

Jaber v Elayyan
2018 NY Slip Op 31515(U)
June 8, 2018
Supreme Court, Richmond County
Docket Number: 151161/2017
Judge: Jr., Orlando Marrazzo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

JUBER JABER,

DCM PART 21

Plaintiff(s),

HON. ORLANDO MARRAZZO, JR.

Index No.: 151161/2017

Motion No. 2

-against-

**MUNZER ELAYYAN and FARHOUD JABER
and 12 WHITWELL REALTY CORP.**

Defendant(s).

The following numbered 1 to 3 were fully submitted on 23rd day of May 2018

Papers
Numbered

Defendant Munzer Elayyan and Nominal Defendant 12 Whitewell Realty Corp.'s Motion to Dismiss Nominal Defendant Faroud Jaber's Cross-Claim, with Supporting Papers and Exhibits	1
Affirmation in Opposition with Supporting Papers and Exhibits	2
Reply	3

Defendant Munzer Elayyan and nominal defendant 12 Whitwell Realty Corp., move for an order pursuant to CPLR 3211(a)(5) dismissing nominal defendant Farhoud Jaber's cross-claim pursuant to CPLR 3211 on the grounds of collateral estoppel; pursuant to CPLR 3211(a)(4) dismissing the cross-claim as duplicative of pending declaratory judgment claim in PH-105 Realty Corp. v Munzer Elayaan, Index No. 656160/2016

(Sup. Ct., N.Y. Cnty.) (the “New York County Action”); and pursuant to CPLR 3211(a)(3) and CPLR 3211(a)(1) dismissing on nominal defendant Farhoud Jaber’s lack of standing to sue on behalf of nominal defendant 12 Whitwell Realty Corp., as confirmed by two court orders. As is set forth below, defendant Munzer Elayyan and nominal defendant 12 Whitwell Realty Corp. motion is granted and nominal defendant Farhoud Jaber’s cross-claim is dismissed.

As a matter of law, collateral estoppel bars Farhoud’s cross-claims. The doctrine of collateral estoppel requires two elements: (1) “the identical issue was necessarily decided in the prior action and is decisive in the present situation,” and (2) “the party to be precluded from relitigating an issue must have had a full and fair opportunity to contest the prior determination.” (*D’Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664 [1990].) “The doctrine of collateral estoppel is...based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it.” (*Westchester Cty. Correction Officers Benev. Ass’n, Inc. v Cty. Of Westchester*, 65 AD3d 1226, 1227 [2d Dept’t 2009].) There is also no dispute that once identity

of the issues is established, the burden of demonstrating the absence of a full and fair opportunity to litigate the issue falls on the party opposing the application of the doctrine. *D'Arata*, 76 NY2d at 664.

Here, Elayyan and Whitwell Corp., have established that the identical and decisive issues that are relevant to the cross-claim have been previously decided against Farhoud in the New York County Action, and because Farhoud has failed to show an absence of a fair and full opportunity to litigate these issues, therefore this court through application of collateral estoppel and dismiss the cross-motion.

It is clear to the court that Farhoud's ownership of Whitwell Corp., and his standing to sue on its behalf are two issues previously decided which are decisive to the cross-claim.

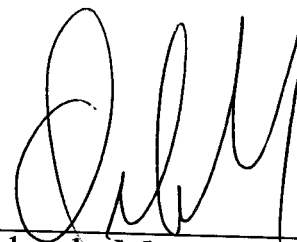
The first element of collateral estoppel, which requires that an issue which was previously decided to be decisive in this case, is not in dispute. In denying Farhoud's order to show cause petitions and motion for re-argument in the New York County Action, Judge Lebovits twice held that Farhoud has failed to demonstrate ownership of Whitwell Corp., and that, as such, he lacks standing to sue on its behalf.

Additionally, Farhoud had a fair and full opportunity to litigate the issues and Farhoud failed to demonstrate that they are a shareholder of Whitewell Corp.

Therefore, in accordance with the doctrine of collateral estoppel, nominal Defendant Munzer Elayyan and Nominal Defendant 12 Whitewell Realty Corp, motion is granted and nominal defendant Farhoud Jaber's cross-claim is dismissed.

This constitutes the decision and order of the court.

Dated: June 8, 2018
Staten Island, New York

A handwritten signature in black ink, appearing to read 'Orlando Marrazzo, Jr.', written over a horizontal line.

Orlando Marrazzo, Jr.,
Justice, Supreme Court