

Arfa v Zamir
2011 NY Slip Op 04719
Decided on June 7, 2011
Court of Appeals
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Decided on June 7, 2011

No. 92

[*1]Rachel L. Arfa, et al., Appellants,

v

Gadi Zamir, et al., Respondents, Eli Mor, et al., Defendants. (And Other Actions.)

David J. Katz, for appellants.
Eric B. Levine, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

In June 2005, plaintiffs Rachel Arfa and Alexander Shpigel executed a general agreement with defendant Gadi Zamir regarding management of their real estate business. The [*2]agreement contained a provision in which each party released the others and their related entities from, "any and all claims, demands, actions, rights, suits, liabilities, interests and causes of action, known and unknown, which they have ever had, have or may now have, which in any way pertain to or arise from any matters, facts, occurrences, actions or

omissions which occurred prior to" the date of the contract. This general release, which plaintiffs allege was part of a negotiated agreement meant to ease an antagonistic relationship and keep Zamir "from destroying the value of the real estate portfolio," prevents plaintiffs from now bringing an action for fraud based on misrepresentations predating it.

Plaintiffs have failed to allege that the release was induced by a separate fraud (*see Centro Empresarial Cempresa S.A., et. al. v América Móvil, S.A.B. de C.V., et al.*, ___ NY3d ___ [decided ___]). Additionally, they have failed to allege that they justifiably relied on Zamir's fraudulent misstatements in executing the release. By their own admission, plaintiffs, who are sophisticated parties, had ample indication prior to June 2005 that defendant was not trustworthy, yet they elected to release him from the very claims they now bring without investigating the extent of his alleged misconduct (*see Centro*, ___ NY3d at ___; *DDJ Mgt., LLC v Rhone Group L.L.C.*, 15 NY3d 147, 153-154 [2010]). Dismissal of plaintiffs' fraud cause of action is therefore appropriate.

* * * * *

Order affirmed, with costs, and certified question answered in the affirmative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

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