

Richardson v New York City Housing Authority

2005 NY Slip Op 30176(U)

August 19, 2005

Supreme Court, New York County

Docket Number: 0116084/2001

Judge: Carol R. Edmead

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. CAROL EDMEAD

PART 35

0116084/2001

RICHARDSON, TIFFANY
VS
HOUSING AUTHORITY

INDEX NO. _____

MOTION DATE 7/20/05

MOTION SEQ. NO. 006

MOTION CAL. NO. _____

SEQ 6

SUMMARY JUDGMENT

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

11 17 05
10:22:05

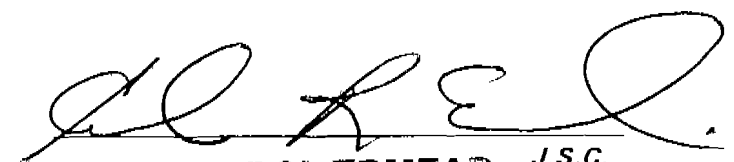
In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendant New York City Housing Authority for summary judgment pursuant to CPLR 3212 is granted, and the complaint is dismissed; and it is further

ORDERED that the movant shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: 8/19/05


HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
TIFFANY RICHARDSON,

Index No. 116084-2001

Plaintiff,

-against-

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

----- X
HON. CAROL EDMEAD, J.S.C.

MEMORANDUM DECISION

Considering the horrific underlying circumstances of this case, undoubtedly, anyone aware of the underlying facts of the case would be sympathetic to the plaintiff. It is hoped that the fact that the assailant has been prosecuted and is currently incarcerated for his crimes is some solace to the plaintiff. However, this is not the forum to decide the underlying sexual assault of the plaintiff, but the forum to decide the negligence issue of defendant, New York City Housing Authority.

The facts are undisputed.

On September 25, 1998, then 15-year old plaintiff was a tenant in a building located at 20 Paladino Avenue, New York, New York owned by the defendant The New York City Housing Authority ("NYCHA") (the "building"). At approximately 8:30 p.m., plaintiff left the building and returned at approximately 9:00 p.m. Since the entrance door was locked and plaintiff did not have the key, she waited outside the building, along with another man and her assailant Mr. Kee. After a few seconds, someone exited the building, held the door open, and plaintiff, Mr. Kee, and the other individual were given access to the building and walked into the lobby. The three of

them waited in the lobby for the elevator. When the elevator arrived, the three of them entered. When the elevator stopped at the sixth floor, Mr. Kee got off. Plaintiff then got off at the ninth floor and walked to her apartment. As she was about to knock on her door, Mr. Kee put a knife to her throat, and took her up through the building stairway to the sixteenth floor, pushed the roof door open, and took her to the roof where he sexually assaulted her. There was no alarm on the building's roof doors and no security camera on the roof. There was no lobby guard or security camera in the lobby, no sign-in sheet, and the intercom security system allowing tenants to unlock the door from their apartments was reported broken two months before the incident.

Defendant now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint on the ground that NYCHA did not breach its duty to provide minimal security to plaintiff and that the alleged negligence was not the proximate cause of plaintiff's injuries. NYCHA argues that plaintiff's own testimony establishes that NYCHA provided an entrance door with functioning locks to the building, and therefore, satisfied its duty to provide minimal security protections to tenants. NYCHA further argues that since Mr. Kee gained access by waiting for someone to exit the building, any alleged negligence of NYCHA regarding the door locks is irrelevant as Mr. Kee did not gain entry through a negligently maintained door. As there is no causal connection between the alleged negligence of NYCHA and the assault upon plaintiff, plaintiff fails to establish the proximate cause element of her negligent claim. NYCHA further contends that contrary to this Court's earlier conclusion (Lebedoff, J.), any alleged security defects at the building in addition to the front entrance door lock are irrelevant since those other alleged defects are immaterial once Mr. Kee is inside the building. And, as to any allegation concerning the lack of security features on the roof door, Multiple Dwelling Law prohibits locks

on roof doors, and there is no evidence of any prior criminal activity on the roof to render foreseeability an issue. As to the crime statistics offered by plaintiff, NYCHA argues that they fail to show whether the crimes were committed within the subject building within the Wagner Houses, a 23 building development, in which the subject building is located.

In opposition, plaintiff argues that the absence of visible security measures, such as cameras or lobby guards, and the presence of congregating crowds at the front door provided signals to potential wrongdoers that the chances of unchallenged admittance were good, making the building a target for foreseeable violent crime as demonstrated in the crime statistics. Despite being fully aware of the majority of attacks in public housing buildings, NYCHA never warned its tenants at the building of this danger, and took no steps to safeguard the building or to strengthen access control. Plaintiff claims that ordinarily she would have used the building's front door intercom and her mother would have activated the mechanism to unlock the door and waited on the ninth floor for her to arrive home. However, the intercom had not been working for a couple of months. Plaintiff contends that despite NYCHA's assertions, Mr. Kee was an intruder, and the front entrance was negligently maintained in that the security system, *i.e.*, the intercom buzzer allowing tenants to unlock doors for visitors, was often not working, rendering the front door lock an illusory, ineffective security device.¹ Another instance of inadequate security contributing to the assault includes the absence of door alarms for the roof. According to plaintiff's expert, the United States Department of Housing and Urban Development ("HUD") directive "Residential Security in Multi-Family Housing" in effect at the time of the incident

¹ The submissions indicate that the intercom for the building was "out of order" as of July 8, 1998, two months before the incident, and was not repaired until November 10, 1999, over a year after the incident.

requires that "Roof . . . Fire exits" "should be equipped with a device which sounds an alarm if opened." Plaintiff's expert opines that a roof alarm would have alerted authorities to unauthorized activity on the roof so as to cut short the assault. Plaintiff avers that liability must be imposed because Mr. Kec was a non-resident intruder who entered the building via a negligently maintained, unguarded entrance. By failing to provide tenants an alternative visitor screening method when the intercom buzzer was broken, NYCHA improperly foisted its responsibility for building security onto any person opening the lobby door, regardless of whether that person was a tenant, employee, or visitor. Moreover, plaintiff argues, the Court (Lebedeff, J.) previously decided that the locked front door is not, standing alone, sufficient proof of adequate security so as to warrant summary judgment.

In reply, NYCHA maintains that since plaintiff failed to present any proof of actual and specific notice or that ambient neighborhood crime had actually infiltrated the premises, or that there was a serious risk of infiltration, there is no evidence that it owed a duty to provide additional security at the premises. In any event, the duty to maintain security measures must be related to a specific building itself, and as Wagner Houses consists of 23 separate buildings, plaintiff failed to show that there was a foreseeable risk of intrusion at the specific building where plaintiff was assaulted. NYCHA also notes that plaintiff's expert's opinion that the lack of visible security measures makes the building a target for intruders is *ipse dixit*, and is unsubstantiated by any data. NYCHA points out that plaintiff failed to annex the HUD directive to the moving papers, and it is not clear whether this directive is advisory or compulsory. Further, plaintiff's expert's reference to this directive as requiring fire alarms fails to distinguish whether such directive refers to doors that are designated as fire exits or roof doors.

Analysis

At the outset, whether NYCHA satisfied its duty to the plaintiff by maintaining functioning door locks at the building is a question left undecided by the Court's prior decision. According to the prior decision, NYCHA took the position that it could only be held liable if the assailant, Mr. Kcc, gained access to the premises through a negligently maintained entrance, and that since the front door lock of the premises was functional at the time of the incident, summary judgment was warranted (Decision, page 3). The Court however, noting that the bill of particulars had not been served, nor discovery completed, pointed out that plaintiff's claim did not rest solely upon the condition of the front door (Decision, page 4). Instead, the plaintiff also relied on the lack of an alarm on the roof door and stairways, and "landlord liability claims may be premised upon allegations beyond a simple 'broken front door lock' factual pattern" (Decision page 4). Furthermore, the Court acknowledged that plaintiff's crime statistics "must yet be put in context" in consideration of the foreseeability analysis (Decision, page 4-5). Therefore, in denying summary judgment to NYCHA, the Court simply articulated and framed the issues, and did not rule on the issue of minimal security. Accordingly, as discovery is now complete, the issue of whether NYCHA satisfied its obligation to provide minimal security is ripe for determination.

It is well settled that although landowners are not insurers of the safety of those who use their premises (*Florman v City of New York*, 293 AD2d 120 [1st Dept 2002]), landlords have a "common-law duty to take minimal precautions to protect tenants from foreseeable harm," including a third party's foreseeable criminal conduct on the landlord's premises (*Burgos v Aqueduct Realty Corp.*, 92 NY2d 544, 548 [1998]; *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507,

517; *Miller v State of New York*, 62 NY2d 506, 513 [1984]). Foreseeability determines the scope of the duty once the duty is determined to exist, and in cases arising from injuries sustained on another's property, the scope of such duty is defined by past experience and the likelihood of conduct on the part of third persons (*Ram Krishna Maheshwari v The City of New York*, 2 NY3d 288, 294 [2004]). Ambient neighborhood crime alone is insufficient to establish foreseeability (*Yuen v 267 Canal Street Corp.*, citing, *Johnson v City*, 7 AD3d at 578). Therefore, in order to establish the element of foreseeability, "a plaintiff is required to present proof that the criminal conduct at issue was 'reasonably predictable based on the prior occurrence of the same or similar criminal activity at a location sufficiently proximate to the subject location'" (*Yuen v 267 Canal Street Corp.*, --- NYS2d ----, 2005 WL 1703570 (NY Sup 2005) citing *Johnson v City of New York*, 7 AD3d 577, 577-578 [2d Dept 2004], quoting *Novikova v Greenbriar Owners Corp.*, 258 AD2d 149, 153 [2d Dept 1999]).

It has been held that functioning door locks constitute minimal security (*see Tarter v Schildkraut*, 151 AD2d 414 [1st Dept 1989] [where plaintiff's assailant followed her into the vestibule of her apartment building and shot her, and the lock on the outer door of the vestibule was inoperable, but the inner door's lock functioned, which plaintiff was attempting to open when she was shot, one locked door was sufficient to discharge defendants' duty to the plaintiff to provide minimal precautions to protect tenants from reasonably foreseeable criminal acts]). Here, it is undisputed that the front door lock to the building was operational on the date of the incident, and that the assailant, Mr. Kee, acquired access to the building, as did plaintiff, when another person held the door open for him.

To establish that NYCHA neglected its duty to maintain the intercom system in working

order or provide *additional* security measures under the circumstances,² plaintiff presented, *inter alia*, a crime statistic report entitled “Wagner Houses Three Year Total Index Crime,” indicating the number of assaults, burglaries, grand larcenies, rapes, and murders which occurred within Wagner Houses.

In *Yuen v 267 Canal Street Corp.*, a tenant was assaulted upon defendant’s premises, which contained security measures, including steel cage doors protecting the tenant’s leased area, screening of delivery personnel by freight elevator operators, locked doors to stairwells, and the ability of tenants to lock-out the passenger elevator. The Court found that plaintiff’s submission of overall crime statistics for the precinct in which the subject building was located was insufficient to demonstrate that the assault of the tenant on the sixth floor of the building was foreseeable, so as to defeat summary judgment in landlord’s favor (*see also Johnson v City of New York, supra* [plaintiff, who was raped inside defendant’s premises, failed to present proof of any reported crimes that occurred in the subject building or in any identifiable buildings or streets in the vicinity of the subject building]).

Contrary to NYCHA’s contention, it is not necessary that plaintiff present proof of crimes committed in the subject building, since caselaw simply requires that proof of “similar criminal activity at a location *sufficiently proximate* to the subject location.” However, there is no indication on the crime statistic report identifying whether the crimes were committed on the roofs of Wagner Houses, as opposed to other areas within the complex, so as to raise an issue fact as to whether additional protective measures to locks, *i.e.*, roof alarm doors, cameras, or

²Contrary to plaintiff’s contention, the instant motion is not one deemed as a renewal since the Court declined to determine NYCHA’s liability due to outstanding discovery.

lobby guards, were required (*see e.g., Tarter v Schildkraut*, 151 AD2d 414 [1st Dept 1989] [where only one other criminal incident was possibly committed in the vestibule area three years prior to the assault on plaintiff, this alone does not provide a basis from which the jury could infer that there had been recurring criminal activity requiring that special security measures be taken]; *c.f. James v Jamie Towers Housing Co., Inc.*, 294 AD2d 268 [1st Dept 2002] [plaintiffs have made no showing that general neighborhood crime had infiltrated the housing complex so as to require defendant Jamie Towers to provide a higher level of security]). Therefore, the Wagner Houses crime statistics indicate that neighborhood crime had infiltrated the housing complex, so as to require NYCHA to provide *minimum* security measures, and the functioning door locks provided by NYCHA constitute minimal security.

It is undisputed that although the door lock was functioning on the day of assault, the intercom system was inoperable. In this regard, it has been held that what safety precautions may reasonably be required of a landowner is almost always a question of fact for the jury, taking into account such factors as the seriousness of the risk, the severity of the potential injuries and the cost or burden imposed on the landowner by reason of each precautionary measure (*Jenkins v Ehmer*, 272 AD2d 976 [4th Dept 2000]; *Bourae v Lutheran Med. Ctr.*, 6 Misc 3d 1027 [Sup Ct Kings County 2005]). However, even assuming there is an issue of fact as to whether NYCHA satisfied its duty to provide minimal or additional security measures at the building, plaintiff may only withstand summary judgment by raising a triable issue of fact regarding whether defendant's conduct proximately caused plaintiff's injuries (*Burgos v Aqueduct Realty Corp.*, 92 NY2d 544 [1998]; *Miller v State of New York*, 62 NY2d 506, 509).

It is undisputed that Mr. Kee entered the building when another individual held the door

open for him and others. Thus, there is no basis in the record, from which this Court may infer, that Mr. Kee would not have entered the building in the event the intercom system was functioning. In other words, even if the intercom system had been working, when a tenant buzzes in a guest through the intercom, it is just as likely that additional people, including uninvited persons and intruders such as Mr. Kee, might enter the building as when the intercom system is not functioning. Further, the position that plaintiff's mother would have been alerted via the intercom system that plaintiff was arriving home, and could have met plaintiff in the hallway thereby preventing the assault, is speculative.

Moreover, even assuming an absence of adequate or additional security measures on the premises, plaintiff's injuries were not the result of such absence, but were caused by an independent, intervening criminal act (*Ram Krishna Maheshwari v The City of New York*, supra [criminal assault of plaintiff was an independent act far removed from defendants' conduct and broke the causal nexus]). An intervening act may break the causal nexus when it is "extraordinary under the circumstances, not foreseeable in the normal course of events or independent of or far removed from the defendant's conduct" (*Ram Krishna Maheshwari v The City of New York*, 2 NY3d at 295). Here, the Court is constrained to find that Mr. Kee's acts upon plaintiff were independent and so far removed from NYCHA's alleged negligence thereby constituting an intervening act breaking the causal nexus between NYCHA's alleged failures and plaintiff's injuries.

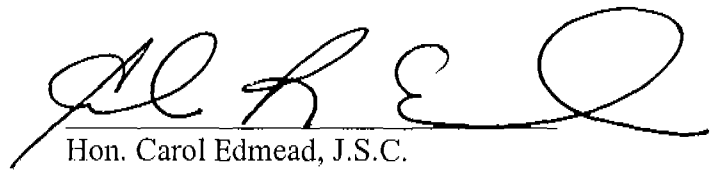
Accordingly, it is hereby

ORDERED that the motion by defendant New York City Housing Authority for summary judgment pursuant to CPLR 3212 is granted, and the complaint is dismissed; and it is further

ORDERED that the movant shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: August 19, 2005


Hon. Carol Edmead, J.S.C.

CLERK OF COURT
AUG 22 2005
OFFICE