

Williams v New York City Hous. Auth.

2007 NY Slip Op 32812(U)

August 24, 2007

Supreme Court, New York County

Docket Number: 0119238/2006

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE

PART 10

Index Number : 119238/2006

WILLIAMS, AMANDA

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED
SEP 07 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: AUG 24 2007


HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X

Amanda Williams,

Plaintiff

-against-

New York City Housing Authority, et al.

Defendants.

-----X

DECISION/ORDER

Index No.: 119238/06

Seq. No.: 001

Present:

Hon. Judith J. Gische

J.S.C

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this/these motion(s):

Papers	Numbered
Def n/m (§3211) w/JS affirm, exhs	1
Pltff opp w/ARP affirm	2
Def reply w/JS affirm, exh	3

FILED
SEP 07 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers the court's decision is as follows:

GISCHE, J.;

Plaintiff seeks to recover damages for the personal injuries she claims to have sustained in connection with a shoot-out that took place in the common area of a housing complex owned by the defendant ("NYCHA"). Before the court is NYCHA's pre-answer motion to dismiss the complaint on the basis that plaintiff has failed to state a cause of action. CPLR § 3211 (a) (7).

This action was commenced December 29, 2006, after plaintiff filed a Notice of Claim, and following a "50-h" hearing. Gen. Mun Law § 50 (h); Pub

Hous Law § 157 (2). No preliminary conference has been held, nor discovery exchanged.

On a motion to dismiss for failure to state a cause of action [CPLR § 3211 (a) (7)], the court is not required to decide whether plaintiff has pled claims on which s/he will eventually succeed. Rather, the court has to broadly examine the complaint to see whether, from its four corners, "factual allegations are discerned which taken together manifest any cause of action cognizable at law."

Guggenheimer v. Ginzburg, 43 NY2d 268 (1977). Therefore, if the plaintiff asserts facts which, when accepted as true, support any cause of action, this will defeat the motion to dismiss the complaint before issue has been joined. Rovello v. Orofino Realty Co., 40 NY2d 633, 634 (1976); Guggenheimer v. Ginzburg, 43 NY2d 268 [1977]; Morone v. Morone, 50 NY2d 481 [1980]; Beattie v. Brown & Wood, 243 AD2d 395 [1st dept. 1997]).

In her complaint and in opposition to defendant's motion to dismiss, the plaintiff relies upon the following facts:

As she walked though defendant's housing complex to her ultimate destination, a shoot-out erupted among several youths who were walking in her direction. Plaintiff was struck and wounded by a bullet and hospitalized for a chest wound. At her 50-h hearing, plaintiff described how the incident happened. She testified that it happened at night in a common area or walkway in the Marble Hill housing complex. She was standing under a street light talking to friends. She then noticed some youths come out from behind a cannister and

they were shooting at each other. The area where the shooters were was "pitch black." Lights under an adjacent scaffolding and on the side of the building nearby were off.

Plaintiff testified at her 50-h hearing that because she did not see the shooters or the crime until it was too late, she could not taken precautionary actions, like avoid them by running away. Thus, she contends that because the defendant did not light the scaffold area, or the lights on the side of the building on, and this is a high crime area, the landlord was negligent by failing to take minimal precautions to protect her from the reasonably foreseeable criminal acts of third parties.

Plaintiff also argues that a resolution of this case at this stage is premature because has been no discovery and there may have been other crimes similar to this one at the complex.

NYCHA presents several arguments as to why this case has no merit and should be dismissed, pre-answer. First, it argues that it does not control the outdoor environment, and therefore, has no duty to keep residents or passersby safe from the criminal acts of third parties. It contends that because it does not control (and cannot control) who uses these walkways (including criminals) it has neither the capacity nor duty to protect plaintiff from crime. NYCHA contends that it does not maintain a police force (as it did at one time), but relies upon the NYPD to protect its residents, like any other landlord.

NYCHA argues that plaintiff has not explained how the lighting (or alleged lack thereof) played any role in the crime because it was a random act of violence of which she was an injured bystander.

Discussion

A landlord has a duty to maintain its property in a reasonably safe condition, and to take reasonable precautionary measures to protect members of the public from foreseeable criminal acts by third parties. Burgos v. Aqueduct, 92 N.Y.2d 544 (1998); Daly v. City of New York, 227 A.D.2d 432 (2nd dept 1996).

There is, however, no common-law duty on the part of a landlord to protect tenants or other members of the public from criminal activity on public walkways outside its premises. Ward v. New York City Housing Authority, 18 A.D.3d 391 (1st Dept 2005). In general, the NYCHA has not been held liable for criminal acts occurring in its common areas, like walkways and parking lots, because to do so would expose the NYCHA to “virtual limitless liability.” Leyva v. Riverbay, 206 AD2d 150 (1st dept 1994).

Plaintiff, in opposition to defendant’s motion, contends that the Marble Hill Housing Complex is a high crime area and this kind of crime was “foreseeable.” This statement, however, is made by her attorney who has no personal knowledge of the facts. In any event, whether a crime is “foreseeable” merely determines the scope of the duty once the duty is determined to exist in the first place. Maheshwari v. City of New York, 2 NY3d 288, 294 (2004).

Leaving aside the issue whether this is (or not) a high crime area, or

whether plaintiff's being caught in the cross fire between youths was foreseeable, the area where plaintiff was shot (e.g. the crime took place) was out in the open, outdoors, and where any one could walk through. NYCHA has no obligation to keep users of outdoor common or public areas safe from the criminal acts of third parties. Ward v. New York City Housing Authority, *supra*; Leyva v. Riverbay, *supra*. NYCHA, as a landlord, only has an obligation to take minimal precautions to protect its tenants from harm by third persons. Rodriguez v. NYCHA, 87 N.Y. 2d 887 (1995). It does not have a police force, nor can it control who uses its outdoor areas, therefore it had no duty to keep plaintiff safe from the shootout that erupted and of which she was an innocent bystander. See: Daly v. City of New York, *supra* (principal shot in housing complex while walking through common area); Leyva v. Riverbay, Corp., 206 A.D.2d 150 (1st Dept 1994); Also: Rodriguez v. NYCHA, 87 NY2d 887 (1995); Ward v. New York City Housing Authority, *supra*.

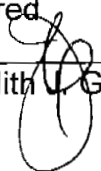
Although plaintiff contends that the poor lighting in that area was the proximate cause of her injuries, she testified at her 50-h hearing that the area where she was standing was lit by a street lamp, and that she observed the shooters start shooting, using large canisters to duck behind and shoot at each other. Even assuming the lights were out under the adjacent scaffolding or on the side of the building, plaintiff has otherwise pled no facts that support her contention that the absence of these lights were the proximate cause of her being caught in the middle of a shoot out and hit by a stray bullet.

Therefore, defendant's motion to dismiss is granted. The clerk shall enter judgment in favor of defendant against plaintiff dismissing this case.

Any relief not expressly addressed has nonetheless been considered and is hereby denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
August 24, 2007

So Ordered


Hon. Judith U. Gische

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