

Ndiaye v City of New York

2007 NY Slip Op 31847(U)

June 25, 2007

Supreme Court, New York County

Docket Number: 0114358/2004

Judge: Paul G. Feinman

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

PRESENT: **HON. PAUL G. FEINMAN**

PART 52

Index Number : 114358/2004

NDIAYE, IBOU

vs

CITY OF NEW YORK

Sequence Number : 002

AMEND SUPPLEMENT PLEADINGS

INDEX NO.

114358/2004

MOTION DATE

6/25/07

MOTION SEQ. NO.

002

MOTION CAL. NO.

101

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted to extend

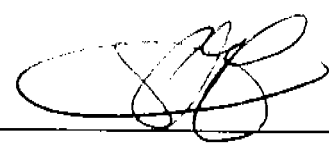
set forth in annexed decision & order.

FILED

JUN 27 2007

NEW YORK COUNTY CLERK'S OFFICE

Dated: 6/25/07



J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X

IBOU NDIAYE,

Plaintiff,

-against-

Index Number 114358/2004
Submission Date 5/25/07
Mot. Seq. No. 002
Cal. No. 101

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, P.O. ANTHONY
TENAGLIA, P.O. JOHN DOE 1, P.O. JOHN DOE 2,
P.O. JOHN DOE 3,

Defendants.

-----X

Papers considered in review of this motion for default :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>

FILED
JUN 27 2007
NEW YORK
COUNTY CLERKS OFFICE

PAUL GEORGE FEINMAN, J.:

Plaintiff Ibou Ndiaye seeks leave, pursuant to CPLR 3025 (b), to amend his complaint. Plaintiff's motion is granted on default to the extent that the proposed amended complaint annexed as Exhibit E shall be deemed filed and served upon service on all defendants of a copy of this decision and order with notice its entry.

This action arises out of the arrest of plaintiff by the New York Police Department on August 17, 2003. The original complaint filed December 16, 2004, alleged several state causes of action, including false arrest, false imprisonment, negligent hiring, retention, abuse of process, malicious prosecution, and a federal violation of civil rights under 42 USC § 1983. The proposed amended complaint discards the causes of action for malicious prosecution and abuse of process, re-pleads the claim for violation of 42 USC § 1983, with specificity as to the rights violated, and

adds several federal causes of action that were previously brought as state claims, under 42 USC §§ 1981, 1983, 1985, and 1986 as well as the Fourth, Fifth and Fourteenth Amendments of the United States Constitution.

CPLR 3025 (b) provides that "a party may amend his pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of the court or by stipulation of all the parties." Leave to amend the pleadings shall be freely given absent prejudice or surprise resulting directly from any delay and upon such terms as may be just including the granting of costs and continuances. CPLR 3025 (b); See also, McCaskey, Davies & Assocs. v New York City Health & Hosp. Corp., 59 NY2d 755 (1983). There is no definitive time limit for which a motion to amend a complaint must be submitted. See, Smith v Industrial Leasing Corp., 124 AD2d 413 (3d Dept 1986) (leave of court can be granted at any time). Whether or not the motion is granted is within the court's discretion. See, Caruso v Anpro, Ltd., 215 AD2d 713 (2d Dept 1995).

At issue here is whether the proposed amendments to plaintiff's complaint will prejudice the defendants. While this motion is brought over three years after the filing of the original complaint, the defendants will not be prejudiced or unduly surprised by the incorporation of federal and constitutional claims as the amended claims are analogous to the state claims in the original complaint. Moreover, there is no drastic change to the claims and theory upon which recovery is based in the plaintiff's original complaint. Furthermore, procedurally the case is still in a pre-note of issue posture and the defendants have ample time to prepare defenses and properly address the amended complaint.

Accordingly, it is


ORDERED that plaintiffs motion for leave to amend the complaint is granted without opposition and the amended complaint in the proposed form annexed to the moving papers as Exhibit E shall be deemed served upon service of a copy of this order with notice of entry thereof upon all defendants; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint within 20 days from the date of said service; and it is further

ORDERED that the parties are to appear at their previously scheduled compliance conference at 2:00 pm, July 25, 2007, in room 103 of the State Supreme Court, 80 Centre Street.

This constitutes the decision and order of the court.

Dated: 6/25/07
New York, New York



J.S.C.

(2007 Pt 52 D&O_114358_2004_002_JM)

FILED
JUN 27 2007
NEW YORK
COUNTY CLERK'S OFFICE