SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. ROBERT D. KALISH **PART 29**
Justice

JOSE ROLDAN,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY and SHAWN LAWRENCE,

Defendant.

NEW YORK CITY HOUSING AUTHORITY,

Third-Party Plaintiff,

- v -

SHAWN LAWRENCE,

Third-Party Defendant.

INDEX NO. 159722/2013

MOTION DATE 11/03/17

MOTION SEQ. NO. 005

The following papers, 74-121, were read on this motion for summary judgment.

Notice of Motion—Affirmation—Exhibits A-L; Corrected Affirmation—Memorandum of Law—Exhibits A-L—Affidavit of Service	No(s). 74-90; 94-116
Memorandum of Law in Opposition	No(s). 92
Reply Affirmation	No(s). 94
Supplemental Memorandum of Law in Support	No(s). 119-120
Supplemental Memorandum of Law in Opposition	No(s). 121

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Motion by Defendant New York City Housing Authority ("NYCHA"), pursuant to CPLR 3212, for summary judgment is denied.

Plaintiff Jose Roldan alleges in his complaint that, on August 8, 2012, he was an invited guest at the premises owned by Defendant NYCHA at 220 East

115th Street New York, NY when he was shot by Defendant Shawn Lawrence. Plaintiff alleges that Defendant Lawrence entered the building through the front door due to a broken lock. Defendant Lawrence was charged with the shooting of Plaintiff and was acquitted after a criminal trial.

BACKGROUND

Plaintiff alleges that Defendant Lawrence—whom he had never met before but seen around the neighborhood—spit in his direction and verbally accosted him. Plaintiff states that a physical altercation ensued during which Defendant Lawrence punched Plaintiff in the head twice, and Plaintiff punched Defendant Lawrence in the face once. Plaintiff states that he then fled to a park nearby the premises where his wife lived and got the keys to her apartment on the sixth floor of the premises.

Plaintiff states that he then went to the front door of the building and placed his key in the door but that the door opened before he turned his key and that it made a buzzing sound.[1] (Dempsey Affirm., Ex. B [50-h Hearing] at 49:02-53:17; Ex. L [Roldan EBT] at 56:14-58:18.) Plaintiff states that he then took the elevator to the sixth floor and began unlocking the apartment door's two locks. (50-h Hearing at 53:18-68:04.) Plaintiff states that as he was unlocking the door, Defendant Lawrence came out of the elevator. Plaintiff states that he said to Defendant Lawrence, "What is the problem?" and Defendant Lawrence responded, "It's a big problem.". Plaintiff states that he then saw Defendant Lawrence remove an automatic gun from his waistline. Plaintiff states that he then entered his wife's apartment and started to lock the door behind him when Defendant Lawrence fired two shots through the apartment door, one of which struck him in the shoulder.

Defendant Lawrence was deposed and states that he did not shoot Plaintiff.[2] Defendant Lawrence states that, rather, he had been playing cards with several

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[1] Plaintiff indicated at his deposition that the buzzing or ringing sound that is made when one opens the door has a distinctly different sound from when one is buzzed into the building from an apartment intercom. (*See* Roldan EBT at 56:14-58:18.) Plaintiff also states that when he last visited two days earlier, he was unable to enter the building without a key. (*Id.* at 59:08-60:19.) However, Plaintiff states that he previously had experienced "a lot" of problems with the door remaining unlocked, sometimes with "[t]hat ringing sound for days." (*Id.*)

[2] Defendant Shawn Lawrence—who is now pro se—has not filed any papers in response to the instant motion and did not appear for oral argument. It is unclear if Defendant Lawrence was served with the instant motion as there is no affidavit of service indicating how he was served.

friends at the time of the shooting and that he remembered seeing the police respond to the shooting and witnessed Plaintiff being taken away by ambulance.

Defendant Lawrence further states that, on August 8, 2012, he was living in the neighborhood, and that he was "born and raised" in the building across from 220 East 115th Street. (Dempsey Affirm., Ex. K [Lawrence EBT] at 15:09-18:08.) Defendant Lawrence further states that he had family and "probably 15, 16 friends" in the 220 building, and that "I know pretty much the whole building." (*Id.*)

In the course of documentary discovery, Defendant NYCHA produced records of inspections and work orders that purport to show that, prior to the shooting, the subject front door was last inspected on the morning of August 8, 2012 and that it was "secured" at the time of inspection. (Dempsey Affirm., Ex. J [Supplemental Response to D&I with Records].) Defendant's Supervisor of Caretakers Victoria Aliheukwu testified that she prepared the subject reports—entitled "Daily Front Entrance & Elevator Reports"—every day pursuant to her job duties. (Dempsey Affirm., Ex. I [Aliheukwu EBT] at 187:22-188:15.) The records further purport to show that the last report of the subject door malfunctioning was on August 1, 2012, and that every inspection between August 2 and August 8, 2012 revealed that the front door was "secured." The records also purport to show that there were twenty-seven (27) instances of the door being not "secured" in the four months prior to the night of the shooting.

Ms. Aliheukwu further states that there are two exits at 220 East 115th Street: the front door and a backdoor exit. (Aliheukwu EBT at 95:21-100:17.) Ms. Aliheukwu further states that the front door is the only means of entrance—through use of a key or by being buzzed in through the intercom—and that tenants and their guests cannot re-enter through the back door once they exit.

Ms. Aliheukwu further states that on many occasions the front door lock would malfunction—staying in an unlocked position with the buzzer staying on—because "the tenant do not have the key, so that they yank the door so that the magnet will disconnect so that they will have access to go in." (*Id.* at 214:24-217:10.) Ms. Aliheukwu further states that she witnessed individuals disable the front door lock in this manner "many times" and that she reported these incidents to her Assistant Superintendent each time. (*Id.*)

ARGUMENTS

Defendant NYCHA sets forth two main legal arguments in its moving papers in support of the instant motion:

1. That Defendant NYCHA had no notice that the front door at the premises 220 East 115th Street was unlocked due to a broken front door lock; and
2. That there is no proof that Defendant Shawn Lawrence was the assailant or proof that Shawn Lawrence was an intruder in the premises on August 8, 2012 and that he gained entry into the premises through a broken front door lock.

Defendant NYCHA argues in the instant motion that it did not have actual or constructive notice of the front door being unlocked due to a broken lock at or about the time of the incident. Defendant NYCHA further argues that since Defendant Lawrence was acquitted of Plaintiff's shooting, Plaintiff's allegation in the instant action that Defendant Lawrence was his shooter is speculative.

Defendant NYCHA further argues that Plaintiff—upon entering the building through the front door immediately prior to the shooting—used a key to enter which Defendant NYCHA argues is evidence that the lock was functioning properly. Defendant NYCHA further argues that Plaintiff testified that he was at the building two days before the shooting and that it was necessary for him to be let into the building because the front door was locked.

Defendant NYCHA further argues that it did not have notice that the front door lock was not functioning properly on the day of occurrence. In particular Defendant NYCHA argues that its Supervisor of Caretakers, Ms. Aliheukwu, testified that she prepares daily reports entitled Daily Front Entrance & Elevator Report. Based upon the reports, Defendant NYCHA argues that the last time a report was filed as to an unsecured front door at the premises was on August 1, 2012. Defendant NYCHA further argues that the subsequent reports indicate that the front door was locking properly from August 2 to August 8, 2012.

Defendant NYCHA further argues that when Defendant Lawrence was deposed he stated that "I know pretty much the whole building" at 220 East 115th Street and that he had both family and friends that live in the building. Defendant NYCHA further argues that Defendant Lawrence testified that at the time of the

shooting he was in the park next to the building playing cards; and that he denied shooting Plaintiff.

Defendant NYCHA argues that even if there is an issue as to notice of the defective lock, there is no proof that Lawrence gained entry to the building through an allegedly unlocked front door. Defendant NYCHA further argues that there is no proof submitted that anyone saw how Plaintiff's attacker entered the building.

In opposition Plaintiff argues that he testified that he had a key to enter through the front door but testified that the door lock was not functioning, and therefore he was able to enter without turning the key.

Plaintiff further argues that although Defendant Lawrence may have been an invited guest into the building at various times prior to the date of the shooting, he did not state on the date in question that he was such a guest.

Plaintiff further argues that Defendant NYCHA's supervisor testified that the lock was nonfunctional on at least 27 days in the four months prior to the shooting.

After oral argument, the Court allowed the parties to submit supplemental papers based upon the oral argument.

In its supplemental papers, Defendant NYCHA argues that the Plaintiff's attack was an unforeseeable, intervening force which severed the causal nexus between its alleged negligence (i.e. the broken door) and the attack on the Plaintiff. In addition, Defendant NYCHA argues that Plaintiff has conceded that he cannot offer any crime statistics for the subject location "such that defendant had a duty to protect against such conduct."

Plaintiff argues in its supplemental papers in effect that if the door had been locked, Defendant Lawrence could not have followed Roldan into the building and that Plaintiff would not have been attacked by Defendant Lawrence.

In addition, Plaintiff argues that in light of the door not being secured 23% of the time in the prior four months, there is a material issue of fact as to notice.

DISCUSSION

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [internal quotation marks and citation omitted].) "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003].) "On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*See Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002].)

"Landlords have a common-law duty to take minimal precautions to protect tenants from foreseeable harm, including a third party's foreseeable criminal conduct." (*Burgos v Aqueduct Realty Corp.*, 92 NY2d 544, 548 [1998] [internal quotation marks omitted].) A landlord has this duty not just to his or her tenants but to guests of tenants. (*Novikova v Greenbriar Owners Corp.*, 258 AD2d 149, 153 [2d Dept 1999].) In premises security cases, a plaintiff will only recover if the plaintiff can establish at trial, by a preponderance of evidence, that the plaintiff's attacker was an intruder who gained access to the premises through a negligently maintained entrance. (*Burgos*, 92 NY2d at 550.)

I. There Are Triable Issues of Fact Regarding Whether Defendant NYCHA Had Notice of a Dangerous Condition with the Front Door.

On the instant motion, Defendant NYCHA argues that Plaintiff's claims should be summarily dismissed because, it argues: (1) Plaintiff's own testimony shows that the front door was working on the day of Plaintiff's shooting; and (2) even if the front door was not working, it lacked notice of that it was not working.

A. There Is a Triable Issue of Fact Concerning Whether the Front Door Was Functioning Moments Before the Shooting.

With regard to Defendant NYCHA's first argument, Defendant NYCHA argues that because Plaintiff attempted to use his key to open the front door and because he made sure it closed behind him, the front door was working properly, notwithstanding Plaintiff's statements to the contrary. (Oral Arg. Tr. at 7:25-9:09, 63:25-65:26.) However, Plaintiff clearly stated, in his 50-h hearing testimony, that he did not turn the key before the door opened. (50-h Hearing at 50:09-17.) As such, the Court rejects this first argument by Defendant NYCHA. (*Pearson v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009] ["The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist."].)

B. There Is a Triable Issue of Fact as to Whether Defendant NYCHA Breached a Duty by Permitting the Front Door to Malfunction Almost One-Quarter of the Time.

"In a premises liability case, the defendant property owner who moves for summary judgment has the initial burden of establishing that it did not create the defective condition or have actual or constructive notice of its existence." (*McGough v Cryan, Inc.*, 111 AD3d 900, 900 [2d Dept 2013].) Here, Defendant NYCHA met its prima facie burden by submitting evidence that the front door lock was operable and not broken on the day of the incident at the time of the inspection in the morning before the assault and therefore did not have either actual or constructive notice of a defective front door lock.

In opposition, Plaintiff provided his own testimony that the lock was not working when he entered the building. He further testified that the lock was frequently broken. However, there is no specific proof that Defendant NYCHA was aware the lock was broken at some time prior to the Plaintiff entering the building.

Notwithstanding the Defendant NYCHA's argument that the record of the morning inspection indicated the front door was operational, Defendant NYCHA's records also show that the lock had malfunctioned on 27 prior occasions in the four months preceding Plaintiff's shooting. In addition, Ms. Aliheukwu testified that on many occasions she witnessed individuals disable the magnetic lock on the front door by yanking the door back, and she further testified that she reported each

instance to her supervisor. This raises a material issue of fact as to whether Defendant NYCHA was on notice that its front door was repeatedly breaking down and whether Defendant NYCHA breached its duty by not taking measures to prevent the door from malfunctioning roughly one out of every four days during that time frame. (*Urich v. 765 Riverside LLC*, 125 AD3d 430, 431 [1st Dept 2015] [affirming denial of summary judgment to defendant landlord where plaintiff submitted "tenants' affidavits saying that there was a recurring problem with the side door to the building, i.e., that it did not close completely"].)

II. There Is a Triable Issue of Fact Concerning Whether Plaintiff Was Attacked by an Intruder Who Gained Access Through a Negligently Maintained Front Door.

> "[A] plaintiff who sues a landlord for negligent failure to take minimal precautions to protect tenants from harm can satisfy the proximate cause burden at trial even where the assailant remains unidentified, if the evidence renders it more likely or more reasonable than not that the assailant was an intruder who gained access to the premises through a negligently maintained entrance."

(*Burgos*, 92 NY2d at 551.)

Unlike cases where the assailant is unknown, in the instant case it is alleged by Plaintiff that the assailant was Defendant Lawrence. Defendant Lawrence has however denied that he committed the shooting, and, in fact, was acquitted after a criminal trial. There is no question that Defendant Lawrence was not a resident of the building, however, and he denies that he was in the building at the time of the shooting. Clearly, there is an issue of fact to be determined as to whether Lawrence was the attacker.

In addition, Defendant argues that, even if Defendant Lawrence was Plaintiff's attacker, this Court should still dismiss the case because Plaintiff's claim that Defendant Lawrence was an intruder is based on speculation. Defendant NYCHA argues that: (1) Plaintiff did not see how Defendant Lawrence entered the building; and (2) it is just as likely that Defendant Lawrence entered as a guest because "he would always be in the subject building to visit family and friends." (Memo in Supp. at 8.)

Although Defendant NYCHA provides some evidence that Defendant Lawrence had the means to enter the building as a guest—as he knew various individuals living on the premises—it has produced no evidence that Defendant Lawrence in fact entered the premises as a guest on the night of the shooting. In contrast, Plaintiff provides direct evidence that the front door was unlocked immediately before he was shot and that Defendant Lawrence approached him alone with a firearm in the hallway outside his wife's apartment. In addition, Ms. Aliheukwu testified that the front door was the only means by which tenants and their guests could enter the building. Given Plaintiff and Ms. Aliheukwu's testimony, there is a triable issue of fact concerning whether Defendant Lawrence entered premises as an intruder through a negligently maintained entrance.

III. There Are Triable Issues of Fact Concerning Whether Plaintiff's Attack Was an Unforeseeable, Intervening Force Which Severed the Causal Nexus Between Defendant NYCHA's Alleged Negligence and Plaintiff's Injuries.

Although landlords have a duty to take minimal precautions to protect their residents from criminal conduct when the risk of such harm is "reasonably predictable based on the prior occurrence of the same or similar criminal activity at a location sufficiently proximate to the subject location" (*Novikova v Greenbriar Owners Corp.*, 258 AD2d 149, 153 [2d Dept 1999]), a landlord is "not the insurer of the safety of its tenants." (*Beato v Cosmopolitan Assoc., LLC*, 69 AD3d 774, 776 [2d Dept 2010].) As such, a landlord will not be held liable where the tenant was intentionally attacked by "an unforeseeable, intervening force which severed the causal nexus between the alleged negligence of the [defendant landlord] and the complained-of injury." (*Harris v New York City Hous. Auth.*, 211 AD2d 616, 617 [2d Dept 1995]. "Thus, where a clearly-articulated motivation for an assault is shown, the truly extraordinary and unforeseeable actions of the assailant serve to break the causal connection between any negligence on the part of the defendants and the plaintiff's injuries." (*Simmons v Kingston Hgts. Apartments, L.P.*, 39 Misc 3d 1228(A) [Sup Ct, Kings County 2013].)

A. Defendant NYCHA Has Failed to Make a Prima Facie Showing That It Lacked Notice of Similar Criminal Activity.

As a preliminary matter, "to establish foreseeability, the criminal conduct at issue must be shown to be reasonably predictable based on the prior occurrence of the same or similar criminal activity at a location sufficiently proximate to the

subject location." (*Novikova*, 258 AD2d at 153.) "The risk to be reasonably apprehended in this instance is that of intrusion by outsiders with criminal motive who might do harm to those who have a right to feel at least minimally secure inside a dwelling place." (*Waters v New York City Hous. Auth.*, 69 NY2d 225, 229 [1987].) "Ambient neighborhood crime alone is insufficient to establish foreseeability." (*Buckeridge v Broadie*, 5 AD3d 298, 300 [1st Dept 2004].)

In its supplemental papers, Defendant NYCHA argues that Plaintiff has failed to present any crime statistics to establish the foreseeability of the subject crime.

On a motion for summary judgment, a defendant landlord must present prima facie evidence that it lacked notice of similar criminal activity. (*See Rodriguez v Camaway Realty, Inc.*, 96 AD3d 479, 479 [1st Dept 2012]; *Ramos v Washington 2302 Plaza Assoc., L.P.*, 136 AD3d 517 [1st Dept 2016], *lv to appeal denied*, 27 NY3d 907 [2016].) After such submission, the burden shifts to Plaintiff to raise a material issue of fact as to the foreseeability of the subject crime based on similar prior crimes in the area. (*Id.*) Here, Defendant NYCHA has failed to present prima facie evidence that it lacked notice of similar criminal activity. As such, the burden never shifted to Plaintiff to raise a triable issue of fact.

B. There Are Triable Issues of Fact Concerning Whether the Alleged Attack Severed the Causal Nexus Between Defendant NYCHA's Alleged Negligence and Plaintiff's Injuries.

In premises security cases, "to withstand summary judgment, a plaintiff need only raise a triable issue of fact regarding whether defendant's conduct proximately caused plaintiff's injuries." (*Burgos v Aqueduct Realty Corp.*, 92 NY2d 544, 550 [1998].)

As a general rule, courts will often find that the causal nexus between the defendant's alleged negligence and the plaintiff's injuries has been severed when the plaintiff appears to have been a targeted victim of a planned attack. For example, in *Cerda v 2962 Decatur Avenue Owners Corp.*, the Appellate Division, First Department affirmed summary judgment in favor of the defendant-landlord, reasoning that the alleged proximate cause—the failure to repair a front door lock—was "seriously undermined" by "a preconceived criminal conspiracy to murder the tenant" in which "a team of assassins ... was waiting for him in the hallway outside his apartment at the exact time, in the early morning, that he

arrived home from work, which team included at least a third member outside the building who coordinated with the attackers by walkie-talkie, and who made statements indicating that they were specifically targeting the tenant." (306 AD2d 169, 170 [1st Dept 2003]; *see also Harris v New York City Hous. Auth.*, 211 AD2d 616, 616–17 [2d Dept 1995] [affirming summary judgment in favor of defendant, where the decedent "was the victim of a targeted murder by a long-time enemy who had tried to kill him on at least one prior occasion"].)

Courts will also often find that the causal nexus has been severed when it appears that the attack would have occurred regardless of the allegedly defective security measures. For example, in *Tarter v Schildkraut*, "plaintiff's jilted lover followed her into the vestibule of the apartment building where she resided and shot her at point-blank range with a shotgun." (151 AD2d 414 [1st Dept 1989].) The Appellate Division, First Department reversed a verdict in favor of the plaintiff and dismissed the complaint, finding that "that the conclusion is inescapable that plaintiff's ex-lover was intent on harming plaintiff" and that he had "stalked her for that purpose." (*Id.* at 416.) As such, the First Department held that the attack "served to break the causal connection" between the non-functioning front door lock and the plaintiff's injuries. (*Id.*) The First Department further added: "We find it equally likely that had the outer door been locked, the plaintiff would have been assaulted outside of the building." (*Id.*; *see also Cynthia B. v 3156 Hull Avenue Equities, Inc.*, 38 AD3d 360, 360 [1st Dept 2007] [affirming summary judgment in favor of defendant, where the infant plaintiff was attacked by a serial rapist who posed as a plumber, finding that plaintiff's argument that "a functioning front door lock would have deterred the rapist is most unlikely"].)

On the other hand, courts will often find that the causal nexus has not been severed, as a matter of law, where "the perpetrator . . . did not intentionally target specific victims, but committed the acts randomly, based on opportunity." (*Gonzalez v Riverbay Corp.*, 150 AD3d 535, 537 [1st Dept 2017].) In *Gonzalez v Riverbay Corp.*, for example, the assailant entered the building by "piggy backing" on a tenant who entered after unlocking the front door with a key, and then sexually assaulted the plaintiff in the laundry room. The assailant had a three-year history of "piggy-backing" into the defendant-landlord's buildings and then "engag[ing] in inappropriate behavior towards women in the laundry rooms, including assaulting and following them." (*Id.*) The Appellate Division, First Department found that the "unique circumstances of this case" raised a triable issue of fact as to whether the landlord-defendant "took minimal security steps with respect to preventing his ability to easily access the interior of their buildings

and attempt to sexually assault female tenants." (*Id.*; see also *Urich v. 765 Riverside LLC*, 2014 WL 2879985, at *2-3, 2014 N.Y. Slip Op. 31621(U) [Sup Ct, NY County June 23, 2014] [Kern, J.], *aff'd* 125 AD3d 430, 431 [1st Dept 2015].)

In *Carasquillo v. Macombs Villages Associates*, the plaintiff was assaulted in a stairwell in defendant-landlord's premises, allegedly in retaliation for his participation in a previous "knife fight." (2011 WL 11060537 [Sup Ct, Bronx County February 3, 2011], *affd* 99 AD3d [1st Dept 2012].) Plaintiff offered evidence from a security guard that "he was aware that gangs would hang out in front of and in the buildings, entering the buildings via the broken front door locks." (*Id.*) In addition, evidence was submitted that "such locks had been constantly broken since their installation two to three years prior to the date of the incident." (*Id.*) The trial court denied the landlord-defendant's motion for summary judgment, reasoning that "[t]he status of the front door lock prior to and at the time of the incident, the fact that there was only one security guard on premises at the time of the assault took place, the credibility of the witnesses, and the reasonableness of those security precautions undertaken by Defendants are all questions of fact for the trier of fact." (*Id.*) The Appellate Division, First Department affirmed, further finding that the assault did not "break the causal connection" as there was no "evidence of a criminal conspiracy to assault plaintiff that is sufficient to support the conclusion that it is most unlikely that reasonable security measures, such as a functioning magnetic door lock, would have deterred the criminal participants." (99 AD3d at 456.)

It is clear from the claims as set forth by Plaintiff that the alleged shooting by Defendant Lawrence was not simply a random act, like the sexual assault in *Gonzalez*, but rather Defendant Lawrence followed Plaintiff specifically and intentionally shot him following the prior fight, as further evidenced by the alleged words of Defendant Lawrence at the time of the shooting.

At the same time, unlike the cases in which there is a longstanding feud or a planned attack over a period of time, like the attack in *Cerda, Harris, Tarter* or *Cynthia B.*, the instant case was more akin to a spontaneous act motivated by a recent physical altercation. Looking at the spectrum of cases, the instant case more closely resembles *Carasquillo*, where the plaintiff there was targeted in retribution for a recent fight. In addition, unlike the cases where courts found that the attack would likely have occurred regardless of the subject defective security measure, here the Court cannot find the same to be true as a matter of law.

The burden at trial is on Plaintiff to establish by a preponderance of the evidence that Defendant NYCHA's negligence was a proximate cause of Plaintiff's injuries. In addition, among the various triable issues of fact, Plaintiff will have to prove that Defendant Lawrence shot him and that he entered the premises as an intruder through an unlocked front door. Plaintiff will further have to prove that Defendant NYCHA breached a duty to him by failing to take measures to correct an allegedly recurring condition with the front door.

CONCLUSION

Accordingly, it is hereby

ORDERED that Defendant New York City Housing Authority's motion for summary judgment is DENIED.

This constitutes the decision and order of the Court.

Dated: February 13, 2018
New York, New York

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

1. Check one:.....
2. Check if appropriate:..... MOTION IS:
3. Check if appropriate:.....

☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE