

Richards v Port Auth. of N.Y. & N.J.

2007 NY Slip Op 31670(U)

June 13, 2007

Supreme Court, Queens County

Docket Number: 0000242/2006

Judge: Kevin Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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WAYNE RICHARDS,

Plaintiff,

Index
Number: 242/06

- against -

Motion
Date: 05/29/07

PORT AUTHORITY OF NEW YORK AND
NEW JERSEY, PORT AUTHORITY POLICE
DEPARTMENT, COUNTY OF BERGEN,
BERGEN COUNTY POLICE DEPARTMENT,
THE CITY OF NEW YORK, THE NEW YORK CITY
CORRECTIONS DEPARTMENT and PAPD
DETECTIVE TERRY NG, SHIELD #67,

Motion
Cal. Number: 16

Motion Seq. No. 1

Defendants.

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The following papers numbered 1 to 21 read on this motion by defendant the City of New York and the New York City Corrections Department (hereinafter collectively referred to as the City) to amend its answer to include the affirmative defenses of res judicata and collateral estoppel, for summary judgment dismissing the complaint as against it, and cross-motion by defendants Port Authority and PAPD Detective Tery NG to dismiss the complaint, pursuant to CPLR 3211(a)(2) and (8)or, in the alternative, to amend its answer to assert cross-claims against defendants County of Bergen, Bergen county Police Department and the City.

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Upon the foregoing papers it is ordered that the motion is

decided as follows:

Motion by the City to amend its answer to include the affirmative defenses of res judicata and collateral estoppel and for summary judgment dismissing the complaint as against it is granted in all respects.

Plaintiff had commenced an action (Index No. 8510/04) against the City of New York (sued therein as "The City of New York, New York City Police Department") and individual police officers alleging false arrest, false imprisonment, violation of his civil rights pursuant to 42 U.S.C. §1983, negligence and intentional infliction of emotional distress arising from his arrest on January 18, 2003 at JFK Airport in Queens County.

Plaintiff had been taken into custody at JFK by Port Authority police based upon an outstanding warrant issued by Bergen County, N.J. for the arrest of one Wayne Richards bearing the social security number of plaintiff. Plaintiff was taken to the Port Authority precinct and questioned. New Jersey authorities, as well as plaintiff's sister, were contacted to confirm that he was the individual wanted in the warrant. He was then placed under arrest and after being held in a cell, he was transported from the Port Authority precinct to a New York City Department of Corrections facility. He was arraigned in Criminal Court a few days later and New Jersey police took him into custody and brought him to New Jersey. It was then determined that plaintiff was not the individual wanted in the warrant and was released on January 25, 2003.

The City moved for summary judgment dismissing the complaint against it, which motion was granted pursuant to the order issued by Justice David Elliott on August 4, 2006. That Court held that the City was entitled to dismissal of the action against it, since plaintiff was not arrested by employees of the City but by employees of the Port Authority, a completely separate and distinct legal entity. Even were they arrested by City employees, that Court held that the City was entitled to summary judgment on plaintiff's cause of action for false arrest and imprisonment, since there was probable cause for plaintiff's arrest and imprisonment, given the facially valid warrant. As to plaintiff's §1983 claim, plaintiff failed to demonstrate that the City or any City employee violated plaintiff's Constitutional rights. In addition, the City was entitled to summary judgment as to plaintiff's cause of action for negligence, since a plaintiff seeking damages stemming from a false arrest and detention may not recover under general principles of negligence. Finally, the City was entitled to summary judgment dismissing plaintiff's cause of action alleging intentional

infliction of emotional distress, since public policy prohibits recovery against a municipality on such claims.

Plaintiff, thereafter, commenced the action herein alleging two causes of action. The first cause of action alleges violation of plaintiff's civil rights pursuant to §1983 and the second cause of action alleges negligence.

Since the second action herein is based upon the same transaction or occurrence, involves the same parties, viz. plaintiff and the City, and alleges the same causes of action as the first action that was finally determined, it is barred as against the City by the doctrine of res judicata (see Timoney v. Newmark & Company Real Estate, Inc., 36 AD 3d 686 [2nd Dept 2007]; Allstate Ins. Co. v. Williams, 29 AD 3d 688 [2nd Dept 2006]; Coliseum Towers Assocs. v. County of Nassau, 217 AD 2d 387 [2nd Dept 1996]).

Plaintiff has neither alleged nor demonstrated any prejudice to the granting of that branch of the motion seeking amendment of the City's answer to include the affirmative defenses of res judicata and collateral estoppel.

Accordingly, the motion is granted. The amended answer is deemed served and filed nunc pro tunc, and upon such amendment, the complaint is dismissed in its entirety as against the City. The New York City Corrections Department is an agency of the City (see NYC Charter §621). As such, it is not a separate entity from the City and, thus, is not a proper party defendant.

Cross-motion by defendants Port Authority and PAPD Detective Tery NG to dismiss the complaint, pursuant to CPLR 3211(a)(2) is granted only with respect to the Port Authority.

Any suit, action or proceeding against the Port Authority must be commenced within one year after the cause of action accrues (see McKinney's Unconsolidated Laws of NY §7107). Plaintiff's cause of action accrued when he was arrested on January 18, 2003. The action herein was commenced almost three years later, on January 5, 2006.

The Port Authority is a direct agency of the State of New York and, as such, is protected by the State's sovereign immunity and is, in the absence of consent by the State, completely immune from suits of any sort (see Trippe v. Port of New York Authority, 14 NY 2d 119 [1964]). In 1950, the Port Authority consented to be subject to suits (see NY L. 1950, Ch. 301; NJ Stat. Ann. §32:1-157 [1963]). However, said consent was granted, inter alia, "upon the condition

that any suit, action or proceeding . . . shall be commenced within one year after the cause of action therefor shall have accrued" (McKinney's Unconsolidated Laws of NY §7107). The one-year time constraint is mandatory for all suits against the Port authority (see Trippe, supra). The failure to satisfy this condition will result in the withdrawal of the Port Authority's consent to be subject to suit, thus compelling dismissal of the action for lack of subject-matter jurisdiction (see Lyons v. Port Authority of New York and New Jersey, 228 AD 2d 250 [1st Dept 1996]).

Although this Court notes that the defense of subject-matter jurisdiction was not raised in Port Authority's answer, subject-matter jurisdiction may be raised at any time and may not be waived (see Re Metropolitan Transportation Authority, 32 AD 3d 943 [2nd Dept 2006]).

Accordingly, since sovereign immunity bars plaintiff from maintaining the underlying action against the Port Authority, this Court lacks subject-matter jurisdiction over the Port Authority with respect to this matter. Therefore, the cross motion must be granted and the complaint dismissed, pursuant to CPLR 3211(a)(2), as against the Port Authority and, since it is merely an agency of the Port Authority, the Port Authority Police Department.

Port Authority Police Detective NG, however, fails to establish an entitlement to summary judgment as a matter of law. Although the Port Authority, as an agency of the State, has absolute immunity in this case, Detective NG does not. Even though the State may be shielded by absolute sovereign immunity from suit, its employees may be held personally liable for Constitutional torts under 42 U.S.C. §1983 (see U.S. v. DCS Development Corp., 590 F. Supp. 1117 [Dist. Court, W.D. NY 1984]). Individual police officers are not entitled to absolute immunity, but only qualified immunity which may be invoked to protect them from suit under §1983 if they establish probable cause for the arrest and detention (see Scheuer v. Rhodes, 416 U.S. 232 [1974]). Therefore, NG is not entitled to dismissal of plaintiff's first cause of action asserted against him alleging violation of Constitutional rights pursuant to §1983 on the ground of lack of subject-matter jurisdiction.

Inasmuch as sovereign immunity bars the present action against Port Authority, the issue of whether plaintiff is collaterally estopped from maintaining the action against it is moot. However, with respect to Detective NG, cross-movants' argument that plaintiff's claims against him are barred by the doctrine of collateral estoppel is without merit. Neither the Port Authority nor NG were parties to the prior action and the order issued by Justice Elliot did not address the liability of the Port Authority

or Detective NG. That decision merely found that plaintiff did not establish a prima facie entitlement to summary judgment as against the City, since plaintiff was not arrested by City employees, but by employees of the Port Authority, and there was no showing that the NYPD had any involvement in his arrest. There was no finding with respect to whether the Port Authority Police had probable cause to arrest or detain plaintiff or whether there was any liability on the part of the Port Authority under §1983. Moreover, there was no mention of Detective NG in that decision. Therefore, plaintiff is not collaterally estopped from maintaining the present action against Detective NG.

That branch of the cross-motion seeking leave to amend the answer of Port Authority and Detective NG to assert cross-claims against the County of Bergen, Bergen County Police Department and the City is granted solely to the extent that NG is given leave to serve and file an amended answer containing cross-claims within 30 days after service of a copy of this order with notice of entry.

The City's contention that the doctrine of collateral estoppel bars the proposed cross-claim is without merit. It is a well-established rule that collateral estoppel cannot be invoked against one who was not a party to the first action unless the party to be estopped was in privity with the non-prevailing party in the first action and, thus, had a full and fair opportunity to contest the prior decision (see Neenan v. Woodside Astoria Transp. Co., 261 NY 159 [1933]; Chambers v. City of New York, 309 AD 2d 81 [2nd Dept 2003]). Here, even though in the first action the City was awarded summary judgment on plaintiff's §1983 claim on the ground that there was no evidence that the City violated plaintiff's civil rights, the determination in that case does not estop Detective NG from asserting cross-claims against the City, since he was neither a party to the first action nor in privity with the City and, thus, had no fair opportunity to be heard therein.

Dated: June 13, 2007

KEVIN J. KERRIGAN, J.S.C.