SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANK P. NERVO** **PART** **04**

Justice

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MICHAEL WEISS,

Plaintiff,

- v -

PARK TOWERS SOUTH COMPANY, LLC,PELICAN MANAGEMENT, INC.,GOLDFARB PROPERTIES, INC.,GOLDFARB MANAGEMENT COMPANY

Defendant.

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INDEX NO. 161545/2015

MOTION DATE 01/10/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

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

Defendants move for summary judgment dismissing the matter. Plaintiff opposes. As relevant here, the following facts are undisputed by the parties: plaintiff resided in, as well as worked out of, his apartment in defendants' building providing psychiatric services; the building had doorman at all entrances; security cameras provided doormen and other building attendants views of common areas of the building in real time; the building's procedures required the doormen to question and screen visitors; on the operative date the building's doorman did not adhere to these procedures when Jacob Nolan was permitted access to the residential portion of the building despite Nolan stating he was visiting a commercial tenant; Jacob Nolan, a

relative of plaintiff's ex-significant other, entered the building with a large bag containing, inter alia, a sledge hammer and other weapons; and Nolan entered the patient waiting area of plaintiff's apartment and attacked and attempted to kill plaintiff. Nolan, and plaintiff's ex-significant other, Pamela Buchbinder, were convicted of felonies in connection with the attack.

The standard by which the Court analyzes the instant motion is well established. On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v. Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v. Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]).

As recently reiterated by the Court of Appeals, "general negligence principles apply to cases in which a tenant is injured by a third party's criminal attack, including the principle that a defendant's negligence qualifies as a proximate cause where it is a substantial cause of the events which produced the injury" (*Scurry v. NYC Hous. Auth.*, 39 NY3d 443 [2023] [internal quotations

and citations omitted]; *see also Turturro v. City of New York*, 28 NY3d 469 [2016]). "[T]he burden regularly placed on plaintiffs to establish proximate cause in negligence cases strikes the desired balance between a tenant's ability to recover for an injury caused by the landlord's negligence against a landlord's ability to avoid liability when its conduct did not cause any injury" (*id.* quoting *Burgos v. Aqueduct Realty Corp.*, 92 NY2d 544, 550 [1998]).

Thus, a targeted attack on a resident of an apartment building, standing alone, does not ordinarily give rise to liability against the landlord for a failure to provide adequate security (*Flynn v. Esplande Gardens, Inc.*, 76 AD3d 490 [1st Dept 2010]). Stated differently, where an attack is "in no way predictable," liability will not attach (*id.*; *Burgos v. Aqueduct Realty Corp.*, 92 NY2d at 550). However, where a landlord's acts or omissions are a substantial cause of the attack, a landlord may be held liable for the attack (*id.*).

Here, a question of fact exists as to the proximate cause of plaintiff's injuries; namely, whether the proximate cause is defendants' failure to screen Nolan in accordance with its own procedures, or whether the proximate and/or intervening cause is plaintiff allowing Nolan to enter his apartment unit (*see*

generally, *Maldonado v. Ruppert Hosing Co.*, 2022 NY Slip Op 32832(U) [NY Cty Sup Ct] [Nervo, J.] *aff'd* 2023 NY Slip Op 03072 [1st Dept 2023]).

To the extent that defendants contend, in a single footnote without any evidentiary support, that defendant "2. GOLDFARB PROPERTIES, INC. has nothing to do with the ownership or management of this building", it is beyond cavil that same does not provide any basis for relief on this motion. The Court declines to perform the work of counsel in searching the record for evidentiary support for defendants' contention given that defendants have, apparently, deemed it unnecessary to do so themselves.

Accordingly, it is

ORDERED that the motion is denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

8/7/2023
DATE

HON. FRANK P. NERVO
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE