

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

Carmona v. Sea Park E., L.P.

2022 NY Slip Op 04149 (N.Y. Ct. App. 2022) · No. 2019-05148 · Decided June 29, 2022

SUMMARY

The Appellate Division, Second Department, affirmed the denial of summary judgment motions brought by an apartment building owner, manager, and private security contractor in a wrongful-death action arising from a fatal shooting. The court held that alleged defects in building-entry security, including an inoperable intercom, inadequate visitor screening, and piggy-backing, raised triable issues concerning foreseeability and proximate cause. The court rejected the defendants’ argument that the targeted shooting was an unforeseeable intervening act.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Sheri S. Roman, J.; Joseph J. Maltese, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	June 29, 2022
DOCKET	2019-05148
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motions for summary judgment in a wrongful-death negligent-security action.
STANDARD OF REVIEW	On a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law; if that showing is not made, the motion must be denied regardless of the sufficiency of the opposing papers.
PRECEDENTIAL VALUE	published
PARTIES	Sea Park East, L.P., Progressive Management of NY Corp., Madison Security Group, Inc. v. Ernest J. Carmona, as administrator of the estate of George L. Carmona

TOPICS

premises liability

wrongful death

proximate cause

standard of review

appellate procedure

PRACTICE AREAS

premises liability

wrongful death

negligent security

appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants established as a matter of law that Banks's intentional shooting was an unforeseeable intervening cause that severed proximate causation.
2. Whether the alleged inoperable intercom system, inadequate visitor screening, and chronic piggy-backing created triable issues regarding negligent building security, foreseeability, and proximate cause.
3. Whether the plaintiff improperly asserted a new theory concerning the inoperable entrance intercom system for the first time in opposition to summary judgment.
4. Whether the defendants made a prima facie showing entitling them to summary judgment.

HOLDINGS

1. In determining whether summary judgment is warranted in a negligent-door-security case, the relevant inquiry is not whether the crime was targeted or random, but whether and to what extent the allegedly negligently maintained building entrance was a concurrent contributory factor in the criminal occurrence.
2. Landlords are subject to a common-law duty to take minimal precautions to protect tenants from foreseeable harm, including foreseeable criminal conduct by third persons.
3. Summary judgment was properly denied because the moving defendants failed to make a prima facie showing of entitlement to judgment as a matter of law.
4. The plaintiff did not improperly raise a new theory of liability concerning the inoperable entrance intercom system for the first time in opposition to the defendants' summary-judgment motions.

KEY QUOTATIONS

“The test in determining summary judgment motions involving negligent door security should . . . not focus on whether the crime committed within the building was 'targeted' or 'random,' but whether or not, and to what extent, an alleged negligently maintained building entrance was a concurrent contributory factor in the happening of the criminal occurrence” ([*2])

“made it foreseeable that some form of criminal conduct could occur to the detriment of one or more of the residents therein, at some point in time” ([*2])

FACTUAL BACKGROUND

George L. Carmona was fatally shot by Jalik Banks on the seventeenth floor of an apartment building owned by Sea Park East and managed by Progressive Management. Madison Security Group provided private security for the building. The alleged assailants entered by piggy-backing behind a tenant and her children, while security remotely unlocked an inner vestibule door without confirming their identities; the tenant also alleged that the

intercom system had long been inoperable. The estate alleged that inadequate security, failure to screen visitors, and failure to address chronic piggy-backing contributed to the death.

PROCEDURAL HISTORY

Ernest J. Carmona, as administrator of the decedent's estate, commenced the action after George L. Carmona was fatally shot in an apartment building. After discovery, Sea Park East, Progressive Management, and Madison Security Group separately moved for summary judgment, arguing principally that the shooting was an unforeseeable, intervening criminal act and that the security measures were reasonable. The Supreme Court, Kings County, denied the motions, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Scurry v. New York City Hous. Auth., 193 A.D.3d 1 (2d Dep't 2020)
- Nallan v. Helmsley-Spear, Inc., 50 N.Y.2d 507 (1980)
- Vilsaint v. SL Green Realty Corp., 195 A.D.3d 657 (2d Dep't 2021)
- Derdarian v. Felix Contr. Corp., 51 N.Y.2d 308 (1980)
- Maestri v. Pasha, 198 A.D.3d 632 (2d Dep't 2021)
- Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851 (1985)