Griffin v Parkash 835, LLC
2015 NY Slip Op 30585(U)
March 19, 2015
Sup Ct, Bronx County
Docket Number: 305151/2012
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX Part 24

TROY GRIFFIN

Plaintiff,

-against-

PARKASH 835, LLC and VED PARKASH,

Defendants.

Index No. 305151/2012
DECISION AND ORDER

HON. SHARON A. M. AARONS, J.S.C.:

Defendants move to dismiss the complaint pursuant to CPLR 3212. Plaintiff submits written opposition. The motion is granted.

Plaintiff, a tenant of premises located at 835 Walton Avenue in Bronx County, was allegedly injured on June 25, 2010, at approximately 10:00 P.M., when he was attacked by unknown persons on the public sidewalk outside of the premises. The complaint and verified bill of particulars state that the assault took place inside, or at or near the front lobby of the building. However, the deposition testimonies of both the plaintiff and his brother, who witnessed the event, state that the assault occurred outside of the building, from 5 to 15 feet from the front entrance.

In support of the motion, the defendants submit the pleadings; the verified bill of particulars; the Note of Issue; the sworn, certified deposition testimony of the plaintiff; the unsigned, certified deposition testimony of Kevin Griffin, accompanied by a letter of transmittal dated April 23, 2014; a photograph of the front of the building; the sworn, uncertified deposition testimony of Luis Perez; a copy of the NYPD Complaint – Follow Up Investigational Report relating to the underlying

incident; and the affidavit of Ved Parkash.[1] The photograph depicts the Walton Avenue entrance to the building. The front entrance is set back from the public sidewalk, and thus is only reachable from the public sidewalk by walking through a small courtyard.

The plaintiff testified that at the time of the assault numerous persons were inside of the lobby and in the courtyard in front of the building. He did not know if these persons were tenants. He had returned home from work shortly prior to the incident, and was advised by his brother, with whom he resided at 835 Walton Avenue, that unknown persons had tried to steal his brother's bicycle and gain entry to the apartment. The plaintiff and his brother were exiting the building, and had walked 15 or 20 feet from the front door, when the plaintiff was accosted by a person who "was coming down the street, come up on the sidewalk." The unknown assailant asked, "You his brother?," and then struck plaintiff in the head with a skateboard, causing serious injury.

Plaintiff's brother Kevin Griffin testified that a large group of individuals that he had seen "in the neighborhood" as well as in the building had been "harassing" him for some time.[2] On the day of the assault, as the witness carried his bicycle down the steps, unknown persons in the building on the stairway threatened him that they were going to "take that bike." When he returned to the building, he was again harassed outside of the apartment door, but failed to notify the building management or the police. Immediately prior to the assault, he and his brother had walked approximately five feet from the front door, and had been talking a short time (from three to five

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[1]Although the deposition transcript of Luis Perez's testimony is not certified, plaintiff submits the same transcript, and raises no objection to the lack of certification. *Rosenblatt v. St. George Health & Racquetball Assoc.*, LLC, 119 A.D.3d 45, 984 N.Y.S.2d 401 (2d Dept. 2014).

[2]He testified that, "I don't know who they are...they be around the neighborhood. Do you understand what I'm telling you? Be in the building. I don't know who these people are."

minutes) when his brother, the plaintiff, was struck with the skateboard. He testified that he first observed the assailant only moments or minutes before the assault (T. p. 145), and that the assailant was "coming from the sidewalk." (T. P. 145.)

Defendants argue that there is no duty to protect a tenant from an assault which occurs outside of the premises. As to the individual defendant, he asserts that the building is owned and operated by the co-defendant LLC, and that he did not personally own, operate, maintain or control the premises.

In opposition, plaintiff submits the same depositions as submitted by the defendants; the police complaint report; and the apartment lease. Plaintiff points to his own testimony that the front door locks were often broken, and that numerous "kids" were frequently loitering in or about the premises. Plaintiff contends that the defendants knew or should have known of the likelihood of criminal acts by the "group or gang" regularly loitering in or around the building.

"Landlords have a common-law duty to take minimal precautions to protect tenants from foreseeable harm, including foreseeable criminal conduct by a third person." *(Mason v. U.E.S.S. Leasing Corp.*, 96 N.Y.2d 875, 878, 756 N.E.2d 58, 730 N.Y.S.2d 770 [1st Dept. 2001]). "In premises security cases particularly, 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." (*Burgos v. Aqueduct Realty Corp.*, 92 N.Y.2d 544, 550, 706 N.E.2d 1163, 684 N.Y.S.2d 139 [1998]). In order to establish foreseeability, plaintiffs are 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"

(*Novikova v. Greenbriar Owners Corp.*, 258 A.D.2d 149, 153, 694 N.Y.S.2d 445 [2d Dept. 1999]).

In *Rodriguez by Galvan v. Oak Point Mgmt.* (87 N.Y.2d 931, 663 N.E.2d 909, 640 N.Y.S.2d 868 [1996]), it was held that defendant had no duty to secure the front door of the residential apartment building it owned and operated in order to protect passersby from the threat of criminal actions by individuals engaging in drug-related activity in or around the building. The infant plaintiff, who had been visiting a tenant, was shot by a drug dealer after he had left the building and walked some 191 feet from the front of the building. At that point, his relationship to a building tenant was "a mere fortuity having nothing to do with the circumstances surrounding the shooting." (*Id.* at 932; *see also*, *Evans v. 141 Condo. Corp.*, 258 A.D.2d 293, 685 N.Y.S.2d 191 [1st Dept. 1999] [dismissing claim by tenant assaulted as she was entering from outer door to building as "[d]efendants had no general duty to protect tenants or other members of the public from criminal activity on the sidewalk outside their building."]; *Ward v. New York City Hous. Auth.*, 18 A.D.3d 391, 795 N.Y.S.2d 568 [1st Dept. 2005] [there is 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]).

In *Novikova* (258 A.D.2d at 155), an unknown person attempted to steal the decedent's wife's purse in the entry vestibule to a building; the decedent was shot in a struggle to ward off the attacker. In finding no liability, the Second Department observed that the entrance vestibule "is by its nature necessarily accessible to the public." (*Id.*) That fact limited the "duty and ability" of the owner to provide security precautions. Similarly, in *Daly v. City of New York* (227 A.D.2d 432, 642 N.Y.S.2d 907 [2d Dept. 1996]), the decedent was shot in a gun battle between several teenagers, one of whom was alleged to be a tenant, in the outdoor common area of a public housing project. In dismissing

the action against the owner New York City Housing Authority, the Court held the owner had no reasonable opportunity or ability to control the conduct of the perpetrators. Further, because the shooting incident occurred in the outdoor common area of the housing project, the defendant owner had no duty to protect the decedent.

In the present case, similarly, the assault occurred outside of the building, either in the courtyard, or on the sidewalk – areas open to the public. At the time of the assault, the plaintiff was standing and talking to his brother and other persons. Moreover, the assailant emerged from the direction of the sidewalk, and thus his presence was not due to any failure to secure the front door. While the plaintiff and his brother alleged that numerous persons were loitering in or about the premises, there is no showing that these persons were not tenants or their invitees. Further, the assailant was coming from the sidewalk area, and there is no tangible evidence that this person was part of the same "group or gang" that was loitering in front of or inside the building.

The plaintiff has not opposed that part of the motion which sought dismissal by the individual defendant, and there is, in fact, no basis to find said defendant liable herein.

The defendants' motion is granted. It is hereby

ORDERED that complaint is dismissed as to defendants PARKASH 835, LLC and VED PARKASH; and it is further

ORDERED that defendants' counsel shall serve a copy of this order with notice of entry upon counsel for plaintiff.

Dated: March 19, 2015

SHARON A. M. AARONS, J.S.C.