

Perez v McFarlane
2005 NY Slip Op 03755
Decided on May 5, 2005
Appellate Division, First Department
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Decided on May 5, 2005

Tom, J.P., Andrias, Sullivan, Williams, Gonzalez, JJ.
5021

[*1]Jennifer Perez, Plaintiff-Respondent,

v

Byron McFarlane, et al., Defendants-Appellants.

Lester Schwab Katz & Dwyer, LLP, New York (Harry Steinberg of counsel), for appellants.
Pollack, Pollack, Isaac & DeCicco, New York (Brian J. Isaac of counsel), for respondent.

Order, Supreme Court, Bronx County (Barry Salman, J.), entered June 22, 2004, which denied defendants' motion for summary judgment dismissing the complaint, unanimously reversed, on the law, without costs, the motion granted and the complaint dismissed. The Clerk is directed to enter judgment accordingly.

Absent any proof other than plaintiff's unsupported and speculative claim that the intruder, who assaulted her in her apartment, gained access to the premises through a window in an adjacent garage/office that had been left open on two occasions several months earlier, the claim that defendants' negligence or inadequate security measures permitted the intruder to gain entry is insufficient to defeat defendants' motion for summary

judgment

(see *Melville v New York City Hous. Auth.*, 242 AD2d 244, 245 [1997]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 5, 2005

CLERK

[Return to Decision List](#)