

Case No. 2008-1433 WC

To be Argued by:
Elena Sassower
(15 minutes requested)

APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Cross-Appellant,

-against-

ELENA SASSOWER,

Appellant.

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APPELLANT'S REPLY BRIEF*



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***Appeal 1: Judge Brian Hansbury's October 11, 2007 Decision & Order
(Westchester City Court #1502/07)**

SB-2

INTRODUCTION

This reply brief of appellant Elena Sassower [Sassower] is submitted in response to the brief of the respondent and cross-appellant John McFadden [McFadden], signed and presumably written by his counsel, Leonard Sclafani, Esq. [Sclafani].

As hereinafter demonstrated, Sclafani's brief is no opposition to Sassower's appeal, as a matter of law. Its 57 pages and five annexed exhibits are completely non-responsive to Sassower's appellant's brief, which it does not discuss or even mention. Indeed, none of the facts, law, or legal argument summarized and detailed by Sassower's "Questions Presented" (pp. iv-v); her "Introduction" (p. 1); her "Statement of the Case" (pp. 2-35); and her "Argument" (pp. 35-46) are denied or disputed by Sclafani's brief. This includes the facts, law, and legal argument particularized by Sassower's incorporated 30-page, line-by-line analysis of Judge Hansbury's October 11, 2007 decision & order, described by her appellant's brief (at p. 36) as "dispositive of the Questions herein presented". *As a matter of law*, Sclafani thereby concedes the truth of what Sassower's brief and analysis set forth, making his non-responsive opposition to the appeal frivolous *per se*.

Also frivolous is Sclafani's cross-appeal to strike Sassower's ten Affirmative Defenses and four Counterclaims. Like his opposition to the appeal, Sclafani's cross-appeal is fashioned on the most flagrant omissions, falsifications, and deceptions, permeating virtually every sentence of his presentation – further reinforcing the merit of Sassower's appeal and the worthlessness of his cross-appeal under the guiding principles quoted at page 14 of Sassower's brief:

“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).”

Consequently, Sassower submits this reply brief not only in further support of her appeal and in opposition to McFadden’s (untimely) cross-appeal¹, but for costs and sanctions against McFadden and Sclafani pursuant to this Court’s rule 730.3(g)², as well as for disciplinary and criminal referrals of them pursuant to this Court’s mandatory “Disciplinary Responsibilities” under §100.3D(2) of the Chief Administrator’s Rules Governing Judicial Conduct³. Indeed, based on the showing herein that Sclafani is virtually incapable of telling the truth in anything he says – replicating his conduct in White Plains City Court, as well as

¹ The untimeliness of Sclafani’s cross-appeal was pointed out by Sassower’s January 15, 2009 letter to this Court’s Chief Clerk – annexed as Exhibit A-1 to Sassower’s reply brief in #2008-1428-WC, incorporated herein by reference.

² “Any attorney or party to a civil appeal who, in the prosecution or defense thereof, engages in frivolous conduct as that term is defined in 22 NYCRR subpart 130-1.1(c), shall be subject to the imposition of such costs and/or sanctions as authorized by 22 NYCRR subpart 130-1 as the court may direct.”

³ “A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.”

previously before this Court in opposing Sassower's July 30, 2008 order to show cause for a stay pending appeal, her August 13, 2008 vacatur/dismissal motion, and her October 15, 2008 order to show cause for reargument/renewal, & other relief, all arising from #SP-651/89, *John McFadden v. Doris L. Sassower and Elena Sassower*, and docketed herein as #2008-1427-WC – this Court should consider including a request to disciplinary authorities that they order that Sclafani be medically examined, as his behavior is clearly pathological.

As McFadden's Verified Petition in this case is the foundational document – as likewise Sassower's responding Verified Answer with ten Affirmative Defenses and four Counterclaims⁴ – copies are annexed to this reply (Exhibits A and B)⁵ to enable the Court to more conveniently determine the brazenness with which Sclafani's brief conceals and falsifies their content. Additionally, because Sassower's 30-page analysis of Judge Hansbury's October 11, 2007 decision is – as stated – “dispositive of the Questions herein Presented” – a copy is also annexed (Exhibit C, pp. 5-35).

To assist this Court in upholding the integrity of the appellate process, Sassower's reply brief herein furnishes the Court with a virtual line-by-line demonstration of the fraud that has been visited upon it by Sclafani's brief, to be passed on to disciplinary and criminal authorities to support their prosecutions of Sclafani and McFadden.

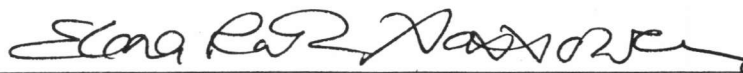
⁴ Contrary to CPLR §§402, 3011, 3012(a), 3019(d), McFadden filed no Reply to Sassower's Counterclaims (Exhibit B, pp. 22-25), each of which “repeat[ed], realleg[ed], and ‘reiterat[ed]....as if fully set forth” the prior paragraphs of her Answer – 77 of these being the paragraphs of her ten Affirmative Defenses.

⁵ Not annexed, due solely to their volume, are the exhibits substantiating Sassower's Affirmative Defenses and Counterclaims, numbering 110 pages. These are appended to the original Answer in the Court's file.

CONCLUSION

WHEREFORE, *as a matter of law*, Sclafani's opposition to Sassower's appeal is no opposition in fact, and, by its material omissions, falsifications, and deceit, reinforces the merit of Sassower's appeal. Sclafani's (untimely) cross-appeal is, likewise, a demonstrated fraud on the Court and must be denied.

Pursuant to this Court's rule 730.3(g) and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, this Court's duty is to impose maximum costs and sanctions on Sclafani and his co-conspiring client McFadden and to refer them to disciplinary and criminal authorities.



ELENA RUTH SASSOWER

New York, New York
March 6, 2009