

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 9th and 10th JUDICIAL DISTRICTS

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PRESENT : McCABE, J.P., TANENBAUM and MOLIA, JJ.

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JOHN McFADDEN,

Respondent,

-against-

NOV 26 2008
NO. 2008-1427 W C

DORIS L. SASSOWER,

Respondent,

-and-

ELENA SASSOWER,

Appellant.

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DECISION

On the court's own motion, motion by landlord-respondent returnable October 24, 2008 and motion by tenant-appellant Elena Sassower returnable November 3, 2008 are consolidated for purposes of disposition.

Motion by landlord-respondent to vacate stay granted.

Motion by tenant-appellant Elena Sassower to "stay" this court's direction conditioning the prior grant of her motion for a stay on her payment of use and occupancy, for leave to reargue and renew her prior motion, and for other relief denied in its entirety.

Contrary to tenant-appellant's contention, stays pending appeal are not routinely granted but rather are granted in the discretion of the court upon a showing of sufficient merit (CPLR 5519 [c]; see 64 B Venture American Realty Co., 179 AD2d 374 [1992]; Application of Mott, 123 NYS2d 603, 608 [1953]) and "upon such terms as may be just" (CPLR 2201). Tenant-appellant's contention that this court's conditioning of the granting of a stay allowing her to remain in the premises on her payment of rent and/or

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use and occupancy is unjust, is unpersuasive. The case of Barbarita v Shilling (111 AD2d 200 [1985]) upon which tenant-appellant relies, involved a direction of payment of use and occupancy pendente lite, and not as a condition of a stay. In addition, unlike in Barbarita, there is in the instant matter a long history of agreements between the parties for the payment of rent and/or use and occupancy. In view of tenant-appellant's conceded receipt of this court's prior order on October 3, 2008 and her failure to make the ordered payment of use and occupancy to date, landlord-respondent's motion to vacate the stay is granted.

With respect to the branch of tenant-appellant's motion seeking leave to reargue this court's denial of her motion to vacate the City Court's order, we note that a motion to vacate an order must be addressed to the court which issued the order.