

Laniox v City of New York
2017 NY Slip Op 33132(U)
September 20, 2017
Supreme Court, Bronx County
Docket Number: 306867/2011
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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EVELYN LANIOX,

Plaintiff,

- against -

THE CITY OF NEW YORK, THE NEW YORK CITY
HOUSING AUTHORITY,

Defendants.

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DECISION AND ORDER

Index No. 306867/2011

PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated May 11, 2017 of defendant The New York City Housing Authority and the affirmation, exhibits and memorandum of law submitted in support thereof; plaintiff's affirmation in opposition dated July 17, 2017 and the affidavit, exhibits and memorandum of law submitted therewith; the reply affirmation dated September 11, 2017 of defendant The New York City Housing Authority; and due deliberation; the court finds:

Plaintiff, a nurse, commenced this action to recover damages for injuries sustained on November 22, 2010 when she was assaulted by an unknown assailant while visiting a patient at 1350 Webster Avenue. Defendant building owner New York City Housing Authority moves pursuant to CPLR 3212 for summary judgment dismissing the complaint on the ground that plaintiff cannot establish its alleged negligence was a proximate cause of her injuries. Defendant submits the notice of claim, the pleadings, and deposition transcripts on the motion.

Plaintiff appeared for a General Municipal Law § 50-h hearing on April 18, 2011. She testified the incident occurred around 12:30 p.m. in the 17th floor hallway at the subject building. After plaintiff walked into the lobby through the open front door, she saw a young man, a young woman and an elderly man in a motorized wheelchair. The woman, who was on her cell phone, and the elderly man were in

front of the elevator. The young man was sitting on a step and using his cell phone. He wore jeans, a gray and black hooded sweater and a backpack. The four of them entered the elevator and plaintiff pressed the button for the 17th floor. She could not see what button the young man pressed because he stood in front of the panel. He and the woman spoke briefly but plaintiff could not recall what was said. The elderly man exited on a lower floor. She could not recall if the woman also exited. When the elevator reached the 17th floor, the man moved back and plaintiff stepped out into the hall. As she began walking to her patient's apartment, she felt the man's left arm come around her neck from behind. His right hand covered her mouth. Plaintiff knew it was the same man from the elevator because she recognized his sweater. After a brief struggle, he fled to a stairwell. Plaintiff testified that two of her patients lived in the building and that the front door was always wide open on her previous visits.

Plaintiff testified at her deposition that she saw a young man and young woman walk into the building as she approached the entrance from 170th Street. After walking through the open front door, she saw an elderly man in a wheelchair and the same man and woman inside the lobby. She did not know if they were residents. The man later turned out to be her assailant. She could not describe his features because "his head was down" and he was using his phone. His hood was also up. Plaintiff told police she did not know her assailant and did not get a look at his face. Although police walked through the building looking for her assailant, he was never captured. Plaintiff testified the front entrance door was "always broken" and she "either walked in, pulled the door, or it was wide open."

Rosalyn Spencer ("Spencer") testified that she was employed by defendant as a caretaker at the building. Her duties included daily checks of the front, rear and side doors to the building. She marked the results on a daily caretaker checklist that she handed in to her supervisor. The daily checklists for the days leading up to and including the date of the incident show that the front entrance door was not locking. It was her supervisor's responsibility to generate a work ticket to repair the lock and she did not know if a work ticket was ever created. An inspection report dated October 22, 2010 indicated that

the front door was “OOO” or out of order. The report did not list a work ticket number for the door.

“Landlords have a common-law duty to take minimal precautions to protect tenants from foreseeable harm, including a third party’s foreseeable criminal conduct.” *Burgos v. Aqueduct Realty Corp.*, 92 N.Y.2d 544, 548, 706 N.E.2d 1163, 1164, 684 N.Y.S.2d 139, 140 (1998) (internal quotation marks and citations omitted). “A visitor may recover damages from a landlord only upon a showing that the landlord’s negligent conduct was a proximate cause of the injury.” *Smith v. New York City Hous. Auth.*, 261 A.D.2d 390, 689 N.Y.S.2d 237 (2d Dep’t 1999). Plaintiff must demonstrate that the assailant was an intruder as opposed to a tenant, guest or invitee. *See Burgos v. Aqueduct Realty Corp.*, *supra*. She is not required to conclusively establish that the assailant was an intruder, *see Reynolds v. New York City Hous. Auth.*, 271 A.D.2d 280, 707 N.Y.S.2d 52 (1st Dep’t 2000), but must present “evidence from which intruder status may reasonably be inferred.” *Burgos*, 92 N.Y.2d 544 at 551, 706 N.E.2d at 1166, 684 N.Y.S.2d at 142. The fact that the assailant’s identity is unknown does not bar the claim. *See Bennett v. Twin Parks Northeast Houses*, 93 N.Y.2d 860, 710 N.E.2d 659, 688 N.Y.S.2d 94 (1999).

Here, questions of fact preclude granting defendant summary judgment. *See Pena v. Penny Lane Realty Inc.*, 129 A.D.3d 441, 11 N.Y.S.3d 25 (1st Dep’t 2015); *Perez v. New York City Hous. Auth.*, 267 A.D.2d 52, 699 N.Y.S.2d 390 (1st Dep’t 1999). Defendant does not dispute that the front door lock was inoperable and had been inoperable for some time. According to its records, defendant’s employees were aware of the condition for at least one week before the incident. It presented no evidence that it had corrected the condition. Instead, defendant argues that plaintiff cannot show her assailant was an intruder and cannot show how he gained entry into the building. The evidence, though, suggests it was more likely than not that plaintiff’s assailant was an intruder who entered the building through the inadequately secured front entrance. Contrary to defendant’s assertion, plaintiff’s testimony is not inconsistent. She testified at the statutory hearing that no one walked through the front door with or

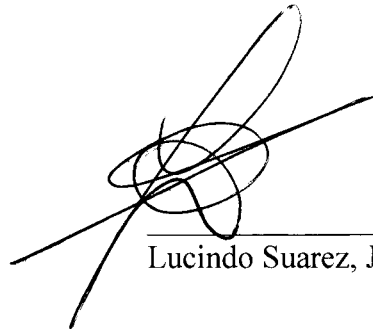
immediately in front of her. At her deposition, she was asked if she ever saw her assailant outside of the building and she answered in the affirmative. Her assailant and the young woman walked into the building “way ahead” of her. The door was open when plaintiff reached the front entrance, and the door was never locked on her previous visits. Plaintiff saw no interaction between her assailant, the woman and the elderly man. Although his hood was up, he made no other efforts to conceal his identity. Her assailant and the woman spoke briefly to each other inside the elevator but plaintiff had no idea if they were acquainted. They did not interact with or stand near each other when plaintiff was in the lobby.

Accordingly, it is

ORDERED, that the motion of defendant New York City Housing Authority for summary judgment dismissing plaintiff’s complaint is denied.

This constitutes the decision and order of the court.

Dated: September 20, 2017

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Lucindo Suarez, J.S.C.