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

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JOHN MCFADDEN

Petitioner

Index #SP-651/89
#SP-2008-1474

AFFIDAVIT IN OPPOSITION TO APPELLANT-RESPONDENT ELENA SASSOWER'S APPLICATION FOR A STAY PENDING APPEAL

-against-

DORIS SASSOWER and
ELENA SASSOWER

Appellants-Respondents.

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John McFadden, being first duly sworn, deposes and says:

1. I am the petitioner-overlandlord in the underlying holderover special proceeding and the respondent in the above referenced appeal of Elena Sassower from the judgment of possession and warrant of eviction issued as against her in those proceedings. As such, I am fully familiar with the facts and circumstances surrounding this matter and hereinafter set forth.

2. I submit this affidavit in opposition to Ms. Sassower's application essentially seeking a stay of enforcement of the judgment of possession and warrant of eviction issued against her by the City Court of the City of

White Plains in the said proceedings on July 3, 2008.[1]

3. For the reasons hereinafter set forth, this Court must refuse to grant any of the relief requested by Ms. Sassower.

4. The facts surrounding this matter would not be complex but for the frivolous actions, legal wranglings and maneuverings of Ms. Sassower, her mother Doris and her father, George Sassower, through which the Sassowers have succeeded in hijacking your affiant's coop apartment for Elena Sassower's use for over twenty-one years, to your affiant's extreme detriment and frustration.

5. The relevant facts are as follows:

6. On August 2, 1983, your affiant purchased from the sponsor of the then newly completed coop project at 16 Lake Street, White Plains, New York the stock and proprietary lease appurtenant to Apartment 2C in the building known by that

[1] While Ms. Sassower has identified in the caption of her motion both herself and her mother, Doris Sassower, as "Respondents-Appellants", it is only Elena Sassower who has filed a Notice of Appeal from the decision and judgment of the White Plains City Court appealed and it is only Elena Sassower who is seeking a stay of proceedings. The time of Doris Sassower to appeal the decision and order granting judgment will have expired as of the

address (hereinafter the "Apartment") as and for my principal residence and the principal residences of my wife and my first child.

7. Prior to that date, I had been a tenant in the building.

8. In 1987, my second child was born and, my family having outgrown the apartment, I purchased a home on Long Island and put the Apartment up for sale.

9. Thereafter, by contract dated October 29, 1987 (Exhibit "A"), your affiant agreed, to sell my interest in the Apartment to appellant Elena Sassower and her mother, Doris Sassower. Although the contract did not reflect this fact, it was understood at the time that the Apartment would be occupied only by Elena Sassower and that Doris Sassower was included as a purchaser because of Elena's lack of funds and credit.

10. As is evident from a review of the contract of sale, the sale was subject to the approval of the Coop Corporation.

return date of Ms. Sassower's stay application.

It specifically provided that it would be cancelled and terminated upon the failure or refusal of the Coop Corporation to consent to the sale.

11. The contract also included an "Occupancy Agreement" under and pursuant to which the parties agreed that the Sassowers could occupy the Apartment for a monthly sum pending closing on the sale contemplated by the contract.

12. However, the closing did not ever occur as a result of the fact that the Coop Corporation's Board of Directors refused to approve the sale.

13. As was proven in the legal proceedings hereinafter cursorily described following the Coop Corporation's said determination, the Corporation had refused its consent to the sale for a laundry list of legitimate reasons including, but not limited to, the wrongful conduct of Elena Sassower's father, George Sassower, who had moved into the Apartment with Elena and had set up shop as an attorney there (Mr. Sassower is a disbarred attorney), smoked in the building's hallways in violation of its rules, was arrested by the police these and otherwise annoyed other residents of the building and Elena

Sassower's lack of financial means and credit.

14. Nevertheless, upon the Coop Corporation's refusal of consent for the sale, Elena and Doris Sassower commenced a civil rights action in the United States District Court for the Eastern District of New York in which they claimed, inter alia, that the Coop Corporation had discriminated against them on the grounds that they were Jewish, women and, in Elena's case, unmarried.

15. In their federal action, the Sassowers also named as defendants, each of the individual members of the Board of Directors of the Coop Corporation, its then managing agent, its former managing agent, its attorney and the prior owner of the building.

16. As the contract of sale was contingent upon the consent of the Coop Corporation, which consent had been denied, the contract and the Occupancy Agreement under which Elena Sassower and her father had been occupying the Apartment terminated by its terms.

17. Nevertheless, Elena and her father remained in

possession of the Apartment and refused to vacate it or return possession of it to your affiant.

18. Initially, your affiant was willing to allow the Sassowers some leeway to attempt, either through negotiation or through their litigation, to obtain the consent of the coop Corporation for the sale of the Apartment to the Sassowers under our contract, and did not immediately demand that the Sassowers vacate it[2]; however, as I witnessed the egregious manner in which the Sassowers went about litigating their claims and attempting to obtain the Coop Corporation's consent, and as it became increasingly clear that the Coop Corporation would not give its consent to the sale and that the Sassowers' litigation was frivolous, I demanded that they vacate the Apartment and return possession of it to me.

19. Needless to say, the Sassowers refused my demands.

[2] Indeed, initially, my attorneys authorized the Sassowers to name your affiant as a plaintiff in their federal action; however, within the a short period of time, as I observed that case progress and the manner in which the Sassowers were conducting it, and I understood more fully the allegation that they had made therein, I instructed my attorneys to remove me as a party therein and, in fact, I was withdrawn as a party to the suit.

The prior Proceedings

20. Thereafter ensued the commencement of several holdover proceedings in the City Court of the City of White Plains all aimed at evicting the Sassowers from the Apartment. Two of these proceedings were commenced by 16 Lake Street Owners, Inc., the Coop Corporation, against your affiant, Elena Sassower and George Sassower under Index #'s 434/88 and 500/88. One, of thse proceeding was commenced by your affiant against Doris and Elena Sassower under Index #504/88, and another was commenced by your affiant against George Sassower under Index #652/89[3].

21. The theory against your affiant in the proceedings commenced by the Coop Corporation was that, by failing to remove the Sassowers as occupants of the Apartment subsequent to their refusal of consent for the sale of the Apartment to Doris and Elena, I was in breach of the proprietary lease for the Apartment resulting in its termination.

[3] George Sassower was not served in these proceedings; he voluntarily vacated the Apartment and has consistently claimed that he does not reside there. The action against him under Index #652/89 was dismissed.

22. The proceedings that I commenced against the Sassowers sought their eviction as holdovers following the termination of my contract of sale with them, the Occupancy Agreement that was a part thereof and their continued occupancy of the Apartment thereafter on a month to month basis.

23. Ultimately, the Sassowers were successful in exploiting what the Court had found to be procedural deficiencies in each of those proceedings rendering it impossible for the cases to proceed; however, not before the Court rejected patently frivolous motions of the Sassowers to disqualify the City Court of White Plains and each of Judge Reap, Judge Hallman, Judge Friedman and Judge Holden (essentially the entire bench of the White Plains City Court at that time) based on unsupported conclusorily allegations of fraud, bias and other alleged misconduct of each of the various judges who, at any time, had any contact or association with any aspect of the cases brought against the Sassowers, and not before rejecting on the law the same arguments and claims that Elena Sassower subsequently offered in the proceedings underlying her instant stay application.

24. Annexed hereto and made a part hereof as Exhibit "B"

are copies of several decisions and orders rendered by the City of White Plains City Court in the above discussed matters evidencing the foregoing.

25. Of no small significance to the proceedings herein are the January 25, 1989 "Consolidated Decisions" of the Court and the Decision and Order embodied in a March 6, 1989 letter from the Court to the attorney for the Coop Corporation, L.J. Glynn, Esq.

26. Through its January 25, 1989 "Consolidated Decisions", the Court considered, and rejected, on the merits, most of the claims and arguments that the Sassowers subsequently raised in the proceedings below.

27. Although the Sassowers appealled the "Consolidated Decisions" to Appellate Term of the Supreme Court, they failed to perfect their appeal making the City Court's rulings final and binding as against them such that the doctrines of res judicata, collateral estoppel and issue preclusion precluded, and now preclude, the Sassowers from raising the same arguments and claims in the proceedings below and before this Court.

28. Through its March 6, 1989 letter decision, the City of White Plains City Court, in addition to outlining the various procedural problems with the three cases above discussed and their then current status according to the Court, denied the Coop Corporation's application to schedule trial dates in the three consolidated proceedings discussed therein until three events occurred; one of which was the issuance of a decision by the Appellant Term on the Sassowers' purported appeal from the City Court's "Consolidated Decisions" dated January 25, 1989, which appeal the Sassowers ultimately failed to prefect.

29. The Court, through its January 25, 1989 "Consolidated Decisions", had already granted to a limited extent a motion of Elena Sassower for a stay of all proceedings pending the outcome of her and her mother's federal litigation.

30. Ultimately, as hereinafter more fully discussed, the three above described proceedings were dismissed.

31. Following a traverse hearing upon the motion of Doris Sassower for dismissal of your affiant's summary proceeding against her under Index #504/89, the City Court of the City of White Plains determined that it lacked personal jurisdiction

over Doris Sassower. It is for this reason that in summarizing the status of my holdover proceeding under Index #5041/89, the City Court in its March 6, 1989 letter decision stated that the suit was viable only against Elana Sassower

The Proceeding Below

32. It being clear from the March 6, 1989 letter decision of the Court below above discussed that the City Court would not permit me to proceed with my summary holdover proceeding on the theory set forth in my petition absent joinder of Doris Sassower as a party respondent, on April 4, 1989, I commenced a new summary holdover proceeding in the City Court of the City of White Plains under Index #651/89 by service of a notice of petition and petition upon them. (Exhibit "B" to Ms. Sassower's papers)

33. It is in this proceeding that the Court issued the judgment and warrant that is now the subject of Elena Sassower's instant stay application.

34. On April 24, 1989, the Sassowers filed a motion with the City Court for dismissal of the proceedings on various

grounds including; a claim that the Court lacked subject matter jurisdiction over the proceedings under RPAPL §713, a claim that the predicate notice of termination had not properly been served because it was served upon respondents at the subject premises and not at the address given in the contract of sale between your affiant and the Sassowers as the address for service of notices under the contract and a claim that your affiant's acceptance of what the Sassowers identified as "rent" subsequent to the commencement of the proceedings voided them.[4]

35. By their motion, the Sassowers also demanded that their motion be referred to Judge Reap of the City Court of the City of White Plains despite their prior application in the previous cases filed against them for disqualification of Judge Reap on the grounds, inter alia, of fraud and bias.

[4] Initially, the Sassowers had been paying $1,000.00 per month as use and occupancy under the terms of the Occupancy Agreement. Subsequently, in the context of applications made by the Sassowers for stays of proceedings, they agreed to pay use and occupancy that petitioner could accept without prejudice. The Court, in any case that the monies paid were accepted post petition and therefore would not distrub the summary proceedings Over the course of the period since the the proceedings against the Sassowers was commenced, Elena Sassower agreed to increases in the monthly use and occupancy. Although she has ceased to make the monthly payments, when last she paid, the agreed amount was $1,600.00 per month; a sum well below the market rent for the Apartment.

36. Lastly, the Sassowers sought a stay of the proceedings pending the outcome of their federal lawsuit above described.

37. Annexed hereto and made a part hereof as Exhibit "C" is a copy of the Sassowers' notice of motion and motion.

38. Your affiant duly opposed the motion. A copy of my opposition is annexed hereto as Exhibit "D".

39. It was not until September 18, 1989, that the City Court determined the Sassowers' motion.

40. By decision and Order dated and entered on that date (Exhibit "E"), the Court granted that portion of the Sassowers' motion as sought referral of it to Judge Reap. It was he that rendered the September 18, 1989 decision and order.

41. By that same decision, the Court denied, both on procedural grounds and on the merits, each of the Sassowers' claims and arguments with respect to the Court's lack of jurisdiction over the subject matter of these proceedings and over their persons.

42. In this regard, the Court noted that the Sassowers had made identical arguments in the earlier summary proceedings above described, each of which the Court had denied by and through its January 25, 1989 "Consolidated Decisions". As set forth above, because the Sassowers filed a notice of appeal of the "Consolidated Decisions" in the prior cases but failed to perfect their appeals, the January 25, 1989 "Consolidated Decisions" became final and the Sassowers were and are, barred by the doctrines of res judicata, collateral estoppel and issue preclusion from raising the same arguments in the proceedings below and on this instant appeal.

43. The City Court also noted in the September 18, 1989 decision, that RPAPL §713 was not applicable to the proceedings inasmuch as they were holdover proceedings commenced by your affiant pursuant to RPAPL §711.

44. The Court also determined that service upon respondents at the address of the premises that were the subject of the proceedings and not at the address set forth in your affiant's contract of sale with the Sassowers for the giving of notices was proper because the, contact's "notice" provision did not govern the service of a notice of

termination and/or a notice of petition and petition in the holdover proceedings that your affiant had commenced.

45. With respect to that portion of the Sassowers' motion as sought a stay of the proceedings pending the outcome of their federal lawsuit, the Court granted the motion to a limited extent in an obvious attempt to follow its ruling in the January 25, 1989 "Consolidated Decisions" under the mistaken belief that the Sassowers had perfected their appeal of the "Consolidated Decisions" and were awaiting a decision of the Appellate Term determining their appeal.

46. Because of the Court's decision, the case remained dormant for well over a year, pending the outcomes of the Sassoswers' non-existent appeal of the January 25, 1989 "Consolidated Decisions" and their federal litigation.

The Federal Litigation

47. By a decision and order dated September 5, 1990 (Exhibit "F"), the U.S. the District Court granted a motion of defendant Hale Apartment Corp., the former owner of the building before it was converted by the Sponsor to coop

ownership, for summary judgment.

48. By the same decision, the Court also granted motions for summary judgment in favor of the Coop Corporation's managing agent; however, although the Court found that "plaintiff faced a formidable task in proving their claim of sex and/or religious discrimination, it could not grant the motion for summary judgment of the Coop Corporation or its individual board members.

49. A few months later, by decision and order dated November 13, 1990 (Exhibit "G") the U.S. District Court granted a motion for summary judgment dismissing the Sassowers' claims against defendant Roger Esposito, the Coop Corporation's attorney, Secretary and Assistant Vice President, finding the Sassowers' claims and arguments as against Mr. Esposito to be "groundless".

50. In its decision, the Court denied Mr. Esposito's motion to recover costs, disbursements and attorneys fees "without prejudice to renewal at the conclusion of [the] litigation." The Court also denied the Sassowers' " frivolous motion for Rule 11 sanctions" against Mr. Esposito.

51. On March 4, 1991, the Sassowers' claims against the Coop Corporation and its individual Board members was brought on for trial before the Honorable Gerald L. Goettel, United States District Judge, with a jury. At the conclusion of the trial, because the jury had answered unfavorably to the Sassowers each of the questions set forth in a special verdict form provided by the Court for that purpose and had returned a unanimous verdict in favor of the defendants, the Court, by judgment dated March 20, 1991 and entered on March 22, 1991, dismissed the Sassowers' claims. (Exhibit "H")

52. As was, is, and has been, their practice in each and every litigation in which they were involved and where decisions were rendered against them, the Sassowers promptly moved for a new trial and for recusal of Judge Goettel from the matter or reassignment of the action to another judge outside of the Southern District of New York on the grounds of misconduct, fraud and bias.

53. In its decision and order dated May 16, 1991, the U.S. District Court, having found that the motion was "not made in good faith" and was, patently frivolous, denied each and every aspect of the Sassowers' motion.

54. A copy of the U.S. District Court's May 16, 1991 decision and order is annexed hereto as Exhibit "I".

55. Subsequently, all of the defendants in the federal action moved the District Court, for attorneys fees and sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedures, the Federal Fair Housing Act, 42 USC §3614(c), 28 USC §1927 and the general powers of the court.

56. On August 12, 1991 in a decision castigating the Sassowers for acting in bad faith, for acting vexatiously and unreasonably in the manner in which they litigated their claims, for vexatiously multiplying proceedings, for making several unsupported bias recusal motions, for continually making personal attacks on opposing parties and counsel, for routinely making baseless motions to reargue in each and every instance where the Court's ruling were not satisfactorily to them, for making a "mammouth motion for a new trial and sanctions against opposing counsel which sought to reargue virtually every aspect of the litigation for the third time" and for the commencing and maintaining their frivolous action in the first instance, the Court awarded sanctions, attorneys fees and costs as against the Sassowers in the total sum of

$97,850.00.[5]

57. A copy of the U.S. District Court's August 12, 1991 decision and order granting sanctions is annexed hereto as Exhibit "J".

58. Neither of the Sassowers ever appealed the jury verdict or the judgment rendered as a result therein.

59. They did, however, file an appeal with the United States Circuit Court for the Second Circuit from the decisions of the District Court that denied their recusal motion and motion for a new trial and that granted sanctions as against them.

60. By its August 13, 1992 decision (Exhibit "K"), the United States Court of Appeals affirmed each and all of the District Court's decisions and orders, with the exception that, although the Court "conclude[d] that [Judge Goettel] was entitled to find both [Elena and Doris Sassower] liable for

[5] The Court also awarded sanctions jointly against your affiant and my counsel in the sum of $6,000.00 because of my initial participation in the action as a plaintiff. Because I had never authorized my attorney to include me as a plaintiff, the sanctions, ultimately, were paid entirely by my, then, counsel.

sanctions", it vacated the imposition of joint liability for the full amount upon Elena in the absence of evidence that she had the financial resources to pay an award of that size and remanded the issue of the sanctions to be imposed against Elena to the U.S. District Court to assess against Ms. Sassower "such portion of the award as is appropriate in light of her resourses".

61. The Sassowers subsequently filed a petition for certiorari with the United States Supreme Court; however, that petition was denied.

62. Incredibly, the Sassowers thereafter sought a rehearing of the Supreme Court's denial of their cert. application.

63. A copy of the decisions of the Supreme Court denying the Sassowers' petition for certiorari and for rehearing on the denial are annexed hereto as Exhibit "L".

64. Following these proceedings and consistent with their frivolous practice, the Sassowers filed a "formal complaint" with the House Judiciary Committee of the U.S. House of

Representatives claiming that U.S. District Judge Goettel, each of the Judges of the Second Circuit Court of Appeals and each of the U.S. Supreme Court's Justices was guilty of "misconduct", "a profound abuse of judicial power for retaliatory purposes", "a pattern of wilful and deliberate perversion and disregard of controlling law" and other acts of wrongdoing. (See Exhibit "M").

Petitioner's Summary Judgment Motions Below

65. Following the entry of judgment against the Sassowers in the Federal Court and each of the provisions limiting the previously granted stay of proceedings having been satisfied, your affiant moved the City Court for summary judgment by motion made returnable before the Court on December 17, 1991 in the proceeding below. (Exhibit "N")

66. By and through your affiant's said motion, your affiant advised the Court that the Sassowers' federal discrimination action had been dismissed and that the Sassowers had failed to perfect their appeal of the City Court's January 25, 1989 "Consolidated Decisions". Your affiant also provided the Court with a copy of the jury

verdict form and judgment rendered against the Sassowers in their federal litigation and asked the Court to award a judgment of possession in favor of your affiant.

67. Respondent opposed the motion (Exhibit "O") claiming that the motion was premature and violative of a stay allegedly granted by the Court and claiming that "the federal action is far from concluded" because the Sassowers had perfected their appeal to the U.S. Court of Appeals of the award of sanctions as against them and of the denial of their motion for a new trial.

68. As was their practice, the Sassowers' opposition was replete with personal attacks against your affiant's then counsel and sought monetary sanctions against your affiant and counsel for bringing what the Sassowers described as a "frivolous, false and patently deceptive motion".

69. The Court rendered its decision on your affiant's motion on December 19, 1991. A copy of the Court's said decision is annexed hereto as Exhibit "P".

70. By its decision, the Court determined to reserve

decision on your affiant's summary judgment motion until the U.S. Court of Appeals made its decision on the Sassowers' appeal and the City Court was provided with a copy of the appellate decision.

71. In so ruling, the Court noted that the only issue remaining in the case following the Court's denial of the Sassowers' prior motion for dismissal and other relief was the same issue presented by the Sassowers in their federal litigation and that, as a result, if the Sassowers prevailed on their federal litigation, your affiant's summary proceedings would be dismissed while, conversely, if the Sassowers failed to prevail on their federal action, summary judgment in favor of your affiant in my summary proceedings would, and should, be granted.

72. Thus, the Court ruled as follows:

> In one sense (1) the appeals of the jury verdict and judgment of the U.S. District Court Judge (Hon. Gerald L. Goettel, U.S.D.J.) entered thereon and dated March 20, 1991 and (2) the Judge's decision dated May 16, 1991 are not relevant because there was never any stay of the proceedings in the White Plains City Court ordered in all of the federal litigation. See paragraph III C. of our letter dated March 6, 1989 and sent to L.J. Glynn, Esq., with copies to petitioner and respondent herein.

> In another sense the federal appeals are very relevant because petitioners lost in the Federal District Court and if they also lose in the U.S. Court of Appeals for the Second Circuit our case would be effective terminated. This follows because respondent's claims in the federal action were dismissed and it is those exact claims that form their defenses in City Court summary proceedings. Axiomatic principles of res judicata, collateral estoppel an issue preclusion would apply. In that situation we would grant the instant motion for summary judgment forthwith. Conversely, if the respondent prevail in the federal appellate process, that would mean a denial of the instant motion and ultimately a dismissal of the underlying summary proceeding because respondents' defenses here would have been proven valid and petitioner similarly would be bound by the three principles stated above.

73. The Court, in the same decision, denied the Sassowers' frivolous request for sanctions and costs.

74. The Sassowers did not appeal the City Court's December 19, 1991 decision and Order.[6]

[6] It is critical to note that all of the defenses that the Sassower had raised in their answer with the exception of their claim of discrimination had already been determined against them in prior proceeding as above set forth. The Sassowers were precluded from relitigating the issues. The Sassowers failed to offer any legitimate basis or evidence in opposition to your affiant's summary judgment motion. It is for these reasons that the City Court correctly ruled that the only remaining issue in the case before it was whether the Sassowers would prevail on their Federal claims.

75. As above set forth, it was not until August 12, 1992, that the U.S. Court of Appeals for the Second Circuit rendered its decision on the Sassowers' appeal of the award of sanctions against them and the denial of their application to the District Court for a new trial.

76. Promptly thereafter, your affiant, through my counsel, made and filed with the City Court a second motion for summary judgment (Exhibit "Q") in which, in accordance with the City Court's December 19, 1991 decision and order, your affiant advised the City Court of the U.S. Court of Appeals' decision as against the Sassowers and provided as an exhibit to my motion a copy of the said decision.

77. Copies of my prior motion for summary judgment and the December 19, 1991 decision and order were also included as exhibits to my motion.

78. Thorough my motion, your affiant also reminded the Court of the ruling in its December 19, 1991 order that summary judgment would be granted to your affiant in the event that the Sassowers were unsuccessful in the appeal that they had filed with the United States Circuit Court of Appeals.

79. As was their consistent pattern and practice of frivolous, vexatious and multiplicitous litigation, the Sassowers responded to your affiant's motion by filing affidavits seeking what they described as an adjournment of your affiant's motion for summary judgment but which, was, in fact, a further stay of proceedings pending an application that they intended to make to the United States Supreme Court for certiorari and also sought sanctions as against your affiant and my counsel for refusing to agree to an adjournment of my motion.

80. As was also their pattern and practice, the Sassowers' motion was rife with unwarranted and baseless personal attacks and vitriol leveled against your affiant and my counsel.

81. A copy of the Sassowers' said affidavits are annexed hereto as Exhibit "R".

82. Your affiant opposed the Sassowers' improperly made application (Exhibit "S")

83. By decision and order dated and entered on December 29, 1992, the City Court denied the Sassowers' request for a

stay and for sanctions and directed that they file any opposition to your affiant's summary judgment motion by January 18, 1993. (Exhibit "T")

84. The Sassowers filed no opposition to the motion. Instead, they submitted the affidavit of Doris Sassower in which she purported to seek reargument and renewal of the denial of the Sassowers' application for sanctions against your affiant and my attorney and, as well, reargument and renewal of their application for a stay of petitioner's motion for summary judgment sine die. (Exhibit "U")

85. The Sassowers' presented no factual basis, evidence or citation of authority opposing the merits of your affiant's summary judgment motion or supporting any defense that they may have had to it.

86. They did not "lay bare" any "proof" in defense of your affiant's motion as CPLR §3212 required.

87. Incredibly, the City Court did not rule on your affiant's motion for summary judgment until July 3, 2008, a full fifteen years after is was made, and only then, upon the

urging of both your affiant through new counsel and of Ms. Sassower herself.

88. The City Court, by its decision and order of July 3, 2008 granted your affiant's summary judgment motion, awarding a judgment of possession to your affiant and directing the issuance of a warrant of eviction as against the Sassowers.

89. As above set forth, as of date that your affiant's motion for summary judgment was fully submitted, Elena Sassower was, and to this day remains, the only occupant of the Apartment.

90. Likewise, as above set forth, as the date that your affiant's summary judgment motion was fully submitted, Ms. Sassower was paying monthly use and occupancy of $1,000.00, almost half the fair market rental value for the Apartment. Although she agreed to pay various increases in this sum, she continued to pay well less than the fair market value for the Apartment until recently when, in violation of a City Court Order, she ceased to make any payments at all.

91. Your affiant has been burdened with the cost of

ownership of the Apartment, paying mortgage obligations, common charges, insurance and costs of repairs and maintenance, while Ms. Sassower continues to enjoy the use of the Apartment at my expense.

92. In late 2006, a leak in the plumbing in the building from above the Apartment caused significant damage to the Apartment.

93. The Coop Corporation, through its insurance carrier, agreed to make the necessary replacements of flooring and cabinets and other repairs of the Apartment; however, Ms. Sassower refused the Coop and your affiant's contractors access to the Apartment claiming she continued to have a right to purchase the Apartment and that, as such, she should be the sole arbiter of what work was to be performed and the manner and timing of its performance.

94. She also made frivolous complaints to the Coop Corporation's insurance carrier to the effect that the Coop and your affiant were committing fraud in making the insurance claims because, she alleged, the repairs that the insurance company had agreed to pay for were not necessary.

95. From these events, it became patently clear to your affiant and to the Coop Corporation, that we could no longer wait for the City Court to rule on your affiant's long pending motion for summary judgment and that some other action was required.

96. Therefore, I retained new counsel and, through him, commenced a new summary holdover proceeding against Ms. Sassower under Index #1502/07, on different grounds and on a different theory than those pled in my summary proceeding under Index #651/89. Because, as of this date, the Apartment was occupied only by Elena Sassower, she, alone, was named as the respondent in the action.

97. On August 20, 2007, Ms. Sassower filed her answer in those proceedings. (Exhibit "V" w/o voluminous exhibits). Through her answer, and through a subsequent motion for dismissal of the proceedings, Ms. Sassower claimed that the proceedings should be dismissed, inter alia, because your affiant's claims herein were, allegedly, identical to those raised by your affiant in the summary holdover proceeding under Index #651/89, which case, Ms.Sassower asserted was still open.

98. Ms. Sassower also raised delusional claims to the effect that she had been discriminated against by the Coop, that was entitled to purchase the Apartment under the 1987 contract above discussed and that somehow, your affiant should be estopped from evicting her because, allegely, I profittdd by her continued occupancy of the Apartment and was, thereby, unjustly enriched. She also raised several of the same defenses as this Court had previously rejected in the prior proceedings against her including the proceedings under Index #651/89.

99. During the course of the proceedings Ms. Sassower moved for the disqualification of Judge Hansbury and Judge Fria and for the transfer of the case out of the City Court on the grounds that the Court and the Judges therein were biased and had committed misconduct and fraud as against her.

100. She also sought sanctions and a referral of your affiant's attorney to the Disciplinary Committee on baseless claims of fraud and misconduct.

101. Lastly, she sought consolidation of the proceedings with the proceedings under Index #651/89 which she continued

to assert remained open.

102. Ms. Sassower's submissions were, to say the least, abusive, vitriolic and so overly bulky as to prevent your affiant from burdening this Court with their reproduction here.

103. By and through a notice issued by the City Court, Ms. Sassower and your affiant were notified that the proceedings under both Index #651/89 and 1502/07 would appear on the Court's calendar on June 30, 2008.

104. On that day, Ms. Sassower, your affiant and my attorney appeared before the Court at the call of the Court's calendar, whereupon Ms. Sassower continued to demand that the Court refuse to proceed with the proceedings under Index #1502/87 because, she asserted, the claims therein were identical to those raised by your affiant in the proceedings under Index #651/89, which she continued to claim remained open.

105. Your affiant, through my counsel, advised the Court that, in fact, the proceedings under 651/89 did remain open as

Ms. Sassower claimed and that there was pending still therein your affiant's, November, 1992 motion for summary judgment.

106. The Court acknowledged that such was the case and advised that it would consider your affiant's summary judgment motion de novo; and did so.

107. Upon its consideration of your affiant's motion, the Court granted it by and through the July 3, 2008 decision and order from which Ms. Sassower now appeals.

Appellant's Motion

108. Ms. Sassower's instant motion for a stay of proceedings, and in particular, a stay of enforcement of the judgment of possession and warrant of eviction issued as against her is nothing short of frivolous.

109. As and for her first argument therein, she brazingly argues that, "upon information and belief, #651/89 is closed and petitioner's March 29, 1989 Petition was dismissed for want of prosecution at some point during the past fifteen years of dormancy."

110. Ms. Sassower's conclusorly allegations are factually erroneous as the City Court determined upon its review of its own files; is unsupported by any facts or evidence and is directly contrary to the claims that Ms. Sassower made in both the proceedings against her under Index #1502/07 and the instant proceedings in open Court on June 30, 2008.

111. Moreover, given that Ms. Sassower sought dismissal of the proceedings under Index #1502/07 on the ground that the instant proceedings wsere identical and still open and viable, she is now estopped from contending that the instant matter is closed or that subsequent events over the past many years, that it has been pending preclude your affiant from obtaining judgment on the matter, as Ms. Sassower now attempts to argue.

112. Ms. Sassower's claim that the Court "opened a new docket number for this 1989 proceeding, #SP-2008-1474" surreptitiously and without notice to the parties" is also nothing short of frivolous; is disproved by the fact that the Court included the Index # at issue on the notice for the parties to appear in the matter on June 30, 2008 and is otherwise unsupported by any facts or evidence.

113. Ms. Sassower's next claim, that "there is no landlord tenant relationship between the parties", is premised on the argument that the 1987 Occupancy Agreement under which she originally took possession of the Apartment so provided.

114. Ms. Sassower, however, fails to advise that the City Court rejected this very argument in its rulings in the prior proceedings against Ms. Sassower above discussed, at least one of which rulings Ms. Sassower filed a Notice of Appeal from, but did not perfect the appeal.

115. More importantly, the grounds on which the White Plains City Court rejected Ms. Sassower's argument are meritorious for the reasons stated in the City Court's various decisions above discussed.

116. Ms. Sassower next argues that Juddge Fria, who rendered the July 8, 2008 decision, "is disqualified for a pervasive actual bias and interest". Once again, Ms. Sassower's claim is nothing short of frivolous, vexatious and harassing to all concerned.

117. Ms. Sassower's argument is nothing but a continuation

of the practice of the filing frivolous recusal motions against every Judge and Court with whom she comes in contact for which she and her mother was severally sanctioned by the Federal Court in her above described litigation.

118. The same is true with respect to Ms. Sassower's argument that your affiant and my counsel were guilty of "fraud, misrepresentation and other misconduct". And that Ms Sassower was, somehow, denied "Constitutional Due Process".

119. Ms. Sassower's rambling vitriolic arguments and accusations are patently frivolous, not worthy of a detailed response and must be rejected as such.

120. The decision as to whether this Court should grant a stay of proceedings pending the outcome of Ms. Sassower's appeal is a matter of discretion. *Genet v. Delaware & H. Canal Co.*, 113 N.Y. 472, later *App.*57 N.Y. Super Ct. 594 6 N.Y.S. 959, aff'd 119 N.Y. 645; *Eno v. New York E.R. Co.*, 15 A.D. 336, 44 N.Y.S. 61, aff'd 158 N.Y. 730; *Van Amburgh v. Curran*, 73 Misc. 2d 1100, 344 N.Y.S. 2d 966).

121. A stay should not be granted where the motion papers

disclose no reason for the stay or merit to the appeal or where it is shown to have been taken solely for the purpose of delay. *Sheffield Producers Cooperative Ass'n, Inc. v. Jetter Dairy Co.*, 299 N.Y.S. 684 (A.D., 1937); *Connolly v. Manhattan R. Co.*, 7 A.D 610, 40 N.Y.S. 1007; *Immigrant Mission Committee of German Evangelical Lutheran Synod v. Brooklyn El. R. Co.*, 40 A.D. 611, 57 N.Y.S. 624; *Application of Mott*, 123 N.Y.S. 2d 603. *Re Terrence K, 135 A.D. 2d 877, 522 N.Y.S. 2d 949, app dismd without op 70 N.Y. 2d 951, 524 N.Y.S. 2d 678, and later proceeding, 138 Misc. 2d 611, 524 N.Y.S. 2d 966.*

122. In the case of *Herbert v. New York*, 126 A.D. 406, 510 N.Y.S. 2d 112, the Appellate Division, First Department ruled that, although the litigants were entitled to appeal as of right, a stay pending appeal will not be granted (and where a stay is automatic, it should not be continued) if the appeal is meritless or taken primarily for the purpose of delay. The Court stated that "proper use of precious court resources is critical."

123. Here, Ms. Sassower has failed to demonstrate that her appeal has any merit or is likely to succeed.

124. At the same time, Ms. Sassower has failed to provide any legitimate basis for this Court to grant a stay pending her appeal.

125. Ms. Sassower has abused the courts of this State and the federal courts for over twenty-one years in these matters. As the City Court finally came to realize, the time has come for the games to end and for the courts to give back to your affiant the Apartment that Ms. Sassower has hijacked these past many years.

WHEREFORE, your affiant respectfully requests that Ms. Sassower's sty application be denied in its entirety and that I be awarded such other and further relief as this Court deems just, proper and equitable.

JOHN MCFADDEN

Sworn to before me this 8
day of August, 2008

Notary Public

LEONARD A. SCLAFANI
Notary Public, State of New York
No. 02SC6120579
Qualified in Westchester County
Commission Expires December 20, 2008