

CITY COURT OF THE CITY OF WHITE PLAINS
STATE OF NEW YORK: COUNTY OF WESTCHESTER

----- X
JOHN McFADDEN,

Petitioner,

**Index #SP651/89
#SP2008-1474**

**NOTICE OF MOTION to Compel
Compliance by White Plains City
Court Chief Clerk Patricia Lupi with
the Duties of her Office & Other Relief**

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.
----- X

PLEASE TAKE NOTICE that upon the annexed affidavit of Respondent ELENA SASSOWER, sworn to on September 18, 2008, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had herein, Respondent ELENA SASSOWER will move in White Plains City Court at 77 South Lexington Avenue, White Plains, New York 10601, on September 26, 2008 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, for an order:

(1) requiring that White Plains City Court Chief Clerk Patricia Lupi furnish the Appellate Term of the Supreme Court's Second Judicial Department with:

(a) a proper "Clerk's Return on Appeal" for the above-entitled case docketed by the White Plains City Court Clerk's Office as #651/89 and #2008-1474;

(b) the docket sheets for #651/89 and #2008-1474;

(c) the microfilm/microfiche of #651/89 and the file of #2008-1474;

(d) a proper “Clerk’s Return on Appeal” for #1502/07, *John McFadden v. Elena Sassower* – a case for which the Clerk’s Office purported #651/89 to be the “original #” and which was purportedly consolidated with #1502/07 on the representation of Chief Clerk Lupi that it was the only prior related case still open;

(e) the docket sheet for #1502/07;

(f) the docket sheets, record entries, and microfiche/microfilm that Chief Clerk Lupi reviewed in representing to Judge Jo Ann Friia that there were no other open prior related cases to #1502/07, *to wit*, #434/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), #500/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*), and #652/89 (*John McFadden v. George Sassower*) – and upon which Judge Friia expressly relied on June 30, 2008 at the court proceedings on #651/89-#2008-1474 and #1502/07;

(g) an explanation for her failure to respond to Respondent ELENA SASSOWER’s hand-delivered August 22, 2008 and August 28, 2008 letters – and requiring her responses to those letters;

(2) referring Chief Clerk Lupi for disciplinary and criminal investigation and prosecution for official misconduct, obstruction of justice, and other crimes involving violation of her oath of office, including tampering with court records and false statements to Judge Friia as to the status of #651/89 and related cases and/or her complicity in Judge Friia’s misrepresentations as to those cases;

(3) for such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.

Answering affidavits, if any, are required to be served at least two days prior to the September 26, 2008 return date.

Dated: White Plains, New York
September 18, 2008

Yours, etc.,



ELENA RUTH SASSOWER, *Pro Se*
16 Lake Street, Apartment 2C
White Plains, New York 10603
Tel: 914-949-2169

TO: LEONARD A. SCLAFANI, ESQ.
18 East 41st Street, Suite 1500
New York, New York 10017

CITY COURT OF THE CITY OF WHITE PLAINS
STATE OF NEW YORK: COUNTY OF WESTCHESTER

----- X
JOHN McFADDEN,

Petitioner,

Index #SP651/89
“SP-2008-1474”

Moving Affidavit

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.

----- X
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the respondent *pro se*, ordered to be evicted and removed “forthwith” from my home of nearly twenty-one years by Judge Jo Ann Friia’s July 3, 2008 decision & order and her July 21, 2008 judgment of eviction and warrant of removal in the above-entitled case (Exhibits A-1, A-2, A-3) – the subject of notices of appeals to the Appellate Term of the Supreme Court’s Second Judicial Department (Exhibits B-1, B-2).

2. As docketed under #651/89, I am fully familiar with the facts, papers, and proceedings heretofore had herein. Likewise I am fully familiar with the facts, papers, and proceedings in *John McFadden v. Elena Sassower*, #1502/07, the case with which #651/89 was allegedly consolidated pursuant to Judge Brian Hansbury’s October 11, 2007 and January 29, 2008 decisions & orders therein (Exhibits C-1 and C-2) – also

the subject of notices of appeals to the Appellate Term (Exhibit D-1, D-2, D-3). However, I am unfamiliar with the facts, papers, and proceedings that resulted in the Clerk's Office's assignment of a new docket number for #651/89, *to wit*, #2008-1474. The assignment of such additional docket number – concealed by the July 3, 2008 decision & order and July 21, 2008 judgment of eviction and warrant of removal (as is the consolidation) – is the first ground of my appeal in #651/89. As stated by my July 30, 2008 order to show cause to the Appellate Term for a stay pending appeal:

“Upon information and belief, #651/89 is closed and petitioner’s March 27, 1987 Petition was dismissed for want of prosecution at some point during the past 15 years of dormancy.

For this reason, the White Plains City Court Clerk opened a new docket number for this 1989 proceeding, #SP-2008-1474. Such was done surreptitiously and without notice to the parties, so as to circumvent my legal entitlement to dismissal of petitioner’s diametrically different Petition in his 2007 proceeding, *John McFadden v. Elena Sassower*, #1502/07, and summary judgment on my Counterclaims therein.” (¶FOURTH, bold in the original).

3. This affidavit is submitted in support of my accompanying notice of motion, without prejudice to my contention that White Plains City Court judges are disqualified for pervasive actual bias and interest and are without jurisdiction by reason thereof. Such contention was previously presented by my legally-sufficient July 18, 2008 order to show cause for Judge Friia’s disqualification, for transfer of this case and of #1502/07, as well as of the record of all related cases, and, if denied, for disclosure, which Judge Friia refused to sign.¹ Among the document-based allegations of that

¹ . That order to show cause, incorporated herein by reference, is now before the Appellate Term in support of my July 30, 2008 order to show cause for a stay pending appeal, as well as in support

order to show cause (at ¶10) is that Judge Friia “collud[ed] with the Clerk’s Office [of the White Plains City Court] in improperly putting #651/89 on the Court’s calendar for an “ALL DAY TRIAL” on June 30, 2008, on the pretext that the case was consolidated with #1502/07 and that #651/89 was the ‘original #’ for #1502/07”. Such collusion is further evidenced by the transcript of the June 30, 2008 proceedings (Exhibit E, pp. 29-30, 34-35), wherein Judge Friia not only purported that Chief Clerk Patricia Lupi had reviewed court records and found that only #651/89 was open and that all other prior related cases were closed, but denied my reasonable request for “a sworn statement” from Chief Clerk Lupi as to her review and determination of the status of #651/89 and the other cases. Such gives Judge Friia a direct self-interest in denying the relief herein sought, as granting it would expose the true facts pertaining to these case records and Chief Clerk Lupi.

4. This motion is made on advice of the Clerk’s Office of the Appellate Term, which received from the Clerk’s Office of White Plains City Court a July 30, 2008 “Clerk’s Return on Appeal” for #651/89 (Exhibit F-1) and a July 31, 2008 “Clerk’s Return on Appeal” for #1502/07 (Exhibits G-1) – each deficient, *as a matter of law*, and materially false. Likewise deficient were the listings of “Papers Forwarded to Appellate Term” (Exhibits F-2, G-2), accompanying each “Clerk’s Return on Appeal”. According to Appellate Term Chief Clerk Paul Kenny, the preferred

of my August 13, 2008 motion to vacate the July 3, 2008 decision & order and July 21, 2008 judgment of eviction and warrant of removal and to dismiss Mr. McFadden’s underlying March 27, 1989 petition.

procedure is for me to make a motion in this Court prior to seeking relief from the Appellate Term, including for its so-ordering of a subpoena to Chief Clerk Lupi for the documents and information I requested from her by letters dated July 30, 2008 (Exhibit H) and August 22, 2008 (Exhibit K).

5. Such motion – whether to this Court or to the Appellate Term – would be unnecessary but for Chief Clerk Lupi’s wilful and deliberate failure to respond to my August 22, 2008 letter to her (Exhibit K), particularizing the deficiencies of the “Clerk’s Return on Appeal” for #651/89 (Exhibit F) and for #1502/07 (Exhibit G), neither of which she signed, as well as the knowingly false and misleading nature of her August 7, 2008 letter to me (Exhibit J) in purported response to my July 30, 2008 letter to her (Exhibit H).

6. In the interest of judicial economy, I incorporate by reference the correspondence between myself and Chief Clerk Lupi, setting forth the facts germane to this motion and entitling me to ALL its requested relief. This correspondence is:

(a) my hand-delivered July 30, 2008 letter to Chief Clerk Lupi (Exhibit H);

(b) my hand-delivered August 7, 2008 letter to Chief Clerk Lupi, stating that I had received no response from her to my July 30, 2008 letter and that such was prejudicial as the requested information was needed for my July 30, 2008 order to show cause in the Appellate Term for a stay pending appeal, returnable on August 13, 2008 (Exhibit I);

(c) Chief Clerk Lupi’s August 7, 2008 letter to me, sent in an envelope postmarked August 8, 2008 and not delivered to me until August 13, 2008 (Exhibit J);

(d) my August 22, 2008 letter to Chief Clerk Lupi, requesting that

she respond in time for my further submission to the Appellate Term due on September 2, 2008 (Exhibit K); and

(e) my August 28, 2008 letter to Chief Clerk Lupi, stating that I had received no response and asking that she advise when her response would be forthcoming (Exhibit L).

7. I rest on the exposition in my aforesaid letters to Chief Clerk Lupi, with only the following modification as to the contents of the record of #1502/07 transmitted by the White Plains City Court Clerk's Office to the Appellate Term. The recitation in the second paragraph on page 5 of my August 22, 2008 letter (Exhibit J) was true and correct on August 13, 2008, but not on September 2, 2008.

On September 2, 2008, I again requisitioned the record of #1502/07 at the Appellate Term and received the identical folder as I had on August 13, 2008. I thereupon inquired of Senior Court Clerk David Ryan whether there might be a further folder containing the record – which he succeeded in locating and which he then marked with a #1, placing a #2 on the other folder. This folder #1 contained documents that approximate the description in the second paragraph of page 5 of my August 22, 2008 letter (Exhibit K) as having been listed in the “Papers Forwarded to Appellate Term” compiled by the White Plains City Court Clerk's Office (Exhibit G-2)².

² The “(2) Stenographers Minutes” are those for June 30, 2008;

The “(3) Federal Cases” is the August 12, 1991 district court decision in the federal action involving the subject apartment – which had been one of many federal court decisions transmitted by Mr. Sclafani under a July 17, 2007 letter to Judge Eric Press, which was not among the file contents;

The “(16) Letter from Sclafani” is his August 30, 2007 faxed letter to me [misdated June 7, 2007] responding to my August 29, 2007 faxed letter to him requesting his missing page 33 of his



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03/17/2008

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

On September 18, 2008, I served the within:

Motion to Compel Compliance by White Plains City Court Chief Clerk Patricia Lupi with the Duties of Her Office & Other Relief

upon: Leonard A. Sclafani, Esq.

by depositing a true copy of same in a post-paid properly-addressed wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, at the address furnished by him:

Leonard A. Sclafani, Esq.
18 East 41st Street, Suite 1500
New York, New York 10017

To further establish such mailing – and its delivery – I have sent same certified mail: 7002-2030-0007-8572-9044 – and postal tracking can be accessed *via* www.usps.com.

ELENA RUTH SASSOWER

Sworn to before me this
18th day of September 2008


Notary Public

8. The successive paragraphs on pages 5 and 6 of my August 22, 2008 letter (Exhibit K) remain true and correct, *to wit*, that the file of #1502/07, as transmitted by the White Plains City Court Clerk's Office to the Appellate Term, omits "any and all records of the related prior City Court proceedings examined by [Chief Clerk Lupi], pursuant to Judge Hansbury's October 11, 2007 decision & order in #1502/07 that 'the Court will consolidate any prior pending action with the instant proceeding...' and contains "not a single document[], entry, or other record that would enable the Appellate Term to rule as to the status of the prior City Court proceedings, including #651/89."



ELENA RUTH SASSOWER

Sworn to before me this
18th day of September 2008



Notary Public

BELINDA HAUGHTON
Notary Public, State of New York
No. 01HA6179682
Qualified in Westchester County
Commission Expires Dec. 24, 2011

August 23, 2007 motion;

The "17) Correspondence from George Sassower" appears to be an August 24, 2007 motion my father had made in Westchester Supreme Court;

The "19) Jury Trial Demanded" is, apparently, my August 20, 2007 Answer with Affirmative Defenses and Counterclaims;

The "20) Correspondence from Eleanor Sassower" consists of my July 26, 2007 letter to Judge Press requesting an extension of time to August 20, 2007 to file my Answer to the Petition – on which was handwritten "EP APPROVED EXTENSION 7/26/07". None of my other substantive correspondence was among the file contents;

The "21) Answer of intervenor..." appears to be my father's July 13, 2007 Answer of Intervenor". As for "21)...Petition, Notice of Petition", I believe these are Mr. McFadden's – though I'm not certain I saw a "21)...Docket Card, Attorney Notice of Appearance";

As for the "22) Denied Order to Show Cause" and "23) "Denied Order to Show Cause", the first is Judge Friia's June 28, 2008 handwritten denial on a copy of my first order to show, consisting of the three-page order to show cause only. The second is her handwritten denial on the full original of my July 8, 2008 order to show cause – which I had resubmitted to Judge Friia under a July 9, 2008 letter to her. This important letter, as likewise, my important predecessor June 24-25 letters to Judge Friia, were not among the "20) Correspondence from Eleanor Sassower".