

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

12/16/73

-----X
JOHN MCFADDEN

Petitioner,

-against-

Responding Affidavit

DORIS L. SASSOWER and ELENA SASSOWER

Index No. 651/89

Respondents.
-----X

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

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am one of the above-named Respondents, appearing pro se, and have personal knowledge of all of the facts hereinafter set forth.

2. This Affidavit is without prejudice to a motion for recusal, change of venue and other relief, which Respondents will make at such time as these proceedings are no longer stayed pursuant to the prior direction of this Court.

3. Petitioner's instant motion for summary judgment is premature and violative of the stay heretofore granted by this Court, and hence will not at this time be addressed as to its substance. In the interest of expediency, this Affidavit is strictly limited to the factual question of whether Petitioner correctly contends that these proceedings are no longer subject to the stay because allegedly the related federal action has been concluded. Respondents reserve their right to address Petitioner's other material factual allegations--all of which are vigorously denied and disputed--by appropriate response at a

EX X

later date, should the instant motion not be dismissed in accordance with Respondents' position.

4. Mr. McFadden's supporting Affidavit, dated November 12, 1991, acknowledges that this Court previously stayed all proceedings herein until the conclusion of the federal action. It is a deliberate deception on the Court that Petitioner supports his position by annexing as exhibits to his motion documents not later than June 1991, including therein Mr. Lehrman's six-month-old representations designed to mislead the Court into believing that "the Federal case has been concluded, and...the appeal was never perfected"--statements that were not true then and are not true now.

5. Contrary to the aforesaid deceitful representations of Petitioner and his counsel, the federal action is far from concluded. Respondents have perfected their appeal (Exhibit "A")--the same being presently pending in the Second Circuit Court of Appeals. For the Court's information, it is not anticipated that there would be any decision on the federal appeal before the spring since argument will not be scheduled until the end of January at the earliest (Exhibit "B").

As part of that appeal, Plaintiffs are seeking review of the district court's denial of their motion for a new trial under Fed. R. Civ. Proc. 60(b)(3).

6. It should be emphasized that Petitioner and his counsel failed to make proper inquiry and investigation to verify their statements back in June and have conscious knowledge of the falsity of their statements as they pertain to the present time.

Not only did Mr. McFadden's counsel in the federal action, Bleakley, Platt & Schmitt, receive copies of two Notices of Appeal since the June 8, 1991 date of Mr. Lehrman's letter to this Court, that firm also received copies of our extensive Rule 60(3)(b) motion (Exhibit "C").

7. In addition, both Petitioner and Mr. Lehrman had actual knowledge of the true facts by personal conversations with me. Both my daughter and I spoke with Petitioner last month--prior to the filing of his instant motion--and specifically informed him that we were then working on our appeal papers and that they had to be filed by December 10, 1991. We particularly discussed with Petitioner that a major portion of the appeal concerned new trial relief based upon the documented "fraud, misrepresentation, and...other misconduct" of adverse counsel. We also told Mr. McFadden that we had just learned that the NAACP Legal Defense and Educational Fund was coming into the federal case as amicus curiae.

8. At that time, I invited Petitioner to have his attorney call me directly so that I could personally confirm for him the status of the federal action and provide him with documentation, since he stated that Mr. Lehrman was being pressured by Mr. Glynn, counsel to the Co-Op, to activate the City Court proceedings.

9. Nonetheless, Mr. Lehrman did not call. Instead, we received the instant motion papers presenting to this Court obsolete information and concealing any and all reference to our said conversation and to updated information showing the pendency

of the appeal.

10. In the circumstances, there can be no doubt that Petitioner's motion was intended to be harassing and burdensome-- and to unfairly prejudice Respondents in their ability even to put in opposing papers. Mr. McFadden was specifically apprised that Appellants' Brief and Appendix were due to be served in federal court on December 10, 1991 (Exhibits "A" and "B")--the precise day on which Mr. Lehrman, thereafter, made answering papers from Defendants due in this proceeding (Exhibit "D").

11. Indeed, on December 10, 1991, my daughter telephoned Mr. Lehrman, who allegedly was unavailable to take the call. I myself spoke with him later in the day. Although I explained to him that we were hard at work on the appeal Brief in the federal action and faced a deadline that very day, he said "I am not consenting to any adjournment" and hung up on me.

12. Since at that point Mr. Lehrman himself had actual knowledge from me that the federal action was not "concluded", he knew that his papers to this Court were untrue and misleading and that there was no basis for this motion. As an officer of the court, he had an immediate affirmative obligation to withdraw the motion so as to avoid needless burden on this Court, as well as on Respondents.

13. It should be noted that almost immediately after my conversation with Mr. Lehrman, I telephoned Mr. McFadden to relate to him what had occurred. I was informed by his secretary that he was not in but would be given my "most urgent" message. Mr. McFadden, however, never returned my call, nor did

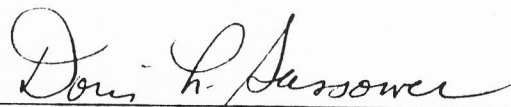
I hear anything further from Mr. Lehrman.

14. Petitioner's fraudulent and irresponsible motion requiring this otherwise needless response and court appearance by myself and my daughter meets the standards for sanctions under Rule 130.1-2. Indeed, it is not only factually unfounded and completely without merit--but knowingly so. Under the circumstances hereinabove described, there is no other conclusion possible but that it was "undertaken primarily...to harass or maliciously injure" Respondents herein. This view is without even considering the utter falsity, hypocrisy and self-serving nature of Petitioner's non-stay related factual allegations. The amicus participation of the NAACP Legal Defense and Educational Fund (Exhibit "E") is ample proof of the validity and merit of Respondents' positions in the federal action, which, in his characteristic opportunistic fashion, Mr. McFadden now seeks to disavow.

15. Petitioner's demonstrable abuse of legal process must not be countenanced. It is not his dishonesty alone that must be deterred and punished, but the extra burden on this Court imposed by this wholly unnecessary bad faith motion--particularly at a time when our whole judicial system is suffering severe crisis resulting from financial cutbacks. It is precisely because of thoroughly needless, bad-faith motions of this ilk, soaking up precious judicial time and resources, that our courts are in their present emergency situation.

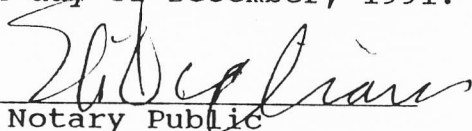
WHEREFORE, it is respectfully prayed that Petitioner's instant motion be dismissed by reason of the prior stay of all

proceedings herein, with monetary sanctions for bringing such frivolous, false and patently deceptive motion, pursuant to Sec. 130.1-2 of the Uniform Rules of the Trial Courts, and \$100 motion costs under CPLR 8106 and 8202.



DORIS L. SASSOWER

Sworn to before me this
16th day of December, 1991.


Notary Public

ELI VIGLIANO
Notary Public, State of New York
No. 4967383
Qualified in Westchester County
Commission Expires June 4, 1992

Doris L. Sassower

283 Soundview Av
White Plains NY 10606
914/997-1677

December 10, 1991

Elaine B. Goldsmith, Clerk
U.S. Court of Appeals
U.S. Courthouse
Foley Square, New York 10007

Re: Sassower v. Field et al.
Index #91-7891

Dear Ms. Goldsmith:

Transmitted herewith are the required eleven signed copies of Appellants' Brief and Appendix in the above matter, together with proofs of due service.

Kindly notify us as soon as there is a date scheduled for oral argument.

Very truly yours,

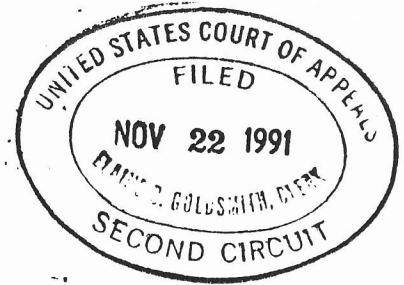


DORIS L. SASSOWER

Enclosures

* in 4 separate packages

EX A



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 22nd day of November, one thousand nine hundred and ninety-one.

SASSOWER

v.

Docket No.
91-7891

FIELD

The Appellant having moved the Court pro se for an extension of time to file briefs, and the Court having entered an order on November 22, 1991, extending the time to November 29, 1991, that said order is hereby corrected to extend the time to December 10, 1991.

Appellee's brief shall be due January 10, 1992, argument as early as the week of January 27, 1992.

This extension is final.

ELAINE B. GOLDSMITH, Clerk

by: Carolyn Clark Campbell
Carolyn Clark Campbell
Chief Deputy Clerk

EX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIN 17

-----X
ELENA RUTH SASSOWER and
DORIS L. SASSOWER,

Plaintiffs,

88 Civ. 5775 (GLG)

-against-

NOTICE OF APPEAL

KATHERINE M. FIELD, et al.,

Defendants.
-----X

S I R S :

PLEASE TAKE NOTICE that the Plaintiffs appeal to the Circuit Court of Appeals for the Second Circuit from the Judgment dismissing Plaintiffs' Complaint, entered March 22, 1991, from the Order of the U.S. District Court, dated May 16, 1991, denying Plaintiffs' Motion for Recusal and for a New Trial under Rule 59(d), from the Order, dated June 11, 1991 denying Reargument thereof, and from each and every part of said Judgment, including all intermediate and post-Judgment Orders of the District Court.

Dated: June 17, 1991
White Plains, New York

Yours, etc.

Elena Ruth Sassower
ELENA RUTH SASSOWER, Pro Se
ERS-7522

16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 997-8105

Doris L. Sassower
DORIS L. SASSOWER, Pro Se
DLS-7527
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

EXC

TO:

Lawrence Glynn, Esq.
Attorney for 16 Lake Street, Inc.
and Board of Directors
Two William Street
White Plains, New York 10601
(914) 761-0404

Steven Sonkin, Esq.
Marshall, Conway, and Wright, P.C.
Attorneys for A.M. DeSisto Management
116 John Street
New York, New York 10038
(212) 619-4444

Mariann Wetmore, Esq.
Diamond, Rutman & Costello, Esqs.
Attorneys for Roger Esposito, Esq.
291 Broadway
New York, N.Y. 10007
(212) 267-4731

Dennis Bernstein, Esq.
Apicella, Bernstein, & Milano
Attorneys for Hale Apartments
111 Lake Street
P.O. Box 269
Tuckahoe, New York 10707
(914) 779-9099

James Glatthaar, Esq.
Attorney for former Plaintiff,
John McFadden
Bleakley, Platt & Schmidt
One North Lexington Avenue
White Plains, New York 10601-1700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

-against-

KATHERINE M. FIELD, et al.,

Defendants.
-----x

S I R S:

PLEASE TAKE NOTICE that upon the Affirmation of Plaintiffs Pro Se, Elena Ruth Sassower and Doris L. Sassower, dated July 1, 1991, the exhibits annexed thereto, the accompanying Supplemental Opposing Memorandum of Law, the papers incorporated therein by reference, the Judgment of this Court entered March 22, 1991 dismissing this action, and all papers and proceedings heretofore filed and had herein, the undersigned will move this Court at the United States Courthouse at 101 East Post Road, White Plains, New York, at Courtroom 41, on Friday, July 19, 1991 at 10:00 a.m. in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order granting Plaintiffs' motion for sanctions to be imposed against Defendants and their counsel, as well as State Farm Insurance Company, under Civ. Rule 11, the inherent powers of this Court, and Rule 4(f) of the General Rules of this Court based on

88 Civ. 5775 (GLG)


NOTICE OF MOTION
FOR SANCTIONS,
COUNSEL FEES AND
FOR A NEW TRIAL
UNDER Civ. R. 60.

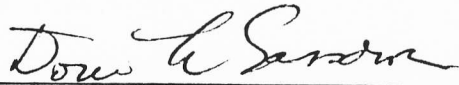
Oral Argument
Requested

violation of the Codes of Professional Responsibility of the American Bar Association and of the New York Bar Association; for an additional award of counsel fees against Lawrence Glynn, Esq., pursuant to 28 U.S.C. 1927; and for a New Trial pursuant to Civ. R. 60(b)(3) based on the misconduct of adverse counsel, and for such other, further and different relief as the Court may deem just and proper.

Answering papers, if any, to be served upon the undersigned within seven (7) days prior to the return date of this motion.

Dated: White Plains, New York
July 1, 1991


ELENA RUTH SASSOWER
Plaintiff Pro Se
16 Lake Street
White Plains, New York 10603
(914) 997-8105


DORIS L. SASSOWER
Plaintiff Pro Se
283 Soundview Avenue
White Plains, N.Y. 10606
(914) 997-1677

- 7527

TO: LAWRENCE GLYNN, Esq.
Attorney for Defendant 16 Lake Street
2 William Street
White Plains, New York 10601

DENNIS T. BERNSTEIN, Esq.
111 Lake Avenue
Tuckahoe, New York 10707

MARSHALL, CONWAY & WRIGHT
116 John Street
New York, New York 10039

DIAMOND, RUTMAN & COSTELLO
291 Broadway
New York, New York 10007

BLEAKLEY, PLATT & SCHMIDT
One North Lexington Avenue
P.O. Box 5056
White Plains, New York 10602-5056

PETER GRISHMAN, ESQ.
194 Deerfield Lane North
Pleasantville, New York 10570

ELI VIGLILANO, ESQ.
1250 Central Park Avenue
Yonkers, New York 10704

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
SEP 2 1991
USDC-WP-SDNY

-----x
ELENA RUTH SASSOWER and
DORIS L. SASSOWER,

Plaintiffs,

88 Civ. 5775 (GLG)

-against-

NOTICE OF APPEAL

KATHERINE M. FIELD, et al.,

Defendants.
-----x

S I R S :

PLEASE TAKE NOTICE that Plaintiffs appeal to the Circuit Court of Appeals for the Second Circuit from the Opinion/Order, dated August 12, 1991 and entered August 11, 1991, from the Judgment, dated August 13, 1991, entered August 13, 1991, and from the Memorandum Decision/Order, dated August 15, 1991 and entered August 16, 1991, and from each and every part thereof.

Dated: September 12, 1991
White Plains, New York

Yours, etc.

Elena Ruth Sassower Pro Se
ELENA RUTH SASSOWER, Pro Se
ERS-7522

16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 997-8105

Doris L. Sassower Pro Se
DORIS L. SASSOWER, Pro Se
DLS-7527

283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

TO:

State Farm Insurance Company
Douglas P. Joseph, Division Manager
1750 Route 23
Wayne, New Jersey 07477
(201) 305-7321

Lawrence Glynn, Esq.
Attorney for 16 Lake Street, Inc. and Board of Directors
Two William Street
White Plains, New York 10601
(914) 761-0404

Steven Sonkin, Esq.
Marshall, Conway, and Wright, P.C.
Attorneys for A.M. DeSisto Management
116 John Street
New York, New York 10038
(212) 619-4444

Mariann Wetmore, Esq.
Diamond, Rutman & Costello, Esqs.
Attorneys for Roger Esposito, Esq.
291 Broadway
New York, N.Y. 10007
(212) 267-4731

Dennis Bernstein, Esq.
Apicella, Bernstein, & Milano
Attorneys for Hale Apartments
111 Lake Street
P.O. Box 269
Tuckahoe, New York 10707
(914) 779-9099

James Glatthaar, Esq.
Bleakley, Platt & Schmidt
Attorneys for former Plaintiff John McFadden
One North Lexington Avenue
White Plains, New York 10601-1700
(914) 949-2700

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

-----X
JOHN McFADDEN

Plaintiff,

NOTICE OF MOTION

-against-

Index No: 651/89

DORIS L. SASSOWER and ELENA SASSOWER

Defendant.
-----X

PLEASE TAKE NOTICE, that pursuant to CPLR 2212, and upon the annexed affidavit of John McFadden sworn to on the 25 day of NOVEMBER, 1991, and the exhibits annexed thereto, the plaintiff herein shall move this court at a Special Term Part thereof on the 17TH day of December, 1991 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, at the Courthouse, located at 77 South Lexington Avenue, White Plains, NY in support of plaintiff's Notice of Motion for Summary Judgment and for such further and additional relief as this court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that demand is hereby made pursuant to CPLR 2214, that answering papers, if any, must be served upon the undersigned at least seven (7) days prior to the date upon which this motion is noticed to be heard.

Dated: White Plains, New York
November 25, 1991

Yours, etc.,

LEHRMAN, KRONICK & LEHRMAN
Attorneys for Plaintiff
199 Main Street
White Plains, New York 10601
(914) 761-4488

EX D



NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.

National Office

Suite 1600
99 Hudson Street
New York, N.Y. 10013 (212) 219-1900 Fax: (212) 226-7592

December 10, 1991

Hon. Elaine B. Goldsmith
Clerk, United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: Sassower v. Field: No. 91-7891

Dear Ms. Goldsmith:

Enclosed for filing please find the original and nine copies of the brief of the NAACP Legal Defense and Educational Fund, Inc., as amicus curiae in the above matter. A certificate of service on all parties is attached. All parties have consented to its filing pursuant to Rule 29, F.R. App. Proc. Enclosed are the letters of Ms. Sassower, Mr. Bernstein, and Mr. Sonkin. Mr. Glynn has consented orally and will endorse a copy of the brief with his consent.

Thank you for your consideration of this matter.

Very truly yours,

Charles Stephen Ralston
Counsel for Amicus Curiae

Contributions are
deductible for U.S.
income tax purposes.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is not part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had for over 30 years a separate Board, program, staff, office and budget.

Regional Offices

Suite 301
1275 K Street, NW
Washington, DC 20005
(202) 682-1300
Fax: (202) 682-1312

Suite 218
315 West Ninth Street
Los Angeles, CA 90015
(213) 624-2405
Fax: (213) 624-0075

91-7891

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ELENA RUTH SASSOWER and
DORIS L. SASSOWER,

Plaintiffs-Appellants

vs.

KATHERINE M. FIELD, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

**BRIEF OF THE NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC., AS
AMICUS CURIAE**

JULIUS L. CHAMBERS
CHARLES STEPHEN RALSTON
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street
Suite 1600
New York, N.Y. 10013
(212) 219-1900

Attorneys for Amicus Curiae

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

-----X
JOHN MCFADDEN

Petitioner,

-against-

Responding Affidavit

DORIS L. SASSOWER and ELENA SASSOWER

Index No. 651/89

Respondents.

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

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

1. I am one of the above-named Respondents and have personal knowledge of all of the facts set forth in the accompanying Affidavit of my mother, Doris L. Sassower, sworn to on December 16, 1991, which I incorporate herein by reference.

2. The aforesaid Affidavit is true and correct to my knowledge and I adopt and approve it as if it were my own.

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
16th day of December 1991

Eligiano

Notary Public
ELI VIGLIANO
Notary Public, State of New York
No. 4967383
Qualified in Westchester County
Commission Expires June 4, 1992