

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
2 - - - - -X

3 ALLAN KASSENOFF,
Plaintiff,
4 -against-

5 CATHERINE KASSENOFF,
Defendant.
6 - - - - -X

6 INDEX NO. 58217/2019
Westchester County Courthouse
7 111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
8 July 2, 2020
12:30 p.m.

9 B E F O R E: HONORABLE NANCY QUINN KOBA,
10 Justice of the Supreme Court.

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

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Attorneys for Plaintiff
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Tuckahoe, New York 10707
14 BY: GUS DIMOPOULOS, ESQ.
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15
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17 81 Main Street, Suite 205
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18 BY: JILL SPIELBERG, ESQ.
ALYSON KURITZKY, ESQ.

19
20 MOST & SCHNEID, PC
Attorney for the Children
21 222 Bloomingdale Road, Suite 302
White Plains, New York 10605
22 BY: CAROL W. MOST, ESQ.

23 ALSO PRESENT:
24 Allan Kassenoff
Catherine Kassenoff

Gina M. Saline,
Senior Court Reporter

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1 (The following proceedings were held with all
2 participants appearing via Skype.)

3 (Mrs. Kassenoff was not present at this time.)

4 THE COURT: Let's put our appearance on the record.

5 MR. DIMOPOULOS: Dimopoulos Bruggemann, Gus
6 Dimopoulos, Michael Chiaramonte on behalf of the plaintiff
7 Alan Kassenoff who is on the call. Good afternoon, your
8 Honor.

9 THE COURT: Good afternoon.

10 MS. SPIELBERG: Jill Spielberg, Harold Salant
11 Strassfield Spielberg for the defendant who's actually not
12 on the call, Judge. Also, I have in my office Alyson
13 Kuritzky and we have an intern who is also sitting in my
14 office.

15 THE COURT: Okay.

16 MS. MOST: Carol Most, attorney for the children.

17 THE COURT: Okay. So, this conference was scheduled
18 at the request of Mr. Dimopoulos. Mr. Dimopoulos, you can
19 please put on the record your request for this conference.

20 MR. DIMOPOULOS: Your Honor, my request for the
21 conference is based upon Mrs. Kassenoff's harassment of the
22 tenant at the New Rochelle house. According to all of the
23 information we have she has signed all of the documents to
24 list the property. A little late but better late than
25 never. The house I think is on the market as of today. We

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1 hope. We believe.

2 She's reached out to the tenant, told the tenant
3 this court has ordered the tenant to leave on July 15th and
4 she'll be moving in.

5 As far as my client's concerned, this thirty-seven
6 hundred fifty dollars that he may, they may or may not, may
7 or may not be getting is not worth five court conferences on
8 this ridiculousness. They've had a tenant. She's been a
9 great tenant. She asked if she could stay to August 1st.
10 Mr. Kassenoff told her he needed to see what the Court would
11 say. The Court, I believe, was clear if she's out by the
12 15th, great; if she's not, we can't, we can't compel her to
13 leave. I walked away. I ordered the transcript. That's
14 what I read. The information was conveyed to the tenant.
15 The tenant asked to stay until 8/1.

16 Miss Kassenoff now told her -- I'm paraphrasing,
17 because I didn't have time to get my notes together --
18 you've got to be out on the 15th. It is a court order. I
19 will be there with my belongings to move in.

20 Nobody wants trouble, your Honor. The tenant
21 doesn't want trouble. We don't want trouble. We just --
22 you know, this all is just too much at this point. Just
23 give us clear directives on what you think should happen and
24 we don't need to have these conferences but I don't want a
25 situation where, you know, there's going to be police

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1 called. And, you know, frankly, what if the tenant turns
2 around says I'm not leaving; you know what, I'm holding
3 over. There is a buyer. Drama should just be avoided.
4 That's the reason I asked for the conference.

5 THE COURT: Miss Spielberg.

6 MS. SPIELBERG: Judge, I think that it's not as
7 simple as Mr. Dimopoulos made it seem. I mean, I find it
8 ironic and a little bit too convenient we have a
9 conversation with the Court, you know, there's a bum rush to
10 sign the stipulation to get the house on the market. My
11 client does it. She complies. There are all these
12 provisions as to when she can move in. She told the Court
13 that she wants to be in the house so that she can be settled
14 for the trial. That's pretty important to her. Then the
15 next day or within a couple of days Mr. Kassenoff is all of
16 a sudden coordinating with the tenant to stay until August
17 1st. It's clear that a side deal was struck. To my client's
18 detriment. You know, she has a right to move into her home.

19 And I find it hard to believe that she's, the
20 woman's willing to leave on 7/15 and then as soon as the
21 house is on the market now all of a sudden she's demanding
22 to stay until 8/1. I mean, to me it's all too convenient.
23 And my client, Judge, my client just needs a place to live.
24 Like, cut this woman a break at this point. I don't
25 understand why we can't just allow her to move into her

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1 home. I don't believe that the tenant all of a sudden had
2 a, had a divine moment where she decided she wanted to stay
3 two weeks later, conveniently the same day that my client
4 signs the agreement, the listing agreement.

5 THE COURT: Okay. So, this is how I see it. There
6 is a lease agreement here that goes until July 15th. Then
7 the tenant, if they don't move out, is considered to be a
8 holdover tenant. And the way, that would necessitate these
9 parties commencing an eviction proceeding in order to regain
10 the possession of the house under the R-P-A-P-L.

11 Now, in the interim the governor has issued an
12 order saying there are no eviction proceedings. That order
13 goes until August 19th. So, none of these parties have a
14 right to harass the tenant out of the premises if the tenant
15 decides to stay over on July 16th. Those are the orders of
16 the governor.

17 After I read Mr. Dimopoulos's E-mail, I went and
18 looked at the latest order and the order is extended to
19 August 19th. Moreover, the courts are not hearing any
20 eviction proceedings at the present time consistent with the
21 governor's order. So, you can't go in and use self help to
22 evict this tenant if she chooses to stay over. You cannot
23 bring an eviction proceeding; you cannot harass her under
24 the current orders issued by the governor and the
25 Administrative Judge of the New York State Court System.

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1 That in and of itself. It has nothing to do with Mrs.
2 Kassenoff. It has nothing to do with Mr. Kassenoff. That's
3 the law. That's where we exist now. And we're dealing with
4 two attorneys.

5 Now, when we had this conference last time I said
6 if the tenant moves out on July 15th and of course Miss
7 Kassenoff can take occupancy of her house. I also clearly
8 stated having reviewed again the administrative orders and
9 the governor's executive orders, of which I'm sure Miss
10 Kassenoff as an employee of the governor certainly would be
11 up-to-date to, indicate that you cannot move to evict
12 someone if in fact this tenant chooses to remain in the
13 property. The fortunate thing for these parties is the
14 tenant has indicated if I remain to the end of the month,
15 which was her request, I will again pay the rent issued and
16 I will leave by August 1st. If the tenant chooses not to
17 leave by August 1st, again, neither of these parties can
18 make an eviction proceeding to remove her from the property.
19 And if they persist in harassing her when the law is that
20 she can stay during this particular time then they're
21 looking at some other violation of the law.

22 The governor's order has already been found by a
23 federal judge that he had the authority to issue it until
24 such time as the New York State Court should determine that
25 he didn't. So, it's the law in effect at the present time.

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1 I appreciate that Mrs. Kassenoff has chosen not to
2 secure permanent housing during the past year. That was as
3 I stated previously her choice. I understand she wishes to
4 move into the premises but it's occupied and the rights
5 right now belong to that particular tenant. She has a right
6 to holdover, not a right but the law allows her and at the
7 present time to continue tenancy in that property until she
8 leaves or until such time as the prohibition on moving to
9 evict tenants leaves. There is some eviction going on on
10 preexisting previously filed evictions where they're only
11 for settlement purposes.

12 So, right now you have a situation where although
13 you have a tenant that's potentially holdover, she's saying
14 I will leave by July 31st. And, quite frankly, I'd be
15 working out an agreement with her to insure that she in fact
16 is leaving on July 31st given the current situation where
17 you can't move to evict her if she decides to stay beyond
18 July 31st. Okay?

19 Now, Mrs. Kassenoff indicated to the Court and the
20 Court said it was okay at the time that she was very good
21 friends with this tenant, and if she told the tenant that
22 she really needed the property the tenant would voluntarily
23 leave. The E-mail that was sent to me by Mrs. Kassenoff is
24 not we're really good friends, you know my situation's bad,
25 I'd like you to leave if possible. It was more of a you

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1 need to leave the house. The Court did not issue an order
2 saying this tenant had to move out on July 15th. I don't
3 have authority to issue that order. Nobody frankly as the
4 judge has an authority to issue an eviction order for this
5 person. The law is eviction proceedings are not allowed at
6 this time. So, I hope there's no misunderstanding now.

7 The tenant is the one in occupancy of the property
8 and continues in occupancy until such time as she
9 voluntarily vacates or such time that the law is changed and
10 eviction proceedings may resume. And Mrs. Kassenoff cannot
11 be sending communications to this tenant that could be
12 construed as harassing or threatening. If the tenant stays,
13 the tenant stays. And I said that last time and I'm saying
14 it again because that happens to be where the law is at the
15 present time.

16 MS. SPIELBERG: Judge, can we have an understanding
17 as to what the terms are as discussed between Mr. Kassenoff
18 and the tenant? My understanding is they have come to an
19 agreement which to me does not suggest that she --

20 THE COURT: My understanding from when we were in
21 court the last time, and Mr. Kassenoff raised this issue
22 before a listing agreement was signed, and before the order
23 was issued selling the house that he had been approached by
24 the tenant that she wanted to stay in the property an
25 additional two weeks until the end of July and she would pay

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1 the balance of the rent due at that time, which is three
2 thousand seven hundred fifty dollars. So there was no
3 under-the-table discussion here. All of those
4 communications, well, at least were brought to the Court's
5 attention before the listing agreement was signed and before
6 the sale order was issued.

7 MR. DIMOPOULOS: Your Honor, I know, I know that my
8 conduct is under scrutiny by Miss Kassenoff and now
9 repeatedly Miss Spielberg but it is to be very clear we had
10 a conference last week. Prior to the conference the tenant
11 reached out to Mr. Kassenoff. He said I don't know. We've
12 got to go to court. We went to court. He notified the
13 Court of what happened and that's it. There are no backroom
14 deals. And I have no -- just, it's unbelievable that we're
15 accused of it but whatever. It is what it is. We don't
16 care at this point. Accuse us of whatever you want.

17 THE COURT: Well, there's nothing to be done. The
18 law is you can't move to evict this woman. And she can stay.
19 She can holdover at the present time under the pandemic.

20 MR. DIMOPOULOS: And, quite frankly, let's all
21 hopes she leaves on the 31st because I guarantee you commence
22 an eviction proceeding you'll see a courtroom in February.

23 THE COURT: Well, you can't commence an eviction
24 proceeding at the present time.

25 MR. DIMOPOULOS: Well, the executive order is

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1 lifted, which one day it will be, it's not like you're going
2 to get in the court the next day. Let's just hope we play
3 nice with her and she leaves on the 31st and everyone is
4 happy.

5 THE COURT: Right. All right. So, that's what I
6 have to say.

7 MR. DIMOPOULOS: That's all we have.

8 THE COURT: The two hundred dollar fee on the
9 supervisor, I am not directing anyone pay that at this time.
10 I don't understand how a fee was incurred but I'm not
11 directing Mr. Kassenoff to pay.

12 MS. SPIELBERG: It was incurred because the visit
13 was scheduled and Mr. Kassenoff wouldn't agree to it until
14 my client turned over the citizenship papers.

15 THE COURT: Exactly. So he didn't schedule it. He
16 did it then it should have been canceled.

17 MS. SPIELBERG: They agreed to the scheduling of
18 it, Judge, and then they would not go forward with it.

19 MR. DIMOPOULOS: Your Honor, I have five E-mails,
20 maybe six.

21 THE COURT: I am not going to deal with that issue.
22 I'm not directing that he pay the fee at this time.

23 MS. SPIELBERG: Judge, I just wanted to ask a
24 question about trial. Miss Kuritzky and I have been
25 quarantining together, if you like.

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1 THE COURT: Yes.

2 MS. SPIELBERG: We have been sharing an office and
3 other things. Is there some way to make an application that
4 the social distancing rules need not apply to us in the
5 courtroom?

6 THE COURT: No.

7 MS. SPIELBERG: We're happy to sit closer to each
8 other if that makes more space for everybody else.

9 THE COURT: No.

10 MS. SPIELBERG: Okay.

11 THE COURT: We're trying to see if we can move the
12 courtroom down to like one in the annex that it's more space.

13 MS. SPIELBERG: Okay.

14 THE COURT: That's my solution for that because
15 even if we just do with the three attorneys, and your
16 projector, and the expert, and the court reporter, it's
17 pretty cramped. So, my clerk is putting in the request to
18 see if we can be in the annex. Those courtrooms are bigger
19 and may be a little more easier for everyone to deal with it.

20 MR. DIMOPOULOS: And wholly unused for the most part
21 even before the pandemic. So, that's a really good idea.

22 THE COURT: Well, but if we can do that that would
23 be, I think answer a lot of questions and people could have
24 who they want to have. It could be up to fifty percent
25 capacity but it has to be social distancing; so if we're

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1 down there you should be able to have your clients and -- I
2 was thinking even if -- somebody asked me, I was like even
3 if we just put you at the counsel table, you're really lucky
4 to have your clients in the back row and that's pretty much
5 it. So, hopefully we'll get that done and seems we can
6 accommodate counsel, their associates, and their clients,
7 and the witness on the stand comfortably, and in accordance
8 with the mandates.

9 MS. MOST: Your Honor, I just have one more
10 question. Are we going day to day?

11 THE COURT: Yes.

12 MS. MOST: Okay. So, so probably about two weeks
13 do you think or it could be more?

14 THE COURT: I don't know.

15 MS. MOST: All right.

16 THE COURT: You have a week; so I suggest -- I tend
17 not to lollygag when I'm on trial. I have people go and go
18 and go. I don't deal with histrionics. I don't deal with
19 unnecessary delays. I don't deal with cross talk. I'm here
20 to have the witnesses on the stand.

21 We have it for a week. If we don't finish it that
22 week, then we'll have to try to figure out how to continue
23 with the following week or we're going to have to get in
24 line behind somebody else. I'm telling people try to put it
25 on. I don't know how many witnesses. I don't have the

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1 witness list yet; but if you think it's going to be two
2 weeks, then we'll have to deal with that issue. But I find
3 two weeks on a temporary custody hearing to be quite
4 excessive. This is not a permanency hearing. It is on the
5 application for the temporary order, temporary Order to Show
6 Cause because Mrs. Kassenoff would not consent to having the
7 full permanent custody hearing. So, it is not going to be a
8 full permanent custody hearing. It's going to be a hearing
9 on a motion.

10 MS. MOST: So just --

11 THE COURT: That's what we're dealing with.

12 MS. MOST: If I can just clarify further. We have
13 the expert Mark Abrams. If we have his testimony now can
14 that be adopted for a final trial or you would have him come
15 back? I'm just curious how you would plan on handling that.

16 THE COURT: I am not planning on handling it any
17 way. I haven't thought about the full custody hearing.

18 MS. MOST: Okay.

19 THE COURT: But it would seem to me that people
20 should not spend their money to recreate that which has
21 already been done. But I still don't get how it's not a
22 full permanent custody hearing but that's a different issue.

23 MR. DIMOPOULOS: Your Honor, I think rather than
24 talking about evictions I think it's important that we at
25 least broach the issue before. I have never been in a

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1 situation where you have a temporary custody hearing this
2 close to when the final trial would be. Again, I am not
3 asking for your Honor to opine on this or direct on this but
4 at least consider this that I don't think there exists
5 evidence after this hearing that would be at all probative
6 or assist the Court in rendering a final determination. We
7 have a final forensic evaluation that's dated March, which
8 even if this were a normal case, you wouldn't even have an
9 update. It's too close. So, we know that counsel's had her
10 experts and has her experts lined up.

11 I would ask the Court to give serious consideration
12 to marking this a final trial because of two very important
13 reasons for your consideration. Number one, the children
14 don't know what the reality looks like right now. They have
15 now, we have now reinstated in person supervised access
16 with Mom. They don't know when the next one is going to be.
17 They don't know what the schedule is. They don't know
18 what's going on. Finality in this case benefits them more
19 than anybody else. The second thing for your Honor's
20 consideration is, you know, gearing up the way I gear up for
21 trial and prepare and the time spent to do this twice is a
22 tremendous financial burden on Mr. Kassenoff. And quite
23 frankly --

24 THE COURT: I don't know that you'll need to do it
25 twice. It might be that you do the whole testimony; you do

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1 the whole hearing and the decision is rendered and people
2 look at the evidence and figure out whether or not they
3 could prevail at a later date. I can't speak for Mrs.
4 Kassenoff or her attorney but I'm assuming they have their
5 reasons.

6 (Mrs. Kassenoff joined the Skype proceedings.)

7 THE COURT: And if they're not meritorious, if we
8 have to do this again a second time then one of the
9 arguments will be, you know, on attorneys' fees and awards
10 and stuff like that.

11 MR. DIMOPOULOS: Fine. Thank you, your Honor.

12 MS. SPIELBERG: Yeah. I mean, just to respond
13 because I understand that everybody thinks that my client,
14 or me, that we're being unreasonable; but the fact is is
15 that we want this hearing to go forward as soon as possible
16 so that if there is a change it also happen as soon as
17 possible.

18 That being said, you know, I wouldn't have gotten
19 for a final custody hearing the forensics file a week before
20 trial. I would have had more time to work with my experts.
21 We would have had 3101(d) disclosures. We would have had
22 more time to prepare and enable our experts to testify. And
23 for Mr. Dimopoulos to say that as he sits here today he
24 knows of no evidence that will be, that will exist after
25 trial, I mean, obviously that's an impossibility. Something

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1 may happen between this hearing and what would ultimately be
2 a final trial. If nothing happens, everything stays the
3 same, maybe any change to what your Honor decides after this
4 interim hearing will be able to be asked for on a motion or
5 maybe any further hearing with respect to custody --

6 THE COURT: Or stipulated, who knows.

7 MS. SPIELBERG: Or might be on a very limited
8 issue. I don't suspect we'll have an entire custody trial
9 again. At this point, especially procedurally and in the
10 wake of corona, one of our experts already has told me she
11 won't appear in person. It is somebody who's very important
12 to us. So, you know, I'm dealing with these kinds of
13 things. We want it now because of what the, because of the
14 temporary order that was entered during COVID, but if I had
15 my druthers I would wait until my witnesses are ready to
16 appear and I would wait until my experts had more than a
17 week to review a forensic file; that I had more than a week
18 to review a forensic file. You know, all those issues.

19 THE COURT: Let me just talk about the forensic
20 file because I do believe that I scheduled this date in May.
21 Didn't I?

22 MS. MOST: Yes.

23 MS. SPIELBERG: Judge --

24 THE COURT: There was more than ample opportunity
25 to have contacted the forensic in May and dealt with the

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1 files. So, I don't want to hear about how the Court didn't
2 give enough time. I rescheduled this. It was originally
3 scheduled in May. I rescheduled it back then. So, it was
4 more than a week before --

5 MS. SPIELBERG: Judge.

6 THE COURT: -- that it was available but I'm not
7 going to argue back and forth. That's their position right
8 now. I don't know what the future holds. And it may be
9 that we do the hearing and they may like the decision, not
10 like the decision, appeal the decision, I have no idea but
11 that's where we are. We're going forward. I suggest you
12 concentrate on your preparation for the hearing. And
13 hopefully we'll get the larger courtroom so everybody can be
14 accommodated safely in accordance with the court protocols.

15 MS. KASSENOFF: Your Honor.

16 MS. SPIELBERG: Just a second, Catherine.

17 The E-mails with Dr. Abrams we'll show you we were
18 in communication with him in May. We did in fact try to
19 start the process in May and he said that he was starting,
20 he was going to go get the file from the warehouse. That
21 was in May.

22 MR. DIMOPOULOS: Can I please? I need to make --

23 THE COURT: I have another conference so I need to
24 sign off on here. Okay?

25 MS. KASSENOFF: Can I say something, please? I'm

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1 sorry. I came late to this call because --

2 THE COURT: No. Mrs. Kassenoff, there's nothing
3 else to say. Your attorney articulated your position. I
4 made my ruling. You have the transcript.

5 MS. KASSENOFF: I'm sorry she doesn't know my
6 position. I'm getting to this call late. I wanted to be --

7 THE COURT: Mrs. Kassenoff, you don't have a -- you
8 have an attorney. You're not self represented. The
9 attorney --

10 MS. KASSENOFF: Judge --

11 THE COURT: -- articulated the position.

12 MS. KASSENOFF: I am not sitting with my lawyer. I
13 can't communicate it to her. Right? I'm sitting in a
14 different spot. Do you understand?

15 THE COURT: The conference is over. Thank you.

16 MS. KASSENOFF: This is -- Judge, I'm sorry but I
17 would like to say something and that is the following.

18 (The Court exited the Skype proceedings.)

19 (The proceedings were concluded at 12:57 p.m.)

20 CERTIFICATION

21 Certified to be a true and accurate transcript of
22 the minutes of proceedings taken by the undersigned, to the
23 best of her ability.

24

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(PDF NOT CERTIFIED)

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GINA M. SALINE

Senior Court Reporter

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