

Hassan v Moran ID No. 906866
2006 NY Slip Op 30130(U)
June 12, 2006
Supreme Court, New York County
Docket Number: 0400669/2007
Judge: Eileen A. Rakower
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SCANNED ON 6/19/2007

5

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Rakower

PART 5

Index Number : 400669/2007

HASSAN, ALAMIN O.

vs

MORAN ID NO. 906866

Sequence Number : 001

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits Cross Motion

Replying Affidavits _____

PAPERS NUMBERED

1
2

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED

JUN 19 2007

COUNTY CLERK'S OFFICE
NEW YORK

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

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

Dated: 6/13/07



EILEEN A. RAKOWER J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

-----X
ALAMIN HASSAN O.,

Plaintiff,

Index No.
400669/07

- against -

Decision and
Order

MORAN ID NO. 906866 and NEW YORK CITY,

Defendants.

-----X
HON. EILEEN A. RAKOWER

Plaintiff, appearing *pro se*, brings this action for alleged violation of his constitutional rights, battery, assault, false imprisonment, intentional infliction of emotional distress, invasion of right to privacy, “intentional and negligent misrepresentation”, “wrongful institution of legal procedure” and “negligence.” Plaintiff’s claims stem from his arrest at or near the intersection of 58th Street and 5th Ave., New York, New York. Defendant the City of New York (“City”) moves to dismiss plaintiff’s causes of action which are time barred pursuant to CPLR 3211, namely: false arrest, false imprisonment, assault, battery, and defamation, and dismissal of his claims for intentional infliction of emotional distress and negligent hiring and or retention. Plaintiff cross moves for “summary judgment.”

The City, in support of its motion, argues that plaintiff’s claims for false arrest, false imprisonment, assault, battery and defamation are untimely. City submits that plaintiff did not file his summons and complaint until June 29, 2006, after the applicable One year and Ninety day statute had run. City, assuming that by “negligence” plaintiff intends a negligent hiring claim, next argues that it must be dismissed because the police officer who arrested plaintiff was acting in the scope of his employment and thus the theory of respondeat superior applies and precludes the negligent hiring claim. Regarding the claim of intentional infliction of emotional distress, City claims that it should be dismissed as a matter of public policy because such action cannot be taken against the state.

Plaintiff, in his opposition, argues that the statute of limitations ran on Sunday June 28, 2006 and thus he was entitled to file his claim on the next business day, June 29, 2006. Plaintiff cross moves for summary judgment claiming that City left "several statements without answer in specificity and particularity" in its answer and thus, in effect, admitted to these accusations.

Initially, the date of the occurrence is not clear to this court. Plaintiff's notice of claim lists the date as March 29, 2005 yet in his summons and complaint he states that the date of occurrence is March 30, 2005. To further confuse the issue, a letter from a Civilian Complaint Review Board investigator submitted by plaintiff refers to the incident date as March 28, 2005.

Even in the light most favorable to the plaintiff, if the alleged incident occurred on March 30, 2005, the statute would have expired on June 28, 2006. The court takes judicial notice that June 28, 2006 fell on a Wednesday, contrary to plaintiff's claim. Thus, plaintiff's claims for false arrest, false imprisonment, assault, battery and defamation are time barred and must be dismissed. The claim for intentional infliction of emotional distress is time barred and must be dismissed because the statute of limitations for intentional torts is One year.

Plaintiff states in his complaint that the defendant officer was "duly appointed and acting as such capacity as a police officer for New York City". City agrees that the officer was acting within the scope of his employment when he arrested plaintiff. A claim for negligent hiring cannot be brought when a tort was committed while an agent is acting within the scope of their employment. Thus, plaintiff's claim for negligent hiring must also be dismissed (*Karoon v. New York City Transit Authority*, 241 A.D.2d 323 (1st Dept. 1997)). However, plaintiff's remaining claim for constitutional violations is viable as the statute of limitations for a civil rights claim against a municipality is three years. (*Lopez v. Shaughnessy*, 260 A.D.2d 551 (2nd Dept. 1999))

The court now turns to plaintiff's cross-motion for summary judgment based on the City's answer. Plaintiff claims that the City answered "all paragraph of by number and general denial" and thus does not satisfy CPLR §3018. Specifically, plaintiff claims that City did not sufficiently answer paragraphs 18, 19, 21, 22, 28, 1, 2, 11, 14, 16, 17, and 20. CPLR 3018(a) states, in relevant part:

A party shall deny those statements known or believed by him to be untrue. He shall specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial.

Paragraph (1) of City's answer states:

Deny each allegation set forth in paragraph(s) 18, 19, 21, 22, 25-28, inclusive

Paragraph (2) of City's answer states:

Deny knowledge or information sufficient to form a belief with respect to the truth of allegations set forth in paragraph(s) 1,2,11-14,16,17,20, inclusive.

The City has satisfied CPLR 3018(a) as to the specific paragraphs that plaintiff claims were insufficiently answered. Thus, plaintiff's cross motion is without merit.

FILED

JUN 19 2007

Wherefore it is hereby

ORDERED that defendant the City of New York's motion is granted to the extent that plaintiff's claims, listed in his complaint under "second cause of action" for false arrest, false imprisonment, assault, battery and intentional infliction of emotional distress are dismissed as time barred, and it is further

COUNTY CLERK
NEW YORK

ORDERED that plaintiff's claim for negligent hiring and/or retention listed in his complaint under "second cause of action" is dismissed, and it is further

ORDERED that plaintiff's cross motion for "summary judgment" is denied.

The case in all other respects continues.

DATED: JUNE 12, 2007



EILEEN A. RAKOWER, J.S.C.