

Richardson v New York City Housing Authority

2002 NY Slip Op 30063(U)

February 7, 2002

Supreme Court, New York County

Docket Number: 0116084/2001

Judge: Diane A. Lebedeff

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

DIANE A. LEBEDEFF

PRESENT: _____

PART 8

Justice

Tiffany Richardson

INDEX NO. 116084/01

MOTION DATE 1/3/02

MOTION SEQ. NO. 001

MOTION CAL. NO. 123

- v -

NYC Housing Authority
et al.

The following papers, numbered 1 to _____ were read on this motion to/for SJ

PAPERS NUMBERED

Notice of Motion/ ~~Order to Show Cause~~ Affidavits — Exhibits ...

1

Answering Affidavits — Exhibits _____

2,3

Replying Affidavits _____

4,5

Cross-Motion: Yes No

SCANNED

Upon the foregoing papers, it is ordered that this ~~motion~~

FEB 11 2002

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: FEB 07 2002

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: I.A.S. PART 8

-----X

TIFFANY RICHARDSON, By her mother and
Natural Guardian VALERIE RICHARDSON and
VALERIE RICHARDSON, Individually,

Plaintiffs,

-against-

Index No. 116084/01

Mot. Seq. No. 001

THE NEW YORK CITY HOUSING AUTHORITY
and AHRON KEE,

Defendants.

-----X

DIANE A. LEBEDEFF, J.:

Defendant New York City Housing Authority (“NYCHA”) moves for summary judgment on various grounds (CPLR 3212).

This matter is based upon an occurrence during which plaintiff Tiffany Richardson, then 15 years old and residing in a NYCHA with her family, was captured at knifepoint by a man in the hallway outside her apartment, forced to accompany him through the building fire stairway, up a number of floors to the roof, at which location she was raped and sodomized. The perpetrator was an intruder who had engaged in multiple rapes and reportedly killed four of his victims; the plaintiff co-operated with his prosecution and has required continuing counseling and hospitalizations for her condition following this trauma.

First, NYCHA requests the dismissal of the loss of services claims of plaintiff-mother Valerie Richardson. There being no objection, such claims are severed and dismissed.

Second, NYCHA claims it is also entitled to dismissal of the claims of Tiffany Richardson because she did not appear for a physical examination hearing held pursuant to General Municipal Law § 50-h and Public Housing Law § 157 (2). Given that the notice for such examination fixed no date, time and place for such examination, such notice is insufficient in form to support dismissal (GML § 50-h [2]; see, *Ruiz v. New York City Housing Authority*, 216 A.D.2d 258 [1st Dept. 1995], no clear last notice to appear). Here, there was no clear deliberate avoidance of an examination (compare, *Best v. City of New York*, 97 A.D.2d 389 [1st Dept. 1983], *affd* 61 N.Y.2d 847 [1984]).

Further, NYCHA cites no authority for ignoring the toll of infancy. As has been stated, “[i]nfant plaintiffs should not be penalized by a parent's compliance with section 50-e in an effort to protect a right to recovery. Infancy itself, the state of being ‘a person [under] the age of eighteen’ [CPLR 105 (j)], is the disability that determines the toll. An interpretation of the infancy toll which measures the time period of infancy based on the conduct of the infant's parent or guardian cuts against the strong public policy of protecting those who are disabled because of their age” (*Henry ex rel. Henry v. City of New York*, 94 N.Y.2d 275, 276 [1999]). Infancy is relevant to such a demand for an examination (see, *Jusino v. New York City Housing Authority*, 255 A.D.2d 41, 49 [1st Dept. 1999], “infancy is a factor which the court should have taken into account in determining whether to enlarge [the] time to appear” for an examination, and *Rosado v. Langsam Property Service Corp.*, 251 A.D.2d 258, 259 [1st Dept. 1998], “An infant should not be penalized for the failures or neglect of his guardian or attorney” and “the causes here at issue are in all respects those of the infant plaintiff who, unlike a decedent's estate, is entitled to claim the protection of

the infancy disability toll”).

Based on the foregoing, this branch of the motion is denied. No request has been made in relation to ordering a prospective physical examination. The court reserves the power to address this subject at the next preliminary conference.

Finally, with NYCHA raising this point before demanding a bill of particulars and prior to any discovery, NYCHA maintains this case cannot proceed simply because the front door lock of the premises was functional at the time the rapist gained entry to the building. The standard for evaluating motions for summary judgment is well-established. "To obtain summary judgment it is necessary that the movant establish [a] cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in [movant's] favor (CPLR 3212, subd. [b]), and [movant] must do so by tender of proof in admissible form" (*Friends of Animals v. Assoc. Fur Mfrs.*, 46 N.Y.2d 1065, 1067 [1979]).

NYCHA urges that the following quotation is dispositive: "In premises security cases ... the necessary causal link between a landlord's culpable failure to provide adequate security and a tenant's injuries resulting from a criminal attack in the building can be established only if the assailant gained access to the premises through a negligently maintained entrance. Since even a fully secured entrance would not keep out another tenant, or someone allowed into the building by another tenant, plaintiff can recover only if the assailant was an intruder" (*Burgos v. Aqueduct Realty*, 92 N.Y.2d 544, 550-551 [1998]).

However, the argument mischaracterizes both the facts addressed by the above decision of the Court of Appeals and the instant claim, which involves more than the front

door of the building. As the Court of Appeals made clear, the “locked door” test relates to the need for “plaintiff to present evidence from which intruder status may reasonably be inferred” (92 N.Y.2d at 544). Here, it is clear that the rapist was not properly in the building and was neither a tenant or a guest, for the intruder has been identified and prosecuted. The manner in which he entered the building is also known, for the infant saw another tenant depart from the building who allowed in those who wished to enter.

However, plaintiff has never rested her claim solely upon the condition of the building’s front door. Both the notice of claim and the complaint implicate other security concerns – specifically including the lack of an alarm or security device on the roof exit (the sexual acts having taken place thereon) and the stairways (which plaintiff was forced to traverse with a knife at her throat while climbing numerous flights of stairs). It is well established that landlord liability claims may be premised upon allegations beyond a simple “broken front door lock” factual pattern (see, for example, *Mason v. U.E.S.S. Leasing Corp.*, 274 A.D.2d 79, 80-81 [1st Dept. 2000], summary judgment denied to landlord despite landlord having security guard stationed in the common lobby, working intercom system, and locked inner and outer doors, given other factors presented including assault known as troublemaker; *Bonano v. S.Z. Realty Corp.*, 256 A.D.2d 268 [1st Dept. 1998], summary judgment denied because issue of fact existed as to whether landlord provided reasonable security measures with respect to the roof where the crime was committed). And, although discovery has not yet been had from NYCHA, plaintiff does present crime statistics for the building which indicate a significant amount of criminal conduct which must yet be put in context (see, as to possible use of such statistics,

Chianese v. Meier, 285 A.D.2d 315, 320 [1st Dept. 2001], “foreseeability was established by the evidence of one assault and seven burglaries in the building or the adjoining buildings also owned by defendant within the two-year period immediately preceding the attack”).

Additionally, there is an inference in the NYCHA position that the teenager could have stopped the then unknown man from entering the building. Here again, contrary to the simple description of the facts given by NYCHA, the infancy of the plaintiff must also be borne in mind and cannot be ignored (see, *Carmen P. v. PS & S Realty Corp.*, 259 A.D.2d 386, 388 [1st Dept. 1999], also involving a sexual assault in an apartment building of a 14 year-old plaintiff-victim, “An underage plaintiff should only be charged with the standard of care that is usual and common to children her age. Whether a child has exercised reasonable care for a person of her maturity and developmental level is typically a jury question”).

Taking these factors into account, this branch of the motion is also denied.

Accordingly, the motion is granted to the extent that the claims raised by Valerie Richardson individually are severed and dismissed. No sooner than five days after service of a copy of this decision and a proposed judgment upon plaintiff’s counsel, the clerk is directed to enter judgment accordingly upon the presentation of appropriate papers.

This decision constitutes the order of the court.

Dated: February 7, 2002



J.S.C.