

WHITE PLAINS CITY COURT

-----x  
In the Matter of:

JOHN MCFADDEN,

o

o

Petitioner,

Docket

Number

SP1502/07,

F-19751-07/08B

- against -

ELENA SASSOWER,

Respondent.

-----x  
-----x

In the Matter of:

JOHN MCFADDEN,

Petitioner,

Docket Number

F-19751-07/08B

- against -

SP651/89 and

SP1474/08

DORIS SASSOWER AND ELENA SASSOWER,

Respondents.

-----x  
2007

November 16,

BEFORE: JO ANN FRIIA  
Support Magistrate

APPEARANCES: ELENA SASSOWER  
Respondent

LEONARD SCLAFANI  
Counsel for Petitioner

TRANSCRIBER: Annette M. Duncan

SL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

---

FLYNN STENOGRAPHY & TRANSCRIPTION SERVICE

193 Griffing Avenue

Second Floor C

Riverhead, New York 11901

(631) - 727-1107

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

WITNESSES	DIRECT	CROSS	RE-DIRECT	RE-CROSS
No Witnesses Interviewed				

E X H I B I T S

DESCRIPTION	I.D.	IN. EV.
No Documents Submitted/Received		

1 [CD one, counter 10:12:04]

2 JUDGE FRIIA: McFadden against Elena Sassower.

3 This being a motion it will be marked submitted  
4 for decision to me today and a written decision  
5 will follow. I really don't know if there is any  
6 basis for reply here. It is a pretty straight  
7 forward motion. I looked at it earlier today.

8 MR. SCLAFANI: There are several problems,  
9 Judge. One is that there is a trial date  
10 scheduled for Tuesday and the motion is to stay  
11 the trial among other things.

12 JUDGE FRIIA: Then we will make a decision.  
13 This will go to Mr. O'Shea. I will try to have a  
14 decision done by Monday. We will see - - we are  
15 very busy here.

16 MR. SCLAFANI: Right and the other thing is  
17 that it is a motion to be argued so it needs to go  
18 to Judge Hansberry - -

19 JUDGE FRIIA: Well, we are not sure about that  
20 because the motion seeks to have Judge Hansberry  
21 disqualified so I have asked my law - - isn't that  
22 at least part of the application right so I have  
23 Mr. O'Shea, who is our court attorney looking into  
24 the propriety of that. Ordinarily this would go

1 back to Judge Hansberry but given the nature of it  
2 he feels that maybe I should review it as the  
3 senior Judge. We haven't made a decision on that.  
4 He and I will speak when we are finished with  
5 this morning's calendar again.

6 MR. SCLAFANI: Another problem is there is  
7 there is a cross motion for the argument and that  
8 has to go to Judge Hansberry and that doesn't seek  
9 disqualification.

10 JUDGE FRIIA: Okay. So what do you want me to  
11 do today?

12 MR. SCLAFANI: And the last thing is that in  
13 the decision that it is for which the argument is  
14 sort respondent there was a suggestion that a  
15 prior pending case that involves the same parties  
16 and the same subject matter but not the same  
17 issues - -

18 JUDGE FRIIA: Right I remember okay.

19 MR. SCLAFANI: Was that the order suggested  
20 that that case would be consolidated. The problem  
21 is there are other parties in that case and they  
22 weren't given notice.

23 JUDGE FRIIA: Right.

24 MR. SCLAFANI: And I have suggested - - I

1 suggested in my admission motion papers and I am  
2 now suggesting in re-argument that would should  
3 have happened in that case the Court there was a  
4 motion pending for summary judgment it was  
5 submitted in full. All it needed was a decision.

6 JUDGE FRIIA: That is in the other case.

7 MR. SCLAFANI: In the other case - - all it  
8 really needed was a decision and the only issue  
9 pursuant to an order that was issued by the Court  
10 in that case was whether or not the respondent  
11 would be successful in a federal case if she has  
12 now lost so that case was totally right for a  
13 summary judgment to have been granted which would  
14 of course moot out the instant proceedings which  
15 seeks the same relief although on different  
16 grounds. Rather than consolidate those two cases  
17 what should happen is that motion which has now  
18 been pending for eight or nine years should just  
19 be decided.

20 JUDGE FRIIA: But that is not on for the Court  
21 today.

22 MR. SCLAFANI: No, it is because it is part of  
23 my cross motion.

24 JUDGE FRIIA: Well, except that we have to

1 address the threshold question which is whether or  
2 not Judge Hansberry is the proper Judge to hear  
3 it.

4 MR. SCLAFANI: Right.

5 JUDGE FRIIA: And who the Judge is who is  
6 going to hear it on Tuesday and secondly whether  
7 or not the matter is in fact trial ready based on  
8 what you have indicated.

9 MR. SCLAFANI: And that is - -

10 JUDGE FRIIA: As I understand it. My  
11 understanding these issues are there are a lot of  
12 issues here I agree but you know when you got a  
13 lot of paperwork and you could see that there is  
14 about a stack of about a foot in front of me - -

15 MR. SCLAFANI: Right.

16 JUDGE FRIIA: You got to think logically so  
17 you got to address the matters in order. I don't  
18 believe that Judge Hansberry is scheduled for next  
19 Tuesday with next Tuesday being a holiday week we  
20 are sort of all sharing the calendar referring to  
21 the four Judges here one taking each day it may  
22 very well be that I am the Judge who is going to  
23 be hearing this case on Tuesday but I think the  
24 threshold question is whether or not Judge

1 Hansberry should properly recuse himself in any  
2 event, if it is rendered moot by virtue of the  
3 fact that there is another Judge assigned for the  
4 trial date on Tuesday which for the record is  
5 November 20th and next whether or not this case is  
6 in fact trial ready.

7 MR. SCLAFANI: And with great reluctance  
8 because I am the petitioner most anxious to  
9 proceed expeditiously I nevertheless compel to  
10 suggest that because there are so many - - the  
11 motions that were made earlier involve numerous  
12 defenses that require numerous witnesses some of  
13 whom are lawyers and people that were involved in  
14 prior proceedings and establishing the coop and  
15 not to know whether or not I am going to trial on  
16 those issues is not only a burden for the litigant  
17 but it is also going to be impossible to get those  
18 witnesses you know to have them on that kind of a  
19 schedule so I reluctantly suggest that perhaps the  
20 Court might adjourn for the briefest of time in  
21 this case to give it a sufficient amount of time  
22 to read through each papers and put this case back  
23 in a track that makes it more manageable.

24 JUDGE FRIIA: I am going to - - I will speak



1           in a few minutes I just want to get to the issues  
2           here raised by Mr. Sclafani who decided to speak  
3           first here so am I to understand that while we are  
4           addressing the issues raised in the motion - - the  
5           paperwork. In any event, you would like this case  
6           put over from Tuesday to a date and at this point  
7           counselor, it would have to be after the first of  
8           the new year. I cannot give a date in December.  
9           What we have scheduled in December are all cases  
10          that came on the calendar within the last month or  
11          so that are of much more of a necessity than these  
12          some of which include criminal matters so I cannot  
13          give you a date in December but I certainly can  
14          give you a date in January so that is where we are  
15          and so are you asking for that or are you asking  
16          for - - in any event, the rescheduling of the  
17          trial for a date first available in January.

18           MR. SCLAFANI: No, Judge if the Court can't  
19           then I assume that the Court will be able to  
20           review those papers and have a decision.

21           JUDGE FRIIA: Well, I don't know if I am going  
22           to be able to do it. This is a little crazy. I  
23           am giving it my best effort today. Also, we were  
24           not on for oral argument today. I will be honest

1 with you I am letting you be heard. I don't know  
2 that you are going to get a written decision by  
3 the close of business on Monday so I think your  
4 suggestion of adjourning the case from Tuesday to  
5 a date first up in January is going to make the  
6 best sense.

7 MR. SCLAFANI: That wasn't my suggestion  
8 though, Judge. I can't afford that type of  
9 adjournment.

10 JUDGE FRIIA: Well, you know what we are  
11 closed by mandate of the judicial district from  
12 that Friday afternoon - - I am checking again  
13 December 21st until January 2nd alright so the  
14 courts are closed except for emergency  
15 applications, arraignments and 18080 hearings  
16 under the criminal procedure law so already you  
17 are losing what turns out to be eleven days of  
18 court dates and I am telling you that leaves you  
19 just that - - that leaves us just the - - with the  
20 equivalent of maybe nineteen working days all of  
21 which have matters previously scheduled so I don't  
22 know what to say. I will also tell you that if  
23 you start the trial on Tuesday it doesn't sound  
24 like you are going to be able to finish it on

1 Tuesday so it will go over to a date in January if  
2 what you say is true you got a lot of witnesses  
3 there is no way we are going to be able to do this  
4 in one day so I will make best efforts with our  
5 court attorney to have something done in writing.  
6 Remember not only does it have to be researched  
7 and thoughtfully written but it has to be typed  
8 and served by the clerk. You are asking a lot of  
9 us in what ends up being two business days.

10 MR. SCLAFANI: That may be true, Judge but  
11 with all due respect this was an order to show  
12 cause I didn't set this date. The Court suggested  
13 this particular date I was to understand  
14 specifically so that there wouldn't be an  
15 adjournment of the 20th trial date and so that  
16 this matter could proceed in you know there may be  
17 other matters that are on between now and the 1st  
18 of January but I suggest that several of those  
19 matters probably most of those matters were  
20 matters that came onto to be heard before or after  
21 this case was filed back in July.

22 JUDGE FRIIA: Is that in your paperwork?

23 MR. SCLAFANI: I do - -

24 JUDGE FRIIA: What you are telling me now is

1 that in your paperwork?

2 MR. SCLAFANI: I didn't address the issue of  
3 an adjournment. The court specifically said that  
4 they would make this motion returnable<sup>c</sup> on short  
5 notice quite short notice we - -

6 JUDGE FRIIA: Look I don't know what you are  
7 asking?

8 MR. SCLAFANI: I was suggesting - -

9 JUDGE FRIIA: I think I have addressed all of  
10 the issues that you have raised.

11 MR. SCLAFANI: I was suggesting that it might  
12 make sense to put it over for a week or two to  
13 give everybody time but the Court is saying that  
14 is not an option. It is either two months - - two  
15 and a half months or - -

16 JUDGE FRIIA: That is not what I am saying,  
17 Mr. Sclafani. Obviously, you don't hear me okay.  
18 Obviously, you don't hear me okay. What I am  
19 telling you is if Tuesday is not an appropriate  
20 date and it sounds - - everything you are telling  
21 me you are sounding like it is not going to make  
22 any sense to try this on Tuesday. I am telling  
23 you we don't even have a month to reschedule this  
24 case. This case there is no reason in this case

1 to give it priority over the other matters that  
2 are already scheduled some of which are criminal  
3 trials with defendants in custody so listen to me  
4 now you are not<sup>e</sup> going to be greatly prejudice<sup>c</sup>  
5 particularly since what you are telling me that is  
6 the case does start on Tuesday - - I am repeating  
7 myself it is likely to go over to January in any  
8 event and right now we have got to address the  
9 issue of which Judge is going to hear it or try it  
10 okay. This is what we are going to do - - do you  
11 need time to put in any additional paperwork?

12 MR. SCLAFANI: No.

13 JUDGE FRIIA: Mr. Sclafani, do you need time  
14 to put in any additional paperwork because when I  
15 am finished in the Court today I am going to mark  
16 it submitted for decision. Ms. Rodriguez is going  
17 to hand deliver this with a wheelbarrow to Mr.  
18 O'Shea and he is going to work on it and give it  
19 his best effort and I am going to sit with him as  
20 he needs my help and we are going to try to get  
21 something written and typed by the close of  
22 business on Monday giving our best effect you know  
23 you got a fifty fifty shot that that is going to  
24 happen okay. Do you want any time to reply? Is

1           there any additional paperwork that you want to  
2           submit? There is the main motion and cross motion  
3           anything else? Ms. Sassower, you have heard the  
4           comments of counsel. Is there anything else that  
5           you want to say?

6           MS. SASSOWER: I sure have much to say, Your  
7           Honor. Thank you for permitting me to be heard.

8           JUDGE FRIIA: Let's not get crazy here.

9           MS. SASSOWER: Absolutely not.

10          JUDGE FRIIA: Okay, go ahead.

11          MS. SASSOWER: I request to see the affidavit  
12          of service for this cross motion because it must  
13          be rejected because untimely.

14          JUDGE FRIIA: Okay. Let me have our clerk  
15          take a look at it here because they stamp it in  
16          there okay. Could we - - where is the affidavit -  
17          - what I am going to do - - first of all Ms.  
18          Sassower, do you - - are you indicating to the  
19          Court that you haven't received the notice of  
20          cross motion?

21          MS. SASSOWER: I was served this morning by  
22          hand with the cross motion last night at shortly  
23          before seven.

24          JUDGE FRIIA: That is what it says.

1 MS. SASSOWER: But the statute requires three  
2 days before the return date for a cross motion.  
3 That is untimely.

4 JUDGE FRIIA: Well, let me say something<sup>c</sup> - -

5 MS. SASSOWER: May I say additional that the  
6 statute requires as I understand it that facsimile  
7 service has to be accompanied to be valid. It has  
8 to be accompanied by mail service which I dare say  
9 Mr. Sclafani does not attest to so at best we have  
10 service today indeed in a court room.

11 JUDGE FRIIA: All right. What do you want to  
12 say to that Mr. Sclafani, because I will be honest  
13 with you with the order to show cause you should  
14 have proceeded with a cross order to show cause  
15 you should have proceeded with a cross order to  
16 show cause to eliminate the statutory time frame  
17 is what you should have done. That is what we do  
18 in matrimonial matters.

19 MR. SCLAFANI: I don't believe that that is  
20 correct but in any event the problem here is was  
21 that the order to show cause was incorrectly  
22 served in the first place. What was served was a  
23 non-conformed copy of the order that failed to  
24 include the return date. It wasn't until Tuesday

1 the order to show cause required - - it wasn't  
2 until Tuesday that we were even served with the  
3 return date on this paper that the order to show  
4<sup>c</sup> cause was defective so that - - there are several  
5 procedural problems with this entire thing which I  
6 was willing to overlook.

7 JUDGE FRIIA: Well, let me ask you a question  
8 you - - so your cross notice of motion is also a  
9 response to the motion brought by order to show  
10 cause so it is a combination document yes?

11 MR. SCLAFANI: It is opposition and a cross  
12 motion.

13 JUDGE FRIIA: So it is really opposition and  
14 cross motion. Well, this is what we can do in the  
15 interest of time people we can consider the  
16 response as a reply or response - - we consider  
17 notice of cross motion as a response only to the  
18 order to show cause and preclude the cross motion  
19 part of it as being untimely served in the  
20 interest of time, Ms. Sassower. Unless you want  
21 an opportunity to reply to the notice of cross  
22 motion in which case I can have it reserved and  
23 reissue it now as an order to show cause cross  
24 motion.



1 MS. SASSOWER: Personally I would like to see  
2 the copy that he is contending he was served last  
3 Friday November 9th.

4 MR. SCLAFANI: I am happy to show the Court.  
5 There is no return date. The motion is defective.  
6 You shouldn't consider the motion.

7 JUDGE FRIIA: For the record I am looking at  
8 the order to show cause - - a duplicate original  
9 of the order to show cause that was - - counsel,  
10 this looks like it was completed.

11 MR. SCLAFANI: No, look at the front, Judge.  
12 The return date is not filled in.

13 JUDGE FRIIA: Oh everything else is filled in.

14 MR. SCLAFANI: Right but she failed to give  
15 notice of when it was returnable.

16 JUDGE FRIIA: All right. Take a moment.

17 MR. SCLAFANI: So the motion is defective so  
18 you shouldn't consider it in the first place which  
19 means that the cross motion should be properly  
20 considered.

21 MS. SASSOWER: May I be heard?

22 MR. SCLAFANI: It is my understanding in a  
23 summary judgment proceeding is that you need to  
24 give three days notice except when there is a

1 return date and today is the return date which  
2 makes it timely so you must consider it on the  
3 grounds of timeliness.

4 JUDGE FRIIA: I am looking at the original  
5 order to show cause. He is right if that is his  
6 copy and it doesn't look like it was whited out.

7 MS. SASSOWER: May I be heard, your Honor?

8 JUDGE FRIIA: Go ahead.

9 MS. SASSOWER: He did not identify in his  
10 papers that he was responding to an order to show  
11 cause. That this matter was on for trial and was  
12 seeking a stay with respect thereto he raised no  
13 objection in his papers as to the manner of  
14 service and it is raised by reason thereof.  
15 Additionally, Judge Hansberry did not strike the  
16 requirement in the papers for service three days  
17 before - - I'm sorry for service of respondent  
18 papers - - answering papers three days before the  
19 return date. Judge Hansberry additionally gave me  
20 until the 14th to effect service on the 13th I  
21 faxed Mr. Sclafani and your Honor has a copy of  
22 the actual copy that Judge Hansberry signed with  
23 the return date of the 16th so Mr. Sclafani knew  
24 the return date to be the 16th from at least the

1           13th. Moreover, I dare say he did not  
2           independently call up the Court to inquire as to  
3           the date. He was in no way prejudice but in any  
4           event he raised no objection<sup>c</sup> and it is waived.  
5           Now additionally, if I may I have a right which I  
6           certainly - - were the cross motion to be deemed  
7           acceptable which I would argue it is not and has  
8           to be rejected for short service because having  
9           nothing to do with my papers his cross motion is  
10          short served and untimely but even were his papers  
11          to be deemed acceptable by way of opposition to my  
12          order to show cause I was entitled to under Judge  
13          Hansberry's order answering papers three days in  
14          advance of the return date.

15           JUDGE FRIIA: Ms. Sassower, what do you want  
16          me to do?

17           MS. SASSOWER: I would like opportunity to  
18          respond to - - to reply to his deceitful  
19          fraudulent answering papers which continue the  
20          pattern of his misconduct which has characterized  
21          this litigation and which, your Honor I  
22          respectfully submit entitles me to further  
23          imposition of 130-1.1 sanctions against him.

24           JUDGE FRIIA: All right. Let me - - you are

1           saying a couple of things and I really need to  
2           wind it down because I have other attorneys in the  
3           courtroom. I actually have people behind the door  
4           in custody on some ordinance violations. This is  
5           what I am inclined to do and I am really to strike  
6           a balance here and that is to carefully read these  
7           motions, the applications and the issues raised in  
8           them with our Court attorney and to do them like  
9           today. On the one hand Ms. Sassower, you are  
10          saying that the notice of cross motion is improper  
11          but at the same - -

12                 MS. SASSOWER: Untimely.

13                 JUDGE FRIIA: Untimely improper as untimely  
14          but you would like an opportunity to respond.

15                 MS. SASSOWER: To respond - - to reply you  
16          have already indicated, your Honor if I - -  
17          correct that this cross motion was not properly  
18          noticed and therefore his papers will be  
19          considered only by way of opposition.

20                 JUDGE FRIIA: Okay.

21                 MS. SASSOWER: That being the case fine I  
22          would like the opportunity to reply - - reply.

23                 JUDGE FRIIA: Listen to me now.

24                 MS. SASSOWER: To his opposition papers.

1 JUDGE FRIIA: Listen to what I am going to do  
2 there - - and I think a lot of this is not the  
3 fault of counsel - - litigants on either side here  
4 but rather just you know the issues here being  
5 more important sometimes than the actual procedure  
6 although we could never forget the procedure is  
7 outlined in the CPLR. I do think Ms. Sassower,  
8 that counsel's point is raised that the return  
9 date was not included in his copy of the motion.  
10 On the other hand, he is justice - - responsible  
11 here for not timely filing the notice of cross  
12 motion. I however believe that the issues raised  
13 on both sides should be addressed by the Court and  
14 so rather than do silly things like dismiss  
15 everything and make you start all over again I am  
16 going to allow the applications to proceed and I  
17 am going to give you time to respond okay but in  
18 so doing this case is going to be put over. Now  
19 Mr. Sclafani, don't pop a vein but based on  
20 everything I have heard so far number one we are  
21 not sure who the Judge is on Tuesday number one on  
22 the hit parade. It is like the day before  
23 Thanksgiving and this case should never be given  
24 just one day. It should be given if possible at

1           least two consecutive days in a row where hearing  
2           the trial so this is what I am going to do Ms.  
3           Sassower, I am in this part on Wednesday for sure  
4           because I am doing drug court and I am doing the  
5           co-calendar. Could you have your responding  
6           papers into the Court by the close of business on  
7           Wednesday the 21st? You are going to have to try.

8           MS. SASSOWER: I have a question for you when  
9           you say responding papers am I putting in  
10          opposition papers for cross motion or reply papers  
11          to his opposition to my order to show cause?

12          JUDGE FRIIA: Both - - both because it seems  
13          to me that we are addressing the issues that are  
14          raised on both sides. I will be honest with you I  
15          mean I think it is not semantics because we are  
16          necessarily following procedure but at this point  
17          I just want to read here what everybody has to say  
18          on the issues because I think they are of course  
19          important issues and remember in any event we are  
20          going to be preserving the issues in the event of  
21          an appeal so I have a feeling there is going to be  
22          an appeal probably on one side against one set of  
23          decisions and on the other side against the other  
24          set of decisions. So whether it be me or

1 Hansberry so we are just really preserving a  
2 record I want you all to get the issues out so I  
3 don't care what you call it Ms. Sassower, just put  
4 in your response to the paperwork and get it into<sup>c</sup>  
5 the Court by - - I am going to direct that it be  
6 in if you can be four o'clock on Wednesday the  
7 21st.

8 MS. SASSOWER: Let's remember that the Court  
9 is closed on Thursday.

10 JUDGE FRIIA: Yes.

11 MS. SASSOWER: And I believe nobody is going  
12 to proceed to adjudicate this motion at four  
13 o'clock when I am directed to submit papers.

14 JUDGE FRIIA: No, but I am here on Friday.

15 MS. SASSOWER: I have a pending petition at  
16 the U.S. Supreme Court which is on for court  
17 conference on November 20th Tuesday.

18 JUDGE FRIIA: Okay.

19 MS. SASSOWER: I respectfully request until  
20 Monday. There is no prejudice here.

21 JUDGE FRIIA: So Monday after Thanksgiving?

22 MS. SASSOWER: Yes, Monday the 26th there is  
23 absolutely no prejudice this is - -

24 MR. SCLAFANI: I have no objection.

1 MS. SASSOWER: Thank you.

2 JUDGE FRIIA: No problem.

3 MS. SASSOWER: And let me just one - -

4 JUDGE FRIIA: Close of<sup>o</sup>business and then that  
5 is five o'clock.

6 MS. SASSOWER: Thank you and let me just say  
7 on the issue of consolidation Mr. Sclafani here  
8 again has misrepresented and unfortunately I think  
9 - -

10 JUDGE FRIIA: You are talking about  
11 consolidating that other matter? Is there an open  
12 matter in this Court?

13 MR. SCLAFANI: Yes, Judge it has been open for  
14 ten years. It was held in abeyance pending the  
15 outcome of Ms. Sassower's federal case. She lost  
16 that case. The Court - -

17 JUDGE FRIIA: Is that in your cross motion?

18 MR. SCLAFANI: It is in the motion originally  
19 and the Court said we will just consolidate but  
20 they can't because - - and Ms. Sassower raised  
21 that in her cross motion and I - -

22 JUDGE FRIIA: All right. This is something  
23 that - -

24 MR. SCLAFANI: It should have been



1 adjudicated.

2 JUDGE FRIIA: This is something that our Court  
3 attorney and my research has got to really look  
4 at. ° °

5 MR. SCLAFANI: We both kind of - - because  
6 there may - -

7 JUDGE FRIIA: One wants consolidation and the  
8 other doesn't?

9 MR. SCLAFANI: No, neither wants to  
10 consolidate.

11 JUDGE FRIIA: Neither one of your want?

12 MS. SASSOWER: The Court was responding in its  
13 decision - -

14 MR. SCLAFANI: The Court did respond - -

15 MS. SASSOWER: The Court responded that it is  
16 improper and reversible and - -

17 JUDGE FRIIA: Is that Hansberry's decision?

18 MS. SASSOWER: Yes.

19 MR. SCLAFANI: Judge Hansberry's decision.

20 MS. SASSOWER: What he did was he gave no  
21 notice to the parties and we are not talking about  
22 a single case consolidated we are talking about a  
23 second open proceeding where the coop is seeking  
24 to remove the proprietary lease of Ms. McFadden

1           rightfully so for the - - and Mr. Sclafani has  
2           concealed that case - - that open proceeding  
3           before the Court and Judge Hansberry in his  
4           decision conspicuously failed to identify the  
5           coop's separate proceeding against Mr. McFadden as  
6           well as myself which is also part of any purported  
7           consolidation. Mr. Sclafani in his cross motion  
8           which you are directly me to respond to is careful  
9           not to identify the status of the prior open  
10          proceedings and has given no notice to the parties  
11          in those proceedings who have a right to be heard  
12          on the issue of consolidation. This matter cannot  
13          go forward to trial on Tuesday for a (inaudible)  
14          of reasons and not the least being is that the  
15          order was one of consolidation and they are not  
16          properly before the Court.

17                 JUDGE FRIIA: Excuse me if I hear both of you  
18                 neither side want consolidation?

19                 MR. SCLAFANI: We believe that the motion that  
20                 was pending in the other case where the Court said  
21                 the only issue remaining on this motion for  
22                 summary judgment is whether or not Ms. Sassower  
23                 will prevail on the federal case so we will hold  
24                 this motion in abeyance pending the outcome of

1           that case. That motion should be decided. The  
2           case shouldn't be consolidated. It is a different  
3           case. It should just be decided. It is a simple  
4           decision. That may moot out this entire case.

5           JUDGE FRIIA: Listen to me I am going to scare  
6           myself right now but as you are speaking I  
7           actually remember that case.

8           MR. SCLAFANI: Yes.

9           JUDGE FRIIA: Did I decide that case?

10          MS. SASSOWER: No.

11          MR. SCLAFANI: I don't believe so, Judge.

12          JUDGE FRIIA: Judge Riffen (phonetic).

13          MR. SCLAFANI: I don't believe so, Judge.  
14          That was Judge Riffen.

15          MS. SASSOWER: Judge - -

16          JUDGE FRIIA: I inherited his cases. Alright  
17          there you go that is why this is sounding familiar  
18          to me.

19          MR. SCLAFANI: The decision is actually in my  
20          original motion papers.

21          MS. SASSOWER: Mr. Sclafani's representations  
22          with respect to that decision and the proceedings  
23          are false, misleading and have been demonstrated  
24          as such in my reply papers of September 11th to

1                   which I refer to in my order to show cause.

2                   JUDGE FRIIA: Listen, stay calm. What is  
3                   important is that I hear that neither side at this  
4                   point believes that those cases should be  
5                   consolidated.

6                   MR. SCLAFANI: I don't think they can be.

7                   JUDGE FRIIA: Okay. Mr. O'Shea and myself are  
8                   going to be looking at all of these issues raised  
9                   to allow - - and we are going to set aside the  
10                  procedural defects at least as far as the motion  
11                  practice is concerned. I am going to adjourn the  
12                  trial and the decision on the motions will  
13                  actually set forth a new trial date because number  
14                  one we have to decide the issue of Hansberry  
15                  proper presiding over these cases and second if he  
16                  is not going to do it then it sounds like I or  
17                  Judge Leaf (phonetic) will be presiding and we  
18                  will have to look at who is sitting where in  
19                  January of next year okay. No need to come on  
20                  Tuesday. This matter is removed by the Court from  
21                  our trial calendar on Tuesday November 20th for  
22                  the record and Ms. Sassower has until the close of  
23                  business which is five o'clock but we always ask  
24                  that you get here by a quarter to.

MS. SASSOWER: Absolutely.

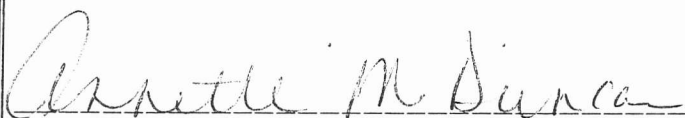
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

[CD one, counter 10:39:52]

\* \* \* \* \*

C E R T I F I C A T E

I, Annette M. Duncan certify that the foregoing transcript of proceedings White Plains City Court, John McFadden against Eleanor Sassower. Docket Number SP1502/07, SP651/89 and SP1474/08 was prepared using electronic transcription equipment and is a true and accurate record of the proceedings.



Annette M. Duncan

Date cassette was transcribed

March 3, 2009