

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUICIAL DISTRICTS

----- X
JOHN McFADDEN,

Respondent,

-against-

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.
----- X

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

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

1. I am the above-named appellant *pro se*, fully familiar with all the facts, papers, and proceedings heretofore had, and submit this affidavit in opposition to respondent John McFadden's October 20, 2008 motion, returnable October 24, 2008, for an order:

“vacating the stay of enforcement of the final judgment of eviction entered in the proceedings below on July 21, 2008 in accordance with this Court's October 1, 2008 Decision and Order”.

2. Such October 1, 2008 order and decision, as sent to me by this Court's Clerk's Office, are each undated. They are the subject of my October 15, 2008 order to show cause for reargument/renewal, & other relief, signed by Justice Denise F. Molia on October 16, 2008 – and then re-signed by her today, October 22, 2008, adjusting the date for service and

Appellate Term:
#2008-1427 WC

White Plains City Court:
#SP-651/89
#SP-2008-1474

Affidavit in Opposition

the return date (Exhibit 1).¹

3. As presented to Justice Molia, my October 15, 2008 order to show cause also requested an interim stay of this Court's *sua sponte* direction, by its undated order and decision, conditioning my stay pending appeal upon my paying "rent/and or use and occupancy" to Mr. McFadden "within 10 days from the date of [the] order". Although Justice Molia struck this interim relief, my October 15, 2008 affidavit in support of my order to show cause particularized (at ¶¶3-25) my entitlement to deletion of the Court's *sua sponte* payment condition from its undated order and decision. This, *inter alia*, by reason of the Court's lack of jurisdiction to direct same, and the fraud, misrepresentation, and other misconduct of Mr. McFadden and his counsel, disentitling them to any monetary direction, let alone by the Court acting *sua sponte*, as here.

4. In the interest of judicial economy and to avoid needless duplication, annexed hereto is my October 15, 2008 affidavit supporting my order to show cause for reargument/renewal & other relief (Exhibit 2), which more than suffices as opposition to Mr. McFadden's October 20, 2008 motion.

5. Plainly, my pending order to show cause for reargument/renewal of the Court's undated order and decision makes premature Mr. McFadden's motion to enforce the *sua sponte* condition the order sets. Such must properly be deferred pending determination of my order to show cause, which Justice Molia made returnable on October 31, 2008.

¹ Such was necessary because, apparently, either this Court's Clerk's Office failed to transmit the originally signed order to show cause to the White Plains Office of the Self-Represented or the White Plains Office of the Self-Represented had not received it. Such came to light because, after inquiring of the Office of the Self-Represented on Friday, October 17th, Monday, October 20th, and Tuesday, October 21st – and being told that it had received nothing from this Court's Clerk's Office – I myself telephoned the Clerk's Office to inquire as to the status of the order to show cause, submitted for signature on October 15th.

6. Finally, annexed hereto is my faxed letter of yesterday's date to Mr. McFadden's counsel, Leonard Sclafani, Esq., seeking clarification of his October 17, 2008 notice of entry of this Court's order and decision and of his October 20, 2008 motion to vacate the stay pending appeal (Exhibit 3-a)². I have received no response from him.

7. As set forth by that letter, contrary to the claim in Mr. McFadden's October 20, 2008 notice of motion and by ¶3 of his affidavit that a final judgment of eviction was "entered in the proceedings below on July 21, 2008", I am unaware of any final judgment of eviction having been entered³ – and none was ever served upon me.

8. In any event, the fraudulence of Judge Friia's July 21, 2008 jurisdictionally-void and defective judgment of eviction, as likewise of her July 21, 2008 warrant of removal, each signed by her, unchanged from Mr. Sclafani's proposed judgment and warrant, form the basis for my August 13, 2008 vacatur/dismissal motion, whose reconsideration is before the Court on my pending order to show cause.


² So that the Court may have the benefit of my referred-to July 20, 2007 letter to White Plains City Court Judge Eric Press – which is Exhibit J to my September 5, 2007 cross-motion for dismissal/summary judgment in *McFadden v. Elena Sassower*, #1502/07, and before this Court on appeals #2008-01433 WC and #2008-01428 WC – a copy is annexed (Exhibit 3-b).

³ That there is NO ENTRY of the July 21, 2008 judgment of eviction is among the grounds upon which my order to show cause seeks reargument, see ¶¶37-38, as well as such other relief as a conference pursuant to 22 NYCRR §730.2(a) to resolves issues pertaining to the record, see ¶43.

WHEREFORE, in the interest of justice and judicial economy, respondent McFadden's instant motion must be denied or otherwise adjourned so as to permit it to be heard together with my pending order to show cause.


ELENA RUTH SASSOWER

Sworn to before me this
22nd day of October 2008


Notary Public

JULIE E. SOLOMON
Notary Public, State of New York
No. 04SO6040055
Qualified in Westchester County
Commission Expires April 17 20 10