

Bell v New York City Hous. Auth.

2015 NY Slip Op 31933(U)

October 15, 2015

Supreme Court, New York County

Docket Number: 155513/13

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
KEVIN BELL,

Plaintiff,

Index No. 155513/13

-against-

DECISION/ORDER

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X
NEW YORK CITY HOUSING AUTHORITY,

Third-Party Plaintiff,

Index No. 590087/14

-against-

EMILIO QUILES,

Third-Party Defendant.

-----X
HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Kevin Bell commenced the instant action against defendant New York City Housing Authority (“NYCHA”) to recover for injuries he allegedly sustained when he was assaulted by third-party defendant Emilio Quiles (“Quiles”) inside of an elevator in a building owned by NYCHA. NYCHA now moves for an Order pursuant to CPLR § 3212 granting it

summary judgment dismissing the complaint. For the reasons set forth below, NYCHA's motion is granted.

The relevant facts are as follows. On or about April 4, 2012, plaintiff was allegedly assaulted by Quiles inside of the north elevator of the NYCHA-owned building located at 140 Menahan Street, Brooklyn, New York (the "subject premises"), which is located in the Hope Gardens housing development (hereinafter referred to as the "incident"). Thereafter, plaintiff, a tenant of the subject premises, commenced the instant action against NYCHA asserting that NYCHA is liable for his injuries because it failed to prevent the perpetrator, Quiles, from entering the subject premises. Specifically, plaintiff's bill of particulars alleges that NYCHA was negligent in failing to maintain the front door lock and intercom of the subject premises. Additionally, plaintiff's bill of particulars alleges that to the extent Quiles was a lawful resident of the subject premises at the time of the incident, NYCHA was negligent in failing to evict Quiles due to his "drug dealing."

Thereafter, during discovery, the parties entered into a stipulation in which NYCHA agreed, *inter alia*, to "ascertain whether Emilio Quiles was a lawful resident of 140 Menahan Street, Brooklyn, New York, on April 4, 2012." If it turned out that Quiles was in fact a lawful resident of the subject premises, NYCHA further agreed to provide an affidavit to that effect in lieu of providing any confidential tenant information. Based on the stipulation, on or about March 12, 2015, NYCHA provided an affidavit of Lula Richards, NYCHA's manager of the Hope Gardens development, who affirmed that "Quiles is, and was at the time of the incident, an authorized resident of 140 Menahan Street, Apartment 5H, Brooklyn, New York" and that "[t]he tenant folder does not contain any indication or record that Quiles was arrested for or convicted

of a felony drug offense.” NYCHA now moves for an Order pursuant to CPLR § 3212 granting it summary judgment dismissing the complaint.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

In the instant action, this court finds that NYCHA has established its *prima facie* right to summary judgment dismissing the complaint, which alleges one cause of action for negligence. In order to make out a *prima facie* case of negligence, a plaintiff must establish: (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom. *Solomon by Solomon v. City of New York*, 66 N.Y.2d 1026 (1985).

As an initial matter, defendants have established that to the extent plaintiff’s negligence claim is based on any failure by defendant to properly maintain the front door lock or the intercom of the subject premises, the complaint must be dismissed on the ground that such failure was not the proximate cause of plaintiff’s injuries. It is well-settled that a landlord’s failure to provide adequately maintained locks or intercoms “is only pertinent as an alleged proximate cause if there is evidence to support a finding that the assailant was ‘an intruder...with no right or privilege to be present there.’” *Dawson v. New York City Hous.*

Auth., 203 A.D.2d 55 (1st Dept 1994)(citing *Miller v. State of New York*, 62 N.Y.2d 506, 509 (1984). Indeed, “[i]nsofar as [the] plaintiff predicates her claim on a lack of security, based on an allegedly broken entrance door lock, it is incumbent upon her, on the issue of proximate cause, to demonstrate that the assailant was an intruder and not one of the building residents or a guest thereof.” *Wright v. New York City Hous. Auth.*, 208 A.D.2d 327, 331 (1st Dept 1995). Here, defendant has provided the affidavit of Lula Richards, NYCHA’s manager of the Hope Gardens development, in which she affirms that Quiles, the assailant, is and was, at the time of the incident, an authorized resident of the subject premises.

Further, defendant has established that to the extent plaintiff’s negligence claim is based on any failure by defendant to protect plaintiff from injury by Quiles by evicting Quiles from the subject premises, the complaint must be dismissed on the ground that defendant did not owe a duty to plaintiff in this regard. “When a municipality acts in a proprietary capacity as a landlord it is subject to the same principles of tort law as is a private landlord, which require that it ‘act as a reasonable [person] in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk.’” *Blatt v. New York City Hous. Auth.*, 123 A.D.2d 591, 592 (2d Dept 1986)(internal citations omitted). “While this standard has resulted in the imposition of a duty upon a landlord to take minimal security precautions to protect tenants or visitors from the reasonably foreseeable criminal activities of third parties on the landowner’s premises, implicit in these decisions is the recognition that such a duty arises by virtue of the party’s ownership and control over property, ‘for the obvious reason that the person in possession of property ordinarily is in the best position to discover and *control* its dangers.’” *Id.* (citing Prosser and Keeton, Torts

§ 57, at 386 (5th ed 1984)). Indeed, it is well-settled that “a landlord is under no duty to safeguard a tenant against attack by another tenant [if] ‘it cannot be said that the landlord had the ability or a reasonable opportunity to control [the assailant].’” *Wright v. New York City Hous. Auth.*, 208 A.D.2d 327, 331 (1st Dept 1995)(citing *Blatt*, 123 A.D.2d at 592); *see also Cortez v. Delmar Realty Co., Inc.*, 57 A.D.3d 313 (1st Dept 2008).

In the instant action, this court finds that defendant has demonstrated that it did not owe plaintiff a duty to protect him from Quiles as defendant did not have the ability or a reasonable opportunity to control Quiles. As an initial matter, defendant has demonstrated that it was unaware that plaintiff felt threatened by Quiles as no violent acts or threats were ever reported by plaintiff. Additionally, defendant has demonstrated that it had no duty to evict Quiles on the basis of “drug dealing.” Indeed, Lula Richards, NYCHA’s manager of the Hope Gardens development, has affirmed that Quiles’ “tenant folder does not contain any indication or record that Quiles was arrested for or convicted of a felony drug offense,” which would warrant NYCHA’s exclusion or eviction of Quiles from the subject premises. Moreover, defendant has demonstrated that no security measures taken by defendant would have prevented the assault as it took place in the elevator of both plaintiff’s and Quiles’ lawful residence and it is undisputed that the dispute was personal and ongoing between plaintiff and Quiles. Indeed, it is well-settled that a landlord does not have a duty to stop or control the actions of one lawful resident against another lawful resident, in particular those that are motivated by a personal dispute between the tenants. *See Blatt*, 123 A.D.2d at 593 (holding that NYCHA did not have a duty to protect plaintiff from the assailant as “the incident giving rise to the injuries sustained, and indeed, the ‘pattern’ of harassment alleged by the plaintiff, arose from a purely personal dispute

between the two individuals.”)

In response, plaintiff has failed to raise an issue of fact sufficient to defeat defendant's motion for summary judgment. Plaintiff's testimony that NYCHA management knew of Quiles dealing drugs in the subject premises and that eviction proceedings were commenced against Quiles, based on hearsay allegations from unidentified witnesses, is belied by the evidence presented by defendant in this action. Further, plaintiff has failed to put forth any evidence in support of his conclusory statements. Indeed, counsel for plaintiff affirms that plaintiff is unable to offer anything more than said hearsay allegations and that plaintiff is unable to identify the witnesses to whom he refers in his testimony. Further, plaintiff's counsel concedes that there is a lack of evidence supporting its position.

Accordingly, NYCHA's motion for an Order pursuant to CPLR § 3212 granting it summary judgment dismissing the complaint is granted. The complaint is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 10/15/15

Enter: _____

CK

J.S.C.

CYNTHIA S. KERN
J.S.C.