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FILED CITY COURT OF
WHITE PLAINS, N.Y.

BY HAND

2008 JUL -9 P 4: 53

July 9, 2008

City Court Judge Jo Ann Friia
White Plains City Court
77 Lexington Avenue
White Plains, New York 10601

RE: Clarification of the Court's Refusal to Sign my July 8, 2008 Order to Show Cause for its Disqualification – and Other Relief
John McFadden v. Elena Sassower, White Plains City Court #SP-1502/07

Dear Judge Friia,

Reference is made to my July 8, 2008 order to show cause, hand-delivered to the Clerk's Office at 12:14 p.m. yesterday, which the Court refused to sign. The Court's handwritten notation on the first page states:

“7/8/08. 4:50 p.m. Denied. The relief has either been previously addressed by the Court or is beyond the scope, authority, or jurisdiction of this City Court. – Any stay of the Court's July 3, 2008 Decision pending appeal is also denied.”

Please advise when the Court “previously addressed” the first branch of relief sought by my July 8, 2008 order to show cause, namely, for the Court's disqualification for demonstrated actual bias and interest, for transfer of this case to another Court, and, if denied, for disclosure. The Court never “previously addressed” ANY of this relief – and ¶¶2, 7-9, 10, 30-37 of my order to show cause so-reflect.

Please further advise when the Court “previously addressed” the third branch of relief sought by my July 8, 2008 order to show cause, namely, for reargument and renewal of Judge Hansbury's January 29, 2008 decision & order pursuant to CPLR §2221 and vacating his denial of the substantive relief sought by my November 9, 2007 order to show cause. The Court never “previously addressed” this relief – and ¶¶28-29 of my order to show cause so-reflect.

Please also advise when the Court “previously addressed” the fourth branch of relief sought by my July 8, 2008 order to show cause, namely, for findings of fact and conclusions of law as to my entitlement to dismissal of Mr. McFadden's Petition and summary judgment on my Counterclaims, based on the record of my September 5, 2008 cross-motion and November 9, 2008 order to show cause. The Court never “previously addressed” this relief – and ¶¶7 and 14, of my order to show cause so-reflect.

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Indeed, the only relief the Court ever *possibly* “previously addressed” was the second branch of relief sought by my July 8, 2008 order to show cause, namely, to vacate Judge Hansbury’s January 29, 2007 decision & order based on his recusal, without explanation, arising from the record of my November 9, 2007 order to show cause. The Court did this at the June 30, 2008 proceeding, wherein it purported that coordinate judges are “bound to follow each other’s decisions”, “unless reversed”, and therefore it had to “defer” to those of Judge Hansbury. The deceit of this claim is particularized by ¶¶10-14 of my order to show cause, including by extensive quotation from the treatise Judicial Disqualification: Recusal and Disqualification of Judges and citation to caselaw, never “previously addressed” by the Court, including at the June 30, 2008 proceeding.

None of this aforesaid relief sought by my July 8, 2008 order to show cause is “beyond the scope, authority, or jurisdiction” of the Court – and I request that the Court specify what it is talking about in purporting the contrary.

Certainly, the Court well knows that it has not “previously addressed” my request to stay enforcement of its July 3, 2008 decision & order in #651/89 and any judgment entered or to entered thereon, pending the hearing and determination of my order to show cause. Such is also not “beyond [its] scope, authority, or jurisdiction”.

Finally, the Court gives no reasons for denying me a stay pending appeal. If the Court has any justification for this further demonstration of its pervasive actual bias, indeed, its malevolence¹, it should take this opportunity to set it forth – and I so request.

¹ The Court’s refusal to grant a stay – indeed, its direction, by its July 3, 2008 decision & order that “a judgment of possession and warrant to remove shall issue forthwith, with a statutory stay of execution” – is all the more egregious as my occupancy rights are NOT disposed of by #651/89. Indeed, at the June 30, 2008 proceedings, Mr. Scalfani reiterated what he had previously emphasized in his papers before the Court, namely, that the instant proceeding rests on an “oral agreement” which Mr. McFadden made with me for my continued occupancy. Thus, as stated by Mr. Scalfani’s September 5, 2008 affidavit (at ¶¶38-39):

“38. ...any prior proceedings between the parties that remain open as of today’s date proceed on facts and grounds other than those that petitioner herein relied upon.

39. Here, petitioner relies in support of his petition upon a state of facts; to wit, an oral agreement, that had been modified over the course of the last fourteen or so years, on several occasions, pursuant to which petitioner agreed to respondent’s possession and occupancy of the premises at issue in exchange for monthly payments of rent. This state of fact was, and is, different than and occurred subsequent to, the alleged events supporting the prior proceedings referred to by respondent.”

See, also, his August 23, 2007 moving affidavit (at ¶¶35-7); his November 15, 2007 cross-motion affidavit (¶48)].

In view of the Court's refusal to grant me a stay, I request the Court's response within 24 hours so that I may be guided accordingly in deciding whether to bring an Article 78 proceeding against the Court. Such will be based, *inter alia*, on the Court's wilful failure and refusal to discharge duties "enjoined upon it by law" (CPLR §7803(1)), beginning with its mandatory duty to confront issues of its disqualification, transfer, and disclosure – which the Court has at no time addressed in this proceeding or in #651/89, while simultaneously preventing a record from being made as to the basis for my seeking such relief. Disqualification for demonstrated actual bias and interest, as here, divests the Court of jurisdiction to proceed (CPLR §7803(2)) – with the Court's succession of rulings in "violation of lawful procedure, "affected by error of law" and "arbitrary and capricious" constituting a further basis for relief (CPLR §7803(3)).

To assist the Court in its response, I am resubmitting the unsigned July 8, 2008 order to show cause, returned to me today by the Clerk's Office.²

Very truly yours,



ELENA RUTH SASSOWER, *Pro Se*

Enclosure

² I have taken the opportunity to make minor corrections.