

rec'd 10/3/08
&

**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.**

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JOHN McFADDEN,
Respondent,
-against-

NO. 2008-1427 W C

DORIS L. SASSOWER,
Respondent,
-and-

**Lower Ct #
SP-651/89
"SP 2008-1471"**

ELENA SASSOWER,
Appellant.

-----X
JOHN McFADDEN,
Petitioner,

-against-

NO. 2008-1504 W C

DORIS L. SASSOWER and ELENA SASSOWER,
Respondents.
-----X

The above named appellant having appealed to this court from an **ORDER** of the **CITY COURT, WHITE PLAINS, WESTCHESTER COUNTY** entered on **JULY 3, 2008**, and the **APPELLANT (ELENA SASSOWER)** having moved this court by **order to show cause** returnable **AUGUST 13, 2008** to **STAY THE ENFORCEMENT OF THE FINAL JUDGMENT ENTERED JULY 21, 2008 PENDING THE DETERMINATION OF THE APPEAL** and the **APPELLANT (ELENA SASSOWER)** having moved this court by **notice of motion** returnable **AUGUST 21, 2008** to **VACATE THE DECISION OF THIS WHITE PLAINS CITY COURT DATED JULY 3, 2008 AND FOR OTHER RELIEF** and the **RESPONDENT (JOHN McFADDEN)** having moved this court by **order to show cause** returnable **SEPTEMBER 4, 2008** to **ENLARGE THE TIME TO SUBMIT OPPOSITION PAPERS TO THE MOTION RETURNABLE AUGUST 21, 2008** and the **RESPONDENT (DORIS SASSOWER)** having moved this court by **order to show cause** returnable **AUGUST 18, 2008** to **STAY ALL PROCEEDINGS PENDING THE DETERMINATION OF THE APPEAL** and said motions having duly come on to be heard;

Ex H

RE: JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1427 W C

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JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1504 W C

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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 are hereby consolidated for disposition; and it is further,

ORDERED that on the court's further motion, the appeal by Elena Sassower from the order of the City Court of White Plains, Westchester County (Jo Ann Friaa, J.), dated July 3, 2008, is deemed from the final judgment of said court entered, pursuant to the July 3, 2008 order, on July 21, 2008 (see CPLR 5512 [a]; Neuman v Otto, 114 AD2d 791 [1985]); and it is further,

ORDERED that the motion by John McFadden to enlarge time to submit opposition to the motion returnable August 21, 2008 is granted and the opposition papers are deemed timely served and filed; and it is further,

ORDERED that the motion by Doris Sassower for a stay is denied; and it further,

ORDERED that the motion by Elena Sassower to vacate the decision and order of the White Plains City Court dated July 3, 2008 and its final judgment entered July 21, 2008, and for other relief is denied; and it is further,

ORDERED that the motion by Elena Sassower seeking in effect to stay enforcement of the final judgment entered July 21, 2008 is granted and enforcement of the final judgment is stayed pending hearing and determination of the appeal on condition that the appeal is perfected on or before December 5, 2008. Movant is directed to pay John McFadden any and all arrears in rent/and or use and occupancy at the rate most recently payable within 10 days from the date of this order and to continue to pay use and occupancy at a like rate as the same becomes due; and it is further,

ORDERED that in the event that any of the above conditions are not met, the court, on its own motion, may vacate the stay, or respondent John McFadden may move to vacate the stay on three days' notice.

We note that Doris L. Sassower has failed to file a notice of appeal.


HON. EDWARD G. McCABE:
JUSTICE PRESIDING
Appellate Term

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

-----X

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

-----X

JOHN McFADDEN,

Respondent,

-against-

NO. 2008-1427 W C

DORIS L. SASSOWER,

Respondent,

-and-

ELENA SASSOWER,

Appellant.

-----X

JOHN McFADDEN,

Petitioner,

-against-

NO. 2008-1504 W C

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.

-----X

DECISION

On the court's own motion, the motions by Elena Sassower returnable August 13, 2008 and August 21, 2008, the motion by John McFadden returnable September 4, 2008 and the motion by Doris L. Sassower returnable August 18, 2008 are consolidated for disposition.

RE: JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1427 W C

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JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1504 W C
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On the court's further motion, the appeal by Elena Sassower from the order of the City Court of White Plains, Westchester County (Jo Ann Friia, J.), dated July 3, 2008, is deemed from the final judgment of said court entered, pursuant to the July 3, 2008 order, on July 21, 2008 (see CPLR 5512 [a]; Neuman v Otto, 114 AD2d 791 [1985]).

Motion by John McFadden to enlarge time to submit opposition to the motion returnable August 21, 2008 is granted and the opposition papers are deemed timely served and filed.

Motion by Doris Sassower for stay denied.

Motion by Elena Sassower to vacate the decision and order of the White Plains City Court dated July 3, 2008 and its final judgment entered July 21, 2008, and for other relief denied.

Motion by Elena Sassower seeking in effect to stay enforcement of the final judgment entered July 21, 2008 is granted and enforcement of the final judgment is stayed pending hearing and determination of the appeal on condition that the appeal is perfected on or before December 5, 2008. Movant is directed to pay John McFadden any and all arrears in rent/and or use and occupancy at the rate most recently payable within 10 days from the date of this order and to continue to pay use and occupancy at a like rate as the same becomes due.

In the event that any of the above conditions are not met, the court, on its own motion, may vacate the stay, or respondent John McFadden may move to vacate the stay on three days' notice.

We note that Doris L. Sassower has failed to file a notice of appeal.