

ELI VIGLIANO

Attorney at Law

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BY FAX AND ORDINARY MAIL

August 8, 1990

James W. Glatthaar, Esq.  
Bleakley Platt & Schmidt  
One North Lexington Avenue  
White Plains, N. Y. 10602-5056

RE: Sassower v. Field, 88 Civ. 5775 (GLG)

Dear Mr. Glatthaar:

We are in receipt of a faxed copy of your letter, dated July 31, 1990, which we asked you to fax to us because we had not received an answer to our hand-delivered letter, dated July 27, 1990. Your original letter, with the indicated enclosures, has still not been received.

As to the Assignment we requested, your negative response is similarly disappointing. You previously stated that you would provide such assignment if the defendants raised the standing objection -- the possibility of which we discussed fully well over a month ago. Your present repudiation of that statement is quite shocking and, in our opinion, evidences a lack of the "full cooperation" which you represented to Judge Goettel would be forthcoming from you and your client as a condition of his discontinuance. In addition, such repudiation does not lend credibility to your further statement in yesterday's telephone conversation with Ms. Sassower that you would belatedly provide such Assignment in the event His Honor does not agree with your analysis and were to dismiss based on the "lack of standing objection". You did not provide a satisfactory explanation for such incomprehensible position, and you further rejected any responsibility for all the additional legal costs for counsel fees on both sides, which would be needlessly incurred by testing the issue in such fashion.

Moreover, after pretending in last month's conversation that you had no proofs of service of summonses in the matter because allegedly your office had "nothing whatever" to do with the initial service, you finally sent us proofs of service as to only two (2) defendants. You admitted in yesterday's telephone conversation that not only had you, in fact, undertaken the responsibility for service, but you had reason to believe that the service by mail, which you stated was your standard modus

EX W-1

ELI VIGLIANO

James Glatthaar, Esq.

August 8, 1990

Page Two

operandi, might, as to certain defendants, be found to be an outright nullity. You also admitted that, nonetheless, you did nothing whatever to correct the potentially serious jurisdictional defect. It was your idea, as you expressed it, to "say nothing and do nothing about it"--and indeed, you not only failed to take corrective steps to address the matter, but never even alerted us to the vulnerability we faced. We believe your recommendation that we do nothing -- notwithstanding that we have now become aware of your faulty service -- would expose the Purchasers to personal liability.

We disagree with such "bury your head in the sand" approach. Frankly, we were shocked, to say the least, by this latest revelation of yours -- as well as your thinking on the matter. We are putting you on notice that we intend to hold you and your firm fully responsible for all costs, expenses and damages (including possible counsel fee sanctions) that may result by reason of such apparent, if not actual, professional malpractice.

We strongly suggest and urge that you have the managing partner of your firm review your decisions and consider a change in course which may, if not avoid -- at least mitigate -- the potentially substantial adverse consequences, both monetarily and reputation-wise, which may otherwise ensue to your office. Inasmuch as we have recently received Court leave to serve an Amended Complaint, this may be a propitious time to meet the improper service objection. Please refer this matter to your senior federal litigator so that we can have his immediate input.

Very truly yours,



DAVID B. COHEN

DBC/gd

cc: Peter Grishman, Esq.  
Elena Ruth Sassower

By Fax:  
9:00 a.m.

16 Lake Street, Apt. 2C  
White Plains, N.Y. 10606  
December 24, 1990

Mr. John McFadden  
472 Clearmeadow Drive  
East Meadow, New York 11554

Dear John:

We are surprised and disappointed that we have not heard from you since our telephone conversation of the 14th. We left off with you stating that you would be coming up to White Plains on Monday or Tuesday to see Jim Glatthaar and would be in touch with us as soon as you reviewed our summary judgment papers with him.

We have now received Mr. Glynn's papers in opposition to our motion, copies of which are enclosed. Just as we anticipated, he has, indeed, raised the objection as to our standing. It is, therefore, of critical importance that we have the requested assignment without further delay, since the motion has been set down for oral argument this Friday, December 28, 1990.

This will confirm that by said assignment you will surrender no claims which would permit you to obtain damages against the Defendants for counsel fees incurred by you in connection with the lawsuit.

We again request the "cooperation" promised by you and Mr. Glaathaar when you sought our consent to your discontinuance-- which was not supposed to impact adversely on your co-Plaintiffs. A copy of this letter and the enclosed motion papers are simultaneously herewith being telefaxed to Mr. Glaathaar.

Happy holidays,



ELENA RUTH SASSOWER

Enc.: Mr. Glynn's Opposing Affirmation

EX-2



FAX COVERSHEET:

TO: John McFadden  
FROM: Elena Ruth Sassower  
DATE: December 24, 1990  
FAX No.: 516-565-2127

*9 pages including  
this  
sheet*

You can reach me by telephone at (914) 997-1677.

My fax no. is 914-684-6554.

Happy Holiday.

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*****  
**** TRANSMISSION REPORT 1990-12-24 09:46 ****  
TEL. NO. ----- 5165652127  
NAME -----  
PAGE ----- 03  
TIME ----- 09:46  
RESULT ----- SUCCESSFUL TRANSMISSION  
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FAX COVERSHEET:

TO: James Glatthaar, Esq.  
FROM: Elena Ruth Sassower  
DATE: December 24, 1990  
FAX No.: 683-6956

*9 pages  
including  
this coversheet.*

We had left a message for you last week. We still await your return call. As you know, our number is 997-1677.

Happy Holiday.

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*      **** TRANSMISSION REPORT  1990-12-24 10:22  ****  
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*      .TEL. NO.  -----  6836956  
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*      .NAME  -----  
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*      .PAGE  -----  09  
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*      .TIME  -----  00H05'34"  
*  
*      .RESULT -----  G3 OK TRANSMISSION OK  
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*****
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16 Lake Street, Apt. 2C  
White Plains, N.Y. 10606  
February 1, 1991

Mr. John McFadden  
472 Clearmeadow Drive  
East Meadow, New York 11554

Dear John:

We were stunned that, notwithstanding your prior assurances of "cooperation" and assistance, you did not even give the courtesy of a response to my letter, dated December 24, 1990.

To save you the necessity of a trip to Westchester, on November 30, 1990, I photocopied and express-mailed relevant materials for your review and comments. Nevertheless, although you knew we had a pending motion for summary judgment--and were going to have to address ourselves to the issues raised therein--you failed to communicate with us. When we finally called and spoke with you by phone, you told us that you would be in touch with us after you conferred with Mr. Glatthaar. However, neither you nor Mr. Glatthaar thereafter contacted us. Indeed, our several telephone messages left at Mr. Glatthaar's office were not returned.

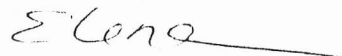
Your refusal to honor our request for an assignment to obviate the "standing objection" has resulted in the expenditure by us of several thousand dollars. We view such cost as completely needless, wholly unanticipated, and a serious breach of your commitment to us--as well as to the Court--which was a condition upon which your discontinuance was granted.

In all this time since your discontinuance, you failed to come forth with the substantive help you promised and which, moreover, you were under court order to provide.

At the very least, a gesture of goodwill and support at the appropriate opportunity would have been appreciated.

In the words of the Jewish sage, Hillel, "If not now, when"?

Sincerely,



Elena Ruth Sassower

Enclosure

EXC-3

Doris L. Sassower  
283 Soundview Ave  
White Plains, N.Y. 10606

Elena Sassower  
16 Lake Street  
White Plains, N.Y. 10603

Dear Doris and Elena:

As you well know, I withdrew from further prosecution from our case, not because of any loss of faith in it or in our right to relief, but only because my financial circumstances were such that I could not continue to incur the high cost of legal fees being run up by counsel in pursuing it.

Since I was told that no amendment of our Complaint would be required by reason of my discontinuance because Plaintiffs had pleaded jointly all causes of action, I was advised by James Glatthaar that no formal written assignment of my claims was necessary.

I understand that since then you have served an Amended Complaint, wherein you pleaded that my claims have devolved to you by operation of law. I am advised that that should be sufficient to withstand any contention by Defendants that you lack standing to continue my causes of action based on the Directors' breach of fiduciary duty. If, however, the Court should rule that a formal assignment is required, then, of course, I will be more than ready to sign one in a form acceptable to my attorney.

With all best wishes, for your ultimate success (long overdue) in this litigation and my compliments on your tenacious efforts to maintain the correctness of our position.

Sincerely yours,

John McFadden

**JEREMY D. MORLEY**

ATTORNEY AT LAW

350 FIFTH AVENUE

SUITE 4710

NEW YORK, NEW YORK 10118

TELEPHONE (212) 684-2210

TELECOPIER (212) 244-2815

March 7, 1991

James Glatthaar, Esq.  
Bleakley Platt & Schmidt  
One North Lexington Avenue  
White Plains, N.Y. 10601-1700

VIA TELECOPIER

Re: Sassower v. Field

Dear Jim:

I enclose the proposed assignment, previously prepared in this matter. Please call me if any changes are needed.

As we discussed, please fax it to Mr. McFadden for his signature and have him send it to you by Federal Express so that you will have it by tomorrow or Saturday. When you receive the originally-executed document, please call Mrs. Sassower or Mr. Vigliano and they will pick it up from your office. (Alternatively, I suggest that you tell John to Federal Express it direct to Mrs. Sassower).

Please call me if there are any questions or problems.

Sincerely,



Jeremy D. Morley

JDM:ehd  
Enclosure  
ltrjgel

EXC-4



ASSIGNMENT

WHEREAS, JOHN MCFADDEN, residing at 472 Clearmeadow Drive, East Meadow, New York 11554 ("Assignor") was a party Plaintiff in an action entitled Elena Ruth Sassower, et al v. Katherine M Field, et. al., 88 Civ. 5775 (GLG) presently pending in the United States District Court for the Southern District of New York in White Plains, New York ("the Action"); and

WHEREAS, the Assignor has withdrawn from the Action; and

WHEREAS, ELENA RUTH SASSOWER and DORIS L. SASSOWER, whose business address is 283 Soundview Avenue, White Plains, New York 10606 ("Assignees") were and are party Plaintiffs in this action; and

WHEREAS, the Assignees are desirous of continuing to prosecute the Action, including the causes of action contained therein which are predicated on the rights and privileges of the Assignor, and the Assignor is agreeable to the continued prosecution of said Causes of Action by the Assignees;

NOW, THEREFORE, in consideration of said premises and of the sum of Ten Dollars (\$10) paid by the Assignees to the Assignor, receipt of which is hereby acknowledged by the Assignor, the Assignor does hereby sell, transfer, assign, and set over to the Assignees, and to their successors and assigns all of the Assignor's rights, title and interest in and to all of the Causes of Action pleaded in the Complaint in the Action, but especially the Fifth, Sixth, Seventh, and Eighth Causes of Action contained therein;

AND the Assignor does hereby give the said Assignees, their successors and assigns, full power and authority, for their own use and benefit, but at their own cost and expense, to ask, demand, collect, receive, compound, and give acquittance for said Causes of Action, and bring, prosecute, and withdraw any suits or proceedings at law or in equity (including, but not limited to, the Action) against the Defendants named in the Action, and others, as fully, and to all intents and purposes, as the Assignor might or could do, if these presents were not made.

IN WITNESS WHEREOF, the Assignor has set his hand and seal this        day of                    , 1990, at                    New York.

\_\_\_\_\_  
JOHN MCFADDEN

STATE OF NEW YORK        )  
COUNTY OF                    )ss.:

On                    , 1990, before me personally came JOHN MCFADDEN, to me known and known to me to be the individual described in, and who executed the foregoing Assignment, and duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Sworn to before me  
this        day of                    , 1990