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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DAVID DERRINGER,) 1 CA-CV 09-0306
)
Plaintiff/Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, ARCAP)
JANET TERMAIN; DON TERMAIN;)
DONNA TRAPHAGAN; ROBERT SEWELL,)
)
Defendants/Appellees.)

Appeal from the Superior Court in Apache County

Cause No. CV2008261

The Honorable Donna J. Grimsley, Judge

AFFIRMED

David Derringer
Plaintiff/Appellant *In Propria Persona*

Albuquerque, NM

Davis Miles PLLC
by Lori A. Curtis
Attorney for Defendants/Appellees

Mesa

W I N T H R O P, Judge

¶1 David Derringer ("Appellant") appeals the trial court's dismissal of his complaint and subsequent imposition of attorneys' fees. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This case arises out of a self-storage rental space dispute. Beginning in 2004, Appellant rented storage space from Termain Storage, LLC. When the price of Appellant's rental units increased, the relationship deteriorated, full payment became an issue, and Termain Storage locked Appellant out of his rental units.

¶3 Unable to access his personal items, Appellant filed suit against Termain Storage and its owner and operator, Janet Termain, alleging breach of contract, conversion, and "other illegal and unconstitutional acts."¹ Termain counterclaimed for non-payment of rent and damage to a vacant unit, and, in March 2008, the Round Valley Justice Court ruled in Termain's favor on its counterclaim, sanctioning Appellant for abuse of process. The superior court affirmed the justice court's ruling, and Appellant appealed to the present court. We dismissed the case for lack of jurisdiction.

¶4 On November 5, 2008, Appellant filed the complaint at issue in this appeal. Termain moved for dismissal, primarily on the ground that Appellant's complaint was barred by *res judicata*. The trial court agreed and granted dismissal with prejudice on February 4, 2009. Appellant timely appealed, and

¹ The court later dismissed Janet Termain from the action.

we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

ANALYSIS

I. Motion to Dismiss

¶15 In reviewing a dismissal for failure to state a claim, we assume the truth of the allegations Appellant asserts in his complaint, but review legal issues *de novo*. See *Baker v. Rolnick*, 210 Ariz. 321, 324, ¶ 14, 110 P.3d 1284, 1287 (App. 2005). We will sustain a dismissal only if Appellant "could not be entitled to relief under any facts susceptible of proof under the claims stated." *Phelps Dodge Corp. v. El Paso Corp.*, 213 Ariz. 400, 402-03, ¶ 8, 142 P.3d 708, 710-11 (App. 2006) (citation omitted).

¶16 In his complaint, Appellant alleged that Termain Storage committed "numerous torts" by restricting access to Appellant's personal items. He claims Termain Storage and its representatives ("Termain") deprived him of his property, violated his right to access his "trade tools," wrongfully tampered with his possessions, withheld Appellant's partial rent payment checks in a conspiracy to steal Appellant's property, and intimidated him in an attempt to deprive him of his due process rights. Termain argues that the facts and allegations underlying the complaint in this appeal ("second complaint") are the same as those raised in Appellant's first justice court

action ("original complaint"), and are therefore barred. We agree.

¶7 The doctrine of *res judicata*, or claim preclusion, "protects 'litigants from the burden of relitigating an identical issue' and promotes 'judicial economy by preventing needless litigation.'" *Hall v. Lalli*, 194 Ariz. 54, 57, ¶ 6, 977 P.2d 776, 779 (1999). "[U]nder the doctrine of *res judicata*, a judgment 'on the merits' in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action." *Aldrich & Steinberger v. Martin*, 172 Ariz. 445, 448, 837 P.2d 1180, 1183 (App. 1992) (citation omitted). The doctrine binds the parties "not only upon the facts actually litigated, but also upon those points which might have been (even though not expressly) litigated." *Id.* (citation omitted).

¶8 Ultimately, Appellant seeks the return of his personal property. The Round Valley Justice Court, however, already adjudicated Appellant's case against Termain on the merits, thereby precluding Appellant from litigating his grievances a second time. The only noticeable differences between the two actions are the addition of new parties² and a "trade tools"

² In this second action, Appellant listed Janet Termain, Don Termain (Janet's son and occasional Termain Storage employee), Donna Traphagan (Termain Storage employee), and Robert Sewell (Termain's attorney in the original action) as defendants.

argument, and neither is sufficient to overcome claim preclusion.

¶9 First, *res judicata* bars a claim by a third party against an employee when the employer has obtained a favorable judgment against the third party, and vice versa. See *Aldrich*, 172 Ariz. at 448, 837 P.2d at 1183. When the relationship between two parties is "analogous to that of principal and agent, the rule is that a judgment in favor of either, in an action brought by a third party, rendered upon a ground equally applicable to both, should be accepted as conclusive against the plaintiff's right of action against the other." *Id.* (citing *Indus. Park Corp. v. U.S.I.F. Palo Verde Corp.*, 26 Ariz. App. 204, 208, 547 P.2d 56, 60 (1976)). Termain Storage and the other defendants have a common interest in this litigation and their relationship is such that, for *res judicata* purposes, they are privies.

¶10 Second, Appellant argues that his "trade tools" are exempt from the original judgment. Appellant did not raise this argument in his original complaint, although he could have. The argument is therefore barred. See *Indus. Park Corp.*, 26 Ariz. App. at 206, 547 P.2d at 58 ("an existing final judgment rendered upon the merits . . . is conclusive . . . as to every point raised by the record which could have been decided").

¶11 Finally, Appellant attempts to assert new claims against Termain based on its representative's actions during the litigation of the first action, but succeeds only in making conclusory allegations that are nearly impossible to ascertain. He has failed to sufficiently state a claim upon which relief may be granted, and the trial court properly dismissed his complaint. See *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008) (“[A] complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy Arizona’s notice pleading standard under [Arizona Rule of Civil Procedure] 8.”).

II. Attorneys’ Fees and Sanctions

¶12 The trial court awarded the defendants \$2467.51 in attorneys’ fees pursuant to A.R.S. § 12-349 (2003) and Arizona Rule of Civil Procedure (“Rule”) 11. Appellant disputes this award, which we review for an abuse of discretion. See *State v. Shipman*, 208 Ariz. 474, 475, ¶ 3, 94 P.3d 1169, 1170 (App. 2004). We find no error in the court’s decision.

¶13 Rule 11 allows a trial court to impose “an appropriate sanction, . . . including a reasonable attorney’s fee” against a party who files motions and pleadings that are not “well grounded in fact” or “warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law[,]” and are “interposed for any improper purpose,

such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ariz. R. Civ. P. 11(a). Section 12-349 allows a court to assess attorneys' fees when a party brings a claim "without substantial justification" or "primarily for delay or harassment." The trial court found an attorneys' fee award appropriate and, based on our review of the record, we will not disturb that finding.

CONCLUSION

¶14 For the foregoing reasons, we affirm the trial court's dismissal of Appellant's complaint. Further, we grant Termain's request for attorneys' fees upon compliance with Arizona Rule of Civil Appellate Procedure 21(c).

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge