

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 116 SSM 18
Evelyn Laniox,
Appellant,
v.
City of New York,
Defendant,
New York City Housing Authority,
Respondent.

Edward C. De Vivo, for appellant.
Patrick J. Lawless, for respondent.

MEMORANDUM:

The Appellate Division order should be affirmed, with costs. On this record, the New York City Housing Authority met its initial burden of demonstrating that no material triable issues of fact exist through its showing that plaintiff's assailant was likely not an intruder. In response, plaintiff failed to adduce any admissible evidence from which a jury

could conclude, without engaging in speculation, that her assailant was an intruder and, concomitantly, whether defendant's alleged negligence was a proximate cause of her injuries (see Burgos v Aqueduct Realty Corp., 92 NY2d 544 [1998]).

FEINMAN, J. (dissenting):

I dissent. The New York City Housing Authority (NYCHA) failed to tender sufficient evidence demonstrating that the unidentified assailant likely was not an intruder and, thus, did not establish a prima facie showing of entitlement to summary judgment on

the issue of proximate cause. In the absence of a prima facie showing, the burden never shifted to plaintiff to establish triable issues of fact (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). The Appellate Division therefore erred by granting NYCHA's motion.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge DiFiore and Judges Stein, Garcia and Wilson concur. Judge Feinman dissents in an opinion in which Judges Rivera and Fahey concur.

Decided November 21, 2019