

1 WHITE PLAINS CITY COURT
2 COUNTY OF WESTCHESTER PART EP
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3 JOHN McFADDEN, :
4 : Index #
5 Petitioner, : SP1502/2007

6 -against- :

7 ELENA SASSOWER, :
8 :
9 Respondent :
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10 Westchester County Courthouse
11 77 Lexington Avenue
12 White Plains, New York
13 July 16, 2007

14 B E F O R E: HON. ERIC PRESS,
15 City Court Judge

16 A P P E A R A N C E S:

17 LEONARD SCLAFANI, ESQ.
18 Attorney for Petitioner
19 18 East 41st Street
20 Ney York, New York 10601

21 ELENA SASSOWER
22 Pro se

Pamela Carollo,
Court Reporter

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24
25

Proceedings

1 THE CLERK: John McFadden versus Elena
2 Sassower.

3 MR. LESH: For the respondent, Stephen
4 Lesh, 733 Yonkers Avenue, Yonkers, New York
5 10701.

6 THE COURT: Do we have a notice of
7 appearance for you?

8 MR. LESH: No, not yet.

9 Thank you.

10 THE COURT: And have you spoken with
11 the attorney for McFadden?

12 MR. LESH: I have spoken and advised
13 him that we would be making an application.

14 MR. SCLAFANI: I am hard of hearing. I
15 didn't hear you.

16 THE COURT: I will speak up, then.

17 This is John McFadden against Elena
18 Sassower. Mr. McFadden is represented by
19 counsel.

20 Your appearance, please.

21 MR. SCLAFANI: Leonard Sclafani.

22 MS. SASSOWER: I am present and I am
23 pro se, not yet presented, and I wish to be
24 heard.

25 THE COURT: About your representation?

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1 MS. SASSOWER: Exactly.

2 THE COURT: Go ahead.

3 MS. SASSOWER: I am the respondent,
4 Elena Sassower, and I am here to defend my
5 right to my home of 20 years.

6 The petition John McFadden, the
7 petitioner, drafted by his attorney is
8 based on false publication of the facts.
9 It is my belief that he should be held in
10 sanctions and costs under 22USC-1.1. And
11 it is my understanding that to make such
12 application --

13 THE COURT: Ma'am, before you go on,
14 are you representing yourself?

15 MS. SASSOWER: I am at this moment.

16 THE COURT: All right.

17 Sir, you just filled out a notice of
18 appearance. Can you tell me what is going
19 on, please?

20 MR. LESH: We have had a consultation
21 but he has not been retained. That is part
22 of my statement here.

23 MR. SCLAFANI: May I be heard?

24 THE COURT: Yes.

25 MR. SCLAFANI: Mrs. Sassower was the

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1 plaintiff in a rather contentious,
2 over-the-top civil rights action several
3 years ago that started when Mr. McFadden
4 agreed to sell her his co-op which is the
5 subject of this action. There was an
6 occupancy agreement in that contract, and
7 it is under that the occupancy agreement
8 that Mrs. Sassower took occupancy of the
9 apartment.

10 The Board rejected her for what they
11 ultimately determined in the Federal Court,
12 in which she brought civil rights actions,
13 and in this court, in the landlord/tenant
14 proceeding that Mr. McFadden brought
15 because the Board prohibited him because
16 there was no right of sublet or no right of
17 lease without the Board's consent, and they
18 specifically denied that consent.

19 After years of extraordinary
20 litigation, that order previously the judge
21 used, he not only denied Mrs. Sassower's
22 claim but he sanctioned Mrs. Sassower. And
23 ultimately, Mr. McFadden, who appealed,
24 sought to be relieved because he made the
25 mistake of joining and dropping out of the

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1 lawsuit once he figured out that -- the
2 manner in which the litigation was
3 proceeding was inappropriate and that
4 sanctions from signature plus legal fees.

5 The litigation was so extensive and
6 damaging to everyone --

7 MS. SASSOWER: Excuse me, but --

8 THE COURT: I let you be heard; now it
9 is his turn. And the reporter can only
10 take one person's statement at a time. Let
11 him speak.

12 MR. SCLAFANI: The litigation was so
13 extensive and so difficult for everyone
14 concerned, including appeals and sanctions,
15 motions and the like that Mr. McFadden's
16 lack the funds -- he wound up in debt to
17 his attorneys at the time and unable, after
18 the stay in this court was lifted, because
19 Mrs. Sassower had lost the civil rights
20 action that she had brought in Federal
21 Court, the lack of the funds to proceed to
22 complete the conviction.

23 So they made an agreement, an oral, a
24 month-to-month tenancy. She is --
25 Mrs. Sassower has been the beneficiary of

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1 that agreement since that time.

2 THE COURT: When was that time?

3 MR. SCLAFANI: It started in 1984 and
4 ended many years later. It has been
5 several years. I can't tell you exactly
6 when since Mrs. Sassower has an
7 extraordinary record of sanctions in many,
8 many courts throughout this country,
9 including --

10 THE COURT: Let's leave that for a
11 moment. Tell me what this action is.

12 MR. SCLAFANI: It is a holdover
13 proceeding.

14 THE COURT: What does that have to do
15 with the federal case?

16 MR. SCLAFANI: Only that the claims
17 have already been decided. All of the
18 claims that she has now told us about were
19 already decided in this court and in the --

20 THE COURT: I really haven't heard her
21 claims yet.

22 MR. SCLAFANI: She told me, as I
23 understand, she had civil rights --

24 THE COURT: I don't know what they
25 are, though.

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1 MR. SCLAFANI: Right.

2 THE COURT: Can you point me to a
3 federal court decision?

4 MR. SCLAFANI: I can -- I don't have
5 the papers here. I may actually have one
6 or two, but yes, I can point them to where
7 it was denied and where the civil court --
8 the city court decision that stayed the
9 proceeding pending the determination of
10 that case.

11 THE COURT: Stayed these proceedings?

12 MR. SCLAFANI: No, these proceedings
13 initially.

14 THE COURT: This petition was brought
15 at the end of June of this year.

16 MR. SCLAFANI: Right. Not these
17 proceedings, the original proceedings that
18 I said Mrs. Sassower brought, the civil
19 rights action cause when the Board denied
20 her.

21 My client ultimately, under authority
22 that the Board would evict him and cancel
23 him for breach of the lease that denies
24 sublet, brought a proceeding -- a
25 proceeding -- holdover proceeding in this

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1 court which was stayed pending the outcome
2 of the federal court action.

3 But as I said, when that action was
4 ultimately decided against Mrs. Sassower,
5 there was nobody that had the ability to
6 proceed to complete this case.

7 MR. LESH: So Mrs. Sassower still
8 lives at 16 Lake Street.

9 MR. SCLAFANI: And she has.

10 THE COURT: What happened with the
11 Board's directive to evict the petitioner?

12 MR. SCLAFANI: The Board ran out of
13 funds and the ability to proceed as well
14 and restarted their efforts. And we, in
15 turn, are seeking to regain possession of
16 the apartment.

17 THE COURT: Was there a contract of
18 sale here?

19 MR. SCLAFANI: There was.

20 THE COURT: What happened to that?

21 MR. SCLAFANI: The contract of sale
22 had this occupancy agreement in it which
23 had -- Mrs. Sassower gained occupancy.

24 THE COURT: But it never closed.

25 ATTORNEY 4: No. Once the Board

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1 denied, we wound up in this litigation.

2 And once that was over, the contract was

3 never closed on.

4 THE COURT: So it is your position

5 that there is no occupancy agreement.

6 MR. SCLAFANI: There was a subsequent

7 oral month-to-month tenancy.

8 THE COURT: Which can be terminated.

9 MR. SCLAFANI: Once the contract

10 ended, the occupancy ended with it by its

11 own terms on failure to close on the

12 closing.

13 But subsequently, because the

14 litigation lasted so long, during which

15 time there was a stay of eviction and an

16 order that Mrs. Sassower paid monthly rent,

17 she had been living for many years under

18 this litigation paying use and occupancy.

19 When the litigation finally ended, that

20 arrangement continued by oral agreement.

21 THE COURT: And the petition seeks to

22 end that agreement.

23 ATTORNEY 4: That's true.

24 THE COURT: Mrs. Sassower?

25 MS. SASSOWER: As I stated, this

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1 petition is based upon falsifications.

2 THE COURT: What are the
3 falsifications?

4 MS. SASSOWER: Everything that he just
5 presented to the Court which he purportedly
6 now deems relevant for this Court's
7 information. It is completely irrelevant
8 in his petition. And indeed, his oral
9 representation before Your Honor would be
10 knowingly false representation.

11 THE COURT: What was false? What was
12 what --

13 MS. SASSOWER: The good and sufficient
14 bases for the federal actions was such that
15 Mr. McFadden joined as a co-plaintiff and
16 it was based upon his assurance as to the
17 procedure of the Board's specific
18 guidelines used by the co-op with respect
19 to single women and minorities that we
20 enter into this mandatory litigation.

21 Of course, the litigation decided that
22 the guidelines had never been adopted,
23 approved, promulgated.

24 I so pointed out that Mr. McFadden was
25 president of the co-op and his

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1 participation in the lawsuit was pivotal.

2 Additionally, the Board purported that
3 our occupancy was not properly approved by
4 the Board and had been improperly precluded
5 by Mr. McFadden. Mr. McFadden dropped out
6 of the lawsuit because he was -- authorized
7 the co-op board that they would otherwise
8 terminate his property lease. And indeed,
9 took steps to terminate. But he at all
10 times believed in the merit of that
11 litigation.

12 THE COURT: May I ask you a question,
13 please?

14 MR. LESH: Yes.

15 THE COURT: Was there a written
16 decision by the federal court?

17 MS. SASSOWER: There were written
18 decisions by the Southern District Court
19 and the Second Court of Appeals. The case
20 went up to the U.S. Supreme Court on a
21 petition, including the judicial misconduct
22 complaints that were filed with the house
23 judiciary for the improper decision that
24 the judge rendered that was utterly false,
25 unsupportable decisions that they did.

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1 THE COURT: I have another question.

2 Was there any decisions regarding the
3 agreement to sell the co-op to you?

4 MS. SASSOWER: To my recollection I
5 believe not. But I am not certain.

6 I will tell you for an absolute
7 certainty that Mr. Scalfani's
8 representation and oral agreement is false,
9 and it was false when he said it to you and
10 false in his papers, because there never
11 was such an agreement.

12 Moreover --

13 THE COURT: Is there a valid written
14 agreement?

15 MS. SASSOWER: There is.

16 THE COURT: Do you have that?

17 MS. SASSOWER: Yes, I do.

18 THE COURT: May I see it?

19 MS. SASSOWER: May I just apprise the
20 Court of the following facts?

21 THE COURT: I would like to see it
22 now.

23 MS. SASSOWER: I would like to apprise
24 the Court that the written agreement --

25 THE COURT: I asked you and I would

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1 like you to show it to me.

2 MS. SASSOWER: Let me tell you what it
3 is a part --

4 THE COURT: You're not going to give
5 it to me?

6 MS. SASSOWER: Of course.

7 THE COURT: What exhibit?

8 MS. SASSOWER: A, of course.

9 THE COURT: This is the 1987
10 agreement.

11 MR. SCLAFANI: The original contract.

12 MS. SASSOWER: Part of the contract of
13 sale.

14 THE COURT: All right. Is your
15 position that this contract is valid?

16 MS. SASSOWER: The Board has stated in
17 writing that they would consider my
18 reapplication for purchase, favorable
19 purchase. The claim that Mr. Scalfani has
20 made now moving against Mr. McFadden and
21 seeking my removal is so fantastically
22 false.

23 And the documents are appended to
24 this, what I handed to you, which I may
25 identify for the Court's record upon

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1 receiving this bogus notice of petition and
2 petition at 6:00 p.m. on Monday July 9th, I
3 immediately began putting together my
4 records and drafting my answer and
5 affirmative defenses.

6 THE COURT: Is that what you have?

7 MS. SASSOWER: Yes. Not completed but
8 only drafted.

9 THE COURT: Okay. Why don't you take
10 it back if it's not what you want to submit
11 to the Court.

12 MS. SASSOWER: It has not been served
13 and it's my intention to request this Court
14 to adjourn this so that --

15 THE COURT: When will you file your
16 papers?

17 MS. SASSOWER: I consulted with
18 counsel, Mr. Lesh, on Friday. Mr. Lesh, to
19 expedite a burden of the court's time,
20 called Mr. Scalfani and stated that I was
21 in his office on a consultation, they were
22 reviewing the papers and were requesting an
23 adjournment of this proceeding first on --

24 THE COURT: When would you like an
25 adjournment to?

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1 MS. SASSOWER: Is two or three weeks
2 agreeable to Your Honor?

3 THE COURT: Would you like to be
4 heard, sir?

5 MR. SCLAFANI: I will be out of the
6 country from the 27th of July through the
7 14th of August.

8 THE COURT: All right. July 23rd
9 then.

10 MR. LESH:

11 MS. SASSOWER: That's not sufficient
12 time.

13 THE COURT: You're right. I am look
14 at the wrong date.

15 When do you return?

16 MR. SCLAFANI: The 14th of August.

17 THE COURT: This is a holdover. If
18 there is some urgency for this -- I assume
19 that you have been at that address for some
20 time?

21 MS. SASSOWER: Twenty years. It is my
22 home.

23 THE COURT: August 27thth.

24 MS. SASSOWER: Thank you, your Honor.

25 THE COURT: Both parties will be back

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1 in court. If Mr. Lesh is retained as
2 counsel, he will be here as well.

3 Mrs. Sassower, I would like you to
4 have your papers here and served by
5 July 30th.

6 I will see you all on August 27.

7 MR. SCLAFANI: Make the service by
8 July 27, then I will make -- receive it by
9 the time I leave.

10 THE COURT: Let's do that so he can
11 take the papers with him.

12 MR. LESH: And if I have any
13 difficulties, I can notify the Court.

14 THE COURT: You can. And if you have
15 counsel, they should notify.

16 MS. SASSOWER: Certainly. And I will
17 make every good effort.

18 MR. SCLAFANI: I would only ask,
19 Judge, that the respondent be directed to
20 pay use and occupancy during the interim
21 without prejudice to the petitioner's
22 claims. He has not accepted the rent for
23 June or July.

24 THE COURT: He has not?

25 MS. SASSOWER: But he received it and

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1 he has not received it on the falsification
2 on the papers.

3 THE COURT: Mrs. Sassower tendered the
4 check?

5 ATTORNEY 4: Yes. On my direction
6 they were returned.

7 MS. SASSOWER: They were not returned.

8 THE COURT: What is your intention to
9 do with these checks if they're sent?

10 MR. SCLAFANI: We don't have them. We
11 returned them.

12 MS. SASSOWER: I have not received any
13 return of those checks. And the cover
14 letter is right here.

15 THE COURT: When were they returned?

16 MR. SCLAFANI: I think we received one
17 check last week, if I'm not mistaken.

18 THE COURT: Perhaps it hasn't arrived.

19 ATTORNEY 4: And it was mailed back.

20 That was July.

21 THE COURT: Certainly not cashed.

22 MR. SCLAFANI: No, not cashed.

23 MS. SASSOWER: And June?

24 MR. SCLAFANI: Shortly after it was
25 received, too.

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1 THE COURT: Does the petitioner wish
2 to accept without prejudice?

3 MR. SCLAFANI: Without prejudice.

4 THE COURT: Let's get that done as
5 soon as we can.

6 MS. SASSOWER: I have received no
7 return of the June check which was mailed
8 on May 31st.

9 THE COURT: Ma'am, communicate with
10 your bank. Void the check, send a new
11 check.

12 MS. SASSOWER: I shall, Your Honor.

13 THE COURT: Thank you.

14 MR. SCLAFANI: Thank you, Judge.

15 THE COURT: See you next time.

16 MS. SASSOWER: Excuse me. I am not to
17 await for receipt of the returned checks?

18 THE COURT: Void the checks if they
19 haven't been cashed. I don't see that it
20 is a problem.

21 MS. SASSOWER: If they have been
22 returned, then I should receive them.

23 Thank you, Your Honor.

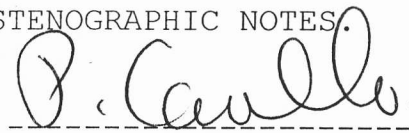
24 THE COURT: Your welcome.

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THIS IS TO CERTIFY THAT THE ABOVE TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.



-----X
Pamela Carollo
Court Reporter