

Shadli v 8835 23rd Ave. Tenants Corp.

2011 NY Slip Op 31609(U)

June 13, 2011

Sup Ct, NY County

Docket Number: 400316/11

Judge: Eileen A. Rakower

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

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Dahi Shadli

INDEX NO. 400316/11

MOTION DATE _____

8835 23rd v. Aw. Tenants

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED
<u>1</u>
<u>2</u>
<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER
FILED**

JUN 15 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/13/11

[Signature]
HON. EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X

DAHI SHADLI and RAWIA SHADLI,

Index No.
400316/11

Plaintiffs,

**DECISION
and ORDER**

- against -

8835 23rd AV. TENANTS CORP.,

FILED Mot. Seq.
001

Defendant.

JUN 15 2011

-----X
HON. EILEEN A. RAKOWER, J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE

Dahi and Rawia Shadli's ("Plaintiffs") are owners of Apartment E8 of 8835 23rd Avenue in Kings County ("the premises"), which they have occupied pursuant to a proprietary lease since December 1989. The premises is owned and operated as a cooperative apartment corporation by defendant 8835 23rd Avenue Tenants Corp. ("Defendant"). Plaintiffs' *pro se* complaint alleges:

- Isaac Friedman falsely signed a document purporting to be President of Defendant;
- that the Board of Directors "is not validly constituted," and that, as a consequence, all increases in maintenance since 1989 are "false and fraudulent;"
- that Defendant rented roof space on the building to T. Mobile"without sharing the benefits with the tenants-shareholders"
- that Defendant improperly withheld "plaintiffs personal exemption and Co-op abatement benefits taken by defendant, Isaac Friedman, from NYC Department of Finance since 1989 to 2008;
- that Friedman and Defendant "took the abatement benefit of J-51 from NYC Department of Finance since 1989 to date without any knowledge or consent

from the plaintiffs;”

- that Friedman “took \$11,395.62 from NYC Human Resource [sic] Administration Department of Social Service Rental Assistant [sic];”
- that Defendant has failed to repair a leaking radiator and leaking toilet above Plaintiff’s apartment, causing damage thereto;
- that Defendants are responsible for the destruction of their furniture due to “bedbugs, roaches, etc, since 2008 to 2010, as well as for personal injuries resulting from the bedbugs.

Plaintiffs move by order to show cause for an order granting the monetary, declaratory and injunctive relief sought in their complaint.

Defendant cross-moves to dismiss the complaint pursuant to CPLR §3211(a)(5) & (8), claiming that Plaintiffs’ claims are barred by the doctrines of *res judicata* and collateral estoppel.

CPLR §3211 provides, in relevant part:

- (a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
 - (5) the cause of action may not be maintained because of ... collateral estoppel, [or] *res judicata*; or

Collateral estoppel, or issue preclusion, ‘precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party ..., whether or not the tribunals or causes of action are the same’ (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500; see also, *Burgos v Hopkins*, supra, 14 F3d, at 792). The doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the

plaintiff had a full and fair opportunity to litigate the issue in the earlier action (*Ryan v New York Tel. Co., supra, at 500-501*). '[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identity and decisiveness of the issue, while the burden rests upon the opponent to establish the absence of a full and fair opportunity to litigate the issue in [the] prior action or proceeding' (*id., at 501*).

(*Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 349 [1999]).

In *Dahi Raheim & Rawia Shadli v. 8835 23rd Avenue Tenants Corp.*, Index No. 400975 (Sup. Ct., New York County), the Hon. Marcy S. Friedman dismissed Plaintiffs complaint, which raised similar allegations to the complaint herein, "with prejudice." In her December 5, 2008 decision, Justice Friedman held, *inter alia*, that:

To the extent that plaintiffs claim that defendants failed to credit them with a senior citizen rent increase exemption ("SCRIE"), plaintiffs acknowledge that they did not apply for a SCRIE. Contrary to plaintiffs' contention, it was not defendants' obligation to notify them of their right to apply for this benefit.

To the extent that plaintiffs claim that defendants failed to credit them with other amounts that they are owed, this contention is also without merit. Defendants annex documentary evidence which conclusively establishes that it credited non-senior citizen tax abatements to the individual shareholders. Plaintiffs do not make any showing that they are entitled to a share of revenue from rental of a portion of the roof to a third-party for placement of antenna facilities or revenue from rental of a portion of the basement for laundry facilities.

Plaintiffs fail to set forth allegations legally sufficient to support their apparent claim that the election of the Board of Directors was invalid.

In addition, in a Kings County Civil Court proceeding titled *8835 23rd Ave. Tenants Corp. v. Dahi Raheim, Rawia Shadli*, Index No. 55041/09, wherein Defendant in this action brought a nonpayment proceeding against Plaintiffs, the Hon. Laurie L. Lau awarded a final judgment of possession against Plaintiffs (which included maintenance). Importantly, in so holding, Judge Lau found that Plaintiffs “failed to meet [their] burden of proof and establish that any of the conditions in this Apartment are the responsibility of the co-op rather than [their] responsibility as set forth in the proprietary lease for the Apartment.” Judge Lau further found that, “[a]s to [Plaintiffs’] claims that there is no legitimate board and no right to raise the maintenance, this court notes that [Defendant] was sued by [Plaintiffs] as to these matters and the action was dismissed by Justice Marcy Friedman in a 12/5/08 decision & order.”

It is clear from the record that the claims now advanced by Plaintiffs were squarely addressed in two separate prior proceedings, and that those proceedings were decided against them. Accordingly, the complaint herein is dismissed under the doctrine of collateral estoppel.

Wherefore it is hereby

ORDERED that Defendant’s motion to dismiss the complaint herein is granted and the complaint is dismissed in its entirety, with costs and disbursements to Defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: June 13, 2011



EILEEN A. RAKOWER, J.S.C.

FILED

JUN 15 2011

NEW YORK
COUNTY CLERK'S OFFICE