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CLERK OF
COURT OF
WHITE PLAINS, N.Y.
AUG 22 P 3:31

BY HAND

August 22, 2008

White Plains City Court Chief Clerk Patricia Lupi
77 Lexington Avenue
White Plains, New York 10601

RE: Your August 7, 2008 Letter
& Purported Transmittal to the Appellate Term of the Record of:
John McFadden v. Doris L Sassower & Elena Sassower,
White Plains City Court #651/89 & “#2008-1474”
John McFadden v. Elena Sassower,
White Plains City Court #1502/07

Dear Chief Clerk Lupi,

This replies to your letter to me dated August 7, 2008, purporting to respond to my July 30, 2008 letter to you.

At the outset, please advise why the Appellate Term is an indicated recipient of your August 7th letter to me, as the Appellate Term was not an indicated recipient of my July 30th letter to you. Please also state whether you furnished the Appellate Term with a copy of my July 30th letter so that it could compare your response to my letter.

Quite frankly, there was no reason for you to have sent your letter to the Appellate Term other than to prejudice it against me and to mislead it as to the status and completeness of the record of #651/89 and #1502/07 which, unbeknownst to me, you were then transmitting to it with false certifications by your “Clerk’s Return on Appeal”, accompanied by patently deficient listings of “Papers Forwarded to Appellate Term”.

On August 13, 2008, the return date of my order to show cause for a stay pending appeal¹,

¹ This return date was brought to your attention by my August 7th letter to you, which stated that I had received no response from you to my July 30th letter and that this was all the more prejudicial as I needed the requested information for my order to show cause for a stay pending appeal to the Appellate Term, returnable on August 13th. Your August 7th letter makes no mention of my August 7th letter, received by the White Plains City Court Clerk’s Office at 11:27 a.m., and ignored its request that your response to my July 30th letter be faxed to me. Instead, you mailed your purported August 7th response in an envelope bearing a Pitney Bowes

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I was at the Appellate Term and obtained copies of your certification for #651/89, dated July 30, 2008, and for #1502/07, dated July 31, 2008. These certifications, entitled "Clerk's Return on Appeal", were required to be signed by you as Chief Clerk, but were not. Indeed, they were not even signed by your Deputy Chief Clerk, Lynn Ward. Rather, they were signed by Court Assistant Jacqueline Rodriguez. I also obtained copies of the listing of "Papers Forwarded to Appellate Term" for #651/89 and #1502/07, presumably compiled by Ms. Rodriguez. For your convenience, copies of all these documents are enclosed.

Please identify why you did not sign the "Clerk's Return on Appeal", as required, and confirm that it was prepared under your direction and reviewed by you before being transmitted to the Appellate Term. This includes its false representation that "The within case and exceptions are settled"², as to which, for #651/89, Ms. Rodriguez marked "Justice's Minutes of Testimony", followed by the handwritten addition "-motion", and marked "Official Stenographic Minutes" for #1502/07.

Contrary to Ms. Rodriguez' certification for #651/89, virtually all of what she transmitted to the Appellate Term as "originals...of all papers" are NOT "originals"³. Rather, they are copies, mostly from microfilm/microfiche of #651/89⁴ – a fact her "Clerk's Return on Appeal" does not disclose, just as it does not indicate transmittal of the microfilm/microfiche to the Appellate Term for such comparison as it would see fit to do. Nor are any of the transmitted documents "entered"⁵, to wit, Judge Friia's July 3, 2008 decision & order, her

postage label dated August 8th – and which was not delivered to me until August 13th – an unusual lag for a local letter. By then, I had already filed in the Appellate Term my August 13th reply affidavit in support of a stay pending appeal, without the requested information.

² Settlement is governed by §1704(a) of the Uniform City Court Act – reproduced, in full, by the Appellate Term's "Guide to Preparing a Civil Return on Appeal to the Appellate Term Ninth and Tenth Judicial Districts", supplied by the Appellate Term to the White Plains City Court Clerk's Office.

³ Pursuant to §1704(b) of the Uniform City Court Act – reproduced, in full, by the Appellate Term's Guide – the return is required to contain "...the judgment or order appealed from and all the original papers upon which the judgment or order was rendered or made, duly authenticated by the certificate of the clerk having the custody thereof, or copies thereof duly certified by such clerk, and shall have annexed thereto the opinion of the court, if any, and the notice of appeal."

⁴ Among the copied documents not from microfilm/microfiche are Judge Friia's July 21, 2008 judgment of eviction and July 21, 2008 warrant of removal. Not only are these two documents not originals, but the originals from which the copies were made were never entered and bear no file stamp of the White Plains City Court Clerk's Office after Judge Friia signed them. Indeed, the only file stamp they bear is from July 11, 2008 at 10:12 a.m., which apparently was when Mr. McFadden's attorney submitted these proposed documents for Judge Friia's signature.

⁵ The Appellate Term's Guide instructs that "If the appeal is from a judgment even if an order granted

July 21, 2008 judgment of eviction, and her July 21, 2008 warrant of removal.

Nor did Ms. Rodriguez transmit “all papers required to be returned” from #651/89. Missing from what I saw at the Appellate Term were the following material documents:

- (1) the exhibits annexed to respondents’ April 24, 1989 motion to dismiss the Petition;
- (2) the complaint in the federal action in which petitioner was co-plaintiff with respondents, incorporated by reference in respondents’ April 24, 1989 motion and annexed to their Answer in the related City Court proceeding under #500/88;
- (3) the exhibits to petitioner’s first and second summary judgment motions, dated November 25, 1991 and October 20, 1992, respectively;
- (4) the exhibits to respondents’ responding affidavits opposing petitioner’s two summary judgment motions;
- (5) my father George Sassower’s opposition papers to petitioner’s first and second summary judgment motions;
- (6) the exchange of correspondence between Judge Reap and the attorneys – including Judge Reap’s April 12, 1990 letter extending respondents’ time to answer the Petition under June 27, 1989.

Did you transmit these above-enumerated documents to the Appellate Term and are they part of the microfilm/microfiche of #651/89?

I believe these enumerated documents were also missing from the documents Ms. Rodriguez gave me to review on July 21st, with the representation that they were a full copy of the microfilmed/microfiched file of #651/89.⁶ As you know, it was because such purported “full

the judgment, it must be properly entered, see CPLR 5016” – and reproduces that provision, in full, beginning with its subdivision (a) “What constitutes entry. A judgment is entered when, after it has been signed by the clerk, it is filed by him.”

⁶ Not included among these enumerated documents are “respondents’ December 17, 1991 responding affidavits opposing petitioner’s November 2[5], 1991 motion for summary judgment” – cited by my July 30th letter as having been missing from the documents that Ms. Rodriguez had claimed to be the file of #651/89 on July 21st. I did find those affidavits among the documents sent to the Appellate Term file, misplaced as affidavits in opposition to Mr. McFadden’s October 20, 1992 summary judgment motion.

copy” was “MATERIALLY INCOMPLETE” that my July 30th letter requested “access to the microfilm/microfiche of #651/89” as its first request. Your August 7th letter does not acknowledge this threshold request – which you implicitly deny in falsely purporting that:

“[I] have been afforded full and reasonable access to the complete court record on all matters requested...any court record(s) which [I] have requested, and which were previously reduced to microfilm, have been provided to [me] in its entirety...judicial resources and staffing simply cannot entertain repeated and duplicative requests for material previously reviewed by and/or provided to [me] by the Court.” (underlining added).

Your August 7th letter also fails to acknowledge the second request of my July 30th letter, namely, that you

“confirm, in writing, what you and Ms. Rodriguez...stated to me, including on July 21, 2008, *to wit*, that the Clerk’s Office has NO docket sheet for #651/89 – and also has NO docket sheets for the...related City Court proceedings [#434/88, #500/88, #504/88, #652/89]” (underlining and capitalization in the original).

Your August 7th letter simply ignores this request

Plainly, if you had a docket sheet for #651/89, you would have transmitted it to the Appellate Term with your “Clerk’s Return on Appeal” – which you did not do⁷. Without a docket sheet, you have no way of verifying “the complete court record” of #651/89 “in its entirety” and no basis to purport that you have afforded me access to same, when I have my own original of the file with which I am comparing your microfilmed/microfiched copies.

In this regard, your list of 16 “Papers Forwarded to Appellate Term” for #651/89 is completely worthless and does not conform with the documents in the Appellate Term file for #651/89, as transmitted by you. Only a single “Notice of Motion” is indicated by your list. Is it respondents’ April 24, 1989 dismissal motion? Is it petitioner’s November 25, 1991 summary judgment motion? Is it petitioner’s October 20, 1992 summary judgment motion? There are no opposition or responding affidavits listed pertaining to such unidentified motion, nor my father’s letter opposing the first summary judgment motion or his affirmation opposing the second. Nor is any correspondence listed.

⁷ You did transmit to the Appellate Term a page of handwritten notes of the case. Please advise whether such page – a copy of which is enclosed – was copied from microfilm/microfiche – and whether there is an additional page, as appears from the upper right edge.

Additionally, none of the documents forwarded to the Appellate Term for #651/89 – including your “Clerk’s Return on Appeal” and list of forwarded “Papers” – identify that you opened a new docket number “2008-1474” for #651/89 or the reasons therefor. My July 30th letter recounts my discovery of that new docket number on July 21st, upon reviewing the file for #651/89 at the White Plains City Court Clerk’s Office and our conversation about it on that date – as to which my July 30th letter requested further information, ignored by your August 7th letter.

As for #1502/07, the file at the Appellate Term that I reviewed on August 13th was missing the most essential of its “Papers”, namely, Mr. McFadden’s June 23, 2007 verified Petition, served upon me on July 9, 2007, and my August 20, 2008 verified Answer with Affirmative Defenses and Counterclaims. Nor does your list of 23 “Papers Forwarded to Appellate Term” for #1502/07 conform to what I found in the file. I did not see any “2) Stenographers Minutes”; “3) Federal Cases”; “16) Letter from Leonard Sclafani”, “17) Correspondence from George Sassower”; “19) Jury Trial Demanded”; “20) Correspondence from Eleanor Sassower”; “21) Answer of intervenor, Petition, Notice of Petition; Docket Card, Attorney Notice of Appearance”; “22) Denied Order to Show Cause” or a second “23) Denied Order to Show Cause”. Indeed, I repeatedly asked the personnel at the Appellate Term Clerk’s Office if perhaps they had another folder containing these documents and was repeatedly told no.

Also missing from the transmitted file of #1502/07 are any and all records of the related prior City Court proceedings examined by you, 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 to avoid duplicative trials and promote judicial economy”. Such October 11, 2007 decision & order was the subject of my December 5, 2007 notice of appeal and of Mr. McFadden’s December 14, 2007 notice of cross-appeal – which, apparently, the White Plains City Court Clerk’s Office has only now forwarded to the Appellate Term in conjunction with my July 23, 2008 notice of appeal from Judge Hansbury’s January 29, 2008 decision & order which, *inter alia*, ordered “The proceedings shall remain consolidated”.⁸

It was based on your examination of these related prior proceedings that only #651/89 was consolidated with #1502/07. Other related prior proceedings, such as #434/88 and #500/88, were not because – as baldly stated by Judge Friia on June 30, 2008 – you had determined them to be “closed”. Such was described by my July 30th letter to you and was the basis for my request for access to the microfilm/microfiche of these related prior City Court

⁸ The Appellate Term has assigned these appeals separate numbers. #2008-01433 WC is for my appeal and Mr. McFadden’s cross-appeal of Judge Hansbury’s October 11, 2007 decision & order. #2008-01428 WC is for my appeal of Judge Hansbury’s January 29, 2008 decision & order. Neither decision & order has been entered by you.

proceedings and for “such specific documents or entries in the ‘files’ and ‘records’ of White Plains City Court as led you to represent to Judge Friia that prior City [C]ourt proceedings, except for #651/89, are closed and upon which she has relied, to my prejudice (Tr. 29-30, 34-35).” For your convenience, the referred-to transcript pages of Judge Friia’s statements on June 30, 2008 are enclosed.

Your “Clerk’s Return on Appeal” for #1502/07 contains not a single documents, 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.

Although your August 7th letter states “The Court remains ready and willing to accommodate any reasonable request [I] may have with respect to records and/or [my] appeal”, you have ignored ALL the requests made by my July 30th letter, except one, which you have implicitly denied. That request was for “access to the file of [#1502/07], which – because it is recent and ongoing – is not on microfilm or microfiche.” As I now know, you have forwarded what you have purported to be that file to the Appellate Term.

As for the requests in my July 30th letter that your August 7th letter ignores, and which by this letter I reiterate as they are ALL “reasonable”, such are as follows:

- (1) my request to review the microfilm/microfiche of #651/89, as well as the microfilm/microfiche of the related City Court proceedings under #434/88, #500/88, #504/88, #652/89;
- (2) my request that you “confirm, in writing”, that “the Clerk’s Office has NO docket sheet for #651/89” and also has “NO docket sheets” for #434/88, #500/88, #504/88, #652/89;
- (3) my request that you explain why there are “NO docket sheets” for the aforesaid five proceedings, if such be the case, and that you state “whether such comports with the Clerk’s Office’s duties, under law”;
- (4) my request that you “furnish me with such specific documents or entries in the ‘files’ and ‘records’ of White Plains City Court as led you to represent to Judge Friia that prior City [C]ourt proceedings, except for #651/89, are closed... (Tr. 29-30, 34-35)”;
- (5) my requests that you “identify at whose instance docket number ‘SP-2008-1474’ was assigned to #651/89, the date this was done, ... the reason therefore”, [and] “what notice, if any, was given to the parties of this new docket number”;

- (6) my request for a copy of the docket sheet for “SP-2008-1474”;
- (7) my request that you advise as to your knowledge of the form notice of appearance, filled in by Leonard Sclafani, Esq., which he dated 6/30/08, identifying himself as “Attorney for: John McFadden” in an action he entitled “*John McFadden v. Elena Sassower John Doe*”, for which he furnished no index number;
- (8) my request that you advise as to the basis on which the Clerk’s Office placed Mr. Sclafani’s aforesaid notice of appearance in the file of #651/89 and why it bears no file and date stamp of the Clerk’s Office;
- (9) my request for a copy of the docket sheet of #1502/07;
- (10) my request that you “confirm that you have refused to provide me with the date of Judge Reap’s retirement and the names of the other White Plains City Court judges serving at that time and immediately thereafter”.

Finally, so that the Appellate Term has no misimpression from your August 7th letter as to the reality of the “access” afforded me by the White Plains City Court Clerk’s Office to review copies of what it purported to be the full microfilmed/microfiched files of #651/89, #434/88, #500/88, #504/88, #652/89 and the original file of #1502/07, the facts are as follows:

I reviewed same on two, possibly three, occasions in August 2007. Each of these visits was pre-scheduled to meet the convenience of the Clerk’s Office – and their purpose, known to the Court, was to enable me to properly draft my Affirmative Defenses and Counterclaims for my Answer in #1502/07, which I filed on August 20, 2007. Indeed, this is why the Clerk’s Office copied the files from microfilm/microfiche.

Not until nearly ten months later, on June 12, 2008, did I review the files again – at which time you berated me for seeking to review them. My review lasted no more than 20 minutes and our conversation on that date is recounted by the second of my June 13, 2008 letters to you. Your wilful and deliberate failure to respond to those June 13, 2008 letters, as likewise the wilful and deliberate failure of Judge Friia to respond to the copies of those letters I provided her under a June 24, 2008 letter, compelled me to bring my June 28, 2008 order to show cause to disqualify Judge Friia and transfer the proceeding to another court to ensure the appearance and actuality of impartial justice, which Judge Friia refused to sign.⁹

⁹ My June 28, 2008 order to show cause is annexed as Exhibit 1 to my July 8, 2008 order to show cause – which is in the possession of the Court, having been resubmitted by me with my July 9, 2008 letter to Judge Friia. Such was not among the “Papers” I found in the file at the Appellate Term.

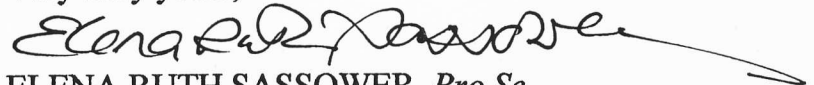
Thereafter, on July 21st, when I came to the Clerk's Office to pick up the third order to show cause that Judge Friia refused to sign, we had the exchange recounted by my July 30, 2008 letter. My review of the files on that date came about because I asked you when you would be responding to my July 8, 2008 and July 9, 2008 letters to you. These had requested, respectively, access to review the "Filed Papers: All papers on file" – referred to by Judge Friia's July 3, 2008 decision & order in #651/89 – and copies of the docket sheets of #651/89 and the other related cases. You answered me that I could review the files right then. You thereupon limited my review to 30 minutes, which you enforced by telling me nearly 30 minutes later that my time was almost up.

If you deny or dispute this, please set forth what you contend to be the dates and duration of the "access" afforded me by the White Plains City Court Clerk's Office.

As I must make a further submission to the Appellate Term by Tuesday, September 2, 2008, I would appreciate your response to this letter by Thursday, August 28th, as I have plans to be out of town for the Labor Day weekend. Please send it to me by fax, with a copy to the Appellate Term's Chief Clerk, Paul Kenny. For your convenience, I have underlined the inquiries I specifically request you to answer.

Thank you.

Very truly yours,


ELENA RUTH SASSOWER, *Pro Se*

Enclosures

cc: Paul Kenny, Chief Clerk, Appellate Term