

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

-----X

INDEX NO. 158442/2012

TEPHANIE HOLSTON,

MOTION DATE 07/17/2019

Plaintiff,

MOTION SEQ. NO. 009

- v -

THE NEW YORK CITY HOUSING AUTHORITY, TYSHAWN BROCKINGTON, ROBERT CARTAGENA, CLC COMMUNICATIONS INC,

DECISION + ORDER ON MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 009) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 182, 183, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents and after hearing oral argument, it is

ORDERED that the motion for summary judgment, pursuant to CPLR 3212, by Defendant New York City Housing Authority ("NYCHA"), Inc. is granted for the reasons stated in the oral argument transcript of July 17, 2019 (the "Oral Argument Transcript"), and the complaint is dismissed with costs and disbursements to said Defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that within thirty (30) days Defendant NYCHA is to purchase a copy of the Oral Argument Transcript and upload said copy to NYSCEF together with a copy of this short-form order with notice of entry; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This short-form order together with the Oral Argument Transcript constitutes the decision and order of this Court.

7/17/2019 DATE

HON. ROBERT D. KALISH J.S.C.

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

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK - CIVIL TERM - PART 29

3 -----X
4 The Estate of TAYSHANA MURPHY by its administratrix,
5 TEPHANIS HOLSTON,

6 Plaintiff,

7 -against- Index No. 158442/12

8 THE NEW YORK CITY HOUSING AUTHORITY, TYSHAWN
9 BROCKINGTON, ROBERT CARTAGENA AND CLC
10 COMMUNICATIONS, INC.,

11 Defendants.

12 -----X
13 NEW YORK CITY HOUSING AUTHORITY,

14 Third-Party Plaintiff,

15 -against-

16 TERIQUE COLLINS,

17 Third-Party Defendant.

18 -----X
19 71 Thomas Street
20 New York, New York
21 July 17, 2019

22 B E F O R E: HONORABLE ROBERT D. KALISH
23 Supreme Court Justice

24 A P P E A R A N C E S:

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Diane Kavanaugh, RPR
Senior Court Reporter

dk

Proceedings

1 COURT OFFICER: The Court is calling Index No.
2 158442 of 2012, Murphy versus New York City Housing
3 Authority.

4 Counsel, your appearances.

5 MR. PECORARO: Steven Pecoraro, representing the
6 plaintiff.

7 THE COURT: Good afternoon.

8 MR. PECORARO: Good afternoon.

9 MR. CLARKE: Christopher Delamere Clarke, Leahey
10 and Johnson, representing movant, New York City Housing
11 Authority. Good afternoon.

12 THE COURT: Good afternoon.

13 The Court does have a motion made by the defendant,
14 New York City Housing Authority, pursuant to CPLR 3212,
15 seeking summary judgment to dismiss the action.

16 I will hear the defendant first.

17 You may stand or sit, whatever is more comfortable.

18 MR. CLARKE: Thank you for the opportunity, Judge.

19 And on a day like this, I have particular reverence
20 and respect for the fact that you have to wear a robe on top
21 of everything else. I grabbed the wrong suit.

22 In preamble, I will not be speaking at my normal,
23 you know, 80 millimeter per hour, whatever, pace.

24 THE COURT: Fair enough.

25 MR. CLARKE: But I know that subject matter is not

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Proceedings

1 something that your Honor is not already somewhat familiar
2 with. I know during the course of discovery there was
3 considerable time spent in this court. Your Honor's had an
4 opportunity to review some of the evidence in detail
5 throughout the case. So I know I'm not talking to an
6 audience that doesn't already have an understanding of the
7 evidence.

8 THE COURT: I've read all the papers submitted. I
9 am fully familiar with the facts of the case, since I have
10 presided over the matter for the discovery. I have looked
11 at the video that has been presented to the Court by both
12 counsel.

13 Make a record so the Appellate Division, if it goes
14 there, will know what was said.

15 MR. CLARKE: Thank you, your Honor.

16 At its core, this very sad case involves the murder
17 of plaintiff's decedent, Tayshana Murphy, who, on
18 September 11, 2011, at approximately four o'clock in the
19 morning, was murdered by a fellow named Cartagena and
20 another man named Brockington. These are co-defendants in
21 this case.

22 These two gentlemen, I use that term loosely, in
23 March of 2014, were convicted in this county, after a jury
24 trial, of that murder. They have been found guilty of the
25 premeditated intentional murder of Tayshana Murphy.

Proceedings

1 It isn't a guess, a hypothetical, what may be, what
2 could have been. It isn't like the issue that was discussed
3 in the Roldan case between your Honor and I where the
4 defendant was actually acquitted. This is a case where the
5 killers were convicted of this crime.

6 THE COURT: They are serving 25 to life, according
7 to the papers.

8 MR. CLARKE: We provided your Honor with the trial
9 transcript of that case. It's important and illustrates
10 beyond, really, a reasonable doubt, as that jury found,
11 certain facts that are critical here.

12 THE COURT: Well, let me make certain we all
13 agree.

14 Both sides seem to be reviewing and using this
15 trial transcript. I want to make sure that we're all using
16 the same group of evidence, so to speak.

17 MR. CLARKE: We attached a certified trial
18 transcript from the criminal court as exhibits to our
19 motion. I see no objection by my colleague in his papers.

20 THE COURT: Well, I didn't hear any objection. I
21 want to make sure there isn't any objection. You are using
22 it. Mr. Pecoraro is using it. Therefore, since the two of
23 you are using it, and there is no objection, the Court is
24 going to use it.

25 MR. CLARKE: Thank you, Judge.

Proceedings

1 THE COURT: I haven't heard anything to the
2 contrary. I assume there isn't anything to the contrary.

3 MR. PECORARO: For the purposes related to movant's
4 argument, and with respect to the portions cited by the
5 movant in his papers, I have no objection.

6 THE COURT: Fair enough.

7 MR. CLARKE: Thank you, Judge.

8 So we know in the trial testimony there was
9 testimony by a person named Robert Nelson.

10 THE COURT: He was part of this group.

11 MR. CLARKE: He was part of the group that the
12 plaintiff's decedent was part of and that they had
13 interactions that evening with Cartagena and Brockington.
14 Other witnesses, including Eric Pierce, part of that group,
15 Steven Reynoso, part of that group, Brittany Santiago, who
16 was the girlfriend of Mr. Cartagena, all testified about the
17 events of that evening. All testified there were
18 interactions between these two groups of individuals.

19 Some have used the phrase, a gang called Three
20 Stacks, which are people in this group that the plaintiff's
21 decedent was alleged and described to be a part of, or at
22 least to be friends with.

23 THE COURT: People that lived in the Grant Houses.

24 MR. CLARKE: In the Grant Houses, where the
25 decedent lived.

Proceedings

1 And then you have Manhattanville Project where,
2 evidently, there are other young men who call themselves,
3 according to the district attorney, the Make It Happen Boys.

4 There are altercations during the evening, groups
5 chasing other groups, one group throwing bottles, the Three
6 Stack Boys throwing bottles at Brockington and Cartagena.

7 Cartagena then --

8 THE COURT: Well, not Brockington. Cartagena.

9 MR. CLARKE: Okay.

10 And then they go, according to Miss Santiago,
11 Cartagena's girlfriend, they go to the third-party
12 defendant, Collins, and acquire a gun for the purposes of
13 getting retribution and revenge for having been teased and
14 tormented and bothered. There's some descriptions of a
15 fight in the street.

16 THE COURT: Let's go back a second.

17 So according to the transcript, Cartagena, being
18 with his girlfriend, Santiago, according to the information
19 laid out by the district attorney, some altercation, as you
20 said, or confrontation arose between a group of individuals
21 from the Grant Houses, what they call the Three Stacks, who
22 somehow or did something to Cartagena, hit him with a bottle
23 or something else, and then he left.

24 MR. CLARKE: And there's going back and forth.
25 There's chasing. Some say they punched him in the street.

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1 And he left and went and got a gun from Collins and then
2 came back looking for this group.

3 The group, including Tayshana Murphy, were hanging
4 out outside of her building. They saw these individuals
5 coming to get them and they ran inside the building. The
6 killers followed them inside the building, ran up the -- the
7 plaintiff and her brother ran up the stairs to the fourth
8 floor, where they tried to get the elevator.

9 I believe the testimony is, that we're all relying
10 upon and has already been a basis for a conviction, went
11 into the elevator, Tayshana is in the stairwell, and two
12 different witnesses tell us, almost, to be dramatic, but
13 we're hearing the words of the decedent crying out to us
14 today as to what happened, she says, I'm not a part of it,
15 one witness heard her say. The other one said, I'm not with
16 them.

17 The decedent knew she was being targeted by the
18 killer, who allegedly said, in a vulgar expression, I don't
19 give a hmm, and killed her.

20 She knew she was a target. She knew she was being
21 targeted. And these killers have been convicted of this
22 targeted assault.

23 The law being what it is, your Honor, and the
24 plaintiff, in his papers, do not offer any evidence to
25 challenge the status of the plaintiff as being a target.

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Proceedings

1 How could they? There's no evidence to refute
2 that. There's nothing to refute this analysis of the facts,
3 which has already been relied upon by a jury in finding a
4 conviction of these two men.

5 THE COURT: But I think, in jumping ahead, I will
6 certainly let the plaintiff make their own argument, I think
7 part of the plaintiff's argument was that she may have been
8 running away, along with five other people, but that she
9 wasn't herself targeted, but people from the Grant Houses
10 were being targeted.

11 MR. CLARKE: There's one sentence in my colleague's
12 papers where a lawyer says that and no evidence to support
13 it.

14 Mr. Nelson says that Tayshana Murphy was part of
15 the group that were tormenting these people. Mr. Eric
16 Pierce says she was part of the group. And that even after
17 they went inside the building were taunting and teasing and
18 they were part of the group that were being targeted by the
19 killers.

20 So the evidence before the Court is that she was a
21 part of this group that was being targeted. A lawyer's one
22 sentence argument doesn't overcome that. And there's no
23 evidence by my colleague to refute it.

24 THE COURT: Where do you get that after they
25 entered the building they were taunting Cartagena and/or

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1 Brockington? I looked at the video. I don't see any
2 evidence of that.

3 MR. CLARKE: According to Mr. Pierce, at four
4 o'clock they saw Cartagena and Brockington coming through.
5 They taunted them again from inside the building, as cited
6 in my papers.

7 THE COURT: I know. I read the papers. I'm just
8 saying I think we could agree the video doesn't show that,
9 at least I didn't think it did. It's a minor point.

10 MR. CLARKE: I don't know that everything that
11 happened is on the video. There's an awful lot that the
12 witnesses testified to in the street and inside the
13 building. The killing isn't on the video, Judge. The
14 arguments in the hallway aren't on the video. The
15 screaming, I'm not part of them, isn't on the video. But
16 that's the testimony we're all relying on. And my colleague
17 doesn't refute or rebut in any way, shape or form.

18 So what we have, Judge, are two gangs or two groups
19 of people that are fighting with each other. And one goes
20 and gets a gun, planning to get retribution, and chases the
21 other group into the building and commits a crime.

22 It isn't a hypothetical situation. They're
23 motivated by revenge for the earlier fight. They've been
24 convicted of that crime.

25 There's no evidence by my colleague to refute any

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1 of that. And, as your Honor knows, the defendant does not
2 have an obligation to stop a crime or to fight all crime or
3 to protect everyone under any circumstance from crime.

4 More importantly, I think the case law is very
5 clear that an intentionally targeted attack on a tenant is
6 an unforeseeable, intervening act which severs the causal
7 nexus between the alleged negligence and the injuries even
8 if the locks are not functioning properly. Cerda v. 2962
9 Decatur Avenue, 306 AD2d 169, First Department, 2003.

10 I know my colleague spends time in his papers, and
11 I'll listen to his argument and have a chance to rebut about
12 negligence.

13 We would argue, and we have an expert to that
14 effect, that this defendant met the standards required under
15 the law. And my colleague speculates as to how to interpret
16 some of that evidence.

17 But at the end of the day, we have evidence that is
18 not refuted of a targeted assault, which severs the causal
19 nexus. Even if your Honor was to conclude that there's a
20 jury question on the issue of negligence, it ultimately
21 doesn't matter. This targeted assault severs any nexus
22 between that argued negligence my colleague argues about and
23 the ultimate outcome here.

24 THE COURT: So the Court sees two issues, as you
25 are pointing it out.

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1 MR. CLARKE: Yes, Judge.

2 THE COURT: One, whether or not the defendant had
3 notice of a dangerous condition in terms of whether the lock
4 was working or not working.

5 And the second issue, of course, is whether or not
6 this was a targeted attack. And if it is a targeted attack,
7 I gather what you're saying to me is the first issue becomes
8 a nonissue because the targeted attack would become a
9 superseding intervening cause, regardless of what happened
10 before, whether you had notice or not notice.

11 MR. CLARKE: Judge, that's the law. That's the
12 law. And, respectfully, it's not an open issue as to
13 whether or not the plaintiff was a target. The men were
14 convicted of the premeditated murder of her. That is by
15 definition. She was the target. They planned to kill her.
16 They killed her. That's what happened. And we have the
17 testimony of two eyewitnesses who heard her saying, it's not
18 me, I'm not a part of them, recognizing she's a target.

19 THE COURT: Well, I think they were convicted of
20 conspiracy to commit murder and murder. But they were not
21 convicted of conspiracy, I don't think, to commit murder of
22 this particular person.

23 They were convicted of conspiracy that the two of
24 them got together, got a gun, went out, found this girl,
25 along with other people, and happened to shoot her. That's

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1 the murder.

2 MR. CLARKE: She's the one who died. You can't
3 have a murder without a dead person. She's the dead person.
4 It's conspiracy to commit murder. She's murdered.

5 It wasn't manslaughter. It wasn't let me find the
6 first person. It wasn't a crime of passion. It was murder.
7 125.25, that's the conviction. That's an intentional act.
8 They went away for a long time, and they ought to go away
9 for a long time.

10 But that does, under the law, sever the causal
11 nexus, as the Appellate Division said in the Roldan case.

12 THE COURT: I'm very familiar with Roldan. Let's
13 talk about Roldan.

14 MR. CLARKE: There, the defendant was acquitted.
15 The killer was acquitted. And the Court still found that
16 the plaintiff admits that he was a victim of a targeted
17 attack by the alleged assailant, which severs the causal
18 nexus between the Housing's negligence and the plaintiff's
19 injuries.

20 Now, here he's saying she's not the target, but the
21 evidence that he just stipulated the Court can rely upon is
22 to the contrary.

23 THE COURT: I am going to have to let Mr. Pecoraro
24 try to explain to me how this case is not the Roldan case,
25 that this Court, I was reversed on.

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1 I analyzed each of the cases that have been cited
2 by each of you, or certainly the ones that are cited by the
3 defendant in their papers, and I analyzed the case that the
4 Appellate Division's counsel has cited, the Cerda case, that
5 I distinguished in Roldan.

6 And this Court, in Roldan, believed that the Roldan
7 case, as counsel is familiar, obviously, him being the
8 attorney, this Court believed that the case was more in line
9 with the case called Carasquilo. I will give you the page
10 later. But I analyze it to be in the Carasquilo case.

11 However, the Appellate Division ruled to the
12 contrary, that Roldan did not fit within the Carasquilo
13 case, but rather fit within the other line of cases. And
14 this case is a stronger case.

15 MR. CLARKE: Your Honor, I only bring it up -- let
16 me say this, you would be hard pressed to find an attorney
17 more -- a bigger fan of you than me. And certainly everyone
18 who practices law in New York County knows your Honor takes
19 your time, is thoughtful, and like so few of your brethren
20 have done this for a living. So we have great respect and
21 admiration for all of your efforts, Judge.

22 The reason I refer to Roldan was because I
23 understood the decision your Honor wrote, but here there is
24 a huge element that was not present there.

25 There they had an acquittal. Here there's a

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1 conviction.

2 So that issue -- and I know that your Honor has
3 invited my colleague to argue. I suspect he can. He didn't
4 in his papers. His papers are silent on the issue, Judge.

5 THE COURT: But in this case, more so than in
6 Roldan, in this case, the two individuals, meaning Cartagena
7 and Brockington, got together, went to Collins, obtained a
8 gun. The intent was there to use the gun. And then they
9 came back and followed this group into this building.

10 Unlike in Roldan, which something happened very
11 quickly. And there may not have been the thought of this
12 pre-plan.

13 But this case is a much stronger case on the idea
14 of real premeditation in planning this assault.

15 MR. CLARKE: And that was why I brought it up,
16 because if summary judgment is appropriate under the Roldan
17 situation, certainly here it's a much straighter, more
18 evenly path with the conviction of the facts that we have,
19 that everyone's relying upon.

20 And I appreciate your Honor clarifying that issue.
21 I would appreciate the opportunity to listen to my colleague
22 and to rebut.

23 THE COURT: Sure.

24 MR. CLARKE: Judge, are there any questions that I
25 can answer?

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1 THE COURT: Not yet.

2 MR. CLARKE: Thank you, your Honor.

3 THE COURT: Let me see. I am going to hear what
4 Mr. Pecoraro has to say.

5 The bottom line really comes down to, your argument
6 is that this preplanned attack, so to speak, targeting of
7 this individual, is an unforeseeable superseding intervening
8 cause that would break whatever nexus there would be in
9 terms of, in this situation, any potential liability that
10 the Housing Authority might have because of the, pretty
11 much, quote, premises liability.

12 MR. CLARKE: That is precisely the point. I
13 believe if we were to argue the negligence issues, I would
14 prevail there as well. I recognize it would be a closer
15 call, but I believe I would prevail.

16 I believe the targeted assault defense, the
17 intervening and superseding proximate cause, is dispositive
18 and inarguable here that has not been opposed or refuted by
19 my colleague.

20 THE COURT: Further, though, on the negligence
21 point, that this occurrence was September 11, 2011, I think,
22 correct?

23 MR. CLARKE: Yes, your Honor.

24 THE COURT: It happened at approximately four in
25 the morning?

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1 MR. CLARKE: Yes.

2 THE COURT: So the records, I think, or the
3 testimony that was presented, I believe, to the Court was
4 the work that was done on the 10th, which is a partial
5 workday, meaning from 8 or 8:30, 8 to 1:30 in the afternoon,
6 and the daily -- what do they call it?

7 MR. PECORARO: The caretaker's.

8 THE COURT: Yes, the daily caretaker's record,
9 that's the terminology, I believe, indicated that some
10 caretaker by the name of Pugh, I think, inspected the door
11 at some time, there is no actual time, I think, but during
12 that shift, and according to the one document that we have,
13 indicates that at that time the door was in operation,
14 that's -- or functioning properly, let me use a better word,
15 according to the report.

16 MR. CLARKE: Just to amplify that, Judge.

17 As we pointed out in our reply, yes, the workday
18 ended at 1:30 the day before. There was ample time for the
19 door to be damaged or broken, sadly, in that interim that we
20 would not have notice of and did not have notice of.

21 And also one issue that also was ignored by my
22 colleague but your Honor may consider it, it's in our
23 expert's affidavit, has to do with whether or not there's
24 knowledge on the part of the defendant that the broken lock,
25 assuming it's broken, would likely result in there being a

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Proceedings

1 crime. We provided affidavits as to the crime statistics on
2 that issue.

3 THE COURT: Of lack of propensity of other crimes.

4 MR. CLARKE: Exactly, Judge.

5 So there's no nexus between anticipation or
6 foreseeability of a murder with a broken lock given those
7 facts and given those statistics, which is important, Judge.

8 THE COURT: Thank you.

9 MR. PECORARO: My adversary, perhaps a dozen times
10 or more, claimed that I did not dispute his targeted victim
11 defense. And just because he said it a dozen times or so
12 doesn't mean that it's true.

13 THE COURT: Well, I see it in paragraph 4, if I
14 recall correctly.

15 MR. PECORARO: Exactly.

16 THE COURT: You do make a statement in paragraph 4
17 about it.

18 Go ahead.

19 MR. PECORARO: Exactly.

20 My dispute with that argument was brief because
21 that was consistent with my feeling of the strength of that
22 argument.

23 While the convicted murderers may have wanted to
24 retaliate by, quote, murdering anyone from Grant Houses,
25 close quote, and that was -- I'm quoting that only because

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1 the movant quoted that from the trial against Cartagena and
2 Brockington.

3 Even though that may have been the case, there's no
4 evidence that these two individuals specifically targeted
5 the deceased.

6 The targeted victim defense doesn't mean that all
7 you need to prove is that they were targeted the second
8 before the trigger is pulled.

9 That would mean, arguably, the targeted defense
10 defense would protect the Housing Authority if they randomly
11 shot at anyone in the building.

12 THE COURT: How about this, let's discuss a
13 particular case, a case called Roldan.

14 Mr. Roldan has a fight with somebody out in the
15 street. He leaves. He goes back to the Housing Authority
16 and tries to open the door. Whether the lock was working or
17 doesn't work, it's unclear, but he says it wasn't working.
18 Moments later this guy who he had an argument with, or a
19 fight, follows him in, follows him in and shoots him through
20 a door in his apartment.

21 I ruled that that was not going to be considered a
22 targeted attack because it happened not with long planning
23 or anything of that nature, that it was, sort of, pretty
24 quickly. And that's why I said to you I followed a line of
25 cases called Carasquillo. The Appellate Division ruled

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1 differently.

2 They cited a case that counsel just cited to me, a
3 case called Cerda, where some men were in an apartment, I
4 believe, the plaintiff, or the decedent, I don't remember if
5 the plaintiff was killed, but was there, was a drug dealer,
6 and there were a group of men waiting in the building,
7 somebody was outside, they had walkie-talkies, and when he
8 came in, they did whatever they did to him, assaulted him.

9 Now, that doesn't sound very much like Roldan. But
10 that's what the Appellate Division says.

11 Now, this case is much stronger than Roldan from
12 the defendant's point of view. Here, there's no question,
13 these two guys, Cartagena and Brockington, after Cartagena
14 is assaulted or injured or is a victim, however you want to
15 characterize him, decide that they are going to do
16 something. And they go together to Collins. They get --
17 they convince him to give them a gun.

18 That's a little bit more planning than we had in
19 Roldan. Where the gun came from, I don't know. But here
20 they went and got a gun. And then they came back and
21 followed.

22 So in this situation, when you look at the video
23 that we had, the video, doesn't the video show when
24 Brockington and Cartagena enter this building, you can see
25 in the background other people, that same building. They

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1 didn't go shoot these people.

2 And if you look at the video, when you see the five
3 people, I think it's five guys or four guys, five guys,
4 let's say, and this plaintiff, decedent, who went to the
5 building, what are they doing in this lobby area? They're
6 looking out the window, opening the door, who's coming.

7 They obviously see these two people coming and they
8 close the door and they run. And the next thing you know,
9 you see these two individuals, Brockington and Cartagena, in
10 the lobby looking around --

11 MR. PECORARO: Like they own the place.

12 THE COURT: -- to see if anybody is lurking in
13 there. The next thing you know, they go up the stairs.

14 I'm sorry to say, Mr. Pecoraro, it seems to me this
15 is a lot stronger case on the idea that she, Miss Murphy,
16 decedent, unfortunately, she was part of these people, this
17 group. And she's the one, unfortunately, that was shot.

18 MR. PECORARO: I believe this case is far different
19 from Roldan, far weaker.

20 THE COURT: Tell me why.

21 MR. PECORARO: In Roldan, the fellow that got into
22 the fistfight, or the altercation, with the person who ended
23 up being accused of killing him, it was one on one. The
24 killer wasn't looking to randomly shoot anyone in the group.
25 The killer was looking for Roldan and found Roldan.

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1 In this case, there's no evidence whatsoever, and
2 it's the movant that has the burden of proof, that Cartagena
3 and Brockington were specifically targeting, were
4 specifically looking for Tayshana Murphy.

5 There's also been --

6 THE COURT: I think that's a fair statement, that
7 there's nothing to say that would indicate specifically
8 other than the fact that they were chasing this group. So
9 they were targeting everybody in this group. And the fact
10 that they happened to shoot one, they don't have to shoot
11 all five of them, they shot one.

12 MR. PECORARO: Well, we don't know. Just because
13 they were following a group didn't mean that they were
14 targeting anyone in the group.

15 There's been no evidence that Miss Murphy was a
16 member of -- was involved in the throwing of this bottle or
17 the altercation.

18 The only evidence -- the only testimony that was
19 cited by movant is that she was there at the time of these
20 prior altercations, not that she performed any action
21 involved in those altercations.

22 So with respect to the other people who were in the
23 Grant Houses, who may have been ignored by Cartagena and
24 Brockington, they likely did not know that Cartagena and
25 Brockington had a beef against one or more of these people

Proceedings

1 in the group. So that explains their actions. If they knew
2 that these two fellows were packing a gun and were after
3 somebody, they probably would have been running too.

4 But Tayshana Murphy likely did observe these
5 prior -- one or more of the prior altercations. And that
6 explains why she ran.

7 There's been no evidence that she affirmatively was
8 involved in the prior altercations. And there was no
9 evidence that Brockington or Cartagena specifically decided
10 to target her.

11 And that's the major difference between this case
12 and Roldan.

13 THE COURT: What else do you want to tell me?

14 MR. PECORARO: If you would like, I could go into
15 the multiple contradictions with respect to the records, but
16 I think they have been covered in the papers.

17 The records show that the door was inoperable
18 months before the incident.

19 THE COURT: In Roldan, the records show that there
20 were 27 times that the door wasn't working in the
21 four months before, meaning one out of every four days.

22 The record indicated that -- what's that report
23 again?

24 MR. PECORARO: The caretaker's checklist.

25 THE COURT: The caretaker's report indicated for

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1 the day of the occurrence that the door was working
2 properly. The Appellate Division --

3 MR. PECORARO: And also immediately after the
4 incident it was supposedly working properly.

5 THE COURT: And the Appellate Division ruled that
6 the fact that, well, maybe it wasn't working a few times
7 before was not relevant, that the Housing Authority did not
8 have any notice that the door was not working at the time,
9 and, therefore, all of the past, they didn't seem to give
10 any credence to.

11 So what we have here is on the date of the
12 occurrence, according to their report, at 8:30 or 9:00,
13 between 9:00 and 1:30, on that Saturday morning, it was
14 operating appropriately.

15 Your opposition was, what you said, that the mother
16 has pointed out. We don't know when the mother went. For
17 all we know, the mother went at five o'clock at night to go
18 into that door.

19 MR. PECORARO: Well, I believe I pointed out four
20 different instances of records contradicting themselves
21 and/or being fraudulent.

22 First, the records show that the door was not
23 functioning at all a few months before the accident, in
24 March and early April. And it was supposedly fixed,
25 supposedly by a George Torres, who is on one of the work

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1 orders.

2 And when we got his records, or attempted to get
3 his records, by affidavit of the defense, it turns out he
4 wasn't working at the Grant Houses for that entire month,
5 which puts into question the entire work order showing
6 supposedly that the door was fixed.

7 Then I served a demand for the caretaker's
8 checklists for that period of time where we knew for a fact
9 that the door wasn't working, from early March through early
10 April, because our argument was that these checklists are
11 just ignored and on default they indicate that there's
12 nothing wrong with the door. And those records, without any
13 explanation, were missing.

14 THE COURT: Right.

15 MR. PECORARO: Without any explanation.

16 And, finally, not only does the caretaker's
17 checklist claim that the door was working the day before the
18 incident, but we know from the video, we know from my
19 locksmith's affidavit, that it wasn't working at the time of
20 the incident. You've seen the video.

21 But before -- the checklist before the murder and
22 the day immediately after the murder, the next time the
23 caretaker comes in and supposedly looks at the door, it's
24 working. It worked before. It worked after. It just
25 happened to not work at the time of the murder. Come on.

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1 So we've got multiple discrepancies, missing
2 records, false records, because of Torres, and highly,
3 highly suspicious records in terms of immediately before the
4 murder and immediately after, both claiming there was
5 nothing wrong with the door.

6 If after the murder the worker's checklists said,
7 yeah, it's not working, you could believe that, and it would
8 give credence to the checklist immediately before the murder
9 that, you know, maybe they did check it, but it got
10 vandalized or broken during the few hours between then and
11 the murder. But, come on, when the one immediately after
12 the murder says the door was working, it's too suspicious to
13 warrant summary judgment.

14 THE COURT: But you will agree, I guess, that if I
15 were to decide that your client was targeted, then what you
16 have just informed me of is not really relevant, based on
17 the cases that I seemed to have read.

18 They all seem to infer that the word superseding
19 intervening cause means exactly what it says. Forget about
20 whatever the negligence might have been before, this cuts
21 off that whatever conduct it was, and this is the cause.

22 And, therefore, if I were to decide based upon the
23 arguments that have been made by the defendant that this
24 young lady was targeted, meaning as part of the group, or,
25 as he's saying, these two gentlemen, the individuals, were

dk

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1 convicted of conspiracy to commit murder, and committed
2 murder, and are now serving 25 years to life, that seems to
3 be proof that your client was targeted.

4 This was not a random -- as he says, this is not a
5 random shooting out in the street, that they went looking
6 for people, and that she was not simply a target of
7 opportunity, in other words, somebody that just happened to
8 be in a particular building where an occurrence may be.

9 This is something that there was thought involved,
10 they were looking for A, B, C, D or A, or A, B, C, or any of
11 these people, they're looking for particular individuals.

12 As I said to you, doesn't the video show other
13 people outside?

14 MR. PECORARO: Yes, who were running away and
15 probably --

16 THE COURT: No. There were people standing. If
17 you look at the video, you'll see -- I don't want to make it
18 sound like it's so clear, but I think a close analysis of
19 the video shows people in, sort of, like the background, the
20 courtyard, people at the building at that time, four in the
21 morning, outside, obviously part of the Grant Houses.
22 There's no shooting that's taking place there.

23 These two individuals, Cartagena, were looking for
24 these people, and the people that were in the building knew
25 they were being followed, because they were looking out the

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1 window and opening the door to see who's coming or how far
2 behind are they.

3 MR. PECORARO: If movant was able to prove that
4 Cartagena and Brockington were specifically targeting
5 Tayshana Murphy, not specifically targeting anyone in the
6 building, not specifically targeting anyone who was a member
7 of Three Stacks, if they specifically targeted her and
8 intended to kill her, as they were walking up to the
9 building and continuing through the time of the murder, then
10 I would be very concerned about my case being dismissed.

11 THE COURT: What about what he said? Let's think
12 about it. In other words, she said, I'm not with them,
13 right? He went and shot her anyway. He shot her knowing
14 exactly that obviously he's looking for her.

15 MR. PECORARO: Well, not for her. Maybe they were
16 in general looking for people in the group and were
17 frustrated because they didn't find the person who threw the
18 bottle or the person who did get into a physical altercation
19 with one of them. They were frustrated. And they decided
20 to shoot her randomly.

21 That happens all the time. That happens all the
22 time at murder trials. They don't find the person they're
23 targeting and they target somebody else at the very end.

24 If they just got so aggravated that they randomly
25 shot somebody in the building as a tenant, does that make

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1 this -- does that make the targeted defense viable? I
2 certainly would say not.

3 If they were targeting, as the movant quoted the
4 prosecutor, murdering anyone from Grant Houses, if they
5 randomly chose Tayshana or any other tenant there, does that
6 allow the Housing Authority now to rely on the targeted
7 victim defense? They could have shot five thousand
8 victims, all the tenants in the building, I would say not.

9 THE COURT: In looking at the video, obviously
10 there was another individual that went into the building
11 that we all saw, it looks like a young lady, that came up
12 the walkway, went to the correct door, not the second door,
13 the correct door. And you could assume that that door, in
14 fact, was locked, and she went in there.

15 Now, obviously, that person, who seemed to be an
16 ordinary person, if she had been shot in the building, that
17 would be a different situation clearly. So I don't really
18 have any argument with you on that. Let's say that
19 individual had been.

20 But this seems to be a totally different situation.
21 This is a situation in which, based upon the testimony,
22 these people were part of this Three Stack group, and that
23 it was obviously a feud, has been, and that night, whatever
24 was going on that night, Cartagena was hurt or injured in
25 some form or other, went and got a gun, and came back.

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1 You're thinking that Miss Murphy was just simply a
2 random person, out of the clear blue, that she,
3 unfortunately, was shot, is that really what you believe is
4 the fact, or was she shot because she was part of this group
5 that was running away from Cartagena and that she was -- I
6 think it was clear that she was part of this Three Stacks
7 people, whoever they are.

8 MR. PECORARO: You know, sometimes when it comes to
9 predators, like Brockington and Cartagena, or maybe
10 predators like a mountain lion or a bear, the first instinct
11 might be to run, and you're not targeted until you start
12 running. She knew they were dangerous and ran too.

13 If this other woman who walked through knew that
14 they were up to something, for whatever reason, maybe she
15 heard it, maybe from somebody else, or if she saw what
16 happened before, she could just as easily have been shot.

17 There's been no proof that they specifically
18 targeted Tayshana Murphy. There's been no proof that they
19 were going for Nelson or Rivera or whoever was specifically
20 involved in that alleged assault with Cartagena or
21 Brockington.

22 And then out of frustration, they happened to catch
23 her. And she said, you know, I didn't do it, it wasn't me.
24 And at that point, yes, they didn't give, I will paraphrase,
25 a damn, as one of the killers said.

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1 But there's been no proof, and the movant has the
2 burden, that she specifically was targeted.

3 And in Roldan, Roldan was specifically the person
4 targeted. And I believe in that other case, it was a
5 specific target as well, not here.

6 THE COURT: Defendant.

7 MR. CLARKE: Very briefly, your Honor.

8 I think your Honor's observations are spot on with
9 respect to the video. It speaks to the fact that the
10 plaintiff decedent was a target, knew she was a target, knew
11 she needed to run away from the people she had been
12 interacting with that night, teasing, chasing, et cetera, as
13 described by the witnesses in the criminal case.

14 As your Honor points out, other people in the lobby
15 don't run away. They have no idea what's going on. And the
16 shooters and killers don't bother them. The killers are not
17 looking for anyone. They're looking for someone specific,
18 the people that had been interacting with them.

19 My colleague says there's no proof, no proof, no
20 proof. Although he's already accepted and informed the
21 Court it can rely upon the criminal transcript, when you
22 have multiple witnesses, Mr. Nelson, Mr. Pierce, and
23 Mr. Reynoso, among others, saying that the plaintiff
24 decedent was part of the group, that they chased Cartagena
25 and the other guy -- forgive me.

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1 THE COURT: Brockington.

2 MR. CLARKE: Brockington, in the neighborhood, that
3 they teased them, that they were part of the group that were
4 chasing them, they ran away when Brockington or Cartagena
5 got up from the fight, they ran inside the building, they
6 were waiting. You can see them looking out the window to
7 see if they're coming.

8 And she says, I'm not part of them. Part of what?
9 If she doesn't know who they're looking for, how does she
10 deny that she's not part of it?

11 She's clearly a target, Judge. There's no way you
12 can argue with a straight face that she's not or that she
13 didn't know that she was a target or that from the evidence
14 before the Court, it's abundantly clear that she was a
15 target.

16 And, beyond that, there's a criminal conviction,
17 not of crime of passion or some diminished charge, some
18 manslaughter charge, that they got anybody they could find
19 on the fly. It wasn't a 120 or 125.20, whatever it is.
20 It's 125.25.

21 She was the one that they intended to kill. That's
22 what they're convicted of. That's almost a collateral
23 estoppel argument. I don't know how you can say no, no, no,
24 she wasn't the target, although they've been convicted of
25 it.

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1 I appreciate your Honor's analysis. And I thank
2 your Honor.

3 THE COURT: I think what counsel is saying is that
4 let's say you have five or six people, six, I think we're
5 clear, six people running away, what plaintiff is saying is
6 that it might have been any one of those six, but it wasn't
7 specifically her. I don't want to paraphrase.

8 MR. CLARKE: That's not the law.

9 THE COURT: So he's making a distinction in Roldan,
10 which was a one on one. I have to agree, that is a fact, it
11 was a one on one, as opposed to this.

12 MR. CLARKE: And an acquittal.

13 THE COURT: Well, it was an acquittal. Lawrence
14 indicated that he didn't do it.

15 MR. CLARKE: And here there's a conviction, right?
16 So it's five on two as opposed to one on one. So you have
17 Brockington and Cartagena looking for five people. She's
18 one of them.

19 MR. PECORARO: I dispute that --

20 MR. CLARKE: Please.

21 Very simply stated, my colleague in his argument,
22 your Honor, must have said, might, could have, maybe, should
23 have five times. He hasn't offered any proof.

24 I could do that too. Maybe when they came back in
25 the morning, whoever put a little plug in the door knocked

dk

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1 it out. Maybe the cops fixed the door. Maybe they pushed
2 the button on the door.

3 I don't need to do that. I have a record that says
4 it was inspected the day before. Over 12 hours go by before
5 there's a killing that's intentional and targeted.

6 You understand the law, Judge.

7 THE COURT: Sure.

8 MR. CLARKE: Unless you have any other questions,
9 your Honor.

10 THE COURT: No, I don't think I have any other
11 questions.

12 MR. CLARKE: Thank you, your Honor. I appreciate
13 the opportunity to be heard.

14 MR. PECORARO: With respect to the records, I don't
15 have any problem with relying on the portions that were
16 cited by the defendant. As I indicated earlier, to the
17 extent that he's relying on anything in there that hasn't
18 been cited in his papers, I would object.

19 MR. CLARKE: The entire transcript is before the
20 Court.

21 THE COURT: That's the whole point.

22 MR. CLARKE: You didn't point out anything in your
23 opposition. It was served on you back in January.

24 MR. PECORARO: Right. I relied on the portions
25 that were cited by you in support of my argument that there

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1 wasn't a specific target with respect to Tayshana Murphy.

2 THE COURT: Okay.

3 But the defendant is arguing that she is targeted
4 based upon, and then he goes through various things that are
5 said in the record, meaning, there was an altercation, that
6 Cartagena and Brockington went and got a gun, that Santiago,
7 the girlfriend, testified that they went to Collins, that
8 they left Collins, they went back towards the building.
9 These are all the things that the defendant is relying on
10 that's based upon what's in the transcript. That's all I'm
11 saying.

12 MR. PECORARO: That's correct. And nothing in the
13 transcript says that the two convicted murderers
14 specifically targeted Tayshana.

15 THE COURT: We understand that. We understand the
16 record says what it says. That's fair enough. I think I
17 follow your point. The record gives me factual background.
18 That's what I'm alerting you to.

19 MR. CLARKE: It gives you eyewitness testimony to
20 what happened. It's thousands of pages. My colleague had
21 it since January. He didn't cite to a single page in that
22 transcript.

23 THE COURT: The point being, as long as we're all
24 in agreement that the Court can use the transcript for that
25 purpose, I don't have an issue. That's why I began by

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1 making certain that nobody was objecting to what that was.

2 Have a seat for a minute.

3 (Whereupon, a recess was taken.)

4 THE COURT: The Court, having heard the arguments
5 made by both the defendant movant and the plaintiff in
6 opposition, the Court having read the papers before the
7 Court that were submitted by the defendant, as well as by
8 the plaintiff, the Court also being familiar with the case,
9 but based upon the arguments that have been made, the motion
10 by the defendant to dismiss this action is granted for the
11 following reasons:

12 The issue before the Court, as the Court had
13 indicated initially, were to be two fold, one, whether or
14 not the defendant had notice of a dangerous condition,
15 meaning that the lock which has been alleged by the
16 plaintiff to be the competent-producing cause of this
17 accident, or shooting, plaintiff has argued that the lock
18 was nonfunctioning and, therefore, that the defendant would
19 be negligent because they had notice or should have had
20 notice that the lock was nonfunctioning, which allowed
21 intruders to enter the building, which ultimately resulted
22 in the shooting of the decedent.

23 The second issue would be whether or not the
24 plaintiff was a target of a preplanned attack. And, if so,
25 that would be an unforeseeable superseding intervening

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1 cause, which, in effect, would negate the effect of notice
2 of a defective lock to the Housing Authority. And if it was
3 an intervening superseding cause, meaning a targeted attack,
4 made by this assailant on the plaintiff, there would be no
5 liability to the New York City Housing Authority.

6 Based upon the arguments that have been made, that
7 seem to be undisputed, based upon the criminal trial
8 transcript, the individual shooter, who was convicted of
9 this crime, Cartagena, as well as Brockington, at some point
10 in an evening on September 10th, I guess it is, or 11th, of
11 2011, after there was some type of incident or altercation
12 between two groups, the Three Stacks, the Make It Happen
13 Boys, at which time Cartagena was assaulted, Cartagena then
14 goes along with his girlfriend and meets with his friend
15 Brockington. They go to an individual by the name of
16 Collins. And from Collins, according to the information,
17 they receive a gun, with the understanding that they are
18 going to use this gun, and the testimony had been in the
19 transcript that they were going to smoke somebody.

20 They then take this weapon and they now go back,
21 presumably to the location where the plaintiff is, as well
22 as other members of this Three Stacks group, consisting of
23 at least five people, plaintiff making the sixth person,
24 there is video that has been submitted to the Court which
25 indicates the six individuals, which include the plaintiff,

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1 running into the building, the building that the plaintiff
2 lives in, through a second door, or a side door to the
3 building.

4 The main door of the building, which you can tell
5 from the video, had a working lock, because that door could
6 not be opened from the outside. The side door could be
7 opened. And you could see the people enter the building
8 through this side door, and obviously it's not supposed to
9 be open from the outside in. It's only supposed to be going
10 from the inside out. So clearly the door was not
11 functioning properly at that time, the time of the
12 occurrence, being four o'clock in the morning -- excuse me,
13 six in the morning, I think it is, approximately 6 or 6:30
14 in the morning.

15 You do see in the video these individuals looking,
16 scanning the windows and looking out the door, obviously in
17 anticipation that somebody is behind them.

18 Moments later, one of the individuals, who is in
19 the building, closes the door. And you see all of the six
20 people scatter and disappear, meaning either go up an
21 elevator and/or a stairway.

22 Moments later, as I indicated, two individuals come
23 in, who obviously were, one, Brockington and, two,
24 Cartagena, one of which had the gun. I don't know -- you
25 can't tell from the video.

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1 Sometime thereafter, one of these two individuals
2 shoots and kills the decedent.

3 The issue before the Court is was this a targeted
4 attack or not.

5 Plaintiff argues that it's not. The defendant has
6 argued that it is.

7 This Court previously issued a decision in Roldan
8 versus the New York City Housing Authority, which this Court
9 was reversed, having denied summary judgment to the Housing
10 Authority under circumstances in which this Court believed
11 that the Housing Authority was not entitled to it because,
12 two things, one, they did not establish that they did not
13 have notice of the defective door in that there was a
14 recurring condition, for which the Appellate Division
15 rejected; number two, this Court determined at that time
16 that this was not an occurrence of a targeted attack. And
17 this Court analyzed the Roldan case based upon a case called
18 Carasquilo.

19 However, the Appellate Division, contrary to this
20 Court's ruling, determined that the proper analysis was to
21 be, in effect, the analysis as set forth in the Cerda case,
22 which is at 306 AD2d, page 169.

23 In this particular case now, ours, it's a much
24 stronger case than Roldan. But there's a distinction that I
25 appreciate what the plaintiff is saying.

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1 In Roldan, the incident occurred between one on
2 one, being Roldan and the defendant Lawrence. But it's
3 something that occurred pretty much instantaneously. It was
4 a crime that occurred based upon a fight that had happened.
5 And then Lawrence allegedly follows Roldan into the
6 building, enters because of a broken lock, and shoots Roldan
7 in an apartment.

8 This case is stronger from the defendant's point of
9 view in terms of the targeting in that in this situation
10 Cartagena is assaulted. Cartagena meets his friend
11 Brockington. The two of them get together and they go to a
12 third person to get a gun. All of this takes time and
13 planning. They then take the gun and they come back to the
14 location, obviously looking for this group, for which they
15 obviously found, because based upon the video, you can see
16 the six people running away, running into the building, and
17 looking at the building in anticipation that Cartagena is
18 right behind them.

19 So from the point of view of planning, this case is
20 a much stronger case that this is a targeted attack.

21 Now, the plaintiff argues that unlike Roldan, and
22 other cases, it's one on one.

23 In this situation, the testimony that is unrefuted,
24 and the evidence before the Court, is that there was this
25 dispute between these two groups, and that the Three Stacks

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1 group, in this situation, the group was being targeted, the
2 group. But any one of those group, whether it was all six
3 of them could be shot or any one of them, it was the group
4 that was targeted.

5 And the Court does not see any distinction, as the
6 plaintiff would have the Court believe because it's only one
7 of six, and that there need not have been a plan, that
8 there's a plan, a mental plan, that they're going to kill
9 all six, but rather, in this situation, Cartagena and
10 Brockington went after this group. It happened to be six.
11 They found one. And that's who they shot.

12 Why nobody else got shot, obviously it's not before
13 the Court. The Court will not speculate as to what happened
14 thereafter.

15 But the Court does see that this is a case that is
16 very much like the Roldan case.

17 There have been other cases that have come down
18 concerning this, a case called Lanoix, 170 AD3d 519.

19 In that case, the issue was whether or not the
20 plaintiff could establish whether the assailant was an
21 intruder. But the Appellate Division was very clear, they
22 had indicated where they weren't condoning the fact that the
23 Housing Authority had a broken front door lock, and they
24 recognized that maybe they had a broken front door lock, but
25 the fact is, in order for the plaintiff to have prevailed,

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1 they must show that the assailant who entered that building
2 was an intruder.

3 In this situation, we're dealing with, the fact
4 that the door may have been broken is not the issue before
5 this Court. The issue here is whether or not Miss Murphy
6 was considered to be a target of this assault that was
7 committed by Brockington and Cartagena.

8 It has been shown in the records before the Court,
9 both Brockington and Cartagena have been convicted. I
10 believe they were charged with conspiracy to commit murder
11 and murder. They were convicted. They have been sentenced
12 to prison, 25 years to life.

13 And it has been pointed out in the Roldan case that
14 was not an issue, or certainly the person that was claimed
15 to have assaulted the plaintiff was acquitted. In this
16 situation, that's not the case.

17 On the issue of notice, if we go to that issue, the
18 defendant has presented evidence by way of the caretaker's
19 records that indicate that on the morning of the day that
20 preceded it, because the incident occurred in the middle of
21 the morning of the next day, so on September 10th, the
22 Housing Authority worked from the hours of 8 to 1:30.

23 The person that -- the caretaker examined the door
24 sometime during the shift. According to the records, it
25 indicates that the door was working properly.

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1 It is true, as the plaintiff has pointed out, that
2 the records for the date after the occurrence also indicate
3 that the door was working properly.

4 Plaintiff also points out that there was no record
5 that was produced that indicates in between that the door
6 was fixed, yet it seemed to be working the day before and
7 the day after, but it was clearly not working at the time of
8 the occurrence.

9 The fact is, though, that there is no other
10 indication that the door was not working or that the
11 defendant did have notice that the door was not operational
12 in a sufficient amount of time for the defendant to repair
13 it, if it needed to be repaired.

14 The fact is, of course, this is on a weekend. And
15 even if they did know, what the obligation of the Housing
16 Authority to fix it in the middle of the day, since it may
17 not be, based upon the records that have been submitted by
18 the defendant, on the issue of foreseeability, it would not
19 be foreseeable that there would be further criminal activity
20 at the location. That seems to be unrefuted.

21 The case I referred to, I want to be clear on the
22 record, the Carasquilo case was cited at 99 AD3d 455. The
23 Roldan case that I have cited from the Appellate Division
24 was at 171 AD3d 418.

25 On the Cerda case that the Court has cited, this

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1 Court distinguished in its Roldan decision, which the
2 Appellate Division disagreed, was 306 AD2d 169.

3 The Court is further aware of Harris versus
4 New York Housing Authority, 211 AD2d 616.

5 Further, a case called Tarter, 151 AD2d 414.

6 Further, a case called Gonzalez, 150 AD3d 535.

7 All of these cases this Court analyzed and went
8 through carefully in the Roldan decision.

9 The Appellate Division, contrary to this Court's
10 opinion, ruled contrary and indicated that under those
11 circumstances that that was considered to be a targeted
12 attack.

13 Based upon the record before this Court, this Court
14 believes it is a much stronger case from the defendant's
15 point of view.

16 The Court feels constrained to rule in favor of the
17 defendant based upon the holding of the Roldan case.

18 Accordingly, as I previously indicated, the motion
19 by the defendant to dismiss the action on that basis, that
20 the plaintiff was considered or is to be considered to be a
21 target of the attack made by Cartagena and Brockington,
22 there would be no liability with respect to the Housing
23 Authority, based upon the cases that the Court has
24 previously cited.

25 The Court further finds that the defendant has

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1 submitted prima facie proof that they had no notice of a
2 defective door. And the plaintiff has failed to submit
3 sufficient evidence to rebut that prima facie showing.

4 Accordingly, the motion by the defendant is
5 granted.

6 The defendant Housing Authority will purchase a
7 copy of the minutes and upload a copy.

8 The Court will issue a short form indicating that
9 the motion is granted so that the defendant will serve a
10 copy of the transcript along with that order within 10 days
11 of receiving that so that if there is going to be an appeal,
12 I want to make sure that you have set the time for the
13 appeal, to be very blunt. I don't want this hanging out
14 there. Okay.

15 MR. CLARKE: To be clear, Judge, and thank you for
16 giving the record such time and attention and providing the
17 decision on the record, so it's clear, we'll order a copy of
18 the transcript and you would like us to serve your Honor a
19 short form order with the transcript and that will serve as
20 the order of the Court, the decision and order of the Court,
21 am I understanding correctly?

22 THE COURT: Off the record.

23 (Whereupon, an off-the-record discussion was held.)

24 THE COURT: Thank you.

25 MR. CLARKE: Thank you, your Honor.

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MR. PECORARO: Thank you, your Honor.

* * * *

Certified to be a true and accurate transcript of
the stenographic minutes taken within.

Diane Kavanaugh
Diane Kavanaugh, RFP
Senior Court Reporter

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