

At a term of the Appellate Term of the Supreme Court
of the State of New York for the 9th & 10th Judicial Districts

HON. EDWARD G. McCABE, J.P.
HON. MELVYN TANENBAUM
HON. DENISE F. MOLIA, JJ.

NOV 26 2008
2008-01427 W C

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JOHN MCFADDEN,
Respondent

-against-

Lower Court #
SP-651/89

DORIS L. SASSOWER,
Respondent,

-and-

ELENA SASSOWER,
Appellant.
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The above named appellant having appealed to this court from a **JUDGMENT** of the **CITY COURT, WHITE PLAINS, WESTCHESTER COUNTY** entered on **JULY 21, 2008**, and the **RESPONDENT** having moved this court by **notice of motion** returnable **OCTOBER 24, 2008** to **VACATE THE STAY CONTAINED IN ORDER OF THIS COURT DATED OCTOBER 1, 2008** and the **APPELLANT** having moved to this court by **order to show cause** for, **INTER ALIA, LEAVE TO REARGUE AND RENEW PORTIONS OF THIS COURT'S ORDER DATED OCTOBER 1, 2008 AND FOR OTHER RELIEF** and said motion having duly come on to be heard;

Now, on reading the papers filed in support of said motion and the papers filed in opposition thereto, and due deliberation having been had thereon, it is,

ORDERED that on the court's own motion, the motion by landlord-respondent and motion by tenant-appellant Elena Sassower are consolidated for purposes of disposition; and it is further,

ORDERED that the motion by landlord-respondent to vacate stay is granted; and it is further;

ORDERED that the motion by tenant-appellant Elena Sassower to "stay" this court's direction conditioning the prior grant of her motion for a stay on her payment of use and occupancy, for leave to reargue and renew her prior motion, and for other relief is denied in its entirety.

HON. EDWARD G. McCABE
JUSTICE PRESIDING
Appellate Term

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 9th and 10th JUDICIAL DISTRICTS

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PRESENT : McCABE, J.P., TANENBAUM and MOLIA, JJ.
-----X

JOHN McFADDEN,

Respondent,

-against-

NOV 26 2008
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DORIS L. SASSOWER,

Respondent,

-and-

ELENA SASSOWER,

Appellant.
-----X

DECISION

On the court's own motion, motion by landlord-respondent returnable October 24, 2008 and motion by tenant-appellant Elena Sassower returnable November 3, 2008 are consolidated for purposes of disposition.

Motion by landlord-respondent to vacate stay granted.

Motion by tenant-appellant Elena Sassower to "stay" this court's direction conditioning the prior grant of her motion for a stay on her payment of use and occupancy, for leave to reargue and renew her prior motion, and for other relief denied in its entirety.

Contrary to tenant-appellant's contention, stays pending appeal are not routinely granted but rather are granted in the discretion of the court upon a showing of sufficient merit (CPLR 5519 [c]; see 64 B Venture American Realty Co., 179 AD2d 374 [1992]; Application of Mott, 123 NYS2d 603, 608 [1953]) and "upon such terms as may be just" (CPLR 2201). Tenant-appellant's contention that this court's conditioning of the granting of a stay allowing her to remain in the premises on her payment of rent and/or

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use and occupancy is unjust, is unpersuasive. The case of Barbarita v Shilling (111 AD2d 200 [1985]) upon which tenant-appellant relies, involved a direction of payment of use and occupancy pendente lite, and not as a condition of a stay. In addition, unlike in Barbarita, there is in the instant matter a long history of agreements between the parties for the payment of rent and/or use and occupancy. In view of tenant-appellant's conceded receipt of this court's prior order on October 3, 2008 and her failure to make the ordered payment of use and occupancy to date, landlord-respondent's motion to vacate the stay is granted.

With respect to the branch of tenant-appellant's motion seeking leave to reargue this court's denial of her motion to vacate the City Court's order, we note that a motion to vacate an order must be addressed to the court which issued the order.