

CITY COURT OF THE CITY OF WHITE PLAINS
COUNTY OF WESTCHESTER

FILED CITY COURT OF
WHITE PLAINS, N.Y.

JOHN MCFADDEN

Petitioner

Index #SP 651/89

2009 JUL 11 A 10:12

JUDGMENT-HOLDOVER

472 Clearmeadow Drive
East Meadow, New York 11554

-against-

Judgment Rendered
in Favor of Petitioner
Residing at
472 Clearmeadow Drive
East Meadow, NY 11554

DORIS L. SASSOWER

Respondent

283 Soundview Avenue
White Plains, NY 10606

and

ELENA SASSOWER

Respondent

16 Lake Street, Apt 2C
White Plains, NY 10603

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Petitioner having duly commenced this summary holdover proceeding on April 4, 1989 by service of the Notice of Petition and Petition filed herein upon the above-captioned respondents; and respondents having filed a motion with this Court seeking various forms of relief including dismissal of the proceedings based upon lack of subject matter jurisdiction and inadequate notice; and, by Decision and Order entered on September 18, 1989, this Court denied respondents' said motion; and petitioner having served and filed a motion for summary judgment herein on November 25, 1991; and, by Decision and Order dated December 19, 1991, this Court reserved decision on the said motion pending a determination by the United States Court of Appeals for the Second Circuit of an appeal that had been filed by respondents of decisions of the United States District for the Southern District of New York that denied respondents' motion for a new trial and granted sanctions against respondents for frivolous conduct in commencing and maintaining an action against the Board of Directors of the cooperative corporation that owns the premises the subject of the above captioned proceeding and the

building in which it was situated in which respondents alleged housing discrimination, a violation of New York Executive Law, estoppel and damages for severe emotional distress and also pending receipt by this Court of notification of the outcome of respondents' appeal; and the United States District Court for the Second Circuit having denied respondents' appeal and having affirmed the decisions of the United States District Court appealed from (except that, as to respondent Elena Sassower, the Court vacated the imposition of sanctions solely on the ground of said respondents' impoverished condition) and this Court having been notified of the said decision of the United States Court of Appeals on July 9, 2007, thereby rendering petitioner's pending motion for summary judgment ripe for adjudication in accordance with the above described December 19, 1991 Decision and Order of this Court; and this Court having now considered petitioner's motion for summary judgment *de novo* and, by Decision and Order entered herein on July 3, 2008, having granted petitioner's said motion;

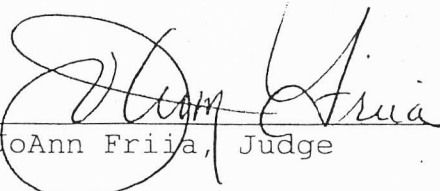
NOW, on motion of petitioner, through his attorneys, Leonard A. Sclafani, P.C. in person, it is

ADJUDGED, that the possession of the premises described in the petition herein, to wit, Unit 2C in the building known as 16 Lake Street, White Plains, New York, be awarded to the petitioner-landlord with \$55.00 costs of this proceeding, and it further

ADJUDGED, that a warrant of eviction issue, such issuance to be stayed to and including the 31st day of July, 2008

Dated: July 21, 2008

Enter


JoAnn Friia, Judge

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.
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JOHN McFADDEN,

Respondent,

-against-

NOV 26 2008
NO. 2008-1427 W C

DORIS L. SASSOWER,

Respondent,

-and-

ELENA SASSOWER,

Appellant.
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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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NO. 2008-1427 W C

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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.