

Present: HON. JO ANN FRIJA
CITY COURT JUDGE

-----X
JOHN MCFADDEN,

Petitioner,

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.
-----X

DECISION ON MOTION

TO COMMENCE THE
STATUTORY TIME PERIOD
FOR APPEALS AS OF RIGHT
(CPLR 5513[a]) YOU ARE
ADVISED TO SERVE A COPY
OF THIS ORDER, WITH NOTICE
OF ENTRY, UPON ALL PARTIES.

INDEX NO.: SP 651/89
MOTION DATE: 12/17/91

Reassigned and resubmitted: 6/30/08

Notice of Motion 1
Affidavit of John McFadden 2
Exhibits (unmarked) 3
Filed Papers: All papers on file.

FILED CITY COURT OF
WHITE PLAINS, N.Y.
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Upon the foregoing papers, the Court finds and decides as follows:

Procedural History:

This summary holdover proceeding was commenced on April 4, 1989 by service of a notice of petition and petition upon the above-captioned respondents. On April 24, 1989, the respondents filed a motion with the City Court which requested various forms of relief. By decision and order entered September 18, 1989, the Hon. James Reap denied those branches of the motion which sought dismissal of the proceeding based upon lack of subject matter jurisdiction and inadequate notice, and directed the respondents to file their answer on or before October 6, 1989. The respondents filed an answer with the City Court on June 6, 1990.

Sometime in August 1988, the respondents commenced an action in the United States District Court, Southern District of New York against the Board of Directors (the "Board") and the Cooperative Corporation (the "Corporation") alleging housing discrimination, a violation of the New York Executive Law, estoppel and damages for severe emotional distress. On March

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19, 1991, the jury returned a special verdict in favor of the Board and Corporation. By judgment of the United States District Court dated March 20, 1991, the action was dismissed.

On November 25, 1991, the petitioner served and filed a motion for summary judgment. By decision and order dated December 19, 1991, the Hon. James Reap reserved decision pending a determination of respondent's appeal by the United States Court of Appeals for the Second Circuit.

On July 9, 2007, approximately fifteen (15) years and eight (8) months after the Hon. James Reap reserved decision in this matter, the petitioner commenced a summary holdover proceeding against respondent Elena Sassower under Index No. SP 1502/07. In motion papers filed in connection with SP 1502/07, the City Court has now been provided with the information which the Hon. James Reap deemed necessary in his decision to reserve on petitioner's motion for summary judgment. Specifically, on appeal, the Second Circuit affirmed both the District Court's decision to impose sanctions upon the above-captioned respondents and the denial of their motion for a new trial (*see Sassower v. Field*, 973 F.2d 75 [U.S. Ct. of Appeals, 2d Cir. 1992]; *certiorari denied*, 507 U.S. 1043 [1993]).

On June 30, 2008, the parties were advised in open court that the Hon. James Reap retired in or about December 1992 and that this Judge would consider petitioner's motion for summary judgment *de novo*, supplemented only by the Second Circuit decision cited above.

Petitioner's Motion for Summary Judgment:

The papers before this Court establish the following: On or about October 30, 1987, the petitioner and respondents entered into a contract of sale for the subject cooperative apartment (the "Apartment"). The parties also executed an "occupancy agreement" which provided for "temporary occupancy" of the Apartment pending Board approval of respondents' application to purchase same. In or about May and June 1988, the respondents received communication(s) from the Board of Directors which disapproved their application to purchase. Under the terms of the occupancy agreement, respondents' right to occupy the Apartment terminated in May 1988.

Shortly thereafter, respondents commenced the federal lawsuit in the United States District Court, Southern District of New York, asserting the various claims referenced by the federal court decision(s). Ultimately, the federal lawsuit was dismissed and sanctions were imposed upon the respondents for their frivolous conduct.


As noted in Judge Reap's decision dated December 19, 1991, "[i]f [the respondents] also lose in the U.S. Court of Appeals [the case in City Court] will be effectively terminated. This follows because all respondents' claims in the federal action were dismissed and it is those exact claims that form their defense in the City Court summary proceeding." In fact, respondents' appeal to the U.S. Court of Appeals for the Second Circuit was a failure. In its opinion, the Second Circuit affirmed the District Court's decision which imposed sanctions and also denied respondents' request for a new trial. The U.S. Supreme Court denied respondents' writ of certiorari.

Upon the credible evidence, petitioner has established his entitlement to judgment as a matter of law. In view of the results of respondents' federal law suit, and having considered the defenses raised in this proceeding, respondents have failed to raise a material triable issue of fact. Accordingly, summary judgment is granted. A judgment of possession and warrant to remove shall issue forthwith, with a statutory stay of execution.

Submit judgment for signature.

THIS DECISION CONSTITUTES THE ORDER OF THE COURT

Dated: White Plains, New York
July 3, 2008


HON. JO ANN FRIA
CITY COURT JUDGE

TO: Lehrman, Kronick & Lehrman
Attorneys for Petitioner
199 Main Street
White Plains, New York 10601

Lawrence J. Glynn, Esq.
Attorney for Respondent
2 William Street
White Plains, New York 10601

Peter Grishman, Esq.
Attorney for Respondent
194 Deerfield Lane North
Pleasantville, New York 10570

Doris L. Sassower
Respondent Pro Se
283 Soundview Avenue
White Plains, New York 10606

Elena Sassower
Respondent Pro Se
16 Lake Street, Apartment 2C
White Plains, New York 10603

Leonard A. Schafai, Esq. (courtesy copy)
Attorney for Petitioner
18 East 41st Street, 15th Floor
New York, New York 10017

Doris L. Sass
Registration #
2010-000000000