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JOHN MCFADDEN,

Petitioner (Overtenant),

CALENDAR PROCEEDINGS

Docket No.SP 1502-07

-against-

ELENA SASSOWER,

Respondent (Subtenant).

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City Court of White Plains  
White Plains, New York  
September 6, 2007

B E F O R E:

HON. JO ANN FRIIA  
CITY COURT JUDGE OF WHITE PLAINS

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

LEONARD A. SCLAFANI, ESQ.  
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ELENA SASSOWER  
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Eleanor L. Scarpino  
Official Court Reporter

EXBB

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2 THE COURT: All right. Very good. We have  
3 another summary proceeding, the case of John McFadden  
4 against Elena Sassower, our docket SP-1502-07.

5 This, I'm advised, is on for submission of  
6 papers on a motion. Is that accurate?

7 MR. SCLAFANI: Leonard A. Sclafani of the  
8 law firm of Leonard A. Sclafani, 18 East 41st Street,  
9 Suite 1500, New York, New York 10017.

10 MS. SASSOWER: Elena Sassower, 16 Lake Street,  
11 apartment 2C, White Plains, New York, subject premises.

12 THE COURT: All right. Thank you. So with  
13 that, let me confirm, paperwork served and filed. Our  
14 policy, again, if there is any final or additional  
15 paperwork to submit, we'll have it clocked by our clerk.  
16 This will then go, as you know, to our court attorney  
17 for review and then the Judge for signature.

18 MR. SCLAFANI: Thank you.

19 MS. SASSOWER: May I be heard, your Honor?

20 THE COURT: Sure.

21 MS. SASSOWER: I have just this morning,  
22 shortly before this proceeding commenced before your  
23 Honor, received from Mr. Sclafani what is entitled  
24 "Petitioner's Reply in Opposition to Cross Motion." He  
25 opposes the cross motion. I would like a right of reply

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2 to his submission because it is materially false and  
3 misleading and I request that opportunity.

4 THE COURT: All right. There is no right to a  
5 reply here, but let me inquire. Counsel, do you have  
6 any objection?

7 MR. SCLAFANI: We object. We were served at  
8 four o'clock last night with the papers to which we  
9 responded and we faxed -- Ms. Sassower isn't totally  
10 honest when she tells you she got served this morning,  
11 she was served last night, ten o'clock, five hours  
12 after --

13 THE COURT: I don't mean to interrupt you, but  
14 the question is, if the Court grants a week for reply  
15 papers, do you have any objection to that?

16 MR. SCLAFANI: I do have an objection, Judge,  
17 and the transcript from the last proceeding would be  
18 helpful. The history of these proceedings to date are  
19 in summary as follows:

20 They were originally on to be heard on July  
21 16. The petitioner -- the respondent had some 18 days  
22 to respond from when she was -- I shouldn't say that, I  
23 can't remember, but, she had sufficient time to respond.  
24 She came to Court. She had papers. She said they were  
25 a motion. They turned out to be an answer, but she

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2 wanted time to serve that, to edit that.

3 We pointed out to the Judge that she had yet  
4 to pay use and occupancy for June and July. Those  
5 months were rejected. The checks were returned. Ms.  
6 Sassower objected, said that they weren't returned --

7 THE COURT: Counsel, this is the subject of a  
8 motion. I don't want to hear this. Let me just --

9 MR. SCLAFANI: When last we were in court the  
10 Judge made the extension that the respondent got to  
11 submit the papers to me at four o'clock last night  
12 conditioned on her payment or her proof that she had  
13 paid certain monies that she represented to the Court  
14 had already been paid.

15 That statement was not true. The Judge was  
16 quite clear that I would not even accept the papers if  
17 she couldn't demonstrate that what she said was true  
18 which is that she had made the payment.

19 THE COURT: Well, the paperwork has been  
20 accepted and we now have a cross motion on the table and  
21 that's been accepted.

22 This is what I am going to do. We are on the  
23 eve of the Jewish holidays. We also have a busy  
24 calendar next Wednesday because that's a building fire  
25 code day. Ms. Sassower, could you get your papers into

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2 the court by the close of business on 9/11, any reply  
3 papers? I would like to mark it fully submitted for  
4 decision by next Tuesday. Could you do that? You could  
5 actually come in next Wednesday morning if you want.  
6 We'll call this before we begin our building fire code  
7 calendar.

8 MS. SASSOWER: Your Honor, I will make every  
9 good effort to complete your deadline of September 11.  
10 If I have some difficulty, May I apprise the Court?

11 THE COURT: No, not really, because you are  
12 not entitled to it. It is really discretionary with the  
13 Court as to further paperwork. We have a lot here and I  
14 have a hearing. What's going to be added is not new,  
15 but, I want to give both sides an opportunity to have  
16 their final say. So let me do this. I'll put it on  
17 for next Wednesday morning, final submission, but I'm  
18 going to direct any papers be served and filed by the  
19 close, be served, you can file in the morning, be served  
20 by the close of business, 5:00 p.m. on 9/11; 9/11 for  
21 submission of all papers.

22 MS. SASSOWER: Does he have to have receipt by  
23 9/11?

24 THE COURT: You have to serve this by the  
25 close of business, 9/11.

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MS. SASSOWER: Mailing is sufficient?

THE COURT: Yes, mailing is fine.

MR. SCLAFANI: No, Judge, because then I won't see them.

THE COURT: But, so what? This is final for submission of all papers. This is a reply to your cross motion. You are not going to get sur-reply, for the record, discretionary with the Court here, any further paperwork. I'm directing that any reply to what's been served with the court, finding here Petitioner's Reply and Opposition to Cross Motion, this is to give the respondent time to respond to that cross motion, that would be final, no further sur-reply, served by the close of business on opposing counsel, 9/11; on the calendar 9/12 for submission of all papers. I believe I'm sitting in this part. If not, I will mark the file, "final for submission of all papers." This being a motion, a written decision will follow within 30 days. Thanks so much.

MS. SASSOWER: Your Honor, I wish to --

MR. SCLAFANI: There is no appearance on --

THE COURT: No appearances required unless you want to come on 9/12, but that's when I ask that the papers be filed.

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2 MR. SCLAFANI: Could I ask the Court kindly  
3 for a ruling? There should be no matters raised in  
4 these papers but merely response to what's being  
5 litigated.

6 THE COURT: That is civil practice, no new  
7 matters can be raised, not that there are any new issues  
8 here. I'm looking at some 30 exhibits in total here,  
9 approximately, 25 to 30. I can't imagine. This is a  
10 summary proceeding. I think everything's been covered.  
11 This is just to give everybody an opportunity for their  
12 final say.

13 MS. SASSOWER: Yes, and your Honor, I have  
14 been in communication with Ms. Lupi, the court clerk.

15 THE COURT: That's our chief clerk, correct.

16 MS. SASSOWER: Who, to my surprise, told me I  
17 need to take up the following matter to you which is  
18 directly germane in view of the representation Mr.  
19 Sclafani made. I have been unable to obtain the  
20 transcript of last week, August 27, which I sought to  
21 promptly order on that date and which I was told by Ms.  
22 Ward, the deputy clerk, I had to put a request for in  
23 writing.

24 THE COURT: Was it on tape or was it  
25 electronic recording, or was it one of our --

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2 OFFICER KUPIEC: It was a visiting reporter,  
3 your Honor.

4 THE COURT: Was a visiting reporter. This is  
5 nothing, let me just confirm on the record and then  
6 we're going to conclude, this ultimately will be  
7 resolved by written decision. We have visiting  
8 reporters helping us along with our full-time court  
9 reporters. It takes a while to contact visiting  
10 reporter to arrange for that reporter to let you know  
11 what the cost of the transcript will be. And, also,  
12 criminal matters take precedence to civil matters, this  
13 being a civil case. It is very likely you are not going  
14 to get the transcript for a couple of weeks.

15 MS. SASSOWER: I put in a check made out for  
16 \$40. I delivered it to the court and I have not even  
17 been contacted --

18 THE COURT: We are not going to be able to do  
19 anything. Contact has to be made with the visiting  
20 reporter who then will refer to her notes or with the  
21 assistance of one of our full-time reporters will make  
22 arrangements for the transcript to be completed.

23 MS. SASSOWER: May I point out, Your Honor has  
24 directed papers for September 11. He has in his papers,  
25 handed to me just now which I have only partially read,



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2 made representations based upon what he is alleging took  
3 place on August 27.

4 THE COURT: Listen to me. Sounds like there  
5 is a lot on the record. It's not going to make any  
6 difference. It sounds like questions of fact are raised  
7 that ultimately will be resolved at a hearing or trial.

8 The Court will address the points of law  
9 raised in the motion, but I tell you right now, you know  
10 it, you are all smart, if there is any issue of fact,  
11 that's got to be resolved in trial, so bear that in  
12 mind. Points of law will be addressed and you will  
13 get a decision on that from the Court. Any issues of  
14 fact, referred to hearing or trial. That's how this  
15 will happen. Thank you all. I didn't mean to cut you  
16 off. Visiting reporters need to be contacted and  
17 arrangements have to be made with them for the  
18 transcript. If they can't do it, then they'll work with  
19 one of our full-time court reporters to do so, so that  
20 necessarily takes a little longer.

21 MS. SASSOWER: But I will be deprived of the  
22 ability to defend myself without a copy of the  
23 transcript.

24 THE COURT: No, you won't. By Court, an  
25 opinion; if there is an issue of fact raised, you will

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get a hearing or a trial. You won't be penalized by failure to get a transcript on motions.

MS. SASSOWER: Thank you, your Honor.

THE COURT: You are welcome.

MR. SCLAFANI: Thank you, your Honor.

THE COURT: Thank you both. So this is September 11 final for submission.

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

  
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Eleanor L. Scarpino  
Official Court Reporter