

Guzman v 2427 LLC
2009 NY Slip Op 32915(U)
December 7, 2009
Supreme Court, New York County
Docket Number: 105823/07
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Justice

Index Number : 105823/2007

GUZMAN, JOSE

VS.

2427

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: No Yes

Upon the foregoing papers, it is ordered that

UNFILED JUDGMENT

No judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

Dated: 12/07/09

JUDITH J. GISCHE, J.S.C. 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: IAS 10

-----X

Jose Guzman,

Plaintiff,

Decision/Order

-against-

Index # 105823/07

Mot. Seq. # 001

2427 LLC and Jasper Equities LLC,

Defendants.

-----X

Hon. Judith J. Gische:

Pursuant to CPLR § 2219(A) the following papers were considered on this motion for summary judgment:

PAPERS

- Notice of Motion, LL affirm., exhibits.....
- JNK affirm. in opp., exhibit.....
- LL affirm. in reply.....

UNFILED JUDGMENT NUMBERED
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Upon the foregoing papers the decision and order of the court is as follows:

In the underlying action, plaintiff is suing the defendants, the owners of a residential apartment building located at 2427 Webster Avenue in the Bronx, New York ("building"), for personal injuries he sustained when was assaulted by unrelated non-parties to this action. Plaintiff's case is based upon a claim that defendants were negligent in providing security at the building. Defendants have moved for summary judgment in their favor. Issue has been joined and fewer than 120 days have elapsed since plaintiff filed the Note of Issue was filed. The motion is, therefore, properly before the court and will be considered on its merits. CPLR §3212; Brill v. City of New York, 2 NY3d 648 (2004).

The facts set forth in this motion are derived from the complaint, plaintiff's bill of particulars and plaintiff's deposition.

Plaintiff was a tenant of apartment 2A at the building. On December 8, 2005, at approximately 11:00 p.m. plaintiff was at a bodega located at the "bottom of the building," which has its own separate entrance out into the street. Plaintiff left the bodega with another man named Tony and they proceeded out into the street toward the entrance to the residential section of the building. Plaintiff proceeded to walk up the handicapped accessible ramp toward the front door. Tony was walking up the adjacent stairs. Mid ramp, plaintiff was stopped by two people who came up from behind him and a third person who came out of the building with an Uzi machine gun. The machine gun was pointed directly at plaintiff and then someone placed over plaintiff's head. He was forced into the back seat of a car and then driven to an unknown location. At the unknown location additional people became involved in what was an ongoing crime. Plaintiff was badly assaulted, which included being beaten and burned. He was repeatedly berrated to tell his assailants about the location of money. Plaintiff denied knowing anything about any money. He was eventually set free, but with a warning that his continued physical safety would be in jeopardy if he reported the incident to the police.

Plaintiff denies knowing his assailants or understanding what they were referring to when they demanded that he tell them the location of the money.

Plaintiff's theory of liability against the owners of the building is based upon the fact that the lock on the front and only door to the building was broken at the time of the incident and that it had been broken for at least a month before. He claims that there

had previously been intruders into the building who had killed people.

Defendants claim that they are entitled to summary judgment dismissing the complaint because a landlord's duty with respect to premises security is limited to criminal conduct occurring inside the building. Here, because all of the incidents took place outside the building, defendants claim there is no duty. Defendant further argues that because the assailants were engaged in criminal conduct targeting a particular victim, plaintiff cannot prove that the lack of security in any contributed to causing the assault. Plaintiff argues that this was a crime of opportunity and had the front door lock not been broken, one of the assailants could not have hidden inside the building before committing the crime. He further argues that because he did not know his assailants, there is an issue of fact about whether this was a targeted crime.

Discussion

A movant seeking summary judgment in its favor must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 (1985). The evidentiary proof tendered, however, must be in admissible form. Friends of Animals v. Assoc. Fur Manufacturers, 46 N.Y.2d 1065 (1979). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

Landlords have a common law duty to take minimal precautions to protect tenants from foreseeable harm, including foreseeable criminal conduct by a third person. A landlord has a duty to minimize the foreseeable danger from criminal acts

when past experience alerts it to the likelihood of criminal conduct on the part of third persons. Mason v. UESS Leasing Corp., 96 NY2d 875 (2001); Jacqueline S. v. City of New York, 81 NY2d 288 (1993). 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); Leyva v. Riverbay, 206 AD2d 150 (1st dept 1994).

In addition, a party may only recover damages when the landlord's negligent conduct in failing to provide minimal security is a proximate cause of the injury. Burgos v. Aqueduct Realty Corp., 92 NY2d 544 (1998). In a premises security case, the causal link can usually be established if the assailant gained access to the premises through a negligently maintained entrance, since a fully secured entrance would keep the intruder out. Burgos v. Aqueduct Realty Corp., *supra*. Where the criminal activity involved is the result of preconceived criminal activity, making it highly unlikely that any reasonable security measures would have deterred the criminal participants, the causal link between the malfunctioning lock and the criminal activity is broken. Cerda v. 2962 DeCatur Avenue Owners Corp., 306 AD2d 169 (1st dept. 2003); Rivera v. New York City Housing Authority, 239 AD2d 114 (1st dept. 1997).

Applying the law to the facts of this case, and viewing such facts in the light most favorable to the non-moving plaintiff, summary judgment dismissing the complaint must be granted to the defendants for the following reasons:

It is conceded that all of the offending acts occurred outside of the building. While some of the acts occurred on the premises right outside and adjacent to the building, nothing occurred inside the actual building itself. Therefore the general rule

that limits premises security liability to the inside of a premises precludes liability in this case. Plaintiff's only argument for distinguishing this case from the general rule, that a landlord cannot be held accountable for ambient crime in the neighborhood, is that one of his assailants was able to hide inside the building because the lock was broken. There is no case law that supports a hiding place exception to the limitations of liability outside a premises under these circumstances.

The Court holds that the complaint would otherwise have to be dismissed because the undisputed facts establish that the crime perpetrated against plaintiff was a planned, targeted crime, which would not have been deterred by the presence of a functional front door lock. Defendants have proven, through an abundance of circumstantial evidence, that this was a premeditated crime with an intended target. The facts show that the three original assailants came to the crime location prepared with weapons, a mask, and a getaway car. They targeted plaintiff as their intended victim, even though at least one other person (Tony) was at the scene. The assailants clearly had a specific location in mind of where they were taking plaintiff when they left the outside of the building. This was confirmed by the fact that the original assailants met others at that remote location, who participated in the continuation of the crime. Plaintiff, was interrogated about the location of a certain slush of money. All of these facts taken together prove that the crime committed was not a random crime of opportunity, but rather a planned crime in search of an intended victim.

In opposition plaintiff asserts that he did not know his assailants and did not know what money they were referring to during their interrogation of him. Even assuming plaintiff's facts to be true, they do not create any issue about whether the

crime was pre-meditated or not. At best plaintiff's facts may show that the assailants misidentified their victim or got the wrong person. In the context of considering whether the nature of the crime is targeted, such that third parties committing the crime would not be deterred by working locks on the door, the focus is on the state of mind of the persons committing the crime and not the person against whom the crime is committed. Here even assuming that the assailants got the wrong person, the undisputed facts still prove that they were searching for someone in particular in order to recover a certain stash of money. The assailants would not have been deterred by a working lock on the front door of the building.

CONCLUSION

In accordance herewith it is hereby:

ORDERED that defendants 2427 LLC and Jasper Equities LLC's motion for summary judgment dismissing the complaint is granted and it is further

ORDERED and ADJUDGED that the Clerk of the Court shall enter a judgment in favor of defendants 2427 LLC and Jasper Equities LLC and against defendant Jose Guzman dismissing the complaint in its entirety.

Any requested relief not expressly granted herein is denied. This constitutes the decision and order of the Court.

Dated: New York, New York
December 7, 2009

SO ORDERED:

UNFILED JUDGMENT
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