

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

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

*In the Matter of the Application of  
HANYING LIU,*

Index No. 150026/15

Petitioner,

-against-

MOTION DATE \_\_\_\_\_

SPICE LOFTHOUSE CORP., et al.,

Motion Seq. No. 001

Respondents,

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1

Answering Affidavits- Exhibits 2-4

Replying Affidavits 5-7

CROSS-MOTION: \_\_\_\_\_ YES  NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 4/27/15

*Donna M. Mills*  
J.S.C.

Check one:  FINAL DISPOSITION

\_\_\_\_\_ NON-FINAL DISPOSITION

**DONNA M. MILLS, J.S.C.**

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

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**In the Matter of the Application of  
HANYING LIU,**

**Petitioner,**

**For a Judgment pursuant to Article 78 of the  
Civil Practice Law and Rules**

**INDEX NO.  
150026/15**

**- against -**

**SPICE LOFTHOUSE CORP., ANN SARDINI,  
MAUREEN MARONEY, PAMELA VALERI,  
ERIC ANDRUS and ANDREW ROSS,**

**DECISION/ORDER**

**Respondents.**  
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**DONNA M. MILLS, J:**

In this special proceeding, plaintiff Hanying Liu, a shareholder/tenant, brings this action against a cooperative corporation, Spice Lofthouse Corp., as well as against individual board members, Ann Sardini, Maureen Maroney, Pamela Valeri, Eric Andrus and Andrew Ross, challenging their authority to enter into a settlement agreement on August 28, 2014. Petitioner also challenges the board's rejection of her application to transfer the shares under her name and ex-fiance's name into her name solely.

This special proceeding is the second matter commenced by petitioner in an attempt to set aside a settlement agreement, which was negotiated by petitioner's counsel and entered into by petitioner following the settlement of a partition action commenced by her ex-fiancé, Espen Robak. That partition action was filed here in New York County Supreme Court, under *Espen v Liu and Spice Lofthouse Corporation*, Index Number 157390/13.

The settlement agreement that petitioner seeks to set aside in this action, is the same settlement agreement that was at issue in the aforementioned partition action that was assigned to Justice Peter Moulton. In a decision dated March 30, 2015, Justice Moulton denied petitioner's attempt to vacate the settlement agreement.

"The doctrine of collateral estoppel . . . 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 or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). Collateral estoppel effect will be given only to matters actually litigated and determined in a prior action or proceeding (see *Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 456 [1985]). It must be shown that the identical issue was decided in the prior action or proceeding, is decisive in the present action, and that the party to be precluded from relitigating the issue had a full and fair opportunity to contest it (*id* at 455).

In the instant action, petitioner's claims regarding the purported lack of authority of the co-op board to enter into the subject settlement agreement, was previously litigated and decided in the prior action, and as such, petitioner is precluded from relitigating the issue which she had a full and fair opportunity to contest. Petitioner's claim in this action that the co-op board should return the payments she made under the Agreement to her attorney's escrow account was similarly litigated and decided against her in the prior action, and shall not be relitigated.

The remaining cause of action pertains to the petitioner's contention that the Respondents discriminated against her when they denied her transfer application. It should be noted that petitioner filed a housing discrimination complaint with the U.S. Department of Housing and Urban Development ("HUD") against the respondents herein, claiming as she does in this special proceeding, that they discriminated against her when they denied her share transfer application. The plaintiff is barred from maintaining this action by the election of remedies doctrine because the cause of action for discrimination is based on the same allegedly discriminatory conduct asserted in the HUD proceedings (*Benjamin v New York City Dept. of Health*, 57 AD3d 403, 404 [2008]; *Craig-Oriol v Mount Sinai Hosp.*,

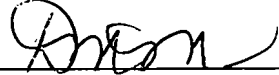
201 AD2d 449, 449-450 [1994]).

Accordingly, it is

ORDERED that the petition is denied in its entirety, the action dismissed and the Clerk is directed to enter judgment accordingly in favor of defendants.

Dated: 4/27/15

So Ordered



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Donna M. Mills, J.S.C.

**DONNA M. MILLS, J.S.C.**