

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERMS: NINTH & TENTH
JUDICIAL DISTRICTS

- - - - -X

JOHN MCFADDEN

Petitioner

-against-

DORIS SASSOWER

Respondent

ELENA SASSOWER

Appellant

- - - - -X

Index No. 2008-1427 WC

Lower Ct. No. SP-651/89

SP 2008-1471

**AFFIDAVIT IN OPPOSITION
TO ORDER TO SHOW CAUSE FOR
REARGUMENT/RENEWAL AND
OTHER RELIEF**

John McFadden, being first duly sworn, deposes and says:

1. I am the petitioner in the underlying summary holdover proceeding and respondent on appellant Elena Sassower's appeal of the judgment of possession entered against her in the White Plains City Court. As such, I am fully familiar with the facts and circumstances surrounding this matter and hereinafter set forth.

2. I submit this affidavit in opposition to Ms. Sassower's application seeking a) reargument/renewal of her motion for, inter alia, dismissal of the proceedings in the White Plains City Court in which the judgment appealed from was entered and this

Court's October 1, 2008 decision and order denying that application; b) a stay of that portion of this Court's October 1, 2008 decision and order that required Ms. Sassower to pay use and occupancy and perfect her appeal by December 5, 2008 as a condition for the grant of the stay that she sought of enforcement of the judgment of possession entered as against her and from which she has appealed; and c) various orders directed at the Clerk of the White Plains City Court relating to her Clerk's Return on Appeal herein, and, d) other relief.

3. Ms. Sassower's instant application is reflective of the type of frivolous, vexatious guerrilla litigation tactics that she has employed over the past twenty years through which she has succeed in hijacking possession, use and control of your affiant's coop apartment to your affiant's utter and profound economic and personal detriment.

4. Ms. Sassower entered into possession of my coop apartment at 16 Lake Street, White Plains, New York under an occupancy agreement that was part and parcel of a contract of sale pursuant to which I agreed to sell her my interest as the proprietary leasee of the apartment. When the Board of Directors of the coop corporation rejected her application to purchase the apartment

(for good reason)¹, the contract expired by its terms and Ms. Sassower was required to vacate the apartment and tender possession back to your affiant.

5. She did not do so. Instead, for the next twenty years up to and including her instant application, she has engaged in one frivolous litigation strategy after another through which she has succeeded in stalling and delaying the entry of final judgment as against her and the return of possession and control of my apartment.

6. At the same time, through these tactics, Ms. Sassower continues to enjoy the benefits of residing in my apartment making only minimal payments of court ordered use and occupancy in amounts far far less than the fair market value of the rent for my apartment while I have had to pay on the mortgage that I gave for the purchase of the apartment, insurance and the ever

¹Among numerous grievances that tenants at the Coop had against Ms. Sassower's tenancy were that her father, a disbarred attorney, used the apartment to conduct his illegal law practice and was arrested there. He also smoked in the halls despite prohibitionss against such conduct. At trial on Ms. Sassower's federal action against the coop, the coop corporation provided a veritable laundry list of other acts and actons of Ms. Sassower and her father that justified the board's decision to deny her application to become a proprietary leasee in the coop. The jury found unanimously in favor of the coop.

increasing maintenance that the coop corporation charges under my proprietary lease.

7. Annexed here to as Exhibit "A" is a copy of the decision of United States District Judge Gerald L. Goettel, who presided over Ms. Sassower's frivolous federal discrimination suit against the coop corporation and its board of directors. Ms. Sassower successfully employed this frivolous litigation to stall and delay for years the White Plains City Court's adjudication of the holdover summary proceeding that forms the case below and determination of motions for summary judgment that I filed in the case below. Through that decision, Judge Goettel awarded in excess of \$90,000.00 in sanctions and attorneys fees against Ms. Sassower and her mother, Doris Sassower, for the very type of frivolous guerrilla litigation tactics that Ms. Sassower has now engaged in before this Court. See also, the decision and order of Judge Goettel on Ms. Sassower's motion for reargument and recusal of Judge Goettel (Exhibit "B") wherein the federal court also identified and rejected the identical frivolous tactics of Ms. Sassower employed by her here.

8. Your affiant respectfully submits that the time has come for the State courts to act accordingly.

9. As hereinafter demonstrated, each of the numerous branches of Ms. Sassower's motion herein are frivolous in the extreme. This Court must not only deny her motion but it must take appropriate action to prevent her further abuse of the legal process hereinafter.

Ms. Sassower's Motion for Reargument/Renewal is Meritless

10. CPLR §2221(f) provides that a combined motion for reargument and for renewal must identify separately and support separately each item of the relief sought.

11. Pursuant to CPLR § 2221(e), a motion for renewal must be based either on new facts that could not be offered on the prior motion or a change in the law that, in either case, would change the prior determination.

12. Pursuant to CPLR §2221(d), a motion for reargument must be based on a matter of fact or law allegedly overlooked or misapprehended by the court in determining a prior motion. It cannot include any matters of fact not offered on the prior motion. A motion for reargument is not an opportunity for a litigant unsatisfied with a decision and order to present again

the same agreements and facts in the hope that the court will rule differently the second time around. *Ulster Savings Bank v. Goldman*, 183 Misc. 2d 893, 705 N.Y.S. 2d 880 (200)

13. Ms. Sassower's combined motion for reargument and renewal fails to identify separately or support separately each branch of her application.

14. To the extent that her motion purports to be one seeking renewal, she fails to identify any new facts or new law that she could not have presented on her prior application that would change the Court's October 1, 2008 decision.

15. To the extent that her motion purports to seek reargument, Ms. Sassower fails to base her motion on facts or law allegedly overlooked and misapprehended by the court in determining her prior motion.

16. Instead, Ms. Sassower's application is little more than a rehash of the ranting and ravings contained in her earlier motions for a stay and for dismissal of the case below. Her claims and arguments were less than frivolous when she originally made them and have not changed or risen in stature or merit since

then.

17. Accordingly, Ms. Sassower's application for reargument/renewal must be denied.

Ms. Sassower's Motion For a Stay of Payment of Use and Occupancy Must Also Be Denied

18. By its October 1, 2008 decision and order, this Court directed, as a condition for the grant of a stay of enforcement of the judgment of possession entered against Ms. Sassower pending her appeal, that she pay, within 10 days of the date of the decision and order, all arrears in use and occupancy, that she continue to pay use and occupancy as it becomes due and that she perfect her appeal herein by December 5, 2008.

19. Ms. Sassower admits that she received the October 1, 2008 decision and order on October 2, 2008; as a result, Ms. Sassower had no excuse for any failure to pay all arrears in use and occupancy by October 10, 2008.

20. Needless to say, she has not done so. She now comes to this Court having willfully disobeyed the October 1, 2008 order belatedly seeking relief from it albeit without a shred of a

legitimate basis for her application.

21. In so doing, she challenges the authority of this Court to impose conditions or the grant of the stay that she sought.

22. Her claims and arguments herein are frivolous.

23. CPLR §5519(c) gives to the court to which an appeal is taken authority to grant a stay subject to, or limited by, conditions that the court determines to impose.

24. The statute does little but reiterate the common law, which provides that a court has the power, in the interest of justice, to control its own judgments or to suspend the operation of them during proceedings taken to review their validity. *Genet v. Delaware & H. Canal Co.*, 113 NY 472, later app.

25. In short, to the extent that a court or a judge has the inherent power to grant a stay, it, he or she has the inherent, concomitant authority and power to impose conditions on the grant of a stay or even to deny the stay outright. *American Bank - Note Co. v. Manhattan Ry. Co.*, 66 Hun. 627, 20 N.Y.S. 819. *Mutual Life Ins. Co. v. Robinson*, 22 Misc. 563, 52 N.Y.S. 795.

International Railway Co. v. Town of Cheekowaga, 252 A.D. 41, 297 N.Y.S. 506.

26. Where, as in this case, a court order is required for a stay pending an appeal, the decision as to whether a stay should be granted is solely within of the court's discretion. *Genet v. Delaware & H. Canal Co.*, supra. However, in determining to exercise its discretion, the court must impose such terms as are appropriate to secure the party stayed from damages that he/she might suffer as a result thereby.

27. Only where the circumstances of the case so justify should the court grant a stay pending appeal without imposing conditions that secure the opposing party from suffering damages thereby. *Sternbach v. Freidman*, 29 A.D. 480, 51 N.Y.S. 1068.

28. In the case at bar, it was more than reasonable for the Court to require that Ms. Sassower pay use and occupancy during the period that the judgment entered against her is stayed while she appeals it. Indeed, failing to do so would have been an abuse of the Court's discretion.

29. This is particularly true when it is considered that Ms.

Sassower has failed to demonstrate any legitimate litigable issue that would result in a decision of this Court on her appeal overturning the judgment rendered against her.

30. In this regard, Ms. Sassower's claims both on her motion herein and as she asserts will form the basis for her appeal, consist of little more than foolish sophistry presented in a self righteous, vitriolic and unseemly manner.

31. The law is clear that a stay pending appeal should not be granted where the motion papers disclose no reason for the stay or merit to the appeal as where it is shown to have been taken solely for the purpose of delay. *Sheffield Producers Cooperative Ass'n, Inc. v. Jetter Dairy Co.*, 299 N.Y.S. 684; *Connolly v. Manhattan R. Co.*, 7 A.D. 610, 40 N.Y.S. 1007; *Immigrant Mission Committee of German Evangelical Lutheran Synod v. Brooklyn El. R. Co.*, 40 A.D. 611, 57 N.Y.S. 624.

32. The court will note that, by motion made returnable before this court on October 24, 2008, your affiant sought an order vacating the stay granted to Ms. Sassower because she had willfully failed and refused to obey the October 1, 2008 order requiring her to pay arrears in use and occupancy within 10 days

of the Court's order.

33. As of the date hereof, despite the pendency of that motion and despite that the Court refused to grant the temporary stay of the Court's direction that Ms. Sassower pay use and occupancy that Ms. Sassower sought as part of her order to show cause herein, Ms. Sassower continues to disobey the October 1, 2008 order and has not paid any of the use and occupancy that she owes.

34. On the basis of the foregoing, not only must this Court deny Ms. Sassower's motion but it must vacate the stay imposed by its October 1, 2008 decision and order.

Ms. Sassower's Complaints Concerning the Clerk's Return on Appeal and the Clerk of the White Plains City Court are Baseless

35. Much of Ms. Sassower's application is devoted to ranting and ravings of fraud and deceit leveled against the Clerk of the White Plains City Court, the Judge presiding over the proceedings below, your affiant and my counsel concerning the Clerk's Return on Appeal in this matter.

36. All of Ms. Sassower's raving are meritless.

37. Ms. Sassower claims that neither the July 3, 2008 decision and order granting judgment as against her nor the judgment rendered against her thereby were ever "entered" in the court below such that they should not have been included as part of the Clerk's Return on Appeal.

38. Ms. Sassower's claims is unsupported by fact or evidence and is easily disproved by examination of the Clerk's Return on appeal that includes these documents among those entered in the proceedings.

39. Notably, Ms. Sassower admits that her own appeal herein is from those very rulings of the court below.

40. Ms. Sassower's claim that the Clerk's Record on Appeal is deficient because it does not include either a docket sheet for the case below or the actual microfiche of the record maintained by the City Court in the case below is equally meritless. There is no provision in the law for a lower court to transmit, as part of a Clerk's Return on Appeal, microfiche of the documents that it includes in the Clerk's Return in addition to copies of those documents themselves.

41. Likewise, as Ms. Sassower has been informed on numerous occasions, the White Plains City Court does not maintain docket sheets on the cases before it and did not do so for the case below; moreover, there is no provision in law requiring the City Court to keep or maintain docket sheets for the cases it handles. Indeed, it is common among lower courts that docket sheets are not maintained.

42. Ms. Sassower's claim of entitlement to the inclusion in the Clerk's Return of documents from other cases in which she was, or is, involved in the White Plains City Court is patently frivolous so as to require no substantive comment as is her claim that the determination of the White Plains City Court Clerk to refrain from responding to her incessant letters after several of them accused her of fraud and deceit provides no basis either for any of the relief that Ms. Sassower seeks, either through her instant motion or, ultimately, on her appeal.

43. Ms. Sassower has utterly failed to demonstrate how, if at all, any of the problems that she claims exist in the Clerk's Return on Appeal herein would prejudice her on her appeal here or require that she be afforded additional time to perfect her appeal.

44. In any case, her attacks against the Clerk of the White Plains City Court Clerk and demands that the Clerk be directed to alter or add to her Return on Appeal, even if they were justifiable, are not properly addressed by motion to this Court in these proceedings; nor has Ms. Sassowe provided any authority to the contrary.

45. Ms. Sassower was informed by the White Plains City Court in its denial of her motion to that Court for the same or similar relief as she seeks here that such relief as she seeks must be brought by Article 78 Proceeding properly plead and properly served on, inter alia, the Attorney General of the State of New York.

46. Ms. Sassower's response to that advice was first to include the Attorney General on her ever growing list of those guilty in her unique opinion of fraud, deceit and malfeasance as against her and, next, to make the instant application, ignoring what she should have learned from the White Plains City Court's ruling.

47. With respect to her claim that this Court should direct a conference pursuant to 22 NYCRR §730.2(a) and extend her time to

perfect her appeal until after such a conference, it is clear from a plain reading of this rule that it was not intended as a forum for arbitration of questions, regardless of their merit or lack thereof, as to the sufficiency or propriety of a Clerk's Return on Appeal.

48. Ms. Sassower's request for the conference is nothing short of a further attempt by her to stall and delay her day of reckoning while she continues to use and enjoy your affiant's apartment without any right to do so and at my expense.

49. Accordingly, that portion of Ms. Sassower's application as seeks relief with respect to the Clerk's Return on Appeal and/or the Clerk of the White Plains City Court must be denied.

Ms. Sassower's Request For an Extension of Time to Obtain Counsel

50. Perhaps the most transparent of all of Ms. Sassower's ploys further to delay and confuse these proceedings is her request for an extension of time to perfect her appeal in order to obtain counsel.

51. As Judge Goettel's decision awarding sanctions as against

Ms. Sassower in her frivolous federal a litigation (Exhibit "A") reveals, Ms. Sassower has, in the past, used the tactic of switching between being a pro se litigant and one represented by counsel solely for the purpose for stalling and delaying the proceedings and attempting to gain unfair advantage against her adversaries.

52. Ms. Sassower and her mother were originally represented by counsel, one Eli Vigaliano, Esq. in the court below and in the Sassower's federal litigation; but they unilaterally opted to proceed pro se.

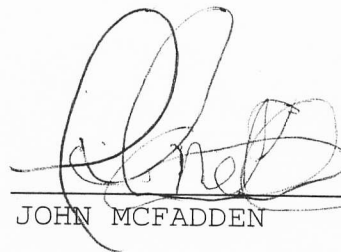
53. However, the last correspondence that your affiant's counsel received from Ms. Sassower was enclosed in an envelope bearing the return name and address of said Eli Vigliano, Esq. (Exhibit "C").

54. Moreover, Ms. Sassower's mother Doris, who attempted to file papers in the proceedings below on behalf of her daughter and who has filed papers on Ms. Sassower's appeal herein, is an attorney (albeit a suspended attorney) for whom Ms. Sassower works as a paralegal.

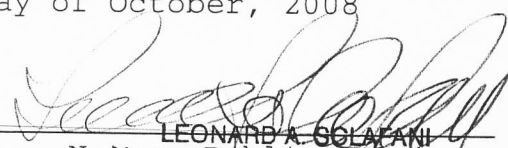
55. It would appear that Ms. Sassower has the aid of counsel in this matter, just not one who is willing to put his name to the nonsense that is being filed by Ms. Sassower herein.

56. Accordingly, it is submitted, this Court must deny that aspect of Ms. Sassower's motion as seeks further to delay and stall these proceedings purportedly in order to afford her the opportunity at this late date to obtain counsel.

WHEREFORE, your affiant respectfully requests that Ms. Sassower's motion be denied in its entirety, that the stay of enforcement of the judgment of eviction as against Ms. Sassower be vacated and that your affiant be granted such other and further relief as this Court deems just, proper and equitable.


JOHN MCFADDEN

Sworn to before me this 28
day of October, 2008


LEONARD A. SOLAPANI
Notary Public, State of New York
No. 02SC6120579
Qualified in Westchester County
Commission Expires December 20, 2008