

**Greaves v Memadet Realty Corp.**

2010 NY Slip Op 33423(U)

December 6, 2010

Supreme Court, New York County

Docket Number: 110789/09

Judge: Joan A. Madden

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: Hon Joan A. Midden  
Justice

PART 11

Greaves, C

INDEX NO. 110789/09

MOTION DATE 7/22/10

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

- v -

Memadit Realty

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for Summary Judgment

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the enclosed Memorandum Decision & Order, and the parties are directed to appear in Part 11, Room 351 on January 13, 2011 at 9:30 AM for a preliminary conference.

**FILED**

DEC 13 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: December 6, 2010

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

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

-----X  
CHERISH GREAVES and LLOYD GREAVES,

Plaintiffs,

-against-

MEMADET REALTY CORP,

Defendant.  
-----X

JOAN MADDEN, J.:

DECISION AND ORDER  
Index No. 110 89/07  
**FILED**

DEC 13 2010

NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiffs Cherish Greaves and Lloyd Greaves ("the Greaves") move for summary judgment as to liability on their claim for wrongful eviction based on the theories of res judicata and collateral estoppel. Defendant Memadet Realty Corp. ("Memadet") opposes the motion, which is granted for the reasons below.

Background

The Greaves were tenants at Apartment D-5 ("the Apartment") at 640 West 153<sup>rd</sup> Street, New York, NY (the Building). Memadet owns, manages and operates the Building. The Greaves fell behind in their rent payments and, as a result, Memadet commenced a summary proceeding against them in the Civil Court of the City of New York, County of New York, seeking to evict them for nonpayment of rent. A judgment dated February 27, 2009, was issued on default which provided that a warrant of eviction should issue in five days.

The Greaves then filed an order to show cause which, pursuant to a stipulation of settlement between the parties dated April 7, 2009, stayed the warrant of eviction for Greaves to pay \$6,477.27 for rent that was due through April 30, 2009. Of this amount, the stipulation indicated that the Greaves paid \$5,070 into court on April 7, 2009, and that Greaves was to pay

Memadet \$1,407.27 before May 29, 2009. The stipulation further provided that "the above sum does not include [\$717.49] for current use and occupancy/rent through May 2009, which is payable when due." Thus, under the stipulation, in addition to the \$5,070 paid on the date of the stipulation of settlement, the Greaves were to pay \$2,124.79 to Memadet.

On June 10, 2010, Memadet caused the Greaves to be evicted from the Apartment, including their personal property and furniture. On June 12, 2010, the Greaves moved, by order to show cause, to be restored to possession of the Apartment, asserting that \$2,124.76 had been paid in accordance with the stipulation of settlement and was returned by Memadet. In support of the motion, the Greaves submitted copies of three money orders in the amounts of \$725, \$1,000, and \$336, for a total of \$2,124.76, and correspondence from Memadet returning the payments of \$725 and \$1,000.

Memadet opposed the motion to restore, asserting, *inter alia*, that (1) the money orders it received from the Greaves totaled \$2,064.76, which is \$60.00 less than the \$2124.76 due through May 31, 2009, pursuant to the stipulation of settlement, (2) the money orders had different dates of them and were not in the tenants' name and were thus returned, and (3) at the time of the eviction, rifles and ammunition were removed from the Apartment.

By decision and order dated June 17, 2009, Judge David Kaplan of the Civil Court of the City of New York rejected Memadet's arguments and restored the Greaves to possession (hereinafter "the Civil Court decision"). He wrote:

It is undisputed that [the Greaves] tendered all arrears due through May 2009 and current rent before the due date provided in the 4/7/09 stipulation. This is evident by [Memadet's] opposition papers which show a money order for \$725 from "C. Greaves" dated 5/12/09 and two money orders dated 5/19/09 for \$399.76 and

[\* 4]

\$1,000 in the name of "Cherish Greaves" for a total of \$2124.76. It is clear [Memadet] received such funds before the due date as they were returned by mail by [Memadet's] own admission on 5/20 and 5/26. But for these actions, [the Greaves] would not have been evicted.

[Memadet] sets forth three arguments in support of its actions, all of which fail. First, [Memadet] claims the payment was \$60 short. This is belied by the documents presented. Under the stipulation, all payments were applied to current use and occupancy and then arrears. The use and occupancy for May was \$717.49, when added to that arrears of \$1407.27, a total of \$2124.76 was due—exactly what was paid. [Memadet's] second argument is that the payments were not in the tenants' names. Once again, the documents annexed to [Memadet's] opposition contradict this position....[Memadet's] third argument, and raised orally, is that the \$725 tendered first, did not cover all the arrears. First off this argument was not properly raised. Regardless, said payment more than covered the May 2009 use and occupancy [which] was due first.

Finally, to the extent petitioner raises allegations about the use of the premises, they are not properly raised in the context of a nonpayment proceeding.....If appropriate, [the Greaves are] directed to tender and [Memadet] to accept the previously rejected \$2124.76 in court. [Memadet] is directed to restore [the Greaves] to the possession forthwith as but for its actions, the eviction could not have proceeded. [Memadet] is directed to return [the Greaves'] possessions at its own expense within 48 hours...This is without prejudice to damages claims/defenses.

The Greaves commenced this action against Memadet on July 29, 2009, alleging that they were wrongfully evicted on June 10, 2009, and demanding compensatory and treble damages pursuant to section 853 of the Real Property Actions and Proceedings Law ("RPAPL"). Memadet filed an answer generally denying the allegations in the complaint and asserting as affirmative defenses (i) failure to state a cause of action, (ii) failure to inform defendant of basis of complaint, and (iii) failure to plead with sufficient specificity. Memadet also asserts a

counterclaim for legal fees.

The Greaves now move for summary judgment as to liability, arguing that the Civil Court decision restoring them to possession of the Apartment is conclusive of the issues in this wrongful eviction action, and Mamadet is thus barred by the doctrines of res judicata and/or collateral estoppel from relitigating these issues.

Mamadet opposes the motion, asserting the Greaves did not comply with the stipulation of settlement and therefore the eviction was not wrongful. In particular, Mamadet argues that the Greaves did not pay May rent when it was due on May 1, 2009 and that, instead, it received a check for \$725 on May 20, 2009, and that it returned the check as late. Mamadet argues that the payments were for rent since the lease with the Greaves was still in place at the time of the stipulation.

Mamadet also argues that the payment of \$1,390, which it received on May 26, 2009, was after the date that rent was due and not enough to cover the \$2,124.76 that was owed under the stipulation. Thus, Mamadet argues as Greaves were in default, their eviction was not wrongful. Mamadet also asserts that as the Civil Court decision restoring the Greaves to possession did not determine that the eviction was wrongful or illegal, it is not barred from litigating the issue, particularly as the decision and order stated that it was without prejudice to any claims or defenses.

In reply, the Greaves assert that the Civil Court decision determined that May 2009 use and occupancy and all other amounts due under the stipulation had been paid by the Greaves and that their eviction was thus wrongful. The Greaves also argue that the order of eviction which was resolved by the stipulation of settlement severed the landlord-tenant relationship, and

[\* 6] ,  
therefore the May payment was for use and occupancy and not rent and was therefore timely made.

### Discussion

The doctrine of res judicata or “claim preclusion” provides that “as to parties in a litigation ... a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action.”

Singleton Management, Inc. v Compere, 243 AD2d 213, 215 (1<sup>st</sup> Dept 1998)(citation omitted).

Under the transactional approach to res judicata adopted by New York courts, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.”

Marinelli Associates v Helmsley-Noyes Co., Inc., 265 AD2d 1, 5 (1<sup>st</sup> Dept 2000)(quoting, O'Brien v City of Syracuse, 54 NY2d 353, 357 (1981), citing Matter of Reilly v Reid, 45 NY2d 24, 29-30 ).

The related doctrine of collateral estoppel or “issue preclusion” prevents a party from relitigating an identical issue which has previously been decided against it in a prior action in which it had a fair opportunity to fully litigate the issue. See Allied Chemical v Niagara Mohawk Power Corp., 72 NY2d 271 (1988), cert denied, 488 US 1005 (1989). The policies underlying the application of collateral estoppel are avoiding relitigation of a decided issue and the possibility of an inconsistent result. D'Arata v New York Central Mutual Fire Insurance Co. 76 N.Y.2d 659 (1990 ).

Here, the court finds that the doctrine of collateral estoppel applies to bar Memadet from denying liability for the Greaves' wrongful eviction. Contrary to Memadet's position, the Civil

\* 7]

Court decision which restored the Greaves to possession, and found that but for the actions of Memadet, the Greaves would not have been evicted establishes that the eviction at issue was wrongful. See Marcina v. Shirrmeister, 105 AD2d 672 (1<sup>st</sup> Dept 1984)(holding that Civil Court proceeding finding that tenants were not properly served with process and vacated warrant of eviction and dismissed petition for possession established the eviction was wrongful and collateral estoppel applied to bar landlord from relitigating this “ultimate fact”).

Furthermore, that the Greaves were removed from the Apartment despite their compliance with the stipulation of settlement is sufficient to establish that the eviction was wrongful and no show of malice is required. Marcina v. Shirrmeister, 105 AD2d 672 (noting that an eviction is wrongful when a tenant is removed from a premises pursuant to a judgment and warrant that are subsequently vacated and dismissed); Sills v. Dellavalle, 9 AD3d 561 (3d Dept 2004)(holding that court properly found that tenant was wrongfully evicted even though landlord attempted to give plaintiff proper notice and there was not malice involved); Mayes v. UVI Holdings, Inc., 280 AD2d 153 (1<sup>st</sup> Dept 2000)(noting that “whether plaintiffs’ eviction on an invalid warrant was deliberate or inadvertent, there is no question that neither the landlord nor its attorneys can evade responsibility for the wrongful eviction”).

Next, Memadet’s argument that the eviction was not wrongful as the Greaves failed to comply with the stipulation which required that “rent” be paid by the first of the month is foreclosed by the Civil Court decision which clearly states that the Greaves complied with the stipulation by paying use and occupancy before the end of the month. In addition, while the Civil Court decision stated that it was without prejudice to any defenses, Memadet has not raised any defenses that were not previously determined by the Civil Court decision. Moreover, there

is no merit to Memadet's affirmative defenses or counterclaim for legal fees, for which Memadet does not provide any support.

Furthermore, Memadet does not deny that it had a full and fair opportunity to litigate the issues in the Civil Court proceedings.

Accordingly, the Greaves are entitled to summary judgment as to liability on their wrongful eviction claim and Memadet's affirmative defenses and counterclaim are dismissed, and the only issue remaining is the amount of damages, including whether the Greaves are entitled to treble damages under RPAPL § 853.

Conclusion

In view of the above, it is

ORDERED that the motion of summary judgment is granted to the extent of granting summary judgment in favor of plaintiffs Cherish Greaves and Lloyd Greaves on the issue of liability on their wrongful eviction claim; and it is further

ORDERED the affirmative defenses and counterclaim asserted by defendant Memadet Realty Corp are dismissed.

DATED: December 6, 2010

  
\_\_\_\_\_  
J.S.C.

**FILED**  
DEC 13 2010  
NEW YORK  
COUNTY CLERK'S OFFICE