

Lora v Barker Ave Estates LLC

2025 NY Slip Op 35158(U)

March 20, 2025

Supreme Court, Bronx County

Docket Number: Index No. 28505/2020E

Judge: Paul L. Alpert

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

C

-----X
Florimel Lora

Index No. 28505/2020E

-against-

Hon. Paul L. Alpert

Barker Ave Estates LLC, Allerton TKT LLC, and
YMY Acquisitions, LLC

Justice Supreme Court

-----X
Barker Ave Estates LLC, Allerton TKT LLC, and
YMY Acquisitions LLC

-against-

Wilson Rojas

-----X
The following papers numbered 1 to _____ were read on this motion (Seq. No. 5)
for _____ noticed on _____.

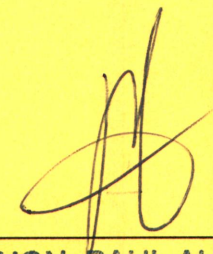
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

The plaintiffs motion is decided in accordance with the annexed decision and order of the court.

Motion is Respectfully Referred to Justice:

Dated: _____

Dated: 3/20/25

Hon. 
HON. PAUL ALPERT J.S.C.

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

Index No.: 28505/2020E

-----X
Florimel Lora,

Plaintiff,

DECISION/ORDER

-against-

Barker Ave Estates LLC, Allerton TKT LLC, and YMY
Acquisitions, LLC,

Defendants.

-----X
Barker Ave Estates LLC, Allerton TKT LLC, and YMY
Acquisitions, LLC,

Third-Party Plaintiff,

-against-

Wilson Rojas,

Third-Party Defendant.

-----X
Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion
as indicated below:

Papers	Numbered
Notice of Motion and Affirmation in Support & Exhibits.....	1
Affirmation in Opposition.....	2
Affirmation in Reply & Exhibits.....	3

Upon the foregoing cited papers the Decision/Order on this motion is decided as follows:

The plaintiff commenced this action for personal injuries following an accident that occurred on August 27, 2018, when the plaintiff, Lora Florimel, was stabbed multiple times by third-party defendant, Wilson Rojas premises located at 665 Allerton Avenue, Bronx, New York which is owned by defendants Barker Ave Estates LLC, and Allerton TKT LLC. Mr. Rojas pleaded guilty to attempted murder in the second degree and is serving a ten-year prison sentence at Mohawk Correctional Facility. The plaintiff now moves for summary judgment pursuant to

CPLR § 3212 on the issue of liability against the defendants. The plaintiff additionally moves pursuant to CPLR § 3215(c) dismissing the third-party complaint as abandoned. The defendants oppose the motion in its entirety.

The plaintiff began living at 665 Allerton Avenue, Bronx New York, in August of 2018 with her two children (Plaintiff's Motion, Exhibit 4, page 23 line 19- page 24 line 10). The plaintiff's apartment is located on the third floor of the building (page 28 lines 21-23). To enter the front door of the building, the plaintiff did not find it necessary to use a key to get into the building because the door had a hole and it would open by itself (page 27 lines 13-20). She never made complaints to the superintendent about the front door (page 29 lines 20-22). Her apartment door has a front door lock, a dead bolt and a latch (page 30 lines 1-4). The dead bolt did not work and she informed the superintendent at the time that it was not working (page 30 lines 18-23). She spoke with the superintendent three to four times (page 31 lines 6-8).

On the night before the incident, the plaintiff and her children went to bed at around 11:00 p.m. and the plaintiff turned her phone on silent (Plaintiffs Motion, Exhibit 5, page 8 lines 12-16). The following morning, the plaintiff's daughter informed her that someone is breaking down the door (page 9 lines 10-19). When the plaintiff went into the living room, she saw Mr. Rojas, her ex-boyfriend, on the ground, and he went into the kitchen to grab a knife and stabbed her three times with the knife (page 9 lines 20-25).

The plaintiff primarily argues that the defendant failed to implement minimal security measures within the premises. The plaintiff additionally contends that the defendant had actual and constructive notice of the defective front entrance door lock and the defective apartment door lock. The plaintiff next argues that the defendants failure to repair the broken front door lock constitutes negligence per se as it is a violation of Multiple Dwelling Law 50-a(1) and (3)

which mandates the installation of self-closing and self-locking doors in multi-residential buildings.

A landlord is not the insurer of the safety of its tenants (*Leyva v. Riverbay Corp.*, 206 AD3d 150). However, a landlord has 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 NY2d 875, citing, *Jacqueline S. v. City of New York*, 81 NY2d 288, 293-294). The law does not require the defendant to provide the optimal or most advanced security system available, but only reasonable security measures (*Tarer v. Schildkraut*, 151 AD2d 414, 415, citing, *Gill v. City of New York City Hous. Auth.*, 130 AD2d 256). Functioning door locks are an example of the most rudimentary security that a landlord can afford a tenant (*Cabrera-Perez v. Promesa Housing Development Fund Corporation*, 225 AD3d 464, Citing *Jacqueline S. v. City of New York*, 81 NY2d 288, 295). A failure to supply minimal security breaches that duty (*Scurry v. New York City Housing Authority*, 39 NY3d 443). Where minimal security measures such as a locked door would have had the effect of deterring an attacker, a jury can infer that the absence of such measures proximately caused an attack (*Id.*, citing, *Nallan v. Helmsley-Spear, Inc.*, 50 NY2d 507 521).

To constitute constructive notice, a defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it (*Gordon v American Museum of Natural History*, 67 NY2d 836). The plaintiff avers that a key was not needed to enter the premises as the front door lock was broken. Ms. Lora further testified that her apartment door did not function either. Ms. Lora informed the superintendent about the lock on her apartment door on three to four separate occasions. She alleges that the superintendent did not repair her apartment door.

The plaintiff further includes a video in support of the motion demonstrating the condition of the front door lock (see Exhibit 16). The plaintiff avers in her moving papers that this video was taken of the front entrance door on August 29, 2018, several days after the plaintiff's accident occurred. In the video, it is evident that the door has a defective lock. The door can be easily opened by merely placing a finger in the cutout hole next to the lock. This video demonstrates that there was a defective condition on the front entrance door that was visible and apparent.

To demonstrate notice of the condition, the plaintiff relies on the testimony of Sal Berman. Mr. Berman is employed by YMY Acquisitions as a property manager (Plaintiff's motion, Exhibit 7, page 14, lines 7-8). At the time of the plaintiff's accident, Mr. Berman was a Junior Manager. The first time that Mr. Berman visited 665 Allerton Avenue, he was on the premises for general maintenance, repair, and tenant complaints (page 21 lines 4-9). He does not recall if the any of the general maintenance involved the front door (page 21 lines 10-12). As a Junior Manager, he would be on location four times a week (page 21 lines 16-19). He testified that if he had inspected the property any time in 2018, he would see the front door entrance to the building (page 94 lines 7-19). He is unaware as to how long the door had the cutout (page 94 lines 11-13). He agrees that anyone could enter the property by sticking their finger in the cutout (page 94 lines 19-23). Complaints made by tenants were not recorded in any way. Rivky Felender is the Controller of the defendant and testified that defendants have no records of any repairs made to the front entrance (Plaintiff's motion, Exhibit 8, page 196 lines 4-11).

The plaintiff further relies on testimony by Yolanda Ynfante, a nonparty witness. Ms. Ynfante and the plaintiff became friends in 2017 when they were employees of a bakery together (Plaintiff's Motion, Exhibit 11, page 11 line 23- page 12 line 10). The plaintiff moved into Ms.

Ynfante's home on July 20, 2018 (page 17 lines 8-12). Ms. Ynfante subsequently left her job because Mr. Rojas threatened her at her workplace and demanded she inform him of the plaintiffs whereabouts after Mr. Rojas and the plaintiff ended their relationship (page 17 line 4 – page 18 line 1). She never told Mr. Rojas where the plaintiff was staying during this time (page 18 line 22- page 19 line 1). She assisted the plaintiff in finding a new apartment (page 19 lines 17-22). She went with the plaintiff to look at the apartment located at 665 Allerton Avenue (page 20 lines 1-4). She testified that one week before the plaintiff moved into the building, she noticed the front door of the building could be opened with a finger and that the apartment door had cracks in it from the top to the bottom and that in order to close the door she needed to slightly lift it and close it (page 20 lines 4-17). Ms. Ynfante spoke to the superintendent of the building about these issues and he assured her that it would be fixed and that the main entrance door would be replaced with a new entrance door (page 21 lines 4-9). However, one week later when the plaintiff moved in, Ms. Ynfante noticed that the main entrance door had not changed. The apartment door was exactly the same and nothing had been done to improve the cracks in the door (page 21 lines 11-23).

In support of the motion, the plaintiff includes the testimony of third-party defendant, Wilson Rojas. The testimony demonstrates that the third party defendant was able to use his own house keys to enter the front door of the premises. On the night of the incident, Mr. Rojas was speaking on the phone with the plaintiff (page 48 lines 17-24). Wilson Rojas testified that he never had a key to the plaintiffs apartment or the front entrance to the building (page 38 lines 11-19). He testified that he was highly intoxicated on the day of the accident and he thinks he used a key to try to open the door. He thinks he tried to use his regular house keys (page 42 lines 17-25). He testified that he put the key in the area of the hole in the door to open it (page 43 lines

11-18). He went in the building multiple times that evening because the plaintiff did not want to let him in the apartment because he was intoxicated and told him to come back the next day (page 49 line 22- page 50 line 2). He left the building and came back at 3:54 a.m. and a woman let him into the building (page 50 line 21- page 51 line 7). Mr. Rojas left the building again at 4:00 a.m. and went to the store to buy more beer (page 52 line 18- page 53 line 2). Mr. Rojas maintains that the plaintiff did not tell him which apartment number she was in but she said it was on the third floor (page 55 lines 16-20). When he came back again, he then broke down the door to the plaintiffs apartment (page 59 line 24- page 60 line 4). He believed that the plaintiff had another man in the apartment (page 60 lines 7-11). When he got inside the apartment, they argued and he stabbed her in the arm (page 61 lines 5-11). After stabbing her he took a taxi to his house and then to the airport (page 63 line 22- page 64 line 3).

In opposition, defendants argue that any violations issued to the defendants in 2017 and 2018 were corrected and that the plaintiff failed to establish lack of actual or constructive notice. The violations were received by defendants from the New York City Department of Housing Preservation and Development regarding the front door in 2017 and 2018. The certification demonstrates that the violation was corrected on February 1, 2018. However, the testimony by nonparty witness Ms. Ynfante, the plaintiff, and Mr. Rojas demonstrate that the door was not functioning at the time that the plaintiff moved into the building, in August of 2018, well after these violations were allegedly corrected pursuant to the violations notice annexed to the motion. The defendants did not raise an issue of fact as to how the third-party defendant, Mr. Rojas, entered the building.

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

activity at a location sufficiently proximate to the subject location” (*Novikova v. Greenbriar Owners Corp.*, 258 AD2d 149, 153). The plaintiff has established that her attack was foreseeable through the testimony of Mr. Berman. Mr. Berman testified that the neighborhood is heavy in crime (page 57 lines 14-16).

The testimony presented from the plaintiff, Mr. Rojas, Ms. Ynfante, and Mr. Berman demonstrates that the defective condition was visible, apparent, and existed for enough time before the accident to permit the owners employees to discover and remedy the problem. “Defendants failure to discover a condition that should have been discovered is ‘no less a breach of due care than a failure to respond to actual notice’” (*Hauptner v. Laurel Dev., LLC*, 65 AD3d 900, quoting, *Blake v. City of Albany*, 48 NY2d 875, 877). Moreover, the defendant failed to maintain minimal security measures in the building. Lastly, the plaintiff established foreseeability. In reply, the plaintiff asserts that the opposition should be disregarded as filed untimely and failed to provide any good cause for their delay. The plaintiff asserts that the defendants filed their opposition on January 9, 2025, past the agreed upon date of December 26, 2024. Notwithstanding the late filing, the defendant failed to raise an issue of fact in opposition.

The court will next address the branch of the plaintiff’s motion to dismiss the third-party complaint against Wilson Rojas as abandoned by defendants/third-party plaintiff pursuant to CPLR § 3215(c). The plaintiff avers that the third-party defendant, Mr. Rojas, never appeared or joined issue in this case and that the defendants/third-party plaintiffs failed to take proceedings for entry of judgment within one year after Mr. Rojas’ default and cannot offer any reasonable excuse for such delay. However, the plaintiff lacks standing to move to dismiss the third-party complaint as abandoned pursuant to CPLR § 3215(c).

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that the plaintiffs branch of the motion for summary judgment pursuant to CPLR § 3212 on the issue of liability is granted, and it is further,

ORDERED AND ADJUDGED, that the branch of the plaintiffs motion to dismiss the third-party complaint is denied, and it is further,

ORDERED AND ADJUDGED, that the plaintiff shall serve a copy of this decision and order upon all parties within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: March 20, 2025



Hon. Paul L. Alpert, J.S.C.