Elena Ruth Sassower
16 Lake Street, Apartment 2C
White Plains, New York 10603
E-Mail: elenaruth@aol.com
Tel. (914) 949-2169
Fax (914) 428-4994

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 appeal[1],

[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

Ex G-2

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 #651/89[4] – 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

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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

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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 do[7]. 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.

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[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

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[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.

<u>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</u>:

(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, <u>in writing</u>", 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]

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[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

(X) CITY COURT
( ) COUNTY COURT
( ) DISTRICT COURT
( ) JUSTICE COURT
( ) TOWN COURT
( ) VILLAGE COURT

White Plains City Court

INDEX NO. SP651/89

PLAINTIFF,

-AGAINST-

DEFENDANT.

THE WITHIN CASE AND EXCEPTIONS ARE SETTLED.

( ) OFFICIAL STENOGRAPHIC MINUTES
( ) CLERK'S MINUTES OF TESTIMONY
(X) JUSTICE'S MINUTES OF TESTIMONY - motion

JOANN FRETA
City Court Judge

JUDGE

DATED:

Hon. JoAnn Freta

TO THE CLERK: ON APPEALS WHERE NO CASE IS SETTLED, PLEASE STRIKE OUT THE ABOVE.

CLERK'S RETURN ON APPEAL

I, THE UNDERSIGNED, CLERK OF THE ABOVE-NAMED COURT, RESPECTFULLY MAKE RETURN TO THE APPELLATE TERM OF THE SUPREME COURT FOR THE NINTH AND TENTH JUDICIAL DISTRICTS AND CERTIFY THAT THERE ARE HERETO ATTACHED ORIGINALS OF THE NOTICE OF APPEAL AND OF ALL PAPERS REQUIRED TO BE RETURNED PURSUANT TO THE CIVIL PRACTICE LAW AND RULES, THE COURT ACT APPLICABLE TO THIS COURT AND THE RULES AND REGULATIONS OF THE APPELLATE TERM OF THE SUPREME COURT FOR THE NINTH AND TENTH JUDICIAL DISTRICTS.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF THE ABOVE-NAMED COURT THIS 30th DAY OF

July 2008.

Court Assistant
CLERK

PAPERS FORWARDED TO APPELLATE TERM

Index No. SP651/89

7/30/08

John McFadden
~~Plaintiff~~/Petitioner

Attorney: Leonard A. Sclafani

Doris L. Sassower & Elena Sassower
~~Defendant~~/Respondent

Attorney Pro-Se

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1) Notice of Appeal
2) Decision on Motion
3) Warrant
4) Judgment
5) Clerk's Return on Appeal
6) Consent to Change Attorney
7) Notice of Entry
8) Decision on Motion 7/3/08
9) Notice of Motion
10) Decision on motion 9/18/89
11) Consolidated Decisions
12) Decision - 12/29/92
13) Affirmation
14) Petition
15) Notice of Petition
16) Answer

SP 6511/89

Sp. 6151-89

Irene Feldman vs. Doris F. Sassower & Elena Sassower

Attorney: Christopher Kelly
~~Doris Sassower, Pro se~~

Doris F. Sassower, Pro se
Peter J. Gleason, Esq. (Elena)

914-741-2757 - (Feldman)
914-682-2006 - (Sassower)

1-10-89 - Petition adj 4/24/89 - Noticed to dismiss by Elena adj 5/5/89 for answer

5/22/89. Adj to June 5, 1989 - For Reply papers by Sassower + STAY Continued until motion decided by Judge Leap

6/8/89 - Motion to dismiss denied JBL cf Doris Sassower 8-2-89

P GRESHMAN ESQ will reply short w/leave of Lehman

Mel Greenberg, Fed Attorney for counsel on 8/2 of [illegible]

adj to 11/14 89 to extend Pet's time to answer
Denied Letter Oil to 2-14-90 moved adj 2/16/90 9AM
" 4/12/90 extended time for respondents to answer the Pet 6/12/90.
11/1/89 Letter/Req adjourning pet request
2/16/90 Pet's atty filed

[illegible] Request [illegible] for [illegible] - various letters & motion papers
[illegible] Petition Summary proceeding dismissed & denied
Decision & Order entered - mailed 2-5 Exec'd Copies
Mail determinations

(X) CITY COURT of White Plains
( ) COUNTY COURT
( ) DISTRICT COURT
( ) JUSTICE COURT
( ) TOWN COURT
( ) VILLAGE COURT

INDEX NO. SP1502/07

John McFadden PLAINTIFF,

-AGAINST-

Elena Sassower DEFENDANT.

THE WITHIN CASE AND EXCEPTIONS ARE SETTLED.

(X) OFFICIAL STENOGRAPHIC MINUTES
( ) CLERK'S MINUTES OF TESTIMONY
( ) JUSTICE'S MINUTES OF TESTIMONY

JO ANN FRETA
City Court Judge

Jo Ann Freta JUDGE

DATED:

TO THE CLERK: ON APPEALS WHERE NO CASE IS SETTLED, PLEASE STRIKE OUT THE ABOVE.

CLERK'S RETURN ON APPEAL

I, THE UNDERSIGNED, CLERK OF THE ABOVE-NAMED COURT, RESPECTFULLY MAKE RETURN TO THE APPELLATE TERM OF THE SUPREME COURT FOR THE NINTH AND TENTH JUDICIAL DISTRICTS AND CERTIFY THAT THERE ARE HERETO ATTACHED ORIGINALS OF THE NOTICE OF APPEAL AND OF ALL PAPERS REQUIRED TO BE RETURNED PURSUANT TO THE CIVIL PRACTICE LAW AND RULES, THE COURT ACT APPLICABLE TO THIS COURT AND THE RULES AND REGULATIONS OF THE APPELLATE TERM OF THE SUPREME COURT FOR THE NINTH AND TENTH JUDICIAL DISTRICTS.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF THE ABOVE-NAMED COURT THIS 31st DAY OF

July 2008.

Court Assistant
CLERK

PAPERS FORWARDED TO APPELLATE TERM

Index No. SP1502/07

7/31/08

John McFadden
~~Plaintiff~~/Petitioner

Attorney: Leonard A. Sclafani, P.C.

Elena Sassower
~~Defendant~~/Respondent

~~Attorney~~ PRO-SE

1) Notice of Appeal
2) Stenographers Minutes
3) Federal Cases
4) Decision on Motion
5) Notice of Cross Appeal
6) Notice of Appeal
7) Respondent's Affidavit in opposition to Petitioner
8) Notice of Motion
9) Respondent's Memorandum of Law
10) Order to Show Cause for Stay of Trial
11) Decision on Motion
2) Respondent's Affidavit in Reply
3) ~~Pet~~itioner's Reply & Opposition to Cross-motion
4) Affidavit of Service
5) Notice of Cross motion
16) Letter from Leonard Sclafani
17) Correspondence from George Sassower
18) Notice of Motion
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
23) Denied order to show cause

PAPERS FORWARDED TO APPELLATE TERM

Index No. SP1502/07

7/31/08

John McFadden
~~Plaintiff~~/Petitioner

Attorney: Leonard A. Sclafani, P.C.

Elena Sassower
~~Defendant~~/Respondent

~~Attorney~~ PRO-SE

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PAPERS FORWARDED TO APPELLATE TERM

Index No. SP1502/07

7/31/08

John McFadden
~~Plaintiff~~/Petitioner

Elena Sassower
~~Defendant~~/Respondent

Attorney: Leonard A. Sclafani, P.C.

~~Attorney~~ PRO-SE

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22) Denied order to show cause
23) Denied order to show cause

----------x

JOHN McFADDEN,

Petitioner-Landlord,

CALENDAR PROCEEDINGS
Index No.
SP 651-89(1474-08)

- against -

DORIS SASSOWER and ELENA SASSOWER,

Respondent-Tenants.

AND

----------X

JOHN McFADDEN,

Petitioner-Landlord,

Index No.
SP 1502/07

- against -

ELENA SASSOWER,

Respondent-Tenant.

----------X

City Court of White Plains
White Plains, New York
June 30, 2008

B E F O R E: HON. JO ANN FRIIA
CITY COURT JUDGE OF WHITE PLAINS

A P P E A R A N C E S:

LEONARD A. SCLAFANI, P.C.
Attorney for Petitioner-Landlord
18 East 41st Street, 15th Floor
New York, New York 10017

ELENA SASSOWER
Pro Se Respondent-Tenant
16 Lake Street, Apartment 2C
White Plains, New York 10603

Other Appearances:

John McFadden

Eleanor L. Scarpino
Official Court Reporter

The judges of this court must follow the decision and orders of each other. We do not sit as an appellate review of each other, okay; so, unless a decision of one of the judges of this court, full-time or part-time, is reversed by a superior court, in this case the Appellate Term of the State Supreme Court, or proceedings here stayed by the Supreme Court which has exclusive, original jurisdiction over all matters, we are bound to follow each other's decisions.

And in that way, I defer to Judge Hansbury and his decisions of October 11, 2007, and January 29, 2008. As best I know, as we speak, while there may be appeals of those decisions, there is no stay of the directions of those decisions, nor has the Appellate Term or the Supreme Court spoken with respect to the contents of those decisions.

In that way, our chief clerk sought to retrieve the file from 1989, and in so doing, ascertained that that is the only other open case in this matter.

Reference has been made today to other proceedings that might have been filed and occurred throughout the years, referring specifically to the last 17, 18 years in this city court between Mr. McFadden,

Elena and/or Doris L. Sassower, and/or a certain cooperative housing corporation which may be a real party in interest here, I don't know that, but may be a real party in interest here, sounds like they are for the moment since we are not addressing the facts, just the procedure, those are all closed files, okay.

The only open file from the past historically here is 651 of '89. Okay. Going to that file, Mr. Sclafani is absolutely correct that this is, that file is still open in that Judge James Reap reserved decision on the petitioner's then motion for summary judgment, pending the results of litigation in the Federal Court.

Okay. That having been said, there are now three full time judges and one half-time judge in White Plains City Court. That was not the case in 1989. Over the years the configuration of this court has changed. Nonetheless, I'm sitting the longest and I'm the successor in interest, being the senior judge, to Judge James Reap who was the senior judge in 1989 immediately prior to his retirement.

Our chief clerk then directed the file to me, for lack of a better way to assign older files, that file was directed to me. In directing that file to me, the decision of Judge Hansbury to then recuse himself,

with this decision but I know you had another application.

MS. SASSOWER: Well, with all respect, your Honor, I made, I have ten affirmative defenses here and my first one relates to open proceedings.

I read the pertinent portion into the record today. I said there are three open proceedings. This is what I determined based upon reviewing the file last summer as well as my own copy of the file.

THE COURT: I understand. That statement disagrees with what I have just said. Do you have another application to the Court?

MS. SASSOWER: Well, with all respect, I understood you to say that you are, you are resting on Chief Clerk Lupi telling you that the other two proceedings of the co-op brought by the co-op, which I identified in my first affirmative defense to be open, she has represented to you, not on papers, not in a letter, not in my commun -- she has represented to you as being closed.

THE COURT: No, that's not what I said, Ms. Sassower. What I said is that a review of the files for the last 18 years, I asked her to go back one year prior to 1990, just to make sure we have the full span, only

confirms that is the only open matter in this court. All other files are closed.

MS. SASSOWER: That's not correct, your Honor.

THE COURT: I'm telling you that. I'm telling you that is not what Ms. Lupi told me. That is what the records of the White Plains City Court indicate.

MS. SASSOWER: Can she put this in a sworn statement.

THE COURT: No. I'm telling you that is what the records shows. No one is putting anything into a sworn statement.

MS. SASSOWER: I reviewed the records and --

THE COURT: AS I said, you can disagree with what I have said here today. I'm going to stay on the bench for any additional applications. Okay.

MS. SASSOWER: Yes.

THE COURT: Okay go ahead.

MS. SASSOWER: You identified that you must follow the decision and orders of each of the other judges. Unless reversed, you are bound by those decisions and, therefore, you are deferring, you said, to the two decision orders of Judge Hansbury, October 11, 2007, and January 29, 2008.

I refer your attention respectfully to this