SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND PART- IAS 11

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DR. R.A. GREGG a/k/a RENAULD A. GREGG and CHERYNNE CARO

Plaintiffs

Present: Hon. Catherine DiDomenico

-against-

DECISION AND ORDER

LIANG CHENG ZHANG and LAN ZHEN SHEN

Index No. 100052/2019

Motion Sequence No.: 006

Defendants.

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Recitation as required by CPLR 2219(a) of the papers considered in the review of Motion Sequence Number 002

	Numbered
Notice of Motion for Summary Judgment by Defendants (006),	1
Affidavit in Opposition by Plaintiff Gregg,	2
Affidavit in Opposition by Plaintiff Caro,	3
Reply Affirmation by Defendants,	4
Judicial notice taken of all prior orders issued by this Court.	5

Upon the foregoing cited papers, the Decision and Order is as follows:

Present Motion

Defendants move by notice of motion (Seq. No. 006) for an order pursuant to CPLR §3112 granting them summary judgment dismissing all causes of action raised in the Plaintiffs' Summons and Complaint, to wit, causes of action for (1) a constructive bailment and (2) the intentional infliction of emotional distress. Defendants argue that the causes of action asserted by the Plaintiffs are not sustainable as a matter of law based upon the doctrines of collateral estoppel and res judicata. Plaintiffs, in opposition, offer a slew of procedural and factual arguments that attempt to discredit the Defendants' motion. However, these arguments fail to clearly address the Defendants' main argument that the issues raised in this proceeding have necessarily been resolved in a prior Civil Court proceeding. The Plaintiffs in this matter are self-represented while the Defendants are represented by counsel.

Relevant Facts

Even though this action presents as this Court's most voluminous file with over 400 e-filed

documents, most of the relevant facts are simple, undisputed, and a matter of court record. The Defendants in this action owned a parcel of real property located at 16 Vulcan Street in Staten Island, New York, and were the residential landlords of Plaintiff Gregg. Plaintiff Gregg signed a written lease wherein he agreed to pay the sum of **$3,400** a month for use and occupancy of the property. In or around September of 2017, Plaintiff Gregg failed to pay rent as required. As a result, the Defendants commenced a "non-payment proceeding" in Richmond County Civil Court in February of 2019 seeking **$61,454** in unpaid rent. That case was resolved by an undated Stipulation of Settlement between the parties wherein Plaintiff Gregg agreed to vacate the premises on or before July 30, 2019. The express terms of this Stipulation indicate that **"any items remaining after vacatur, will be deemed abandoned and may be disposed of by the Landlord without liability."** A later motion to vacate the Stipulation was denied by the Civil Court (See Order dated 8/7/19, L. Grey, J.).

Despite the clear terms of this Stipulation, Plaintiff Gregg did not timely vacate the premises. Accordingly, pursuant to the Stipulations terms, he was evicted by the New York City Marshall on or about August 28, 2019. Plaintiff Gregg then filed a post eviction Order to Show Cause in Civil Court. That motion was decided by Order dated August 29, 2019 (K. Slade, J.). Pursuant to the terms of that Order, Plaintiff Gregg was provided supervised access to the property to obtain the rest of his remaining belongings, with a provision that **"any items remaining after 5pm on September 4, 2019 shall be deemed abandoned, and [Landlord] may dispose of the same without any liability."** Despite the clear terms of this Order, and the parties' Stipulation, the gravamen of the Plaintiffs' constructive bailment cause of action is a claim for damages relating to personal property left in the residence. The claim for the infliction of emotional distress relates to the alleged conduct of the Defendants during the removal of property. Notably, it is unclear from the Plaintiffs' Summons and Complaint what role Plaintiff Caro played in this fact pattern other than as a witness. However, during this proceeding it has become apparent that she was cohabitating with Plaintiff Gregg at the residence at the time of eviction and that some of her personal property was left behind at the residence when Plaintiff Gregg was evicted. Plaintiff Caro was not on the lease at issue, but she was identified in the landlord tenant proceeding as a "Jane Doe."

Applicable Law

The proponent of a summary judgment motion has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact from the case. **See *Otty Cab Corp. v. Nazir*, 72 N.Y.S.3d 517 (2d Dept. 2017)**. A movant's burden can be satisfied by the submission of sworn affidavits and other documentary evidence in proper evidentiary form. **See *Charlie Fox, Inc. v. Diallo*, 48 N.Y.S.3d 264 (2d Dept. 2016)**. Once prima facie showing of entitlement to summary judgment has been established, the burden shifts to the non-moving party or parties to raise a material issue of fact. **See *Ubillus-Tambini v. Ischakov*, 36 N.Y.S.3d 410 (2d Dept. 2016)**.

Under the doctrine of res judicata, or claim preclusion, a valid final judgment or order bars future actions between the same parties on the same causes of action. **See *Simmons v. Trans Express*, 37 N.Y.3d 107 (2021).** The doctrine of res judicata operates to preclude the reconsideration of claims actually litigated and resolved in a prior proceeding, as well as claims for different relief against the same party which arise out of the same factual grouping or transaction and should or could have been addressed in the prior proceeding. **See *Jacobson Dev. Group, LLC v. Grossman*, 2021 N.Y. Slip Op 05851 (2d Dept. 2021).** The related doctrine of collateral estoppel, or issue preclusion, 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 to that party. **See *Reid v. Reid*, 2021 NY Slip Op 05881 (2d Dept. 2021); see also *Lennon v. 56th and Park (NY) Owner, LLC*, 2021 NY Slip Op 04972 (2d Dept. 2021).** In the context of collateral estoppel, privity does not have a single well-defined meaning, rather the application of the term depends upon the relationship of the parties and the circumstances of the case. **See *Buechel v. Bain*, 97 N.Y.2d 295 (2001); see also *Suter v. Ross*, 179 A.D.3d 1127 (2d Dept. 2020).**

Decision

(1) Constructive Bailment

Here, Defendants have established their initial entitlement to summary judgment as a matter of law. It is undisputed that pursuant to the terms of the parties' Civil Court Stipulation of Settlement, and the subsequent Order of the Civil Court, that the Defendants had the unequivocal right to dispose of any property left in the residence after the dates set forth in the Order. As the Defendants were granted the explicit right to dispose of abandoned property in the prior proceeding, a claim of constructive bailment of that same property cannot be raised in this proceeding under the doctrines of res judicata and collateral estoppel. **See *W54-7 LLC v. Perrin*, 183 A.D.3d 448 (1st Dept. 2020); see also *Sang Seok NA v. Schietroma*, 172 A.D.3d 1263 (2d Dept. 2019); *Wen Mei Lu v. Wen Ying Gamba*, 158 A.D.3d 1032 (3rd Dept. 2018).** In so ruling, the Court acknowledges that Plaintiff Caro was not an express party to the prior landlord-tenant proceeding, but finds she was clearly in privity with Plaintiff Gregg as a cohabitant of the apartment at issue. The Court finds that Plaintiff Caro's interests regarding personal property in the residence were fairly represented by the participation of the named tenant, Plaintiff Gregg, in that matter. **See *Green v. Santa Fe Industries, Inc.*, 70 N.Y.2d 244 (1987); see also *Matter of Corporate Woods 11, LP v. Board of Assessment Review of the Town of Colonie*, 83 A.D.3d 1250 (3rd Dept. 2011).** Moreover, as an unnamed cotenant, Plaintiff Caro's rights in this proceeding are derivative of Plaintiff Gregg's rights (if any) as the named tenant on the lease. **See *Bayer v. City of New York*, 115 A.D.3d 897 (2d Dept. 2014).** Accordingly, the doctrine of collateral estoppel applies to Plaintiff Caro.

As Defendants have established their entitlement to summary judgment as a matter of law, the burden shifts to the non-moving parties, in this case Plaintiffs, to raise a material question of fact. **See *Paula v. City of New York*, 249 A.D.2d 100 (1st Dept. 1998)**. When facing a defense of res judicata or collateral estoppel, it is the burden of the party opposing the doctrine's application to show that they were *not* afforded a full and fair opportunity to address the claims at issue in the prior proceeding. **See *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449 (1985)**. Here, Plaintiffs have failed to raise a triable question of fact sufficient to defeat summary judgment. Despite lengthy opposition papers, the Plaintiffs fail to sufficiently address the Defendants' main argument that they were specifically entitled to dispose of any property left in the residence by the terms of the parties' Stipulation and the subsequent Civil Court Order. As the Defendants had the unequivocal right to dispose of any property left in the residence, they could not possibly have a legal duty to safeguard that same property under the theory of a constructive bailment. **See *Zinner v. Advance Parking Servs.*, 55 Misc. 3d 68 (2d Dept. 2017)**. Accordingly, the Defendants motion for summary judgment dismissing the Plaintiffs' cause of action for a constructive bailment is hereby granted.

(2) Intentional Infliction of Emotional Distress

The Plaintiffs' second cause of action alleges the intentional infliction of emotional distress. Defendants move for summary judgment dismissing this claim arguing that Plaintiffs have failed to state a viable cause of action. The elements of an intentional infliction of emotional distress cause of action are "(1) extreme and outrageous conduct; (2) the intent to cause, or the disregard of a substantial likelihood of causing, severe emotional distress; (3) causation; and (4) severe emotional distress." **See *Roe v. Domestic & Foreign Missionary Socy. Of the Prot. Episcopal Church*, 2021 NY Slip Op 05360 (2d Dept. 2021)**. However, under controlling precedent, a party making such a claim must plead conduct "so outrageous in character, and so 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." ***Norris v. Innovative Health Sys., Inc.*, 184 A.D.3d 471 (1st Dept. 2020)**. This State's highest court has repeatedly held that this requirement is "rigorous, and difficult to satisfy" and as such, *every* claim reviewed by the Court of Appeals has failed "because the alleged conduct was not sufficiently outrageous." **See *Chanko v. American Broadcasting Cos. Inc.*, 27 N.Y.3d 46 (2016)**. When considering Defendants' motion for summary judgment, this Court is constrained to consider all of the facts alleged by Plaintiffs as true, and to view those facts in a light most favorable to them. **See *Rubin v. Napoli Bern Ripka Shkolnik, LLP*, 179 A.D.3d 495 (1st Dept. 2020); see also *Armellino v. Thomase*, 72 A.D.3d 849 (2d Dept. 2010)**.

Here, Plaintiffs allege that after they were evicted, the Civil Court granted them an opportunity to remove their personal property from the residence over the course of several days. However, they claim that the Defendants' hindered their ability to do so by limiting access, by making verbal threats, by making defamatory statements to neighbors, and in one instance by threatening Plaintiff Caro with a wrench. Plaintiffs' Summons and Complaint alleges that by "not returning Plaintiffs' personal property,

defaming Plaintiffs' to neighbors and threatening Caro, Defendants intentionally and recklessly inflicted emotional distress." Defendants correctly argue that these allegations, taken as true and afforded every favorable inference, are insufficiently "outrageous" to support a claim for the intentional infliction of emotional distress. **See *Abruscato v. Allstate Prop. & Cas. Ins.Co.* 165 A.D.3d 1209 (2d Dept. 2018); *Chen v. Dehjung Deborah Wang*, 164 A.D.3d 1299 (2d Dept. 2018); *Matthaus v. Hadjedj*, 148 A.D.3d 425 (1st Dept. 2017); *Petkewicz v. Dutchess County Dept. of Community & Family Servs.*, 137 A.D.3d 990 (2d Dept. 2016).** In opposition to the motion for summary judgment, Plaintiffs have failed to allege any additional conduct sufficiently outrageous to warrant a trial on the cause of action. Thus, Defendant's motion for summary judgment dismissing the second cause of action is hereby granted. **See *Baumann v. Hanover Community Bank*, 100 A.D.3d 814 (2d Dept. 2012)**.

For the reasons set forth above, the Defendants' motion for summary judgment dismissing the Plaintiff's causes of action is hereby granted. This constitutes the Decision and Order of the Court on all issues raised in relation to motion sequence number 006. Defendant's counsel is hereby directed to serve a copy of this Order on the Plaintiffs with Notice of Entry.

Dated: December 3, 2021

Hon. Catherine M. DiDomenico
Acting Justice Supreme Court