

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - June 13, 2011

WILLIAM F. MASTRO, J.P.
ARIEL E. BELEN
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-04887

DECISION & ORDER

Chidi Eze, et al., appellants, v Spring Creek Gardens,
etc., et al., respondents, et al., defendants.

(Index No. 26138/04)

Patrick O'Keke, Brooklyn, N.Y., for appellants.

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Joseph Laird
and Elizabeth L. Knapp of counsel), for respondents.

In an action, inter alia, to recover damages for unlawful eviction, the plaintiffs appeal from an order of the Supreme Court, Kings County (Martin, J.), dated April 26, 2010, which granted the motion of the defendants Spring Creek Gardens and Betty Perry for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

In a summary proceeding to restore possession of real property brought under RPAPL article 7, the Civil Court lacks jurisdiction over a cause of action seeking to recover treble damages pursuant to RPAPL 853 for wrongful eviction (*see* RPAPL 741[5]; *Rostant v Swersky*, 79 AD3d 456, 457). Consequently, contrary to the respondents' contentions, the judgment issued in a prior Civil Court summary holdover proceeding regarding the apartment unit at issue in the instant action, which was brought by a defendant herein, Spring Creek Gardens (hereinafter Spring Creek) against, among others, a plaintiff herein, Beatrice Ohanbamu, in favor of Spring Creek, did not preclude the plaintiffs from commencing the instant action, inter alia, to recover damages for wrongful eviction (*see Rostant v Swersky*, 79 AD3d at 457).

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The defendants Spring Creek and Betty Perry (hereinafter together the defendants) established their prima facie entitlement to judgment as a matter of law dismissing the cause of action to recover damages for wrongful eviction (*see* Administrative Code of City of NY § 26-521[a]; RPAPL 711, 713[3]; *cf. Mitchell v City of New York*, 154 Misc 2d 222, 223). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562).

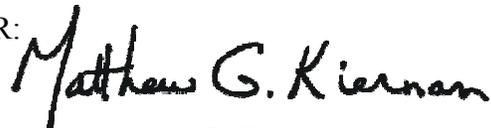
The Supreme Court also properly granted those branches of the defendants' motion which were for summary judgment dismissing the remaining causes of action insofar as asserted against them. In opposition to the defendants' prima facie showing, the plaintiffs failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d at 562).

The plaintiffs' remaining contentions are without merit.

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them.

MASTRO, J.P., BELEN, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court