At an IAS Term, Part 88 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on July 11, 2018.

PRESENT:
HON. DAWN JIMENEZ-SALTA,
Justice.

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PETER MINIC and CARLOS FRIAS,

Plaintiff,

- against -

GRJ LLC, 920 BUSHWICK, LLC, 946 BUSHWICK, LLC, 1075 GREENE, LLC, SAFEGUARD REALTY MANAGEMENT, INC., and GRAHAM JONES,

Defendant(s).

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Index No.: 522329/2017

DECISION AND ORDER

Recitation, as required by *CPLR 2219(a)*, of the papers considered in the review of:
1) Defendants GRJ LLC ("Defendant GRJ"), 920 Bushwick LLC, 946 Bushwick LLC, 1075 Greene LLC (together "Property Defendants") and Defendant Graham Jones' ("Defendant Jones") Notice of Motion to Dismiss Plaintiffs Peter Minic ("Minic") and Carlos Frias' ("Frias") (together "Plaintiffs") Complaint Pursuant to *CPLR Section 3211(a)(7)*, dated December 18, 2017 Along with Affirmation in Support and Memorandum of Law;
2) Defendant Safeguard Realty Management, Inc.'s ("Safeguard Defendant") Notice of Motion to Dismiss Plaintiffs' Complaint Pursuant to *CPLR Section 3211(a)(7),* dated December 19, 2017 Along with Memorandum of Law;
3) Plaintiffs' Attorney's Affirmation in Opposition to Defendant GRJ, Property Defendants and Defendant Jones' Motion, dated February 19, 2018;
4) Plaintiffs' Attorney's Affirmation in Opposition to Safeguard Defendant's Motion, dated February 19, 2018;
5) Safeguard Defendant's Reply Memorandum of Law, dated February 27, 2018;
6) Defendant GRJ, Property Defendants and Defendant Jones' Reply Affirmation, dated March 2, 2018, all of which submitted on June 27, 2018.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	GRJ/Property/Jones Defendants 1, Roberts Affirmation 2 [Exh. A-B] Safeguard Defendant 4 [Exh. A-B]
Notice of Cross-Motion and Affidavits Annexed.....	
Order to Show Cause and Affidavits.....	
Answering Affidavits.....	Plaintiffs Opp. GRJ/Property/Jones Defendants 6 Plaintiffs Opp Safeguard Defendant 7
Replying Affidavit.....	GRJ/Property/Jones Defendants Reply 9
Supplemental Affidavits.....	
Exhibits.....	

Mot Seq #5 1+2

Other [Memorandum of Law].....GRJ/Property/Jones Defendants Law 3
Safeguard Defendant Law 5
Safeguard Defendant Reply Law 8

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows: Defendants GRJ LLC ("Defendant GRJ"), 920 Bushwick, LLC, 946 Bushwick, LLC, 1075 Greene, LLC (together the "Property Defendants") and Defendant Graham Jones ("Defendant Jones") and Defendant Safeguard Realty Management, Inc.'s ("Safeguard Defendant") Motions to Dismiss Plaintiffs Peter Minic ("Minic") and Carlos Frias' ("Frias") (together "Plaintiffs") Complaint Pursuant to *CPLR 3211(a)(7)* are granted, and Plaintiffs' Complaint is dismissed in its entirety with prejudice [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

PROCEDURAL HISTORY AND BACKGROUND

Defendants 920 Bushwick LLC, 946 Bushwick LLC and/or 1075 Greene, LLC (together the "Property Defendants") are the respective ownership entities of the buildings located at 920 Bushwick Avenue, 946 Bushwick Avenue and 1075 Greene Avenue in Brooklyn (collectively the "Buildings"). Defendant Graham Jones ("Defendant Jones") is a principal of the Property Defendants and Defendant GRJ, LLC[1] ("Defendant GRJ") [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; DRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

After the purchase of the Buildings in 2016, the Property Defendants retained Defendant Safeguard Realty Management, Inc. ("Safeguard Defendant") to perform routine property management services on their behalf. Its duties included the collection of rents and payment of the expenses for the Buildings such as taxes and utilities [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

Plaintiffs Peter Minic ("Minic") and Carlos Frias ("Frias") were employees of Defendants 920 Bushwick LLC, 946 Bushwick LLC and 1075 Greene LLC ("Property Defendants"). Plaintiff Minic worked as a

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[1] According to the Complaint, Defendant GRJ LLC is a New York limited liability company with a principal place of business at 156 Fifth Avenue, 4th Floor, New York, NY 10010 [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

superintendent[2] while Plaintiff Frias worked as a porter[3] at the Buildings in Bushwick, New York. According to the Complaint, Plaintiffs allege two (2) causes of action: 1) negligent retention and 2) intentional infliction of emotional distress. They allege that they were instructed by Defendant Jones, the head officer of the Property Defendants to harass the tenants in order to coerce them into buy-outs of rent stabilized apartments. They allege that Defendant Jones and the other Defendants directed them to withhold essential maintenance services from the tenants. They allege that they were directed to reject the renewal of leases upon the tenants' refusal of the buyout offers. Plaintiffs allege that Defendant Jones threatened Plaintiffs into the continuation of their purported harassment of the tenants. If they did not do so, they allege that they would no longer be employed or able to live in apartments owned by the Property Defendants [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

According to Safeguard Defendant, it was never the direct employer of Plaintiffs. Neither Safeguard Defendant nor any of its employees claim any ownership interest in the Buildings. It asserts that it was not responsible for negotiations of tenant buyouts or the oversight of the rehabilitation of any of the units in the Buildings [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

According to Plaintiffs' Complaint, certain tenants of the Buildings commenced an action for harassment against Defendant Jones and others, including Plaintiff Minic. As a result of Defendants' conduct of harassment, Plaintiff Minic asserts that he has been "falsely portrayed . . . in a negative light and as the cause of the harassment of the tenants." [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

On October 30, 2017, Defendant Jones and the Property Defendants entered into an Assurance of Discontinuance ("AOD") with the New York Attorney General's Office[4]. The AOD was a response to technical

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[2] According to Defendant GRJ, Property Defendants and Defendant Jones, Plaintiff Minic was terminated as superintendent on November 1, 2017 after his arrest for assault on October 16, 2017 [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

[3] According to Defendant GRJ, Property Defendants and Defendant Jones, Plaintiff Frias voluntarily left his position [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

[4] According to Defendant GRJ, Property Defendants and Defendant Jones, Mr. Gregory Jones, who is not a Defendant in this case, was also a respondent in the Attorney General's Office action [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant

violations of a notice requirement as a result of Defendants' failure to provide a required written notice of the tenant's rights pursuant to a recently adopted *New York City Law*. Following a thorough investigation, the Attorney General's Office made no findings of substantive harassment by any of the Defendants. The AOD specifically provides "[t]his Assurance is not intended for use by any third party in any other proceeding. The admissions contained in this Assurance are not admissions in the context of any other proceeding or with respect to any claims asserted by any third party." [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

In their Notice of Motion to Dismiss Plaintiffs' Complaint Pursuant to *CPLR Section 3211(a)(7)*, dated December 18, 2017, Defendant GRJ, Property Defendants and Defendant Jones argue that dismissal is warranted because Plaintiffs have not stated a claim cognizable by law. See *Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 115 AD3d 128 (1st Dept., 2014); *Leon v. Martinez*, 84 NY2d 83 (1994) [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

Because an employee's remedy for negligence against an employer is exclusively subject to the *Workers' Compensation Law*, Defendant GRJ, Property Defendants and Defendant Jones insist that Plaintiffs' negligent retention claim fails. See *Ferris v. Delta Air Lines, Inc.*, 277 F3d 128 (2nd Circuit, 2001); *Maas v. Cornell University*, 253 AD2d 1 (3rd Dept., 1999); *O'Rourke v. Long*, 41 NY2d 219 (1976); *Pasqualini v. MortgageIT, Inc.*, 498 F.Supp2d 659 (SDNY, 2007); *Conde v. Yeshiva University*, 16 AD3d 185 (1st Dept., 2005); *Burlew v. American Mutual Insurance Company*, 63 NY2d 412 (1984); *Lattibeaudiere v. AMR Serv. Corp.*, 1996 WL 518076 (EDNY, 1996). They point out that New York courts permit negligent retention claims to hold employers liable for retaining an employee after the employer knew or should have known that the employee posed a risk to other employees or third parties. See *Walker v. Weight Watchers*, 961 F. Supp. 32 (EDNY, 1997) [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

Defendant GRJ, Property Defendants and Defendant Jones emphasize that Defendants' alleged conduct is insufficient to satisfy New York's high standard for intentional infliction of emotional distress. See *Bender v. City of New York*, 78 F3d 787 (2nd Circuit, 1996); *Murphy v. American Home Products Corp.*, 58 NY2d 293 (1983); *Taggart v. Costabile*, 131 AD3d 243 (2nd Dept., 2015); *Howell v. New York Post Co.*, 81 NY2d at 115; *Cruz v. HSBC Bank, USA, N.A.*, 5 F. Supp3d 253 (EDNY, 2014); aff'd 586 Fed. Appx. 723 (2nd Circuit, 2014); *Guan v. NYC Dept. Of Education*, 2013 WL 67604 (SDNY, 2013); *James v. DeGrandis*, 138 F.Supp2d 402 (WDNY, 2001); *LaDuke v.Lyons*, 250 AD2d 969, 673 NYS2d 240 (3rd Dept., 1998); *Nestlerode v. Federal Insurance Co.*, 66 AD2d 504, 414 NYS2d 398 (4th Dept., 1979); *Tianbo-Huang v. ITV Media, Inc., et al*, 13 F. Supp3d 246 (EDNY, 2014); *Mariani v. Consolidated Edison Co.*, 982 F. Supp. 267 (SDNY, 1997); *Stuto v. Fleishman*, 164 F3d 820 [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones

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7;Safeguard Defendant Reply Law 8; Property/Jones Defendants Reply 9].

Defendants Reply 9].

In its Notice of Motion to Dismiss Plaintiffs' Complaint Pursuant to *CPLR Section 3211(a)(7),* Safeguard Defendant underscores that since the Complaint is devoid of any allegations of specific conduct by it, the Complaint should be dismissed against it for failure to state a cause of action. See *Santos v. City of New York,* 269 AD2d 585 (2nd Dept., 2000); *Parola, Gross & Marino, PC v. Susskind,* 43 AD3d 1020 (2nd Dept., 2007); *Koopersmith v. Winged Foot Golf Club, Inc.,* 38 AD3d 847 (2nd Dept., 2007); *Jaymer Commc'ns, Inc., v. Associated Locksmiths of Am., Inc.,* 84 AD3d 888 (2nd Dept., 2011); *Kopelowski & Co., v. Mann,* 83 AD3d 793 (2nd Dept., 2011); *Biondi v. Beekman Hill House Apt., Corp.,* 257 AD2d 76 (1st Dept., 1999); aff'd 94 NY2d 659 (2000); *Adler v. 20/20 Cos.,* 82 AD3d 915 (2nd Dept., 2011); *Guggenheimer v. Ginzberg,* 43 NY2d 268 (1977); *Colleran v. Rockman,* 232 AD2d 322 (1st Dept., 1996) [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

Safeguard Defendant points out that it is merely the managing agent for the Property Defendants and Defendant Jones, the disclosed principals. Consequently, Safeguard Defendant stresses that its role in that capacity provides an insufficient basis to impose liability upon it for Plaintiffs' requested relief in the Complaint. See *Crimmins v. Handler & Co.,* 249 AD2d 89 (1st Dept., 1998); *Cruz v. NYNEX Information Resources,* 263 AD2d 285 (1st Dept., 2000); *Leonard Holzer Assoc., Inc., v. Orta,* 250 AD2d 737 (2nd Dept., 1998); *City University of New York, v. Finalco, Inc.,* 93 AD2d 792 (1st Dept., 1983) [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

In addition, Safeguard Defendant adopts and incorporates all the arguments for the dismissal of the Complaint proffered by Defendant GRJ, Property Defendants, Defendant GRJ and Defendant Jones. See *Ferris v. Delta Air Lines, supra; Walker v. Weight Watchers, supra; Maas v. Cornell University, supra; Bender v. City of New York, supra* [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

In their Attorneys' Affirmations in Opposition to Defendant GRJ, Property Defendants, Defendant Jones and Safeguard Defendant's Motions to Dismiss, dated February 19, 2018, Plaintiffs' Attorney contends that Plaintiffs have successfully met the legal standards required to withstand a motion to dismiss pursuant to *CPLR Section 3211(a)(7).* Since their Complaint can be deemed sufficient, they argue that it should not be dismissed. See *511 West 232nd Owners Corp., v. Jennifer Realty Co.,* 98 NY2d 144, 773 NE2d 496, 746 NYS2d 131 (2002); *219 Broadway Corp., v. Alexander's Inc.,* 46 NY2d 506, 387 NE2d 1205, 414 NYS2d 889 (1979) [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

In its Reply Memorandum of Law, dated February 27, 2018, Safeguard Defendant points out that Plaintiffs failed to oppose the branch of its motion that seeks dismissal based upon its status as an agent for the disclosed principals. Consequently, it maintains that its motion to dismiss the Complaint should be granted. See *Savoy*

Record Company, Inc., v. Cardinal Export Corp., 15 NY2d 1 (1964); *Crimmins v. Handler & Co., supra*; *Leonard Holzer Assoc., Inc., v. Orta, supra*. It reasserts that Plaintiffs' attorney's opposition fails to allege any specific factual allegations regarding Safeguard Defendant. It emphasizes that Plaintiffs merely speculate about any alleged liability by it or its employees. See *Koeppel v. Volkswagen Group of America, Inc.*, 128 AD3d 441 (1st Dept., 2015); *Siegel v. Terrusa*, 222 AD2d 428 (2nd Dept., 1995); *Jaymer Commc'ns, Inc., v. Associated Locksmiths of Am., Inc., supra*; *Kopelowitz & Co., v. Mann, supra* [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

In their Reply Affirmation, dated March 2, 2018, Defendant GRJ, Property Defendants and Defendant Jones underscore that Plaintiffs' claims for negligent retention must be dismissed because they are barred: 1) by New York's *Worker's Compensation* laws; and 2) because Plaintiffs are not a third party. See *Arroya v. WestLB Admin., Inc.*, 54 F. Supp.2d 224 (SDNY, 1999); *Bumpus v. New York City Transit Authority*, 851 NYS2d 591 (2nd Dept., 2008); *Jackson v. New York University Downtown Hospital*, 893 NYS2d 235 (2nd Dept., 2010); *Weldon v. Rivera*, 301 AD2d 934 (3rd Dept., 2003). They accentuate that Defendants' alleged conduct is insufficient to satisfy New York's high standard for intentional infliction of emotional distress. See *Howell v. New York Post Co., supra*; *Graupner v. Roth*, 293 AD2d 408 (1st Dept., 2002); *Fischer v. Maloney*, 43 NY2d 553, 402 NYS2d 991 (1978); *Herlihy v. Metropolitan Museum of Art*, 214 AD2d 250, 633 NYS2d 106 (1st Dept., 1995); *Bender v. City of New York, supra*; *Murphy v. American Home Products Corp., supra*; *Slatkin v. Lancer Litho Packaging Corp.*, 33 AD3d 421, 822 NYS2d 507 (1st Dept., 2006); *Wende C. v. United Methodist Church*, 6 AD3d 1047, 776 NYS2d 390 (4th Dept., 2004); *Lapidus v. New York City Chapter of the New York State Association for Retarded Children, Inc.*, 118 AD2d 122, 504 NYS2d 629 (1st Dept., 1986); *Clayton v. Best Buy Co., Inc.*, 48 AD3d 277, 851 NYS2d 485 (1st Dept., 2008); *Fama v. American International Group, Inc.*, 306 AD2d 310, 760 NYS2d 534 (2nd Dept., 2003); *Chime v. Sicuranza*, 221 AD2d 401, 633 NYS2d 536 (2nd Dept., 1995) [DRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; DRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. DRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; DRJ/Property/Jones Defendants Reply 9].

COURT RULINGS

This Court is obligated to read Plaintiffs Minic and Frias' allegations liberally and to afford them the benefit of every possible favorable inference. Despite this broad directive, this Court finds that Plaintiffs have failed to plead the requisite elements for their causes of action. Therefore, this Court must dismiss their Complaint with prejudice pursuant to *CPLR 3211(a)(7)* because it fails to state a claim cognizable at law against the Property Defendants, Defendant GRJ, Defendant Jones and/or Safeguard Defendant. See *Leon v. Martinez, supra*: *Basis Yield Alpha (Master) v. Goldman Sachs Group, Inc., supra* [DRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; DRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. DRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; DRJ/Property/Jones Defendants Reply 9].

This Court dismisses Plaintiffs' negligent retention claim. The tort of negligent retention is designed to permit *injured third parties* (emphasis added) to seek redress from employers for the conduct of their employees. It seeks to compensate those who have been injured by the negligently retained employee. It is not intended to address any harm to the negligently retained employees themselves by the employer. Those negligent hiring and retention claims brought by an employee are barred by the *Workers' Compensation Laws*

which are "designed to provide a swift and sure source of benefits to injured employees in exchange for the loss of the common-law tort claim in which greater benefits might be obtained". See *Maas v. Cornell University, supra.* See also *Ferris v. Delta Air Lines, Inc., supra; Walker v. Weight Watchers, supra.* Since the *Workers' Compensation Law* is the exclusive remedy for negligent employment-related injuries, this Court follows the established precedent of other New York courts which routinely dismiss such claims on that basis. Negligent retention does not protect the employee in this circumstance, and their purported injuries, to the extent substantiated, are to be addressed exclusively under the *Workers' Compensation Laws* [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

This Court dismisses Plaintiffs' second cause of action for intentional infliction of emotional distress because Plaintiffs have failed to meet its stringent requirements. The tort of intentional infliction of emotional distress has four elements under well-settled New York law: 1) extreme and outrageous conduct, 2) intent to cause severe emotional distress, 3) a causal connection between the conduct and the injury, and 4) severe emotional distress. See *Bender v. City of New York, supra.* A claim of intentional infliction of emotional distress requires the alleged conduct be "[s]o extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." See *Bender v. City of New York,* 78 F3d at 790-791. See also *Murphy v. American Home Products Corp., supra* [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

"The first element - outrageous conduct - serves the dual function of filtering out petty and trivial complaints that do not belong in court, and assuring that plaintiff's claim of severe emotional distress is genuine". See *Taggart v. Costabile,* 131 AD3d at 249 (2nd Dept., 2015), quoting *Howell v. New York Post Co.,* 81 NY2d at 122; *Cruz v. HSBC Bank, USA, N.A., supra.* Only the most egregious conduct establishes such a claim. Because the bar is "extremely high", "this highly disfavored cause of action is almost never successful". See *Guan v. NYC Dept. of Education, supra,* quoting *Zick v. Waterfront Com'n of New York Harbor,* No. 11 Civ. 5093, 2012 WL 4785703, at *6(S.D.N.Y. Oct. 4, 2012)(internal quotes and citations omitted). In fact, the Court of Appeals has noted that before 1993 every intentional infliction of emotional distress claim before it had "failed because the alleged conduct was not sufficiently outrageous". See *Zick v. Waterfront Com'n of New York Harbor, supra,* quoting *Semper v. N.Y. Methodist Hosp.,* 786 F.Supp.2d 566, 586 (E.D.N.Y.), which quoted *Howell v. New York Post Co., supra* [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

In the instant action, Plaintiffs' only assertion of intentional emotional distress is predicated upon a claim of fear of losing their jobs, and with respect to Plaintiff Minic, his apartment, as well as embarrassment from media attention about the harassment allegations against him. None of these purported injuries reaches the levels of outrageousness and extreme conduct required under New York law. Even if Defendant Jones' alleged conduct is true in threatening Plaintiffs with loss of their jobs and residence or the impact of negative publicity, this Court finds that it does not rise to the level of outrageousness required by New York courts. That level of extreme and outrageous behavior required is heightened in the employment context where "New York courts are exceedingly wary of claims for intentional infliction of emotional distress . . . because of their

reluctance to allow plaintiffs to avoid the consequences of the employment-at-will doctrine by bringing a wrongful discharge claim under a different name." See *Tianbo Huang v. iTV Media, Inc., supra,* quoting *Mariani v. Consolidated Edison, supra.* Plaintiffs' claims in this situation are precisely that kind of employment-related intentional infliction of emotional distress claim that New York courts treat with caution so as to avoid the lawful termination of an employee [GRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; GRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. GRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; GRJ/Property/Jones Defendants Reply 9].

Moreover, embarrassing media attention similarly does not reach the required levels of outrageousness to support an intentional infliction of emotional distress claim. See *Howell v. New York Post Co., supra.* Although Plaintiff Minic's purported embarrassment at being named in the harassment lawsuit and featured in the media may be distressing, this Court finds that it is not sufficiently extreme or outrageous to be actionable [DRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; DRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. DRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; DRJ/Property/Jones Defendants Reply 9].

This Court dismisses the Complaint against Safeguard Defendant because it contains nothing more than bare legal conclusions. The Complaint's only allegation regarding Safeguard Defendant is that it is a corporation with a business address. *CPLR 3013* requires that the Complaint be sufficiently particular in order to give the Defendants notice of the occurrence giving rise to the elements of each cause of action. See *Colleran v. Rockman,* 232 AD2d 322 (1st Dept., 1996). While the bar is relatively low, this Court finds that Plaintiffs have not met it since the Complaint fails to make any substantive allegations against Safeguard Defendant specifically. See *Parola, Gross & Marino, PC v. Susskind, supra; Kupersmith v. Winged Foot Gulf Club, Inc., supra; Jaymer Commc'ns, Inc. V. Associated Locksmiths of Am., Inc., supra; Kopelowitz & Co., v. Mann, supra; Biondi v. Beekman Hill House Apt. Corp., supra; Guggenheimer v. Ginzberg, supra; Adler v. 20/20 Cos., Inc., supra* [DRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; DRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. DRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; DRJ/Property/Jones Defendants Reply 9].

Under well-established law, this Court also finds an insufficient basis to impose liability on Safeguard Defendant because it is the managing agent for the Property Defendants and Defendant Jones, the disclosed principals. The law is clear that a managing agent is not responsible for the liabilities of the principal in the absence of "clear and explicit evidence of the agent's intention to substitute or superadd [sic] to his personal liability for or to that of his principal". See *Crimmins v. Handler & Co., supra; Cruz v. NYNEX Information Resources, supra; Leonard Holzer Assoc., Inc., v. Orta, supra; City University of New York v. Finalco, Inc., supra* [DRJ/Property/Jones Defendants 1, Roberts Affirmation 2, Exhs. A-B; DRJ/Property/Jones Defendants Law 3; Safeguard Defendant 4, Exhs. A-B; Safeguard Defendant Law 5; Plaintiffs Opp. DRJ/Property/Jones Defendants 6; Plaintiffs Opp. Safeguard Defendant 7;Safeguard Defendant Reply Law 8; DRJ/Property/Jones Defendants Reply 9].

Based on the foregoing, it is hereby ORDERED as follows:

Defendants GRJ LLC, 920 Bushwick LLC, 946 Bushwick LLC, 1075 Greene LLC, Graham Jones and Safeguard Realty Management, Inc,'s Motions to Dismiss Plaintiffs Peter Minic and Carlos Frias' Complaint

pursuant to *CPLR 3211(a)(7)* are GRANTED, and Plaintiffs' Complaint is DISMISSED in its ENTIRETY with PREJUDICE.

Clerk to notify.

This constitutes the Decision and Order of the court.

Date: July 11, 2018
Minic et al v. GRJ LLC et al
(Index Number 522329/2017)

Dawn Jimenez-Salta
J.S.C.

Hon. Dawn Jimenez-Salta
Justice of the Supreme Court

KINGS COUNTY CLERK
FILED
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