rec'd 8/22/08

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERMS: SECOND & ELEVENTH AND
NINTH & TENTH JUDICIAL DISTRICTS
- - - - - - - - - - - - - - - - - - - -X
JOHN MCFADDEN
Petitioner

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

AFFIDAVIT IN OPPOSITION TO APPELLANT-RESPONDENT ELENA SASSOWER'S MOTION FOR "VACATUR/DISMISSAL"

-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. 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 the motion of Ms. Sassower, one of two respondents in the underlying holdover proceeding and the only appellant herein[1], seeking: (a) vacatur

[1] While, in the caption of her motion and Notice of Appeal, Ms Sassower has identified 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 from and it is only Elena Sassower who is the movant herein . The time of Doris Sassower to appeal the decision and order granting judgment has expired.

of a decision and order of the City Court of the City of White Plains, entered on July 3, 2008 (hereinafter" the July 3, 2008 decision and order") which granted Mr. McFadden's motion for summary judgment and which now underlies Ms. Sassower's appeal herein, on grounds of "fraud, misrepresentation and other misconduct of an adverse party" allegedly pursuant to CPLR §5015(a)(3) and for alleged "lack of jurisdiction to render the judgment or order", purportedly pursuant to CPLR §5015(a)(4); b) dismissal of Mr. McFadden's underlying petition purportedly pursuant to CPLR §§3211(a)(1)&(2) and CPLR §3212(b), allegedly "based on documentary evidence and lack of subject matter jurisdiction"; c) referral of Mr. McFadden and my counsel for disciplinary and criminal investigation"; and referral also of White Plains City Court Judge Friia, who rendered the July 3, 2008 decision and order, for disciplinary and criminal investigation "consistent with this Court's mandatory 'Disciplinary Responsibilities' under §100.3(d) of Chief Administrator's Rules Governing Judicial Conduct"; e) the imposition of monetary sanctions and costs upon your affiant and my counsel allegedly for "litigation misconduct proscribed by 22 NYCRR §130-1.1 et seq.", and f) the assessment of damages against my counsel allegedly "for deceit and collusion

proscribed under Judiciary Law §487(1) as a misdemeanor and entitling [Ms. Sassower] to treble damages".

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 Sassower, 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 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 (who did not intend to, and never did, live in the apartment, but who was funding the purchase for her daughter).

10. As is evident from a review of the contract of sale, the sale was subject to the approval of the Coop Corporation. 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 that followed 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 was, and is, a disbarred attorney), smoked in the building's hallways in violation of its rules, was there arrested by the police 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.

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

[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.

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.

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

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[3] George Sassower was not served in these proceedings; he voluntarily vacated the Apartment and has since consistently claimed that he does not reside

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 conclusory 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 motion.

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

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there. The action against him under Index #652/89 was dismissed.

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 appealed the "Consolidated Decisions" to the 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 barred and precluded, and now bar and 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 perfect.

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 City Court 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 July 3, 2008 decision and order and granted the judgment and warrant that is now the subject of Elena Sassower's instant motion.

34. On April 24, 1989, the Sassowers filed a motion with the City Court for dismissal of the proceeding 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 proceeding voided it.[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.

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.

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[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 disturb 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

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 the proceeding 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

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market rent for the Apartment.

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 Elena Sassower was and is, barred by the doctrines of res judicata, collateral estoppel and issue preclusion from raising the same arguments in the proceedings below, on her appeal to this Court and on her instant motion.

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 thereunder 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; service of these documents was governed by RPAPL §735 and the Sassowers did not deny that they

were served in accordance with that Statute.

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, it reluctantly denied the motion of the Coop Corporation and its individual board members stating that although the Sassowers had made allegations of fact sufficient to defeat the motion, they "faced a formidable task in proving their claim of sex and/or religious discrimination".

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 Eastern 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 Procedure, 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 and 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 satisfactory 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 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 thereof.

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

[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.

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 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. Copies 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. The Sassowers 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 (that is; were the Sassowers the victims of discrimination) 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 proceeding 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 effectively terminated. This follows because respondents' 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 and issue preclusion would apply. In that situation we would grant the instant motion for summary judgment forthwith. Conversely, if the respondents 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]

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[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

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. Through my motion, your affiant also reminded the Court of the ruling in its December 19, 1991 order that summary

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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

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 request for a further stay of proceedings pending an application that they intended to make to the United States Supreme Court for certiorari and a request for 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 then counsel.

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

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whether the Sassowers would prevail on their Federal claims.

82. Your affiant opposed the Sassowers' improperly made applications (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 sine die of petitioner's motion for summary judgment. (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 finally rule on your affiant's motion for summary judgment until July 3, 2008, on which date, by its July 3,2008 decision and order, it granted the motion and directed the issuance of a judgment of possession and a warrant of eviction as against Ms. Sassower and her mother Doris (who had never assumed occupancy of the Apartment). As hereinafter more fully set forth, it was only upon the urging of both your affiant through new counsel and Ms. Sassower herself that the City Court finally determined to consider and rule on the motion.

88. In this regard, the following occurred:

89. As above set forth, during the period following the Coop Corporation's refusal to approve the Sassowers as purchasers of my Apartment, your affiant was burdened with the cost of ownership of the Apartment; paying mortgage obligations, common charges, insurance and costs of repairs and maintenance, while Ms. Sassower continued to enjoy the use of the Apartment at my

expense.

90. Your affiant's attorneys who had made my above described motions for summary judgment had advised that without the expenditure of significant sums that your affiant did not have, I could do nothing more to regain possession of my Apartment from the Sassowers but await the determination of my motions for summary judgment pending before the City Court.

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

92. 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 that 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.

93. 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.

94. From these events, it became patently clear to your affiant and to the Coop Corporation, that, regardless of the expense, 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.

95. Therefore, I retained new counsel and, through him and on his advice, in July, 2007, I commenced a new summary holdover proceeding against Ms. Sassower under Index #1502/07 to which I above refer, on different grounds and on a different theory than those pled in my summary proceeding under Index #651/89. Because, as of the times relevant to my claims in that proceeding, the Apartment was occupied solely by Elena Sassower, she alone was named as the respondent in the action.

96. On August 20, 2007, Ms. Sassower filed her answer in that proceeding. (Exhibit "V" w/o voluminous exhibits). Through her

answer, and through a subsequent motion for dismissal of the proceeding, Ms. Sassower claimed that the proceeding should be dismissed, inter alia, because your affiant's claims therein were, allegedly, identical to those raised by your affiant in the summary holdover proceeding under Index #651/89 (the proceeding below), which case, Ms.Sassower asserted was still open.

97. Ms. Sassower also continued to claim, as she does on her motion before this Court, and despite the outcomes in her federal litigation: that she had been discriminated against by the Coop, that she was entitled to purchase the Apartment under the 1987 contract above discussed and that somehow, your affiant should be estopped from evicting her because, allegedly, I somehow profited 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 proceeding below.

98. During the course of the proceeding, 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.

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

100. Lastly, she sought consolidation of the proceedings with the proceedings below which she continued to assert remained open.

101. 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.

102. By and through a notice issued by the City Court, Ms. Sassower and your affiant were notified that both the proceeding below under Index #651/89 and the proceeding under Index #1502/07, which, based upon Ms. Sassower's claims and arguments in the case under Index 3 1502/07, the Court had determined to consolidate for trial, would appear on the Court's calendar on June 30, 2008.

103. 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 action under Index #1502/87 because, she asserted, the claims therein were identical to those raised by your affiant in the proceedings below, which she continued to claim remained open.

104. Your affiant, through my counsel, advised the Court that, in fact, the proceedings below 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.

105. The Court acknowledged, from its own review of the Court's files, that such was the case and advised that it would consider your affiant's summary judgment motion de novo; and did so.

106. 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. In mid July, 2008, the City Court issued a judgment of possession in favor of your affiant, but did not issue a warrant of eviction until July, 31, 2008.

107. Ms. Sassower thereafter filed a Notice of Appeal of the July 3, 2008 decision and order.

108. She had previously presented to the City Court a proposed order to show cause in which she attempted to raise, for the most part, the same claims, defenses and arguments that the City Court had rejected in the prior litigations against her,(in particular the claims that the City Court had rejected through its January 25, 1989 "Combined Decisions" and March 6, 1998 letter decision above described). She also requested essentially the same form of relief as had been denied to her through that decision and other decisions in the prior litigation. Lastly, she sought a stay of enforcement of the July 3, 2008 decision and order and of the judgment and warrant issued thereby pending a determination of her application.

109. However, recognizing that the claims, issues and

arguments that Ms. Sassower had proposed to advance had already been finally determined as against her in the prior litigations and, in any case, were meritless, the City Court refused to sign the order to show cause, noting on the face of the document the that "all issues raised have been previously determined by the Court".

110. It appears that Ms. Sassower has filed with the Appellate Term as a free standing document, either in connection with her instant motion or in connection with a motion hereinafter discussed that she filed with the Court for a stay of enforcement of the July 3, 2008 decision and order, or both, a copy of the said order to show cause with the City Court's above quoted notation thereon.

111. Annexed under Exhibit tab "A" to that order to show cause is a copy of another order to show cause that Ms. Sassower apparently had filed with the City Court under the more recent case that your affiant had commenced as against her under Index # 1502/07.

112. A review of that document reveals that, through it, Ms.

Sassower attempted again to raise the same issues and claims and to advance the same arguments as she had raised and that the City Court had rejected in the prior litigations above described.

113. As the face of that order to show cause plainly sets forth, the City Court denied Ms. Sassower's application on the grounds that "the relief requested has either been previously addressed by the Court or is beyond the scope, authority or jurisdiction of this City Court".

114. From the foregoing, the exhibits annexed hereto and your affiant's accompanying memorandum of law, it is clear that, in summarily denying Ms. Sassower's two proposed orders to show cause, the City Court was on solid ground and acted in accordance with applicable law in that Ms. Sassower was barred from raising the issues, claims and arguments, and from obtaining any of the relief that she sought therein under the doctrines of res judicata, collateral estoppel and issue preclusion.

115. Because, with the exception of Ms. Sassower's tiresome

requests that City Court Judge Friia and your affiant's attorney be referred for criminal and disciplinary prosecution and the like, the issues, claims and arguments that Ms. Sassower has advanced in support of her instant motion are the same as those that the City Court previously and repeatedly rejected and that she is now barred and precluded from relitigating, this Court must also reject the arguments and deny Ms. Sassower's motion.

116. It should be noted that, by motion fully submitted for adjudication to this Court on August, 13,2008, the same day that Ms. Sassower filed her instant motion with the Court, Ms. Sassower advanced the identical claims, arguments and issues as she has attempted to raise on her motion herein. Her instant litigation, once again evidences the precise style of multiplicitous, frivolous vitriolic litigation that caused the U.S. District Court to sanction Ms. Sassower in her above described unsuccessful federal litigation.

117. As above set forth, as of date that your affiant's motion for summary judgment giving rise to the decision and order from which Ms. Sassower now appeals was fully submitted in 1992 in the City Court, Elena Sassower was, and to this day

remains, the only occupant of the Apartment.

118. Likewise, as above set forth, as the date that your affiant's said 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.

119.For reasons set forth in the accompanying memorandum of law, and herein this Court must deny Ms. Sassower's motion in its entirety

120. Ms. Sassower has abused your affiant, my counsel the courts and judges 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 motion 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 18
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