

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

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JOHN McFADDEN,

Petitioner (Overtenant),

Index #SP1502/07

**ORDER TO SHOW CAUSE FOR
STAY OF TRIAL, Disqualification/
Transfer/Disclosure, Vacatur,
Reargument/Renewal, Findings, &
Other Relief**

-against-

ELENA SASSOWER,

Respondent (Subtenant)
16 Lake Street – Apt. 2C
White Plains, New York

10:50 AM Denied
The matter is
scheduled for
Proceedings
on Monday
The 30, 2008
@ 9:30 AM
(Part B) -
The subject
Application
can be
made
on the record
at that time
June 27, 2008
Jo Ann Friia

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Upon the annexed affidavit of the respondent *pro se* ELENA SASSOWER, duly sworn to on June 27, 2008, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had,

LET petitioner JOHN McFADDEN show cause before this Court at the White Plains City Courthouse at 77 South Lexington Avenue, White Plains, New York 10601, on the 30th day of June, 2008 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, why an order should not be granted staying trial of the above-entitled proceeding, presently scheduled for June 30, 2008, pending determination of respondent's within motion:

(a) to disqualify White Plains City Court Judge Jo Ann Friia for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14 and to transfer this proceeding to another Court to ensure the appearance and actuality of impartial justice – and, if denied, for disclosure pursuant to

§100.3F of the Chief Administrator's Rules Governing Judicial Conduct of facts bearing on her impartiality and that of the White Plains City Court Clerk's Office;

(b) to vacate the January 29, 2008 and October 11, 2007 decisions & orders of White Plains City Court Judge Brian Hansbury based on his recusal, arising from the record of respondent's November 9, 2007 order to show cause;

(c) to grant reargument and renewal of the January 29, 2008 decision & order pursuant to CPLR §2221 and vacating its denial of the substantive relief sought by respondent's November 9, 2007 order to show cause;

(d) for findings of fact and conclusions of law as to respondent's entitlement to dismissal of the Petition and summary judgment on her Counterclaims, based on the record of her September 5, 2007 cross-motion and November 9, 2007 order to show cause; and

(e) for such other and further relief as may be just and proper.

Alternatively, if all the foregoing relief is denied, for a stay pending determination of respondent's appeal thereof – and of Judge Hansbury's January 29, 2008 decision & order – to the Appellate Term of the Appellate Division, Second Department.

SUFFICIENT CAUSE APPEARING THEREFOR, let this order to show cause with its moving affidavit be served by fax upon the office of petitioner's counsel, LEONARD SCLAFANI, P.C., at 212-949-6310, on the 27th day of June 2008.

Dated: White Plains, New York
June 27, 2008

ENTER:

Judge, White Plains City Court

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

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JOHN McFADDEN,

Petitioner (Overtenant),

Index #SP1502/07

**Respondent's Affidavit in
Support of Order to Show
Cause for Stay of Trial,
Disqualification/Transfer/
Disclosure, Vacatur,
Reargument/Renewal,
Findings, & Other Relief**

-against-

ELENA SASSOWER,

Respondent (Subtenant)
16 Lake Street – Apt. 2C
White Plains, New York

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

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

1. I am the respondent *pro se*, whose home of nearly twenty-one years is the subject of this proceeding. I am fully familiar with all the facts, papers, and proceedings heretofore had.
2. This affidavit is submitted in support of an order staying the trial, presently scheduled for Monday, June 30, 2008, pending determination of this motion to safeguard the integrity of these proceedings and secure adherence to the rule of law.
3. No other stay of this June 30, 2008 trial date has been sought. The only

previous stay of trial was granted by Judge Friia on November 16, 2007, at the oral argument of my November 9, 2007 order to show cause, at which time I stated words to the effect that:

“...the only trial warranted herein is as to the amount of compensatory and punitive damages due me on my Counterclaims – since, *as a matter of law*, I am entitled to the granting of the second and third branch of my September 5, 2007 cross-motion: dismissal of the Petition and summary judgment on those Counterclaims.”¹

4. The truth of this statement was readily apparent from my November 9, 2007 order to show cause then before Judge Friia. It remains true today.

5. My entitlement to a stay of the trial – and to all the further relief sought by my instant order to show cause – is particularized by my correspondence to Chief Clerk Lupi and Judge Friia pertaining to the trial notices, dated May 30, 2008, setting this case down for an “ALL DAY TRIAL” on June 30, 2008 (Exhibit MM)². Not surprisingly, my correspondence reiterates that:

“...the only trial warranted herein is as to the amount of compensatory and punitive damages due me on my Counterclaims – since, *as a matter of law*, I am entitled to the granting of the second and third branch of my September 5, 2007 cross-motion: dismissal of the Petition and summary judgment on those Counterclaims.” (Exhibit QQ, p. 6; Exhibit RR, p. 1; Exhibit SS-2, p. 6; Exhibit SS-3, p. 1)

¹ See ¶7 of my November 26, 2008 affidavit – the last submission in the record of my November 9, 2007 order to show cause (underlining in the original).

² This motion continues the previous sequence of exhibits: (1) My Exhibits A-G are annexed to my August 20, 2007 “VERIFIED ANSWER with Affirmative Defenses & Counterclaims”. (2) My Exhibits H-AA are annexed to my September 5, 2007 Notice of Cross-Motion; (3) My Exhibits BB-FF are annexed to my September 11, 2007 Affidavit in Reply to Petitioner’s Opposition to my Cross-Motion; (4) My Exhibits GG-II are annexed to my November 9, 2007 Order to Show Cause for a Stay of Trial, etc.; (5) My Exhibits JJ-LL are annexed to my November 26, 2007 Affidavit in Opposition to Petitioner’s Cross-Motion, etc.

and cites to pages 7-18 of my November 9, 2007 order to show cause as establishing that there are NO fact issues, as *a matter of law*, as to the Petition and as to my six substantive Affirmative Defenses, constituting a complete defense to the Petition, each Affirmative Defense being documentarily established, as likewise my Counterclaims based thereon. Consequently, and as demonstrated by my November 9, 2007 order to show cause, reiterating my showing by my September 5, 2007 cross-motion, the only fact issue for trial, *as a matter of law*, is as to the amount of compensatory and punitive damages due me on my Counterclaims³ (Exhibit SS-1, fn. 1; Exhibit TT).

6. For the convenience of the Court, pages 7-18 of my November 9, 2007 order to show cause are annexed hereto (Exhibit NN-1), along with pages 18-22 pertaining to my “First Affirmative Defense (*‘Open Prior Proceedings’*)” (Exhibit NN-2), germane to the purported consolidation. Judge Hansbury’s patently fraudulent January 29, 2008 decision & order denying the substantive relief sought by that order to show cause – for which I am entitled to vacatur, whether directly or upon the granting of reargument/renewal, is also annexed (Exhibit OO).

7. In the interest of judicial economy – and because Chief Clerk Lupi and Judge Friia have so flagrantly disregarded their duty to respond to my aforesaid correspondence pertaining to the trial notices (Exhibits PP-TT), with knowledge that I would thereby be prejudiced in bringing an order to show cause to protect my rights (Exhibit RR, pp. 2-3; Exhibit SS-1, p. 1; Exhibit SS-3, pp. 2-3) – I rely on the

³ See Exhibit NN-1, ¶21.

particularized facts and law presented by my correspondence, which I incorporate by reference, attesting to the truth of what I therein stated, most of which is independently verifiable from the record of this case. The starting point for verifying the record should be the annexed pages of my November 9, 2007 order to show cause (Exhibit NN).

8. In chronological order, my correspondence with Chief Clerk Lupi and Judge Friia, dispositive of my rights, consists of the following letters, each of which I hand-delivered to the Clerk's Office on the date that appears on the letters:

(a) my June 6, 2008 letter to Chief Clerk Lupi (Exhibit PP-1) – to which I received an comprehensible June 9, 2008 reply from Jacqueline Rodriguez as “Court Assistant” (Exhibit PP-2);

(b) my June 13, 2008 letter to Chief Clerk Lupi entitled “Request for Clarification of Ms. Rodriguez’ June 9, 2008 Letter” (Exhibit QQ), which was accompanied by a further June 13, 2008 letter to Chief Clerk Lupi entitled “My Yesterday’s Visit to the Clerk’s Office & Our Conversation Together” (Exhibit RR) – to which I received no response; and

(c) my June 24, 2008 letter to Judge Friia entitled “Respecting the Appearance and Actuality of Fair and Impartial Justice” (Exhibit SS), with a correcting June 25, 2008 letter by the same title (Exhibit TT) – to which I received no response.

9. There is a further letter to Deputy Clerk Ward, dated yesterday (Exhibit UU), memorializing my final attempt to ascertain whether I was to be put to the burden of bringing an order to show cause for relief to which I am entitled, *as a matter of law*.

In pertinent part, it stated:

“Consistent with the facts and law set forth by my letters, the trial notice must be rescinded. Otherwise, I will have no choice but to bring the

order to show cause therein described.

Please advise so that I may know how to proceed.”

10. The Deputy Clerk’s failure to so advise me, notwithstanding she had assured me that she would follow-up with Chief Clerk Lupi and Judge Friia about my unresponded-to correspondence to them, only further reinforces the disqualifying actual bias of this Court – both by its Clerk’s Office and its judges – warranting transfer of this case to a different Court to ensure respect for the rule of law.

11. Time does not permit me to set forth the additional facts pertaining to Judge Friia’s bias – and that of the Court – as well as their interest herein. This, however, will be done on the return date.

12. Finally, inasmuch as my appended correspondence identifies the basis for all the relief herein sought (Exhibit QQ, Exhibit SS-2) – indeed, identified, in advance, the relief that this order to show cause would seek (Exhibit RR, p. 3; Exhibit SS-3, p. 3) – nothing further is required, other than to specify the new facts “not offered on the prior motion” that support renewal of Judge Hansbury’s January 29, 2008 decision & order (Exhibit OO), as opposed to the “overlooked” and “misapprehended” facts that support reargument. The new facts – unknown to me prior to Judge Hansbury’s January 29, 2008 decision & order and, therefore unavailable to me for inclusion in my November 9, 2007 order to show cause – relate to Judge Hansbury’s without-explanation recusal by that decision. The significance of this recusal for purposes of my entitlement to the vacatur of both his January 29, 2008 decision & order and his

prior October 11, 2007⁴ decision & order⁴ is also set forth by my correspondence to Chief Clerk Lupi and Judge Friia (Exhibit QQ, pp. 4-6; Exhibit SS-2, pp. 4-6).


ELENA RUTH SASSOWER

Sworn to before me this
27th day of June, 2008


Notary Public

BELINDA HAUGHTON
Notary Public, State of New York
No. 01HA6179682
Qualified in Westchester County
Commission Expires Dec. 24, 2011

⁴ See Exhibit PP-2, which annexes Judge Hansbury's October 11, 2007 decision & order.