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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x

ALLAN KASSENOFF,
Plaintiff,
v.

CATHERINE KASSENOFF,
Defendant.

Index #:
58217/2019

-----x

(Via Skype)

June 26, 2020
Westchester County Courthouse
111 Dr. M.L.K., Jr. Boulevard
White Plains, New York 10601

BEFORE: HON. NANCY QUINN KOBA,
Supreme Court Justice

APPEARANCES:

DIMOPOULOS BRUGGEMANN, P.C.
Attorneys for Plaintiff
BY: GUS DIMOPOULOS, ESQ.
AND: MICHAEL CHIARAMONTE, ESQ.

HAROLD, SALANT, STRASSFIELD & SPIELBERG, ESQS.
Attorneys for Defendant
BY: JILL SPIELBERG, ESQ.
AND: ALYSON KURITZKY, ESQ.

CAROL MOST, ESQ.
Attorney for the Children

ALSO PRESENT:
HON. LEWIS J. LUBELL, Supreme Court Justice

Sandra Perrone, CSR
Senior Court Reporter

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HON. NANCY QUINN KOBA: Judge Lubell is going to be joining us at some point given the issues that were raised in the correspondence.

So Plaintiff, put your appearance on the record.

MR. DIMOPOULOS: For the Plaintiff, good afternoon, your Honor, Dimopoulos Bruggemann by Gus Dimopoulos and Michael Chiaramonte on behalf of the Plaintiff who is also joining us on this call.

MS. SPIELBERG: Jill Spielberg and Alyson Kuritzky; Harold, Salant, Strassfield & Spielberg on behalf of the Defendant who is also on the call, Judge. Good afternoon and hello again.

HON. NANCY QUINN KOBA: Good afternoon.

MS. MOST: Carol Most, attorney for the children. Good afternoon, your Honor.

HON. NANCY QUINN KOBA: Good afternoon. I didn't have a chance to read through all of this. I got distracted with other matters today, but I have read enough.

I did not read the response because it came too late for me to actually take a look at it and digest it. Let's take a look at the non-issue of the other parties because I want Judge Lubell present for

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that part of this conversation.

The New Rochelle house sale order, where are we with that?

MR. DIMOPOULOS: Your Honor, I transmitted the order a little later than I would have liked to last night to Ms. Spielberg. We had a brief conversation about it before the call.

As far as I'm concerned, well -- why don't I just allow her to discuss it.

MS. SPIELBERG: Judge, as you know better, just as all the rest of us, there have been a lot of issues going on in a bunch of cases, I think we are all a little backed up.

I got the agreement after ten o'clock, I think, last night. I didn't have a chance to look at it until this morning, but there is some issues just from a first glance.

For example, it sets forth what the equitable distribution will be. Again, we are escrowing the funds, I think that should be subject to whatever later --

HON. NANCY QUINN KOBA: I'm sorry, what did you say?

MS. SPIELBERG: It says that the proceeds --

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it doesn't provide for escrow. It provides for distribution on a 50/50 basis. I believed what the Court directed and certainly what we requested --

HON. NANCY QUINN KOBA: I think Judge Lubell is here. Let's start with the other issue then.

HON. LEWIS LUBELL: Good afternoon.

HON. NANCY QUINN KOBA: Mr. Dimopoulos, it's your correspondence, fill us in briefly.

MR. DIMOPOULOS: Yes, your Honor. Starting about June 19, my client received information that Ms. Kassenoff was making public posts on her Facebook account regarding the divorce. I included them in my correspondence so I'm not going to go over them again.

The issue that we have, specifically, what the Facebook posts are, Ms. Kassenoff has some 335 friends. Many of them are parents of the children, of the Kassenoff children. Many of them go to school in the Larchmont school with them. Some of them go to the French school with Charlotte. She also has a friend, the Mayor of Larchmont.

The one that really concerns us is that a gentleman by the name of Dan Alonso who is -- he is serving on the attorney Grievance Committee for the

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First Judicial Department, that is the same grievance committee that Ms. Kassenoff has filed a grievance against my client.

We don't know what that grievance says. From my preliminary research, the grievance committees have just started coming -- opening again and they are dealing with backlog, so we haven't -- we have never gotten the correspondence from them with a copy of the grievance and an opportunity to respond, but certainly, that raises serious concerns.

The issue is, look, we all know what the First Amendment says and we all know that unless we have the ability to show that we are unable to get a fair and impartial trial, that I can't ask this Court to put a gag order on Ms. Kassenoff. I understand that.

The problem is, what happened with respect to a certain group of people, FASNY is the French American School where Charlotte goes.

HON. LEWIS LUBELL: In Mamaroneck.

MR. DIMOPOULOS: Correct. A separate group of people, they titled their group FASNY Moms, took the chat regarding the Kassenoff divorce private, into a private chat area, so it wasn't available to

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the public.

What Ms. Kassenoff did not know is that one of Mr. Kassenoff's friend's wife was a member of that group.

Some of the really troubling information being shared there is one of the people has given a link to CPS and, basically, instructions to anyone to file a claim against Mr. Kassenoff.

This becomes especially concerning when in the past ninety days, there have been two -- I think -- maybe the first one goes back a little further, there have been two recent CPS reports against my client.

The first one was unfounded, yet again, and the second one is ongoing. One of the case workers just visited Mr. Kassenoff for the second time.

I'm having a call with Ms. Clemens of the County Attorney's office with a case worker probably next week to complete that.

We don't know the source of that report. We do know that it was not the school psychologist who received the correspondence from the child at Ms. Kassenoff's insistence because she has spoken to Mr. Kassenoff and said that it wasn't me.

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We believe that Ms. Kassenoff is encouraging these third parties to file CPS investigations and we believe that the risk is ongoing.

The other problem is that Mr. Kassenoff's name, details of the divorce and worst of all, his affiliation with Greenberg Traurig are being shared directly with the people in this group.

Suffice it to say, we have serious concerns. Suffice it to say that Ms. Kassenoff has made it known to everyone who has been on these calls that she, quote, unquote, works for Governor Cuomo.

I believe that we are in a position here where we need to have a directive from this Court that no further communications are posted on-line because frankly, more so than anything else, your Honor, these children's parents are the ones who are viewing this.

When life resumes, how is my client supposed to parent the children when people are being told that he has beaten his children and beaten his wife and that she has been a victim for many years of domestic violence, so I think this is serious.

This isn't just parents -- litigants acting a fool and making posts to infuriate their loved

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ones. This is a serious, serious concern as well as ethical concerns, legal concerns.

I wanted to bring it to the Court's attention and the Court will notice that I did not specifically ask for any relief because, quite frankly, I don't know what to ask for, so I look to the guidance of the Court.

MS. MOST: Your Honor, if I could also say that these things really do affect children, so every time a CPS report is made and children are interviewed, it affects them.

Having things being said about them in the community, things come back to children's ears and there is an effect on them as well.

I'm not sure what Mrs. Kassenoff is thinking, but this will have an effect on her children and it's not a good effect. It's very concerning.

MS. SPIELBERG: All right, Judge, if I may respond.

First of all, my client posted for the first time, and this divorce has been going on for more than a year or just about a year now, about -- and what she said was not inflammatory.

She did not make any of the accusations

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proffered by Mr. Dimopoulos. She didn't say she had been beaten. She said she had been living out of her car for a year, that was the post.

What other people did as a result of that and what friends of hers knew, while the result may be something that Mr. Kassenoff is not happy with or the result of other people's actions may be inappropriate, my client didn't --

HON. LEWIS LUBELL: Let me say one thing, because of my knowledge and my history of this case, if anybody participating in this conference is either taping it, recording it or preserving it in any manner, I will immediately find you in contempt of court without a hearing, without any fact finding and will incarcerate you for a minimum or even up to the maximum for a direct, knowing, willing and conscious violation of a directive of this Court.

You heard it on behalf of your client, Mr. Dimopoulos?

MR. DIMOPOULOS: I did, your Honor.

HON. NANCY QUINN KOBA: You heard it on behalf of your client, Ms. Spielberg?

MS. SPIELBERG: Yes, sir.

HON. LEWIS LUBELL: Go ahead.

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MS. SPIELBERG: The actions of third parties and the fact that they have decided to come to the aid of my client is in and of itself not a result of any of my client's doing or wrongdoing, Judge.

She is not the one who formed these groups of parents and it seems to me and as can be understood upon a review of these chats that Mr. Dimopoulos offered, many of them had pre-existing knowledge about what was going on in this family.

This is not a secret. This is a long history of domestic violence. My client has medical records and police records to that effect which will be offered at trial in just a couple of weeks and the one individual that Mr. Dimopoulos speaks of specifically is a close friend of my client's.

The fact that he happens to be on the Grievance Committee or associated with it is a coincidence, if nothing else.

If Mr. Kassenoff is concerned about people's perception of him and his behavior, that's something that he should think about.

My client has First Amendment rights that Mr. Dimopoulos acknowledges and if she posts something that engenders support or outrage on the

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part of third parties and then they take action,
that's on them.

All of the things that Mr. Dimopoulos
referred to, the posting of the CPS link, all of
those, that's done by third parties --

HON. LEWIS LUBELL: Jill, Jill, slow down.
We have a reporter that cannot take speed speaking.

MS. SPIELBERG: Those actions are on the part
of third parties and were not instigated by my
client.

The children themselves do not have Facebook
accounts so they will not see these posts.
Mr. Dimopoulos acknowledges that the FASNY Moms chat
is a private chat. Nothing stops my client from
speaking to her friends about what's going on in her
life and her experiences.

HON. NANCY QUINN KOBA: What about so many
moms and dads are prepared to make a human chain
across the driveway and hold up signs of support, how
will that impact the children?

MS. SPIELBERG: Judge, my client neither
asked for that nor encouraged it and to the extent
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HON. NANCY QUINN KOBA: It's in her e-mail

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and it's a quote from her.

MS. SPIELBERG: She is quoting other people
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HON. LEWIS LUBELL: Ms. Spielberg, please
don't testify.

MS. SPIELBERG: I am responding to --

HON. LEWIS LUBELL: You are speaking as if
you're Mrs. Kassenoff.

MS. SPIELBERG: I am referring to the post,
Judge.

HON. LEWIS LUBELL: You are only as
knowledgeable as your client makes you and if you
think that because she didn't instigate or promulgate
or propagate any of this, the end result may be
deemed by the Court to be defamatory and any other
civil claim that may be identified as a result of
certain actions and/or inactions, whether it's
misfeasance, nonfeasance, malfeasance or any feasance
you wish to caption it as.

These are two attorneys, that is absolutely,
absolutely rising to the level where it shocks the
conscience of the Court. I will and Judge Koba will
find that standard and apply that standard and people
are not going to be happy.

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MS. SPIELBERG: Judge --

HON. LEWIS LUBELL: I'm talking.

MS. SPIELBERG: I'm sorry, I thought you were finished.

HON. LEWIS LUBELL: You have less than a month for this case to come to trial and people's credibility, demeanor and actions are going to be interpreted by the Court and, quite frankly, if I was a litigant about to go in front of a judge where my future, both parental, financial, et cetera, was going to be considered, this is the last conference that I would want to be in. Go ahead.

MS. SPIELBERG: I was just going to say, to the extent that you feel that my representation of what my client has told me or that she has said or done is testimony, I am happy to have her speak to her own actions, Judge, but I can't respond to an inquiry from the Court about my client's posts without talking about what she did or did not do.

HON. LEWIS LUBELL: You were talking about the operation of her mind, Ms. Spielberg, and that's where I cautioned you. That's all.

MR. DIMOPOULOS: Only because we are on the record here, I need to make -- I trust that the

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Court has read the correspondence and I don't need to correct Ms. Spielberg as to what Ms. Kassenoff herself said or what she acknowledged, it doesn't matter. I think the Court understands.

The problem here is that she accuses my client of domestic violence. Domestic violence is a crime and it's a misdemeanor in some instances, it's a felony in other instances and that rises and raises certain very interesting and concerning wrinkles with respect to a libel or defamation claim, that's first of all.

Second of all, my client has never once been adjudicated to have ever touched his wife in any way, shape or form, inappropriate or illegal.

He is being accused of domestic violence based upon Ms. Kassenoff's unfounded claims and I need to make that just clear for the record, since it seems that she thinks that that fact is already acknowledged. It is not.

He has never been adjudicated, found, accused or even brought under investigation, so it is --

MS. SPIELBERG: Is there not a founded CPS report -- is there not an indicated CPS report against him?

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MR. DIMOPOULOS: Ms. Spielberg, perhaps you don't appreciate the difference between a founded CPS report and an actual crime or a misdemeanor.

Second of all --

MS. SPIELBERG: He has never been accused of domestic violence, I was correcting that.

MR. DIMOPOULOS: No, no --

HON. NANCY QUINN KOBA: Don't cross talk, there is one reporter.

MR. DIMOPOULOS: I specifically said he has been accused. His wife has accused him in every single conference we have ever had.

There is a difference between an accusation and a finding or a conviction, so we will deal with that standard, perhaps, in related civil litigation.

I really just want to stress to the Court that we need -- perhaps some thought here, but I can't have my client testify, be subject to cross examination with these types of claims being put out there and the threat of an angry mob coming to the Court.

I'm very concerned with how this is going to become, number one, a big circus at the courthouse on July 13.

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Number two, we all know that soon, we're going to be discussing an order regarding her moving into the New Rochelle home and we have comments from them saying that they are going to have this big party, so I think that we are stepping outside of her First Amendment rights and we are dealing with the best interest analysis which should allow me to make a motion to prohibit certain conduct.

It's not a free speech issue. It's an issue that her speech is actionable. It is inviting conduct of third parties. We all took constitutional law. Not all speech is protected free speech.

I wanted to bring it to the Court's attention, discuss it, conference it, but I have to protect my client here. I just want to make that very clear.

MS. SPIELBERG: You know, Judge, my client has been saying from the beginning of this case that there had been a history of domestic violence and I, like everybody else on this call, like to do my due diligence, even where I find my client credible.

In preparation, without putting my cards on the table, Judge or Judges, I should say, in preparation for the hearing, I have ordered medical

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records, I have done FOIL requests to obtain the documents which would either prove or disprove my client's allegations against Mr. Kassenoff.

I'm going back ten years when she got her first Order of Protection against him, albeit ex parte, and then filed for divorce, so I understand that Mr. Kassenoff has not been adjudicated by a Court with respect to these allegations.

However, there is an indicated CPS report which is an adjudication in and of itself and there have been other allegations.

If anybody is familiar with domestic violence, it is often the case that where there are children involved, victims of domestic violence do not go the distance with these allegations until they are ready. You will likely hear testimony on that on July 13.

HON. NANCY QUINN KOBA: Can I just interrupt for a second, I understand those allegations in a litigation.

My greater concern is really the impact of all this disclosure on the three children that are going to be the subject of the custody proceeding.

I have a concern that Mrs. Kassenoff is

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writing in an e-mail, gleefully as it appears, that people are going to take up and line up across the driveway.

How would that impact the children seeing that, with signs of support for her and implicitly against their father?

I am also concerned about how this child goes to the school that you wanted to go to when there is all this talk going on because children are not shielded and it's going to be in the environment. That's my concern.

What she wants to say about Mr. Kassenoff, she can say about Mr. Kassenoff and he can deal with not in the presence of the children and she can't do it by third parties in the presence of the children.

That's my concern. That's the issue that the judges would like to have addressed here.

HON. LEWIS LUBELL: I join in Judge Koba's express concern and, quite frankly, she has hit the nail right on the head and especially if this is going to trial by the 13th.

There is a difference between freedom of speech and actions or inactions which affect the best interests of the children and if you think that the

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children are insulated from all of this up to the present time, I think you are grossly, emphasis added, mistaken.

MS. MOST: Thank you, Judge, thank you. Judges, I'm not sure if we can have a ruling that the courtroom would be closed, but certainly, with what's being threatened here --

HON. LEWIS LUBELL: Let me say something, Ms. Most, if you think that the courtrooms, because we are doing bench trials, are open, you are definitely mistaken.

There will be room at the counsel table for counsel and there will be maybe room for three people in the gallery, maybe three, depending on the courtroom.

Judge Koba's courtroom, my courtroom, have all been pre-readied for bench trials and I will tell you, the public is not coming into this building, so believe me, it's not going to be like it was in January.

Judge Koba's courtroom with the gallery seating that she has will probably hold two people and the rest is at counsel table which will be already, I see, three attorneys.

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I don't know if you're bringing associates with you, but that's going to be a problem because you will not all fit at counsel table and observe the appropriate restrictions and distancing that is mandated by the Governor and safety regulations.

MS. MOST: So, your Honors, I would also like to add, it is mentioned here that this kind of conduct is based on Catherine's lawyer's advice and I surely hope that's not true.

MS. SPIELBERG: Hold on, Carol. Read that again carefully, because at first glance, that's what I thought it said which outraged me because I obviously have never spoken to any of these people nor would I ever.

Read it again. What it says is, if I may correct you, upon Catherine's lawyer's advice, I envision doing the following. I can only assume what she meant was, I will see if we can do that.

I can assure you, certainly, nobody from my office, I can't speak to anybody else, certainly, nobody from my office knew this was happening, why it was posted, communicated with any of these people and I can only speak for myself and Alyson can speak for herself, I never told anybody to make a human chain,

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you can be sure of that.

HON. NANCY QUINN KOBA: But you're not the only lawyer that she is consulting with on this case anymore.

MS. SPIELBERG: My understanding from conversations with my client, and I want to be careful because of Judge Lubell's admonition earlier, I want to be clear that any attorney that I know that's involved with Catherine, and I have heard from each and every one of the sanctuary of her family attorneys, none of them communicated with anybody nor did they condone that. I just want to be clear on that.

MR. DIMOPOULOS: Your Honors, let me just speak to the issue that we are discussing.

Obviously, my client has been fully briefed on the situation with Mr. Davidoff. He certainly doesn't want a circus in his divorce proceeding which is already costing him far more than anyone would like to spend, but here is the issue.

It has to be said. Mr. Davidoff has made many, many public statements concerning his wishes to file grievances against me, to have me disbarred, to have me arrested.

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2 He has personally contacted on my count
3 perhaps seven litigants on the opposite sides of my
4 cases. One of those cases which we made clear in her
5 deposition is a matter that also, luckily, for Judge
6 Koba is assigned to her, that case is Mancibo v.
7 Mancibo, where Mr. Mancibo filed an ill-advised
8 grievance against me and it was disclosed that not
9 only does Mr. Davidoff know him, but Mrs. Kassenoff
10 has also spoken to him, she testified at her
11 deposition.

12 There is a situation here and, Allan, I
13 apologize that this has happened in your case, but
14 there is a situation here where there is a litigant
15 in this courthouse that has made his intention of
16 trying to take me down known.

17 Then there is another situation here, in this
18 Kassenoff matter, where these comments make very
19 clear that Mrs. Kassenoff intends to take this matter
20 public, to take the Court's mistreatment of domestic
21 violence victims public. She has threatened Ms. Most
22 on a number of occasions.

23 We need to have Orders of Protection issued.
24 I don't think anybody from the bar or the bench would
25 condone any litigant doing such a thing, but when you

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2 have this level of public disclosure in one case
3 where a person from another case, Mr. Davidoff, who
4 has signed a retainer with Ms. Kassenoff to represent
5 her on a pro bono basis, according to Ms. Kassenoff's
6 testimony, we need to -- again, I think that there
7 should be orders, that there be no disclosures of any
8 matter in the Kassenoff matter to Mr. Davidoff or
9 anyone, any third party for that matter.

10 So I'm going to be seeking permission to file
11 for various Orders of Protection, both on behalf of
12 my client, myself and the children, with a carve-out
13 for access.

14 I'm going to filing an order seeking to
15 preclude Mr. Davidoff's involvement in the Kassenoff
16 matter whatsoever and I'm going to asking for some
17 serious relief and I just want to bring that to the
18 Court's attention.

19 MS. SPIELBERG: I just want to remind the
20 Court that in all of the posts and conversations and
21 chatter that's attached to Mr. Dimopoulos' letter,
22 nothing suggests any violence or physical attack or
23 danger or threat to anybody. I just want to make
24 that very clear.

25 In fact, what is suggested, albeit --

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whether appropriate or not, what is suggested are well known peaceful demonstration type tactics and I think that an Order of Protection is way overboard.

My client, to my knowledge, has never threatened Ms. Most physically. She feels that as though Ms. Most has inappropriately substituted judgment for the children in this matter. We have written letters to that effect.

With respect to any Orders of Protection, there is no reason to -- there is no basis for that and my client's access to her children is already supervised.

She hasn't tried to thwart that. She has been compliant despite the fact that Mr. Kassenoff has thwarted her ability to see her children --

HON. NANCY QUINN KOBA: Hold on a second, I have heard enough of the argument on this, so I'm going to grant Mr. Dimopoulos permission to file an Order to Show Cause for the Temporary Orders of Protection and the language that he is seeking as well as any other relief he thinks is necessary regarding potential demonstrations outside any of the marital residences where the children might be or where the mother might be staying, for the Court's

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consideration, and outline what relief he is seeking at that point.

Just to be clear, while that motion is pending, based upon what I have seen in these communications, even if Ms. Kassenoff is going to take the position that she did not tell the people to do this, clearly, she is implicitly okaying it and encouraging the behavior which is a direct negative impact on her children.

That needs to stop immediately, that needs to stop immediately now.

If you choose to litigate in the public forum, your relationship with your husband or your divorce, that's one thing.

To go to a school and involve parents that are your children's playmates in a school environment where it impacts that child's relationship with people in the school, with the parents of her friends is a hundred percent unacceptable behavior.

It is detrimental to the interest of this child who we have had multiple conversations about what's going on with this child, to the extent where she sends an e-mail in June about how she is so distressed that she allegedly wanted to kill herself.

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I don't know what has to happen here, but for both parents, stop engaging in behavior that is detrimental to these children.

MS. SPIELBERG: Judge, I just want to clarify that my client did not go to the school. The chat that was created was as a result of the post, so I just wanted that to be clear for the record.

All she did was post -- make one post on her Facebook page and then this group of FASNY Moms was created, not by my client.

HON. NANCY QUINN KOBA: Okay, it's very simple to me, it's like, excuse me, don't do this, I appreciate your support, but please don't post and do this because it is detrimental to my children.

HON. LEWIS LUBELL: Your clients -- you can't use free speech as a sword and something else as a shield or vice versa. Quite frankly, laying silent is not a defense.

If you're in litigation and you want to protect the best interests of your children, to have parents of the friends of your children involved, is truly offensive to this Court.

It violates all my rationale of decency. It's really disgusting and it's up to somebody to

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take an affirmative step and renounce and denounce things that involve the children. I'm done.

MS. KASSENOFF: Your Honor, may I speak? Your Honor, can you hear me?

HON. NANCY QUINN KOBA: Yes, Ms. Kassenoff.

MS. KASSENOFF: I would like to address this because I think this has been portrayed in a very dramatic way. Look, here is the situation.

After a year of living out of my car, literally, living out of my car, driving around to people's homes while they put me up on their couches, while they fed me food, while they put a roof over my head because I didn't have legal fees and I didn't have interim support, after a year of that, I posted a picture of the car, among other things. I was doing this because I needed help. I needed a place to stay.

One of the things that these mothers and other people in this community have done for me is cobble together a schedule, allowing me to stay in different places while I move from someone's basement, to someone's guest room, to someone's couch.

That was the purpose, not at all in any way

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to have some sort of detrimental effect on my children who would never in a million years see this Facebook page because they are too young to have access to Facebook.

So please, I don't want anyone to misconstrue the fact that my goals were to survive, to survive, not in any way to hurt my children. Please understand that.

MS. MOST: Your Honor, the problem is that parents talk in front of their spouses and children have ears that hear everything and those children come back and talk to other children. There is a detrimental effect on the children. They will hear about it.

MS. KASSENOFF: Ms. Most, with all due respect to you, this divorce has been talked about all over this community for a year.

There is nothing about what I posted that is somehow going to push this over the edge into some arena where suddenly it becomes, you know, on the front page of the Larchmont news.

This divorce has been an ongoing situation and if a parent doesn't have the discretion to refrain from that conversation in front of their own

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children, I don't know what to say about that parent, but that shouldn't happen.

HON. LEWIS LUBELL: Well, then neither of you or any of your friends should provide the ammunition for a continuation and a spreading of information.

It all starts somewhere and it stops here and Judge Koba, I am confident, will make whatever determination she deems appropriate.

Nobody is innocent in this particular matter and people are going to suffer significant consequences as a result of their actions and/or inactions. Judge Koba, I leave it to you.

HON. NANCY QUINN KOBA: Thank you, Judge.

HON. LEWIS LUBELL: Have a good weekend, everybody. See you on the 13th.

HON. NANCY QUINN KOBA: Mr. Dimopoulos, you can make the motion on that issue. Let's go back to the New Rochelle house.

MS. MOST: Judge, I'm going to be joining in with Mr. Dimopoulos on the Order to Show Cause for the TOP for the children on this issue.

HON. NANCY QUINN KOBA: Okay.

MS. MOST: Thank you.

HON. NANCY QUINN KOBA: Where were we on the

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house?

MS. SPIELBERG: Judge, with respect to the stipulation on the house, there are a couple of issues.

I believe you will likely recall because you have a very good memory, that I had originally asked for the proceeds to be escrowed. This stipulation calls for the distribution of the proceeds 50/50. Obviously, we're not agreeing to that. We don't know --

HON. NANCY QUINN KOBA: It was supposed to be escrowed because it might be available in the event that Mr. Kassenoff's business interest is evaluated, yes.

MS. SPIELBERG: So that's one issue with it.

Also, with respect to Page 5 of the order, it calls for a thousand dollar per day penalty on my client if she doesn't vacate within seven days prior to the closing.

It does not suggest that she will have exclusive use and occupancy which I think she should if Mr. Kassenoff has exclusive use and occupancy of the other residence.

It gives a list of nine things she has to do

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before there is any showing and while, obviously, she would always want to keep the house in show condition because she is just as motivated as anybody else to get this house sold, I think this goes a little above and beyond.

HON. NANCY QUINN KOBA: This has to stop on both sides. I thought it was very clear in the transcript about putting this house on the market.

I was very clear that the proceeds are not going to be equitably distributed, but will be held in escrow because there is still the issue of Mr. Kassenoff's business which apparently is never getting evaluated because it hasn't been evaluated yet. That should not result in this.

I did not say that Ms. Kassenoff would get a penalty of \$1,000 a day if she doesn't move out. To put in there that she needs to move out a week before the closing, I don't think is unreasonable. If she doesn't move out, then you contact me and I will decide what the remedy would be, if any.

Let's stop taking a resolved problem and turning it into another three conferences. The house goes on the market. Whatever the agreement is about the price and how it gets reduced and who your broker

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is, you agree upon.

Ms. Kassenoff needs to move out seven days before. If for some reason, she is there on the eighth day, then you contact the Court and I will deal with that issue.

She gets exclusive use and occupancy of the house subject to not being present when the people come in to look at the house. Mr. Kassenoff received exclusive use and occupancy of the house as a result of an order which is temporary.

Stop taking what is an agreed relatively simple concept and turning it into a mountain. Put the house on the market at a price that's agreed to or recommended by your broker with the standard provisions.

You sell it if it's up to five percent of the asking price, with periodic reductions of the price and agreed to by the broker, if it doesn't sell for the initial price that it is put on the market.

MS. SPIELBERG: May I just mention two things that I think will be an issue, back to the sale of the house.

I understand that the broker has offered two different theories. I mean, this is not rocket

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science.

She said either price it a little above and I expect to get an offer below, which would be someplace around what you want or price it super aggressive and have a bidding war.

My concern is, Judge, I don't know where Mr. Kassenoff stands on this. Both of their interests should be in getting as much money for this house as possible, but I see that, for example, it calls for the recommendation of a broker, but my understanding is the broker is saying, what do you guys want to do, price it high and get an offer below or price it aggressively and hope for a bidding war.

HON. NANCY QUINN KOBA: How about we just price it for what the market -- reasonable market value is and you might get a bidding war in either of them because the market is hot.

MR. DIMOPOULOS: Why don't we specifically discuss the issue and resolve it now. I think the specifics --

HON. NANCY QUINN KOBA: What are the numbers?

MR. DIMOPOULOS: The specifics are that I believe, Mr. Kassenoff, can you correct me where I am wrong, the broker says you could price it at 999 and

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hope for a bidding war or you could price it at \$1,035,000, I don't remember specifically.

MS. SPIELBERG: \$1,050,000, I think, Gus.

MR. DIMOPOULOS: What's your client's position, Jill?

MS. SPIELBERG: Her position is a million fifty. She said that they marketed it recently at 1.2 and got a lot of traffic. She doesn't want to put it lower than a million fifty.

MR. DIMOPOULOS: What do you feel?

MR. KASSENOFF: 1.2 marketing was six years ago. I don't care. The brokers were fine either way. I responded to them and I said, I don't care, whatever you think is fine. If Catherine wants 1,05, then let's do 1,05.

HON. NANCY QUINN KOBA: Then it is agreed.

MS. SPIELBERG: The other issue is that the broker has recommended staging of the house. I also note for the Court that it's going to be a completely empty house and my client is going to be living in it.

She wanted to -- we would have to deal with the staging issue and also, she wanted to ask for a couple of things from the marital residence, such as

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a pull-out couch so she could have a place to sit and to sleep. I don't think that's unreasonable.

There is a couple of other items. I told Mr. Dimopoulos I was going to send a letter. However, when I first brought this up, his answer was absolutely not, there will be nothing leaving the marital residence.

I think that that's unreasonable. I'm not asking to take the dining room set. I'm asking for a couple of things that my client, for the short time that she will be staying there, has a place to both sit and sleep.

MR. DIMOPOULOS: Okay, first of all, when you paraphrase what I say, Ms. Spielberg, just give the complete context.

MS. SPIELBERG: I have.

MR. DIMOPOULOS: Did she or did she not give a laundry list of things she wanted to take?

She now asked for a pull-out couch. Allan, are you okay with her taking a pull-out couch from your office?

MR. KASSENOFF: Let me just explain, this pull-out couch does not fit down the stairs. We had to hire someone to literally take it apart, carry it

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piece by piece up the stairs and then put it back together.

If Catherine wants to -- I'm not paying for it. If she wants to pay someone to take it apart, carry it down the stairs, transport it to New Rochelle and then put it back together, that's fine with me.

MR. DIMOPOULOS: Is there anything else she wants to take, Jill?

MS. SPIELBERG: There is a list, Judge, you want to do it on this conference or shall we do this off line?

HON. NANCY QUINN KOBA: What does he object to on the list?

MR. KASSENOFF: Your Honor, I haven't seen any list.

MS. SPIELBERG: He hasn't seen the list. It's not exhaustive. When I spoke with Mr. Dimopoulos about the order, just before the conference, I mentioned it to him. I said I will send it to him, I just need to pull it up.

MR. DIMOPOULOS: I'm sorry to trouble you with this, your Honor, but it just seems if we deal with all these issues now, we don't have to bother

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you later.

MS. SPIELBERG: Judge, for example, it's like pre-marital china, dishes to eat off of, some towels, some lamps, linens, that type of stuff. She has personal property still. Obviously, we will arrange for her to get that kind of stuff.

MR. DIMOPOULOS: Is there anything on your list other than what you have just said?

MS. SPIELBERG: I'm pulling it up, just give me a second.

MS. KASSENOFF: Your Honor, if I --

HON. NANCY QUINN KOBA: I'm sorry, go ahead, Ms. Kassenoff. Everybody still here, can you hear me?

MS. MOST: I can hear you, Judge.

MR. DIMOPOULOS: Yes, your Honor.

HON. NANCY QUINN KOBA: Did you send the list to him?

MS. SPIELBERG: Were you able to just hear her, Judge?

HON. NANCY QUINN KOBA: I have a conference at three, I'm going to push that back, we need to finish this. We need to go right to the point because I have to do the conference at 3:15.

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MS. SPIELBERG: Judge, were you able to hear what my client was saying just now?

HON. NANCY QUINN KOBA: No, I did not hear. I heard something about a rug.

MS. SPIELBERG: She is going to do it from here.

MS. KASSENOFF: The office where the Plaintiff is currently sitting is actually my home office and you can see my various placards on the wall and my books. I had it set up that way when I worked from home. I would like those materials and a carpet --

HON. NANCY QUINN KOBA: I can't hear that. Just send the list to him. If there is an issue, we can have a quick phone call, because I can't hear everybody on this.

MR. DIMOPOULOS: Getting back to the order, your Honor, a few blanks to list here, do we all agree to list -- sign a listing agreement on or before the close of business on Monday?

MS. SPIELBERG: I'm sorry, can you repeat that?

MR. DIMOPOULOS: Do we all agree to sign a listing agreement on or before the close of business

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on Monday?

MS. SPIELBERG: I am happy to work with you to get this agreement done by Monday, close of business, but my understanding is that this would be done first and then we'd list it.

MR. DIMOPOULOS: Jill, we are done with it. I took out the \$1,000 penalty provision. Everything else is completely standard.

MS. SPIELBERG: Did you put in the escrow provision that's now been --

MR. DIMOPOULOS: I want to address that with the Judge. I'm just going down the list, which is why can't we list it right away.

MS. SPIELBERG: Judge, it seems to me that it makes sense to put this order in place first because if there is a sale, we have to determine what to do with the proceeds.

MR. DIMOPOULOS: Let me just address one issue.

MS. SPIELBERG: And the price.

MR. DIMOPOULOS: Number one, the tenant has notified Mr. Kassenoff that she would like to stay there, instead of moving out July 15, to move out August 1. She is willing to pay an additional half

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month of rent. That's one issue that's in here that I haven't heard an objection to, but we should deal with.

The second issue --

HON. NANCY QUINN KOBA: Let's just stop. Is there an objection to her staying until the end of the month?

MR. DIMOPOULOS: She is going to pay \$3,750 and it will be applied to the mortgage, real estate and taxes.

MS. KASSENOFF: Here is the issue, I have a trial as you know on July 13. I do not want to be in a position where I'm having to find a place to live while I am also dealing with a trial. It's a lot of stress.

I would like to move in, as planned, on July 15. I mean, I think my well-being in this case has to matter at least a little bit and I would ask that I be permitted to move in on the 15th as scheduled.

MR. DIMOPOULOS: I don't think we could tell the tenant no, your Honor. We have never served her with a thirty-day notice. We have no legal grounds to ask her to leave. She said I am moving out on August 1. I actually don't think we are permitted to

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say no legally.

MS. KASSENOFF: The lease ends on July 15,
that is the end of the lease, so this would be --

HON. NANCY QUINN KOBA: Then you would have
to bring an eviction proceeding and you can't bring
an eviction proceeding right now.

MS. KASSENOFF: Judge, I have a very good
relationship with the tenant. It's not going to
require an eviction proceeding. She will leave
willingly on July 15, I'm a hundred percent sure.

MR. DIMOPOULOS: Why should we lose the
\$3,750?

MS. KASSENOFF: Because I need a place to
live, Mr. Dimopoulos. Is your client prepared to put
me up in a hotel for two weeks?

MR. KASSENOFF: Catherine, you can pay the
\$3,750. I'm not here to -- your Honor, the whole
point Ms. Spielberg raised was we couldn't find a
month to month tenant.

There is a tenant who wants to stay another
two weeks. She has been a great tenant. I want to
do her the courtesy and, frankly, I need the money.
No one is helping me pay for these mortgages, so even
two extra weeks would be extremely helpful for me.

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MS. KASSENOFF: I'm not aware of any legal authority that precludes me from moving into my home when my tenant vacates. I need somewhere to live.

This is inhuman. Please, have some mercy on the situation. I can't keep doing this and fighting now a trial against very aggressive lawyers and having nowhere to live and worrying about it all.

HON. NANCY QUINN KOBA: Ms. Kassenoff, you can just stop because you could have rented a place to live before. You chose not to do that. That's your choice, don't talk to me about mercy in the Court. You had an opportunity. You had the funds. You could have found a place to live.

That being said, she doesn't have to consent to keep the tenant there. If the tenant moves out the 15th, she can move in. If the tenant chooses to stay to the end of the month, then that's the way it goes. You can't evict her, so --

MR. DIMOPOULOS: I understand. Your Honor, I also would just like the opportunity to -- permission, really, to submit just a one-page legal point of legal authority of why the funds should not be escrowed.

The reason being, there is absolutely no

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dispute as to title of the premises. It's 50/50 and she would be getting half of the proceeds. When there is an agreement, I think it is on that that it should be dispersed.

HON. NANCY QUINN KOBA: Somebody tell me what the status is of evaluating Mr. Kassenoff's interest in his firm?

MR. DIMOPOULOS: I absolutely will, your Honor. Ms. Zeiderman in December was authorized and directed by your Honor to serve a subpoena on Greenberg Traurig who made clear that they were not going to provide any documents as is their policy, that 80 percent, 90 percent of the documents that Mr. DeMarco asked for are not in Mr. Kassenoff's control, firm billing records, the shareholder's agreement. Greenberg Traurig has told Mr. DeMarco that they will not give it to him. That was all on the record.

MS. SPIELBERG: Without a subpoena.

MR. DIMOPOULOS: Without a subpoena, right.
Ms. Zeiderman --

HON. NANCY QUINN KOBA: So I authorized the subpoena to be served.

MR. DIMOPOULOS: In December. Do you know

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when the subpoena was served?

MS. SPIELBERG: Hold on, hold on.

MR. DIMOPOULOS: Ten days ago.

MS. SPIELBERG: Judge --

HON. NANCY QUINN KOBA: There was a stay of everything, so you can't include -- first of all, I wasn't here in December, so I don't know -- I know I did it in February.

MR. DIMOPOULOS: Sorry, sorry.

HON. NANCY QUINN KOBA: Then there was a pandemic and everything was stopped, so I don't think you can criticize --

MR. DIMOPOULOS: I'm not criticizing --

HON. NANCY QUINN KOBA: -- what happened during the pandemic. Was the subpoena served?

MR. DIMOPOULOS: Yes.

MS. SPIELBERG: The subpoena was sent out for service during the pandemic. Our process servers told us, other than Orders of Protection, no service until whatever day in June.

That day, it went to be served. We have been trying to locate the affidavit of service from the process server, but we communicated with them and said okay, today is the day, have at it and we have

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e-mails to that.

HON. NANCY QUINN KOBA: When is it returnable?

MS. SPIELBERG: She is going to pull it up, just a second.

MR. DIMOPOULOS: While they do that, your Honor, I'm not indicating that somebody didn't move post haste. I am just saying this delay is not my client's fault. He has no control.

HON. NANCY QUINN KOBA: I know it's not his fault, that's why we authorized the subpoenas on Greenberg Traurig.

MR. DIMOPOULOS: We had a conference call with Mr. DeMarco last week where he asked us to provide Mr. Kassenoff's 2014 to 2018 tax returns, which incidentally are joint tax returns, so anybody could provide them, and his 2014 to 2019 W-2s and his paystubs from 2014 to 2019.

I told Mr. DeMarco, I would get him the tax returns. The problem with the W-2s and paystubs, a lot of that stuff is at Mr. Kassenoff's office. He's going to do everything he can to get them to him, but those are the --

HON. NANCY QUINN KOBA: But aren't those part

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of the tax returns, the W-2s?

MR. DIMOPOULOS: For the most part, yes, they are. I think it would behoove Ms. Spielberg to also see what she has, if she can get them quickly, but I certainly will help.

The paystubs might be a problem, but everything else, Greenberg Traurig has already told us, you're not authorized to give unless we give it. That's why this is at a standstill.

MS. SPIELBERG: Judge, I have more information. We just located the affidavit of service. It says that it was served on June 15 on Mr. Kaminsky and I believe it gives twenty days, so we have another week or so.

HON. NANCY QUINN KOBA: Well, have you called them to find out if they are going to comply with it, if they have any objections to it, have they contacted you at all?

MS. SPIELBERG: I have not received any point of contact from them. The issue is, obviously, it is served at the office.

We have been getting a lot of these subpoenas, responses saying that there is nobody at the office. We will follow up and make sure that

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they actually have it.

The other issue, Judge, is that -- it wasn't as if Mr. Dimopoulos just asked for those documents. He asked for a bunch of other documents, which I went through in detail in Mr. Kassenoff's deposition that he does, in fact, have access to.

So, for example, he wanted billing records. He wanted to know how many hours were billed by him for certain years and those are things that all he would have to do is go on his time system and print those out, but Mr. Dimopoulos has taken the position that he won't do that.

MR. DIMOPOULOS: Stop, stop.

HON. NANCY QUINN KOBA: I have to go to my other conference now.

MR. DIMOPOULOS: Your Honor, can we -- I'm sorry, I have no confidence that we're going to get any of these things done with the real estate.

Can we please have a brief conference on Monday, even if it's just on the order. I don't want to let this linger. The real estate market has never been better.

HON. NANCY QUINN KOBA: I know.

MS. SPIELBERG: Can we do attorneys only,

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PROCEEDINGS

maybe?

HON. NANCY QUINN KOBA: The two cases that you two have with me, it seems to be monopolizing my entire calendar.

MS. SPIELBERG: Mine too, Judge.

HON. NANCY QUINN KOBA: I have to give my court reporter a break before we go on to the next case. She has been working hard.

Let's put this over, let's continue this discussion on -- I settled a case, actually, so I'm now available on Monday at two o'clock, that case got settled. Does that work for everybody?

MR. DIMOPOULOS: Yes, your Honor.

MS. SPIELBERG: Monday at two, I am available.

MS. MOST: Maybe you don't need me on this part of it.

HON. NANCY QUINN KOBA: We're going to talk about the real estate issue.

MS. MOST: So I'm not going to be on that, your Honor, because I have one in Nassau County.

HON. NANCY QUINN KOBA: It is not going to be about the children, it's going to be about real estate, Davidoff and the fees, so you don't need to

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be there for that.

MS. MOST: Thank you, Judge.

HON. NANCY QUINN KOBA: We're going to continue on Monday at two o'clock. Do not add any additional issues to this already.

MS. SPIELBERG: Judge, then, I just need to put something on the record. I meant to bring it up the last time, and then we said we would do it today, I just want to put on your radar so we can do it on Monday, which is that if you recall, a few conferences ago, Ms. Most relayed to the Court that Dr. Adler wanted to have communication with the parents.

Nothing has happened and I think in light of what's been going on with Charlotte, I think that that should be happen in whatever form the Court deems appropriate.

She has had four sessions with Charlotte since the e-mail and I think that if the therapist herself is asking to have communication with the parents, nobody should be standing in the way of that, but it hasn't happened.

HON. NANCY QUINN KOBA: My understanding from the order is that they can have communications with

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Ms. Adler, but they have to be on the same phone call.

MS. SPIELBERG: She asked for it individually, correct, Carol?

MS. MOST: She just wanted to hear from the parents. She didn't --

HON. NANCY QUINN KOBA: They should schedule a joint telephone conference with her. Of course, she needs to get input from them and feedback and they can talk to her. They just can't do it without the other party being present.

MS. SPIELBERG: I misheard Ms. Most, I thought she said it would be --

HON. NANCY QUINN KOBA: If she tells them during that phone call that she wants that, then we will deal with the issue. They can absolutely speak to any of the therapists of the children.

Is Ally still going to hers?

MS. MOST: Yes, yes.

HON. NANCY QUINN KOBA: How is that going so far?

MS. MOST: I think it's going well. When I spoke to her two weeks ago, she did think that she would like to have a further evaluation, but I asked

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her to see her a couple of times further and then we would all discuss it.

HON. NANCY QUINN KOBA: We will discuss those issues, limited, on Monday, so we can finish them, okay.

MS. SPIELBERG: Judge, my client hasn't been informed or consulted at all with respect to summer activities. I have written to Mr. Dimopoulos. He says his plan is no duty to co-parent which I think is in derogation of your order.

HON. NANCY QUINN KOBA: Add that to the list on Monday.

MS. SPIELBERG: Thank you, Judge.

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THIS IS TO CERTIFY THAT THE FOREGOING IS
A TRUE AND ACCURATE TRANSCRIPTION OF THE
ORIGINAL STENOGRAPHIC RECORD.

Sandra Perrone

SANDRA PERRONE, CSR

Senior Court Reporter