

Taebi v Suffolk County Police Department

2005 NY Slip Op 30306(U)

January 13, 2005

Supreme Court, Suffolk County

Docket Number: 00-30248

Judge: Arthur G. Pitts

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SHORT FORM ORDER

INDEX No. 00-30248

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 43 - SUFFOLK COUNTY

PRESENT:

Hon. ARTHUR G. PITTS
Justice of the Supreme Court

MOTION DATE 8-25-04
ADJ. DATE 12-2-04
Mot. Seq. # 001 - CASEDISP

-----X		
NAGHMEH TAEBI,	:	RAPPAPORT, GLASS, GREENE &
	:	LEVINE, LLP
Plaintiff,	:	Attorneys for the Plaintiff
	:	500 Fifth Avenue, Suite 1150
- against -	:	New York, New York 10110
	:	
SUFFOLK COUNTY POLICE DEPARTMENT	:	CHRISTINE MALAFI, ESQ.
and THE COUNTY OF SUFFOLK,	:	Suffolk County Attorney
	:	By: Susan A. Flynn, Esq.
	:	100 Veterans Memorial Highway
Defendants.	:	Hauppauge, New York 11788-0099
-----X		

Upon the following papers numbered 1 to 20 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 8; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 9 - 19; Replying Affidavits and supporting papers _____; Other defendant's memorandum of law - 20; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by defendants for summary judgment pursuant to CPLR 3212 dismissing the complaint is granted.

This action arises out of an incident that occurred on February 12, 2000 when plaintiff Naghmeh Taebi ("Taebi") was stabbed numerous times by her former live-in paramour, John Gardella ("Gardella").

Plaintiff alleges in her complaint, among other things, that defendants negligently failed to arrest Gardella; that defendants assumed and owed to plaintiff a special duty; that defendants failed to protect plaintiff and warn her that Gardella had not been arrested and was still at large; that defendants assured plaintiff that protection would be afforded her; that plaintiff relied upon defendant's assurances and was "lulled" into a false sense of security; and that as a result of the foregoing, plaintiff sustained her injuries. Defendants interposed an answer which contains general denials and fourteen affirmative defenses.

Defendants, Suffolk County Police Department (“SCPD”) and The County of Suffolk (“the County”) now move for an order granting them summary judgment dismissing the complaint pursuant to CPLR 3212. In support of this motion, defendants have submitted, *inter alia*, the affirmation of counsel, the pleadings, plaintiff’s verified bill of particulars, and transcripts of plaintiff’s testimony at her 50-H hearing on May 31, 2000, and of her deposition which was taken on October 31, 2001. Defendants argue, among other things, that plaintiff cannot demonstrate that a special duty existed sufficient to give rise to liability between the plaintiff and the SCPD or the County, or that the actions by the defendants were the proximate cause of the plaintiff’s injuries.

In opposition to this motion, plaintiff has submitted, among other things, the affirmation of counsel; plaintiff’s affidavit in opposition; and excerpts of transcripts of the depositions of SCPD officers, Otiz, F. Cimcchitano,¹ Longo and Mamay.² Plaintiff argues, among other things, that a special duty existed and that she relied upon representations by various officers employed by the SCPD to her detriment.

Plaintiff testified at her deposition taken on October 31, 2001, *inter alia*, that she first contacted the SCPD concerning her relationship with Gardella on February 1, 2000. At that time, the parties had been living together but plaintiff decided to move to her own residence. While plaintiff was attempting the move, Gardella physically tried to restrain her and, in doing so, pushed her to the ground. At plaintiff’s request, a neighbor called for police assistance and two officers came to the scene. However, she did not ask the police to arrest Gardella. After she moved, she saw Gardella a few times at his insistence. He repeatedly came to her place of business and called her. He also found out where she lived and visited her a few days later. She initially told him to stop calling and visiting her, but she did not report the incident or ask for police assistance. At this time, she did not know to deal with him because he became “so calm, so nice” after the February 1, 2000 incident. A few days later, Gardella came to her residence and she allowed him inside to watch her cable television. He stayed about two hours without incident. However, since she no longer wanted him in her life, she formulated “a plan.” She called him and told him, among other things, that he should move in with his mother who was in Florida, and that she eventually would move in with him after she was divorced. She became “scared” when Gardella figured out that her plan was to get away from him. Gardella subsequently called her at work and she spoke with him. She also called him and invited him over so they could speak “face to face.” On February 9, 2000, plaintiff allowed Gardella to pick her up from work and take her to his house. As soon as she arrived at his house, he “turned violent again” and started yelling at her. She immediately left and decided to walk home after

¹ The Court notes that plaintiff’s opposition papers include hand corrections of the name of precinct crime scene officer “Cimcchitano” to “Schicatno.”

² The Court notes that the excerpts submitted do not include front and back pages for each witness, and that the excerpts themselves are incomplete.

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refusing a ride from him. As she was walking, Gardella followed her in his vehicle, yelling insults at her. According to plaintiff, Gardella was pressing the gas and vehicle's brakes repeatedly and tried to hit her with his vehicle. She called out for someone to help her and went to a nearby service station. She initially asked the station employee if she could get in and use a telephone, but she was directed to an outside pay phone as the station was closed. The attendant then offered to call the police for her, but she declined. She did not immediately report this incident to the police because she had to work the next day. Instead, she went directly home and put a hammer "behind her pillow." Two days later, February 11, 2000, plaintiff took a taxi to her local police precinct arriving at approximately 12 p.m. Inside, she spoke to several officers. She told one officer that she "had a problem" with Gardella; that she was breaking up with him; that he was "going crazy;" and that he "wanted to hit her" with his car two days prior. She also told the officer that she wanted Gardella's harassing phone calls to stop. When she asked if she should get an order of protection, she was told that someone would get in contact with her. However, she never specifically requested that Gardella be arrested. On February 12, 2000, the day of the incident, she decided to walk home from a service station as her car had not yet been properly repaired. As she was walking, she saw Gardella at a distance waiting for her. After she thought that she would be alright, he suddenly grabbed her and pulled her towards his car. He tried to kiss her. She told him that their relationship was over. She further testified that as she tried to pull away, Gardella suddenly began stabbing her repeatedly. Lastly, plaintiff testified that she was rescued by a bystander and was taken to Huntington Hospital.

Probationary Police Officer Anthony Ortiz testified, *inter alia*, that he took down a domestic incident report dated February 11, 2000 from information supplied to him by plaintiff. He advised his supervisor, Frank "Chicatan," of what he had written on his report.³ Officer Chicatan advised him that he would not be able to interview the complainant at that time but that she would be interviewed at another time. He further testified that the Precinct Crime Section oversees domestic incident reports.

Precinct Crime Section Officer F. Cimchitano testified, among other things, that he received a phone call from officer Ortiz on the date of the incident. Ortiz told him that a woman wanted to make a harassment complaint against her "boyfriend." It is then investigated. According to Cimchitano, if the complaint is of a violent nature, the SCPD will go out and look for the accused, and if a person wants a former lover to stop calling, sometimes an arrest is warranted. In his opinion, sometimes, "all the complainant wants" is for the other person to stop calling and for an admonition that the accused will be arrested if he calls again. According to Cimchitano, a certain amount of discretion is involved. Ortiz told him that plaintiff did not want to pursue charges. So he told Ortiz to take information from plaintiff and "send it through

³ The Court notes that the excerpts of the deposition transcript of P.O. Ortiz includes a phonetic description of precinct crime scene officer name as "Chicatan." This officer's name is spelled "Cimchitano" throughout the transcript of his deposition, and he is referred to as "Schicatan" in plaintiff's opposition papers.

the channels.”

Police Officer Longo testified, *inter alia*, that he had spoken with Officer Ortiz about the plaintiff’s incident. He had reviewed the report that Ortiz had prepared. Normal procedure would have involved contacting Precinct Crime Section (PCS) and the complainant being interviewed. PCS would do one of three things. PCS would either request a criminal summons through a court, or request that a warrant be issued, or go out and make a summary arrest of the subject. Ortiz told him that plaintiff had left the station. It was his opinion that plaintiff wanted to press charges against Gardella and have him arrested.

Police Officer Mamay testified that Gardella advised that he had thrown plaintiff down on the ground.⁴ Gardella also said that plaintiff did not like him and that he did not like plaintiff. Mamay told plaintiff during the investigation that she could request a civilian arrest but that she “refused.” Specifically, Mamay recalled that plaintiff said that she did not want defendant arrested, and that she only wanted him to leave.

As a rule, municipalities are immune from tort liability when their employees perform discretionary acts involving the exercise of reasoned judgment. In a narrow exception to the rule, tort claims have been upheld when plaintiffs have established a special relationship between the municipality and the injured party (*Pelaez v Seide*, 2 NY3d 186, 193, 778 NYS2d 111 [2004]). To establish that a special relationship exists, a plaintiff must demonstrate ““(1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality’s agents that inaction could lead to harm; (3) some form of direct contact between the municipalities’ agents and the injured party; and (4) that party’s justifiable reliance on the municipality’s affirmative undertaking”” (*Gillette v City of Elmira*, 285 AD2d 909, 727 NYS2d 821 [3d Dept 2001] at 910, quoting *Cuffy v City of New York*, 69 NY2d 255, 260, 513 NYS2d 372 [1987], *motion to amend remittur dismissed* 70 NY2d 667). Further, “[w]hile the existence of a special relationship depends on the facts, a plaintiff has a heavy burden in establishing such a relationship” and the Court of Appeals has “dismissed most such claims as a matter of law” (*Pelaez v Seide*, *supra* at 186, 193 n 8).

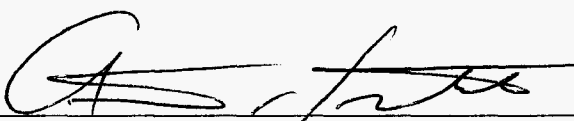
Here, although plaintiff directly contacted the SCPD, she fails to raise a triable issue of fact as to the other necessary three elements. More specifically, since the SCPD’s completion of incident reports on February 1, 2000 and February 11, 2000 constitute nothing more than the performance of a duty owed to the public generally, these acts alone are insufficient to create a special duty to plaintiff (*see, Florence v Goldberg*, 44 NY2d 189, 404 NYS2d 583 [1978]; *Bishop v Bostick*, 141 AD2d 487, 529 NYS2d 116 [2d Dept 1988]). Even if there was a duty, there is no proof that such duty had been breached or that defendants’ alleged negligence constituted a concurrent proximate cause of plaintiff’s injury (*see, Evers v Westerberg*, 32 NY2d

⁴ The testimony of Officer Mamay appears to relate to the plaintiff’s February 1, 2000 incident.

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Westerberg, 32 NY2d 684, 343 NYS2d 361 [1973]). In any event, plaintiff has failed to establish justifiable reliance in light of, *inter alia*, her voluntary involvement with Gardella after the February 1, 2000 incident (see, *Merced v City of New York*, 75 NY2d 798, 552 NYS2d 96 [1990]; *Kircher v City of Jamestown*, 74 NY2d 251, 544 NYS2d 995 [1989]; *Hancock v City of New York*, 230 AD2d 603, 645 NYS2d 797 [1st Dept 1996]; *c.f.*, *Sorichetti v City of New York*, 65 NY2d 461, 492 NYS2d 591 [1985]). Accordingly, defendants' motion is granted and plaintiff's complaint is dismissed in its entirety.

Dated: January 13, 2005



J.S.C.

 X FINAL DISPOSITION NON-FINAL DISPOSITION