

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

D29721
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Submitted - December 20, 2010

RUTH C. BALKIN, J.P.
RANDALL T. ENG
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-00499
2010-00501

DECISION & ORDER

Fitzroy Campbell, appellant, v County of Westchester,
et al., respondents.

(Index No. 11466/09)

Harold Chetrick, P.C., New York, N.Y., for appellant.

Robert F. Meehan, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and Martin G. Gleeson of counsel), for respondents County of Westchester, Westchester County Police Department, Westchester County Department of Public Safety Services, and Police Officer “John” Tierney.

Loretta J. Hottinger, Corporation Counsel, Mount Vernon, N.Y. (Hina Sherwani of counsel), for respondent City of Mount Vernon.

In an action, inter alia, to recover damages for false arrest and false imprisonment, the plaintiff appeals from (1) an order of the Supreme Court, Westchester County (Smith, J.), entered October 26, 2009, which granted the motion of the defendants County of Westchester, Westchester County Police Department, Westchester County Department of Public Safety Services, and Police Officer “John” Tierney, inter alia, pursuant to CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against them, and (2) an order of the same court dated December 16, 2009, which granted the motion of the defendant City of Mount Vernon for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that orders are affirmed, with one bill of costs to the defendants appearing separately and filing separate briefs.

January 18, 2011

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The plaintiff commenced this action against the County of Westchester and the City of Mount Vernon, among others, to recover damages for false arrest and false imprisonment, arising out of an arrest effectuated by an officer of the Westchester County Police Department.

The Supreme Court properly granted the motion of the defendants County of Westchester, Westchester County Police Department, Westchester County Department of Public Safety Services, and Police Officer “John” Tierney, inter alia, pursuant to CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against them. The documentary evidence submitted by these moving defendants conclusively established that the plaintiff was arrested pursuant to a facially valid arrest warrant issued by a court having jurisdiction, thus defeating the causes of action to recover damages for false arrest and false imprisonment (*see Broughton v State of New York*, 37 NY2d 451, 457, *cert denied sub nom. Schanbarger v Kellogg*, 423 US 929; *Johnson v Kings County Dist. Attorney’s Off.*, 308 AD2d 278, 286; *Russo v Village of Port Chester*, 198 AD2d 408; *Saunsen v State of New York*, 81 AD2d 252, 253).

The Supreme Court also properly granted the motion of the City of Mount Vernon for summary judgment dismissing the complaint insofar as asserted against it. In opposition to the City’s prima facie showing of entitlement to judgment as a matter of law, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

The plaintiff’s remaining contentions are either without merit or not properly before this Court.

BALKIN, J.P., ENG, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court