

2009-148 WC
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS

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JOHN McFADDEN,

Petitioner Respondent,

Case No. 2009-148 WC

-against-

City Court, White Plains
Index No. SP 1474/08

DORIS L. SASSOWER,

Respondent,

**AFFIRMATION IN
OPPOSITION**

ELENA SASSOWER,

Respondent Appellant.

-----X

DIANA R. H. WINTERS, an attorney duly admitted to practice law before the courts of this State pursuant to New York Rules of Court § 520.11(a)(2), hereby affirms under penalty of perjury as follows:

1. I am an Assistant Solicitor General in the Office of Andrew M. Cuomo, Attorney General of the State of New York, attorney for non-party respondent Patricia Lupi, the Chief Clerk of the City Court of the City of White Plains. I make this affirmation in opposition to the April 25, 2010, motion brought by appellant Elena Sassower, requesting that

this Court disqualify Justice Angela G. Iannacci, vacate its February 19, and February 23, 2010 decisions, grant reargument and renewal, and grant leave to appeal to the Appellate Division, Second Department

2. Non-party respondent Lupi was implicated only in the February 23, 2010 decision determining Case No. 2009-148 WC, which affirmed City Court's denial of Sassower's motion to compel Lupi—the Chief Clerk of the City Court of White Plains—to perform various official duties. This affirmation in opposition only refers to Sassower's motion as it regards this February 23, 2010 decision.

3. Sassower's motion is untimely, and should be denied for this reason. Pursuant to this Court's Rule § 732.11, a motion to reargue or resettle an order must be made within thirty days after the decision, except for good cause shown. Pursuant to C.P.L.R. § 5513(b), a motion for permission to appeal must be made within thirty days of notice of entry of the decision. The decision appealed from was issued on February 23, 2010, and notice of entry is dated March 15, 2010. *See attached.* Sassower's motion was made on April 25, 2010, and is therefore untimely.

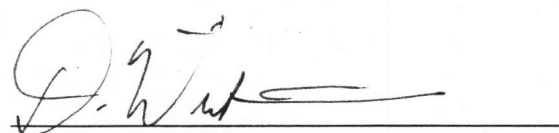
4. Moreover, Sassower's motion does not set forth any matters of fact or law relevant to her appeal that were not offered on the

prior motion, that were overlooked, or that were misapprehended by the court in determining her prior motion. Her motion for reargument and renewal should therefore be denied.

5. Nor does Sassower 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. Her motion to vacate, to disqualify, and for leave to appeal should therefore be denied.

WHEREFORE, for the foregoing reasons, the motion of appellant Elena Sassower should be denied.

Dated: New York, New York
May 14, 2010

A handwritten signature in black ink, appearing to read "D. Winters", written over a horizontal line.

Diana R. H. Winters
Assistant Solicitor General

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: 9TH and 10TH
JUDICIAL DISTRICTS

-----X
JOHN MCFADDEN

Index #2008-00148 W C

Respondent

-against-

Lower Court #
SP 651/89

DORIS L. SASSOWER

Tenant

-and-

ELENA SASSOWER

Appellant

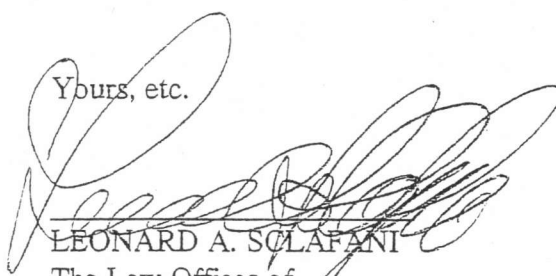
PATRICIA LUPI

Non-party Respondent
-----X

PLEASE TAKE NOTICE that the within are true copies of a Decision and Order duly entered
in the office of the clerk of the within named court on February 23, 2010.

Dated: March 15, 2010
New York, New York

Yours, etc.



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RE: JOHN McFADDEN v DORIS L. SASSOWER and ELENA SASSOWER

PATRICIA LUPI
NO. 2009-148 W C

Court, the relief sought was in the nature of mandamus under article 78 of the CPLR, and the court was without jurisdiction to entertain appellant's application (CPLR 7804 [b]). We find no merit to appellant's request for a referral of the matter for "disciplinary and criminal investigation." Accordingly, the order is affirmed.

Molia and Iannacci, JJ., concur.

Nicolai, P.J., taking no part.

2009-148 WC

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APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS**

JOHN McFADDEN,

Petitioner-Respondent,

-against-

DORRIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Respondent-Appellant.

AFFIRMATION IN OPPOSITION

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Personal service of the within document is admitted by:

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... day of, 20