

Case No. 2008-1427 WC
Case No. 2009-148 WC

To be Argued by:
Elena Sassower
(15 minutes requested)

APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Respondent,

-against-

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

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APPELLANT'S BRIEF*



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***Appeal 3: Judge Jo Ann Friia's July 3, 2008 Decision & Order
July 21, 2008 Judgment of Eviction
July 21, 2008 Warrant of Removal**

***Appeal 4: Judge Jo Ann Friia's October 14, 2008 Decision & Order**

(Westchester City Court #SP-651/89 & #SP-2008-1474)

SD-1

INTRODUCTION

This brief combines two appeals of appellant Elena Sassower [hereinafter “Sassower”]¹:

#2008-1427-WC: Sassower’s appeal of a July 3, 2008 decision & order of White Plains City Court Judge Jo Ann Friia, granting a 16-1/2 year old summary judgment motion of John McFadden [hereinafter “McFadden”] (Exhibit C-1), and the July 21, 2008 judgment of eviction and warrant of removal purportedly based thereon (Exhibits C-2, C-3); and

#2009-148-WC: Sassower’s appeal of Judge Friia’s October 14, 2008 decision & order, denying Sassower’s September 18, 2008 motion to ensure that this Court has the documents and information necessary for its appellate review, including proper Clerk’s Returns on Appeals, and to that extent granting, on jurisdictional grounds, the cross-motion of the New York State Attorney General (Exhibit D).

Both appeals arise from the same 1989 White Plains City Court case, *John McFadden v. Doris L. Sassower and Elena Sassower*, #SP-651/89 – to which, on or about May 30, 2008 – and at the instance of Judge Friia – the White Plains City Court Clerk assigned an additional number, #SP-2008-1474, without notice or explanation.

At that same time – May 30, 2008 – another case, *John McFadden v. Elena Sassower*, #SP-1502/07, was before Judge Friia in a posture requiring any fair and impartial judge to have dismissed McFadden’s Petition therein, *as a matter of law*, and to have granted summary judgment to Sassower on her four ~~Affirmative Defenses~~ ^{Counterclaims} therein, *as a matter of law*.

¹ This single brief has been authorized by a February 5, 2009 letter of this Court’s Clerk (Exhibit A-3), responding to a January 5, 2009 letter request by Sassower (Exhibit A-1). Both appeals herein are timely (Exhibit A-2, A-4, A-5). For the convenience of the Court, the relevant correspondence and other documents germane to these appeals are furnished in an accompanying Compendium of Exhibits.

Judge Friia, however, was not a fair and impartial judge. Rather, she was a judge intent on using her judicial office for ulterior retaliatory purposes. To that end, she wilfully and maliciously disregarded her duty to disqualify herself based upon the appearance and actuality of her bias and interest and to disclose facts pertinent thereto. As hereinafter demonstrated, Judge Friia's appealed-from decisions & orders and judgment and warrant are flagrant judicial frauds – being indefensible in fact and law and knowingly so. Such requires that this Court refer Judge Friia to disciplinary and criminal authorities pursuant to §100.3D(1) of the Chief Administrator's Rules Governing Judicial Conduct so that her corruption and those complicit and benefiting therefrom may be investigated and prosecuted.

Sassower has already perfected two separate appeals in #SP-1502/07, which she incorporates herein by reference as they are essential background. They are appeal #2008-1433-WC from a October 11, 2007 decision & order of White Plains City Court Judge Brian Hansbury and appeal #2008-1428-WC from Judge Hansbury's January 29, 2008 decision & order, each depriving Sassower of the dismissal and summary judgment to which she is there entitled, *as a matter of law*.

Prior to perfecting the instant two appeals, Sassower sought to dispose of them by motions before this Court, stating:

“11. No appellate court can uphold a decision awarding summary judgment to a petition alleging that respondents ‘entered in possession [of the subject premises] under a month to month rental agreement’ for which there is not only NO evidentiary proof, but which is rebutted by evidentiary proof. Nor can an appellate court uphold a warrant of removal that ‘completely falsifies’ the allegations of the petition for which summary judgment was given and

'materially alters' its caption. Nor can it allow a judgment of eviction that 'materially diverges' from the decision it purports to implement, including by omission of respondents' Answer. All these are readily-verifiable from what is now before this Court, making the requested vacatur/dismissal relief of my motion not only immediately appropriate, but matters of elementary law. No appeal is necessary to resolve these straight-forward, documentarily-established issues. They can be resolved expeditious[ly], now." (Sassower's August 13, 2008 affidavit, underlining and capitalization in the original).

The record of these motions – Sassower's August 13, 2008 vacatur/dismissal motion and her October 15, 2008 order to show cause for reargument/renewal & other relief – are also incorporated herein by reference, as they were, and are, dispositive.² Indeed, they furnished this Court with the dispositive documents from the record before Judge Friia:

(1) Sassower's July 18, 2008 order to show cause for Judge Friia's disqualification and vacatur of her July 3, 2008 decision & order (Exhibit N)³ containing a 51-page analysis of the decision & order; and

(2) Sassower's October 10, 2008 opposition/reply affidavit (Exhibit O) containing a 12-page analysis of the cross-motion of the Attorney General that

² This Court's October [1], 2008 decision & order denied Sassower's August 13, 2008 vacatur/dismissal motion without reasons and without reciting any of the facts, law, or legal argument there presented. The Court's November 26, 2008 decision & order denying Sassower's October 15, 2008 order to show cause for reargument/renewal was also without reciting any of the facts, law, or legal argument pertaining thereto. Indeed, its "note" that "a motion to vacate an order must be addressed to the court that issued the order" was altogether inapplicable as Judge Friia had denied Sassower's July 18, 2008 order to show cause for vacatur of her July 3, 2008 decision & order, without signing it, writing on its first page "All issues raised have been previously addressed by the Court/ Appeal(s) may be taken to Appellate Court – no further action by City Court of White Plains to be taken." (Exhibit N).

³ Sassower furnished this original document to the Court on August 13, 2008 in support of her August 13, 2008 vacatur/dismissal motion and in further support of her July 30, 2008 order to show cause for a stay pending appeal. The copy of the July 18, 2008 order to show cause herein annexed (Exhibit N) does not include its voluminous substantiating exhibits. These primarily consist of Sassower's June 27, 2008 and July 8, 2008 orders to show cause in #SP-1502/07 (with their substantiating exhibits), each of which Judge Friia denied, without signing, and Sassower's July 9, 2008 letter to Judge Friia, to which she did not respond. These exhibits are summarized at pages 27-30, 40-47, *infra*, with the July 18, 2008 order to show cause summarized at pages 47-50, *infra*.

Judge Friia's October 14, 2008 decision & order thereafter granted to the extent of denying, on jurisdictional grounds, Sassower's September 18, 2008 motion to compel the White Plains City Court Clerk to provide this Court with the documents and information necessary for her appeals.⁴

STATEMENT OF THE CASE

The Re-Emergence of #SP-651/89 by a Trial Notice from the White Plains City Court Clerk Claiming it to be the "Original #" for #SP-1502/07

The 1989 case, *John McFadden v. Doris L. Sassower and Elena Sassower*, #SP-651/89, was dormant for approximately 15 years and likely dismissed by White Plains City Court for want of prosecution. From this hibernation, if not dismissal, the case popped onto the June 30, 2008 calendar for an "ALL DAY TRIAL" by a typewritten form notice from the White Plains City Court Clerk, dated May 30, 2008⁵. Such typewritten notice, not signed by the Clerk, was also not generated from the 1989 case, but from the separate 2007 case, *John McFadden v. Elena Sassower*, #SP-1502/07. Above its typewritten docket number "SP-2007-1502" was handwritten "SP651/89 (original #)". This handwritten addition was false.

#SP-651/89 is not the "original #" for SP-1502/07. This is immediately evident from their Petitions (Exhibits E, F). Not only do they bear different captions: the 1989 case involving an additional party, Doris L. Sassower, who is not a party to #SP-1502/07, but their Petitions are incompatible.

⁴ Sassower furnished a copy of her October 10, 2008 affidavit to the Court on November 3, 2008 to support her October 15, 2008 order to show cause for reargument/renewal & other relief. [See ¶24 of Sassower's November 3, 2008 reply affidavit therein].

⁵ The May 30, 2008 trial notice that Sassower received is Exhibit MM to her July 18, 2008 order to show cause (Exhibit N). Discussion of the trial notice appears at ¶¶15-20 thereof.

February 12, 2009 decision in *Amalfitano v. Rosenberg*, 12 N.Y.3d 8,14, recognizing “the evident intent” of Judiciary Law §487 “to enforce an attorney’s special obligation to protect the integrity of the courts and foster their truth-seeking function”.

CONCLUSION

WHEREFORE, *as a matter of law*, Judge Friia’s July 3, 2008 decision & order and her July 21, 2008 judgment of eviction and warrant of removal must be vacated, as likewise her October 14, 2008 decision & order. Also, *as a matter of law*, McFadden’s March 27, 1989 Petition must be dismissed, with costs and maximum sanctions imposed on McFadden and his counsel pursuant to 22 NYCRR §130-1.1 *et seq.*, as well as their referral to disciplinary and criminal authorities for fraud and perjury. Additionally, costs and maximum sanctions must be imposed on the Attorney General and Sclafani and their referral to disciplinary and criminal authorities for their fraudulent and perjurious opposition to Sassower’s September 18, 2008 motion.

As for #SP-1502/07 – with which #SP-651/89 was allegedly consolidated – such case, in limbo since the June 30, 2008 court proceeding, must be transferred to a fair and impartial tribunal outside White Plains and the Ninth Judicial District for determination of the amount of compensatory and punitive damages due Sassower on her four Counterclaims, as it is the

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- Rule 3.3 requires a lawyer who knows that a person intends to, is or has engaged in criminal or fraudulent conduct related to the proceeding to take reasonable remedial measures, including disclosure of confidential client information.”

only issue remaining therein after this Court dismisses McFadden's June 22, 2007 Petition and grants summary judgment to Sassower on her four Counterclaims, relief to which she is entitled, *as a matter of law*, as demonstrated by her appeals #2008-1433-WC and #2008-1428-WC of Judge Hansbury's October 10, 2007 and January 29, 2008 decisions & orders in #SP-1502/07.

Consistent with this Court's mandatory "Disciplinary Responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, Judge Friia must be referred to disciplinary and criminal authorities for investigation and prosecution for her wilful and deliberate perversion of her judicial office for ulterior, vindictive purposes. Likewise, Clerk Lupi must be referred to disciplinary and criminal authorities for her unprofessional conduct, including tampering with court records and/or collusion in such tampering by Judge Friia.


ELENA RUTH SASSOWER

Dated: New York, New York
April 17, 2009