

**Chelsea 23rd St. Corp. v Cheng**

2006 NY Slip Op 30655(U)

July 17, 2006

Supreme Court, New York County

Docket Number: 113054/05

Judge: Debra A. James

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

CHELSEA 23<sup>RD</sup> STREET CORP.,  
Plaintiff,

Index No.: 113054/05

Motion Date: 03/21/06

- v -

Motion Seq. No.: 01

SYBAO B. CHENG AND BILL WILSON,  
Defendants.

Motion Cal. No.: \_\_\_\_\_

The following papers, numbered 1 to 3 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_

PAPERS NUMBERED	
_____	1
_____	2
_____	3

**UNFILED JUDGMENT**

Cross-Motion:  Yes

**No** This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Upon the foregoing papers,

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Plaintiff-landlord brings this action seeking ejection and a judgment of possession against tenants in its building. The defendants-tenants now move to dismiss the complaint under CPLR 3211 (a) (5) on the grounds of res judicata and collateral estoppel. The court agrees and shall grant the motion.

The plaintiff correctly states the law on these principals citing the Court of Appeals articulation of the doctrine of res judicata as follows:

The common-law doctrine of res judicata, designed to bar relitigation of adjudicated issues, is the law's recognition of the fact that it is to the interest of the State that there should be an end to litigation. The

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

doctrine, as generally stated, is that an existing final judgment rendered upon the merits by a court of competent jurisdiction, is binding upon the parties and their privies in all other actions or suits on points and matters litigated and adjudicated in the first suit or which might have been litigated therein.

Israel v. Wood Dolson Co., 1 NY2d 116, 118 (1956). With respect to collateral estoppel

New York Law has now reached the point where there are but two necessary requirements for the invocation of the doctrine of collateral estoppel. There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and, second, there must have been a full and fair opportunity to contest the decision now said to be controlling.

Schwartz v. Public Adm'r of Bronx County, 24 NY2d 65, 71 (1969).

The issue on this motion is the discrete application of these broadly applicable and flexible principles. For the relevant history of this matter the court shall refer to the subject order of Civil Court, New York County upon which the defendants' rely. That Order dated November 19, 2001 (Index Nos. 73893/2001 & 73894/2001, Civ Ct, NY County, Klein, J.) was issued in the consolidated summary proceedings between these identical parties. The Order states that "Petitioner contends respondent Cheng, and eventually her husband respondent Wilson, did not vacate as agreed and remained in possession (for 10 years) and as such are month-to-month tenants, which tenancy was terminated by service of a 30-day Note of Termination. Petitioner further contends that neither Apartment 1016 or 1004 is subject to any regulation and based upon all the facts, summary judgment must be

granted and possession awarded to petitioner." Id. at 1-2. The Court went on to summarize the respondents position stating in relevant part "[r]espondent opposes and cross-moves to dismiss and for summary judgment. . . Respondent contends . . . the nature of their relationship has changed and [respondents] no longer are or may never have been month-to-month tenants. Respondent further contends that contrary to petitioner's assertions the apartments are subject to rent stabilization and that respondents are protected tenants." Id.

Ultimately, the Civil Court held that "[a]s this Court determines the apartments are subject to rent regulation the predicate notices are defective. Since predicate notices are unamendable, the proceedings are dismissed. Accordingly, respondents['] motion to dismiss these proceedings is granted in all respects. Petitioner['s] motion is denied as moot."

Four years later the plaintiff now argues that collateral estoppel should not apply to the instant suit as "Chelsea Hotel was never afforded an opportunity to litigate the issue of Defendants' claim to regulatory status, because Judge Klein's decision never made a determination as to whether Defendants' [sic] were protected by the RSL. . . Judge Klein's decision found that the Apartment and Room were subject to the RSL and, as such, the proceedings were dismissed because the notices of termination based on a month to month tenancy were defective."

Even assuming arguendo that the court agreed with plaintiff that the statement in the Civil Court decision that "the apartments are subject to rent regulation" only meant that the apartment, and not the tenants, were subject to rent regulation, plaintiff's argument would still fail because the court expressly stated that "respondents['] motion to dismiss these proceedings is granted in all respects" and the court elucidated in the quoted portions above that part of defendants' request for judgment was a declaration that they were rent stabilized tenants.

Contrary to plaintiff's suggestion, nothing in the Civil Court Order prevented it from continuing to litigate the issue of defendants' rent-regulated status. Plaintiff was free to seek clarification and reargument of the Court's decision to the extent there was any alleged lack of clarity and because the decision was a final judgment dismissing the summary proceeding the plaintiff was free to seek appellate remedy. Plaintiff may indeed be correct that the Civil Court erred but this court lacks jurisdiction to correct any alleged error.

Plaintiff's further argument that the defendants are impermissibly seeking to create rent regulated tenancy by estoppel are incorrect. The estoppel and waiver that Courts have found impermissible in the cases cited by the plaintiff (see Levy v Carol Management Corp., 199 AD2d 140 [1<sup>st</sup> Dept 1993]; Gregory v

Colonial DPC Corp., III, 234 AD2d 419 [2d Dept 1996]) were based on the alleged actions of the parties. These authorities have no bearing on cases such as this where a court has held that premises are rent regulated because court orders do not create rent regulated premises but merely adjudicate their existence.

The court agrees with defendants that the plaintiff in this action is merely relitigating the same precise issues that the Civil Court determined between these parties over four years ago. This court is without jurisdiction to alter the holdings of the court in the prior summary proceeding and therefore the court shall grant defendants' motion to dismiss this action on the grounds of res judicata and collateral estoppel.

Accordingly, it is

ORDERED that defendants motion to dismiss the complaint pursuant to CPLR 3211 (a) (5) is GRANTED and the complaint is DISMISSED; and it is further

ORDERED and ADJUDGED that the Clerk is directed to enter judgment in favor of the defendants DISMISSING the complaint.

This is the decision and order of the court.

**Dated:** July 17, 2006

ENTER:

  
**DEBRA A. JAMES J.S.C.**  
**J.S.C.**

**UNFILED JUDGMENT**

**This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1-1B).**