

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24602
Y/hu/prt

_____AD3d_____

Argued - September 25, 2009

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2008-07901

DECISION & ORDER

Michael M. Bassett, et al., respondents, v City
of Rye, appellant.

(Index No. 20430/05)

Joseph A. Maria, P.C., White Plains, N.Y., for appellant.

Gerard A. Falco, Harrison, N.Y., for respondents.

In an action to recover damages for false arrest and malicious prosecution pursuant to 42 USC § 1983, the defendant appeals from an order of the Supreme Court, Westchester County (Liebowitz, J.), entered July 2, 2008, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

On February 10, 2004, the plaintiff Michael M. Bassett (hereinafter the plaintiff) hosted a reception at the Milton Fire House in the City of Rye following his father's funeral. The plaintiff paid to have the reception catered with food, wine, and beer. The beer was stored in a cooler behind a bar, and it was not served, but rather, guests helped themselves to it. It is undisputed that a friend of the plaintiff's son, Scott Graham, who was under the age of 21 at the time, attended the reception after being invited by the plaintiff's wife, the plaintiff Cathyann Bassett. As the plaintiff eventually learned, after Graham left the reception, he was involved in a motor vehicle accident. The plaintiff also learned that beer was found in Graham's vehicle.

After a prior charge against the plaintiff was dismissed or withdrawn, the plaintiff was

charged with unlawfully dealing with a child in the first degree (*see* Penal Law § 265.20[a][2]). However, by order dated February 14, 2005, the City Court of the City of Rye granted the plaintiff's motion to dismiss the superseding misdemeanor information.

By verified complaint dated June 15, 2006, the plaintiffs commenced this action against the defendant City of Rye to recover damages for false arrest and malicious prosecution pursuant to 42 USC § 1983. The defendant moved for summary judgment dismissing the complaint, arguing, *inter alia*, that the plaintiff could not establish that a policy or custom employed by it caused the alleged constitutional violations. The Supreme Court denied the defendant's motion, determining that triable issues of fact remained. We affirm.

“A 42 USC § 1983 action may lie against a municipality if the plaintiff shows that the action that is alleged to be unconstitutional either implement[s] or execute[s] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers or has occurred pursuant to a practice so permanent and well settled as to constitute a custom or usage with the force of law” (*Maio v Kralik*, _____AD3d_____, 2009 NY Slip Op 08187[2d Dept 2009] [citations and quotations omitted]; *see Monell v Department of Social Servs. of City of N.Y.*, 436 US 658, 690; *Adickes v S. H. Kress & Co.*, 398 US 144, 167-168; *Pendleton v City of New York*, 44 AD3d 733, 736). “[A] municipality may only be held liable under [42 USC] § 1983 for the unconstitutional actions of its employees if those acts were the result of a municipal policy, practice or custom” (*Maio v Kralik*, _____AD3d_____, 2009 NY Slip Op 08187 [2d Dept 2009], quoting *Ponder v Albany County Sheriff's Dept.*, 307 AD2d 602, 602).

Here, in opposition to the defendant's *prima facie* showing of entitlement to judgment as a matter of law, the plaintiff raised a triable issue of fact as to whether the defendant's arrest and prosecution of him, which he alleges violated his rights under 42 USC § 1983, resulted from a policy, practice, or custom of the defendant (*see generally Zuckerman v City of New York*, 49 NY2d 557). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint.

The defendant's remaining contention is without merit.

DILLON, J.P., DICKERSON, LOTT and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court