COURT OF APPEALS NO. CTQ-2020-00003

TO BE ARGUED BY:
ABDUL K. HASSAN, ESQ.
TIME REQUESTED: 20 MINUTES

State of New York
Court of Appeals

CHARLENE SIMMONS,

Plaintiff-Appellant,

-against-

TRANS EXPRESS, INC.

Defendant-Respondent.

BRIEF FOR PLAINTIFF-APPELLANT

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United States Court of Appeals for the Second Circuit
Eastern District of New York (Brooklyn), Docket 19-438

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I. JURISDICTIONAL STATEMENT

Plaintiff-Appellant Charlene Simmons ("Plaintiff," "Appellant" or "Simmons") filed this action in the United States District Court, Eastern District of New York on October 24, 2018 (A169-A177), against Defendant-Respondent Trans Express Inc. ("Defendant," "Respondent," or "Trans Express"). The district court had subject matter jurisdiction over Plaintiff's FLSA claims under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et Seq., and pursuant to 28 U.S.C. §§ 1331. The district court had supplemental jurisdiction over Plaintiff's state law claims, including under 28 U.S.C 1367. The Second Circuit Court of Appeals had appellate jurisdiction pursuant to 28 U.S.C. § 1291. Plaintiff timely filed her notice of appeal (A201-A202)[1] on February 19, 2019 from an order of the Hon. Eric N. Vitaliano, dismissing the complaint, entered in favor of Defendant, in the United States District Court, Eastern District of New York, on February 7, 2019 (A151-A163) – the judgment was entered on February 20, 2019. (A35). Plaintiff's appeal to the Second Circuit was from a final judgment (A200) and order (A151-A163) that dismissed all her claims.

On April 13, 2020, the Second Circuit certified a question to the New York Court of Appeals pursuant to 22 N.Y.C.R.R. § 500.27 and Second Circuit Rule

[1] "A" in this and other citations used in this brief refers to the joint appendix. For example, "A39" refers to page 39 of the appendix.

27.2(a). (A134-A150). This Court accepted the certified question on May 7, 2020 and set a briefing schedule. (A2).

II. QUESTION PRESENTED

The Second Circuit certified the following question to this Court:

> Under New York City Civil Court Act § 1808, what issue preclusion, claim preclusion, and/or res judicata effects, if any, does a small claims court's prior judgment have on subsequent actions brought in other courts involving the same facts, issues, and/or parties? In particular, where a small claims court has rendered a judgment on a claim, does Section 1808 preclude a subsequent action involving a claim arising from the same transaction, occurrence, or employment relationship?

Short Answer: Preclusion under New York City Civil Court Act ("NYCCCA") § 1808 is unique and does not fit within the traditional res judicata and collateral estoppel labels. NYCCCA § 1808 only precludes Plaintiff from asserting in this action, the same claim she brought in the prior small claims court action. A separate or different claim under NYCCCA § 1808 can involve "the same facts, issues and parties" as the small claims court action - as set forth in the text of NYCCCA § 1808. By extension and even more so, a separate or different claim under NYCCCA § 1808 can also involve "the same transaction, occurrence or employment relationship" – a transaction/occurrence can have many different facts/issues, and an employment relationship can span many years and have many different transactions/occurrences.

III. PRELIMINARY STATEMENT

In its Opinion certifying the subject question to the New York Court of Appeals, the Second Circuit summarized Plaintiff's main arguments and concluded as follows (A142):

> It cannot be doubted that Simmons's textual contentions have persuasive force. Section 1808 clearly contemplates a subsequent action "involving the same facts, issues and parties" as the small claims court action. The statute even provides for a set-off in those circumstances: "a subsequent judgment . . . shall be reduced by the amount of a judgment awarded" in small claims court. The text's plain meaning thus strongly supports Simmons's interpretation.

After being taken off the schedule and sent home by Defendant in June 2018, Plaintiff sued Defendant on or about August 10, 2018 in small claims court, on a claim tantamount to one for wrongful termination – for *nonpayment* of the regular weekly wages she lost as a result of being taken off the schedule and terminated (A183-A184) – Plaintiff did not sue in small claims court for the *underpayment* of wages and other damages prior to her termination that she now seeks in this action through her federal and state statutory claims. (A169-A177). Plaintiff was awarded $1000 by judgment in the small claims action on or about September 4, 2018. (A185). Because the claim in small claims court was heard by an arbitrator, there are no transcripts/recordings of the proceedings.

After later consulting an attorney and learning of her federal and state statutory wage and other rights, Plaintiff filed this action in federal court on or

about October 24, 2018 and asserted claims to recover her unpaid overtime wages under federal and state law as well as other claims – claims during the period prior to her termination that were not part of small claims court action. (A169-A177).

By order entered on February 19, 2019, the district court granted Defendant's motion to dismiss the complaint in its entirety, based on the purported traditional res judicata affirmative defense. (A187-A199). In the context of the certified question, for several compelling reasons, the district court's interpretation of NYCCCA § 1808 is erroneous and so is its order dismissing the complaint.

First, the district court's dismissal order is based on an aspect of traditional res judicata that was specifically eliminated by New York State statute – NYCCCA § 1808. In this regard, traditional res judicata bars a claim in a subsequent action that is "based on the same harm and arising out of the same or related facts." *Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 347–48, 712 N.E.2d 647, 650 (1999). By contrast, NYCCCA § 1808 by its plain language permits claims in a subsequent action "involving the same facts, issues and parties." As such, even though the statutory overtime, wage notice, wage statement and manual worker claims in this action involve different facts and issues than the termination claim in the small claims action, the claims in this case would not be barred by res judicata even if they "involve[ed] the same facts, issues and parties," in light of NYCCCA § 1808. As the Second Circuit noted, 'Section 1808 clearly

contemplates a subsequent action "involving the same facts, issues and parties" as the small claims court action.' (A142). It appears that for purposes of the Second Circuit's certification and the district court's motion to dismiss, it is accepted or assumed that Plaintiff's claims in this action are not the same as the claim in the small claim court action. It is well settled that statutory interpretation begins with the statutory text and ends with the statutory text, where, as here, the statutory text is clear.

Second, as Second Circuit also pointed out, '[t]he statute even provides for a set-off in those circumstances: "a subsequent judgment . . . shall be reduced by the amount of a judgment awarded" in small claims court.' (A142). A setoff provision would only have application if the recovery is duplicative or overlapping – such as based on the same transaction and facts as the claim in the small claims court[2]. Simply put, if Defendant and the district court are correct then the words of the statute have no meaning – as this Court has pointed out, courts are not in the business of rendering statutes meaningless.

Third, contrary to Defendant's argument that res judicata is allowed in all cases, the title of the statute clearly states that "res judicata" only applies in "*certain* cases" – only where a subsequent claim is the same or exactly the same as

[2] The facts and wage claims in this action are different than the termination claim in small claims action but even if they the different and separate claims herein involved "the same facts, issues and parties," such claims would still be permitted under the plain language of 1808.

the claim in the small claims action - as several federal and state cases have explained below.

Fourth, although the statutory language controls, even the Bill Jacket concerning the August, 2005 amendment of NYCCCA § 1808 – as quoted by the district court itself, states that NYCCCA § 1808 in its current form is intended to preclude only the *same* claim – not related, separate or different claims even "involving the same facts, issues and parties."

Fifth, the structure and purpose of small claims court, supports Plaintiff's interpretation of NYCCCA § 1808 as the Second Circuit also observed. (A142). In this regard, small claims court as its name suggests, was intended to handle *small* claims in an informal and expedited way, while preserving higher value and more complex claims for higher courts at a later time. The legislature did not intend for small claims litigants to bring all their claims at once in small claims court and specifically allowed them to bring other claims at a later time.

Finally, the interpretation Defendant purports to rely on is erroneous and not persuasive primarily because those holding and interpretation strayed from the plain text of the statute and hitched a ride on the collateral estoppel wagon that was galloping in the wrong direction. In this regard, they were unnecessarily caught up in the res judicata and collateral estoppel labels and missed the bigger picture and context dictated by the text and purpose of NYCCCA § 1808. Specifically, even if

one can label the type of preclusion prohibited by NYCCCA § 1808 collateral estoppel or bollateral bestoppel, the whole purpose of prohibiting certain forms of preclusion in NYCCCA § 1808 is precisely to allow for subsequent litigation of claims involving "the same facts, issues and parties" – the legislature is free by statute to create its own form of preclusion. Facts and issues do not exist in isolation and can only be litigated in the context of claims – a single claim can consist of many facts/issues and different claims can share the same facts/issues.

IV. STATEMENT OF THE CASE AND FACTS

In the context of a question certified to this Court by the Second Circuit, this Court is generally limited to the facts and framing of the issue provided by the Second Circuit with its certification. *Engel v. CBS, Inc.*, 93 N.Y.2d 195, 199, 711 N.E.2d 626, 627–28 (1999). In this regard, the Second Circuit set forth the relevant facts as follows (A136-A137):

> Simmons worked for Trans Express, a transportation services company headquartered in Brooklyn, as a driver from April 2012 to April 2013 and again from June 2016 to June 2018. After her employment with Trans Express ended, Simmons sued Trans Express in August 2018 in Queens Small Claims Court, seeking "monies arising out of nonpayment of wages." App'x at 18.
>
> After trial before a small claims arbitrator, the court awarded Simmons a $1000 judgment and a $20 disbursement. Trans Express paid this amount and satisfied the judgment on September 28, 2018.
>
> Thereafter, on October 24, 2018, Simmons filed this federal suit. She alleged that, despite her working in excess of forty hours a week, Trans Express did not pay her time-and-a-half for her overtime hours,

> thereby violating the unpaid overtime provisions of the FLSA and several provisions of the NYLL. She sought a declaratory judgment as well as an award of unpaid wages, liquidated damages, interest, costs, and attorneys' fees.
>
> Trans Express moved to dismiss the complaint pursuant to Rule 12(b)(6), contending that Simmons's prior small claims court action barred her federal suit under the doctrine of claim preclusion. The district court agreed and granted Trans Express's motion.

The district court set forth the facts concerning the small claims court action as follows (A188):

> Prior to bringing this lawsuit, it is undisputed, in August 2018, Simmons filed suit against Trans Express in small claims court, seeking "monies arising out of nonpayment of wages." Summons, Simmons v. Trans Express Bus Co., No. S.C.Q. 2847/2018 (N.Y. Civ. Ct. Aug. 10, 2018). On September 4, 2018, after trial before a small claims arbitrator, Simmons was awarded a $1,000 judgment, along with a $20 disbursement. Notice of Judgment, Simmons (N.Y. Civ. Ct. Sept. 4, 2018). This judgment was satisfied on September 28,2018. Notice of Payment, Simmons (N.Y. Civ. Ct. Oct. 15, 2018).

Notably, the Second Circuit, and it appears, the district court as well, do not dispute Plaintiff's position that none of the claims in this action were part of the small claims court action. Such a dispute of such a material fact would require a denial of the pre-answer motion to dismiss based on res judicata – a *fact-intensive* affirmative defense that Defendant has the burden of proving. See i.e. *Thompson v. Cty. of Franklin*, 15 F.3d 245, 253–54 (2d Cir. 1994)("Practical considerations, moreover, counsel against our review of the res judicata issue at this time. Res judicata inquiries often require a detailed analysis of a developed record."). It is

also well settled, that all reasonable inferences on a motion to dismiss must be drawn in favor of the non-moving party, whose factual allegations and assertions must also be taken as true for purposes of the motion.

However, the district court ruled that Plaintiff *could* have brought the claims in this action in the small claims action – not that she did but that she could have. (A159)("More precisely, in seeking to avoid the res judicata bar, the question is not whether Simmons did or did not advance all of her claims in the small claims proceeding. The question is whether she could have."). The Second Circuit's certification to this Court is premised on the view that the claims in this action are not the same as the claim in the small claims action – even if they share some of the same facts, issues and parties.

Additionally, Defendant and the district court do not appear to dispute that if the application of res judicata under NYCCCA § 1808 is limited to only situations that involve the same or exact same claims then Plaintiff must prevail in the case. Relatedly, Defendant and the district court so not appear to dispute that under the plain text of the statute, this action is not barred by res judicata – instead, they purport to rely on decisions, which in their view are contrary to the text of the statute.

By order entered on February 19, 2020, the district court granted Defendant's motion to dismiss the complaint in its entirety based on the traditional

purported res judicata affirmative defense on February 7, 2019. (A151-A163). Plaintiff filed her notice of appeal on February 19, 2019 (A201-A202). On April 13, 2020, the Second Circuit certified a question to the New York Court of Appeals pursuant to 22 N.Y.C.R.R. § 500.27 and Second Circuit Rule 27.2(a). (A134-A150). This Court accepted the certified question on May 7, 2020 and set a briefing schedule. (A2).

This brief now constitutes the perfection of the appeal to this Court.

V. ARGUMENT

1. APELLANT'S INTERPRETATION OF NYCCCA § 1808 IS CORRECT BECAUSE AS THE SECOND CIRCUIT OBSERVED, THE STATUTORY "TEXT'S PLAIN MEANING THUS *STRONGLY SUPPORTS* SIMMONS'S INTERPRETATION" AND AS THIS COURT HAS REPEATEDLY HELD, COURTS ARE BOUND BY CLEAR STATUTORY TEXT

The biggest fatal flaw in Defendant's analysis and interpretation is the failure to address and follow the text of NYCCCA § 1808 which reads as follows:

> A judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action or court; except that a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article

Unlike Defendant and the cases its purports to rely upon, we begin with the statutory text because the New York Court of Appeals has repeatedly instructed us to do so in interpreting and construing statutes. In this regard, in *Majewski v.*

Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583, 696 N.E.2d 978, 980 (1998), the New York Court of Appeals stated in relevant part as follows:

> As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof. As we have stated:
>
> "In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning" (*Tompkins v. Hunter,* 149 N.Y. 117, 122–123, 43 N.E. 532; *see also, Matter of Raritan Dev. Corp. v. Silva,* 91 N.Y.2d 98, 667 N.Y.S.2d 327, 689 N.E.2d 1373).

In *Kimmel v. State*, 29 N.Y.3d 386, 392, 80 N.E.3d 370, 374 (2017, Judge DiFiore), the NY Court of Appeals stated in relevant part as follows:

> In interpreting the term "action" we are guided by the principle that a statute should be construed to avoid rendering any of its provisions superfluous …

See also, *People v. Holz*, No. 33, 2020 WL 2200365, at 2 (N.Y. Court of Appeals, May 7, 2020, Judge Fahey) ('A governing principle of statutory construction is that courts must attempt "to effectuate the intent of the Legislature, and when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used" (*People v. Williams,* 19 N.Y.3d 100, 103, 945 N.Y.S.2d 629, 968 N.E.2d 983 [2012])'. Similarly, NY Court of Appeals in *Cty. of Chemung v. Shah*, 28 N.Y.3d 244, 263, 66 N.E.3d

1044, 1051–52 (2016, Judge Rivera), quoting the U.S. Supreme Court, stated as follows:

> As the Supreme Court has held, "[w]hether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." (*Chicago, B. & Q.R. Co. v. McGuire,* 219 U.S. 549, 569, 31 S.Ct. 259, 55 L.Ed. 328 [1911].)
>
> In other words, the counties cannot challenge the State's decision to prospectively reallocate Medicaid payments.

In summary therefore, clear statutory text must be followed by the courts without going beyond the text of the statute - unless the statutory text is contradictory or absurd – there is no claim and there cannot be any claim that the text of NYCCCA § 1808 is contradictory or absurd. Moreover, even if courts disagree with the law or statutory text adopted by the legislature, courts are legally bound by clear statutory text. Finally, courts cannot interpret a statute in a manner that renders it superfluous and without meaning. Here, Defendant and the cases it purports to rely upon, did not follow the statutory language which even allows a subsequent action involving the "same facts, issues and parties," and Defendant puts forth an interpretation that would render this statutory language meaningless and without application.

Realizing the importance of the statutory text, the Second Circuit correctly and powerfully agreed with Plaintiff as follows (A142):

> It cannot be doubted that Simmons's textual contentions have persuasive force. Section 1808 clearly contemplates a subsequent action "involving the same facts, issues and parties" as the small claims court action. The statute even provides for a set-off in those circumstances: "a subsequent judgment . . . shall be reduced by the amount of a judgment awarded" in small claims court. The text's plain meaning thus strongly supports Simmons's interpretation.

Indeed, it appears that Defendant as well as the district court also agree with the Second Circuit that the plain text of Section NYCCCA § 1808 "strongly supports Simmons's interpretation" – additional compelling reason to rule in favor of Plaintiff as we must follow the statutory text of NYCCCA § 1808 in this case.

Instead, Defendant and the district court purport to rely on their view of certain non-binding lower court decisions override Plaintiff's view and the plain language of NYCCCA § 1808 which allows a subsequent action and claims "involving the same facts, issues and parties." However, it is well settled, that the statutory language must prevail – this Court has a legal obligation to follow the statute but does not have any legal obligation to follow lower courts decisions, especially where those decisions relied on by Defendant conflict with the statutory text as is the case here and undisputedly so.

2. CONTRARY TO DEFENDANT'S INTERPRETATION, EVEN THE TITLE OF NYCCCA § 1808 STATES THAT "RES JUDICATA" APPLIES ONLY IN "CERTAIN CASES" – NOT ALL CASES – AS FURTHER CONFIRMED BY SEVERAL FEDERAL AND STATE COURT DECISIONS LIMITING RES JUDICATA TO ONLY SITUATIONS INVOLVING THE *SAME* CLAIMS AS IN SMALL CLAIMS COURT

The title of the statute, "§ 1808. Judgment obtained to be res judicata in *certain* cases," tells the story. In this regard, the title of NYCCCA § 1808 explicitly uses the term "res judicata" and specifically limits res judicata by allowing it in "*certain* cases" – but not in *all* cases as Defendant erroneously argues.

We also know what "certain cases" the statute is referring to – cases involving the "exact same claim" as explained by other federal judges in the EDNY as well as decisions of the New York Appellate Division. See *Katzab v. Chaudhry*, 48 A.D.3d 428, 849 N.Y.S.2d 804 (2d Dep't 2008) (adopting the *same* claim analysis and invoking the text of NYCCCA § 1808 in rejecting application of traditional res judicata); *Merrimack Mut. Fire Ins. Co. v. Alan Feldman Plumbing & Heating Corp.*, 102 A.D.3d 754, 754–55, 961 N.Y.S.2d 183, 184–85 (2d Dep't, 2013) (reaffirming the *same* claim analysis and stating that "*Katzab v. Chaudhry,* 48 A.D.3d 428, 849 N.Y.S.2d 804 and *McGee v. J. Dunn Constr. Corp.,* 54 A.D.3d 1010, 864 N.Y.S.2d 553 are not to the contrary, as the claims in those cases were not the ***same*** as the ones previously asserted in small claims actions."); *Farbstein v. Hicksville Pub. Library*, 323 F. Supp. 2d 414 (E.D.N.Y.

2004) ("upon review of the case law" concluding that New York small claims judgments only have res judicata effect as to "the *exact same claim* in subsequent proceedings"); *Walters v. T&D Towing Corp.*, No. 17CV0681JSAKT, 2018 WL 1525696, at 5 (E.D.N.Y. Mar. 28, 2018) (relying on Farbstein and applying the *same* claim standard in rejecting res judicata effect of NY small claims judgment).

3. THE BILL JACKET QUOTED BY THE DISTRICT COURT ITSELF CONFIRMS THAT NYCCCA § 1808 ONLY PRECLUDES THE SAME CLAIM AS THE ONE IN SMALL CLAIMS COURT - NOT RELATED, SEPARATE AND DIFFERENT CLAIMS "INVOLVING THE SAME FACTS, ISSUES AND PARTIES"

Even though the Bill Jacket cannot overcome the clear text of NYCCCA § 1808 which controls, it is notable that part of the Bill Jacket of the 2005 amendment to NYCCCA § 1808 which was quoted by the district court itself, confirms Plaintiff's same claim interpretation and states in relevant part as follows (A154):

> The Legislature noted that "[t]he courts have consistently held that a small claims judgment is res judicata when the *same* claim is filed in another court"

Moreover, other portions of the Bill Jacket also confirms that the 2005 amendment was intended to limit res judicata to situations involving the same claim and to permit small claims litigants to assert in a subsequent action even related but separate/different claims "involving the same facts, issues and parties."

A consistent theme in the Bill Jacket is that the 2005 amendment which in the current version of NYCCCA § 1808 was intended "to protect the parties from any unforeseen consequences of the small claims proceeding" (New York Bill Jacket, 2005 A.B. 4320, Ch. 443) – the very type of unforeseen consequences that comes with applying traditional res judicata to preclude claims beyond the claim the unsophisticated claimant asserted in small claims court without legal counsel.

The Bill Jacket also contains a letter from New York Public Interest Research Group (NYPIRG), which appears to support Plaintiff's interpretation of the current NYCCCA § 1808 and states in relevant part as follows (New York Bill Jacket, 2005 A.B. 4320, Ch. 443):

> In this section, the Legislature has balanced the need for some finality, or *res judicata* effect, for claims that have been decided with the recognition that the streamlined small claims courts should not bind higher courts with respect to fact finding and application of law in related but different claims.
>
> NYPIRG urges the Governor to sign this legislation which clarifies existing law regarding the intended effect of existing sections 1808 and 1808-A and provides that in the event of a judgment in a case involving the same parties, facts and issues as the one previously decided in small claims court, the subsequent judgment would be reduced by the amount of the small claims court case.

In other words, the NYPIRG letter confirms what appears from the entire Bill Jacket that the 2005 amendment and the current version of NYCCCA § 1808 allows subsequent but related/different claims "involving the same facts, issues and

parties" – contrary to Defendant's view that such subsequent claims are barred by traditional res judicata despite the plain language of NYCCCA § 1808.

When the Bill Jacket uses the term collateral estoppel it is in the context of allowing subsequent claims by allowing claimants to even relitigate facts and issues previously litigated in small claims courts. Obviously, facts and issues do not exist in isolation and can only be litigated in the context of claims – a single claim is made up of several elements, facts and issues. This appear to be the source of confusion in the cases district court's decision but it is a dynamic unique to NYCCCA § 1808 that was recognized by the court in *McGee v. J. Dunn Const. Corp*., 54 A.D.3d 1010, 864 N.Y.S.2d 553 (2008), whose ruling was affirmed by the Second Department. In *McGee v J. Dunn Const. Corp.,* No. 7340/2006, 2007 WL 6179709 (N.Y. Sup. Ct. Sep. 24, 2007), the motion court denied the motion to dismiss 'pursuant to the doctrine of res judicata," and explained that "Uniform Justice Court Act §1808 does not allow for either "issue preclusion" or "collateral estoppel" of separate claims arising from the same transactions between the parties." Unlike the court in *McGee*, Defendant and the district court did not see the link between collateral estoppel and claims. Although collateral estoppel deals with issues and facts, it is used to defeat or prevent claims. As such, by eliminating collateral estoppel or whatever other label is used for such preclusion, the effect is to allow different/separate claims in a subsequent action based on the same facts,

issues and parties and the end result is a narrower form of res judicata that is limited to only situations involving the *same* claim.

The Bill Jacket concerning the 2005 amendment confirms that the prior version of the current NYCCCA § 1808 limited res judicata to the amount of the small claims judgment alone and did not prevent subsequent litigation of even the exact same claim that was previously litigated in small claims court. Nonetheless, some courts interpreted the old version to preclude relitigating of the exact same claim – while allowing related but different claims in a subsequent action "involving the same facts, issues and parties." As the NYPIRG letter also explains, the 2005 amendment was intended to strike a balance between allowing subsequent litigation of all claims on the one hand, and allowing subsequent litigation of no claim on the other hand – the balance was struck in the form of the current NYCCCA § 1808 which bars relitigating of the exact *same* claim brough in small claims court, while allowing related but different/separate claims even "involving the same facts, issues and parties," and allowing for a setoff as to these subsequent related claims based on the amount of the small claims judgment.

4. THE STRUCTURE AND PURPOSE OF SMALL CLAIMS COURT SUPPORTS PLAINTIFF'S INTERPREATION OF NYCCCA § 1808

As the name suggests, small claims court is designed to handle small claims only - not big ones like we have in this case – an argument which the second

Circuit concluded has "persuasive force." (A142). This is precisely why New York statute at NYCCCA § 1808 specifically allows a small claims plaintiff to bring claims in a subsequent action "involving the same facts, issues and parties." This provision specifically and logically allows for plaintiffs not to bring all of their claims in small claims court given the then $5,000 jurisdictional limit of that court, without the risk or penalty of forfeiting bigger and more important claims through res judicata. In other words, the purpose of NYCCCA § 1808 and small claims court is to allow for expedited recovery of small claims through the informal process of small claims court without an attorney, while preserving bigger statutory claims for other higher courts such as federal court that may require more elaborate discovery procedures, motion practice etc., and with the help of counsel. This is a recognition that small claims court may be suitable for litigation of some claims but not others and that a small claims plaintiff should not be forced to choose between her claims or between courts. In other words, a single mother who needs her last several weeks of wages to pay her rent is able to utilize the informal an expedited procedures of small claims court while the landlord is standing at the door without waiving her bigger and more complex claims that are more suited for a higher court at a later time.

VI. CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Honorable Court adopt Plaintiff's interpretation and answers the certified question as follows and grant Plaintiff such other, further and different relief in her favor as the Court deems just and proper:

Answer: Preclusion under New York City Civil Court Act ("NYCCCA") § 1808 is unique and does not fit within the traditional res judicata and collateral estoppel labels. NYCCCA § 1808 only precludes Plaintiff from asserting in this action, the same claim she brought in the prior small claims court action. A separate or different claim under NYCCCA § 1808 can involve "the same facts, issues and parties" as the small claims court action - as set forth in the text of NYCCCA § 1808. By extension and even more so, a separate or different claim under NYCCCA § 1808 can also involve "the same transaction, occurrence or employment relationship" – a transaction/occurrence can have many different facts/issues, and an employment relationship can span many years and have many different transactions/occurrences.

Dated: Queens Village, New York
July 5, 2020

Respectfully submitted,

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Dated: July 9, 2020

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