

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Wheeler v. Linden Plaza Preserv., LP

Wheeler, 2026 NY Slip Op 00604 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 150079/17; Appeal No. 5771; Case No. 2025-00660 · Decided February 5, 2026

SUMMARY

The Appellate Division, First Department modified an order denying summary judgment to Linden Plaza Preservation, Linden Plaza Housing, and RY Management, granting their motions and otherwise affirming the order. The court held that the defendants established the absence of damages supporting the plaintiff's negligence claims and that the remaining claims, including negligent training, negligent supervision, trespass to chattel, conversion, and negligent infliction of emotional distress, were legally deficient or unsupported by the evidence. The court also affirmed summary judgment for Madison Security Group based on the absence of a duty to the plaintiff and concluded that punitive damages were unavailable.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; González, J.; Shulman, J.; Pitt-Burke, J.; Chan, J.
JURISDICTION	Appellate Division, First Department, New York
DECIDED	February 5, 2026
DOCKET	Index No. 150079/17; Appeal No. 5771; Case No. 2025-00660
DISPOSITION	other
PROCEDURAL POSTURE	Appeal and cross-appeal from an order of Supreme Court, New York County, addressing defendants' motions for summary judgment and dismissing plaintiff's punitive-damages claim.
STANDARD OF REVIEW	Summary judgment is appropriate when the movant establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the appellate court reviewed the order for legal error.
PRECEDENTIAL VALUE	Published intermediate appellate opinion

PARTIES

Linden Plaza Preservation, LP, Linden Plaza Housing Co., Inc., RY Management Co. Inc., Madison Security Group, Inc. v. Deborah Wheeler

TOPICS[summary judgment](#)[negligence](#)[conversion](#)[trespass](#)[negligent infliction of emotional distress](#)**PRACTICE AREAS**[Civil procedure](#)[Torts](#)[Landlord-tenant](#)[Real estate](#)[Remedies](#)**QUESTIONS PRESENTED**

1. Whether Madison Security Group owed plaintiff a duty of care in connection with the denial of access to her apartment.
2. Whether Linden Plaza Preservation, Linden Plaza Housing, and RY Management were entitled to summary judgment on plaintiff's negligence claims for failure to establish damages.
3. Whether plaintiff's negligent training and negligent supervision claims were legally deficient because the alleged employees acted within the scope of their employment.
4. Whether plaintiff's conduct allegations supported punitive damages.
5. Whether plaintiff's trespass to chattel, conversion, and negligent infliction of emotional distress claims were legally or evidentially sufficient.

HOLDINGS

1. Madison Security Group was entitled to summary judgment because it did not owe plaintiff a duty of care in the circumstances presented.
2. Linden Plaza Preservation, Linden Plaza Housing, and RY Management were entitled to summary judgment because plaintiff failed to raise a triable issue of fact as to damages, a necessary element of negligence.
3. The negligent training and negligent supervision claims were defective because the complaint alleged that the employees acted within the scope of their employment.
4. The alleged denial of access to the apartment did not support punitive damages.
5. The trespass to chattel claim was defective because plaintiff presented no evidence that her medications or medical supplies were damaged.
6. The conversion claim was unsupported because a lawful eviction and storage of a tenant's property do not constitute conversion.
7. Summary judgment on the negligent infliction of emotional distress claim was warranted because plaintiff was not shown to have been in physical danger and testified that she had no physical contact with the building superintendent.

KEY QUOTATIONS

*“Because damages are a necessary element of a negligence cause of action, summary judgment was warranted.” ([*1])*

*“The conversion claim was also unsupported because a lawful eviction and storage of a tenant's property does not constitute a conversion.” ([*1])*

FACTUAL BACKGROUND

After Deborah Wheeler was evicted from her apartment, she alleged that defendants denied her access to retrieve medicines and medical supplies despite a November 2, 2016 court order permitting limited access. She asserted negligence, negligent training and supervision, trespass to chattel, conversion, and negligent infliction of emotional distress claims. Defendants submitted a clinical neuropsychologist's affidavit opining that Wheeler's inability to retrieve the items did not adversely affect her mental condition, and Wheeler offered no evidence that her physical condition deteriorated or that the items were damaged.

PROCEDURAL HISTORY

Supreme Court granted Madison Security Group's motion for summary judgment dismissing the complaint and cross-claims against it, denied the summary-judgment motions of Linden Plaza Preservation, Linden Plaza Housing, and RY Management, and dismissed plaintiff's punitive-damages claim. The Appellate Division modified the order to grant the latter defendants' motions and otherwise affirmed.

DISPOSITION

other

CASES CITED

- Espinal v. Melville Snow Contrs., 98 N.Y.2d 136 (2002)
- Paternack v. Laboratory Corp. of Am. Holdings, 27 N.Y.3d 817, 825 (2016)
- Medina v. City of New York, 102 A.D.3d 101, 108 (1st Dep't 2012)
- Fischer v. Machon Bais Yaakov, 176 A.D.2d 655, 656 (1st Dep't 1991)
- Abrams v. Pecile, 115 A.D.3d 565, 566 (1st Dep't 2014)
- Priester v. R.F.H. Realty Corp., 13 Misc. 2d 446, 447 (2d Dep't 1958)
- Allstate Ins. Co. v. Burger King Corp., 25 A.D.3d 472, 472 (1st Dep't 2006)
- Stanley v. Smith, 183 A.D.2d 675, 676 (1st Dep't 1992)

OPINION

Wheeler v. Linden Plaza Preserv., LP 2026 NY Slip Op 00604

PER CURIAM.

Wheeler v Linden Plaza Preserv., LP (2026 NY Slip Op 00604) Wheeler v Linden Plaza Preserv., LP 2026 NY Slip Op 00604 Decided on February 05, 2026 Appellate Division, First Department

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: February 05, 2026 Before: Manzanet-Daniels, J.P., González, Shulman, Pitt-Burke, Chan, JJ. Index No. 150079/17|Appeal No. 5771|Case No. 2025-00660| [*1]Deborah Wheeler, Plaintiff-Respondent-Appellant, v Linden Plaza Preservation, LP, et al., Defendants-Appellants-Respondents, RY Management Co. Inc., Defendant-Respondent-Appellant, Madison Security Group, Inc., Defendant-Respondent. Gallo Vitucci Klar LLP, New York (Mónica Romero of counsel), for appellants-respondents. Peter H. Paretsky, New York, for Deborah Wheeler, respondent-appellant. Wood Smith Henning & Berman, LLP, White Plains (Christopher J. McClain of counsel), for RY Management Co. Inc., respondent-appellant. Order, Supreme Court, New York County (Lynn R. Kotler, J.), entered January 13, 2025, which, to the extent appealed from as limited by the briefs, granted defendant Madison Security Group's motion for summary judgment dismissing the complaint and all cross-claims against it, denied the separate motions of defendants Linden Plaza Preservation, LP and Linden Plaza Housing Co., Inc., and of RY Management Co. Inc. for summary judgment dismissing the complaint and all cross-claims against them, and dismissed plaintiff's claim for punitive damages, unanimously modified, on the law, to grant the motions of Linden Plaza Preservation and Linden Plaza Housing, and RY Management, and otherwise affirmed, without costs. This action arises from the eviction of plaintiff from her apartment, which plaintiff states was legal. Plaintiff alleges that, after her ouster, defendants denied her access to the apartment to obtain medicines and medical supplies, despite her having obtained a court order on November 2, 2016 permitting her limited access. Supreme Court properly granted defendant Madison Security's motion for summary judgment because Madison Security, which contracted with RY Management to provide security services in the apartment building, did not owe a duty to plaintiff (see *Espinal v Melville Snow Contrs.* , 98 NY2d 136 [2002]). However, Supreme Court should have also granted the motions of defendants Linden Plaza Preservation and Linden Plaza Housing, and RY Management because those defendants demonstrated prima facie entitlement to summary judgment on plaintiff's negligence claims. Defendants submitted the affidavit of a clinical neuropsychologist who opined that plaintiff's inability to retrieve her medications and medical supplies for the stated period did not have an adverse effect on her mental condition. In opposition, plaintiff failed to present evidence sufficient to raise a triable issue of fact as to damages. Plaintiff presented no evidence to dispute the opinion of the clinical neuropsychologist or that demonstrated that her physical condition deteriorated as a result of the lock out. Because damages are a necessary element of a negligence cause of action (see *Paternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]), summary judgment was warranted. In any event, the causes of action were legally deficient. The negligent training and negligent supervision claims were defective because the complaint alleged that defendants' employees were acting within the scope of their employment when they denied her access to the apartment (see *Medina v City of New York*, 102 AD3d 101, 108 [1st Dept 2012]).

Although there is an exception to this principle where the injured plaintiff is seeking punitive damages (*id.*), here, the conduct cited in the complaint was insufficient to support a recovery for punitive damages. Defendants' alleged denial of access to the apartment after plaintiff obtained a court order was not aimed at the public generally, gross, or involve high moral culpability, but rather an isolated incident related to the conduct of a legitimate business (see *Fischer v Machon Bais Yaakov*, 176 AD2d 655, 656 [1st Dept 1991]). Plaintiff's trespass to chattel cause of action was defective because no evidence was presented that plaintiff's medications or medical supplies were damaged (see *Abrams v Pecile*, 115 AD3d 565, 566 [1st Dept 2014]). The conversion claim was also unsupported because a lawful eviction and storage of a tenant's property does not constitute a conversion (see *Priester v R.F.H Realty Corp.*, 13 Misc2d 446, 447 [2d Dept 1958]). Finally, summary judgment on the negligent infliction of emotional distress cause of action was warranted because there was no evidence that plaintiff was ever in physical danger, and she testified that she had no physical contact with the building superintendent (see *Allstate Ins. Co. v Burger King Corp.*, 25 AD3d 472, 472 [1st Dept 2006]; see also *Stanley v Smith* , 183 AD2d 675, 676 [1st Dept 1992]). We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 5, 2026
PER CURIAM.

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apartment, which plaintiff states was legal. Plaintiff alleges that, after her ouster, defendants denied her access to the apartment to obtain medicines and medical supplies, despite her having obtained a court order on November 2, 2016 permitting her limited access. Supreme Court properly granted defendant Madison Security's motion for summary judgment because Madison Security, which contracted with RY Management to provide security services in the apartment building, did not owe a duty to plaintiff (see *Espinal v Melville Snow Contrs.* , 98 NY2d 136 [2002]). However, Supreme Court should have also granted the motions of defendants Linden Plaza Preservation and Linden Plaza Housing, and RY Management because those defendants demonstrated prima facie entitlement to summary judgment on plaintiff's negligence claims. Defendants submitted the affidavit of a clinical neuropsychologist who opined that plaintiff's inability to retrieve her medications and medical supplies for the stated period did not have an adverse effect on her mental condition. In opposition, plaintiff failed to present evidence sufficient to raise a triable issue of fact as to damages. Plaintiff presented no evidence to dispute the opinion of the clinical neuropsychologist or that demonstrated that her physical condition deteriorated as a result of the lock out. Because damages are a necessary element of a negligence cause of action (see *Paternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]), summary judgment was warranted. In any event, the causes of action were legally deficient. The negligent training and negligent supervision claims were defective because the complaint alleged that defendants' employees were acting within the scope of their employment when they denied her access to the apartment (see *Medina v City of New York*, 102 AD3d 101 , 108 [1st Dept 2012]). Although there is an exception to this principle where the injured plaintiff is seeking punitive damages (*id.*) , here, the conduct cited in the complaint was insufficient to support a recovery for punitive damages. Defendants' alleged denial of access to the apartment after plaintiff obtained a court order was not aimed at the public generally, gross, or involve high moral culpability, but rather an isolated incident related to the conduct of a legitimate business (see *Fischer v Machon Bais Yaakov*, 176 AD2d 655, 656 [1st Dept 1991]). Plaintiff's trespass to chattel cause of action was defective because no evidence was presented that plaintiff's medications or medical supplies were damaged (see *Abrams v Pecile*, 115 AD3d 565 , 566 [1st Dept 2014]). The conversion claim was also unsupported because a lawful eviction and storage of a tenant's property does not constitute a conversion (see *Priester v R.F.H Realty Corp.*, 13 Misc2d 446, 447 [2d Dept 1958]). Finally, summary judgment on the negligent infliction of emotional distress cause of action was warranted because there was no evidence that plaintiff was ever in physical danger, and she testified that she had no physical contact with the building superintendent (see *Allstate Ins. Co. v Burger King Corp.*, 25 AD3d 472, 472 [1st Dept 2006]; see also *Stanley v Smith* , 183 AD2d 675, 676 [1st Dept 1992]). We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 5, 2026

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