COURT OF APPEALS NO. APL-2021-00179

TO BE ARGUED BY:
STEVEN PECORARO, ESQ.
TIME REQUESTED: 15 MINUTES

State of New York
Court of Appeals

The Estate of TAYSHANA MURPHY,
by its administratrix, TEPHANIE HOLSTON,
Plaintiff-Appellant,

v.

THE NEW YORK STATE HOUSING AUTHORITY,
Defendants-Respondents,

-and-

TYSHAWN BROCKINGTON, ROBERT CARTAGENA,
and CLC COMMUNICATIONS INC.,
Defendants.

THE NEW YORK CITY HOUSING AUTHORITY,
Third Party plaintiff,

v.

TERIQUE COLLINS,
Third-Party Defendant.

BRIEF FOR PLAINTIFF-APPELLANT

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Appellate Division, First Department Docket No. 2020-01722
Supreme Court, New York County, Index No. 158442/2012

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A.
QUESTIONS PRESENTED

1. Should this Court resolve the conflict between the First and Second Departments as to the applicability of the "targeted victim" defense?
2. Did the First Department err in holding that the targeted victim defense is a complete defense that absolves a landlord of liability for failing to provide a functional door lock, or whether, as held by the Second Department in Scurry v New York City Housing Authority, NY Slip Op 00447 (2nd Dept 2021), must the "targeted victim" claim be considered by a jury as just one of the multiple possible proximate causes of an attack, as is consistent with longstanding general statutory law and case law?
3. Did the First Department err in deciding multiple questions of fact related to the aforesaid defense, such as whether, had the lock at issue been working, would the assailants have killed the decedent?
4. Did the First Department err in expanding its applicability of the targeted victim defense, to one random victim out of a group of six or more?
5. Did the First Department otherwise err in affirming the decision granting summary judgment to the defense?

All questions must be answered "Yes."

B.
PRELIMINARY STATEMENT

By Decision and Order dated July 17, 2019, the Motion Court erred in granting the defendant-respondent's motion for summary judgment, which was based upon the First Department's targeted victim defense, in this action alleging a non-working security lock in a New York City Housing Authority exit-only door at the front entrance of its building. Police surveillance video, which was submitted and reviewed by the Motion Court and First Department, established that the decedent victim was one of six people fleeing her killers into the defendant-respondent New York City Housing Authority's building where she lived, and that the assailants entered the building due to the automatic locking mechanism of the emergency exit-only door not working.

As an incidental finding, the Motion Court also claimed that notice of the defective lock was not established. R 8-55.

By Decision and Order dated April 13, 2021, the Appellate Division, First Department, erred by deciding multiple questions of fact to affirm the Motion Court's Decision. R 2036.

By Order dated November 18, 2021, the Court of Appeals granted the plaintiff-appellant's motion for leave to appeal to this Court. R 2045.

Default judgments were obtained against defendants Cartegena and Brockington based on their murder convictions. The action and cross-claims against defendant CLC Communications were discontinued.

C.
STATEMENT OF FACTS

1. The murder of Tayshana Murphy

This suit arises out of a non-working electro-magnetic lock in an exit-only door, which was designed to lock automatically upon closing. The building was part of the Grant Houses, owned by the defendant-respondent New York City Housing Authority ("Housing Authority"). The 18-year-old decedent resided in Apartment 15I with her mother. The Bill of Particulars alleged a failure to comply with multiple statutes and regulations requiring self-locking doors in the building, undisputed in the record. R 231-234.

Surveillance videos installed by the New York City Police Department captured the decedent and five other young adults fleeing the decedent's two convicted killers, defendants Brockington and Cartagena, as these defendants entered the premises via the non-functioning exit-only door. These videos were obtained from the District Attorney's Office and exchanged in the course of discovery. R 1964-1968. A flash drive or disc containing these videos is being provided to this Court, and was provided to the Motion Court and the Appellate Division. R 1964-1968. The videos show the decedent and five

others fleeing into her building, one of whom pulled shut the exit-only door, which was supposed to be self-locking (some portions of the record incorrectly referred to the number of individuals fleeing the perpetrators. The videos speak for themselves and the Court is encouraged to view them). Per the deceased's mother's deposition testimony, in the video identified as playlist 2012-8-22_2052, the deceased is the girl in the red sweatshirt (not to be confused with the boy in the red sweatshirt and red sweatpants). The deceased's mother gives commentary on the exchanged videos shown to her at her deposition, which show her daughter and others fleeing into the building, followed by the convicted killers. She describes how the videos show how the two killers initially attempted entry via the main entrance door, by the intercom, but were unable to open it, as it was apparently, and appropriately, locked. The videos then show that the killers tried the door at issue, "the side door, pulled it open, walked in with no problem…. It always does that." The inside camera video shows that the assailants pulled the exit-only door open by the grating over its single window, as it did not have a handle on the outside, because it was designed as an exit-only door. R 1974-1977. See also the inside video, which shows the door bouncing after it is closed, and outside videos showing perpetrators walking in. Brockington and Cartagena carried no bags and there was no evidence that they possessed a

crowbar or other burglars tools that would have allowed them entry through a locked door, and significantly, the first door they tried, which locked, prevented their entry through it.

The videos were submitted and relied upon by the Motion Court, and are referred to extensively in the Motion Court's record. R 11-55, 1950, 1964-1968. It was also referred to in the First Department's record. R 2039-2040.

The two killers were convicted of the 18-year-old decedent's murder as she begged for her life. R 1234-1235, 1908, 1954-1963. The record further established that there was an ongoing feud between certain residents of the Manhattanville Houses, where the perpetrators resided, and certain residents of the Grant Houses, where the decedent Tayshana Murphy resided. Defendant-respondent submitted evidence in its underlying motion that Brockington and Cartagena wanted to kill "anyone from Grant [Houses]" but that it was the 18-year-old decedent who the perpetrators came upon and shot dead. R 66. The criminal trial testimony of Eric Pierce that defendant-respondent relied upon and quoted, makes evident that the decedent was not specifically targeted: Before being shot after the killers came upon her in the fourth-floor stairwell, the decedent pleaded with her killers, stating "I'm not with them." One of the killers responded "I don't give a fuck" and was then shot twice. R 1234-1235. Per the criminal trial testimony of Steven Reynoso,

also relied upon by defendant-respondent, the decedent pleaded "I didn't have nothing to do with it. I didn't have nothing to do with it. I had nothing to do with it" before he heard three shots. R 1908.

While the surveillance video shows that Tayshana was one of six young people fleeing the perpetrators, it was never established that the perpetrators specifically targeted her (as opposed to targeting anyone associated with the Grant Houses, or even any one of the six persons fleeing), until the moment that it happened to be Tayshana they came upon and murdered. The defendant-respondent quoted the prosecution's closing argument in its underlying papers, stating that "They [the perpetrators] reduced her to an address. You are from Grant. We got attacked by kids from Grant, by younger kids with bottles, so we're gonna come back with a gun and because she was from Grant, she died in Grant in a hallway shot by three bullets by Tyshawn Brockington and Robert Cartagena." R 71-72.

(The criminal records and death certificate reflect the murder taking place at about 4:00 a.m. R 1954-1963. The time on the Police surveillance videos appears off, reflecting the time just before the murder as after 6:00 a.m.)

While the criminal trial record established that on the day before the murder, the decedent was present while one of the perpetrators fought one of,

and was chased by members of, the Three Stacks group, it was never established that she took part in any violence against either of the perpetrators. R 70-71.

In its underlying papers and at oral argument the defendant-respondent incorrectly claimed that some of the fleeing six young people taunted the killers while in the lobby of the building, but the Motion Justice correctly pointed out on the record that the surveillance video does not show that, and in any event, the video speaks for itself. R 18, line 24 – R 19, line 9.

2. Notice upon the New York City Housing Authority

The Appellate Division did not decide the issue of notice of the broken door lock upon the Housing Authority, instead basing its decision entirely on the targeted victim defense. The Motion Court's decision revolved almost entirely around that the targeted victim defense as well, but as an incidental finding claimed that notice was not established. For this reason, the plaintiff is compelled to discuss how notice was established, notwithstanding that it is not the central issue of law to this, or the underlying, appeal.

In opposition to the underlying motion, the affidavit of Tephanie Holston, the mother of the deceased, established that the exit-only door at issue never locked automatically as it was supposed to. She entered through the door at issue on both Friday, September 9th and Saturday September 10th,

the two days before her daughter's murder, and it was not locked. The murder occurred in the early morning hours of Sunday, September 11th. She also states, consistent with her deposition testimony, that she made multiple complaints concerning the door not locking. R 1969-1971. The record includes two photos of the door at issue which she identifies, one taken from the outside (the door at issue is the one on the left), and one from the inside (the door at issue is the one on the right) R 1972-1973.

Also in opposition to the motion was the affidavit of locksmith Barry Gasthalter, who concludes that the door's electro-magnetic lock was not working at the time, and that this is consistent with the door having never been fixed since the Housing Authority was aware of the problem back in March, six months before the shooting. He notes the door bouncing after closing in the video. His affidavit refers to his examination of the door and his review of the respondent's records, as well as the surveillance video. R 1974-1977.

Notwithstanding that the video surveillance clearly shows that the door did not lock and was not locked at the time the perpetrators entered, the Housing Authority's "SUPERVISOR OF CARETAKERS - DAILY CARETAKER CHECKLIST" (hereinafter "Checklist") forms for the work day before the murder and the day after, claim the door was properly

functioning, without any records claiming a repair after the shooting! R 1978-1979

The Housing Authority's Work Order 16701419 establishes that the door lock was not working March 3rd through March 31st, 2011. The record reflects that major work was required. It indicates "Also side door [the door at issue]" and in handwriting states:

> "ALSO BOTH DOORS NEED ELECT. NO POWER
>
> WELDER, BRACKET FOR ARMATURE
>
> Electrician Ticket Created
> 3-31 [2011]"

R 1980.

The next Housing Authority Work Order, 17095235, claims that electrical work was done on April 5th, 2011. R 1981. These aforesaid Work Orders establish that at the very least the door at issue was not locking from March 3 through April 5th, 2011. Plaintiff-appellant sought the Housing Authority's Checklist records for this time period, because if the doors were legitimately checked, they would each reflect that the door at issue was not locking during this time period. The Court ordered that they be provided. Pursuant to the Court's directive, the Housing Authority performed a search these documents for this time period. Its resultant affidavit claimed that the records could not be located. R 1982-1984.

No records were ever proffered that the welding work was performed and the armature bracket was fixed or otherwise installed. In his deposition transcript, Housing Authority electrician Robert Loomis was identified in the Work Order of April 5th, but acknowledged that he does not weld, and that welding is performed by another trade employed by NYCHA. R 1989, page 11, lines 6-20. He also testified that he has no recollection of the work performed related to the two Work Orders (including his supposed own work). R 1989, page 12, line 23 – page 13, line 18.

Robert Loomis testified that the other Housing Authority employee working with him would have been an electrician's helper. R 1999, page 52, lines 15-20. The April 5th Work Order identifies the co-worker as George Torres. However, after repeated attempts to depose him, it was acknowledged by the Housing Authority that George Torres did not work at the Grant Houses at the time of the purported repair! The affidavit by Housing Authority Human Resources personnel, required per Court Order, states:

> "The time as recorded on the Kronos timeclock is the employee's official time record of where the employee starts and ends their work day… A review of the Kronos records reveal that Mr. George Torres did not swipe on or out at the Grant Houses in April 2011 [the month for which the Court Order required a search]."

R 2019-2021.

A summary of the above reflects missing records (Daily Caretaker Checklists from March 3rd – April 5th, 2011), incredulous records (the September 10th and September 12th, 2011 Daily Caretaker Checklists claiming a properly functioning door, in contradiction to the video evidence, affidavit of the deceased's mother, and locksmith's affidavit) and fraudulent records (the April 5th, 2011 Work Order claiming George Torres was involved in the repair, when in fact he was not working at the Grant Houses for - at least - the entire month of April).

D.
ARGUMENT

1. The First Department's application of the targeted victim defense as a complete defense is aberrant.

The First Department is the only one of the four which relies on its self-created targeted victim defense as a complete defense to absolve a defendant of liability. And unlike our State's former contributory negligence defense, the First Department's targeted victim defense relies not on the negligent actions and state of mind of the plaintiff to absolve the defendant of liability, but the actions and the state of mind of a perpetrator who is not necessarily an appearing party in the action!

The targeted victim defense, as a complete defense, goes against long-standing New York precedents holding that there can be multiple proximate causes of an event, and multiple liable parties.

The First Department in the case before us pointed out that its interpretation of the targeted victim defense is in direct conflict with that of the Second Department's Scurry v New York City Housing Authority, NY Slip Op 00447 (2nd Dept 2021). The Second Department held:

> "There is a line of cases from the Appellate Division, First Department, holding that targeted attacks break the proximate causal link between the reasonableness of security measures by the property owner and the targeted crime itself. We respectfully disagree and hold, for reasons set forth below, that depending upon the circumstances, the issue of proximate causality may present a triable issue of fact."

This direct conflict between the First and Second Departments justifies a resolution by this Court. There is no other Department that has adopted the First's rationale behind its decision to adopt the target victim defense as a complete one.

In Scurry, the Second Department concluded that it is inappropriate to attempt to go into the minds of the perpetrators to determine whether the attack at issue would have taken place had it not been for the defendant's broken door lock, as a myriad of factors go into such a conclusion, and as a

result the target victim defense must be generally viewed as just another potential proximate cause of the attack for the jury to consider.

In Scurry, the Second Department Court rejected the targeted victim defense as grounds for summary judgment, notwithstanding that the case's facts painted an even stronger case for the applicability thereof. The case involved an attack on the specifically targeted decedent – by her jilted ex-boyfriend, who doused his victim and himself with gasoline, killing both, and severely injuring the decedent's son who came to protect his mother. In the case at bar, decedent Tayshana Murphy was a random target of a group of six young people running from Brockington and Cartagena. There was no evidence that Tayshana was specifically targeted by the two. It was only established that she happened to be the unfortunate one of the six that was found and killed by the convicted killers, after which time the perpetrators fled, were subsequently arrested, tried, convicted, and incarcerated.

In the case at bar, the First Department expands the applicability of the targeted victim defense to a victim who was, at best for the respondent, a random target of a group of six (Alternatively she could be viewed as one random target out of all Grant Houses tenants). In other prior applications of the targeted victim defense decided by the First Department, the victims were specifically targeted – known and targeted based upon specific individual

identities, or on rare occasion, based on the victim's specific role as an occupant of a specific apartment or home who was attacked by perpetrators to get access thereto.

In applying the targeted victim defense, the First Department fails to differentiate between criminals over a broad spectrum – from that of a single perpetrator whose anger and intent may well cool over time, and/or who may be incarcerated before his plan is carried out, to a group of well planned Mossad assassins. Where Brockington and Cartagena fell on that spectrum, and whether the minimal security measure of a functional door lock would have prevented the decedent's murder, is a question appropriately resolved by the trier of fact.

2. Even if this Court chooses to adopt the targeted victim defense as a complete defense, there exist multiple reasons why it should not be applied to this case.

In the case at bar, the First Department inappropriately decided the following questions of fact:

i. That had that lock been functional, the assailants "would have gained access to the building by following another person in or by forcing such a person to let them in…," ignoring the likelihood that by that time, the decedent would have likely been safe in her locked apartment. R 2044.

ii. That had a functional lock delayed the assailants in carrying out their plan, they would have killed the decedent in the future, rather than instead killing one of the other six members of the group they were chasing, or a random Grant Houses tenant (and likely getting incarcerated for either) whether it be that day, or in following days, or whether the assailants would have been unable or unwilling to kill the decedent for the infinite other circumstances that may have occurred.

iii. That the killers specifically targeted the decedent, notwithstanding her res gestae statement that "I'm not with them," and a killer's response of "I don't give a fuck" before shooting her twice. R 1234-1235;

iv. That a broken door lock on an exit-only door qualifies as "minimal security measures" sufficient to avoid liability.

In the case before us, there is no evidence that up until the time the perpetrators came upon the decedent, she was their specific target. There is no evidence that the perpetrators intended to kill every one of the tenants of the Grant Houses, or even every one of the six individuals who was running from them. It just so happened that the decedent was the random one of the six that the killers came upon, and at that moment, decided to kill. The First

Department's applicability of its targeted victim defense as held in Cerda v. 2962 Decatur Owners Corp, 306 AD2d 169, 761 NYS2d 220 (1st Dept 2003) is limited to a scenario in which the victim is specifically targeted. What if the killers randomly chose to kill another Grant Houses tenant (not one of the six who fled), or multiple others, only because they were one of the thousands who lived at Grant Houses? Under the defendant-respondent's interpretation, this would provide the Housing Authority a blanket defense, with no obligation to provide working door locks to any of the tenants.

The Housing Authority failed to provide minimal security measures. In his affidavit, locksmith Barry Gasthalter states "Self-locking doors is standard and expected security in multiple-family dwellings such as the building at issue, and were so at the time of the murder." R 1975. That this was required security was not disputed in the record.

In Tarter v. Schildkraut, 151 Ad2d 414, 542 NYS2d 626 (1st Dept 1989) this Appellate Court has held that "A landlord has a duty to take "minimal" precautions to protect tenants... (Miller v State of New York, 62 N.Y.2d 506, 513; Iannelli v. Powers, 114 A.D.2d 157, 161, lv denied 68 N.Y.2d 604.)" In Schildkraut the Appellate Court held that having a working door lock is a minimal precaution.

In Jacqueline S. v. City of New York and The New York City Housing Authority, 81 NY2d 288, 598 NYS2d 160 (1993), the Court of Appeals stated:

> "We hold merely that, in the circumstances, given the Authority's conceded failure to supply even the most rudimentary security -- e.g., locks for the entrances -- it was error to grant summary judgment."

Now, four decades later, it is time to reaffirm, without reservation, that a working door lock is an expected minimal requirement in multi-family dwellings such as the Housing Authority's Grant Houses, and at the very least, that there is a question of fact as to whether such minimal safety measures were provided.

3. Respondent failed to refute Prima Facie Notice as a Matter of Law.

The transcript of the oral argument in the underlying Court reflects that it overwhelmingly involved the applicability of the targeted victim defense. That notwithstanding, the Motion Court also held that notice of the defective locking mechanism was not established.

Defendant-respondent's underlying papers failed to establish that the locking mechanism to the front entrance emergency door was properly functioning, and in fact never even argued that it was properly functioning.

The plaintiff-appellant's evidence allows the trier of fact to reasonably conclude that the door at issue was never checked, and that the line referring

to exit doors not locking properly on the "SUPERVISOR OF CARETAKERS - DAILY CARETAKER CHECKLIST" (hereinafter "Checklist") forms were left at "NO" on default. Supporting this contention (in addition to plaintiff's affidavit and testimony that the door never locked) is the fact that notwithstanding that the video surveillance clearly showing that the door did not lock and was not locked at the time the perpetrators entered, the Checklist for the day before the murder and the day after claim the door was properly functioning, without any records claiming a repair! R 1978-1979.

That the door was non-functional from March 3rd to April 5th is unrefuted. NYCHA's Work Order 16701419 establishes that the door was non-functional March 3 through March 31, 2011. The record reflects that major work was required. It indicates "Also side door [the door at issue]" and in handwriting states:

> "ALSO BOTH DOORS NEED ELECT. NO POWER
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R 1980.

The next Housing Authority Work Order, 17095235, claims that electrical work was done on April 5, 2011. R 1981. These Work Orders establish that at the very least the door at issue was not locking from March 3

through April 5, 2011. However, the Checklist records for this time period, which, if the doors were legitimately checked, would each reflect that the door at issue was not locking during this time period, were missing without explanation. R 1982-1984. This allows a negative inference to be made against the party which cannot find them. Based on this alone, the defense' lack of notice argument must be denied.

Furthermore, the Housing Authority's claim that the work required by the Work Order was performed is suspect, not only based upon Mrs. Holston's testimony, but because no records were ever proffered that the electrical and welding work was performed and the armature bracket was fixed or otherwise installed, and due to testimony of the electrician Robert Loomis. He is identified in the Work Order of April 5th. R 1981. He testified that he does not weld, and that any welding is performed by another trade employed by the Housing Authority. R 1989, page 11, lines 6-20. He also testified that he has no recollection of the work performed with respect to the two Work Orders, including his own. R 1989, page 12, line 23 – page 13, line 18. Furthermore, it was established per the Housing Authority's affidavit, that notwithstanding the April 5th Work Order identifying Robert Loomis' co-worker as George Torres, and after repeated attempts to depose him, it was acknowledged by the Housing Authority that George Torres did not work at the Grant Houses

at the time of the purported repair! The affidavit by Housing Authority Human Resources personnel, required per Court Order, states:

> "the Kronos timeclock is the employee's official time record of where the employee starts and ends their work day… A review of the Kronos records reveal that Mr. George Torres did not swipe on or out at the Grant Houses in April 2011 [the month for which the Court Order required a search]."

R 2019-2021.

We now have missing records (Daily Caretaker Checklists from 3/3 – 4/5/2011 and no evidence of the necessary welding repair), we have incredulous records (the 9/10 and 9/12/2011 Daily Caretaker Checklists claiming a properly functioning door, in contradiction to the video evidence and affidavit of the deceased's mother), and we have fraudulent records (the 4/5/2011 Work Order claiming George Torres was involved in the repair, when he was not working at the Grant Houses for - at least - the entire month of April). Under these circumstances, at the time of trial there will undoubtedly be a spoliation charge, and a Falsus in Uno charge. Looking at all of this in the light most favorable to the party opposing summary judgment, it is reasonable to conclude that the work necessary to repair the non-locking door was never performed, and the door was never properly checked, and that the movant has otherwise failed to meet its burden as to lack of notice.

4. Respondent's Expert's Affidavit is Speculative, Conclusory,and Without Adequate Basis in Fact

The affidavit of defendant-respondent's purported expert is both speculative and conclusory, without adequate basis in fact, and the expert, without adequate experience. R 1931-1938. He claims the malfunctioning door lock was properly checked without any background in locksmithing, and while ignoring the evidence of fraudulent, inaccurate, and missing records. He does not address whether it was properly fixed on April 5, 2011 to begin with. Then he speculates that "no security device such as a working lock… would have deterred Tyshawn Brockington and Robert Cartagena…," notwithstanding that the first door they tried was locked and deterred them, and that there was no evidence that they had burglar tools with them to break through a locked door, and even if so, ignores that by that time the decedent would likely have not been found by them in the fourth-floor stairwell. He never alleged that the perpetrators intended to kill all the residents of the Grant Houses, or even all of the six young adults running from them, which leaves open the likely possibility that even if their plan was not one of brief rage which would have dissipated over time, it could well have been someone else from Grant Houses, or someone else from the group of six fleeing young adults, who they would have murdered – perhaps Steven Reynoso, who admitted to throwing a bottle at Cartagena, or perhaps someone else who

actually was involved in a physical altercation with either of the perpetrators, as opposed to the decedent, who has only been identified as being present during the prior altercations with the perpetrators.

Finally, without including his records or referring to any trend within them, the purported expert claimed that with "only" an average of two murders per year in 2009, 2010, and 2011 in the precinct covering the Grant Houses, a murder due to non-functioning door locks was not foreseeable. To the contrary, a reasonable jury can conclude this statistic makes a murder foreseeable – isn't this why we have locks on our doors to begin with? Aren't there many precincts throughout the state and country with no annual murders? Furthermore, he is silent as to any trend (perhaps steadily increasing 2009 – 2011?) or how many attempted murders, shootings, and assaults occurred, and why he was reporting to such a short window (perhaps prior years did not help his argument?), or whether the murders took place in Housing Authority projects, or even in the Grant Houses. His affidavit is conclusory, speculative, and self-serving.

CONCLUSION

Based on the foregoing, the conflict between the Second Department and the First Department regarding the targeted victim defense must be resolved consistent with the Second Department's holding in Scurry, to wit, that the targeted victim defense must be viewed as just another potential proximate cause of the attack for the jury to consider, rather being viewed as the First Department holds, as a complete defense regardless of a defendant landlord's failure to provide minimal security.

Furthermore, the First Department erred in expanding the targeted victim defense to include the random shooting of the decedent who happened to be one in a group of six (or possibly, one random target within the group of all Grant Houses residents), and erred in deciding multiple issues of fact related to the likelihood of the defendant perpetrators killing the decedent, had the lock on the exit door been functional at the time of the murder.

The First Department also erred in not concluding that a prima facie case of notice of the broken lock was made by the plaintiff.

WHEREFORE, it is respectfully requested that the April 13th, 2021 Order of the Appellate Division, First Department, be reversed, that summary judgment on behalf of the defendant New York City Housing Authority be

denied, and that this Court grant such other and relief as may be just and proper.

Dated: May 11, 2022
New York, New York

Respectfully,

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State of New York
Court of Appeals

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In the Matter of TAYSHANA MURPHY
by its Administratrix, TEPHANIE HOLSTON,

Plaintiff-Appellant,

-against-

THE NEW YORK STATE HOUSING AUTHORITY,

Defendant-Respondent,

-and-

TYSHAWN BROCKINGTON, ROBERT CARTAGENA,
and CLC COMMUNICATIONS INC.,

Defendants.

THE NEW YORK CITY HOUSING AUTHORITY,

Third-Party Plaintiff,

-against-

TERIQUE COLLINS,

Third-Party Defendant.

STATEMENT PURSUANT TO CPLR 5531

1. Supreme Court, New York County, Index No. 158442/2012.

2. The full names of the original parties are the same; there has been no change.

3. Action commenced in Supreme Court, New York County.

4. Action was commenced by the filing of a Notice of Claim, dated December 5, 2011, and a Summons and Complaint, dated November 26, 2012. Action was joined by the filing of an Answer, dated January 9, 2013.

5. Nature of action: Civil Action — Torts.

6. This appeal is from the Appellate Division, First Department Order, entered July 17, 2019.

7. Appeal is on the Record (reproduced) method.

Dick Bailey Service INC
APPELLATE SERVICES

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dickbailey.com

Affidavit of Service by Overnight Carrier

The Estate of TAYSHANA MURPHY, by its administratrix, TEPHANIE HOLSTON v. THE NEW YORK STATE HOUSING AUTHORITY -and- TYSHAWN BROCKINGTON, ROBERT CARTAGENA, and CLC COMMUNICATIONS INC. and THE NEW YORK CITY HOUSING AUTHORITY v. TERIQUE COLLINS

020-1722

State of New York }
County of Kings }

Jonathan Didia , being duly sworn, deposes and says that he is over the age of 18 years of age, is not a party to the action and is employed by Dick Bailey Service, Inc. That in the above case on Tuesday, May 17, 2022 deponent served 3 copies of the within

Brief [X] Record [ ] Appendix [ ] Notice [ ] Other [ ]_____

upon

Wilson Elser Moskowitz Edelman & Dicker, 150 East 42nd Street, New York, New York 10017

by dispatching the paper to the person(s) by overnight delivery service at the address(es) designated by the person(s) for that purpose, pursuant to CPLR 2103(b)(6).

Jonathan Didia

Sworn to before me
Tuesday, May 17, 2022

WILLIAM BAILEY
Notary Public, State of New York
No. 01BA6311581
Qualified in Richmond County
Commission Expires Sept. 15, 2022

98648

Dick Bailey Service INC
APPELLATE SERVICES

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Affidavit of Service by Overnight Carrier

The Estate of TAYSHANA MURPHY, by its administratrix, TEPHANIE HOLSTON v. THE NEW YORK STATE HOUSING AUTHORITY -and- TYSHAWN BROCKINGTON, ROBERT CARTAGENA, and CLC COMMUNICATIONS INC. and THE NEW YORK CITY HOUSING AUTHORITY v. TERIQUE COLLINS

020-1722

State of New York }
County of Kings }

Jonathan Didia , being duly sworn, deposes and says that he is over the age of 18 years of age, is not a party to the action and is employed by Dick Bailey Service, Inc. That in the above case on Thursday, May 19, 2022 deponent served 1 copies of the within

Brief [ ] Record [ ] Appendix [ ] Notice [ ] Other [X] Corrected Cover

upon

Wilson Elser Moskowitz Edelman & Dicker, 150 East 42nd Street, New York, New York 10017

by dispatching the paper to the person(s) by overnight delivery service at the address(es) designated by the person(s) for that purpose, pursuant to CPLR 2103(b)(6).

Jonathan Didia

Sworn to before me
Thursday, May 19, 2022

WILLIAM BAILEY
Notary Public, State of New York
No. 01BA6311581
Qualified in Richmond County
Commission Expires Sept. 15, 2022

98648.1