

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT**

Virella v. 245 N. St. Hous. Dev. Fund Corp.

2020 NY Slip Op 06605 (App. Div. 2020) · No. 630 CA 19-01066 · Decided November 13, 2020

SUMMARY

The New York Appellate Division, Fourth Department affirmed summary judgment dismissing a tenant's personal-injury claims against the building owners and manager after the tenant was assaulted by another tenant. The court held that landlords generally have no duty to prevent one tenant from attacking another absent sufficient authority, ability, and opportunity to control the assailant, and that the alleged assault was not shown to be foreseeable. The court also declined to follow *Jackson-Ott v Mack* to the extent it recognized a broader landlord duty to control tenant conduct.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Smith, J.P.; Carni, J.; Nemoyer, J.; Troutman, J.; Bannister, J.
JURISDICTION	New York
DECIDED	November 13, 2020
DOCKET	630 CA 19-01066
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment and dismissing the complaint against them.
STANDARD OF REVIEW	The court reviewed the grant of summary judgment to determine whether defendants established entitlement to judgment as a matter of law and whether plaintiff raised a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; binding within the Fourth Department subject to controlling Court of Appeals authority.
PARTIES	Antonio Jose Virella v. 245 North Street Housing Development Fund Corp., 245 North Street, LLC, E. Square Capital, Inc., Et al.

TOPICS

premises liability

negligence

personal injury

summary judgment

standard of review

PRACTICE AREAS

torts

premises liability

landlord tenant

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether landlords and a property manager owed plaintiff a duty to prevent one tenant from assaulting another tenant.
2. Whether defendants had sufficient authority, ability, and opportunity to control the tenant-assailant to establish a duty based on special circumstances.
3. Whether the alleged assault was reasonably foreseeable based on defendants' knowledge of possible harassment involving the cotenant.
4. Whether defendants were potentially liable for injuries caused by an intoxicated cotenant under the duty to supervise intoxicated guests.
5. Whether defendants were entitled to summary judgment because plaintiff failed to raise a triable issue of fact.

HOLDINGS

1. A landlord generally has no duty to control a tenant's conduct for the protection of other tenants unless special circumstances establish that the landlord had the authority, ability, and opportunity to control the assailant.
2. Defendants were entitled to summary judgment because they established that they had no ability or opportunity to control the cotenant who allegedly attacked plaintiff, and plaintiff failed to raise a triable issue of fact.
3. Defendants were not liable on the intoxicated-guest theory because they established that they lacked the opportunity or ability to control the intoxicated cotenant, and plaintiff failed to raise a triable issue of fact.
4. Evidence that defendants knew of possible harassment of another tenant did not establish that defendants knew of the cotenant's violent propensities or that the assault was reasonably foreseeable.

KEY QUOTATIONS

“landlords would be exposed to liability for virtually all criminal activity in their buildings” (at 1)

“a landlord has no duty to prevent one tenant from attacking another tenant unless it has the authority, ability, and opportunity to control the actions of the assailant” (at 1)

“a reasonable opportunity or effective means to control a third person does not arise from the mere power to evict” (at 2)

“defendants established on their motion for summary judgment that the conduct of the tenant-assailant in their building was not reasonably foreseeable” (at 2)

FACTUAL BACKGROUND

Virella was a tenant in a building owned by 245 North Street Housing Development Fund Corp. and 245 North Street, LLC, and managed by E. Square Capital, Inc. He alleged that another tenant assaulted him and that defendants negligently failed to keep the premises free from the known dangerous condition posed by the intoxicated and violent cotenant. Defendants established that they lacked the ability, authority, and opportunity to control the assailant and that the assault was not reasonably foreseeable.

PROCEDURAL HISTORY

Antonio Jose Virella commenced an action for personal injuries allegedly sustained when he was assaulted by another tenant. Supreme Court, Erie County, granted summary judgment to the property owner, property owner entity, and property manager, dismissing the complaint against those defendants. The Appellate Division, Fourth Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Burgos v. Aqueduct Realty Corp., 92 N.Y.2d 544, 548, 550-551 (1998)
- Jacqueline S. v. City of New York, 81 N.Y.2d 288, 293-294 (1993), rearg. denied, 82 N.Y.2d 749 (1993)
- Williams v. Utica Coll. of Syracuse Univ., 453 F.3d 112, 120-121 (2d Cir. 2006)
- Aminova v. New York City Hous. Auth., 168 A.D.3d 651, 652 (2d Dep't 2019)
- Britt v. New York City Hous. Auth., 3 A.D.3d 514, 514-515 (2d Dep't 2004), lv. denied, 2 N.Y.3d 705 (2004)
- Mills v. Gardner, 106 A.D.3d 885, 886 (2d Dep't 2013)
- Cortez v. Delmar Realty Co., Inc., 57 A.D.3d 313, 313-314 (1st Dep't 2008), lv. dismissed in part and denied in part, 12 N.Y.3d 774 (2009)
- Siino v. Reices, 216 A.D.2d 552, 553 (2d Dep't 1995)
- Torre v. Burke Constr., 238 A.D.2d 941, 942 (4th Dep't 1997)
- Sobers v. Roth Bros. Partnership Co., 284 A.D.2d 324, 324 (2d Dep't 2001)
- Jackson-Ott v. Mack, 30 A.D.3d 1025, 1025-1026 (4th Dep't 2006)
- Purdy v. Public Adm'r of County of Westchester, 72 N.Y.2d 1, 8 (1988), rearg. denied, 72 N.Y.2d 953 (1988)
- Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986)
- Firpi v. New York City Hous. Auth., 175 A.D.2d 858, 859 (2d Dep't 1991), lv. denied, 78 N.Y.2d 864 (1991)
- Perry v. Northwestern Realty Co., 236 A.D.2d 378, 378 (2d Dep't 1997)
- Bonano v. XYZ Corp., 261 A.D.2d 280, 280-281 (1st Dep't 1999)
- Belinkie v. Zucker, 255 A.D.2d 219, 219-220 (1st Dep't 1998), lv. denied, 93 N.Y.2d 802 (1999)
- D'Amico v. Christie, 71 N.Y.2d 76, 85 (1987)
- Parslow v. Leake, 117 A.D.3d 55, 65 (4th Dep't 2014)
- Daly v. Finley, 101 A.D.3d 931, 932 (2d Dep't 2012)

- McGlynn v. St. Andrew Apostle Church, 304 A.D.2d 372, 372-373 (1st Dep't 2003), lv. denied, 100 N.Y.2d 508 (2003)
- Cavanaugh v. Knights of Columbus Council 4360, 142 A.D.2d 202, 204-205 (3d Dep't 1988), lv. denied, 74 N.Y.2d 604 (1989)

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