

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 12th day of October, Two thousand and four.

PRESENT:

HON. ELLSWORTH VAN GRAAFEILAND,  
HON. PIERRE N. LEVAL ,  
HON. ROBERT A. KATZMANN,  
*Circuit Judges,*

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LINDA AND ARKADY VAIZBURD,

Plaintiffs-Appellants,

-v.-

No. 04-0062

CITY OF NEW YORK, ENVIRONMENTAL CONTROL BOARD OF THE CITY OF NEW YORK, JOHN DOE INDIVIDUALLY AND AS BOROUGH COMMISSIONER OF THE DEPARTMENT OF BUILDINGS OF THE CITY OF NEW YORK, JOHN DOE(S) AND AS BUILDING INSPECTOR OF THE CITY OF NEW YORK, JOHN DOE, INDIVIDUALLY AND AS DIRECTOR OF THE ENVIRONMENTAL CONTROL BOARD OF THE CITY OF NEW YORK, JOHN DOES, AND AS OFFICIALS OF OF ENVIRONMENTAL CONTROL BOARD OF THE CITY OF NEW YORK,

Defendants-Appellees.

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SUBMITTED FOR APPELLANTS: Linda and Arkady Vaizburd, *pro se*, Boynton Beach, Florida

SUBMITTED FOR APPELLEES: Victoria Scalzo, Esq., Assistant Corporation Counsel for the City of New York, New York, NY

Appeal from the United States District Court for the Eastern District of New York (David Trager, Judge).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the judgment of the District Court is **AFFIRMED**.

Linda and Arkady Vaizburd, *pro se*, appeal the judgment of the district court granting the defendants' motion to dismiss plaintiffs' civil rights complaint pursuant to 42 U.S.C. §§ 1983, and 1985. The parties' familiarity with the facts is assumed.

An independent review of the record, and relevant case law leads us to affirm the district court's decision to grant the City, DOB and ECB's motion to dismiss the Vaizburds' complaint.

The district court should permit the plaintiffs to file an amended complaint in this action, alleging the unreasonable search and seizure of their residence on October 24, 2001 (the only viable claim remaining) and naming the proper defendants. While Rule 15(c) limits the circumstances in which an amended complaint relates back to the filing of the original pleading, relation back should not be a concern if the amendment is filed within the time allotted by the statute of limitations, which appears to expire on October 23, 2004.

For the foregoing reasons, the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:  
Roseann B. MacKechnie, Clerk

By: \_\_\_\_\_