

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)

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 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.

QUESTIONS PRESENTED FOR REVIEW

APPEAL 3: #2008-1427 WC

APPEAL 4: #2009-148 WC

1. Was #SP-651/89 closed for lack of prosecution during the approximately 15 years of its dormancy, divesting White Plains City Court Judge Jo Ann Friia of jurisdiction to render her July 3, 2008 decision & order?

Judge Friia's July 3, 2008 decision & order did not identify or determine the question of whether #SP-651/89 was open, gave a pretext for her decision that was materially false, and concealed that sometime in 2008 (and at her direction) the White Plains City Court Clerk assigned #SP-651/89 an additional docket number, #SP-2008-1474, without notice or explanation – presumably because #SP-651/89 was closed.

This Court cannot conclusively determine this question from the Clerk's Returns on Appeals for #SP-651/89 or #SP-2008-1474. Nor can it do so from the Clerk's Return on Appeal for #SP-1502/07, with which #SP-651/89 was allegedly consolidated and for which #SP-651/89 was purported to be the "original #". Available evidence supports the inference that #SP-651/89 was closed.

2. Does White Plains City Court have jurisdiction and supervisory responsibilities over its own Clerk and was appellant's September 18, 2008 motion sufficient, *as a matter of law*, to have required any fair and impartial tribunal to have granted:

(a) its first branch: to compel the White Plains City Court Clerk to provide this Court with proper Clerk's Returns on Appeals, as well as court records and other information necessary to determining the status of #SP-651/89 and related City Court proceedings;

(b) its second branch: to refer the White Plains City Court Clerk to disciplinary and criminal authorities, *inter alia*, for tampering with court records and false statements to Judge Friia as to the status of #SP-651/89 and related cases and/or her complicity in Judge Friia's misrepresentations as to their status;

(c) its third branch: for such other and further relief as may be just and proper – including sanctions and costs against the New York State Attorney

General and petitioner-respondent's counsel and their referral to disciplinary and criminal authorities?

Judge Friia's October 14, 2008 decision & order did not identify or adjudicate the motion's threshold assertion that she was disqualified for actual bias and "direct self-interest", did not address any of the facts, law, or legal argument appellant presented as to the City Court's jurisdiction and supervisory responsibilities over its own Clerk, and, without identifying or adjudicating the motion's second and third branches, denied the motion for lack of "subject matter jurisdiction".

3. Was appellant's July 18, 2008 order to show cause sufficient, *as a matter of law*: (a) for the granting of its requested relief:

(i) to stay enforcement of the July 3, 2008 decision & order pending determination of appellant's underlying motion or, alternatively, pending appeal;

(ii) to disqualify Judge Friia for demonstrated actual bias and interest based, *inter alia*, on her July 3, 2008 decision & order, to vacate same by reason thereof, for transfer, and, if denied, for disclosure;

(iii) for reargument and renewal of the July 3, 2008 decision & order and, upon the granting of same, vacating it;

(iv) to vacate the July 3, 2008 decision & order pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct of an adverse party", with imposition of maximum costs and sanctions against petitioner-respondent and his counsel;

(v) to vacate the July 3, 2008 decision & order pursuant to CPLR §5015(a)(4) for "lack of jurisdiction to render the judgment or order";

(b) for the granting of its requested "such other and further relief as may be just and proper" – and, specifically,

(i) summary judgment to appellant pursuant to CPLR §3212(b),

dismissing the Petition in #SP-651/89;

(ii) summary judgment to appellant in #SP-1502/07, dismissing the Petition therein, with summary judgment to appellant on her four Counterclaims?

Judge Friia made no determination as to the sufficiency of appellant's July 18, 2008 order to show cause for any of its requested relief. Instead, she denied it, 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".

In fact, appellant had never previously moved for reargument and renewal of the July 3, 2008 decision & order and had never moved for its vacatur pursuant to CPLR §5015(a)(3) and (4). As for that branch of appellant's motion as sought Judge Friia's disqualification, transfer, and disclosure, Judge Friia had never "previously addressed" these issues.

Based on appellant's July 18, 2008 order to show cause, any fair and impartial tribunal would have granted her summary judgment pursuant to CPLR §3212(b), dismissing the Petition in #SP-651/89 as rebutted by documentary evidence. Such tribunal would have also dismissed the Petition in #SP-1502/07 and granted appellant summary judgment on her four Counterclaims therein.

4. Is vacatur of Judge Friia's July 21, 2008 judgment of eviction & warrant of removal required, as a matter of law – and does Judge Friia's signing them, simultaneous with her not signing appellant's July 18, 2008 order to show cause, further manifest her pervasive actual bias for which appellant was entitled to her disqualification?

Judge Friia's July 21, 2008 judgment of eviction and warrant of removal, unchanged from the proposed judgment and warrant submitted by petitioner-respondent's counsel, do not comport with the form and content of such documents and materially diverge from her July 3, 2008 decision & order. Her signing them further manifests her pervasive actual bias, entitling appellant to her disqualification – and especially as appellant's July 18, 2008 order to show cause, which she simultaneously did not sign, provided her with a 51-page analysis establishing her July 3, 2008 decision & order to be "a judicial fraud" – indefensible in fact and law and knowingly so.

5. Do the course of these proceedings require this Court to discharge its mandatory “Disciplinary Responsibilities” under §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct by referring Judge Friia and the White Plains City Court Clerk to disciplinary and criminal authorities, as likewise petitioner-respondent’s counsel and the New York State Attorney General?

They surely do.