2nd Request

7/21/08 Denied. All issues raised here have been previously addressed by the Court / Appeal(s) may be taken to Appellate Court - no further action by City Court of White Plains to be taken

CITY COURT OF THE CITY OF WHITE PLAINS
STATE OF NEW YORK: COUNTY OF WESTCHESTER

JOHN McFADDEN,

Petitioner,

Index #SP651/89

ORDER TO SHOW CAUSE TO STAY JUDGMENT OF EVICTION & REMOVAL, & for Disqualification/Transfer, Disclosure, Vacatur, Reargument/Renewal, & Other Relief

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.

Upon the annexed affidavit of respondent *pro se* ELENA SASSOWER, duly sworn to on July 18, 2008, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had,

LET petitioner JOHN McFADDEN show cause before this Court at the White Plains City Courthouse at 77 South Lexington Avenue, White Plains, New York 10601, on the _____ day of July 2008 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, why an order should not be granted staying enforcement of the judgment of eviction and warrant of removal entered or to be entered on the July 3, 2008 decision & order of White Plains City Court Judge Jo Ann Fria, pending determination of respondent ELENA SASSOWER's within motion:

(1) to disqualify Judge Friia for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, based,

Ex N

inter alia, on her July 3, 2008 decision & order & to vacate same by reason thereof, and to transfer this proceeding, the proceeding *John McFadden v. Elena Sassower*, #1502/07, and the record of #434/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), #500/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*), and #652/89 (*John McFadden v. George Sassower*), to another Court to ensure the appearance and actuality of impartial justice; and, if disqualification/transfer are denied, for disclosure by Judge Friia, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality and that of White Plains City Court;

(2) for reargument and renewal of Judge Friia's July 3, 2008 decision & order pursuant to CPLR §2221 and, upon the granting of same, vacating the decision & order;

(3) for vacatur of Judge Friia's July 3, 2008 decision & order pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct of an adverse party", with imposition of maximum costs and sanctions pursuant to NYCRR §130-1.1 *et seq.* against Petitioner, John McFadden, and his attorneys herein, Lehrman, Kronick, & Lehrman, as well as Leonard Sclafani, Esq., his attorney in #1502/07;

(4) for vacatur of Judge Friia's July 3, 2008 decision & order pursuant to CPLR §5015(a)(4) for "lack of jurisdiction to render the judgment or order";

(5) for such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202.

Alternatively, if the interim stay is denied, for a stay of the judgment entered or to be entered in enforcement of Judge Friia's July 3, 2008 decision & order pending appeal thereof.

SUFFICIENT CAUSE APPEARING THEREFOR, let service of this order to show

cause, together with the papers upon which it is based, be made personally or by overnight mail on or before the _____ day of July 2008, upon the offices of: (a) petitioner's counsel herein, LEHRMAN, KRONICK & LEHRMAN, 199 Main Street, White Plains, New York 10601; (b) petitioner's counsel in #1502/07, LEONARD SCLAFANI, P.C., 18 East 41st Street, Suite 1500, New York, New York 10017; (c) LAWRENCE J. GLYNN, ESQ, counsel to the Co-Op in #434/88 and #500/88; (d) DORIS L. SASSOWER, *pro se* respondent herein; and (e) GEORGE SASSOWER, *pro se* respondent in #652/89.

Dated: White Plains, New York
July , 2008

ENTER:

_____
Judge, White Plains City Court

CITY COURT OF THE CITY OF WHITE PLAINS
STATE OF NEW YORK: COUNTY OF WESTCHESTER

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JOHN McFADDEN,

Petitioner,

Index #SP651/89

Moving Affidavit in Support of ORDER TO SHOW CAUSE TO STAY JUDGMENT OF EVICTION & REMOVAL, & for Disqualification/Transfer, Disclosure, Vacatur, Reargument/Renewal, & Other Relief

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.

---------- x

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

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

1. I am the respondent *pro se*, ordered to be evicted and removed "forthwith" from my home of nearly twenty-one years by this Court's July 3, 2008 decision & order [hereinafter "decision": side-tab Exhibit 2)[1]]. I am fully familiar with all the facts, papers, and proceedings heretofore had.

2. This affidavit is submitted in support of my accompanying order to show cause, without prejudice to my contention that this case, dormant for 15 years until this Court's July 3, 2008 decision, is properly deemed abandoned and would have been so-dismissed by any fair and impartial tribunal, which this is not.

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[1] Side-tab Exhibits 1-7 herein are all part of my July 8, 2008 order to show cause in #1502/07, unsigned by the Court, annexed hereto by side-tab Exhibit A.

3. By my order to show cause, I seek to stay enforcement of the judgment of eviction and warrant of removal entered or to be entered on the Court's July 3, 2008 decision pending determination of my within motion. Alternatively, I seek a stay pending appeal of the decision.

4. I previously sought a stay by a July 8, 2008 order to show cause in #1502/07 (side-tab Exhibit A), which this Court refused to sign. Instead, the Court wrote the following on the face of the order to show cause:

> "7/8/0[8] 4:50 p.m.
> Denied. The relief requested has either been previously addressed by the Court or is beyond the scope, authority, or jurisdiction of this City Court. Any stay of the Court's July 3, 2008 Decision pending appeal is also denied."

5. By a July 9, 2008 letter to the Court, hand-delivered to the Clerk's Office at 4:53 p.m. on that date (side-tab Exhibit B), I challenged the Court to substantiate its hand-written notation. With respect to the requested stay, I wrote:

> "Certainly, the Court well knows that it has not 'previously addressed' my request to stay enforcement of its July 3, 2008 decision & order in #651/89 and any judgment entered or to entered thereon, pending the hearing and determination of my order to show cause. Such is also not 'beyond [its] scope, authority, or jurisdiction'.
>
> Finally, the Court gives no reasons for denying me a stay pending appeal. If the Court has any justification for this further demonstration of its pervasive actual bias, indeed, its malevolence[fn.1], it should take this opportunity to set it forth – and I so request."
>
> In view of the Court's refusal to grant me a stay, I request the Court's response within 24 hours so that I may be guided accordingly in deciding whether to bring an Article 78 proceeding against the Court. Such will be based, *inter alia*, on the Court's wilful failure and refusal to discharge duties 'enjoined upon it by law' (CPLR §7803(1)), beginning with its mandatory duty to confront issues of its disqualification, transfer, and disclosure –

which the Court has at no time addressed in this proceeding or in #651/89, while simultaneously preventing a record from being made as to the basis for my seeking such relief. Disqualification for demonstrated actual bias and interest, as here, divests the Court of jurisdiction to proceed (CPLR §7803(2)) – with the Court's succession of rulings in 'violation of lawful procedure', 'affected by error of law' and 'arbitrary and capricious' constituting a further basis for relief (CPLR §7803(3)).

To assist the Court in its response, I am resubmitting the unsigned July 8, 2008 order to show cause, returned to me today by the Clerk's Office[fn.2]." (side-tab Exhibit B, pp. 2-3, underlining in the original)

The indicated footnote 1 was as follows:

"The Court's refusal to grant a stay – indeed, its direction, by its July 3, 2008 decision & order that 'a judgment of possession and warrant to remove shall issue forthwith, with a statutory stay of execution' – is all the more egregious as my occupancy rights are NOT disposed of by #651/89. Indeed, at the June 30, 2008 proceedings, Mr. Sclafani reiterated what he had previously emphasized in his papers before the Court [in #1502/07], namely, that [#1502/07] rests on an 'oral agreement' which Mr. McFadden made with me for my continued occupancy. Thus, as stated by Mr. Scalfani's September 5, 200[7] affidavit (at ¶¶38-39):

> '38. ...any prior proceedings between the parties that remain open as of today's date proceed on facts and grounds other than those that petitioner herein relied upon.
>
> 39. Here, petitioner relies in support of his petition upon a state of facts; to wit, an oral agreement, that had been modified over the course of the last fourteen or so years, on several occasions, pursuant to which petitioner agreed to respondent's possession and occupancy of the premises at issue in exchange for monthly payments of rent. This state of fact was, and is, different than and occurred subsequent to, the alleged events supporting the prior proceedings referred to by respondent.'

See, also, his August 23, 2007 moving affidavit (at ¶¶35-7); his November 15, 2007 cross-motion affidavit (¶48)]." (side-tab Exhibit B, p. 2).

6. On Friday, July 11, 2008, in the absence of any response, I telephoned the Clerk's Office and was advised by the Court's secretary that the Court was on vacation,

indeed, had left early on Wednesday, July 9, 2008, and would not be back until Monday, July 21, 2008. I was unable to obtain information as to whether any judgment had been submitted and signed by the Court.

7. On Monday morning, July 14, 2008, I again called the Clerk's Office to obtain information as to whether a judgment had been submitted and signed. I was told by the Civil Clerk that he had nothing to do with the case and that I needed to speak with Chief Clerk Lupi. I thereupon spoke with her. After putting me on hold to ascertain the status of the judgment, if any, Chief Clerk Lupi initially stated to me – or so I believe – that the judgment had been submitted and signed. When I asked when that had happened, she stated that it was on the same day as the decision. Upon my asking how that was possible and whether it meant that the decision had been faxed to adverse counsel, as it had not been faxed to me, Chief Clerk Lupi modified what she had said, stating that maybe it was the next day. When I replied that the next day was the 4th of July, Chief Clerk Lupi changed the story, telling me that the judgment was on Court's desk, awaiting its signature.

8. I further requested Chief Clerk Lupi's response, as soon as possible, to my two letters to her, dated July 8 and July 9, 2008 (side-tab Exhibit C), which, in her absence the previous week, I had asked be handled by Deputy Clerk Ward. The first letter requested to know when the Clerk's Office could accommodate my review of the "Filed Papers: All papers on file", indicated by the July 3, 2008 decision as the basis for the Court's decision (side-tab Exhibit 2, p. 1). Additionally, it asked for the date of Judge Reap's retirement – and the names of the other White Plains City Court judges serving at that time or immediately thereafter (side-tab Exhibit C-1). The second letter reiterated my

previous requests for copies of the Clerk's Office docket of this case, as well as its dockets of #1502/07, #434/88, and #500/88 (side-tab Exhibit C-2). In my telephone conversation with Chief Clerk Lupi on July 14, 2008, I told her that I wished her to add #652/89 to that list.

9. All this information is relevant to my within analysis of the Court's July 3, 2008 decision – and upon my receipt of same and review of the "Filed Papers: All papers on file", I will supplement the analysis accordingly.

10. This Court's actual bias, so pervasive as to manifest its interest, is particularized by my within analysis of its July 3, 2008 decision. Such analysis supplements the facts set forth by my unsigned July 8, 2008 order to show cause (side-tab Exhibit A) as to the Court's collusion with the Clerk's Office in improperly putting #651/89 on the Court's calendar for an "ALL DAY TRIAL" on June 30, 2008, on the pretext that the case was consolidated with #1502/07 and that #651/89 was the "original #" for #1502/07, and as to its succession of from-the-bench rulings on June 30, 2008, indefensible in fact and law. I expressly incorporate herein that unsigned July 8, 2008 order to show cause, as likewise my as yet unresponded-to July 9, 2008 letter to the Court (side-tab Exhibit B), in support of the relief herein sought.

11. In the interest of judicial economy, I also expressly incorporate my November 9, 2007 memorandum of law in #1502/07, devoted exclusively to disqualification and disclosure. The law and argument is equally applicable here. As was true with the October 11, 2007 decision of Judge Hansbury, discussed therein, which – without identifying ANY of the facts, law or legal argument presented by my September 5,

2007 cross-motion for dismissal of Mr. McFadden's Petition in #1502/07 and summary judgment on my Counterclaims – so, too, the Court's July 3, 2008 decision in #651/89, identifying NONE of the facts, law or legal argument which respondents had presented in the record of #651/89, with the exception of passing mention to "lack of subject matter jurisdiction and inadequate notice". Such decision is "a knowing and deliberate fraud by the Court", completely unsupported by law and insupportable by law, and "'so totally devoid of evidentiary support as to render [it] 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)."

12. Insofar as I have moved for renewal of the Court's July 3, 2008 decision, "the new facts not offered on the prior motion" and the "reasonable justification for the failure to present such facts on the prior motion" (CPLR §2221(e)) are set forth at ¶¶25, 73, 74-77, 80-81, 85, 91-92, *infra*. As therein shown, Mr. McFadden's November 25, 1991 summary judgment motion is insufficient, including by its failure to annex a copy of his Petition, and is materially false and deceitful, including as to the allegations of his Petition. These ¶¶25, 73, 74-77, 80-81, 85, 91-92, *infra*, are separate and apart from Mr. McFadden's pretense, by his motion, that the federal action was over and not the subject of appeal – the falsity and deceit of which were particularized by respondents' December 16, 1991 responding affidavits (Exhibit Y), whose ¶3 expressly stated:

> "...Respondents reserve their right to address Petitioner's other material factual allegations – all of which are vigorously denied and disputed" – by appropriate response at a later date, should the instant motion not be dismissed in accordance with Respondents' position."

Respondents' "reasonable justification for the failure to present such facts" by their December 16, 1991 responding affidavits was set forth therein: namely, that Mr. McFadden had made answering papers due on his motion on "the precise day" that was respondents' deadline for filing their appellate brief and appendix in the Second Circuit Court of Appeals in the federal action – a fact made known to Mr. McFadden before he made his motion.

13. These two prongs of CPLR §2221(e), additionally, constitute grounds to vacate for "fraud, misrepresentation, or other misconduct of an adverse party", pursuant to CPLR §5015(a)(3). As for vacatur, pursuant to CPLR §5015(a)(4) for "lack of jurisdiction to render the judgment or order", such is based on the indisputable, documentary fact that respondents did not "enter in possession [of the subject apartment] under a month to month rental agreement", as falsely alleged by Mr. McFadden's March 27, 1989 Petition. Rather, they entered into possession – and have remained in possession – pursuant to an occupancy agreement that was part of a contract of sale, expressly stating "in no way do the parties intend to establish a landlord/tenant relationship"– as to which this Court is without jurisdiction. [*See* ¶¶25, 28-31, *infra*]. Additionally, this Court is without jurisdiction by virtue of the sufficiency of this motion for its disqualification for pervasive actual bias and interest.

14. For the convenience of the Court, a Table of Contents of my analysis of the Court's July 3, 2008 decision follows:

TABLE OF CONTENTS

THE COURT'S JULY 3, 2008 DECISION & ORDER MANIFESTS THE COURT'S PERVASIVE ACTUAL BIAS REQUIRING VACATUR UPON THE COURT'S DISQUALIFICATION, UPON THE GRANTING OF REARGUMENT/ RENEWAL, OR UPON APPEAL

Case #651/89 – More than 15 Years Dormant – Was Not Properly on the Court's June 30, 2008 Calendar

15. The July 3, 2008 decision in #651/89, *John McFadden v. Doris L. Sassower and Elena Sassower* (side-tab Exhibit 2) purports that Mr. McFadden's November 25, 1991 summary judgment motion, with an original "MOTION DATE: 12/17/91", was "reassigned and submitted: 6/30/08" (at p. 1) and that "the parties" were before the Court on June 30, 2008 (at p. 2). Yet, June 30, 2008 was not a date on which #651/89 was properly on the Court's calendar – and the decision omits all information about its calendaring. Likewise, it omits the fact that my mother, a party to #651/89, but not #1502/07, was not before the Court on June 30, 2008.

16. As for the improper calendaring of #651/89, the pertinent facts are recited in documents from the record of #1502/07, *John McFadden v. Elena Sassower.* These documents are: my two June 13, 2008 letters to the Chief Clerk (Exhibits QQ, RR)[2], to which there was no response; my June 24-25, 2008 letters to the Court (Exhibits SS, TT),

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[2] The exhibits herein referred-to are all part of the record in #1502/07, as follows: (1) My Exhibits A-G are annexed to my August 20, 2007 "VERIFIED ANSWER with Affirmative Defenses & Counterclaims". (2) My Exhibits H-AA are annexed to my September 5, 2007 Notice of Cross-Motion; (3) My Exhibits BB-FF are annexed to my September 11, 2007 Affidavit in Reply to Petitioner's Opposition to my Cross-Motion; (4) My Exhibits GG-II are annexed to my November 9, 2007 Order to Show Cause for a Stay of Trial, etc.; (5) My Exhibits JJ-LL are annexed to my November 26, 2007 Affidavit in Opposition to Petitioner's Cross-Motion, etc.; (6) My Exhibits MM-UU are annexed to my June 27, 2008 Order to Show Cause for a Stay of Trial, etc.; (7) My Exhibits 1-7 are annexed to my July 8, 2008 Order to Show Cause for Disqualification/Transfer/Disclosure, etc.

to which there was no response; then embodied by my June 27, 2008 order to show cause (side-tab Exhibit 1), which the Court refused to sign, and then orally presented by me to the Court on June 30, 2008, as to which the Court made no ruling.

17. The ONLY basis for calendaring #651/89 for June 30, 2008, which was for an "ALL DAY TRIAL", was because Judge Hansbury, by his October 11, 2007 decision & order in #1502/07 (Exhibit PP-2), had ordered that "any prior pending action" be consolidated – pursuant to which, when the Chief Clerk sent out a notice for #1502/07, setting it down for trial on June 1, 2008 (Exhibit MM), which she did in violation of Judge Hansbury's January 29, 2008 decision & order (Exhibit OO), she accompanied it with an identical second notice with the #1502/07 caption and number, but with #651/89 additionally penned in and represented as the "original #" (Exhibit MM).

18. As established by the record before the Court – most conveniently by my unsigned June 27, 2008 order to show cause (side-tab Exhibit 1) – the "consolidation" ordered by Judge Hansbury's October 11, 2007 decision was sham and unlawful (Exhibit NN-2, ¶30). As stated by my November 9, 2007 order to show cause, pertaining to the October 11, 2007 decision:

> "30. CPLR §602 is entitled 'Consolidation' and specifies that such is 'upon motion'. No motion was made by either me or Mr. Sclafani for consolidation, let alone a motion with notice to the parties in the open prior proceedings who are not parties herein – the Co-Op in 434/88 and 500/88 and my mother in 651/89 – each having a right to be heard with respect thereto.[fn.6] It is blackletter law that it is improper for a court to order

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[fn.6] *Cf.* ¶63 of my [September 11, 2007] reply affidavit which noted that activating "long dormant proceedings, involving additional parties...surely cannot be done summarily...without a formal motion made under the index number of such proceedings, giving notice to the affected parties".

consolidation *sua sponte* – and such will be reversed on appeal, *AIU Insurance Company, v. ELRAC*, 269 A.D.2d 412 (2nd Dept. 2000); *Lazich v. Vittoria & Parker*, 196 AD2d 526, 530 (2nd Dept. 1993); *Singer v. Singer*, 33 AD2d 1054, 1055 (2nd Dept. 1970). Here, the Court not only acted *sua sponte*, but (i) without even specifying the open proceedings it was purporting to consolidate; (ii) without giving notice to the parties in those proceedings; and (iii) without making the necessary changes to the caption, consistent with consolidation. This, although it is also blackletter law that 'Upon consolidation the action takes on one caption and culminates in one judgment which pronounces the rights of all parties (Siegel, NY Prac, §127, p 156)', *Scigaj v. Welding*, 478 N.Y.S.2d 211 (2nd Dept. 1984). As such, the decision's purported 'consolidation' is not just legally unauthorized, but sham." (underlining in the original).

19. Moreover, #651/89 is not the "original #" of #1502/07, as it has a different caption with an additional respondent – my mother – and its Petition rests on different grounds. This would be evident had the decision recited the allegations of the two Petitions, which it does not.

20. Consequently, there was NO basis for #651/89, dormant for over 15 years, to have been noticed for a June 30, 2008 trial by the Chief Clerk and, tellingly, the decision makes no mention of "consolidation" or that #651/89 is the "original #" for #1502/07 – threshold determinations if the Court was to proceed.

The Decision's Listing of "Papers" is Not in Conformity with CPLR §2219(a)

21. The decision's listed "papers" (at p. 1) specifies only three: a "Notice of Motion", "Affidavit of John McFadden", and "Exhibits (unmarked)". In other words, the Court is claiming that Mr. McFadden's November 25, 1991 summary judgment motion – which it purports to be considering "*de novo*" (at p. 2) – is unopposed. This is utterly false – and so-revealed by Judge Reap's December 19, 1991 decision on that motion, reflecting

opposition. Indeed, it opening words are: "Petitioner moves for summary judgment and respondent opposes."

22. The opposition to Mr. McFadden's November 25, 1991 summary judgment motion consisted of respondents' December 16, 1991 responding affidavits and the December 17, 1991 letter of my father, George Sassower, an occupant of the subject apartment and respondent in a virtually identical summary holdover proceeding, #652/89, *John McFadden v. George Sassower*, which Mr. McFadden commenced by Petition dated April 3, 1989.[3]

23. Presumably, the December 16, 1991 responding affidavits and my father's letter are among what the decision lists as "Filed Papers: All papers on file" (at p. 1). However, such "catch-all" does not comply with the requirement of CPLR §2219(a) of reciting "papers used on the motion". The Court may be presumed to know this – quite apart from my November 9, 2007 order to show cause in #1502/07, where I set forth applicable caselaw pertaining to CPLR §2219(a): *Hobart v. Hobart*, 85 N.Y. 637 (1881) and *Deutermann v. Pollock*, 36 A.D. 522, 524 (2nd Dept. 1899) for the proposition:

> "A party is entitled to have recited in an order all of the papers which he or his adversary has used upon the motion from which the order results (*Farmers' Nat. Bankv. Underwood, 12 A.D. 269*)..."

24. There is simply no way to know what these "Filed Papers: All papers on file" consist of – and whether they include the "Filed Papers" of #1502/07, with which #651/89 was purportedly consolidated and as to which #651/89 was purported to be the "original #". This must be specified by the Court, upon the granting of reargument.

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[3] It appears that in addition to #651/89, #434/88, and #500/88 which my First Affirmative Defense in #1502/07 asserted to be "open prior proceedings", that #652/89 is also open.

The Decision Gives a Materially False, Misleading, and Incomplete "Procedural History" of #651/89

25. Under the heading "Procedural History" (side-tab Exhibit 2), the decision identifies (at p. 1) that #651/89 is a "summary holdover proceeding" commenced on April 4, 1989 by Mr. McFadden against my mother and myself, but fails to set forth any of the allegations of his Verified Petition, dated March 27, 1989. The decision thereby conceals that Mr. McFadden's flimsy Petition – on a pre-printed form – had to be dismissed, *as a matter of law*, with costs and sanctions under 22 NYCRR §130-1.1 *et seq.*, because it was materially—and documentarily — false, *inter alia*, in alleging that I and my mother had "entered in possession [of the subject apartment] under a month to month rental agreement". No copy of this supposed "rental agreement" was annexed to the Petition, which materially omitted any reference to Mr. McFadden's October 30, 1987 contract of sale with us for the apartment (Exhibit A-1), the October 30, 1987 occupancy agreement that was part thereof, expressly stating "in no way do the parties intend to establish a landlord/tenant relationship" (Exhibit A-2, ¶1G)[4], and that he was then our co-plaintiff in a federal lawsuit against the Co-Op, commenced in August 1988 to enforce the contract of sale (Exhibit Q)– all requiring dismissal of his Petition, *as a matter of law*, with §130-1.1 costs and sanctions.[5]

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[4] Mr. McFadden's Petition, which specified no monthly rent, purported that the "term for which said premises were rented by the respondent tenant expired on 11/30/89" pursuant to a termination notice that "the undersigned landlord does...terminate your tenancy", and that "The respondents continue in possession of the premises without permission of the landlord or of the petitioner after the expiration of the term".

[5] Identically fraudulent was Mr. McFadden's prior proceeding against me and my mother under #504/88, by a Petition dated December 5, 1988, dismissed as to both of us by a February 28,

26. The decision next identifies (at p. 1) that on April 24, 1989 respondents filed a motion whose "various forms of relief" it only partially reveals in describing Judge Reap's September 18, 1989 decision as having "denied those branches of the motion which sought dismissal of the proceeding based upon lack of subject matter jurisdiction and inadequate notice." Among the unidentified other branches: the motion's first branch, requesting that #651/89 be referred to Judge Reap, and its third branch for a stay, both pursuant to a March 6, 1989 letter of Judge Reap. In support thereof, respondents' April 24, 1989 motion had set forth pertinent background, as follows:

> "2. At the outset, it would be in the interests of judicial economy for this application to be referred to Hon. James Reap who has maximum familiarity with the issues involved herein by reason of identical proceedings under L&T 504/88 heretofore commenced by Petitioner, which were dismissed after a traverse was sustained. During the pendency of that proceeding and two other related proceedings (L&T Doc. Nos. 4[3]4/88 and 500/88), Judge Reap conducted an extensive pre-trial conference, reviewed many related documents, and rendered comprehensive consolidated decisions in the three proceedings, dated January 25, 1989 (Exhibit 'A'), staying all said proceedings until conclusion of certain phases of a related federal action involving the parties herein. A copy of the federal complaint is annexed to Index No. L&T 500/88 and is incorporated herein by reference.
>
> 3. On March 6, 1989, Judge Reap wrote to Lawrence Glynn, Esq., counsel for 16 Lake Street Owners, Inc, (Exhibit 'B') advising him that this Court would retain jurisdiction over the pending matters, but would decline to place them on the trial calendar.
>
> 4. By reason of the aforesaid, it is respectfully submitted that this new proceeding should be referred to Judge Reap (without waiving an objection asserted in open court in connection with the other proceedings by Doris L. Sassower that Judge Reap should for reasons well known to him disqualify himself from sitting on any matter involving her or her family)."

1989 decision & order of White Plains City Court Judge Arthur Kellman, after a traverse hearing. Likewise, his subsequent proceeding against my father under #652/89, by his Petition dated April 3, 1989 was identically fraudulent – the only variation being the date the purported "month to month rental agreement" expired.

27. The Court makes no qualitative assessment of Judge Reap's September 18, 1989 decision. Such granted respondents' request that #651/89 be referred to him, but failed to address, or even identify, the stated objection that he should disqualify himself[6]. Indeed, nowhere does the Court's decision identify that respondents had questioned Judge Reap's fairness and impartiality – nor examine the evidence of his bias, evident from the September 18, 1989 decision itself, as likewise from his other decisions.

28. Among the most important evidence of Judge Reap's bias in his September 18, 1989 decision was his denial of the second branch of respondents' April 24, 1989 motion: to dismiss Mr. McFadden's March 27, 1989 Petition for lack of jurisdiction. Conspicuously, the Court does not identify anything about the basis upon which respondents so-moved – and upon which Judge Reap had denied it.

29. In pertinent part, respondents' April 24, 1989 motion stated:

> "5(a) As shown by the annexed copies of the contract and occupancy agreement between the parties dated October 30, 1987 (Exhibit 'C'), Respondents are contract vendees in possession under a pre-closing occupancy agreement...
>
> Moreover, contrary to Petitioner's allegations, there is no landlord-tenant relationship based upon a 'month-to-month rental agreement', the Contract and Occupancy Agreement explicitly acknowledging that 'in no way do the parties intend to establish a landlord/tenant relationship..."

30. Judge Reap's denial, by his September 18, 1989 decision, was as follows:

"To dismiss for lack of subject matter jurisdiction. Denied, because

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[6] The referred-to on-the-record objection was on December 28, 1988 – in #434/88 (Exhibit 7-a). Prior thereto, on December 12, 1988 and December 13, 1988, I made virtually identical motions in #504/88 and #500/88, whose multi-branch relief included "disqualifying the City Court of White Plains from hearing this matter and directing its reassignment to another Court." (Exhibit 7-b) [See fn. 9, *infra*]. Judge Reap denied the motion for his disqualification, without reasons, in his January 25, 1989 consolidated decisions (Exhibit 7-c).

Petitioner's theory is that this is a hold over proceeding pursuant to RPAPL 711(1). Paragraphs 3 and 4 of our consolidated decision dated 1/25/89 in the companion cases under Index Nos. 434/88, 504/88, and 500/88 apply..." (at p. 2, underlining added).

31. This is FALSE – and should have been readily-apparent to the Court from its review of "Filed Papers: All papers on File" (side-tab Exhibit 2, p. 1).

A. Firstly, Mr. McFadden's "theory" was IRRELEVANT. The predicate for RPAPL 711 – is a landlord-tenant relationship – and this was documentarily rebutted by the October 30, 1987 occupancy agreement that Mr. McFadden had made with us, expressly stating "in no way do the parties intend to establish a landlord/tenant relationship" – a copy of which, with the contract of sale, we had placed before Judge Reap by our April 24, 1989 motion. Such was further substantiated by the Complaint in the federal action, expressly incorporated by our motion, wherein Mr. McFadden was our co-plaintiff, seeking to enforce the contract of sale.

B. Secondly, ¶¶3 and 4 of Judge Reap's January 25, 1989 consolidated decision did not "apply" – as these paragraphs, denying that branch of my December 13, 1988 motion to dismiss Mr. McFadden's identical December 5, 1988 Petition in #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*) for lack of jurisdiction, were rebutted by Mr. McFadden's own December 5, 1988 Petition therein, as well as the October 30, 1987 occupancy agreement, contract of sale, and federal complaint, which my December 13, 1988 motion had also placed before Judge Reap.

Thus, ¶3 of that January 25, 1989 consolidated decision had stated:

"To dismiss for lack of jurisdiction: Denied. This is a holdover proceeding wherein it is alleged that an occupancy agreement expired and an ensuing

month-to-month tenancy was terminated. The petitioner has the burden of proof on these issues which are properly matters for trial, not a motion to dismiss. Among other things we note the occupancy agreement terminated on its face on May 1, 1988, and it is alleged the new relationship of McFadden to the Sassowers existing thereafter was as a Landlord-Tenant on a month-to-month basis in exchange for regular monthly payments of rent. **If that be so**, Petitioner's theory is holdover jurisdiction lies under RPAPL 711, subdivision 1..." (pp. 3-4, underlining and bold added).

However, Mr. McFadden's December 5, 1988 Petition in #504/88 did NOT allege that "an occupancy agreement expired and an ensuing month-to-month tenancy was terminated". Rather, it was identical to his March 27, 1989 Petition herein, alleging, *inter alia*, that I and my mother had "entered in possession [of the subject apartment] under a month to month rental agreement". No copy of this supposed "rental agreement" was annexed to Mr. McFadden's Petition, which materially omitted any reference to his October 30, 1987 occupancy agreement with us, expressly stating "in no way do the parties intend to establish a landlord/tenant relationship" (Exhibit A-2, ¶1G), the contract of sale of which it was part (Exhibit A-1), and that he was then our co-plaintiff in a federal lawsuit against the Co-Op, commenced in August 1988 to enforce the contract of sale (Exhibit Q) – all dispositive of respondents' entitlement to dismissal of Mr. McFadden's Petitions, *as a matter of law*, with §130-1.1 costs and sanctions.

Nor did "the occupancy agreement terminate on its face on May 1, 1988"[7] – with a

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[7] Such is comparably adopted by the Court in the section of its decision entitled "Petitioner's Summary Judgment Motion", *see* ¶¶77-78, *infra*. This, in face of its knowledge of the record of #1502/07 containing an explication of the occupancy agreement at ¶¶167-172 of my September 5, 2007 cross-motion:

> "167. The language of the October 30, 1987 occupancy agreement (Exhibit A-2), which expressly states that 'in no way do the parties intend to establish a landlord/tenant relationship' (¶1G), contains no provision terminating

"new relationship...existing thereafter". Such assertion in Judge Reap's January 25, 1989 decision was *sua sponte*. Indeed, Mr. McFadden's Petition not only contained no such

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the right of occupancy where the Purchasers – myself and my mother – had elected to purchase the apartment. Rather, its language is as follows:

> 'If they have elected to purchase, they shall have the right to continue in occupancy to the date of closing.' (¶1A).
>
> 168. The October 30, 1987 occupancy agreement additionally states:
>
> 'The parties agree that if the Purchasers fail to close as provided for in the Contract of Sale or on any adjourned date consented to by the parties, or if the Purchasers elect to cancel the contract as provided the Purchasers shall be allowed to continue occupancy on a month to month basis as provided herein.' (¶1F, underlining added).

169. The 'month to month' occupancy applicable to the first described situation where 'the Purchasers fail to close as provided for in the Contract of Sale or on any adjourned date consented to by the parties' obviously spans to the eventual 'date of closing'. Both with respect to it and to the second-described situation where 'the Purchasers elect to cancel the contract', the occupancy agreement specifies payment of '$1,000.00 per month for use and occupancy of the premises' (¶1G).

170. Because of this express language and the fact that Mr. McFadden 'consented to' an 'adjourned date' of the 'date of closing' when he became a co-plaintiff with myself and my mother in the federal lawsuit, the Petition omits both that language and the fact that Mr. McFadden was a co-plaintiff in the federal lawsuit. Indeed, the Petition omits any allegation about the lawsuit, whose existence it entirely conceals.

171. The federal lawsuit in which Mr. McFadden was a co-plaintiff with myself and my mother constituted a written agreement – if not an implied contract – between the parties to maintain and enforce the contract of sale and occupancy so as to effectuate a 'date of closing.

172. Tellingly, Mr. Sclafani's [August 23, 2007] affirmation, forced to confront the existence of the federal lawsuit by my Fifth, Sixth, and Seventh Affirmative Defense (¶¶TWELFTH through THIRTY-THIRD) and First Counterclaim (¶¶EIGHTY-FIRST through EIGHTY-THIRD), conceals that the lawsuit was commenced with Mr. McFadden as co-plaintiff (his ¶¶75, 80, 84-87, 97, 102, 104, 109, 116). In so doing, Mr. Sclafani effectively concedes the legal implications of same *vis-a-vis* the occupancy agreement and contract of sale."

allegation, it could not as it omitted the very existence of the occupancy agreement, for reasons obvious from the face of that agreement.

Thus, ¶1A of the occupancy agreement expressly states:

> "...The parties agree that the Purchasers shall have the right to occupy the premises from November 1, 1987 or sooner, until May 1988, at which time they must vacate if they have elected to cancel the Contract, or if they have not received written notice from Seller thirty (30) days prior thereto, allowing them to continue in occupancy. If they have elected to purchase, they shall have the right to continue in occupancy to the date of closing." (underlining added).

Since I and my mother elected to purchase the apartment – not cancel the contract – our right to occupy the apartment did not terminate in May 1988, but continued "to the date of closing". To achieve this "date of closing", Mr. McFadden joined with us, in August 1988, in commencing the federal lawsuit against the Co-Op Board to enforce the contract of sale – a fact Mr. McFadden then concealed by omitting from his Petition any mention of the contract of sale (Exhibit A-1), occupancy agreement (Exhibit A-2), federal lawsuit, its allegations (Exhibit Q), and that he was a co-plaintiff.

Additionally, ¶1F of the occupancy agreement provides

> "The parties agree that if the Purchasers fail to close as provided for in the Contract of Sale or on any adjourned date consented to by the parties, or if the Purchasers elect to cancel the contract as provided the Purchasers shall be allowed to continue occupancy on a month to month basis as provided herein." (underlining added).

Obviously, the "month to month" occupancy when "the Purchasers fail to close as provided for in the Contract of Sale or on any adjourned date consented to by the parties" spans to the eventual "date of closing"[8]. Indeed, it is because Mr. McFadden "consented

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[8] As to those situations and the situation where "the Purchasers elect to cancel the contract",

to" an "adjourned date" of the "date of closing" when he became a co-plaintiff with myself and my mother in the federal lawsuit, that Mr. McFadden's opposition to respondents' April 24, 1989 motion, by a May 12, 1989 affirmation of his attorneys, Lehrman, Kronick & Lehrman, not only omitted any mention of the federal lawsuit in which Mr. McFadden was joined with us in seeking enforcement of the contract of sale, but deceitfully removed the phrase "or on any adjourned date consented to by the parties" in quoting ¶1F of the occupancy agreement.

32. The Court's decision fails to identify #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*), #434/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), and #500/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), let alone to identify that Judge Reap deemed them "companion cases" by his September 18, 1989 decision. Nor does the Court identify, let alone discuss, Judge Reap's January 25, 1989 decision with respect to those "companion cases". Had the Court done so, it would have been forced to confront that I was not only entitled to dismissal of Mr. McFadden's December 5, 1988 Petition in #504/88, but summary judgment, as I had requested therein by my December 13, 1988 motion[9] – and that the same holds true herein, based on respondents' April 24, 1989

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the occupancy agreement specifies payment of "$1,000.00 per month for use and occupancy of the premises" (¶1G).

[9] The multi-branch relief sought by my December 13, 1988 motion in #504/88 and by a virtually identical December 12, 1988 motion I had made in #500/88, was for relief which Judge Reap's January 25, 1989 consolidated decision described as follows: (a) "To stay all proceedings in this court until the Federal action is concluded"; (b) "To disqualify the City Court of White Plains from hearing this matter"; (c) "To dismiss for lack of jurisdiction"; (d) "To dismiss the petition for failure to comply with statutory procedure"; (e) "For summary judgment"; (f) "To

motion.

33. Thus, Judge Reap's January 25, 1989 consolidated decision had denied the summary judgment branch of my December 13, 1988 motion in Mr. McFadden's #504/88, stating:

> "For summary judgment. Denied, sharp issues of fact exist as to what we see are really the only meritorious issues in this case, VIZ:
>
> (a) Was the Board of Directors of 16 Lake Street Owners, Inc., properly constituted when it refused to consent to an assignment of the proprietary lease and the sale of McFadden's stock?
>
> (b) If it was properly constituted, what was the reason or reasons for the Boards refusal to consent? In that connection see paragraphs 5, 6, and 7 of the contract of sale and compare paragraphs 1(d), 13, 14, 15, 16(a)(i)-(vi), 16(c), 16(e), 31, 31(c), 41, and 46(b) of the proprietary lease all on the one hand against paragraph 48 of the proprietary lease and the allegations in the Federal complaint on the other hand. To state the proposition another way, did the Board refuse to consent to assignment and sale respectively because of a reason paragraph 48 of the proprietary lease prohibits or was it, for example, because of the matters alleged in the three individual Directors' affidavits attached to Exhibit 'B' of the Glynn affirmation in opposition as contained in index no. 434/1988?" (at pp. 4-5, underlining added).

34. Yet, as the Court could be presumed to recognize, none of these supposedly "only meritorious issues" were germane to Mr. McFadden's December 5, 1988 Petition in #504/88, resting exclusively on a supposed "month to month rental agreement" by which respondents took possession of the apartment. As to that Petition, there were NO "sharp issues of fact" – indeed, NO ISSUES OF FACT at all. This, because of the occupancy agreement and contract of sale, as well as the Complaint in the federal action, bearing Mr.

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grant pre-trial discovery".

McFadden's name as co-plaintiff – all of which respondents had placed before Judge Reap by their December 13, 1988 motion in #504/88.

35. Judge Reap's January 25, 1989 consolidated decision had also denied my demand for a jury trial, made in my Answer, both in #504/88 and #500/88. Its reason:

> "because, inter alia, she is bound by the terms of the third paragraph of the WITNESSETH clause of the contract of sale and by paragraphs 5, 6, and 13 thereof as well as by paragraph 32 of the rider. These all require her to adhere to the terms of the proprietary lease and paragraph 42 of that document specifically waives the right to trial by jury. Moreover, her defense is equally based on violations of the proprietary lease, the corporate bylaws, and admission requirements, etc., and she cannot simultaneously claim the protection of those documents and then reject the jury waiver clause therein. They are all incorporated by reference in the actions before us and the ultimate question is: Have their terms been violated?" (at p. 6, underlining added)

36. Thus acknowledged by Judge Reap's January 25, 1989 consolidated decision was that my defenses to the City Court proceedings involved not just the discrimination claims of my federal lawsuit, but the claims based on corporate non-compliance with the Co-Op's "proprietary lease, the corporate bylaws, and admission requirements, etc.". Indeed, the consolidated decision, after stating that "Ultimately, all of these cases will be consolidated for trial" (at p. 9), closed with the following:

> "Except for the complaint thereon, we have not been supplied with the complete case file in the Federal action, nor do we have a copy of the 16 Lake Street Owners, Inc., certificate of incorporation, nor its bylaws, nor the offering plan. All of those documents are referred to in the Federal complaint, incorporated by reference in the answer of Elena Sassower in Cases Nos. 2 and 3 [#504/88 & #500/88]. We need these documents for an intelligent analysis of the issues posed under the summary discussion above in Case No. 2 at paragraph 5(a) which appears on page 4 of this decision, and Mr. Glynn is requested to supply us with copies of all these papers." (at pp. 9-10).

37. Five weeks later, Judge Reap stated to Mr. Glynn in his March 6, 1989 letter:

> "We further advise you that we have not been provided with any of the documents we requested, referred to on page 10 of our decision dated January 25, 1989. Please see that we receive those documents." (at p. 3)

38. The Court fails to include any of the above material information, establishing respondents' entitlement to summary judgment on Mr. McFadden's December 5, 1988 Petition in #504/88, as well as on his identical March 27, 1989 Petition herein. Nor does the Court reveal whether Mr. Glynn ever supplied the documents specified by the January 25, 1989 consolidated decision – documents entitling respondents, as well as Mr. McFadden, to summary judgment as to the Co-Op's Petitions against them in #434/88 and #500/88, because they established the Co-Op's non-compliance with its "proprietary lease, the corporate bylaws, and admission requirements, etc."

Instead, the Court makes it appear (at p. 1) that respondents were eight months late in filing the answer directed by Judge Reap's September 18, 1989 decision.

39. This is untrue. Respondents' Answer to Mr. McFadden's March 27, 1989 Petition herein was timely. By an April 12, 1990 letter, Judge Reap extended respondents' time to answer the petition until June 27, 1990. Indeed, this letter should be among the "Exhibits (unmarked)", itemized at the outset of the decision, as it was an unmarked exhibit to Mr. McFadden's November 25, 1991 summary judgment motion – the subject of the Court's supposed "*de novo*" review.

40. As for respondents' timely-filed Answer, for which the Court also gives an

incorrect filing date[10], the Court omits ALL information as to its content, as doing otherwise would expose that summary judgment could not be granted to Mr. McFadden based on his March 27, 1989 Petition . Thus, contained in respondents' Answer was a "GENERAL DENIAL" and such dispositive Affirmative Defenses as:

> "Lack of Jurisdiction...Respondents are Contract-Vendees in possession under a written agreement...which specifically disclaims a landlord-tenant relationship"; and
>
> "Collateral estoppel: Prior to commencement of this proceeding, Petitioner filed an action in Federal Court under Index No. 88 Civ. 5775 in which Petitioner was Co-Plaintiff with Respondents, suing 16 Lake Street Owners, Inc., its Board of Directors, et. al. for its discriminatory and wrongful conduct in refusing to give its approval of his application to sell his proprietary shares in the subject apartment to Respondents."

41. Instead, the Court falsely purports (at p. 1) that "sometime in August 1988, the respondents commenced an action in the United States District Court, Southern District of New York" — omitting Mr. McFadden as co-plaintiff. In the same sentence, the Court also materially misrepresents the jointly-commenced lawsuit so as to delete the causes of action resting on the Co-Op's non-compliance with its "proprietary lease, the corporate bylaws, and admission requirements, etc." Indeed, the Court's description of the grounds of the suit: "housing discrimination, a violation of New York Executive Law, estoppel and damages for severe emotional distress" – appears to be plucked from the categories on the special verdict returned by the jury nearly three years later, on March 19, 1991 (Exhibit X), rather than the Complaint which we and Mr. McFadden filed in August 1988 (Exhibit Q).

42. The decision refers (at p. 2) to the March 19, 1991 "special verdict in favor

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[10] Respondents' Answer, dated June 26, 1990, was plainly not "filed...with the White Plains City Court on June 6, 1990", as the decision purports (at p. 1).

of the Board and the Corporation", as likewise the March 20, 1991 Judgment of the District Court dismissing the federal action. Materially concealed is that whereas the August 1988 Complaint in the federal action bears Mr. McFadden's name as co-plaintiff (Exhibit Q), the Judgment does not bear his name and reflects that I and my mother had withdrawn at trial "causes of action 2 through 8 and 10" (Exhibit X).

43. The decision next refers (at p. 2) to Mr. McFadden's November 25, 1991 motion for summary judgment, providing no information about it, including its grounds, and falsely making it appear as if it were unopposed, which it was not. Here, too, the reason is because the Court could not disclose the particulars of such motion and the good and sufficient basis of the opposition AND grant Mr. McFadden's motion, which it was its prefixed determination to do [*See* ¶¶74-90, *infra*].

44. It is without disclosing anything about Mr. McFadden's November 25, 1991 summary judgment motion – or that it had even been opposed by respondents and my father, let alone any particulars thereof – that the Court refers to Judge Reap's December 19, 1991 decision as having "reserved decision pending a determination of respondent's[11] appeal by the United States Court of Appeals for the Second Circuit." (at p.2). This is materially incomplete. Judge Reap's decision also: (a) denied, without reason, what it described as "respondents' request to supply additional papers in opposition"; (b) ignored, without adjudication, respondents' request for monetary sanctions pursuant to "Sec. 130.1-2 of the Uniform Rules of the Trial Courts" for the "frivolous and patently deceptive motion" of Mr. McFadden and his attorneys, Lehrman, Kronick & Lehrman, as well as

[11] Whether intentionally or not, the Court uses the singular, applicable to #1502/07 with its single respondent, but not #651/89, with two.

respondents' request for "$100 motion costs under CPLR 8106 and 8202"; and (c) baldly asserted "George Sassower has no standing in this proceeding and his papers are a nullity".

45. The Court then implies (at p. 2) that there is no "Procedural History" until July 9, 2007 "approximately fifteen (15) years and eight (8) months after the Hon. James Reap reserved decision in this matter" when Mr. McFadden commenced another summary holdover proceeding, #1502/07, this one against only myself. This is flagrantly false. Ten months after Judge Reap's December 19, 1991 decision, Mr. McFadden made a second summary judgment motion in #651/89, dated October 20, 1992, annexing the August 13, 1992 affirmance decision of the Second Circuit Court of Appeals, in addition to Mr. McFadden's November 25, 1991 summary judgment motion, and Judge Reap's December 19, 1991 decision.

46. This second summary judgment motion was also opposed, both by respondents and by my father. By affidavits dated November 11, 1992 (Exhibit Z-1), November 25, 1992 (Exhibit Z-2), and December 16, 1992 (Exhibit Z-3), respondents sought an adjournment for "the same reason that [Judge Reap] granted adjournment previously, i.e. Respondents have not exhausted appellate remedies". We stated that we were working on a petition for a writ of certiorari to the U.S. Supreme Court, that there was no prejudice to Mr. McFadden by the granting of our request to adjourn the motion, pending the Supreme Court's "ultimate federal determination" in a case that was "good and meritorious", as Mr. McFadden well knew because "he himself was a co-plaintiff in commencing the federal action" (respondents' 11/11/92 affidavit, underlining in original). Alternatively, we sought 45 days so that we could substantively address Mr. McFadden's

motion, "without interference with the preparation of [our] 'Cert' application, in which [we] are pro se". We also requested sanctions against Mr. McFadden and Lehrman, Kronick & Lehrman, under Rule 130-1.2 for their deceitful, harassing summary judgment motion and their misconduct in connection therewith, which our succession of affidavits chronicled. As for my father's opposition, it stated, in pertinent part:

> "1a. I have been informed that a motion has been served by petitioner's attorneys, in the above-entitled matter, returnable November 12, 1992, wherein I am not named as a party nor has petitioner nor his attorneys, nor anyone else denied that I have a vested, constitutionally protected, interest, in the premises
>
> ....
>
> d(1) Decisive of [my] standing in the present proceeding is the related proceeding entitled 16 Lake v. McFadden, Geo. Sassower, et ano. City Court: White Plains L/T 434/88), where the identical issue of standing was involved, and no one, not even the petitioner's attorneys or the Court ever assert[ed] or contend[ed] that I did not have standing.
>
> (2) The petitioner, as well as the Court, having adopted the position that I had standing in L/T 434-1988, and my reliance on such holding, they are now judicially estopped from now claiming otherwise (Davis v. Wakelee, 156 U.S. 680 [1895])."

47. Judge Reap denied our adjournment and sanctions requests by a December 29, 1992 decision & order, stating that there was "no stay of the case in our court provided for by the Federal District Court, the Federal Court of Appeals for the Second Circuit, or the U.S. Supreme Court". This, notwithstanding our request had rested on Judge Reap's own stay of the proceedings during the duration of our federal lawsuit. Judge Reap further ordered that we file our answer to Mr. McFadden's summary judgment motion before January 18, 1993 and repeated his bald assertion "George Sassower has no standing in this proceeding and his papers are a nullity", citing his "11/19/91" decision.

48. By responding affidavit dated January 19, 1993 (Exhibit Z-4), we again

sought an extension of time, in combination with reargument and renewal of Judge Reap's December 29, 1992 decision, stating:

> "2. Respondents are presently engaged in the preparation of a Petition for a Writ of Certiorari to the United States Supreme Court in the federal action involving the subject premises. That federal action, under the Fair Housing Act[fn], was commenced with the Petitioner herein, who was a co-plaintiff with Respondents.
>
> 3. Respondents are proceeding pro se on their Writ application, which was originally due to be filed by December 24, 1992. Because of the complexity of the issues[fn] and Respondents' lack of familiarity with the technical requirements of such applications, Respondents applied for and were granted two extension requests to enable them to complete and file their Writ. Accordingly, Respondent's deadline is now February 22, 1993 by Order of Hon. Clarence Thomas, Circuit Justice for the Second Circuit. Such date represents a final deadline.
>
> 4. Respondents are, likewise, pro se in this City Court proceeding, which had been stayed since 1989 to await the outcome of the federal action. That stay was granted by Judge Reap himself – a fact which his December [29], 1992 Decision/Order appears to have overlooked.
>
> 5. The federal action has not been concluded – and will not be concluded until all appellate remedies are exhausted, i.e., until the U.S. Supreme Court makes a final disposition of Respondents' 'Cert' application.
>
> 6. Obviously, after a three-year freeze by this Court on its proceedings herein, it would be precipitous and a waste of judicial resources to proceed during the relatively short period necessary for the U.S. Supreme Court to act on Respondents' Petition for Certiorari.
>
> 7. As shown by the papers on this motion, there is no claim of any prejudice to the Petitioner herein resulting from a continuation of the stay granted by Judge Reap in this matter more than three years ago.
>
> 8. Under the foregoing facts and circumstances, it would be contrary to judicial economy, as well as the interests of justice to proceed at this point. If Respondent's reasonable request to await the outcome of the Supreme Court's disposition is not granted on reargument and renewal.— for which no reasons have been stated by Judge Reap – Respondents ask that their time be extended to at least 30 days after their February 22, 1993 filing deadline.
>
> 9. Due to the death of Peter Grishman, Esq., their prior counsel in this proceeding, Respondents – if not granted the aforesaid adjournment – would be required to engage other counsel because of their present inability, as hereinabove set forth, to proceed pro se.

> 10. Respondents take this opportunity to seek reconsideration of the denial of their request for sanctions and, if denied, that a statement of reasons for such denial be provided for appellate review. Such misconduct by adverse counsel – which has been appropriately detailed by Respondents' papers[fn] – and was uncontroverted by any factual counterproof – entitles Respondents, as a matter of law, to the sanction relief sought, including dismissal of the proceeding before this Court. Such would be in the interest of both judicial economy and justice."
>
> 11. Finally, as has been previously noted, this proceeding is jurisdictionally defective for a number of reasons, and Respondents do not waive their jurisdictional or other objections."

49. Neither Judge Reap nor any other judge – including the Court – has ruled on such good and sufficient affidavit, in itself precluding the granting of Mr. McFadden's first summary judgment motion.

50. As for the Court's final two paragraphs of its "Procedural History", relating to #1502/07 and what took place on June 30, 2008, they are recited at ¶¶15-20, *supra*, and ¶¶51-73, *infra*.

The Decision's Falsehood and Deceit as to its "Advice" to "the Parties" on June 30, 2008 as to #651/89

51. The decision's last paragraph of "Procedural History" (at p. 2) purports that:

> "On June 30, 2008, the parties were advised in open court that the Hon. James Reap retired in or about December 1992 and that this Judge would consider petitioner's motion for summary judgment *de novo*, supplemented only by the Second Circuit decision cited above".

This is deceitful in multiple respects.

52. First, the reference to "the parties" is ambiguous, as the decision's predecessor paragraph pertains to #1502/07. The "parties" to #1502/07 are Mr. McFadden and myself, whereas "the parties" to #651/89 additionally include my mother. My mother was not before the Court on June 30, 2008 – a material fact the decision omits. Indeed, no

notice was ever sent to "the parties" of #651/89, bearing its caption, summoning them to court on June 30, 2008. Tellingly, the decision fails to state how "the parties" were before the Court on that date.

53. Second, the inference that Judge Reap's retirement "in or about December 1992" explains why – for 15 years – there was no disposition of #651/89, including as to Judge Reap's December 19, 1991 "reserved decision pending a determination of respondent's appeal by the United States Court of Appeals for the Second Circuit", is false. Irrespective of the date of Judge Reap's retirement – and I don't believe the Court supplied the date at the June 30, 2008 proceedings – his pending cases went to other judges. As seen from the record on Mr. McFadden's second summary judgment motion in #651/89, concealed by the Court's decision, this case was actively pending at that time [*See* ¶¶45-49, *supra*].

A. Conspicuously, the decision does not directly state that Judge Reap's retirement "in or about December 1992" is the reason why there was no disposition of #651/89. Upon information and belief, the reason no judge rendered a decision on our January 19, 1993 affidavit was because, apart from Judge Reap's retirement, the other judges of White Plains City Court had recused themselves from such case in which we were plainly entitled to relief, *as a matter of law*. Indeed, in the record of #1502/07, I asserted, upon information and belief, that subsequent to submission of our January 19, 1993 affidavit, White Plains City Court judges recused themselves from cases involving my mother. This, at ¶75 of my September 11, 2007 affidavit in support of my September 5, 2007 cross-motion, whose appended footnote 7 specifically requested that:

> "the Court make disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of any facts bearing upon its ability to be fair and impartial – or otherwise disqualify itself pursuant to §100.3E thereof and Judiciary Law §14 – so that this important and substantial case is decided on the facts and law."

Such was further specified and supplemented by ¶¶30-37 of my July 8, 2008 order to show cause for the Court's disqualification and disclosure – which the Court refused to sign (side-tab Exhibit A).

B. The decision does not reveal that at the June 30, 2008 proceedings, I requested that the Court make disclose of facts bearing upon its fairness and impartiality, which it ignored as it walked off the bench, with knowledge that such was a prelude to my oral application for its disqualification. Nor does it identify that prior to June 30, 2008, I had requested such disclosure, if the Court did not disqualify itself and transfer #1502/07 "to another Court to ensure to the appearance and actuality of impartial justice" – and had formally done so by my June 27, 2008 order to show cause, which the Court had refused to sign on the pretense that I could make such application "on the record" at the June 30, 2008 proceedings (side-tab Exhibit 1).

C. Among the disclosure the Court was duty-bound to make on June 30, 2008 – and to reflect in its decision – was that after it was appointed to the White Plains City Court bench in 1993[12], it had been assigned to, had been responsible for, and/or had knowledge of, #651/89. In fact, it sheepishly disclosed this on November 16, 2007, at the oral argument of my November 9, 2007 order to show cause to stay the trial in #1502/07, in

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[12] According to a September 3, 2003 article in the Larchmont Gazette, Judge Friia's campaign literature in her bid to become a Westchester County judge identified her as having been "a White Plains City court Judge since 1993 and the Senior Judge since 1997."

response to Mr. Sclafani's entreaty, at that time, that the Court grant Mr. McFadden summary judgment in #651/89 based on Judge Reap's December 19, 1991 decision.[13]

D. Tellingly, the Court's only disclosure on June 30, 2008 was by its description of itself as "successor in interest" to Judge Reap because he was White Plains City Court's Senior Judge, just as the Court is now. Yet, its decision entirely omits this, as likewise, that the Court has been the Senior Judge of White Plains City Court for more than a decade, in which capacity it has had reason to know that #651/89 is still open, along with several of the "companion cases".

E. Tellingly, too, the decision – which conceals Mr. McFadden's second summary judgment motion and its posture [*See* ¶¶45-49, *supra*] because they suffice to preclude the Court from granting Mr. McFadden's first summary judgment motion – does not identify that it was Mr. McFadden's burden, if he believed himself entitled to summary judgment, to have requested the Court to make a decision on that second summary judgment motion. The decision conceals that at no time did Mr. McFadden make such request – which certainly he could have been expected to do upon the "ultimate federal determination", *to wit*, the U.S. Supreme Court denial of review of the Second Circuit decision, in June 1993.

F. Nor does the decision identify the legal consequences of Mr. McFadden's failure to have requested decision from the Court on his pending second summary judgment motion. Such were identified by ¶¶77-78 of my September 11, 2007 affidavit in support of my September 5, 2007 cross-motion for summary judgment in #1502/07 as

[13] Such oral argument was recorded.

powerfully reinforcing my Seventh Affirmative Defense therein based on Implied Contract, Detrimental Reliance & Fraud, pointing out that:

> "Neither Mr. Sclafani nor Mr. McFadden has answered the obvious question as to why Mr. McFadden did not seek my eviction upon the federal litigation's conclusion in June 1993, when, based on Judge Reap's December 19, 1991 decision, he readily could have. That Mr. McFadden did not do so from mid-June 1993 or in the 14 years since, however, was a conscious choice by him and his attorneys, who were fully knowledgeable of the December 19, 1991 decision.[fn.9]"

54. Third, the Court's inference that its advice to "the parties" on June 30, 2008 was *sua sponte* is false. The Court's advice was upon the importuning of Mr. McFadden's attorney in #1502/07, Leonard Sclafani, Esq., whose role the Court further conceals by the last page of the decision, indicating that he is being furnished a copy of the decision as a "courtesy copy" (at p. 4). This contrasts with the copy to Mr. Glynn, who never represented any party in #651/89, let alone "Respondent" (at p. 3).

55. The facts as to what took place on June 30, 2008 are recited by my July 8, 2008 order to show cause, which the Court refused to sign (side-tab Exhibit A). In pertinent part, I stated:

> "21. The Court's June 30, 2008 ruling that it would summarily adjudicate a proceeding dormant for more than 15 years – for which it cited no law or authority other than that it was the 'successor in interest' to Judge Reap, who, in 1989, was the senior judge, as the Court is now – followed upon Mr. Sclafani's importuning that the Court should and could summarily grant Mr. McFadden's summary judgment motion underlying Judge Reap's December 19, 1991 'Decision on Motion'. Mr. Sclafani provided no law or other authority for this request. Rather, and, as is his custom, he inundated

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[fn.9] In pleading ignorance, a showing is required "that the ignorance is unavoidable and that with diligent effort the fact could not be ascertained." Siegel, §281 New York Practice (1999 ed., p. 442). *See* also, C3212:16, Civil Practice Law and Rules (1999 ed., p. 324).

the Court with a deluge of assertions which were not only false, but which Mr. Sclafani knew to be false from the record of this case. This included his endorsement of Judge Reap's materially erroneous December 19, 1991 decision that the loss of the federal lawsuit against the Co-Op would entitle Mr. McFadden to summary judgment in #651/89 under doctrines of res judicata, collateral estoppel, and issue preclusion and, further, that all papers necessary for the determination of the motion in #651/89 had been submitted.

22. My response to the Court on June 30, 2008 largely focused on the fact that res judicata, collateral estoppel, and issue preclusion would not apply, contrary to Judge Reap's claim, endorsed by Mr. Sclafani. This, because Mr. McFadden had bailed out of the federal lawsuit, in which he had been a co-plaintiff, and because he had thereafter failed to assign to myself and my mother his shareholder rights, as a consequence of which we had been forced to withdraw our causes of action based on the Co-Op's non-compliance with its rules, procedures, and policies – as to which there had been no adjudication of them in federal court.

23. Additionally I stated that subsequent to Mr. McFadden's first summary judgment motion, to which Judge Hansbury's December 19, 1991 decision had 'reserved decision', he had made a second summary judgment motion, as to which there had been no decision.

24. The Court did not respond to what I said – nor ask for Mr. Sclafani's response. Rather, it granted Mr. Sclafani's request – based on nothing more than his flagrantly false and inflammatory deceits before the Court."

The Decision, by its Omissions and Falsifications, Concedes the Validity of What I Said to the Court on June 30, 2008 as to Why Summary Judgment Could Not Be Granted to Mr. McFadden Based on Judge Reap's December 19, 1991 Decision

56. My explanation to the Court on June 30, 2008 as to why Mr. McFadden was not entitled to summary judgment is validated by the Court's decision (side-tab Exhibit 2), as it:

(a) omits any mention of res judicata, collateral estoppel, and issue preclusion, whose applicability it does not adjudicate.

Thus, it quotes from Judge Reap's December 19, 1991 decision:

"'[i]f [the respondents] also lose in the U.S. Court of Appeals [the case in City Court] will be effectively terminated. This follows because all respondents' claims in the federal action were dismissed and it is those exact claims that form their defense in the City Court summary proceeding.'" (at p. 2),

but fails to include Judge Reap's immediately following sentence:

"Axiomatic principles of res judicata, collateral estoppel and issue preclusion would apply.";

(b) falsely purports – in two separate places – that the federal action was brought by "respondents", rather than by respondents with McFadden as co-plaintiff.

Thus, it states:

"Sometime in August 1998, the respondents commenced an action in the United States District Court, Southern District of New York..." (at p. 1) and

"...respondents commenced the federal lawsuit in the United States District Court, Southern District of New York..." (at p. 2);

(c) misrepresents and conceals the grounds of the federal lawsuit so as to omit its corporate non-compliance causes of action, which respondents had been forced to withdraw at trial.

Thus, in the continuation of the foregoing two sentences, the decision states:

"...commenced an action...alleging housing discrimination, a violation of the New York Executive Law, estoppel and damages for emotional distress" (at p. 1),

taking this description not from the Verified Complaint in the federal action (Exhibit Q), but from the jury's special verdict sheet in March 1991, two-1/2 years after the lawsuit was commenced (Exhibit X)

and

"...commenced the federal lawsuit...asserting the various claims referenced by the federal court decision(s)" (at p. 2),

when the Court could have easily identified the "claims referenced by the federal court decision(s)", including: "failure to comply with the provisions of the corporate by-laws and the proprietary lease governing transfers; breach of the duty of good faith;...unequal treatment of shareholders; breach of fiduciary duty; and failure to comply with its own policies". [U.S. District Court decisions in *Sassower v. Field*: September 5, 1990; November 13, 1990; August 12, 1991];

(d) omits any express endorsement of what it "note[s]" Judge Reap said in his December 19, 1991 decision , *to wit*, "'[i]f [the respondents] also lose in the U.S. Court of Appeals [the case in City Court] will be effectively terminated. This follows because all respondents' claims in the federal action were dismissed and it is those exact claims that form their defense in the City Court summary proceeding.'" (at p. 2);

(e) omits any mention of Mr. McFadden's October 20, 1992 second summary judgment motion – as to which neither Judge Reap nor any other judge made a decision following respondents' submission of their January 19, 1993 affidavit (Exhibit Z-4) – the last document in the record until this Court's decision nearly 15 years later.

57. All these falsified and omitted facts from the decision disentitle Mr. McFadden to the granting of his November 25, 1991 summary judgment motion, as the Court well knew from my unchallenged statements, in open court, on June 30, 2008.

The Court's Omission of the Material Facts and Posture of #1502/07, To Conceal that Its Ulterior Motivation in #651/89 was to Circumvent My Legal Entitlement in #1502/07

58. The decision omits the material facts and posture of #1502/07, thereby concealing that the ulterior motivation for what the Court did in #651/89 was to circumvent my legal entitlement in #1502/07.

59. The entirety of what the decision says abut #1502/07 – under its heading "Procedural History" (at p. 2) – is:

"On July 9, 2007, approximately fifteen (15) years and eight (8) months after the Hon. James Reap reserved decision in this matter, the petitioner commenced summary holdover proceedings against respondent Elena Sassower under Index No. SP 1502/07.";

"In motion papers filed in connection with SP 1502/07, the City Court has now been provided with the information which the Hon. James Reap deemed necessary in his decision to reserve on petitioner's motion for summary judgment. Specifically, on appeal, the Second Circuit affirmed both the District Court's decision to impose sanctions upon the above-captioned respondents [Doris L. Sassower and Elena Sassower] and the denial of their motion for a new trial (see *Sassower v. Field*, 973 F.2d 75 [U.S. Ct of Appeals, 2nd Cir. 1992, certiorari denied, 507 U.S. 1043 [1993])."

60. The decision does not recite ANY of the allegations of Mr. McFadden's Petition in his proceeding against me under #1502/07 – or note that it omits any mention of "companion cases" or prior City Court proceedings, including #651/89, or the federal action in which he was co-plaintiff with myself and my mother. Nor does the decision identify that such material omissions were among the grounds upon which, by the Fourth Affirmative Defense of my August 20, 2007 Answer therein, entitled "Ensuring the Integrity of the Judicial Process", I seek "imposition of $10,000 sanctions and maximum costs under 22 NYCRR §130-1.1" against him and Mr. Sclafani, both of whom signed the Petition, and, additionally, disciplinary referral of Mr. Sclafani, pursuant to the Court's "mandatory 'Disciplinary Responsibilities' under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct".

61. Indeed, the decision conceals the material fact that the City Court proceedings and federal action were focal to my Answer in #1502/07, constituting the basis of both Affirmative Defenses and Counterclaims, including:

my First Affirmative Defense – "Open Prior Proceedings":
¶¶FOURTH to FIFTH;

my Fifth Affirmative Defense – "Equitable Estoppel and Unjust Enrichment":
¶¶TWELFTH to FIFTEENTH;

my Sixth Affirmative Defense – "Detrimental Reliance":
¶¶SIXTEENTH to TWENTY-SECOND;

my Seventh Affirmative Defense – "Implied Contract, Detrimental Reliance & Fraud ¶¶TWENTY-THIRD to ¶¶THIRTY-THIRD;

my First Counterclaim – "Prior Proceedings"
¶¶EIGHTY-FIRST to EIGHTY-THIRD;

my Fourth Counterclaim – "Ensuring the Integrity of the Judicial Process"
¶¶NINTY-FIRST to NINTY-SECOND.

62. Indeed, the decision omits ANY mention of my Answer, with its Affirmative Defenses and Counterclaims.

63. As for the decision's reference to "motion papers" (at p. 2), it materially omits what these consisted of – all properly part of "Procedural History":

A. In response to an August 23, 2007 motion by Mr. Sclafani, *inter alia*, to dismiss my Affirmative Defenses and Counterclaims, I made a September 5, 2007 cross-motion, whose second and third branches sought dismissal of Mr. McFadden's Petition, as well as summary judgment on my Counterclaims.

In substantiation of my First Counterclaim, whose ¶EIGHTY-SECOND stated:

> "Respondent and her mother, Doris L. Sassower, as contract-vendees of the subject premises, had a meritorious federal action against the Co-Op and other defendants, which petitioner knowingly and deliberately compromised, undermined, and sabotaged, both while he was their co-plaintiff therein and after his withdrawal. Such included collusion with the Co-Op both with respect to his initiation and pursuit of eviction proceedings against them in White Plains City Court, timed to be the most prejudicial, and his wilful and repeated failure to assign his shareholder rights to respondent and her mother so as to maintain their corporate non-compliance causes of action.",

my cross-motion set forth facts and documents from both #651/89 and the federal action.

¶155 of my cross-motion described the documents in the record of #651/89 as follows:

> "The City Court file therein reflects that after the loss of the federal case in the U.S. District Court in March 1991 and, thereafter, at the Second Circuit Court of Appeals in August 1992, Mr. McFadden made two motions for summary judgment. Our opposing submissions sought sanctions against Mr. McFadden and his lawyer, chronicling their dishonest failure to accurately apprise the City Court of the status of our federal case, timed to impede and frustrate our unexhausted federal appellate rights. The last document in the City Court file – and my own – is the joint affidavit of myself and my mother, dated and filed January 19, 1993 (Exhibit Z-4), whose requested relief included the Court's reconsideration of its denial of our prior sanctions request against Mr. McFadden's counsel, entitlement to which we had detailed in affidavits identified as November 11, 1992 (Exhibit Z-1), November 25, 1992 (Exhibit Z-2), December 16, 1992 (Exhibit Z-3) – and establishing a repetition of misconduct that we had particularized by our December 16, 1991 affidavit (Exhibit Y)."

B. Mr. Sclafani responded by a September 5, 2007 opposing affirmation (¶¶38-54), annexing Judge Reap's December 19, 1991 decision on Mr. McFadden's first summary judgment motion in #651/89 and requesting, by his affidavit in #1502/07, that the Court grant Mr. McFadden summary judgment in #651/89.

C. My September 11, 2007 affidavit replied with an extensive and dispositive recitation at ¶¶63-79 as follows:

> "63. Mr. Sclafani provides no legal authority for how such long-dormant proceedings, involving additional parties, may be activated, but surely it cannot be done summarily – let alone by the summary granting of a 14-year old summary judgment motion therein – without a formal motion made under the index number of such proceedings, giving notice to the affected parties. Such affected parties would be my mother, a respondent in open proceeding 651/89, and the Co-Op, the petitioner in open proceedings 434/88 and 500/88.
>
> 64. However, were Mr. Sclafani to make a properly-noticed motion therein, Mr. McFadden would still not be entitled to summary judgment on his 14-year old undecided motion for summary judgment. Indeed, Mr. Sclafani's glib representation at ¶46 that 'All the papers necessary for the disposition of the motion had been submitted' – for which

he relies on Judge Reap's December 19, 1991 decision (at ¶49), as he likewise relies on it for his false claims that the outcome of the federal action against me entitles Mr. McFadden to summary judgment based on *res judicata*, collateral estoppel and issue preclusion (his ¶¶47-48) – violates both fundamental due process and black-letter law. Mr. Sclafani can be presumed to know this from my cross-motion's Exhibit Y, as well as from elementary rules governing application of *res judicata*, collateral estoppel, and issue preclusion, set forth in caselaw and treatise authority.

65. Exhibit Y of my cross-motion consists of my mother's December 16, 1991 'Responding Affidavit' and my own December 16, 1991 'Responding Affidavit', subscribing to, and incorporating, my mother's affidavit. Such were our submissions before Judge Reap when he rendered his December 19, 1991 decision with respect to Mr. McFadden's first summary judgment motion, dated November 25, 1991. Evident from ¶¶2 and 3 of my mother's affidavit, is that Judge Reap could not lawfully deny our 'request to supply additional papers in opposition' to Mr. 'McFadden's summary judgment motion. The reason is the nature of the 'additional papers', which those paragraphs identify. As stated:

> '2. This Affidavit is without prejudice to a motion for recusal, change of venue and other relief, which Respondents will make at such time as these proceedings are no longer stayed pursuant to the prior decision of this Court.
>
> 3. Petitioner's instant motion for summary judgment is premature and violative of the stay heretofore granted by this Court, and hence will not at this time be addressed as to its substance. In the interest of expediency, this Affidavit is strictly limited to the factual question as to whether Petitioner correctly contends that these proceedings are no longer subject to the stay because allegedly the related federal action has been concluded. Respondents reserve their right to address Petitioner's other material factual allegations – all of which are vigorously denied and disputed – by appropriate response at a later date, should the instant motion not be dismissed in accordance with Respondents' position.'

66. Aside from our absolute right to interpose a motion for recusal/change of venue so that the proceeding could be heard by a fair and unbiased tribunal – which Judge Reap and the City Court were not – no summary judgment could be rendered where we denied and disputed the material factual allegations of Mr. McFadden's motion, expressing reserving our right to address same, if our showing as to its prematurity was not adopted by Judge Reap, which, by his December 19, 1991 decision, it was.

67. Conspicuously, Mr. Sclafani has not placed before the Court a copy of Mr. McFadden's November 25, 1991 summary judgment motion, upon which Judge Reap rendered his December 19, 1991 decision. Nor has he put forward Mr. McFadden's subsequent October 20, 1992 summary judgment motion, as to which there is no decision by Judge Reap or any other judge. Both these motions were made by the law firm, Lehrman, Kronick & Lehrman, which were Mr. McFadden's attorneys in all the prior City Court proceedings.

68. Mr. McFadden's November 25, 1991 summary judgment motion was supported only by Mr. McFadden's own affidavit, with no accompanying attorney's affirmation or memorandum of law. Such motion did not assert, nor make any argument with respect to, *res judicata*, collateral estoppel, and issue preclusion. Indeed it failed to identify, including by any of its annexed exhibits, that Mr. McFadden had been a co-plaintiff in the federal action, had withdrawn himself as co-plaintiff nearly a year prior to the adverse jury verdict, nor any of the consequences of his withdrawal.

69. The standards for invocation of *res judicata*/collateral estoppel are reflected in *Gramatan Home v. Lopez*, 46 N.Y.2d 481 (1979), wherein the Court of Appeals enunciated:

> 'Collateral estoppel...is but a component of the broader doctrine of *res judicata*...As the consequences of a determination that a party is collaterally estopped from litigating a particular issue are great, *strict requirements for application of the doctrine must be satisfied* to insure that a party not be precluded from obtaining at least one full hearing on his or her claim. ... First, *it must be shown* that the party against whom collateral estoppel is sought to be invoked had a full and fair opportunity to contest the decision said to be dispositive of the present controversy. Additionally, *there must be proof* that the issue in the prior action is identical, and thus decisive, of that in issue in the current action [*Schwartz v. Public Administrator of County of Bronx*], (24 N.Y.2d, at p. 71).' (*Gramatan*, at 485, emphasis added).

70. The first inquiry on collateral estoppel is 'whether it is being used only against one who has already had his day in court' – for which, together with a careful analysis to establish 'identity of issues', 'all the circumstances of the prior action must be examined to determine whether the estoppel is to be allowed.' Siegel, New York Practice, §462 (1999 ed., pp. 742-3). As stated:

> 'Caselaw suggests with good reason that in the final analysis collateral estoppel is sui generis, that its 'crowning consideration' is fairness, that rigidity has no place in its application, and that 'all the circumstances of the prior action must be examined to determine whether the estoppel is to be allowed.'' *Id*, p. 743.

71. Mr. Sclafani does not claim that Judge Reap's December 19, 1991 decision complies with the 'strict requirements' for application of *res judicata*, collateral estoppel, and issue preclusion. His ¶¶47-48 conspicuously do not quote, or even identify, Judge Reap's stated factual basis for application of these doctrines, *to wit*, that 'all respondents' claims in the federal action were dismissed and it is those exact claims that form their defense in the City Court summary proceeding.' Nor does Mr. Sclafani himself independently assert such factual basis – let alone meet any standard of specificity in particularizing my federal claims, the grounds of their dismissal, and compare them to my claims in defending against the referred-to City Court proceeding. Such is all the more telling as my cross-motion expressly noted (at p. 33, fn. 18) that his dismissal motion had not repeated the false statement in his July 17, 2007 letter to Judge Press (Exhibit N) that the federal court decisions and orders had 'dismissed on their merits' 'the claims of Elena Sassower and her mother Doris Sassower, involving the events, facts, and circumstances underlying and precipitating the instant action.'

72. As Judge Reap should have realized based on the March 20, 1991 'jury verdict and judgment of the U.S. District Court' (Exhibit X) – to which his December 19, 1991 decision refers – Mr. McFadden had ceased to be a co-plaintiff with myself and my mother in the federal action and (by reason thereof) virtually the entirety of our federal complaint 'causes of action 2 through 8 and 10' – the causes of action involving corporate non-compliance – were withdrawn.

73. Mr. Sclafani – whose ¶45 states that the status of 651/89 'as of 1992' was that McFadden had a 'pending...motion for summary judgment' – does not identify the date of that motion – presumably October 20, 1992. Nor does he distinguish that such motion is not the same as Mr. McFadden's previous summary judgment motion, to which Mr. Sclafani makes reference at ¶¶46-49, also with no date. This enables Mr. Sclafani's false representation (at ¶46) that 'All of the papers necessary for disposition of the motion had been submitted', substantiating it (at ¶49) by the December 19, 1991 decision on the earlier summary judgment motion.

74. It further enables Mr. Sclafani to misleadingly represent, also at ¶46, that 'the Court elected to hold its determination of the motion in abeyance pending a final decision in federal court'. He has no basis to

speculate as to what Judge Reap 'elected' – and certainly the December 19, 1991 decision shows that Judge Reap was perfectly capable of explaining the situation, which for reasons unknown he did not do.

75. Upon information and belief, Judge Reap – and the other judges of White Plains City Court – subsequently recused themselves from cases involving my mother.[fn.7] This would have included Mr. McFadden's open proceeding against me and my mother under 651/89 as to which no decision had been rendered on Mr. McFadden's October 20, 1992 summary judgment motion.

76. In any event, by June 1993, there was 'a final decision in federal court' – thereby clearing the way for the Court to determine Mr. McFadden's pending October 20, 1992 summary judgment motion. All that was needed from Mr. McFadden's lawyers was a letter to the Court that the federal case was finally over and asking for a decision on the unadjudicated summary judgment motion. This would have entailed virtually no expense and no emotional energy. As such, it puts the lie to Mr. Sclafani's representation to Judge Press in open court on July 16th that by the time the federal case was over, Mr. McFadden 'lack[ed]...the funds to proceed to complete the [e]viction' -- which was Mr. Sclafani's pretext as to why Mr. McFadden thereafter made 'an agreement,...oral, [of] a month-to-month tenancy with me (Exhibit I-1, p. 5, lns. 12-24), as likewise ¶¶86-88 of Mr. Sclafani's affirmation on his dismissal motion purporting that because Mr. McFadden was 'Exhausted both mentally and financially', he 'took no action' to remove me upon the conclusion of the federal action, but, instead allowed me to remain, 'on a month to month basis in exchange for the payment of varying amounts of rents, as from time to time, the parties agreed'.

77. Needless to say, if Mr. Sclafani believes the December 19, 1991 decision entitled Mr. McFadden to summary judgment at the conclusion of the federal action, such powerfully reinforces my Seventh Affirmative Defense based on Implied Contract[fn.8], Detrimental Reliance &

"[fn.7] I herein request that the Court make disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of any facts bearing upon its ability to be fair and impartial – or otherwise disqualify itself pursuant to §100.3E thereof and Judiciary Law §14 – so that this important and substantial case is decided on the facts and law."

"[fn.8] *Cf.* Mr. Sclafani's ¶52 that falsely purports that I cannot and do not rest on 'any subsequent agreement, express or implied, written or oral, between the parties herein'. This, because I 'affirmatively assert[] that [I] remain[] in occupancy of the premises at issue under the temporary occupancy agreement'. Examination of my affirmative defenses and counterclaims shows this to be yet another one of Mr. Sclafani's lies."

Fraud, whose ¶TWENTY-THIRD states:

> 'Notwithstanding the federal suit ended in 1993, adverse to respondent, petitioner did not then or thereafter seek her eviction by reason thereof or otherwise clarify the basis of her occupancy, as he readily could have done. To the contrary, he fostered in respondent the belief that he was honoring the terms of the October 30, 1987 occupancy agreement and contract of sale.' (underlining added).

78. Neither Mr. Sclafani nor Mr. McFadden has answered the obvious question as to why Mr. McFadden did not seek my eviction upon the federal litigation's conclusion in June 1993, when, based on Judge Reap's December 19, 1991 decision, he readily could have. That Mr. McFadden did not do so from mid-June 1993 or in the 14 years since, however, was a conscious choice by him and his attorneys, who were fully knowledgeable of the December 19, 1991 decision.[fn.9] Indeed, this may explain why Mr. Sclafani has not put before the Court Mr. McFadden's October 20, 1992 pending summary judgment motion, which annexed the December 19, 1991 decision as an exhibit and made it the focus of the five-paragraph supporting affirmation of his attorney, who cited to, quoted from, and annexed it, albeit without any independent assertion as to the truth of Judge Reap's factual basis for holding *res judicata*, collateral estoppel, and issue preclusion applicable.

79. Finally, with respect to Mr. Sclafani's ¶53 assertion that my cross-motion and Answer seek 'to preclude this Court from ruling on matters the subject of the subsequent events'. This is flagrantly false. As my Answer's affirmative defenses and counterclaims make evident – as likewise my cross-motion, seeking dismissal and summary judgment based thereon – I have placed before the Court nearly 20 years of 'subsequent events' to the October 30, 1987 occupancy agreement and contract of sale on which to rule."

D. In face of these paragraphs of my September 11, 2007 affidavit, even Judge Hansbury, whose pervasively biased conduct I chronicled by my November 9, 2007 order

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"[fn.9] In pleading ignorance, a showing is required 'that the ignorance is unavoidable and that with diligent effort the fact could not be ascertained.' Siegel, §281 New York Practice (1999 ed., p. 442). *See* also, C3212:16, Civil Practice Law and Rules (1999 ed., p. 324)."

to show cause, did not grant Mr. Sclafani's request for summary judgment in #651/89 when he rendered his October 11, 2007 decision in #1502/07 (Exhibit PP-2), ordering, *inter alia*, consolidation of "any prior pending action".

E. Upon my bringing my November 9, 2007 order to show cause to disqualify Judge Hansbury and vacate his October 11, 2007 decision, Mr. Sclafani cross-moved on November 15, 2007, again seeking, by his affidavit, summary judgment for Mr. McFadden in #651/89, based on Judge Reap's December 19, 1991 decision therein. I again opposed it, incorporating in my November 26, 2007 affidavit (at ¶¶59-61) the above-quoted ¶¶63-79 from my September 11, 2007 affidavit, whose accuracy was not denied or disputed by Mr. Sclafani.

F. Judge Hansbury's January 29, 2008 decision (Exhibit OO) did not grant Mr. Sclafani's second request in #1502/07 for the summary judgment he sought in #651/89 and reiterated "The proceedings shall remain consolidated".

64. All of this essential "Procedural History", properly recited by the Court's decision, is <u>not</u> recited. Likewise essential – but <u>not</u> recited – is the record on my September 5, 2007 cross-motion, highlighted and reinforced by my November 9, 2007 order to show cause, entitling me to dismissal of Mr. McFadden's Petition and summary judgment on my Counterclaims, *as a matter of law*.

65. The Court has been repeatedly made aware of the record of my September 5, 2007 cross-motion: (a) on November 16, 2007, when I appeared before the Court at the oral argument of my November 9, 2007 order to show cause; (b) by my unresponded-to June 13, 2008 letters to the Chief Clerk (Exhibits QQ, RR); (c) by my unresponded-to June

24-25, 2008 letters to the Court (Exhibits SS, TT); (d) by my June 27, 2008 order to show cause, which the Court refused to sign (side-tab Exhibit 1), (e) by my presentation, in open court, on June 30, 2008, emphasizing that there had been no findings of fact or conclusions of law as to my Affirmative Defenses or Counterclaims and that such were dispositive of my rights; (f) by my July 8, 2008 order to show cause, which the Court refused to sign (side-tab Exhibit A). The Court has never denied nor disputed that the record of my September 5, 2007 cross-motion is dispositive of my rights – and the most cursory examination of that record readily confirms that it is.

66. It was to avoid granting me the relief to which that September 5, 2007 cross-motion entitles me, *as a matter of law* – and as to which my unsigned June 27, 2008 and July 8, 2008 orders to show cause had expressly sought:

> "findings of fact and conclusions of law as to respondent's entitlement to dismissal of the Petition and summary judgment on her Counterclaims, based on the record of her September 5, 2007 cross-motion and November 9, 2007 order to show cause". (side-tabs Exhibit A & Exhibit 1, osc, p. 2),

that the Court, without citation to ANY legal authority, purports to have *sua sponte* adjudicated Mr. McFadden's nearly 17-year old summary judgment motion in a case dormant for almost a decade and a half. Such is presumably a prelude to a similarly lawless and fraudulent decision in #1502/07, which, without examining the differences between Mr. McFadden's Petition in #651/89 and his Petition in #1502/07 – indeed, without remarking on the fact that Mr. McFadden's Petition in #1502/07, with its allegations about the contract of sale and occupancy agreement, DOCUMENTARILY REBUTS his Petition in #651/89 – will doubtlessly dismiss his Petition in #1502/07 as

moot, ignoring my Counterclaims that independently entitle me to summary judgment.

The Court's Restriction on its *De Novo* Review Is a Pretext for Its Freeing Itself from the Record in #1502/07 & from my June 30, 2008 Statements, Each Precluding the Granting of Summary Judgment to Mr. McFadden in #651/89

67. The decision purports that the Court advised "the parties" on June 30, 2008 that it "would consider petitioner's motion for summary judgment *de novo*, supplemented only by the Second Circuit decision cited above." (at p. 2, underlining added). This is materially misleading, if not false.

68. First, I do not believe that the Court actually stated that its *de novo* review would be only supplemented by the Second Circuit decision. I believe the Court stated that it would not take further submissions and that its *de novo* review would be based on the existing record, which I understood to include #1502/07.

69. Second, such restriction is ambiguous because the "cited above" Second Circuit decision of August 13, 1992 includes, as part of its citation, the Supreme Court's denial of certiorari. Is the Court thereby conceding what respondents' opposition to Mr. McFadden's second summary judgment motion argued, namely, our entitlement to seek Supreme Court review prior to the City Court's determination of Mr. McFadden's summary judgment motion? Certainly, the ONLY difference between the Second Circuit's August 13, 1992 decision which Mr. Sclafani put before the Court last year in #1502/07 and the Second Circuit's August 13, 1992 decision which Lehrman, Kronick, & Lehrman put before Judge Reap by Mr. McFadden's October 20, 1992 second summary judgment motion is that Mr. McFadden's second summary judgment motion was PRIOR to

respondents' filing their petition for a writ of certiorari. As such, it establishes the Court's recognition that Mr. McFadden's summary judgment motions were premature before Supreme Court review was concluded – entitling respondents to defer their substantive opposition to that point.

70. Nor does the Court give the slightest explanation for the restriction its decision announces. Certainly, if the Court was actually intending a "*de novo*" review of Mr. McFadden's November 25, 1991 summary judgment motion, such could not be governed by Judge Reap's December 19, 1991 decision denying "respondents' request to supply additional papers in opposition", as Mr. Sclafani had urged. Indeed, *de novo* review would require the Court to evaluate, with fresh eyes, respondents' December 16, 1991 affidavits that:

> "reserve[d] their right to address Petitioner's other material factual allegations – all of which are vigorously denied and disputed – by appropriate response at a later date, should the instant motion not be dismissed in accordance with Respondents' position (Exhibit Y, ¶3).

Yet, the Court conceded at the June 30, 2008 proceedings that it had not yet reviewed #651/89, as it was on microfiche, microfilm, or in storage, due to its age. Its decision makes no mention of our December 16 1991 affidavits or my father's December 17, 1991 letter.

71. The obvious reason for the Court's so-restricting its *de novo* review was to free itself from the overwhelming record in #1502/07, where my September 5, 2007 cross-motion established that no award of summary judgment could be granted to Mr. McFadden in #651/89 based on the adverse outcome of the federal lawsuit.

72. Plainly, too, this self-imposed restriction would also free the Court from having to consider what I said at the June 30, 2008 proceedings as to why summary judgment could not be granted to Mr. McFadden – the validity of which is demonstrated by the falsifications and omissions in the Court's decision [*See* ¶¶55-57, *supra*].

73. Even with such restriction, however, summary judgment could not be granted to Mr. McFadden, *as a matter of law*, by reason of the fraudulence of his November 25, 1991 summary judgment motion, indeed, the fraudulence of his March 27, 1989 Petition initiating #651/89, *readily-verifiable* from the record of #651/89.

The Court Did Not Undertake the *De Novo* Review of Mr. McFadden's Summary Judgment Motion it Announced on June 30, 2008

74. Absent from the decision is any statement that the Court actually undertook the *de novo* consideration of Mr. McFadden's November 25, 1991 summary judgment motion that on June 30, 2008 it announced to "the parties" it would. In fact, NO *de novo* review was undertaken – as further reflected by the Court's issuance of the decision a mere three days after the June 30, 2008 proceedings, rather than the four to six weeks it had stated on June 30, 2008 it would require.

75. At minimum, *de novo* consideration of Mr. McFadden's November 25, 1991 summary judgment motion required the Court to examine Mr. McFadden's motion to determine its sufficiency – as well as the sufficiency of any opposing submissions and make adjudications based thereon. The Court does neither – notwithstanding the section of the decision misleadingly entitled "Petitioner's Motion for Summary Judgment" (at p. 2).

76. Had the Court actually examined Mr. McFadden's November 25, 1991

summary judgment motion, it would have seen that his moving affidavit was insufficient and fashioned on falsehood and deceit. The following is an illustrative sampling of what the Court would have discerned upon *de novo* review:

> **(a)** Mr. McFadden's motion purported (at ¶4) that "the instant matter is a holdover summary proceeding wherein and whereby petitioner seeks to evict respondents from petitioner's premises as a result of their holding over therein after the expiration of an occupancy agreement" (underlining added).
>
> This is false. Mr. McFadden's Petition – which his affidavit did not annex – alleged that respondents had entered into possession under "a month to month rental agreement";
>
> **(b)** Mr. McFadden's motion purported (at ¶5) that "this matter in one form or another has been pending before this court for approximately three years" (underlining added).
>
> This is a deceit. By the euphemistic phrase "one form or another", Mr. McFadden concealed the related open City Court proceedings which Judge Reap had deemed to be "companion cases" by his September 18, 1989 decision.
>
> **(c)** Mr. McFadden's motion purported (at ¶6) that "During the pendancy of this proceeding (Index Number 651/89) an application was made by petitioner's counsel for a final order and warrant which resulted in a letter having been sent by Honorable James B. Reap to petitioner's counsel Fredric Lehrman dated June 11, 1991".
>
> This is false. The so-called "application for a final order and warrant" was Mr. Lehrman's letter to Judge Reap, dated June 8, 1991, requesting that the case "be restored to the Court Calendar for an all purporse (sic) conference and so that [it] can finally be concluded." – with Judge Reap's responding June 11, 1991 letter, likewise, acknowledging Mr. Lehrman's request for "a conference".
>
> This exchange of letters was not limited to the parties in #651/89, but to the attorneys in the various City Court cases and my *pro se* mother and father.
>
> **(d)** Mr. McFadden's motion purported (at ¶7) that Judge Reap's June 11, 1991 letter had "referred to three conditions in a prior letter from Judge Reap dated March 6, 1989" and "Upon compliance with these conditions, the pre-requisites necessary for respondents eviction would be met thus enabling petitioner to make the within motion".
>
> This is false. Judge Reap's June 11, 1991 letter asked for pertinent

court decisions, pursuant to his March 6, 1989 letter, because such were conditions "to schedule trial dates in the consolidated proceedings". Neither the March 6, 1989 letter, nor the January 25, 1989 decision on which it relied, had anything to do with "the pre-requisites necessary for respondents eviction". To the contrary, they set forth the Court's prerequisites for scheduling the various "companion cases" for trial.

(e) Mr. McFadden's motion purported (at ¶8) to annex "a copy of a letter from attorney Lawrence Glynn..."

This is a deceit. Mr. Glynn was not just "attorney Glynn" but the Co-Op's counsel in its City Court proceedings against Mr. McFadden and myself, #434/88 and #500/88, which were "companion cases" to #651/89, pursuant to Judge Reap's September 18, 1989 decision.

(f) Mr. McFadden's motion purported (at ¶11) that its annexed Exhibit C were "copies of other documents from the court which the court may wish to review in connection with the within action".

This is a deceit. The hodgepodge of a-chronological documents, calculated to deter examination, included those which the Court was duty-bound to review, as they exposed the fraud being perpetrated by Mr. McFadden's affidavit in support of his summary judgment motion. Specifically, these documents included:

(i) Mr. Lehrman's June 8, 1989 letter, requesting a conference;

(ii) Judge Reap's March 6, 1989 letter to Mr. Glynn, identifying the prerequisite conditions for scheduling "trial date in the consolidated proceedings"; and

(iii) Judge Reap's September 18, 1989 decision, referring to "the companion cases under Index Nos. 434/88, 504/88, and 500/88".

(g) Mr. McFadden's motion purported (at ¶12) that its annexed Exhibit D was "the occupancy agreement which by its terms has expired" (underlining added) and, additionally (at ¶15) that the "occupancy agreement in question expired approximately three years ago"

This is false – and so-revealed by the failure of Mr. McFadden's affidavit to specify which "terms" of the occupancy agreement reflected "the expiration of said agreement", and concealment of the fact most important to interpretation of the "terms" – namely, that more than three years earlier, in August 1988, Mr. McFadden had joined with respondents in commencing the federal action against the Co-Op to enforce the contract of sale.

Moreover, the occupancy agreement which Mr. McFadden appended as an exhibit to his summary judgment motion, sufficed to documentarily establish the fraudulence of his Petition in #651/89, disentitling him to

summary judgment, *inter alia*, by its allegations that respondents had "entered in possession [of the subject apartment] under a month to month rental agreement".

77. In fact, the decision identifies nothing about Mr. McFadden's summary judgment motion, other than its date: November 25, 1991. As for the Court's recitation about the occupancy agreement, *to wit*, that it "provided for 'temporary occupancy' of the Apartment pending Board approval of respondents' application to purchase same" and "Under the terms of the occupancy agreement, respondents' right to occupy the Apartment terminated in May 1988", these are entirely the Court's own, NOT based on Mr. McFadden's affidavit, and IRRELEVANT, as Mr. McFadden's Petition was predicated on a supposed "month to month rental agreement" under which respondents had allegedly "entered in possession".

78. Moreover, the Court's *sua sponte* statements about the occupancy agreement are false [*See* ¶31B, *supra*]. This would explain why the Court does not quote the language of the occupancy agreement, except for the words "temporary occupancy".

79. As for opposition to Mr. McFadden's November 25, 1991 summary judgment motion – an integral component to any *de novo* review – the decision OMITS it and, by failing to list it among the "papers" on which the Court relied (p. 1), creates the false inference that Mr. McFadden's motion was unopposed, which it was not.

80. The December 16, 1991 responding affidavits filed by me and my mother (Exhibit Y) suffice to establish that no fair and impartial tribunal could have failed to impose sanctions on Mr. McFadden and his counsel, Lehrman, Kronick & Lehrman, for their summary judgment motion, whose deceitful and harassing nature and their abusive

conduct with respect thereto our affidavits chronicled. Yet, Judge Reap's December 19, 1991 decision did not rule on our express request for such relief.

81. Nor could any fair and impartial tribunal have denied our request, by our affidavits, that if the Court did not accept our position that Mr. McFadden's motion was premature, inasmuch as the federal action was not concluded, that we be permitted to put in substantive opposition. Yet, Judge Reap's December 19, 1991 decision – although accepting our position as to the prematurity of Mr. McFadden's motion – denied, without reasons, our request to put in further papers.

82. As for my father's December 16, 1991 letter to Judge Reap, stating:

> "1a. neither your Honor, Your Honor's Court, the petitioner, nor his attorneys have personal jurisdiction over me or subject matter jurisdiction, in the above proceeding or on the motion which is returnable this day.
> ...
> 3a. By virtue of a written consent, I have been residing and occupying the subject premises for aeons.
> b. The petitioner and his attorneys, as confirmed by the exhibits to their motion, which was not served upon me, have heretofore recognized my lawful occupancy of the premises.
> c. If there is a decision by any court in this state the holds that I am not an essential party to a holdover proceeding seeking possession, I am unaware of such a holding, which I verily believe does not exist.",

Judge Reap's December 19, 1991 decision asserted, without elaboration, "George Sassower has no standing in this proceeding and his papers are a nullity" – simply ignoring what my father had said – and the documents, annexed by Exhibit C to Mr. McFadden's November 25, 1991 summary judgment motion, reflecting that my father had been a recipient, both indicated and direct, of prior correspondence deemed germane by Mr. McFadden to his motion.

83. My father replied by a December 26, 1991 letter to Judge Reap, stating:

> "Having read about every case on the subject, I believe I can confidently state that they all support my position, (14 Carmody-Waite 2d §90: 149-150, p. 115-116). Neither Farchester Gardens v. Elwell (Misc.2d 562, 525 N.Y.S.2d 111 [City Ct. Yonkers -1987]) nor Atterbury v. Edwa (61 Misc. Rep. 234, 113 N.Y. Supp. 614 [A.T.-1908]), are to the contrary."

Notwithstanding my father's letter requested consideration "in lieu of a formal motion for reargument", Judge Reap did not respond. Nor did he otherwise address the indisputable fact, highlighted by my father's letters, that Judge Reap had adjudicated Mr. McFadden's summary judgment motion in #651/89 without regard to the "companion cases", referred to by his September 18, 1989 decision, without notice to the attorneys and *pro se* parties in those "companion cases"[14] and the properly deemed "companion case" that Mr. McFadden had brought against my father under #652/89.

84. The foregoing, in and of itself, should have further convinced this Court – if it was fair and impartial – of my mother's good and substantial reasons for stating, at the

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[14] Tellingly, the Court concedes their relationship by listing those attorneys as recipients of its July 3, 2008 decision (side-tab Exhibit 2, pp. 3-4):

> (a) Lehrman, Kronick & Lehrman, identified as "Attorneys for Petitioner", were Mr. McFadden's attorneys in #651/07, and #652/07;
>
> (b) Lawrence J. Glynn, Esq., misidentified as "Attorney for Respondent", was "Attorney for Petitioner", *to wit*, the Co-Op in #434/88 and #500/88;
>
> (c) Peter Grishman, Esq., misidentified as "Attorney for Respondent", is deceased, a fact set forth by respondent's January 19, 1993 affidavit – the last document in the record of #651/89 until this Court's July 3, 2008 decision. Prior thereto, and as reflected by Judge Reap's June 18, 1991 letter to Mr. Grishman, he was relieved of his representation of myself and my mother in the various City Court cases;
>
> (d) Leonard A. Sclafani, Esq., identified as "Attorney for Petitioner" is Mr. McFadden's attorney in #1502/07 – with the decision indicating that his inclusion is by a "courtesy copy".

outset of her December 16, 1991 affidavit, respondents' intention to make "a motion for recusal, change of venue".

85. Indeed, had the Court compared Mr. McFadden's November 25, 1991 summary motion to Judge Reap's December 19, 1991 decision, it would have seen that Judge Reap's ostensibly factual assertion: "all respondents' claims in the federal action were dismissed and it is those exact claims that form their defense in the City Court summary proceeding" was

(a) *sua sponte* – and not advanced by Mr. McFadden's own November 25, 1991 summary judgment motion;

(b) irrelevant because summary judgment could not be granted on Mr. McFadden's Petition, as its fraudulence was documentarily proven by the occupancy agreement, contract of sale, and federal complaint in which Mr. McFadden was co-plaintiff – all of which documents were in the record of #651/89;

(c) false, as verifiable from the federal district court's March 20, 1991 Judgment, referred to by Judge Reap's decision, identifying that respondents' "causes of action 2 through 8 and 10" had been withdrawn at trial" – this being the bulk of their federal Complaint and its corporate non-compliance causes of action;

86. *De novo* review of Mr. McFadden's summary judgment motion could not be accomplished by simply resting on Judge Reap's bald factual assertion, without comparing respondents' claims in #651/89 with their claims in the federal action. Yet this is precisely what the decision does – and without so much as endorsing Judge Reap's assertion as factually true, reflective of the Court's knowledge that it is not.

87. Moreover, the only basis for granting Mr. McFadden summary judgment on his Petition would be if res judicata, collateral estoppel, and issue preclusion applied based

on the federal action – and they could not apply because Mr. McFadden had been our co-plaintiff therein, aligning himself with the Complaint's allegations, which themselves exposed the fraudulence of his Petition. Indeed, res judicata, collateral estoppel, and issue preclusion could not even be applied as to the Co-Op, which – tellingly – had made no summary judgment motion of its own.

88. The decision makes no findings as to res judicata, collateral estoppel, and issue preclusion, which it fails to even mention, likewise reflective of the Court's knowledge of their inapplicability, barring summary judgment to Mr. McFadden by reason thereof.

89. Based on the record of my September 5, 2007 cross-motion in #1502/07, the Court had ample documentary evidence of the travesty of due process that had occurred in the federal courts in connection with the federal action, barring res judicata, collateral estopel, and issue preclusion. Such was highlighted at ¶¶89-90, 124-5 of my cross-motion (side-tab Exhibit 5), whose descriptions of the fraudulent decisions in the federal case was substantiated by documentary proof.[15]

90. The record of #651/89 itself contained documentary evidence of the fraudulence of the Second Circuit's August 13, 1992 decision. In responding to Mr. McFadden's second summary judgment motion, our November 11, 1992 affidavit (Exhibit

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[15] This included: our February 22, 1993 cert petition to the U.S. Supreme Court (Exhibit R), our May 14, 1993 petition for rehearing (Exhibit S), our June 1, 1993 supplemental petition for rehearing (Exhibit T), as well as our June 9, 1993 impeachment complaint against the District Court and Second Circuit judges (Exhibit V-1), our July 14, 1993 letter to the National Commission on Judicial Discipline and Removal (Exhibit V-2), and our March 4, 1996 judicial misconduct complaint against the presiding judge of the Second Circuit appellate panel (Exhibit V-3) who authored the decision on which this Court has based its granting of summary judgment to Mr. McFadden in #651/89.

Z-1) annexed our August 27, 1992 petition to the Second Circuit for rehearing and suggestion for rehearing en banc (Exhibit Z-1). Its particularized description of the obliteration of the rule of law represented by the Second Circuit appellate decision is, presumably, another reason why the Court chose to ignore Mr. McFadden's second summary judgment motion, undecided by Judge Reap or any other judge upon our filing of our January 19, 1993 affidavit (Exhibit Z-4).

The Court's Granting of Summary Judgment to Mr. McFadden Based on "Credible Evidence" and its Consideration of "Defenses Raised in this Proceeding" are Judicial Frauds

91. As hereinabove demonstrated by the record of both #651/89 and #1502/07, it is a fraud for the Court to purport (at p. 3) that:

> "Upon the credible evidence, petitioner has established his entitlement to judgment as a matter of law".

Indeed, there is NO EVIDENCE supporting Mr. McFadden's March 27, 1989 Petition that respondents "entered in possession...under a month to month rental agreement". Such is a lie, documentarily-proven by the October 30, 1987 occupancy agreement, annexed to Mr. McFadden's November 25, 1991 summary motion, expressly according respondents "the right to continue in occupancy to the date of closing" on the contract of sale – for which, to secure same, Mr. McFadden became a co-plaintiff with respondents in a federal lawsuit against the Co-Op, commenced in August 1988, a fact Mr. McFadden materially omitted from both his Petition and summary judgment motion.

92. Likewise, fraudulent is the decision's claim (at p. 3):

> "In view of the results of respondents' federal law suit, and having considered the defenses raised in this proceeding, respondents have failed to

raise a material triable issue of fact".

First, there is not the slightest connection between the adverse "results" for respondents of the federal lawsuit and whether Mr. McFadden is entitled to summary judgment on his March 27, 1989 Petition, alleging that respondents "entered in possession under a month to month rental agreement" – the falsity of which is established by the federal Complaint to which Mr. McFadden was co-plaintiff.

Second, there is not the slightest evidence that the Court considered ANY of the "defenses raised in this proceeding". These would include the defenses raised by respondents' April 24, 1989 dismissal motion and their timely-filed June 26, 1990 Answer [*See* ¶¶28-29, 39-40, *supra*]. The decision identifies none of respondents' "defenses", other than by its passing reference (at p. 1) to Judge Reap's September 18, 1989 decision denying those branches of respondents' April 24, 1989 motion as sought "dismissal of the proceeding based upon lack of subject matter jurisdiction and inadequate notice." The record shows that any fair and impartial tribunal would have found respondents entitled to the dismissal relief sought by that motion, *as a matter of law*, as, likewise, to the relief sought by their affidavits in opposition to Mr. McFadden's first and second summary judgment motions, each premature. Neither Judge Reap nor this Court was such a tribunal.

The Court's Direction for a Judgment of Possession and Warrant to Remove Further Evidences its Disregard of #1502/07 and Malice

93. The Court's direction (at p. 3):

> "A judgment of possession and warrant to remove shall issue forthwith, with a statutory stay of execution"

is not only with knowledge that its decision is without basis in fact and law, but with

knowledge that my occupancy rights are NOT disposed of by #651/89. Indeed, at the June 30, 2008 proceedings, Mr. Sclafani reiterated what he had previously emphasized in his papers in #1502/07, namely, that the Petition therein rests on an "oral agreement" which Mr. McFadden made with me for my continued occupancy. Thus, as stated by Mr. Scalfani's September 5, 2007 affidavit (at ¶¶38-39):

> "38. ...any prior proceedings between the parties that remain open as of today's date proceed on facts and grounds other than those that petitioner herein relied upon.
>
> 39. Here, petitioner relies in support of his petition upon a state of facts; to wit, an oral agreement, that had been modified over the course of the last fourteen or so years, on several occasions, pursuant to which petitioner agreed to respondent's possession and occupancy of the premises at issue in exchange for monthly payments of rent. This state of fact was, and is, different than and occurred subsequent to, the alleged events supporting the prior proceedings referred to by respondent." (underlining added).

See, also, Mr. Sclafani's August 23, 2007 moving affidavit (at ¶¶35-7); his November 15, 2007 cross-motion affidavit (¶48).

94. Under such circumstances, the Court's direction for my "forthwith" eviction and removal is yet a further demonstration of its vicious malice, for which I am entitled to its disqualification for pervasive actual bias, if not interest.

ELENA RUTH SASSOWER

Sworn to before me this
18th day of July 2008

Notary Public

JOHN PELOSE
Notary Public, State of New York
No. 04PE6147380
Qualified in Westchester County
Commission Expires June 5, 2010