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JOHN McFADDEN,

Petitioner-Landlord,

- against -

DORIS SASSOWER and ELENA SASSOWER,  
Respondent-Tenants.

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

AND

-----X  
JOHN McFADDEN,

Petitioner-Landlord,

- against -

ELENA SASSOWER,

Respondent-Tenant.

Index No.  
SP 1502/07

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

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

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

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

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

Other Appearances:

John McFadden

Eleanor L. Scarpino  
Official Court Reporter

THE COURT: All right. Great. I'm going to stand up one minute because I'm told only part of the file is not here. I'm going to check my desk and then we're going to do a little bit on the record with this.

This is the matter of John McFadden -- the matter of John McFadden and Elena Sassower on Docket SP 1474 of 2008 and separately the matter of John McFadden against Doris L. Sassower and Elena Sassower on Docket SP 651 of '89. Okay. I will ask the parties to please have a seat. Some paperwork was left on my desk this morning I know what it is, it is likely requisition for the original case that was in on microfiche because of its age. I want to make sure that everything I requested on Friday is now with the Court. I will check my desk. I will be right with you both.

We are ready. We are ready.

MS. SASSOWER: I have an application, your Honor.

THE COURT: Yes. We'll get to that in a minute.

(Brief recess.)

COURT OFFICER: Come to order.

THE COURT: All right. Let's acknowledge appearances.

MR. SCLAFANI: Leonard Sclafani for Mr. McFadden, 18 East 41st Street, New York, New York 10017.

THE COURT: Ms. Sassower, you are a tenant as well as counsel?

MS. SASSOWER: I'm a contract vendee in possession. I'm the respondent in the only case that is entitled John McFadden against Elena Sassower Index SP 1502/07.

THE COURT: All right. Good people, I'm just going to make a couple of preliminary statements so that we preserve the record here and then I will also confirm on the record that on Friday Ms. Sassower did come to the court with an Order to Show Cause. I denied the application, allowing Ms. Sassower to make her application orally in court today, so that was the basis for the denial.

All right. A couple of things. First of all, the matter is scheduled today to consolidate two files, two matters before the Court, and that was done by my colleague, Judge Hansbury, by his decision and order dated January 2, 2008.

That order, or in that order, he also recused himself without explanation from presiding over the case. The judges of this court rotate the parts on a

monthly basis and I rotated in today, into our civil part, having been in the past month in the criminal part and in the month before that in the vehicle and traffic part. So, coming into part "B," our civil trial part where these civil matters are scheduled, for the first time last week, I asked our clerk to please pull the files for me. This is the first time I'm seeing this, okay, and so I want to say a few words about that as well.

In reading Judge Hansbury's motion, I noted that the two matters that he consolidated was a matter from 1989. Those files I know are in storage. Indeed, the contents of those files are on microfilm or microfiche, depending on their year. I asked our clerk, and I would like to thank our two part clerk's for retrieving for the court today the contents of the file for docket 651 of '89. I have not had a chance to read that file because it was just retrieved, okay, I haven't had a chance to read it, but I'm going to say that because the next and last point I'm going to make this morning before allowing counsel to speak, is that over the weekend, I did have an opportunity to read the contents of docket 1502 of '07, the recent case, the one that is or has been following in the court for the last



several months. So, I have read the contents of the file of docket 1502 of 2007. I have not had an opportunity to read the contents of the file of 651 of '89. I'm aware of the issues here, and that having been said, I'm going to defer to Ms. Sassower for her application from last Friday. Go ahead now.

MS. SASSOWER: Thank you, your Honor.

I'm pleased that your Honor has identified that over this past weekend and only this past weekend you have reviewed the file in this case brought by Mr. McFadden last year under index number 1502 against me.

Having reviewed the file, you know or you should know that this case is not properly on the trial calendar. The reasons were set forth in a series of correspondence that I directed initially to this court's chief clerk because it was this court's chief clerk which sent a notice dated May 30 directing this case on for full-day trial today. It is, indicates Patricia Lupi as the chief clerk but not signed by her, there is a slash with initials "JR" which is Ms. Rodriquez, as I understand, who is the clerk of the landlord-tenant part.

There was additionally in the envelope that I received a second notice, these are form notices, the

1  
2 second notice contains the identical title, case title,  
3 the same parties, only two, John McFadden against Elena  
4 Sassower, no indication of any additional party, but  
5 adds, in my hand, a further docket number, SP 651/89  
6 which is represented as quotes "original number."

7           Having gotten this notice dated May 30, I  
8 expeditiously wrote Chief Clerk Lupi a letter and in  
9 that letter asked to advise as to the name of the judge  
10 before whom this case is scheduled for trial today,  
11 whether it was that same judge who had decided to  
12 schedule the case for trial and, if so, whether that  
13 judge had reviewed the pleadings, motions and decision  
14 in the case prior to deciding that it should be put  
15 forward for trial; and third, whether it was that judge  
16 who decided to add SP 651/89 to the trial notice, and  
17 the reason for doing so, in as much as it is not the  
18 original number, has a different premise, has a  
19 different caption with an additional party, and is only  
20 one of three open proceedings.

21           Now, I addressed this letter on June 6 to  
22 Patricia Lupi and I enclosed a copy of the notices I had  
23 received together with the envelope bearing post mark  
24 June 2, I received it on June 3, and my letter was  
25 hand-delivered to Patricia Lupi at the clerk's office on

1  
2 June 6. I received a response but not by Chief Clerk  
3 Lupi, I received a response from Jacqueline Rodriquez,  
4 which was incomprehensible.

5 The entirety of the response to the three  
6 straight-forward questions that I had asked, so that  
7 there would be no confusion, so that there would be no  
8 waste of court time and resources, this is what  
9 Jacqueline Rodriquez said when she signed it as court  
10 assistant:

11 "In response to your letter dated June 6,  
12 2008, the answers are in a decision that you received on  
13 or about October 11, 2007. As a courtesy, the pertinent  
14 answer to your questions have been highlighted."

15 She enclosed the decision of Judge Hansbury of  
16 October 11 and there were three portions highlighted.  
17 The first portion indicated the decision had been filed  
18 in White Plains City Court on October 11. The second  
19 portion indicated that -- the second highlighted portion  
20 was the last paragraph of the decision which said, and,  
21 perhaps I should quote it in full because it goes to the  
22 issue of consolidation which is key here, because not  
23 only is this case not properly as a matter of law  
24 brought to trial based on this record, but it is not  
25 trial ready; and one of those reasons has to do with the

1  
2 purported consolidation.

3 Let me read the last paragraph because there  
4 is a misapprehension on the part of the Court. This is  
5 Judge Hansbury's decision, October 11, 2007:

6 "Last, the Court has reviewed the Decision on  
7 Motion dated December 19, 1991, under index number  
8 651/89 and notes the following. The Hon. James P. Reap  
9 is retired. Since the order quote "reserved decision,"  
10 it does not fall within the ambit of C.P.L.R. 9002.  
11 Additionally, to the extent a prior action remains  
12 pending, the Court is not required to enter an order of  
13 dismissal under C.P.L.R. 3211-a-4, rather, the Court  
14 will consolidate any prior pending action with the  
15 instant proceeding to avoid duplicative trials and  
16 promote judicial economy." There is a citation, "See  
17 Toulouse v. Chandler, referenced according to the  
18 decision, but wrongly so, at 5 Misc. 3d 1005 "A"  
19 footnote 9.

20 Now, the third highlighted portion of the  
21 decision enclosed by Ms. Rodriguez was the name "Hon.  
22 Brian Hansbury, City Court Judge." In other words, Ms.  
23 Rodriguez was representing that the basis of the trial  
24 notice for today is a decision of October 11, 2007, by  
25 Judge Hansbury. Inferentially, she was suggesting that

1 Judge Hansbury had directed it on for trial and insofar  
2 as the original number, well, the October 11, 2007,  
3 decision made no claim that the proceeding under, under  
4 651/89 was an original number, moreover, that decision  
5 of Judge Hansbury called for consolidation not of one  
6 proceeding but of any, where is it, any --

7  
8 THE COURT: Any open case, any pending case.  
9 All right. Ms. Sassower, I'm going to stop you there  
10 because I want to address each of your points as you  
11 make them and in so doing I'm going to ask Mr. Sclafani  
12 if he has any response; so I'm going to stop you there,  
13 because if I understand your first objection, your first  
14 argument, the case is not on for trial today or should  
15 not -- the case should not be on for trial today; that  
16 is your first point.

17 MS. SASSOWER: But I haven't gotten to the  
18 threshold reason why.

19 THE COURT: Okay. Then do that now.

20 MS. SASSOWER: Thank you. On June 13, I wrote  
21 to Patricia Lupi, a hand-delivered letter which said, "I  
22 couldn't begin to fathom the response that I had  
23 received to my three questions from the letter, that I  
24 had gotten, dated June 9, from Jacqueline Rodriquez,  
25 because, among other things, starting threshold, Judge

Hansbury had recused himself from the case by a written decision dated January 9, 2008." And the decision was clear, the decision said, "The undersigned hereby recuses himself and directs the clerk of the court" not to put the matter on for trial, no, "directs the clerk of the court to assign this matter to another judge of the White Plains City Court."

Now, I identified in my letter to Chief Clerk Lupi, "In so doing," this is what I said, quote, "In so doing, Judge Hansbury did not direct this case for trial, he directed it for assignment to another judge of the White Plains City Court who was then free to make such determinations as were appropriate based on the record of this case."

And so I asked Ms. Lupi, did you assign the case to another judge of White Plains City Court as directed by Judge Hansbury? If so, what was the date of the assignment and who was the judge? Was it that judge who decided to schedule the case for trial, and is June 30, and is the June 30 trial to be before him or her? Did that judge also decide to add only a single docket number, 651/89 to the trial notice and to represent it as the original number?" And I said, I concluded my letter by, the letter is extensive.

THE COURT: I got it.

MS. SASSOWER: Okay, but understand further, and I must just say that when I hand-delivered that June 13 letter, I had accompanied it by a further letter and the further letter reflected my visit to the clerk's office the preceding day and my direct conversation with Chief Clerk Lupi. And in the conversation, she, to make it short, she purported she knew nothing about the January 29, 2008, decision of Judge Hansbury in which he had recused himself. She believed -- she did know about Judge Hansbury's recusal, but she stated to me her belief that it was in open court on the record, not reflected in a decision.

She, also, because she didn't know about the written decision, it was clear, and I discussed it with her, that she had not made any assignment, she had, she had violated the direction Judge Hansbury had made and she essentially represented that it was done administratively through the clerk's office placing this case on the calendar.

It has no business being on the calendar for a myriad of reasons, and I will stop because you indicated you wanted to do this sequentially.

THE COURT: Yes.

MS. SASSOWER: Let me just, as earnestly as I can, I feel I did everything in my power, as I always have, I act honestly and in good faith always, I did not wish to waste this Court's time, I did not wish to waste the time of counsel, Mr. McFadden, my own time.

I'm aware of the placard on the clerk's office window, it says, "Committed to quality service. Let us know how we are doing," and it provides a brochure soliciting comment.

I wrote the clerk's office. I hand-delivered two letters asking reasonable questions that had to be addressed as to when this case was properly calendared, the issue of consolidation, whether a judge had made the determination based upon review of the file. You, yourself, said you only reviewed it this weekend, so you plainly didn't direct it.

THE COURT: I'm going to fill in some of those blanks in a minute. The first issue before the Court is Ms. Sassower's arguments that this case should not be on for trial today and if it is, it is not trial ready.

I want to address the first prong of that which is whether or not this matter is on for trial today or should be on for trial today. Mr. Sclafani, do



you want to speak to this?

MR. SCLAFANI: Yes.

THE COURT: Go ahead.

MR. SCLAFANI: Judge, I rarely agree with much that my adversary has to say, as the papers in this case would show, but I do agree with some small portion of what she said today, and that is, that SP 651 of '89 should not be consolidated. There is no basis for a consolidation because one case is trial ready and one case should have had judgment entered in the petitioner's favor 20 years ago, 17 years ago.

The reason for that is this:

You need to understand the history here. In 1989 these summary proceedings were started. At that time the theory under the petition was that the petitioner, the respondents, Ms. Sassower and her mother, had signed an occupancy agreement as part of the contract of sale for an apartment, a co-op apartment, and that agreement provided for a month-to-month tenancy in the event that there was no sale.

In fact, there was no sale, but Ms. Sassower engaged in a holy war with her mother in Federal Court over a litigation that the Second Circuit and the United

1  
2 States District Court found to have been utterly  
3 frivolous. They sanctioned both, the District Court  
4 sanctioned Ms. Sassower and her mother to \$93,000 in  
5 sanctions for engaging in the frivolous litigation in  
6 which she claimed that the board rejected her on the  
7 grounds that she was a Jewish, single woman.

8 A jury found that there was no basis for any  
9 of those claims and the judge found that her allegations  
10 were fraught with untruths and misrepresentations.

11 Thereafter, there was a month-to-month  
12 tenancy. There was a representation to the court in  
13 651 that the judgment had been appealed. That was not  
14 true.

15 THE COURT: The judgment of the Federal Court?

16 MR. SCLAFANI: The federal judgment was not  
17 appealed, but that's what the parties were told. There  
18 were different counsel, at least on the petitioner's  
19 side. So, that petition, at that time the petition  
20 sought eviction based on the proposition that the  
21 month-to-month tenancy that was created by the occupancy  
22 agreement had terminated, and was terminated.

23 A motion for summary judgment was made in that  
24 case, and in that case Judge Reap rendered a decision in  
25 that motion which I believe your Honor has seen.

THE COURT: Yes, I have seen the decision of Judge Reap. When I refer to the contents of docket 651 of '89, I refer to what was on microfilm or microfiche and that was the notice of petition, petition, answer and motion papers; but, what we do have that was made part of the 2007 docket is Judge Reap's decision and I do have an understanding of what you are describing because it is in the 2007 case.

MR. SCLAFANI: What Judge Reap says, as your Honor knows, is the only issue, it was a decision on the motion for summary judgment. He said the decision is reserved, right?

He didn't decide the motion, he reserved decision. But what he said was, the only issue in the case is what happens in the federal litigation. If Ms. Sassower is successful in the appeal, she wins the summary proceeding. If she's not, she loses.

He said that was so because of the doctrines of res judicata and collateral estoppel and the issue of preclusion. In fact, there were appeals in the Federal Court pending, but they were not of the judgment, that there was no discrimination, the appeals were of the sanctions, and the appeals were for a denial, late filed, of a new trial which motion was made several

months after the judgment came down that found that there was discrimination.

I have the cases here for your Honor, the federal cases. I handed some of them to Judge Hansbury pursuant to his request.

THE COURT: Mr. Sclafani, now we're getting way beyond this issue.

MR. SCLAFANI: I will tell you why it is relevant.

THE COURT: All right. If I hear you correctly, you do not disagree with Ms. Sassower that the matters having been consolidated by Judge Hansbury in his decision of October 11 of 2007 are not on the calendar today, or at least both of them are not on the calendar today for trial; is that correct?

MR. SCLAFANI: No, that's not what I said. They are both on the calendar. They had to be calendared at some point.

THE COURT: Together?

MR. SCLAFANI: No, they didn't need to be calendared together because my client, and, Judge, I was patient and I'm going to ask your indulgence --

THE COURT: You are way off. You are losing me completely. I read everything you said in your

papers.

MR. SCLAFANI: I think that I will tie it together if you just give me the same courtesy you gave Ms. Sassower.

THE COURT: You have to tie it together a little better, at least towards the issue of what we're doing today, your positions, what we're doing here today or what we should be doing here today.

MR. SCLAFANI: I'm going to suggest to you what should be happening and the reasons why, but you need to understand, because you may not know what's in 651 totally, and some other things that have gone on, because I'm mystified by a bunch of things, and my adversary has taken a diametrically opposed position in this situation that has lead to some extent to this confusion.

So, 651 has an outstanding motion for summary judgment. That motion should be decided. And Judge Hansbury, in his decision that Ms. Sassower complained about and in which he recused himself, indicated that Judge Reap's decision is not binding. But Judge Reap's decision doesn't need to be binding for the exact same result to occur because Judge Reap's understanding that the only issue in the case 651, was what happens in the

federal litigation was true whether or not Judge Reap said so.

Likewise, because it was the only issue in the case, and because the Court was working under the misapprehension that there was an appeal and that it would be judicially economical to delay the determination of the motion for summary judgment until that appeal was decided, the Judge reserved decision and he said, "because of issue preclusion."

Well, he was right, issue preclusion whether or not he said it, those doctrines would apply to bar an argument in 651.

So, my client asks the Court to decide the motion for summary judgment that should have been decided 17 years ago.

MS. SASSOWER: May I be heard?

MR. SCLAFANI: We don't need a trial in that case. It isn't trial ready because there is an outstanding motion for summary judgment.

Now, there is a problem counsel raised, that my adversary raised. She said there are other parties in that action they are not here, they weren't given notice. She's right, but they don't need to be given notice for the court to decide a motion that it has on

1  
2 its docket now for 17 years. What the Court needs to do  
3 is decide that motion.

4 All of the papers are submitted, as Judge Reap  
5 indicates in his decision, because additional papers,  
6 the right to file additional papers were sought and  
7 denied in that case. And the case was accepted, that  
8 motion was accepted and it remains open on this docket,  
9 so if that motion for summary judgment is granted, that  
10 case is not trial ready, and if it is granted in the  
11 petitioner's favor, we should, we don't need the second  
12 case.

13 Now, what's the relationship between the  
14 second case and the first case? Well, my client says  
15 that in 2001 he was all this time accepting use and  
16 occupancy under a court order that required that use and  
17 occupancy at a thousand dollars a month be paid pending  
18 the outcome of that litigation. That stay was lifted  
19 but the parties continued in that relationship.

20 In 2001 my client claims, as he says in his  
21 petition, he entered into a new agreement with Ms.  
22 Sassower in which he said, "I need to get \$1,660 a  
23 month or else I need to move on. I will terminate the  
24 monthly tenancy."

25 THE COURT: Counsel, these are facts that I

1  
2 don't need to hear to decide procedure of what we're  
3 going to do here today.

4 MR. SCLAFANI: What's now the status we're in,  
5 Mrs. Sassower denied that, she denied that. What she  
6 argued in her answer in this case is that, is there is a  
7 prior open proceeding, and she named 651 and one other  
8 case in which she is not the petitioner or -- she's none  
9 of the -- petitioner is not my client, it is a case  
10 brought by the co-op board and I believe it's closed or  
11 it should be because I think there was a determination  
12 in that case that at least one of the necessary  
13 indispensable respondents was not properly served, so  
14 the only case she cited as an open case in her answer  
15 was 651. She said, you don't have to try this 2007  
16 case, you can't, because there's this open case. You  
17 have to dismiss this one because it is essentially the  
18 same case. That's what she said.

19 She basically continued to argue in her answer  
20 that there was no new agreement, was no new agreement to  
21 the extent that she, and she conceded that there were  
22 several arrangements where she continued, where she paid  
23 additional rent pursuant to agreements she reached, but  
24 she basically says over and over again that she is in  
25 possession under the original occupancy agreement, an



1  
2 agreement that was set forth in 651.

3           So, if she's right on that and she would be  
4 estopped from claiming otherwise, then there has been no  
5 change of circumstance, and she hasn't raised any in her  
6 answer that would require you to dismiss the instant  
7 case in favor of 651, would you grant judgment in my  
8 client's favor on 651. If that's not the case, if, in  
9 fact, there was a new arrangement, then there is no  
10 reason to consolidate because 651 would be mooted out by  
11 virtue of the fact that there was a new tenancy by the  
12 agreement that my client says and my client then would  
13 then be entitled to proceed on this case which is now a  
14 year old, this summary proceeding.

15           Why is it a year old? Well, because Judge  
16 Hansbury wrote a decision that I have to, again, the  
17 only thing I can agree with my adversary was  
18 incomprehensible, he recused and said my adversary  
19 sought recusal of Judge Hansbury, he granted that  
20 recusal, he, and then the case went into never, never  
21 land from October to today.

22           Is it trial ready today? Should it have been  
23 on the calendar today? Absolutely. Why? Because there  
24 is nothing else pending in this case. In a summary  
25 proceeding you make motions, you do what you are going

1  
2 to do, but petitions get served, there is a answer then  
3 there is a trial, unless there are intervening motions  
4 or stays.

5 There are no outstanding motions. There is no  
6 outstanding stay. When Judge Hansbury rendered his  
7 decision denying reargument and when he rendered his  
8 first decision denying the striking of the pleadings, he  
9 disposed of all of the outstanding motions. The only  
10 thing left for this case was to go on the trial  
11 calendar. There was no other thing that could happen to  
12 this case.

13 My adversary would like this case to be  
14 nowhere because she wanted it assigned to a judge. It  
15 doesn't get assigned to a judge, it gets put on the  
16 trial calendar, which is what happened. So, if Ms.  
17 Sassower wants to take the position that she took in her  
18 answer, that there has been no change of circumstance,  
19 that there's been no new agreement, that she's in  
20 pursuant to the occupancy agreement and has been paying  
21 use and occupancy under that occupancy agreement, then  
22 that's what 651 says. Please decide it.

23 There is a motion for summary judgment. We  
24 don't need the second proceeding.

25 THE COURT: I've got you. Thank you so much.

Again, this is all about procedure right now. Okay.

What the Court is going to do today and hereinafter, and I will also address the points on how this case got to me and what this Judge's opinion is of what it must do in light of the two decisions of Judge Hansbury, Ms. Sassower, I'm going to give you just two minutes to respond and then I'm going to decide this first application.

MS. SASSOWER: I'm grateful to you, your Honor, for giving me an opportunity to respond. There are so many misrepresentations, also.

THE COURT: All right. Two minutes. We're just talking procedure today.

MS. SASSOWER: Just procedure. Mr. Sclafani actually said that in my answer I only cited one open case and that was 651 of '89. I refer your Honor respectfully to my first affirmative defense which could not be clearer, more straight forward.

"First affirmative defense. Open prior proceedings. The petition materially omits that petitioner brought two prior eviction proceedings against respondent in White Plains City Court under index numbers 504/88 and 651/89, the latter of which remains open. The petition also materially omits that

1  
2 petitioner himself as well as respondent are both  
3 respondents in prior proceedings against them in White  
4 Plains City Court brought by 16 Lake Street Owners,  
5 Inc., under index numbers 434/88 and 500/88, the former  
6 open as to petitioner and the latter open as to both  
7 petitioner and respondent, wherein 16 Lake Street Owners  
8 seeks to terminate petitioner's proprietary lease and  
9 evict respondent."

10 And then I say, "By reason of these open  
11 proceedings, petitioner is barred from commencing this  
12 instant proceeding where the petition must be  
13 dismissed."

14 I would point out respectfully, your Honor,  
15 because you have rightfully hit the nail on the head,  
16 it's all about procedure. I have a right in this  
17 proceeding to bring affirmative defenses and  
18 counterclaims. I did and I made a cross motion for a  
19 dismissal and summary judgment based upon my affirmative  
20 defenses and counterclaims.

21 Judge Hansbury, in his October 11, 2007,  
22 decision, which is purported by Chief Clerk Lupi to be  
23 the basis of our proceeding today, that decision doesn't  
24 even identify, let alone determine, make any  
25 adjudication as to my affirmative defenses and

1  
2 counterclaims as to which I demonstrated as a matter of  
3 law entitlement to the petition being thrown out on the  
4 papers with no trial and to my entitlement to my  
5 counterclaims.

6           The only trial as a matter of law demonstrated  
7 on that cross motion of September 5 which, if you have  
8 reviewed the file, it is a breathtaking, comprehensive  
9 fact specific, document-supported cross motion which,  
10 additionally, insofar as Mr. Sclafani makes  
11 representations about the open summary judgment motion,  
12 the open summary judgment motion to which he refers is  
13 extensively discussed by me; and including the fact that  
14 it is not the last motion in the record, there was a  
15 subsequent summary judgment motion made by Mr. McFadden  
16 in 1992, and there were submissions there additionally.  
17 And what I pointed out in my papers was that both  
18 summary judgment motions were based upon  
19 misrepresentations to Judge Reap to such a degree that  
20 we asked at that time for sanctions, serious sanctions  
21 against Mr. McFadden and his then attorneys.

22           I know one last thing I'd like to say on the  
23 issue of res judicata, collateral estoppel, issue  
24 preclusion. Mr. Sclafani falsely represented to you  
25 that that would apply here, however, when the federal

1 action was commenced, it was not commenced by Elena  
 2 Sassower and Doris Sassower alone, undisclosed by Mr.  
 3 Sclafani is that we had a co-plaintiff and his name was  
 4 John McFadden. And there were, as part of this  
 5 extraordinarily important litigation, an array of causes  
 6 of action based upon noncompliance by the co-op with  
 7 rules, procedures, guidelines of which Mr. McFadden had  
 8 great personal knowledge since he had been a board  
 9 member for five years, president of the co-op board. He  
 10 was a powerful co-plaintiff who decided to not only jump  
 11 ship after joining with us, agreeing with us as to the  
 12 outrage that had been perpetrated by the co-op, he not  
 13 only jumped ship and colluded with the co-op, but he  
 14 refused to give an assignment of rights; so by the  
 15 time we got to trial, we had to drop our corporate  
 16 non-compliance cause of action which is reflected by  
 17 the judgment. They were dropped.

18  
 19 There is no collateral estoppel, res  
 20 judicata, issue preclusion because those critical issues  
 21 of compliance by the co-op with its procedure, with its  
 22 guidelines were never determined in the federal case  
 23 thanks to Mr. McFadden bailing out and then refusing to  
 24 make the assignment so that we could proceed on those.

25 Let me just finally say when Mr. Sclafani

1 talks about a frivolous litigation, that certainly is  
2 not that federal lawsuit. That federal lawsuit survived  
3 summary judgment as to the discrimination cause of  
4 action and it was so powerful that we made a summary  
5 judgment motion on the corporate non-compliance causes  
6 of action, copies of which we provided to Mr. McFadden  
7 through his attorney and still couldn't get an  
8 assignment of rights because he was colluding with the  
9 co-op.  
10

11 Why would the two open proceedings involving  
12 the co-op be properly brought forward? Because Mr.  
13 Sclafani, when he first came to court a year ago, said  
14 to Judge Press that the reason for this proceeding was  
15 that Mr. McFadden was being pressured by the co-op to  
16 evict me which was an outright lie as, likewise, the  
17 representation made by Mr. Sclafani that the reason that  
18 Mr. McFadden purportedly entered into a quote "oral  
19 agreement" for my continued occupancy was he was too, it  
20 was too impossible to otherwise get us out as I  
21 demonstrated.

22 There was no problem at closeable litigation.  
23 There was no problem. If Mr. McFadden wanted to secure  
24 our eviction, if the co-op wished to secure our eviction  
25 in 1993, there was no bar. They chose knowingly,

deliberately not to proceed, not to get a summary judgment order as they might have. It would have been improper at that time because there were no issue preclusion, collateral estoppel, res judicata that would have been applicable, but nonetheless, if they wanted to try it, there was no bar for Mr. McFadden to have proceeded in that litigation to get the judgment to evict me.

THE COURT: Thank you. I'm ready.

MS. SASSOWER: He chose not to.

THE COURT: First, I'd like to thank both Ms. Sassower and Mr. Sclafani for being here today, for being prepared, clearly, both of you are prepared, and for advising this Judge what your respective positions are, both in terms of what we are doing today and down the road with this matter, should it stay with us or otherwise.

This is the first time that Docket SP 1502 of '07 and SP 651 of '89 are before the Court together. I would agree with both Ms. Sassower and Mr. Sclafani that both cases cannot and should not be on for trial today.

As to how the matter came on to be scheduled today and, specifically, before me, I'd like to note the following:



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

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

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

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

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

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

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

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

1  
2 at least with respect to docket 1502 of 2007, meant that  
3 to consolidate both cases meant that they would be  
4 assigned to me. So, if that serves to answer questions  
5 as to how the case got to me, that is how it got to me.

6 I cannot speak to the good communication that  
7 was had at the front window, why letters or responses or  
8 questions were answered, if or if they were not answered  
9 or not answered clearly, but hopefully my statement now  
10 answers how I came to have the case and how it came on  
11 to be on the calendar today assigned to me because of  
12 Judge Reap's involvement in the 1989 case and docket.  
13 Okay. So that's how it got here.

14 That Jackie Rodriguez actually scheduled the  
15 matter is in the ordinary course of business in the  
16 White Plains City Court. She is the summary proceedings  
17 part clerk. She handles all the landlord tenant matters  
18 in this court, and having been advised that Judge Friia  
19 was going to handle the case, she assigned it to me.  
20 And this was the next available date for me, sitting in  
21 part "B." So, if that answers some of the questions,  
22 that's how I came to get the case. All right.

23 Next, the Court now has the file under index  
24 number SP 651 of '89, and I note that the Honorable  
25 James Reap reserved decision on the petitioner's motion

for summary judgment pending a decision from the Federal Court. Judge Reap is now retired.

For the record, from what I can ascertain, the first notification this court received from the parties regarding the status of the federal Court action, to wit, the Federal Court decision, came by way of the motion papers that were filed under Docket SP 1502 of '07. Procedurally, in the absence of a final determination by Judge Reap on petitioner's motion for summary judgment under Docket SP 651 of '89, this Judge who now has been assigned by way of consolidation, both matters, cannot give effect to the same under C.P.L.R. 9002.

MS. SASSOWER: That's right.

THE COURT: In the interest of judicial economy, the Court, me, Judge Friia, will now consider petitioner's summary judgment motion filed under 651 of '89, de novo and render a decision accordingly.

MS. SASSOWER: May I be heard?

THE COURT: That's the decision and order of the Court with what will occur from herein after.

MS. SASSOWER: May I be heard?

THE COURT: Yes. That's my decision and you can, actually, I don't know if you want to appeal it, I

1  
2 leave it up to you, you can wait until I have an  
3 opportunity to review what's been retrieved from  
4 microfiche under docket 651 of '89, and the  
5 determination of the federal district court on that  
6 matter, at least as we have it now.

7 I would also note since that is a pending and  
8 open matter, the Court will accept no new papers, okay,  
9 no new papers on that, and there is no need, as Mr.  
10 Sclafani properly states, at least for purposes of  
11 submitting the matter de novo to the Court for a final  
12 decision, to notice Doris L. Sassower, at least not at  
13 this time. Okay. So, that having been said, that's the  
14 Court's decision on the first application.

15 The cases are not on today for trial. Having  
16 made a decision as to how we're going to proceed first  
17 with respect to docket 651 of '89, we'll simply be  
18 adjourning docket 1502 of '07 until you receive in the  
19 mail a written decision in the mail from me on the  
20 pending motion.

21 All right. So, now, that having been said,  
22 Ms. Sassower, you have another application now to the  
23 Court?

24 MS. SASSOWER: Yes. Respectfully.

25 THE COURT: I don't want to hear you disagree

1  
2 with this decision but I know you had another  
3 application.

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

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

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

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

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

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

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

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

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

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

MS. SASSOWER: I reviewed the records and --

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

MS. SASSOWER: Yes.

THE COURT: Okay go ahead.

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

I refer your attention respectfully to this

1  
2 treatise called Judicial Disqualification Recusal and  
3 Disqualification of Judges by Richard Enam (p) whose  
4 pertinent portions are quoted in my initial, excuse me  
5 one moment, are quoted in the first of my two letters to  
6 judge, to Chief Clerk Lupi of June 13. I refer you  
7 specifically to section 22.4.1 entitled "Void Orders.  
8 When a judge presumes to take substantive action in the  
9 case despite having recused himself from it or after he  
10 should have recused himself but did not, any such action  
11 is often considered a nullity and any orders issued by  
12 such a judge are considered absolutely void for want of  
13 jurisdiction."

14 Now, it goes on to say that orders by a  
15 disqualified judge, as Judge Hansbury conceded himself  
16 to be, the, he recused himself, he recused himself  
17 without reasons, but he recused himself in the face  
18 of an Order to Show Cause which I brought, dated  
19 November 9, 2007, which documented that his October 11,  
20 2007, decision was nothing short of a fraud by him being  
21 unsupportable in fact and law and contrived.

22 THE COURT: If I may, Ms. Sassower, I'm  
23 unaware of any appeal or decision on appeal of Judge  
24 Reap's decision -- sorry, Judge Hansbury's decision. I  
25 have to stop you there. This is not a new issue.



If I hear you, the new issue is whether or not I should recuse myself.

MS. SASSOWER: No, no, no, no. This is an -- the issue raised in my letter to Chief Clerk Lupi with citation of legal authority is that where a judge recuses himself, recuses himself or has been the subject of a legally sufficient disqualification motion as plainly Judge Hansbury was by my November 9, 2007, his orders maybe are void and are voidable and may be the subject of application -- excuse me -- I'm seeking application which is my right under the law. I do not have to take an appeal. I can seek an application to have those orders, decision orders rescinded, recalled, vacated by reason of his disqualification, which he conceded and, the basis, the good and sufficient basis of the disqualification is in the record.

Both of those decisions, if you, your Honor, reviewed the file as you are maintaining you did this past weekend, and I will give you, let me give you one example.

THE COURT: Ms. Sassower, I addressed this, I addressed this. It is my belief, correct or incorrect, that I cannot review the decision of Judge Reap, I cannot stand in his shoes -- Judge Reap, excuse me, of

1 Judge Hansbury. I cannot stand in his shoes.

2 I don't know why he did what he did  
3 procedurally. I have attempted to pick up the case  
4 where he left off. I'm not going to review his  
5 decision. I'm not going to address whether or under  
6 what circumstances, with or without more, he recused  
7 himself from presiding over this case.  
8

9 It is my belief that the proper forum is the  
10 superior court, either to our administrative judge or to  
11 a judge of the Supreme Court right around the corner, or  
12 a direct appeal of each of his decisions to the  
13 Appellate Term of the State Supreme Court.

14 MS. SASSOWER: I respectfully request an  
15 opportunity, that being the view of this Court, although  
16 it is erroneous by the law that I presented, not just in  
17 my letter to Chief Clerk Lupi, but then brought to your  
18 attention, your Honor, I brought all this correspondence  
19 to your Honor's attention, and the state of the record  
20 to your Honor's attention so that we might avoid a  
21 needless appearance today, and rather than your  
22 enforcing some standard of civility and professionalism  
23 by Chief Clerk Lupi that is her response to my letters,  
24 or yourself responding, because what I said to Chief  
25 Clerk Lupi is, unless she reassigned this trial notice,

1 she should bring my letters to your attention so that  
2 you could vacate it; and based upon the record, because,  
3 after all, what did Judge Hansbury's January 9 decision  
4 and order direct? You are bound by it. What did it  
5 direct? It directed not that that case be put on for  
6 trial, but that another judge be assigned. She made no  
7 assignment. It came to you. You have explained how it  
8 came to you. You only reviewed, according to you, you  
9 only reviewed the record this weekend. If you reviewed  
10 the record, you know that there has to be findings of  
11 facts and conclusions of law with respect to the course  
12 charted by the parties which was not to proceed to trial  
13 but to have a determination of motions made to dismiss  
14 and for summary judgment; and it is because this Court  
15 doesn't want to give me the protection of the law,  
16 doesn't want to adhere to this rule of law, that this  
17 Court, with all respect, purports that it is bound by  
18 decisions demonstrated to be fraud by --

19  
20 THE COURT: Okay. MS. Sassower, is there any  
21 other application?

22 MS. SASSOWER: Yes. I will have to make  
23 motions.

24 THE COURT: That's fine. We are done with the  
25 proceedings here today. You will get a written decision

in four to six weeks. Thank you, everyone. Have a good lunch.

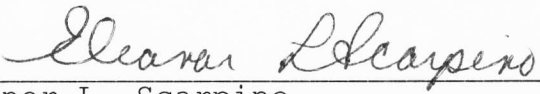
MS. SASSOWER: Would your Honor like to make disclosure of bearing upon your fairness and impartiality?

MR. SCLAFANI: May the record reflect that the Judge is leaving the courtroom as am I.

MS. SASSOWER: Thank you.

\* \* \*

Certified to be a true and accurate transcript of the minutes taken in the above proceeding.

  
 Eleanor L. Scarpino  
 Official Court Reporter