

(4/08)

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERMS: SECOND & ELEVENTH AND  
NINTH & TENTH JUDICIAL DISTRICTS

Index No. SP-651/89  
SP-2008-1494

John McFadden,  
Petitioner

against

Doris L. Sasso &  
Elina Sasso  
Respondents-Appellants

ORDER TO  
SHOW CAUSE

Upon the annexed affidavit of Elina Sasso, sworn to on July 21, 2008,  
notice of appeal dated July 23, 2008 the order/judgment of the City  
Court, City of White Plains, Westchester County  
dated July 8, 2008 and upon all the papers and proceedings heretofore had herein:  
July 21, 2008

LET Respondent(s) or h attorney(s), show cause before this court, at the Courthouse  
located at 141 Livingston Street, Brooklyn New York, 15<sup>th</sup> Floor on August 13<sup>th</sup> 2008  
10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, why  
an order should not be made herein staying all proceedings pending determination of appeal  
and why such other and further relief should not be granted as may be deemed just and proper.

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JSC

(4/08)

SUFFICIENT CAUSE THEREFORE APPEARING IT IS ORDERED THAT,

Pending the hearing and determination of this motion and the entry of an order hereon, LET all proceedings on the part of the Respondent(s), or any person acting on behalf of Respondent(s) including the attorney(s) and agent(s) of Respondant(s) and any marshal or sheriff **BE STAYED**.

And, LET PERSONAL service of a copy of this Order, together with the affidavit, exhibits and all supporting papers, on the Respondent(s) or h attorney(s) and on the marshal, if any, on or before 5:00 P.M. on August 1<sup>st</sup> 2008, be deemed good and sufficient service. Service shall not be made by mail.

These papers may be served by the appellant in person.

Opposition papers, if any, must be served by personal service at least two (2) days prior to the return date herein.

Proof of service and of deposit (if any deposit is required) must be filed with the clerk of this Court no later than 5:00 P.M. on August 11, 2008.

~~THE TEMPORARY STAY IS CONDITIONED UPON THE MOVANT DEPOSITING WITH THE CLERK OF THE COURT BELOW THE SUM OF \$ \_\_\_\_\_ ON OR BEFORE 5 P.M. SAID AMOUNT TO REMAIN ON DEPOSIT UNTIL APPEAL IS DETERMINED OR UNLESS OTHERWISE ORDERED BY THIS COURT. IF THE DEPOSIT IS NOT TIMELY MADE THEN THE TEMPORARY STAY IS DEEMED VACATED TOGETHER WITH THE LOWER COURT TO DETERMINE THE METHODS OF HARMFUL ACCURABLE AND THE LOCATION OF WHERE THE DEPOSIT MUST BE MADE.~~

JUSTICE OF THE APPELLATE TERM

*Edward C. McCabe*  
Hon. Edward C. McCabe

DATED: July 31, 2008  
Brooklyn, New York.  
Minnesota

NOTE: IF YOU HAVE BEEN SERVED WITH THESE PAPERS YOU MAY CALL THE APPELLATE TERM CLERK'S OFFICE AT 347-401-9680 TO VERIFY THE AUTHENTICITY OF THESE PAPERS.

NO APPEARANCE IS REQUIRED ON THE RETURN DATE. ALL MOTIONS ARE SUBMITTED ON PAPERS.

(4/08)

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERMS: SECOND & ELEVENTH AND  
NINTH & TENTH JUDICIAL DISTRICTS

-----x Index No. **SP 651/89**  
**(SP-2008-1474)**

JOHN McFADDEN,

Petitioner,

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents-Appellants.

**AFFIDAVIT IN SUPPORT OF  
ORDER TO SHOW CAUSE**

-----x  
STATE OF NEW YORK, COUNTY OF ss.:  
WESTCHESTER

FIRST: I am the appellant in the above-entitled proceeding, and make this affidavit in support of the motion for an order staying all proceedings pending determination of the appeal. I am currently in possession of the subject premises located at:

16 Lake Street, Apartment 2C  
White Plains, New York 10603.

On July 23, 2008, I filed a Notice of Appeal (Exhibit A-1) from the July 3, 2008 decision & order of White Plains City Court Judge Jo Ann Friia, granting petitioner's nearly 17-year-old motion for summary judgment (Exhibit A-2). Simultaneously, I filed a Notice of Appeal (Exhibit A-3) from the January 29, 2008 order of White Plains City Court Judge Brian Hansbury in the separate proceeding *McFadden v. Elena Sassower*, #1502/07, in which this proceeding was purportedly consolidated (Exhibit A-4).

SECOND: Describe briefly what type of proceeding this is (e.g. non-payment, holdover etc.).

This proceeding was claimed to be a holdover by a Notice of Petition and Petition, signed by petitioner's counsel and petitioner on March 27, 1989 (Exhibit B).

THIRD: (If a landlord and tenant proceeding)

On information and belief, a warrant of eviction was issued and may be executed momentarily causing severe hardship to deponent.

On July 21, 2008, Judge Friia signed a judgment of eviction and warrant of removal (Exhibits C-1 and C-2). Eviction and removal would be a severe hardship as the subject premises has been my home for over 21 years, which I would be forced to leave, virtually overnight.

FOURTH: I have a meritorious defense to this proceeding, to wit:  
(You must also set forth merit to your appeal)

**(1) Lack of Jurisdiction:**

**A. Upon information and belief, #651/89 is closed and petitioner's March 27, 1989 Petition was dismissed for want of prosecution at some point during the past 15 years of dormancy.**

For this reason, the White Plains City Court Clerk opened a new docket number for this 1989 proceeding, #SP-2008-1474. Such was done surreptitiously and without notice to the parties, so as to circumvent my legal entitlement to dismissal of petitioner's diametrically different Petition in his 2007 proceeding, *John McFadden v. Elena Sassower*, #1502/07, and summary judgment on my Counterclaims therein.

**B. There is no landlord-tenant relationship between the parties.** Contrary to petitioner's March 27, 1989 Petition purporting that respondents "entered in possession [of the subject premises] under a month to month rental agreement" on no specified date, for no specified "rent", with no copy of this purported "rental agreement" annexed (Exhibit B), respondents "entered in possession" of the subject premises under an October 30, 1987 written occupancy agreement, which was part of a contract of sale, denominating the parties as "Sellers" and "Purchasers" and expressly stating "in no way do the parties intend to establish a landlord/tenant relationship."

The occupancy agreement conferred upon respondents, "if they elected to purchase", which they did, "the right to continue in occupancy to the date of closing." In August 1988, petitioner and respondents brought a federal lawsuit against the Co-Op to enforce the contract of sale, representing the parties' consent to an "adjourned date" for the closing.

The occupancy agreement, contract of sale, and complaint in the federal action were introduced into the record by respondents' April 24, 1989 motion to dismiss the Petition for lack of jurisdiction and were, thereafter, pleaded by Affirmative Defenses in respondents' timely-filed June 26, 1990 Answer. Both respondents' dismissal motion and Answer additionally challenged jurisdiction based on improper service.

**C. Judge Friia is disqualified for pervasive actual bias and interest, as established by my legally-sufficient July 18, 2008 order to show cause for her disqualification, transfer, and for disclosure, which she refused to sign on July 21, 2008, in favor of the proposed judgment of eviction and warrant of removal of petitioner's counsel, that she signed on that date without change (Exhibits C-1 and C-2);**

**(2) Fraud, Misrepresentation and other misconduct of an adverse party, including:**

A. The warrant of removal, signed by Judge Friia on July 21, 2008 (Exhibit C-2) without change from the proposed warrant of removal of petitioner's counsel, completely falsifies the allegations of petitioner's March 27, 1989 Petition (Exhibit B). COMPARE.

B. The warrant of removal, signed by Judge Friia on July 21, 2008 (Exhibit C-2) without change from the proposed warrant of removal of petitioner's counsel, materially alters the Petition's caption (Exhibit B), concealing respondents' jurisdictional objection based on improper service upon respondent Doris Sassower. COMPARE.

C: The judgment of eviction, signed by Judge Friia on July 21, 2008 (Exhibit C-1), without change from the proposed judgment of eviction of petitioner's counsel, materially diverges from her July 3, 2008 decision & order (Exhibit A-2), including by (i) changing the caption; (ii) falsely making it appear that respondents filed no Answer to the Petition; (iii) falsely making it appear that Judge Friia has continuity with #651/89, from its beginning; and (iv) falsely making it appear that Judge Friia's knowledge that is the basis for her deciding petitioner's November 25, 1991 summary judgment motion derives from this proceeding, rather than the separate proceeding, *John McFadden v. Elena Sassower*, #1502/07. COMPARE.

D. Petitioner's November 25, 1991 summary judgment motion was legally insufficient and deceitful in failing to annex his March 27, 1989 Petition (Exhibit B) and by materially misrepresenting its allegations and the status of the proceeding.

E. Petitioner's March 27, 1989 Petition (Exhibit B) is a verifiable fraud, established as such by the October 30, 1987 occupancy agreement, contract of sale, and August 1988 complaint in the federal action, all part of the record herein – barring summary judgment to petitioner, *as a matter of law*.

**(3) Denial of Constitutional Due Process:** Judge Friia's warrant of removal and judgment of eviction (Exhibits C-1 & C-2), and her underlying July 3, 2008 decision & order (Exhibit A-2) are unsupported by law, insupportable by law, and "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960)." They are fashioned on knowing and deliberate omission and falsification of the material facts

dispositive of my rights both in this proceeding and in #1502/07, entitling me to summary judgment, *as a matter of law*. With respect to the underlying July 3, 2008 decision & order (Exhibit A-2), the omissions and falsifications include:

(a) failing to identify any of the allegations of the Petition herein (Exhibit B);

(b) failing to identify any of the facts and law upon which respondents' April 24, 1989 motion sought dismissal of the Petition for "lack of subject matter jurisdiction and inadequate notice", failing to identify the grounds upon which it was denied by the September 18, 1989 decision of White Plains City Court Judge James Reap – and failing to make any evaluation with respect thereto;

(c) failing to identify that respondents' April 24, 1989 motion had included an objection to Judge Reap, *to wit*, that he should disqualify himself for reasons previously asserted in open court and known to him – and failing to make any evaluation with respect thereto;

(d) falsely making it appear that respondents' Answer to the Petition was untimely;

(e) failing to identify anything about the contents of respondents' Answer, including its Affirmative Defenses;

(f) falsely making it appear that the federal lawsuit against the Co-Op had been commenced only by respondents, rather than with petitioner as their co-plaintiff;

(g) expurgating the grounds of the federal lawsuit to delete its corporate non-compliance causes of action, including its violation of Co-Op policies, procedures, and guidelines;

(h) failing to identify that respondents were forced to drop their corporate non-compliance causes of action at the trial in the U.S. District Court due to petitioner's withdrawal from the federal lawsuit and the District Court's granting of the Co-Op's eve-of-trial motion to assert a defense based on lack of standing – with the result that the corporate non-compliance causes of action were never decided by the jury;

(i) failing to identify the grounds upon which petitioner's November 25, 1991 motion sought summary judgment – and failing to make any findings as to the motion's sufficiency and fidelity to the record, including as to its representations about the Petition, a copy of which was not annexed to the motion;

(j) falsely making it appear that petitioner's November 25, 1991 summary judgment motion was unopposed;

(k) falsely making it appear that following Judge Reap's December 19, 1991 decision reserving decision on petitioner's November 25, 1991 summary judgment motion, he was not provided with a copy of the Second Circuit Court of Appeals' decision on respondents' appeal of the federal lawsuit, which he was, and that his December 19, 1991 decision was the last "Procedural History" for 15 years and 8 months until petitioner commenced #1502/07, *John McFadden v. Elena Sassower*;

(l) failing to identify any of the allegations of the Petition in #1502/07 – and failing to identify anything about the posture of that proceeding wherein Judge Hansbury and Judge Friia have deliberately made no findings of fact or conclusions of law as to my ten Affirmative Defenses and four Counterclaims so as to deprive me of my legal entitlement to summary judgment;

(m) falsely making it appear that “the parties” to this proceeding were before Judge Friia on June 30, 2008;

(n) falsely making it appear that Judge Friia’s announcement to “the parties” on June 30, 2008 that she “would consider petitioner’s motion for summary judgment *de novo*, supplemented only by the Second Circuit decision” was *sua sponte*;

(o) failing to identify that on June 27, 2008, I had brought an order to show cause to disqualify Judge Friia for demonstrated actual bias and interest, largely focused on the improper calendaring of #1502/07 and #651/89 for an “ALL DAY TRIAL” on June 30, 2008, which Judge Friia had refused to sign, claiming that I could make the application orally on June 30, 2008, which she then prevented me from doing by walking off the bench as I was in the midst of requesting that she disclose facts bearing upon her fairness and impartiality, after she had made a succession of legally and factually unfounded rulings, including that she would decide *de novo* petitioner’s November 25, 1991 summary judgment motion;

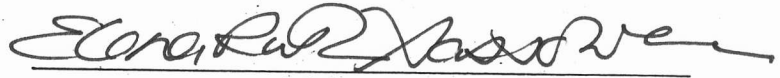
(p) falsely purporting that after “consider[ing] the defenses raised in this proceeding, respondents have failed to raise a material triable issue of fact” – without identifying any of respondents’ “defenses”, except for passing mention of Judge Reap’s September 18, 1989 decision denying those branches of respondents’ April 24, 1989 motion as sought dismissal for “lack of subject matter jurisdiction and inadequate notice”.

FIFTH: No previous application has been made for the relief requested herein except: (If any previous order to show cause has been made, it must be listed here)

Prior to Judge Friia’s signing the judgment of eviction and warrant of removal on July 21, 2008, I presented her with two orders to show cause to stay “enforcement of the judgment of eviction and warrant of removal entered or to be entered” on her underlying July 3, 2008 decision & order. These were submitted on July 8, 2008 and July 18, 2008, the latter presenting a 51-page analysis of the decision, particularizing its material omissions and falsifications, including those hereinabove recited. Judge Friia refused to sign each.

SIXTH: I have no one else to effectuate service of this order to show cause and therefore, I request permission to serve this order as appellant in person.

Wherefore, deponent-appellant prays that the relief requested in the annexed order be granted.



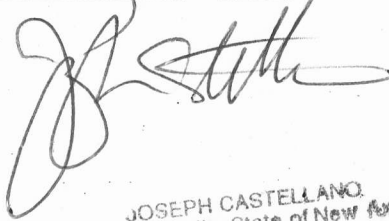
(signature)

ELENA RUTH SASSOWER

(name must be printed beneath signature)

Sworn to before me this

30<sup>2</sup> day of July, 2008



JOSEPH CASTELLANO  
Notary Public, State of New York  
No. 04CA5075933  
Qualified in Westchester County  
Commission Expires April 14, 2011