

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS

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JOHN McFADDEN,

Respondent,

#2008-1427-WC

#2009-148-WC

-against-

(White Plains City Court:
#SP-651/89 & SP-1474-2008)

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

-----X

Affidavit in Reply
to Opposing Affirmation of Assistant Solicitor General Diana R.H. Winters

-----X

JOHN McFADDEN,

Cross-Appellant/Respondent,

#2008-1433-WC

#2008-1428-WC

-against-

(White Plains City Court:
#SP-1502/07)

ELENA SASSOWER,

Appellant.

----- X

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

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

1. I am the appellant *pro se* in the above four appeals and submit this affidavit in reply to the untimely May 14, 2010 affirmation of Assistant Solicitor General Diana R.H. Winters, on behalf of Attorney General Andrew Cuomo, attorney for the non-party White Plains City Court Clerk, Patricia Lupi, opposing my April 25, 2010 motion to disqualify Justice Angela G. Iannacci, to vacate for lack of jurisdiction & fraud, for reargument/renewal, leave to appeal & other relief. This affidavit is submitted in further support of my motion.

2. Pursuant to CPLR §2214(b), cited by my April 25, 2010 notice of motion, Ms.

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PROVINCETON
11:44:30

Winters' affirmation was required to be served "at least seven days prior to the May 17, 2010 return date". Inasmuch as Ms. Winters has raised a spurious timeliness objection to my motion, I would be justified in raising a legitimate timeliness objection to her affirmation.

3. As hereinafter demonstrated, Ms. Winters' paltry five-paragraph affirmation is both frivolous and fraudulent, reinforcing the merit of my motion under applicable legal principles¹, and warranting imposition of costs and sanctions pursuant to this Court's Rule 730.3(g), as well as her referral to disciplinary and criminal authorities, pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct – relief I herein request. Such is all the more compelled as Ms. Winters is on the public payroll, employed by the New York State Attorney General, whose duty, pursuant to Executive Law §63.1, is to safeguard the "interest of the state".

4. No state interest is served by litigation misconduct, let alone at bar where it is intended to thwart my fully-documented April 25, 2010 motion, whose 49 pages establish, by particularized facts and law, the corruption of the judicial process by the Appellate Term, covering up the corruption of the judicial process in White Plains City Court, involving record

¹ My appellant's and reply briefs have made Ms. Winters fully aware of these principles, *to wit*:

"when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339).

"It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause ... and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence §278 at 133 (1979)."

tampering and manipulations by its Chief Clerk, aided and abetted by the Attorney General's office, including by Ms. Winters herself at the Appellate Term. Faced with such serious and substantial motion, involving the Appellate Term's cover-up of her own misconduct, Ms. Winters' duty, pursuant to ethical rules of professional responsibility, was to seek independent evaluation by the Attorney General's office so that New York's highest law enforcement officer could support the motion, consistent his duty under Executive Law §63.1.

5. Indeed, unless Ms. Winters was able to deny or dispute my 49-page showing that the five decisions which are the subject of my motion are “insupportable in fact and law – and knowingly so”, manifest “corruption of this Court's judicial, administrative, and disciplinary responsibilities”; are “judicial frauds” and “so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960)” – all descriptions appearing in my motion's prefatory ¶2 – her duty was to ensure that the underlying record was directed to the Attorney General's Public Integrity Bureau for investigation and prosecution so as to “vindicate the public's interest in honest government” (Exhibit Y).

6. Under the pretense that White Plains City Court Clerk Lupi is “implicated only in the February 23, 2010 decision determining Case No. 2009-148 WC” (¶2), Ms. Winters limits her opposition to my motion to that decision – whose correctness she does not even baldly claim.

7. Her first argument, by her ¶3, is that my motion is “untimely, and should be denied for that reason”. This is both frivolous and fraudulent – as Ms. Winters may be presumed to

² See ¶2 of my motion, underlining in the original.

know from my motion itself. Exhibit W-1 thereto is my March 18, 2010 letter to this Court's Chief Clerk, Paul Kenny, in which I responded to the last two sentences of his March 16, 2010 letter to me, which I quoted:

“I know that you are concerned with the time limitations with respect to your motion to reargue / leave to appeal. If you are having any difficulty, make a written request for additional time and I am confident that given the complexity of your issues, the court will be favorably disposed to granting additional time.”

My response to this was as follows:

“Principal Appellate Court Clerk John Sartoretti has confirmed for me this morning, based on review of the computerized dockets of my four appeals, that my time for the making of such motions has not yet begun to run for either the Appellate Term's February 19, 2010 decisions and orders denying my January 2, 2010 motion to disqualify Justice Molia & other relief or for its February 23, 2010 decisions and orders/judgments determining my four appeals – no notice of entry having been filed. Indeed, I have not been served by my adversaries with notice of entry for any of these decisions and their accompanying orders. Consequently, I do not presently require additional time, although I appreciate your recognition of the circumstances warranting same.”

8. Ms. Winters not only conceals this exchange of correspondence, but conceals that it is service of the order with notice of entry that controls. Thus, she annexes what she describes only as “notice of entry...dated March 15, 2010”, without revealing the date on which it was served or the manner of its service. Her annexed notice of entry is not one she served, but one served by Leonard Sclafani, Esq., counsel to Mr. McFadden, whose March 15, 2010 date is irrelevant, as it was not served by him at that time.

9. Annexed hereto (Exhibit Z-1) is a copy of the envelope I received from Mr. Sclafani containing that notice of entry, bearing a postal imprint of March 24, 2010. Presumably, the notice of entry that Ms. Winters received from Mr. Sclafani had also been mailed to her in an envelope bearing a March 24, 2010 postal date – which is why she does not annex a copy, let

alone acknowledge that service had been by mail, which adds five days to the time for moving for reargument/renewal & leave to appeal.

10. Nor does Ms. Winters annex a copy of the affidavit of service that Mr. Sclafani filed with the Court for this notice of entry – although she could have readily secured it from the Court, if not from Mr. Sclafani, who, tellingly, did not raise a timeliness objection in his own May 4, 2010 affirmation opposing my motion – a copy of which she presumably received from him prior to her making her untimely May 14, 2010 opposing affirmation.³

11. Annexed hereto (Exhibit Z-2) is a copy of Mr. Sclafani's affidavit of service, filed with this Court's Clerk's Office, which I secured today from Senior Court Clerk Julio Mejiia, attesting to service of the notice of entry, by mail, on March 23, 2010 – a date I had ascertained from Mr. Mejiia prior to my making my motion so as to ensure its timeliness.

12. Indeed, had Ms. Winters simply telephoned this Court's Clerk's Office, she would have been told what Mr. Mejiia has today confirmed and what he and Mr. Sartoretti had previously told me: that my time for making motions for reargument/renewal and leave to appeal runs from service of the order with notice of entry.

13. Ms. Winters' next argument, in her ¶4, is a bald assertion that reargument and renewal should be denied as “[my] motion does not set forth any matters of fact or law relevant to her appeal that were not offered on the prior motion, that were overlooked, or that were misapprehended by the court in determining [my] prior motion.” This is a flagrant deceit, verifiable from my motion, whose 49 pages establish my entitlement to reargument/renewal based on the disqualification of Justices Iannacci and Molia for demonstrated actual bias and

³ Mr. Sclafani's affirmation in opposition to my motion, though dated May 4, 2010, was mailed on May 10, 2010. See fn. 1 of my accompanying reply affidavit thereto.

interest. Ms. Winters does not deny the accuracy of ANY of the facts, law, or legal argument therein presented – NONE of which she even identifies. This includes those set forth by my ¶¶20-25 under the title heading:

“THE COURT’S FEBRUARY 23, 2010 DECISION
DETERMINING APPEAL #2009-148-WC:
(Judge Friia’s October 14, 2008 decision/order)”.

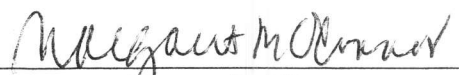
constituting my specific analysis of that decision.

14. As for Ms. Winters’ final ¶5, it is equally bald in purporting that my motion does not “provide sufficient grounds on which to vacate the decision; on which this Court should grant leave to appeal to the Appellate Division, Second Department; or on which to disqualify Justice Iannacci” – and that such relief should, therefore, be denied. This flagrant deceit is likewise verifiable from my 49-page motion, whose accuracy is completely uncontested by her.

WHEREFORE, Ms. Winters’ opposition to my April 25, 2010 motion is none, *as a matter of law*, and, by its deceit, reinforces my entitlement to the granting of the relief sought, and to imposition of costs and sanctions against her pursuant to this Court’s Rule 730.3(g), as well as her referral to disciplinary and criminal authorities pursuant §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct.


ELENA SASSOWER

Sworn to before me this
17th day of May 2010


Notary Public

MARGARET M. O'CONNOR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
REG. NO. 010C6132954
MY COMMISSION EXPIRES AUG. 29, 2013

**SUPREME COURT OF THE STATE OF NEW YORK
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Appellant.
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Appellant's Affidavit in Reply
to Opposing Affirmation
of Assistant Solicitor General Diana R.H. Winters
& in Further Support of Appellant's Motion
to Disqualify Justice Angela G. Iannacci,
to Vacate for Lack of Jurisdiction & Fraud, Reargument/Renewal,
Leave to Appeal, & Other Relief

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