

**Goris v New York City Hous. Auth.**

2023 NY Slip Op 31061(U)

April 3, 2023

Supreme Court, New York County

Docket Number: Index No. 155362/2018

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

HUMBERTO GORIS,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

NEW YORK CITY HOUSING AUTHORITY

Plaintiff,

-against-

JANAC GIRARD

Defendant.

-----X

INDEX NO. 155362/2018

MOTION DATE 03/31/2023

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

Third-Party Index No. 595936/2018

The following e-filed documents, listed by NYSCEF document number (Motion 005) 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 252, 266, 267, 268, 269, 270, 271, 272, 279, 280, 281, 282, 283

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 273, 274, 275, 276, 277, 278

were read on this motion to/for SUMMARY JUDGMENT.

Motion Sequence Numbers 005 and 006 are consolidated for disposition. Third-party defendant Janac Girard's motion (MS005) for partial summary judgment is granted in part and denied in part. Defendant New York City Housing Authority ("NYCHA")'s motion (MS006) for summary judgment is denied.

## Background

Plaintiff's mother and Janec Girard's sister live next door to each other in a NYCHA housing building. Plaintiff contends that he was visiting his mother on February 1, 2018 when he encountered Mr. Girard, who was temporarily living next door at his sister's apartment. At plaintiff's 50-h hearing, plaintiff testified that he had known Mr. Girard for about year prior to February 1, 2018, mainly due to complaints about loud music and noises from Mr. Girard's apartment (NYSCEF Doc. No. 14 at 11).

On the day in question, plaintiff claims he was in the hallway talking to Mr. Girard about the loud music when "All of a sudden, I felt the knife. It happened so quick because I wasn't, you know, expecting that to happen. The music was loud" (*id.* at 58). Plaintiff insisted he tried to run away but that Mr. Girard chased him down and stabbed him twice in the back, before continuing to stab plaintiff many more times (*id.* at 59-60). Mr. Girard was later convicted of attempted murder, although the Appellate Division, First Department ordered that there be a new trial due to Mr. Girard's exclusion from a sidebar conference during the criminal trial (*People v Girard*, 211 AD3d 148, 178 NYS3d 54 [1st Dept 2022]).

## MS006

In this motion, NYCHA moves for summary judgment to dismiss the complaint on the ground that Mr. Girard's intentional act (stabbing plaintiff multiple times) was unforeseeable. NYCHA insists it cannot be held liable for Mr. Girard's acts. It argues that plaintiff was not a tenant of the building and neither was Mr. Girard.

In opposition, plaintiff details that many, many complaints were made to NYCHA about Mr. Girard prior to the altercation. Plaintiff testified that he told a NYCHA housing assistant on

multiple occasions that people in the apartment next door were violent (NYSCEF Doc. No. 226 at 48). He mentioned “The banging on the wall. The fighting. The yelling. Ms. Acevedo [the NYCHA housing assistant] knows. The fighting. They’re fighting every day” (*id.*). Plaintiff did, admit, however, that Mr. Girard did not threaten violence towards him (*id.* at 47).

Mr. Girard also offers opposition and insists that NYCHA’s common law indemnification claim must be denied.

In reply, NYCHA emphasizes that both plaintiff and Mr. Girard were lawful guests of tenants at the building. It argues that plaintiff did not make prior calls to 311, to the cops, or to NYCHA to register a noise complaint. NYCHA argues that it had no knowledge of any violent tendencies by Mr. Girard and plaintiff can only offer speculation that NYCHA knew this type of incident would occur.

The key issues on this motion are whether or not the attack by Mr. Girard was foreseeable and whether there is an issue of fact with respect to NYCHA’s purported negligence. “NYCHA was not an insurer of [plaintiff]’s safety, but it did have a common-law duty to take minimal security precautions to protect tenants ... from the foreseeable criminal acts of third parties” (*Estate of Murphy by Holston v New York City Hous. Auth.*, 193 AD3d 503 [1st Dept 2021], *lv to appeal granted sub nom. Estate of Murphy v New York City Hous. Auth.*, 37 NY3d 913 [2021]). The Court denies the motion as there are issues of fact with respect to what NYCHA knew about the complaints lodged by plaintiff and his family about Mr. Girard.

Plaintiff insisted that he, his mother, and his brother all made complaints to a NYCHA Housing Assistant (Ms. Acevedo) about the behavior in the Girard apartment. Plaintiff’s brother testified that he heard violent fights from the apartment and made complaints to NYCHA about it (NYSCEF Doc. No. 239 at 41-42). Certainly, NYCHA is correct to emphasize that Mr. Girard

made no direct threats of violence towards plaintiff prior to the stabbing, but that does not compel the Court to grant the motion. Complaints about loud and aggressive behavior, as plaintiff and his family insist they made, raise a question about whether or not NYCHA should have taken steps to address these disruptive actions, particularly about someone who was not a tenant at the building.

In other words, the Court cannot summarily dismiss plaintiff's arguments that he complained about Mr. Girard prior to the incident. NYCHA had some notice about unruly behavior happening in the Girard apartment. The extent to which they should have acted upon it is for a fact finder to determine. That there were no 311 or NYPD complaints made about Mr. Girard might be a persuasive argument at trial; but it is not a basis to dismiss the entire complaint. There is no dispute that plaintiff was stabbed by Mr. Girard following a disagreement about loud music—the same issue that plaintiff and his family had complained about to NYCHA on previous occasions. A fact finder could conclude that NYCHA should have done more to intervene to prevent a dispute from escalating and that it was not wholly unforeseeable that a disagreement could result in violence. To find for NYCHA would require the Court to dramatically limit the definition of foreseeability and the Court declines to do so here.

The Court also denies the branch of the motion in which NYCHA seeks summary judgment on its common law indemnification claim against Mr. Girard. “Common-law indemnification is predicated on vicarious liability, which necessitates that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefits of the doctrine” (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 364, 367 [1st Dept 2006] [internal quotations and citations omitted]). “[I]n the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the

statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident” (*Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65, 693 NYS2d 596 [1st Dept 1999]). Here, the Court has found an issue of fact with respect to NYCHA’s liability and so the Court denies this branch of the motion; put another way, because NYCHA did not show it is free of all negligence, the Court must deny this requested relief.

### MS005

In this motion, Mr. Girard moves for summary judgment dismissing NYCHA’s claims for common law indemnification claim contribution. He insists that he owed no duty to plaintiff or to NYCHA. Mr. Girard claims he was temporarily staying with his sister in the apartment and that his sister never informed NYCHA he was staying with her. He argues that as a guest, he owed no duty to anyone and so NYCHA’s third-party claims against him must be dismissed.

In opposition, NYCHA claims that the cases upon which Mr. Girard relies are inapposite because they do not deal with the acts of an intentional tortfeasor. It insists that Mr. Girard’s acts were unforeseeable and that NYCHA committed no wrongful act against the plaintiff. NYCHA stresses that it was Mr. Girard who stabbed plaintiff and that Mr. Girard was not an intruder who gained access through some sort of failure by NYCHA to properly secure the building.

In reply, Mr. Girard insist that although NYCHA had a duty to keep the premises safe, NYCHA did not explain how Mr. Girard had a duty of care to NYCHA or to plaintiff.

The Court grants the motion only to the extent that the claim for common law indemnification is severed and dismissed. As Mr. Girard pointed out, and the judge previously assigned to the case observed (NYSCEF Doc. No. 97 at 1-2), a claim for common law

indemnification from NYCHA cannot lie against Mr. Girard. Common law indemnification, as stated above, presumes that the party seeking this relief is completely free from any negligence. Here, plaintiff has sued NYCHA (he did not sue Mr. Girard) solely for negligence and brings a single cause of action for negligence against NYCHA. That means that there is no way in which NYCHA could face liability (and seek indemnification) if it is found to be free from negligence. Put another way, if NYCHA proves it was not negligent, then it will have won the case and the issue of indemnification will be moot.

However, the Court denies the motion to the extent that Mr. Girard seeks to dismiss the contribution claim. A fact finder could easily find that Mr. Girard—the person who stabbed plaintiff—is partially responsible for plaintiff’s damages and thereby alleviate some of NYCHA’s damages. Mr. Girard’s assertion that he cannot be liable to NYCHA because he owed no duty to NYCHA or to plaintiff is without merit. Under that reading of contribution, nearly every intentional tortfeasor could avoid liability. Of course, that is not the law. It is axiomatic that a negligent tortfeasor can seek apportionment of liability from an intentional tortfeasor (*Morales v County of Nassau*, 256 AD2d 608, 609, 683 NYS2d 127 [2d Dept 1998], *affd*, 94 NY2d 218 [1999]). Mr. Girard failed to meet his burden to explain how he can avoid NYCHA’s contribution claim on the ground that he did not owe a duty to NYCHA or to plaintiff.

Accordingly, it is hereby

ORDERED that third-party defendant Girard’s motion (MS005) for summary judgment is granted only to the extent that NYCHA’s claim for common law indemnification is severed and dismissed; and it is further

ORDERED that defendant NYCHA's motion (MS006) for summary judgment is denied.

4/3/2023  
DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: