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July 16, 2009

Appellate Term Chief Clerk Paul Kenny
141 Livingston Street, 15th Floor
Brooklyn, New York 11201-5079

RE: (1) Opposition to Mr. Sclafani's "June 8, 2009" Letter-Application;
(2) Reargument & Renewal of Your May 19, 2009 and June 5, 2009 Orders Ruling on Mr. Sclafani's Prior Letter-Applications
John McFadden v. Doris L. Sassower and Elena Sassower
Appellate Term: #2008-1427-WC; #2009-148-WC
[White Plains City Court: #SP-651/89, #SP-2008-1474]

Dear Mr. Kenny,

The letter is submitted in opposition to the "June 8, 2009"[1] letter-application of Leonard Sclafani, Esq., counsel for John McFadden, requesting an enlargement of time to file his respondent's brief so that he may resubmit it with an amended affidavit of service.

The respondent's brief that Mr. Sclafani seeks to resubmit contains no certification pursuant to 22 NYCRR §130-1.1-a that it is not frivolous. It is frivolous, indeed fraudulent, as my May 15th and June 1st letters to you predicted it would be in seeking to be protected from just such occurrence.[2]

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[1] It would appear that the correct date of the letter should be July 9, 2009. That is the date Mr. Sclafani faxed it to the Court. It is also the date on the postal strip of his envelope addressed to Doris Sassower. To date, I have NOT received the copy of Mr. Sclafani's letter that he purportedly mailed me – which, as may be seen from the address he indicates for me on his letter, is also incorrect.

[2] The letters requested:

> "that if you or the Court give any consideration to [Mr. Sclafani's] extension request, that he be mandated to certify, in advance, that his respondent's brief will not be frivolous, as defined by 22 NYCRR §130-1.1 *et seq.* and reinforced by this Court's Rule §730.3(g)[fn] (underlining in the original)

As such, Mr. Sclafani's respondent's brief establishes my entitlement to reargument and renewal of your May 19, 2009 and June 5, 2009 orders – the first of these denying Mr. Sclafani's May 12th letter-application for an enlargement of time to file his respondent's brief "without prejudice to renew upon showing proof that a copy of the letter seeking an enlargement of time to file a respondent's brief was sent to all respondents", the second granting his May 26th letter-application for an enlargement of time to file his respondent's brief to July 6th . Each of these two orders was without making any findings with respect to my opposition – or even identifying that there was opposition.[3]

Upon the granting of reargument and renewal, Mr. Sclafani's May 26th letter-application for an enlargement must now be denied, as likewise his instant letter-application for an enlargement by reason of his violative respondent's brief.

Mr. Sclafani's instant letter-application is itself deceitful, not only concealing the pertinent background facts but, upon information and belief, falsifying the most significant fact. Thus, Mr. Sclafani purports:

> "Although Counsel Press served each of appellant, Elena Sassower, her mother, Doris Sassower, and the Attorney General of the State of New York, counsel for the non party respondent Patricia Lupi, clerk of the White Plains City Court, on the day that it submitted Mr. McFadden's brief for filing (See attached), the affidavit of service that it prepared and that accompanied the submission did not reflect that service was made on either Doris Sassower or the Attorney General. When Counsel Press became aware of the error, it attempted to submit an amended affidavit of service on the same day; however, it was not able to submit the document before the clerk's office closed." (underlining added).

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and further:

> "that the Court accompany any extension it gives Mr. Sclafani with an explicit warning that any further violation of his duties, as an officer of the Court, and, specifically, Rules 3.1 and 3.3 of the Rules of Professional Conduct for Attorneys[fn], will result in the Court's taking 'appropriate action' against him, consistent with §100.3D(2)[fn] of the Chief Administrator's Rules Governing Judicial Conduct and the Court of Appeals' recent decision recognizing 'an attorney's special obligation to protect the integrity of the courts and foster their truth-seeking function'"[fn.5] (underlining in the original).

[3] This contrasts with your December 5, 2008 order in #2008-1433-WC and #2008-1428-WC, which, in granting Mr. Sclafani's December 2, 2002 letter-application for an enlargement of time for his two respondent's briefs therein, identified that I had "indicat[ed] objection thereto.

Upon information and belief, there was no "error" with the affidavit of service. The affidavit of service accurately reflected that only I had been then served. Doris Sassower and the Attorney General were not served until LATER that day – and only because I was at the Clerk's Office on July 6th and asked to see the affidavit of service for the respondent's brief, filed about an hour earlier. Before showing it to me, Senior Clerk Julio Mejia realized that the Clerk's Office should not have accepted the respondent's brief because the affidavit of service reflected that only I had been served and telephoned Mr. Sclafani's office. Upon returning to the front desk with the affidavit of service, Mr. Mejia stated that he had been told that service would be made on Doris Sassower and the Attorney General that day and a replacement affidavit of service delivered to the Appellate Term the following day. He did not state that he had been told that the affidavit of service was "erroneous" – as Mr. Sclafani's letter-application purports.

I have asked Mr. Mejia to confirm the accuracy of my recollection of what he told me on July 6th – and he has not contradicted that it is accurate. He has also explicitly confirmed the further facts concealed by Mr. Sclafani's letter that I correctly intuited. Thus, Mr. Sclafani states:

> "Counsel Press did offer the amended affidavit of service for filing the following day. To the extent that the brief may not have been accepted for filing due to the lack of a proper affidavit of service, I respectfully request on behalf of Mr. McFadden that his time to file the brief be extended to allow him to resubmit the brief with the amended affidavit of service."

The translation is that the Clerk's Office rejected the amended affidavit of service, as well as the respondent's brief it had wrongly accepted for filing on July 6th and instructed Mr. Sclafani to make an application for an extension of time to resubmit his brief with the amended affidavit of service.

Mr. Sclafani concludes his letter-application by purporting:

> "None of the parties have been prejudiced in any way by Counsel Press' error. All who were entitled to be served with Mr. McFadden's brief were, in fact, served on the day the brief was due."

There is no affidavit from Counsel Press attesting to its "error" – and I do not believe it made an "error", as Counsel Press is a professional operation, expert in preparing affidavits of service in conformity with service made. Rather, I believe that Mr. Sclafani arranged with Counsel Press that only I would be served – which is what Counsel Press did and accurately reflected in its original affidavit of service.

That Mr. Sclafani would do this – and lie about it when caught – is in keeping with his unceasingly depraved behavior, as highlighted in my May 15th and June 1st letters. Each of these letters quoted from my reply briefs in #2008-1433-WC and #2008-1427-WC in stating that Mr. Sclafani "is virtually incapable of telling the truth"; "his behavior is clearly pathological".

Indeed, although it may seem odd to you that after denying Mr. Sclafani's May 12th letter-application based on his failure to served "all respondents", he would nonetheless not serve his brief on "all respondents", recidivism is his hallmark. Thus, and taking an example from his respondent's brief that you, as Clerk, can readily appreciate, Mr. Sclafani purports:

> "There are presently pending in this Court two appeals brought by Sassower and two cross appeals of McFadden from decisions rendered in the 2007 summary proceeding" (at p. 8).

Mr. Sclafani asserts this notwithstanding my reply brief in #2008-1428-WC demonstrated that his second:

> "purported 'cross-appeal' is itself a brazen fraud on this Court. Contrary to Sclafani's assertion in his brief (at p. 3) that 'McFadden filed a notice of cross-appeal' from Judge Hansbury's January 29, 2008 decision & order, he has failed to substantiate same by producing a copy of that notice of cross-appeal, his affidavit of service, and proof of filing with the White Plains City Court.[fn] This Court's Clerk's Office has no record of a notice of cross-appeal for #2008-1428 WC. (pp. 1-2 of my February 2, 2009 reply brief therein, underlining in my original).

Another example is Mr. Sclafani's claim (at p. 3) that I and my mother did not file our Answer to Mr. McFadden's Petition in #SP-651/89 "until June 6, 1990", notwithstanding Judge Reap's September 18, 1989 decision had "directed that [we] file [our] answer by October 6, 1989". Mr. Sclafani claims this – taking it, without attribution, from Judge Friia's July 3, 2008 decision – in face of my recitation of its falsity (Exhibit N, ¶¶38-40) and his receipt of the referred-to record proof, annexed to my August 13, 2008 vacatur/dismissal motion, whose ¶40 identified what was being supplied:

> "[the Sassowers'] Answer, timely-filed on June 26, 1990 – as verifiable from its back, bearing a date stamp from White Plains City Court, and Judge Reap's April 12, 1990 letter extending [their] time to answer until June 27, 1990".

There are innumerable examples of such already-proven deceits that Mr. Sclafani regurgitates in his respondent's brief, each of whose 50 pages are crafted from a combination of these and new deceits. Here is a small, essentially random, sampling:

- His assertions (at p. 3) as to who the plaintiffs were in the federal lawsuit commenced against the Co-Op, the nature of its claims, and that "Upon a unanimous jury verdict, those of the Sassowers' claims which had not previously been dismissed on motions for summary judgment were dismissed" are materially false[4];

- His assertion (at p. 4) that "As each decision of the federal courts denying Sassowers' various claims, appeals and applications for certiorari came down, McFadden renewed his summary judgment motion; however, each time, the court refused to decide it" is false – and he provides no record references;

- His assertion (at p. 4) that "shortly after the Supreme Court's decision..., McFadden, through counsel, so advised the court and requested again that the court decide his summary judgment motion" is false – and he provides no record reference;

- His assertions (at pp. 5-6) that my appeal of Judge Friia's July 3, 2008 decision and July 21, 2008 judgment of eviction and warrant of removal are "principally " based on my claim that #SP-651/89 was closed or dismissed for want of prosecution; that this is "the centerpiece of [my] appeal"; and that I "offer[] no facts or evidence to support the argument" are false[5];

- His assertion (at p. 6) that "the balance of Sassower's claims and arguments on her appeal of Judge Friia's July 3, 2008 Decision and July 21, 2008 judgment revolve around [Judge Friia's] refusal to sign her...orders to show cause" is false, as is his assertion (at p. 6) that these orders to show cause were "post-judgment"[6];

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[4] Likewise materially false is Sclafani's assertion (at p. 22) that the U.S. District Court's judgment "dismissed the Sassowers' claims".

[5] Mr. Sclafani's deceit that I "offered no facts or evidence", as likewise his deceit that I am estopped from arguing that #SP-651/89 was closed (p. 6) – concealing that only on July 21, 2008 did I obtain the facts and evidence that #SP-651/89 was closed – forms the basis of his fraudulent Point I (pp. 42-45). [Compare to my brief (at pp. 53-58, & Point I: 68-74)].

[6] Mr. Sclafani's deceit that my orders to show cause were "post-judgment applications" is the basis for his fraudulent Point II (p. 46) that because I have not filed notices of appeal from the Judge Friia's denial of them, this Court "may not now consider [my] arguments" with respect thereto. [Compare to my brief (at pp. 47-53 & Point III: pp. 79-87].

- His assertions (at pp. 7, 9, 41) that "To the extent there may be deficiencies in any respect with the clerk's returns on Sassower's appeals, the deficiencies are de minimus, and would constitute harmless error" and that "Sassower cannot claim that she is prejudiced in any way by any shortcomings in the clerk's returns on her appeals" are false[7];

- His assertion (at p. 13, fn. 2) that Mr. McFadden's City Court proceeding against George Sassower (#SP-652/89) was dismissed is unsubstantiated by any document establishing its dismissal;

- His assertion (at p. 14) that the "prior proceedings" that "McFadden commenced against the Sassowers sought their eviction as holdovers following the termination of his contract of sale with them [and] the occupancy that was part thereof" is false – and he provides no record reference to, nor quotation of, the Petitions in those "prior proceedings"[8] – which would be #SP-504/88, *John McFadden v. Doris L. Sassower and Elena Sassower* (Exhibit G) (and, although not technically "prior", #SP-652/89, *John McFadden v. George Sassower* (Exhibit H));

- His assertion (at p. 15) that Judge Reap's January 25, 1989 "Consolidated Decisions" "considered and rejected on the merits, most of the claims and arguments that the Sassowers subsequently raised in the proceedings below" – is false – and he provides no specificity as to the supposed "merits" rejection;

- His assertion (at p. 16) that "the three above described proceedings were dismissed" is unsupported by any documents establishing their dismissals – these being the proceedings embodied by Judge Reap's January 25, 1989 "Consolidated Decisions", *to wit*, the Co-Op's two City Court proceedings: *16 Lake Street Owners v. John McFadden, George Sassower and Elena Sassower* (#SP-434/88 and #SP-500/88 (Exhibits I & J), and his prior proceeding *John McFadden v. Doris L. Sassower and Elena Sassower* (#SP-504/88 (Exhibit G));

- His assertion (at p. 18) that "the Sassowers…demanded that their [April 24, 1989] motion [to dismiss the Petition in #SP-651/89] be referred to Judge Reap…despite their prior applications in the previous cases filed against them for disqualification of

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[7] Mr. Sclafani's deceit that the deficiencies of the Clerk's Return on Appeal are "de minimus" and "harmless error" is the basis for his fraudulent Point IV (pp. 48-50). [Compare to my brief: p. vi (answer to first "Question Presented"; pp. 56-58, pp. 1, 68, Points I & II (at p. 74)].

[8] The Petitions are annexed to my Compendium of Exhibits.

Judge Reap on the grounds, inter alia, of fraud and bias" is false – and he provides no quotation of this supposed "demand[]"

- His assertion (at p. 19) that Judge Reap's September 18, 1989 decision "noted that the Sassower had made identical arguments in the earlier summary proceedings...each of which the Court had denied by and through its January 25, 1989 'Consolidated Decisions' and March 6, 1989 letter decision" is false – and he provides no quotation of this supposed "not[e]";

- His assertion (at p. 27) that Judge Reap's December 19, 1991 decision "noted that the only issue remaining in the case following the Court's denial of the Sassowers' prior motion for dismissal and other relief was the same issue that the Sassowers had presented in their federal litigation; to wit, whether they were the victims of housing discrimination" is false[9];

- His assertion (at p. 28, fn. 5) that "all of the defenses that the Sassowers had raised in their answer with the exception of their claim of housing discrimination had already been determined against them in prior proceedings...The Sassowers were precluded from litigating the issues" is false;

- His assertion (at p. 31) that I had joined with him in "urging" Judge Friia to "rule on McFadden's motion for summary judgment" is false – and he provides no record reference;

- His assertions (at pp. 33, 35, 42) that I claimed that Mr. McFadden's Petition in #1502/07 (Exhibit F) and Petition in #SP-651/89 (Exhibit E) were "identical" – which he purports I did in my "Answer" and in my cross-motion to dismiss Mr. McFadden's Petition in #SP-1502/07, and during the June 30, 2008 proceeding are false – and Mr. Sclafani provides no page or paragraph citations to where in my Answer (which he annexes as his sole exhibit), my cross-motion, or in the June 30, 2008 transcript such appears;

- His assertion (at p. 34) that "I sought consolidation" of #SP-1502/07 with #SP-651/89 is false – and Mr. Sclafani provides no record reference;

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[9] His quotation (at p. 28) of the December 19, 1991 decision contains no reference to the "denial of Sassowers' prior motion" and is not confined to a single "issue", "to wit,...housing discrimination".

- His assertion (at p. 36) that he advised Judge Friia at the June 30, 2008 court proceeding that Mr. McFadden had two summary judgment motions pending in #SP-651/89 is false – and unsupported by his citation reference to pp. 14-22 of the June 30, 2008 transcript (Exhibit M);

- His assertion (at p. 36) that Judge Friia "did" "consider McFadden's summary judgment motion de novo" is false – and his record reference does not substantiate it;

- His assertions (at p. 36) that Judge Friia's July 3, 2008 decision "granted McFadden's motions" and did so "following the decisions in the case up to that time" are false;

- His assertion (at p. 37) that my June 27, 2008 order to show cause was for "disqualification of the judge who granted McFadden's summary judgment motions; Judge JoAnn Friia, transfer of the case to another court on the ground that the entire White Plains City Court was biased against [me], reargument of the July 3, 2008 Decision, discovery and other relief" is false;

- His assertion (at p. 38) that on July 8, 2008 I resubmitted "essentially the same order to show cause and supporting papers" is materially false;

- His assertion (at p. 38) that my July 18, 2008 order to show cause was "styled as an application seeking a stay of enforcement of the judgment herein" is materially false;

The deceits that comprise Mr. Sclafani's respondents' brief are for one purpose: to camouflage that it does NOT address (1) any of the facts, law, and legal argument presented by my appellant's brief; (2) any of the facts, law, and legal argument presented by my incorporated-by-reference appeals in #2008-1433-WC and #2008-1428-WC (*John McFadden v. Elena Sassower,* #SP-1502/07), and (3) any of the facts, law, and legal argument presented by my pre-appeal motions.

Indeed, Mr. Sclafani's brief does not deny or dispute any of the facts, law, or legal argument summarized and detailed by my "Questions Presented" (pp. vi-ix); my "Introduction" (pp. 1-4); my "Statement of the Case" (pp. 4-67); and my "Argument" (pp. 67-96). This includes the facts, law, and legal argument particularized by the two "dispositive documents" which my brief (at p. 3) not only incorporated by reference, but annexed:

> (1) my July 18, 2008 order to show cause for Judge Friia's disqualification and vacatur of her July 3, 2008 decision & order (Exhibit N), whose pages 8-59 – constitute a 51-page analysis of the decision & order; and

> (2) my October 10, 2008 opposition/reply affidavit (Exhibit O), whose pages 4-15 constitute a 12-page analysis of the Attorney General's cross-motion that Judge Friia's October 14, 2008 decision & order thereafter granted to the extent of denying, on jurisdictional grounds, my September 18, 2008 motion to compel the White Plains City Court Clerk to provide this Court with the documents and information necessary for her appeals.

Mr. Sclafani thereby concedes the truth of what my brief and these incorporated, "dispositive documents" set forth, making his non-responsive opposition to my appeals frivolous *per se*.

Consequently, and since Mr. Sclafani's respondent's brief is NO OPPOSITION *as a matter of law*, there is NO PREJUDICE to Mr. McFadden in your denying Mr. Sclafani's instant letter-application.

To further assist you, I will highlight how Mr. Sclafani's 50-page brief responds to the two most immediately-verifiable grounds upon which I sought to dispense with an appeal by my August 13, 2008 vacatur/dismissal motion, seeking relief, *inter alia*, under CPLR §5015(a)(3) ("fraud, misrepresentation, or other misconduct of an adverse party"). As stated at ¶11 of that motion – and quoted at pages 2-3 of my appellant's brief:

> "'11. No appellate court can uphold a decision awarding summary judgment to a petition alleging that respondents 'entered in possession [of the subject premises] under a month to month rental agreement' for which there is not only NO evidentiary proof, but which is rebutted by evidentiary proof. Nor can an appellate court uphold a warrant of removal that 'completely falsifies' the allegations of the petition for which summary judgment was given and 'materially alters' its caption. Nor can it allow a judgment of eviction that 'materially diverges' from the decision it purports to implement, including by omission of respondents' Answer. All these are readily-verifiable from what is now before this Court, making the requested vacatur/dismissal relief of my motion not only immediately appropriate, but matters of elementary law. No appeal is necessary to resolve these straight-forward, documentarily-established issues. They can be resolved expeditious[ly], now.' (Sassower's August 13, 2008 affidavit, underlining and capitalization in the original)."

It is in face of such paragraph, which my appellant's brief prominently quotes (at pp. 2-3), that Mr. Sclafani's respondent's brief does not identify the allegations of Mr. McFadden's March 27, 1989 Petition (Exhibit E) – or the evidence substantiating them. Instead, and just as he did in crafting Mr. McFadden's opposition to my August 13, 2008 vacatur/dismissal motion, my October 15, 2008 order to show cause for reargument/renewal, as likewise to my

July 30, 2008 order to show cause for a stay pending appeal, he falsely makes it appear as if Mr. McFadden's Petition has something to do with the October 30, 1987 occupancy agreement, contract of sale, and the Co-Op's disapproval thereof. This is false. [See his brief: pp 17, 14 & compare to my brief: pp. 5-6, 37, 38, 50, 80 (c), Exhibit N: ¶¶25, 73).

Nor does Mr. Sclafani's brief identify anything about the form and content of the judgment of eviction and warrant of removal (Exhibits C-2, C-3), let alone identify that he drafted them for Judge Friia who signed them without alteration. (See his brief: pp. 5, 6, 36, 38 & compare to my brief: pp. 50-51, 88-91 (Point IV)].

These alone suffice to require vacatur of Judge Friia's July 3, 2008 decision and her July 21, 2008 judgment of eviction and warrant of removal, *as a matter of law* (Exhibits C-1, C-2, C-3) – the overarching relief I seek.

Pursuant to this Court's Rules §731.8(d)(2) and §732.8(d)(2) governing enlargements of time "For Cause" and Rule §730.3(g) governing frivolous conduct in civil appeals, I respectfully submit, based on the foregoing, that Mr. Sclafani's instant letter-application must be denied, either directly or upon the granting of reargument and renewal of your May 15, 2009 and June 5, 2009 orders. Should Mr. Sclafani feel himself aggrieved by such actions, he may then seek review "by motion to the court on notice", as Rule §731.8(d)(2) and §732.8(d)(2) expressly provide.

Thank you.

Very truly yours,

ELENA RUTH SASSOWER, *Pro Se*

cc: Leonard Sclafani, Esq. [Fax: (212) 949-6310]
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