SUPRME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Respondent,

-against-

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

Appellate Term:
#2008-1427 WC

White Plains City Court:
#SP 651/89
#SP-2008-1474

ORDER TO SHOW CAUSE for Reargument/Renewal & Other Relief, with Interim Stay Requested

Upon the annexed affidavit of appellant *pro se* ELENA SASSOWER, duly sworn to on October 15, 2008, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had,

Hon. Denise F. Molia

LET respondent JOHN McFADDEN show cause before this Court at 141 Livingston Street, Brooklyn, New York 11201 on the 30th day of October 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 made staying this Court's *sua sponte* direction, by its updated order and decision, conditioning appellant's stay pending appeal on her "pay[ing] John McFadden any and all arrears in rent/and or use and occupancy at the rate most recently payable within 10 days of the date of this order and to continue to pay use and occupancy at a like rate as the same becomes due" pending the hearing & determination of this motion:

Ex 9

(1) for reargument and renewal of the undated order and decision pursuant to CPLR §2221 and, upon the granting of same, withdrawing and/or vacating the decision and order;

(2) granting appellant's August 13, 2008 vacatur/dismissal motion so as to obviate the appeal herein, and, if denied, giving reasons therefor, if not findings of fact and conclusions of law with respect to each of the motion's three branches;

(3) rejecting the "Clerk's Return on Appeal" for #SP-651/89, as well as the "Clerk's Return on Appeal" for *John McFadden v. Elena Sassower*, #SP-1502/07, with which #SP-651/89 was allegedly consolidated, for the reasons particularized by appellant's August 22, 2008 letter to White Plains City Court Clerk Patricia Lupi and:

(a) ordering Clerk Lupi to certify proper "Clerk's Returns on Appeal" for #SP-651/89, #SP-1502/07, as well as for #SP-2008-1474 – the additional lower court number which Clerk Lupi assigned to #SP-651/89, without notice or stated reason;

(b) ordering Clerk Lupi to produce the docket sheets and microfilm/ microfiche requested by appellant's August 22, 2008 letter; and

(c) ordering Clerk Lupi to explain her non-response to appellant's August 22, 2008 letter – and directing her response to the inquiries therein;

(4) deferring the December 5, 2008 date for perfecting the appeal herein [#2008-1427 WC], as well as the November 13, 2008 date for perfecting the appeals in *John McFadden v. Elena Sassower*, #SP-1502/07 [#2008-1428 WC and #2008-1433 WC], to a date no sooner than 45 days after this Court's written notification of its receipt of proper "Clerk's Returns on Appeal", the docket sheets and microfilm/microfiche requested by appellant's August 22, 2008 letter, and Clerk Lupi's responses to that letter's inquiries.

(5) for a conference pursuant to 22 NYCRR §730.2(a) to resolve issues pertaining to the record herein and the status of #SP-651/89, as well as the record and status of other related cases from 1988 and 1989 not consolidated with #SP-1502/07 [#2008-1428 WC and #2008-1433 WC] because Clerk Lupi allegedly represented to White Plains City Court Judge Jo Ann Friia that they were "closed";

(6) for such other and further relief as may be just and proper, including disclosure of facts bearing upon the appearance and actuality of this Court's bias and interest pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, disqualification pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, and transfer of this appeal and appellant's appeals under #2008-1428 WC and #2008-1433 WC to an appellate court outside the Second Department to ensure fair and impartial justice;

IF AN INTERIM STAY PENDING DETERMINATION OF THIS MOTION IS DENIED, for a 30-day interim stay to enable the *pro se* appellant to consult with counsel skilled in landlord-tenant matters as to the legal consequences, if any, to her appellate rights of a court order vacating the stay pending appeal for failure to make the directed payments to JOHN McFADDEN, resulting in execution of Judge Friia's July 21, 2008 warrant of removal, removing her from the subject apartment. Alternatively, this Court's order should expressly state that such removal is without prejudice to appellant's appellate rights and that she retains the right of repossession of the subject apartment upon her successful appeals.

SUFFICIENT CAUSE APPEARING THEREFOR IT IS ORDERED THAT,

~~PENDING THE HEARING AND DETERMINATION OF THIS MOTION AND ENTRY OF AN ORDER THEREON, LET the Court's ordered and decision requiring payment of "rent/and/or use and occupancy" by respondent JOHN McFADDEN as a condition of appellant's stay pending appeal be and hereby is, stayed~~

And LET SERVICE of this order to show cause, together with the papers upon which it is based, be made personally ~~make overnight mail~~ on or before the 23RD ~~21ST~~ day of October 2008, upon the law offices of respondent JOHN McFADDEN's counsel LEONARD A. SCLAFANI, P.C., 18 East 41st Street, Suite 1500, New York, New York 10017, and upon respondent DORIS L. SASSOWER at 283 Soundview Avenue, White Plains, New York 10606.

Hon. Denise F. Molia

ENTER:

JUSTICE OF THE APPELLATE TERM

Hon. Denise F. Molia

DATED: October 22, 2008
~~Brooklyn~~, New York
Riverhead,

SUFFICIENT CAUSE APPEARING THEREFOR IT IS ORDERED THAT,

PENDING THE HEARING AND DETERMINATION OF THIS MOTION AND ENTRY OF AN ORDER THEREON, LET the Court's undated and decision requiring payment of "rent/and or use and occupancy" to respondent JOHN McFADDEN as a condition of appellant's stay pending appeal be, and hereby is, stayed.

And 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 October 2008, upon the law offices of respondent JOHN McFADDEN's counsel, LEONARD A. SCLAFANI, P.C., 18 East 41st Street, Suite 1500, New York, New York 10017, and upon respondent DORIS L. SASSOWER at 283 Soundview Avenue, White Plains, New York 10606.

ENTER:

_____
JUSTICE OF THE APPELLATE TERM

DATED: October , 2008
Brooklyn, New York

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUICIAL DISTRICTS

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JOHN McFADDEN,

Respondent,

-against-

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

---------- x

Appellate Term:
#2008-1427 WC

White Plains City Court:
#SP-651/89
#SP-2008-1474

Affidavit in Support of Order to Show Cause for Reargument/Renewal & Other Relief, with Interim Stay Requested

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

1. I am the above-named appellant *pro se*, fully familiar with all the facts, papers, and proceedings heretofore had, and submit this affidavit in support of my accompanying order to show cause, whose ultimate purpose is to determine whether there is a cognizable judicial process in this Court whereby I can vindicate my rights.

2. At issue is a two-page order, not identified as such, which I received by mail on October 3, 2008 from this Court (Exhibit H)[1]. It is signed by Justice Edward G. McCabe,

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[1] The exhibits herein continue the sequence begun by my August 13, 2008 vacatur/dismissal motion. Exhibits A-C are annexed to my August 13, 2008 affidavit in support of the motion. Exhibits D-

as Presiding Justice of a panel consisting of two additional justices: Justices Melvyn Tanenbaum and Denise F. Molia. Accompanying this order was another two-page document, marked "DECISION". Neither the order nor decision are dated, although the top of the order bears the following fax transmittal line on each of its two pages: "10/01/2008 14:26 FAX", indicating the date and time of transmittal between locations, one of which is presumably the Appellate Term.

3. The Court's undated order and decision condition my stay pending appeal upon payment to Mr. McFadden "within 10 days from the date of this order" of "any and all arrears in rent/ and or use and occupancy at the rate most recently payable...and to continue to pay use and occupancy at a like rate as the same become due" – a condition not requested by Mr. McFadden, a fact the order and decision do not identify. Such *sua sponte* direction is after denying, *without reasons*, my fact-specific and document-supported August 13, 2008 vacatur/dismissal motion which demonstrated that Mr. McFadden has no legal right to any monies under the March 27, 1989 Petition and that I am entitled to dismissal of the Petition, *as a matter of law*, based on documentary evidence and lack of subject matter jurisdiction.

4. As shown, the underlying March 27, 1989 Petition, verified by Mr. McFadden in this alleged holdover proceeding, specifies no rent pursuant to the "month to month rental agreement" under which I and my mother, Doris L. Sassower, are purported to have "entered in possession" of the subject apartment.

5. It is my belief that the Court's power on the appeal of Judge Friia's decision & order granting summary judgment to the March 27, 1989 Petition is limited by the Petition's

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G are annexed to my September 2, 2008 affidavit in reply to Mr. McFadden's opposition & in further support of the motion.

allegations of "a month to month rental agreement" for which no rent is payable. As a consequence, the Court is without jurisdiction to order "use and occupancy"[2] – and especially as the October 30, 1987 written Occupancy Agreement, which is the actual basis upon which I and my mother "entered in possession", expressly disavows a landlord-tenant relationship, putting such additional or alternative direction beyond this Court's jurisdiction as the appellate tribunal for the White Plains City Court.[3]

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[2] *See* my September 2, 2008 memorandum of law, pages 20-21, quoting the New York Court of Appeals in *Lamphere v. Lang,* 213 N.Y. 585, 588; 108 N.E. 82 (1915):

> "The law on the subject is clear. 'Pleadings and a distinct issue are essential to every system of jurisprudence, and there can be no orderly administration of justice without them. If a party can allege one cause of action and then recover upon another, his complaint would serve no useful purpose.' (*Romeyn* v. *Sickles*, 108 N. Y. 650, 652.) 'The rule that judgment should be rendered in conformity with the allegations and proofs of the parties, '*secundum allegata et probata*,' is fundamental in the administration of justice. Any substantial departure from this rule is sure to produce surprise, confusion and injustice.' (*Day* v. *Town of New Lots*, 107 N. Y. 148, 154; *Northam* v. *Dutchess Co. Mut. Ins. Co.*, 177 N. Y. 73.)"

Also quoted in *Cohen v. City Company of New York et al.*, 283 N.Y. 112, 117; 27 N.E.2d 803 (1940).

My memorandum of law additionally quoted, as "A similar statement of law, even more relevant", the Appellate Division, Third Department in *Gordon v. Ellenville and Kingston Railroad Company*, 119 A.D. 797, 802; 104 N.Y.S. 702:

> "...to permit a recovery would be to allow the plaintiff to allege one cause of action and recover upon another. The effect would be not only to change the action from one cause to another and different ground of action, but it would authorize a recovery upon evidence which disproves the cause of action alleged in the complaint."

[3] The Occupancy Agreement, part of a Contract of Sale for the subject apartment, was unambiguous: "...in no way do the parties intend to establish a landlord/tenant relationship". As the Contract of Sale was not to have been completed within 90 days after its execution and I and my mother had not defaulted thereunder, White Plains City Court was required to have dismissed Mr. McFadden's Petition herein because it did not have jurisdiction to hear the case in a summary proceeding. In such circumstances, "the proper remedy, in an action to recover possession, is by ejectment...". *Orange County Development Corp. v. Perez*, 67 Misc.2d 980; 325 N.Y.S.2d 608 (Co. Ct, Orange County 1971), dismissing the petition in that case. See also, *Barbarito v. Shilling*, 111 A.D.2d 200, 1985, 489 N.Y.S.2d 86 (1985), where the Appellate Division, Second Department reversed the order of the Supreme Court trial part to which the summary proceeding had been transferred and which had directed payment for use and occupancy of the premises *pendente lite*.

6. The Court's order and decision neither cite legal authority nor give any reasons for *sua sponte* conditioning my stay pending appeal on my paying Mr. McFadden "rent" or "use and occupancy". Such is properly the basis of reargument and, upon the granting thereof, clarification by the Court.

7. Should the Court not grant an interim stay pending determination of this motion, I request a 30-day stay to enable me to consult with counsel skilled in landlord-tenant matters to advise me as to the legal consequences, if any, to my appellate rights of an order of this Court vacating its stay for failure to make the directed payments, resulting in execution of Judge Friia's July 21, 2008 warrant of removal, removing me from my home of nearly 21 years. Alternatively, I request that this Court's order expressly state that such removal is without prejudice to my appellate rights and that I retain the right of repossession upon my successful appeals.

8. No other applications for the above-specified interim stay relief have been previously made to this Court or any other judge.

* * *

9. The pertinent facts pertaining to Mr. McFadden's March 27, 1989 Petition, my occupancy of the subject apartment, and Judge Friia's July 21, 2008 warrant of removal are comprehensively set forth by my dispositive August 13, 2008 vacatur/dismissal motion, whose denial by this Court is not only *without reasons*, but *without* reciting ANY of the facts, law, or legal argument there presented. This includes the very fact that the motion sought dismissal of the Petition. Also, that it sought vacatur of the warrant of removal (Exhibit H).[4]

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[4] The Court's order and decision do not even mention the Petition, my requested dismissal thereof, or the warrant of removal.

10. As stated by my August 13, 2008 vacatur/dismissal motion (¶47), I conscientiously made payments to Mr. McFadden up until August "because on August 1, 2008, I was served by the White Plains Marshal with Judge Friia's warrant of removal, signed as submitted to her by Mr. McFadden's counsel." As detailed – and forming the basis for my requested vacatur relief – the warrant of removal "completely falsifies" the March 27, 1989 Petition by purporting that Mr. McFadden had therein verified that he "granted possession" of the subject apartment to me and my mother "under a written occupancy agreement incident to a contract...for sale...of...said premises". Such falsification, entitling me to vacatur of the warrant, *as a matter of law* [see fn. 2, *supra*], is *readily-verifiable* by comparing the warrant with the Petition and so-identified by ¶FOURTH of my July 30, 2008 order to show cause for a stay pending appeal under a heading "Fraud, Misrepresentation and other misconduct of an adverse party", which annexed both documents for comparison.

11. According to RPAPL §749, "The issuing of a warrant for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relation of landlord and tenant". Consequently, the written occupancy agreement that the warrant asserts as the basis of my occupancy is "cancel[led]" and I am relieved of any obligation to pay "use and occupancy".[5]

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[5] Certainly, I have no obligation to pay beyond the $1,000 monthly sum therein fixed. As detailed by my August 20, 2007 Verified Answer in *John McFadden v. Elena Sassower*, #1502/07, my previous payment to Mr. McFadden in excess of that $1,000.00 sum were made in my good faith belief which Mr. McFadden wrongfully induced that we would be ultimately consummating the Contract of Sale. Such is set forth, *inter alia*, by my Seventh Affirmative Defense ("Implied Contract, Detrimental Reliance & Fraud") and my Eighth Affirmative Defense ("Extortion & Malice") – and the basis for my Second Counterclaim therein for ("Fraud from April 2003 Onward & Extortion"). These are before the Court on my appeals for dismissal of Mr. McFadden's Petition therein and summary judgment on my Counterclaims [#2008-1428 WC and #2008-1433 WC]. *See* also fn. 7, *infra*. and my annexed Exhibit I.

12. Such is completely fair and equitable in light of the fraud which Mr. McFadden has perpetrated by his counsel, Leonard Sclafani, Esq., who drafted the warrant of removal and judgment of eviction, signed by Judge Friia, without change, on July 21, 2008. This, in addition to Mr. McFadden's fraud by his March 27, 1989 Petition, aided by his former counsel, Lehrman, Kronick, & Lehrman, who also prepared for him the legally-insufficient and deceitful November 25, 1991 summary judgment motion, granted by Judge Friia's July 3, 2008 decision & order. "Fraud vitiates everything which it touches and destroys the very thing which it was devised to support; the law does not temporize with trickery or duplicity.", *Angerosa v. The White Company*, 248 A.D. 425, 431; 290 N.Y.S. 204 (Appellate Division, 4th Dept. 1936), cited by the New York Court of Appeals in *Hadden v. Consolidated Edison Company of New York, Inc.,* 45 N.Y.2d 466, 470; 382 N.E.2d 1136, 1139 (1978).

13. The Court's direction of payment to Mr. McFadden is also inequitable for reasons relating directly to my subject July 30, 2008 order to show cause for a stay pending appeal.

14. As is obvious from the Court's standardized form for bringing orders to show cause for stays pending appeal, a stay pending appeal is essentially *pro forma* – and granted where an appellant has meritorious grounds for appeal. Such meritorious grounds are required to be set forth at ¶FOURTH of the form affidavit in support of the order to show cause, which is precisely what I did, laying out three meritorious grounds of appeal: "Lack of Jurisdiction"; "Fraud, Misrepresentation and other misconduct of an adverse party"; and "Denial of Constitutional Due Process", as to which, for each ground, I provided specifics.

15. With respect to the second ground, "Fraud, Misrepresentation and other misconduct of an adverse party", the specifics were as follows:

> **"A.** The warrant of removal, signed by Judge Friia on July 21, 2008 (Exhibit C-2) without change from the proposed warrant of removal of petitioner's counsel, completely falsifies the allegations of petitioner's March 27, 1989 Petition (Exhibit B). COMPARE.
>
> **B.** The warrant of removal, signed by Judge Friia on July 21, 2008 (Exhibit C-2) without change from the proposed warrant of removal of petitioner's counsel, materially alters the Petition's caption (Exhibit B), concealing respondents' jurisdictional objection based on improper service upon respondent Doris Sassower. COMPARE.
>
> **C:** The judgment of eviction, signed by Judge Friia on July 21, 2008 (Exhibit C-1), without change from the proposed judgment of eviction of petitioner's counsel, materially diverges from her July 3, 2008 decision & order (Exhibit A-2), including by (i) changing the caption; (ii) falsely making it appear that respondents filed no Answer to the Petition; (iii) falsely making it appear that Judge Friia has continuity with #651/89, from its beginning; and (iv) falsely making it appear that Judge Friia's knowledge that is the basis for her deciding petitioner's November 25, 1991 summary judgment motion derives from this proceeding, rather than the separate proceeding, *John McFadden v. Elena Sassower*, #1502/07. COMPARE.
>
> **D.** Petitioner's November 25, 1991 summary judgment motion was legally insufficient and deceitful in failing to annex his March 27, 1989 Petition (Exhibit B) and by materially misrepresenting its allegations and the status of the proceeding.
>
> **E.** Petitioner's March 27, 1989 Petition (Exhibit B) is a verifiable fraud, established as such by the October 30, 1987 occupancy agreement, contract of sale, and August 1988 complaint in the federal action, all part of the record herein – barring summary judgment to petitioner, *as a matter of law*." (¶FOURTH, underlining in the original).

16. These five specified appellate grounds were the most serious for Mr. McFadden, constituting a basis for referring him and his counsel to criminal authorities for fraud. Certainly, unless he could confront them, quite apart from my other substantial

appellate grounds, it was frivolous for him to oppose my order to show cause for a stay. At most, he could request that I continue to make monthly payments for use and occupancy of the apartment, although he would have to specify the legal basis therefore, since his March 27, 1989 Petition alleges a "month to month rental agreement" with no rent.

17. Nevertheless, and without confronting ANY of the above five particulars of "Fraud, Misrepresentation and other misconduct of an adverse party" – whose accuracy is undenied and undisputed by him, in addition to being *readily-verifiable* from documents before the Court – Mr. McFadden inundated the Court with a 38-page affidavit virtually all of it irrelevant, but designed to divert, mislead, and inflame it against me. As for my other substantial grounds of appeal, to the limited extent his affidavit confronted them, his arguments were "knowingly false, misleading,, and unsupported". This includes his arguments as to my second specification based on "Lack of Jurisdiction":

> **"B. There is no landlord-tenant relationship between the parties.** Contrary to petitioner's March 27, 1989 Petition purporting that respondents 'entered in possession [of the subject premises] under a month to month rental agreement' on no specified date, for no specified 'rent', with no copy of this purported 'rental agreement' annexed (Exhibit B), respondents 'entered in possession' of the subject premises under an October 30, 1987 written occupancy agreement, which was part of a contract of sale, denominating the parties as 'Sellers' and 'Purchasers' and expressly stating 'in no way do the parties intend to establish a landlord/tenant relationship'...." (bold and underlining in the original).[6]

Indeed, so extravagant was Mr. McFadden in purporting that I had "failed to demonstrate that [my] appeal has any merit" (¶123, underlining added) and that I had "failed

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[6] My detailed rebuttal of Mr. McFadden's deceit as to my entitlement to vacatur of the Petition for lack of subject matter jurisdiction, based on the express language of the Occupancy Agreement, is at ¶¶24-37 of my August 13, 2008 affidavit.

to provide any legitimate basis for this Court to grant a stay pending [my] appeal" (¶124, underlining added) that he made no request for any conditions for the granting of a stay pending appeal.[7]

18. As a consequence of Mr. McFadden's pervasively perjurious and deceitful 38-page opposing affidavit, I was to put me to the burden of demonstrating its fraudulence simply to protect my entitlement to a routinely-granted stay. I did so by my 23-page August 13, 2008 reply affidavit, further demonstrating that the appeal could be readily and rightfully obviated by the Court's determination of my simultaneously-made motion for an order:

> "(1) vacating Judge Friia's July 3, 2008 decision & order and her July 21, 2008 judgment of eviction and warrant of removal for 'fraud, misrepresentation, or other misconduct of an adverse party', pursuant to CPLR §5015(a)(3), and for 'lack of jurisdiction to render the judgment or order', pursuant to CPLR §5015(a)(4);
>
> (2) dismissing Petitioner JOHN McFADDEN's underlying March 27, 1989 Petition based on documentary evidence and lack of subject matter jurisdiction, pursuant to CPLR §§3211(a)(1) & (2) and CPLR §3212(b);

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[7] Mr. McFadden essentially buried his deceitful claims of my nonpayment: relegating them to his footnote 4 and ¶¶90-91. My response included the following:

> "46. Finally, materially false is Mr. McFadden's footnote 4 and ¶¶90-91, attempting to mislead the Court that I have not been paying him monthly occupancy for the apartment, which I have been 'enjoy[ing]...at [his] expense'. The facts as to my monthly occupancy payments to Mr. McFadden over these past 21 years – and their rapidly increased and unexplained amounts – are recited in my Seventh Affirmative Defense ('Implied Contract, Detrimental Reliance & Fraud'), as well as in my Eighth Affirmative Defense ('Extortion & Malice') and form the basis of my Second Counterclaim ('Fraud from April 2003 Onward & Extortion') for return of monies due me, and compensatory and punitive damages." (underlining added).

For the Court's convenience, my referred-to Seventh and Eighth Affirmative Defenses and Second Counterclaim from my August 20, 2007 Answer to Mr. McFadden's Petition in *John McFadden v. Elena Sassower* (#SP-1502/07), are annexed hereto as Exhibit I.

[NOTE: Mr. McFadden's affidavit opposing my order to show cause for a stay pending appeal AND his affidavit in opposition to my vacatur/dismissal motion each annex my full Answer (minus all its exhibits) as his Exhibit V.]

(3) granting such other and further relief as may be just and proper, including:

(a) referring Petitioner and his counsel, Leonard A. Sclafani, Esq., for disciplinary and criminal investigation, as likewise, Judge Friia, consistent with this Court's mandatory "Disciplinary Responsibilities" under §100.3(D) of the Chief Administrator's Rules Governing Judicial Conduct;

(b) imposing monetary sanctions and costs upon Petitioner and his counsel for litigation misconduct proscribed by 22 NYCRR §130-1.1 *et seq.*, and;

(c) assessing damages against Petitioner's counsel for deceit and collusion proscribed under Judiciary Law §487(1) as a misdemeanor and entitling Respondents to treble damages."

19. This Court's order and decision grant Mr. McFadden's August 20, 2008 order to show cause to enlarge his time to submit opposition to my August 13, 2008 vacatur/dismissal motion – an order to show cause I did not oppose, notwithstanding its material deceit, which I demonstrated (at ¶¶8-11). As stated by my September 2, 2008 responding affidavit:

"2. ...I do not oppose the relief sought [by the order to show cause] – especially as Mr. McFadden's proffered opposition now proves that he has NO defense to ANY of the facts set forth by my vacatur/dismissal motion, none of which he addresses and all of which he conceals....Indeed, nowhere in Mr. McFadden's 40-page opposing affidavit does he deny or dispute the factual basis for my vacatur/dismissal motion... Nor is there any affirmation from Mr. Sclafani, justifying his drafting of the judgment of eviction and warrant of removal, signed by Judge Friia without change on July 21, 2008 – the first items challenged by my motion.

...

5. ...the brazen deceit that, *from beginning to end*, pervades Mr. McFadden's opposition to my vacatur/dismissal motion, including by Mr. Sclafani's 16-page opposing memorandum of law, reinforces my entitlement to ALL the relief sought by my motion under applicable legal principles." (capitalization, italics, and underlining in the original).

20. This further unremitting perjury and deceit by Mr. McFadden again burdened me with demonstrating his fraud – and that of Mr. Sclafani – simply to protect my entitlement to a stay pending appeal. My September 2, 2008 response, also in reply to Mr. McFadden's opposition to my August 13, 2008 vacatur/dismissal motion, consisted of my 32-page affidavit and 24-page memorandum of law. These meticulously demonstrated my entitlement to additional monetary sanctions and costs pursuant to 22 NYCRR §130-1.1 against Mr. McFadden and Mr. Sclafani, over and beyond those sought by my August 13, 2008 dismissal/vacatur motion – relief I expressly sought.[8]

21. ALL THIS the Court's order and decision ignore, *without* findings of fact, conclusions of law, reasons – or even the slightest mention – in denying my August 13, 2008 vacatur/dismissal motion, *without any explanation*, and in *sua sponte* imposing, as a condition of the stay pending appeal:

> "Movant is directed to pay John McFadden any and all arrears in rent/ and or use and occupancy at the rate most recently payable within 10 days from the date of this order and to continue to pay use and occupancy at a like rate as the same become due."

22. Pursuant to 22 NYCRR §130-1.1, it is I who am entitled to recompense from Mr. McFadden, as well as from Mr. Sclafani. This, for the huge expenditures I was forced to incur to defend my right to a stay pending appeal, unnecessary but for their vehement opposition thereto, which – as I painstaking demonstrated with specific facts, record references, and law – was not just frivolous, but a "fraud on the Court", for which I provided the definition from Black's Law Dictionary:

> "A lawyer's or party's misconduct in a judicial proceeding so

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[8] See ¶5 of my September 2, 2008 affidavit and the first paragraph of my September 2, 2008 memorandum of law, as well as its page 22.

serious that it undermines or is intended to undermine the integrity of the proceeding." (my September 2, 2008 memorandum of law, p. 1)

23. Indeed, throughout August and into September, I was effectively deprived of fair use and enjoyment of the subject apartment because of Mr. McFadden's fraudulent opposition, requiring me to devote myself, essentially full-time, to exposing his litigation misconduct and "fraud on the Court".

24. By reason thereof, I was also forced me to give up my professional work and remuneration based thereon in order to devote myself to securing a stay pending appeal.

25. I have additionally been denied fair use and enjoyment, as well as the ability to earn money during September and to the present, by Mr. Sclafani's persistent, malicious litigation misconduct and fraud in White Plains City Court, where he has opposed the September 18, 2008 motion I made to compel its Clerk, Patricia Lupi, to furnish this Court with a proper "Clerk's Return on Appeal" so that, *inter alia*, this Court may have the information and documentation necessary to determine whether #SP-651/89 is a "closed" case and the facts and circumstances pertaining to her assigning it a new docket number, #SP-2008-1474. Such was the first of my "Lack of Jurisdiction" grounds of appeal presented by ¶FOURTH of my July 30, 2008 affidavit in support of my order to show cause for a stay pending appeal:

> **"Upon information and belief, #651/89 is closed and petitioner's March 27, 1989 Petition was dismissed for want of prosecution at some point during the past 15 years of dormancy.**
>
> For this reason, the White Plains City Court Clerk opened a new docket number for this 1989 proceeding, #SP-2008-1474. Such was done surreptitiously and without notice to the parties, so as to circumvent my legal entitlement to dismissal of petitioner's diametrically different Petition in his 2007 proceeding, *John McFadden v. Elena Sassower*, #1502/07, and summary judgment on my counterclaims therein." (bold in the original).

26. Mr. McFadden's deceitful response to this meritorious appellate ground was particularized at ¶¶17-23 of my August 13, 2008 affidavit in further support of my stay pending appeal and in support of my vacatur/dismissal motion. My ¶19 stated:

> "Clearly, the best evidence as to whether, during the 15 years of its dormancy, the White Plains City Court Clerk's Office closed #651/89 is its docket sheet and other records pertaining thereto and to the opening of #2008-1474. Mr. McFadden has provided none of these."

27. My August 13, 2008 affidavit thereupon annexed my July 30, 2008 and August 7, 2008 letters to Clerk Lupi (Exhibits B-1, B-2) reflecting my efforts to obtain the docket sheets and other records pertaining to #SP-651/89 and #SP-2008-1474. As I had received no response, I stated:

> "Should Clerk Lupi continue to fail to respond – which has been her custom, countenanced by Judge Friia – I will apply to this Court for a subpoena so that the dockets, records, and other information essential to establishing the status of this proceeding and the other related proceedings can be accurately determined and the jurisdictional issues with respect thereto resolved." (at ¶20).

28. I reiterated this at ¶¶44-45 of my September 2, 2008 affidavit in replying to Mr. McFadden's opposition to my August 13, 2008 vacatur/dismissal motion. I also annexed my further letters to Clerk Lupi, dated August 22, 2008 and August 28, 2008 (Exhibits G-2, G-3), to which there had been no response. My concluding words in ¶46 were:

> "Like the other issues forming the basis of my vacatur/dismissal motion, this Court's determination of the status of this proceeding may be readily-accomplished – and, if closed, should properly obviate the necessity of appeal."

29. My August 22, 2008 letter to Clerk Lupi (Exhibit G-2) particularized the deficiencies of her "Clerk's Return on Appeal" herein, as well as of her "Clerk's Return on Appeal" in *John McFadden v. Elena Sassower*, #SP-1502/07, with which #SP-651/89 was

purportedly consolidated. Because the position of this Court's Clerk's Office has been that it is my burden to secure Clerk Lupi's compliance with the requirements for a "Clerk's Return on Appeal" and its advice that I do so, in the first instance, by a motion in White Plains City Court, I made such motion on September 18, 2008[9] for the following relief:

> "(1) requiring that White Plains City Court Chief Clerk Patricia Lupi furnish the Appellate Term of the Supreme Court's Second Judicial Department with:
>
> (a) a proper 'Clerk's Return on Appeal' for [*John McFadden v. Doris L. Sassower and Elena Sassower*] docketed by the White Plains City Court Clerk's Office as #651/89 and #2008-1474;
>
> (b) the docket sheets for #651/89 and #2008-1474;
>
> (c) the microfilm/microfiche of #651/89 and the file of #2008-1474;
>
> (d) a proper 'Clerk's Return on Appeal' for #1502/07, *John McFadden v. Elena Sassower* – a case for which the Clerk's Office

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[9] The motion modified my August 22, 2008 letter's recitation of deficiencies of the "Clerk's Return on Appeal" for #SP-1502/07, stating:

> "7. I rest on the exposition in my aforesaid letters to Chief Clerk Lupi, with only the following modification as to the contents of the record of #1502/07 transmitted by the White Plains City Court Clerk's Office to the Appellate Term. The recitation in the second paragraph on page 5 of my August 22, 2008 letter [] was true and correct on August 13, 2008, but not on September 2, 2008.
>
> On September 2, 2008, I again requisitioned the record of #1502/07 at the Appellate Term and received the identical folder as I had on August 13, 2008. I thereupon inquired of Senior Court Clerk David Ryan whether there might be a further folder containing the record – which he succeeded in locating and which he then marked with a #1, placing a #2 on the other folder. This folder #1 contained documents that approximate the description in the second paragraph of page 5 of my August 22, 2008 letter [] as having been listed in the 'Papers Forwarded to Appellate Term' compiled by the White Plains City Court Clerk's Office [][fn2].
>
> 8. The successive paragraphs on pages 5 and 6 of my August 22, 2008 letter [] remain true and correct, *to wit*, that the file of #1502/07, as transmitted by the White Plains City Court Clerk's Office to the Appellate Term, omits 'any and all records of the related prior City Court proceedings examined by [Chief Clerk Lupi], pursuant to Judge Hansbury's October 11, 2007 decision & order in #1502/07 that 'the Court will consolidate any prior pending action with the instant proceeding...'" and contains "not a single document[], entry, or other record that would enable the Appellate Term to rule as to the status of the prior City Court proceedings, including #651/89."

purported #651/89 to be the 'original #' and which was purportedly consolidated with #1502/07 on the representation of Chief Clerk Lupi that it was the only prior related case still open;

(e) the docket sheet for #1502/07;

(f) the docket sheets, record entries, and microfiche/microfilm that Chief Clerk Lupi reviewed in representing to Judge Jo Ann Friia that there were no other open prior related cases to #1502/07, *to wit*, #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*) – and upon which Judge Friia expressly relied on June 30, 2008 at the court proceedings on #651/89-#2008-1474 and #1502/07;

(g) an explanation for her failure to respond to Respondent ELENA SASSOWER's hand-delivered August 22, 2008 and August 28, 2008 letters – and requiring her responses to those letters;

(2) referring Chief Clerk Lupi for disciplinary and criminal investigation and prosecution for official misconduct, obstruction of justice, and other crimes involving violation of her oath of office, including tampering with court records and false statements to Judge Friia as to the status of #651/89 and related cases and/or her complicity in Judge Friia's misrepresentations as to those cases".

30. Mr. Sclafani has opposed this motion on Mr. McFadden's behalf – notwithstanding its SOLE purpose is to ensure the integrity of the record on appeal and secure the proper functioning of the White Plains City Court Clerk's Office. Likewise the State Attorney General, who came in on behalf of the non-party Clerk Lupi. Each has engaged in fraud and deceit to defeat the motion, as fully demonstrated by my responding October 10, 2008 affidavit. I will be appealing to this Court if the motion is denied. However, I have also requested that in view of Judge Friia's absolute disqualification for pervasive actual bias and interest, divesting her of jurisdiction, that the motion be transferred to this Court.

31. These subsequent events pertaining to the "Clerk's Return on Appeal" form the basis for that branch of my motion herein as seeks renewal. In conjunction therewith, I now request that the Court reject the "Clerk's Return on Appeal" for #SP-651/89, as well as for #SP-1502/07, with which #SP-651/89 was allegedly consolidated, for the reasons particularized by my August 22, 2008 letter to Clerk Lupi and that it order Clerk Lupi: (a) to certify proper "Clerk's Returns on Appeal" for #SP-651/89, #SP-1502/07, and for #SP-2008-1474 – the additional lower court number which Clerk Lupi assigned to #SP-651/89, without notice or stated reason; (b) to furnish the docket sheets and microfilm/microfiche requested by my August 22, 2008 letter; and (c) to explain her non-response to my August 22, 2008 letter – and directing her response to the inquiries therein.

32. The deficiencies of the "Clerk's Return on Appeal" herein[10], of which this Court had notice by my August 22, 2008 letter to Clerk Lupi (Exhibit G-2), made it improper for the Court's order and decision to additionally condition my stay pending appeal on perfecting the appeal "on or before December 5, 2008" (Exhibit H).

33. Upon information and belief, the due date for perfecting appeals is dependent upon the filing of a proper "Clerk's Return on Appeal", constituting the record. Indeed, this Court's printed "INSTRUCTIONS FOR GRANTED ORDERS TO SHOW CAUSE (OSC)" contain a final section entitled "IF THERE IS NO STAY OR THE STAY HAS FALLEN", which reads:

> "Once the Appellate Term receives your <u>complete</u> record from the trial court you will be given 90 days to file a Brief and Note of Issue with the Appellate Term or your appeal will be dismissed. Forms may be obtained from the Clerk's Office." (underlining added).

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[10] I do not believe there is a "Clerk's Return on Appeal" for #SP-2008-1474. *See* my October 14, 2008 letter to Clerk Lupi (Exhibit L-1).

34. Consequently, upon the granting of reargument, the December 5, 2008 due date for perfecting the appeal herein, as well as the November 13, 2008 due date for the appeals in *John McFadden v. Elena Sassower*, #SP-1502/07, docketed in this Court as #2008-01428 WC and #2008-01433CC, should be deferred to a date no sooner than 45 days after this Court's receipt of proper "Clerk's Returns on Appeal", the docket sheets, microfilm/microfiche requested by my August 22, 2008 letter, along with Clerk Lupi's responses to that letter's questions about the record of these two purportedly "consolidated" cases.

35. My August 22, 2008 letter specified (at pp. 2-3) that among the deficiencies of the "Clerk's Return on Appeal" for #SP-651/89 is that neither Judge Friia's July 3, 2008 decision & order nor her July 21, 2008 judgment of eviction and warrant of removal are "entered". The consequence is that appeal therefrom premature. "As a general rule, an appeal cannot be taken before the appealable paper has been formally entered.", though "the defect is one that the appellate court can ignore", New York Practice, Siegel, §525, 4th edition (2005).

36. This Court has not ignored "the defect", but has, instead, affirmatively misrepresented the true facts. Thus, its order (Exhibit H) states that I appealed from "an ORDER of the CITY COURT OF WHITE PLAINS, WESTCHESTER COUNTY entered on JULY 3, 2008". (underlining added).

This is incorrect. My initial notice of appeal herein, dated July 23, 2008, does not state that the appealed-from decision & order had been entered. Nor does the decision & order, annexed to my notice of appeal, bear an entry stamp or Clerk's signature. Rather, it bears

only a July 3, 2008 date and time file stamp of the White Plains City Court Clerk's Office.

37. Additionally, the Court's order (Exhibit H) states that I made an "order to show cause returnable AUGUST 13, 2008 to STAY THE ENFORCEMENT OF THE FINAL JUDGMENT ENTERED JULY 21, 2008" (underlining added).

This is incorrect. My July 30, 2008 order to show cause for a stay pending appeal does not state that the judgment of eviction, which I annexed, had been entered. Nor does any entry stamp or Clerk's signature appear on it. Instead, the judgment of eviction bears only a date and time file stamp of July 11, 2008 at 10:12 a.m., which is apparently when the Clerk's Office received it from Mr. Sclafani for Judge Friia's signature.

38. Upon the granting of reargument, these errors, established by the record, must be corrected, as likewise the further and more potentially prejudicial error, identically recited by both the order and decision, *to wit*, that on the Court's own motion:

> "the appeal by Elena Sassower from the order of the City Court of White Plains, Westchester County (Jo Ann Friia, J.), dated July 3, 2008, is deemed from the final judgment of said court entered, pursuant to the July 3, 2008 order, on July 21, 2008 (see CPLR 5512[a]; Neuman v. Otto, 114 AD2d 791 [1985]" (Exhibit H).

Such is incorrect in numerous respects.

A. The judgment which Judge Friia signed on July 21, 2008 is not entered.

B. The implication that the judgment comports with Judge Friia's July 3, 2008 decision & order is materially false and prejudicial – and this implication is reinforced by citation to *Neuman v. Otto*, holding that where "the final judgment ministerially implements the order granting summary judgment...the appeal from the order should be deemed an appeal from the subsequent judgment in which the order was subsumed". Here, the final judgment does NOT "ministerially implement[]" the order. Indeed, my August 13, 2008

vacatur/dismissal motion is explicitly grounded on their material divergence.

C. The Court's *sua sponte* action in deeming my appeal from Judge Friia's July 3, 2008 decision & order to be from the July 21, 2008 judgment of eviction is superfluous and prejudicial as I filed an August 14, 2008 notice of appeal, not only encompassing both these documents, but reflecting the divergence between them by its language, *to wit*, that I was appealing from:

> "...the Judgment of Eviction and Warrant of Removal, signed by White Plains City Court Judge Jo Ann Friia on July 21, 2008, as well as...her July 3, 2008 Decision & Order on which they purport to be based." (Exhibit J-1, underlining added).

39. My August 14, 2008 notice of appeal takes precedence over the Court's *sua sponte* disposition pertaining to my July 23, 2008 notice of appeal. Yet, strangely, on October 3, 2008, the same day as I received this Court's undated order and decision (Exhibit H), I also received from its Clerk's Office the return of my August 14, 2008 notice of appeal. The coverletter dated September 29, 2008 and posted in an envelope stamped October 1, 2008 (Exhibit J-2), stated, in pertinent part:

> "Enclosed herewith please find what appears to be the original Notice of Appeal...
>
> The original Notice of Appeal must be filed in the trial court, where it will become part of the record on appeal. The trial court will then forward your entire record to us when it is complete."

40. Upon receipt, I immediately telephoned Adrienne Hairston, Senior Court Clerk in the Civil Section, whose name is on the coverletter. I told her: (a) that the returned notice of appeal was, in fact, the original; (2) that I had, in fact, filed it "in the trial court"[11]; and (3)

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[11] Simultaneously, I had also filed "in the trial court" an August 14, 2008 notice of appeal in #1502/07 (Exhibit K). Such was not returned to me by this Court's Clerk's Office and Ms. Hairston and Mr. Ryan each stated to me that the Court has no record of it. This is set forth by my annexed October

that the trial court, not I, had transmitted it to the Appellate Term. Thereafter, I spoke with Senior Court Clerk David Ryan, about the returned notice of appeal. He instructed me that the proper procedure for returning it to the Appellate Term is by refiling it with the White Plains City Court Clerk's Office, which I have now done (Exhibit L-1).

41. The fact that such mix-up has occurred indicates something awry with either the manner in which the White Plains City Court Clerk's Office is transmitting records or by which they are received by this Court's Clerk's Office.

42. My August 14, 2008 notice of appeal (Exhibit J-1), mistakenly returned to me by this Court's Clerk's Office (Exhibits J-2) and which I have now resubmitted to the White Plains City Court Clerk's Office for retransmittal to this Court (Exhibit L-1), is a further basis for renewal, if not reargument.

43. The need to clarify the record herein – which, as to #SP-651/89, contains not a single original document, except, possibly, Judge Friia's unentered July 3, 2008 decision & order and her unentered July 21, 2008 judgment of eviction and warrant of removal and is materially incomplete in the respects identified by my unresponded-to August 22, 2008 letter to Clerk Lupi, and lacks, I believe, a "Clerk's Return on Appeal" for #SP-2008-1474 – can be most expeditiously addressed by a conference pursuant to 22 NYCRR §730.2(a)[12]. By this

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14, 2008 letter to Clerk Lupi (Exhibit L-1).

[12] 22 NYCRR §730.2(a) of this Court's "Civil Appeals Management Program, provides as follows:

> "The chief clerk of the appellate terms, in appropriate cases, may issue a notice directing the attorneys for the parties and/or the parties themselves to attend a pre-argument conference before a designated Justice or other designated person, to consider the possibility of settlement, the limitation of the issues, and any other matters which the designated Justice or other person determines may aid in the disposition of the appeal or proceeding."

motion, I formally request such conference.

44. There are two further and interrelated respects in which the Court's order and decision (Exhibit H) are erroneous, calling for corrective action upon the granting of reargument.

First, the captioning on the order and decision is erroneous and inconsistent.

A. The captioning consolidates this Court's 2008-1427 WC, identified as "Lower Ct #SP-651/89; 'SP-20008-1471'", with this Court's 2008-1504 WC – for which, by contrast, no lower court numbers are identified.

This Court's Clerk's Office assigned the docket number 2008-1427 WC to my July 23, 2008 notice of appeal of Judge Friia's July 3, 2008 decision & order, annexed to my July 30, 2008 order to show cause for a stay pending appeal. However, the face of my order to show cause identified two lower court index numbers, SP-651/89 and SP-2008-1474, NOT #2008-1471, which is erroneous.

This Court's Clerk's Office assigned the docket number 2008-1504 WC to my mother's August 12, 2008 notice of appeal of Judge Friia's July 21, 2008 judgment of eviction and warrant of removal, annexed to her August 12, 2008 order to show cause for a stay pending appeal. Although the correct two lower court numbers appeared on my mother's typed supporting affidavit, her order to show cause mistakenly handwrote "('SP2008-1471')". This presumably is how the Court got that number, though placing it, improperly on the caption for my appeal.

B. The Court has reconfigured the caption of the lower court proceeding, set forth on my order to show cause, to reflect that I am the appellant and that Mr. McFadden and my mother are both respondents. However, it has inconsistently not reconfigured the caption of

the identical lower court proceeding, set forth on my mother's order to show cause. While I do not know the reason for this discrepancy, it may be because – as stated by the last sentence of the order and decision "We note that Doris L. Sassower has failed to file a notice of appeal".[13]

Second, this Court's order and decision are erroneous in "denying" my mother's order to show cause.

According to Mr. Ryan, the Court determined that my mother had not filed her notice of appeal in White Plains City Court, as required. This rendered it a nullity. As a consequence, this Court could not properly "deny" my mother's order to show cause for a stay – as its order and decision do, without explanation. Rather, the Court should have

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[13] My mother's time for filing her notice of appeal from Judge Friia's July 21, 2008 judgment of eviction and warrant of removal has not yet begun to run as neither has been "entered" and she has not been served with either document, as signed by Judge Friia, let alone with notice of entry. Pursuant to CPLR §5513(a), her time to appeal does not begin to run until "service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry. As stated by the Court of Appeals in *Johnson v. Anderson*, 15 N.Y.2d 925; 258 N.Y.S.2d 846 (1965):

> "The basic time limit to take an appeal is within 30 days after service upon the appellant of a copy of the judgment or order 'and written notice of its entry' (CPLR 5513 [a]). The single exception to the general rule is where the appellant himself 'has entered the judgment or order or served notice of its entry', in which event his appeal is limited to 30 days after 'he did either'."

See, also, the Court of Appeals' decision in *Dobess Realty Corp. v. City of New York*, 79 A.D.2d 348, 352; 436 N.Y.S.2d 296, 299 (1981):

> "The rule that service of a judgment or order on the appellant by the prevailing party is necessary to start the 30-day limitation period running, dates back at least 123 years. See *Fry v Bennett* (16 How Prac 402 [1858]) wherein it was stated at page 405 that the rule 'enables the [losing] party to see and apprehend his precise condition in reference to the subject. And on the other hand, it leaves the prevailing party at full liberty to set the thirty days a running when he pleases, or to acquiesce in or allow an unlimited time within which to appeal, if he choose to do so.'
>
> In *Kilmer v Hathorn* (78 NY 228 [1879]) the Court of Appeals explicitly confirmed that rule, which today is apparently such a long-accepted part of New York's appellate practice as to require no case citations by one leading commentator. (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR, C5513:2, p 138.)"

dismissed the order to show cause on jurisdictional grounds, either because she failed to file her annexed notice of appeal in White Plains City Court or because she had not complied with the personal service provision of the order to show cause.

45. My mother has told me that she was unaware of the Court's undated order and decision until I provided her with a copy on Tuesday, October 7, 2008. It would appear that notwithstanding the Court "denied" her order to show cause AND that she is a named party to my appeal, as reflected by the Court's designation of her as a "respondent" in its reformulated caption, the Court never sent her a copy. No listing of recipients appears on either the order or decision.

46. Based on the foregoing, it may well be wondered if any of the three seasoned justices whose names appear on the order and decision, including Presiding Justice McCabe who signed the order, read any of the motion papers. In the event they simply accepted a drafted order and decision from one of the Court's staff attorneys, this is to give notice that IMMEDIATE supervisory oversight is required, as the order and decision fall below ANY acceptable standard.

47. Certainly, the order and decision raise reasonable questions as to the Court's fairness and impartiality, as no disinterested tribunal, having respect for its own integrity and the integrity of the judicial process, could deny my dispositive August 13, 2008 vacatur/dismissal motion, *without reasons*, and reward Mr. McFadden's demonstrated fraud before THIS COURT, by *sua sponte* conditioning my stay pending appeal on payment to him. This would be evident had the Court made findings of fact and conclusions of law with respect to my vacatur/dismissal motion, which, upon the granting of reargument, it must do so as to dispel the appearance – and actuality – that it is denying me relief to which I am

entitled, *as a matter of law*.

48. If it is this Court's view that the exhaustive factual and legal presentation in my August 13, 2008 vacatur/dismissal motion does not, *as a matter of law*, entitle me to all my requested relief therein, it must, at very least, set forth its reasoning so that I might be guided accordingly on my appeals. As stated by the Appellate Division, First Department in *Nadle v. L.O. Realty Corp*, 286 AD2d 130, 735 NYS2d 1 (2001) – a case approvingly cited by the Appellate Division, Second Department in *Hartford Fire Insurance Co. v. Cheever Development Corp*, 289 A.D.2d 292; 734 N.Y.S.2d 598 (2001):

> "...we now take this opportunity to explain the basis for our insistence on the inclusion of the reasoning underlying a ruling. First of all, as the Third Department has had occasion to note:
>
> > Written memoranda assure the parties that the case was fully considered and resolved logically in accordance with the facts and law. Indeed, written memoranda may serve to convince a party that an appeal is unlikely to succeed or to assist this court when considering procedural and substantive issues when appealed.
>
> (*Dworesky v. Dworesky*, 152 A.D. 2d 895, 896.) In addition to the potential benefits to the litigants, the inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision making is reasoned rather than arbitrary."

ELENA RUTH SASSOWER

Sworn to before me this
15th day of October 2008

JOSEPH CASTELLANO
Notary Public, State of New York
No. 04CA5075933
Qualified in Westchester County
Commission Expires April 14, 20 11

Notary Public