

El-Bey v NYPD 63rd Precinct

2012 NY Slip Op 31755(U)

June 29, 2012

Supreme Court, New York County

Docket Number: 107234/11

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

BARBARA JAFFE
J.S.C.

PRESENT: _____
Justice

PART 5

Stanley Aristilde EL-Bey
-v-
NYPD 63rd Precinct, ET AL

INDEX NO. 107234/11

MOTION DATE _____

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) _____

Answering Affidavits — Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

JUL 05 2012

NEW YORK
COUNTY CLERK'S OFFICE

BARBARA JAFFE
J.S.C.

Dated: 6-29-12

JUN 29 2012

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
STANLEY ARISTILDE EL-BEY,

Index No. 107234/11

Plaintiff,

Motion subm.: 3/27/12
Motion seq. nos.: 001,

-against-

DECISION AND ORDER

NYPD 63rd PRECINCT, RICHARD W. LYMAN, DA
OF KINGS COUNTY, DA OF KINGS COUNTY,

Defendants.

FILED

JUL 05 2012

-----X
BARBARA JAFFE, JSC:

For plaintiff self-represented:
Stanley Aristilde El-Bey
1653 Brooklyn Ave.
Brooklyn, NY 11210

For Solimine:
Kenneth D. Litwack, Esq.
Kenneth D. Litwack, P.C.
38-08 Bell Blvd., 2nd Fl.
Bayside, NY 11361
718-428-4806

For City defendants:
Stacey L. Cohen, ACC
Michael A. Cardozo
Corporation Counsel
100 Church St., 4th Fl.
New York, NY 10007
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NEW YORK COUNTY CLERK'S OFFICE

By order to show cause dated December 21, 2011, plaintiff moves for an order directing Marshal Solimine, DOF Brooklyn Business Center, and the New York City Department of Finance (DOF), whom plaintiff characterizes as defendants in this action, to release or return to him his motor vehicle being held by them. He alleges, in essence, that the vehicle is illegally held as "ransom." Solimine and the NYPD 63rd Precinct (NYPD) oppose.

By notice of motion dated December 30, 2011, the NYPD moves pursuant to CPLR 3211(a)(7) dismissing the complaint against it.

By notice of motion dated January 23, 2012, Solimine moves pursuant to CPLR 3211(a)(7) for an order dismissing the complaint against him.

The pertinent facts follow: On October 27, 2011, the DOF issued an execution authorizing Solimine to seize a motor vehicle owned by plaintiff's brother Dave Aristilde, for

whom he proceeds by power of attorney, based on a judgment entered against him in the sum of \$424.07 for unpaid parking violations. Solimine seized the vehicle on November 2, 2011.

(Affirmation of Kenneth D. Litwack, Esq., dated Dec. 27, 2011, Exhs. A, B).

By summons and complaint dated June 21, 2011, plaintiff sues defendants for assault and battery, usury, unlawful detention and transportation, false imprisonment, and conspiracy.

Here, plaintiff has failed to allege or prove that his the parking violations were ever paid or that a valid judgment was not entered against his brother. (Vehicle & Traffic Law § 237[2], [5], § 241; Admin. Code of the City of New York § 19-203[e]). There being no cognizable issue raised as to the validity of the judgment, the DOF was authorized to enforce it by seizing the vehicle. (Vehicle & Traffic Law § 237[5]; Admin. Code § 19-207, § 19-212 [motor vehicle may be seized to satisfy judgment for outstanding parking violations if judgment greater than \$350]; *see Matter of Frierson v NYC Parking Violations Bureau*, 239 AD2d 190 [1st Dept 1997] [seizure of vehicle authorized based on outstanding parking violations]).

Plaintiff has also not shown that that Dave Aristilde received no notice of the proposed judgment or seizure, or that the execution issued for the seizure was invalid. (*See Hindi v City of New York*, 12 Misc 3d 132[A], 2006 NY Slip Op 51151[U] [App Term, 1st Dept 2006] [while plaintiff alleged that City improperly towed vehicle, he did not prove that outstanding parking violations for which vehicle was towed were not issued against him or that City seized vehicle without proper notice]; *compare Firstar Equip. Fin. v Jonathan Travel & Tours, Inc.*, 292 AD2d 275 [1st Dept 2002] [as no judgment was entered, execution was invalid and seizure of vehicle was nullity]). Rather, he levels a variety of contentions without alleging any factual or legal basis. Consequently, he has failed to establish any ground upon which defendants must be

directed to return the vehicle to him.

While plaintiff's motion is directed at Marshal Solimine, DOF Brooklyn Business Center, and DOF, his complaint does not name them as defendants, nor is there any proof that they were served with the summons and complaint. Consequently, the court has no basis upon which to exercise jurisdiction over them in this action.

Moreover, as the NYPD cannot be sued, the complaint is dismissed against it. (New York City Charter § 396 [all actions and proceedings to be brought in name of City and not in that of any City agency]; *see Jenkins v City of New York*, 478 F3d 76, fn 19 [2d Cir 2007] [NYPD is non-suable City agency]; *Wims v New York City Police Dept.*, 2011 WL 2946369 [SD NY 2011] [dismissing claim against NYPD as it could not be sued independently from City]).

And, as Solimine seized the vehicle pursuant to a lawful and valid execution, he may not be held liable for it. (85 NY Jur 2d Police, Sheriffs, Etc. § 174 [2012] [marshal not personally liable if he or she obeys mandate of court]; *see eg Rodriguez v 1414-1422 Ogden Ave. Realty Corp.*, 304 AD2d 400 [1st Dept 2003] [dismissing claim against marshal for executing invalid warrant absent proof she knowingly or negligently executed warrant]; *Mayes v UVI Holdings, Inc.*, 280 AD2d 153 [1st Dept 2001] [same]).

Accordingly, it is hereby

ORDERED, that plaintiff's motion is denied; it is further

ORDERED, that defendant NYPD 63rd Precinct's motion for summary judgment is granted, and the complaint is hereby dismissed and severed against it, and the Clerk is directed to enter judgment in favor of said defendant; it is further

ORDERED, that defendant Solimine's motion for summary judgment is granted, and the

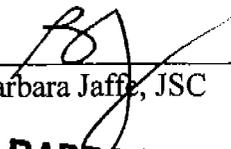
complaint is hereby dismissed and severed against him, and the Clerk is directed to enter judgment in favor of said defendant; and it is further

ORDERED, that as there is no longer a defendant in this matter being represented by Corporation Counsel, the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Plaintiff shall serve a copy of this order on all other parties and the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled.

ENTER:

FILED

JUL 05 2012


Barbara Jaffe, JSC

NEW YORK
COUNTY CLERK'S OFFICE

BARBARA JAFFE
J.S.C.

DATED: June 29, 2012
New York, New York

JUN 29 2012