SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANK NERVO** **PART** **04**

Justice

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EMILY MALDONADO, STEVEN TORRES

Plaintiff,

- v -

RUPPERT HOUSING COMPANY, INC.,MAXWELL KEATS,

Defendant.

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INDEX NO. 153148/2018

MOTION DATE 06/25/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents and on-the-record oral argument of July 25, 2022, the Court issues the following decision and order on defendant Ruppert Housing's motion for summary judgment dismissing the complaint against it.

As relevant here, plaintiff [1] alleges he was injured from an attack by defendant Keats that occurred at defendant Ruppert Housing's building where plaintiff was staying with Maldonado. It is undisputed that Ruppert Housing was advised by Maldonado to refuse defendant Keats entry to the building, due to threats made by Keats against Maldonado and Torres. It is further undisputed that while Ruppert Housing refused Keats access the night prior to

[1] Emily Maldonado's complaint was stricken for failure to comply with orders of this Court. Accordingly, Steven Torres is the sole remaining plaintiff.

the alleged incident – not allowing Keats entry past the building's lobby in accordance with Maldonado's instructions – the next morning, a porter/security employee of Ruppert Housing escorted Keats to Maldonado's apartment. The subsequent events are, however, disputed by the parties. Plaintiff contends that Ruppert Housing's employee knocked on the door, announced Keats' presence, was told by Maldonado and Torres that Keats was not welcome, and while waiting for Maldonado or Torres to open the door the Ruppert Housing employee left. Plaintiff contends that Keats, now unescorted, attacked him with a knife when he opened the door. Plaintiff further contends that neither he nor Maldonado expected that Keats would be unescorted when the door was opened, as the Ruppert Housing employee was present when announcing Keats. Ruppert Housing contends, however, that after escorting Keats to the apartment, plaintiff and Maldonado willingly accepted Keats as a guest, opened the door for Keats to retrieve personal possessions he had left in the apartment, and Ruppert Housing therefore bears no responsibility for the criminal acts of Keats.

Defendant Ruppert Housing cites *Flynn v. Esplande Gardens, Inc.*, for the proposition that "it is well established that a targeted attack on a resident of an apartment building does not give rise to liability on the part of the landlord for

failure to provide security. Plainly the targeted attack – evidently involving the settling of a score over an abortive romance – calls for application of this rule" (*Flynn v. Esplande Gardens, Inc.*, 76 AD3d 490 [1st Dept 2010]). While ordinarily a targeted attack does not give rise to liability, the building owner in *Flynn* was not apprised of threats of violence by the attacker, as Ruppert Housing concedes it was here. Furthermore, the attacker in *Flynn* was a frequent guest who was permitted to visit the tenant's apartment unescorted. Conversely, here, Ruppert Housing was instructed to refuse access to Keats and was informed that Keats had threatened harm against Torres and Maldonado.

Where a landlord has been expressly warned by a tenant that a third-party has threatened to harm the tenant, the tenant requests that the landlord's doorman refuse access to the third-party, and the landlord nevertheless grants access to the third-party, the landlord may not then claim an attack by the third-party is "in no way predictable" and, as a matter of law, not the proximate cause of the attack (*compare id.*; *compare also Burgos v. Aqueduct Realty Corp.*, 92 NY2d 544, 550 [1998]) Here, a question of fact exists as to the proximate cause of plaintiff's injuries; namely whether the proximate cause is defendant Ruppert Housing leaving Keats at plaintiff's door unescorted without informing

plaintiff that the escort was leaving or whether the proximate cause is plaintiff opening the door to Keats.

Turning to plaintiff's cross-motion seeking to depose the Ruppert Housing employee who initially escorted Keats to the apartment door, the Court notes that plaintiff filed a note of issue on April 30, 2021. A note of issue should be vacated where "it is based upon a certificate of readiness that incorrectly states that all discovery has been completed" (*Nielsen v. New York State Dormitory Auth.*, 84 AD3d 519, 520 [1st Dept 2011]; *Matos v. City of New York*, 154 AD3d 532 [1st Dept 2017]). A party may not seek additional discovery after the NOI has been filed, absent "special, unusual or extraordinary circumstances" (*Goldsmith v. Howmedica, Inc.*, 158 AD2d 335, 336 [1st Dept 1990]; *see also Grant v Wainer*, 179 AD2d 364 [1st Dept 1992]). At any time where it appears a party has made a material misstatement in the certificate of readiness or the certificate otherwise fails to comply with 22 NYCRR § 202.21, the Court may, *sua sponte*, vacate the note of issue (22 NYCRR § 202.21[e]).

Here, the note of issue improperly seeks to reserve discovery and concedes that the matter is not ready for trial. It is beyond cavil that the note of issue should not have been filed with such reservations.

Accordingly, it is

ORDERED that defendant Ruppert Housing's motion for summary judgment is denied; and it is further

ORDERED that plaintiff's cross-motion seeking further depositions is granted to the extent of striking plaintiff's note of issue as improperly filed; and it is further

ORDERED that counsel shall confer regarding outstanding discovery, including depositions; and it is further

ORDERED that plaintiff's counsel shall, within 14 days of this decision and order, file, via NYSCEF with courtesy hard copy to chambers, a joint proposed order addressing all outstanding discovery, including filing of a proper note of issue; and it is further

ORDERED that should counsel be unable to reach agreement on outstanding discovery, counsel shall file contemporaneously with any proposed order, via NYSCEF with courtesy hard copy to chambers, a single joint letter outlining the parties' positions on outstanding discovery; and it is further

ORDERED that failure to timely file the above proposed order and/or letter shall constitute waiver of outstanding discovery.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

August 22, 2022

DATE

HON. FRANK P. NERVO J.S.C.

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