

Drakeford v New York City Dist. Attorney

2009 NY Slip Op 32310(U)

October 5, 2009

Supreme Court, New York County

Docket Number: 401121/2009

Judge: Saliann Scarpulla

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

PRESENT: SALIANN SCARPULLA

PART 52

Index Number : 401121/2009 J.S.C.

DRAKEFORD, QUINTIN XAVIER

vs
CITY DISTRICT ATTORNEY

Sequence Number : 002

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 _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the accompanying memorandum decision.

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

FILED
OCT 07 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/5/09.

Saliann Scarpulla
SALIANN SCARPULLA 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: CIVIL TERM: PART 52

----- X
QUENTIN XAVIER DRAKEFORD,

Plaintiff,

- against-

Index No.:401121/2009
Submission Date:
9/11/2009

THE NEW YORK CITY DISTRICT ATTORNEY,
THE CITY OF NEW YORK and
JUDGE CARRUTHERS, PART 53,

DECISION AND ORDER

Defendants.

----- X

Plaintiff, *pro se*:
Kirby Forensic Psychiatric Center -
6 East
Wards Island Complex
Wards Island, New York 10035

For Defendants City of New York
and District Attorney of the
County of New York:
Michael A. Cardozo,
Corporation Counsel
100 Church Street, 4th Floor
New York, NY 10007

For Defendant Justice Carruthers:
Andrew M. Cuomo
Attorney General for the State of
New York
120 Broadway
New York, NY 10271

Papers considered in review of this motion to dismiss:

- Notice of Motion 1
- Aff in Support 2
- Aff in Opp. 3

FILED
OCT 07 2009
COUNTY CLERK'S OFFICE
NEW YORK

HON. SALIANN SCARPULLA, J.:

In this action for civil conspiracy, malicious prosecution and civil rights violations, defendant the City of New York (the "City") and the District Attorney of the County of New York, s/h/a the New York District Attorney (the "District Attorney") (collectively the "City defendants") move to dismiss this action pursuant to CPLR §3211(a)(7) for failure to state a cause of action.

Plaintiff Quintin Xavier Drakeford (“Drakeford”) commenced this action on or about July 2, 2009, seeking in excess of \$8 million from the City, the District Attorney and Honorable Richard D. Carruthers. Drakeford’s complaint alleges causes of action against all defendants for conspiracy and unlawful imprisonment, conspiracy to commit fraud, malicious prosecution, harassment, duress, coercion, and violations of his Fourth, Sixth and Eighth Amendment rights. The City and District Attorney answered the complaint, denying all material allegations and asserting affirmative defenses, including Drakeford’s culpable conduct, assumption of the risk, governmental immunity, limited liability pursuant to CPLR 1601 and 1602, failure to state a cause of action, lack of jurisdiction, failure to consecutively number allegations as required by CPLR § 3014, and prosecutorial immunity.

As alleged by Drakeford in his complaint and the supporting documents, Drakeford pled guilty to a criminal charge of car stripping on October 16, 2006. Drakeford alleges that his court appointed attorney, Mr. Iannenelli provided ineffective assistance, and may not have been licensed to practice law in the state of New York.¹ Drakeford further alleges that the District Attorney falsely imprisoned Drakeford as part of a conspiracy between the District Attorney, the New York City Police Department, and the New York City and State Departments of Corrections, and the New York State Division of Parole.

¹ Drakeford asserts that there is no record of his attorney, Harrold Iannelli, Jr. in the records of the Office of Court Administration. However, the supporting documents annexed to the complaint indicate that Drakeford was represented by Anthony Iannarelli, an attorney licensed to practice law in the state of New York.

Further, Drakeford alleges that the defendants participated in a fraudulent scheme which deprived him of his civil rights under the Fourth, Sixth and Eighth Amendments, and that Drakeford's attorney was coerced to provide Drakeford with ineffective assistance of counsel. Drakeford seeks punitive and compensatory damages.

Defendant the Honorable Richard D. Carruthers previously moved to dismiss the complaint. In a decision and order dated July 30, 2009, this Court granted Judge Carruthers' motion on default. The City defendants now also move to dismiss the Complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, arguing that: (1) the complaint fails to state a cause of action for criminal conspiracy; (2) the City has no control over the manner in which the District Attorney and/or his assistant prosecute cases; and (3) even assuming the City had such control, civil suits arising out of criminal prosecution are barred by the doctrine of prosecutorial immunity. In opposition, Drakeford argues that the action is timely, the action is before the proper court, and that the documents submitted along with the complaint establish Drakeford's claim for false arrest, duress and coercion.

Discussion

On a defendant's motion to dismiss pursuant to CPLR § 3211(a), the test "is not whether the plaintiff has artfully drafted the complaint, but whether, deeming the complaint to allege whatever can be reasonably implied from its statements, a cause of action can be sustained." *Jones Lang Wootton USA v. LeBoeuf, Lamb, Greene & Macrae*, 243 A.D.2d 168, 176 (1st Dep't 1998).

On a motion to dismiss pursuant to CPLR §3211(a)(7), the Court must accept as true all allegations in the complaint, “accord plaintiff[] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Arnav Indus. v. Brown, Raysman, Millstein, Felder & Steiner, LLP*, 96 N.Y.2d 300, 303 (2001). *See also Malphrus v. Clark*, 227 A.D.2d 809 (3d Dep’t 1996) (the Court will afford plaintiff’s *pro se* pleadings the “benefit of every favorable inference”). However, “bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference.” *Ruffino v. NYCTA*, 55 A.D.3d 817 (2d Dep’t 2008) (internal citations omitted).

Drakeford’s complaint, when given the benefit of every favorable inference, alleges that his prosecution, conviction, and incarceration were the result of a fraudulent scheme between the City and the District Attorney. Drakeford alleges that his criminal prosecution and subsequent guilty plea were the result of fraud, coercion and duress, abuse of authority, and the deprivation of his right to counsel, to be free from unlawful search and seizure and excessive bail, and resulted in unlawful imprisonment and malicious prosecution. While the complaint states that all causes of action are against all defendants, Drakeford does not allege any independent torts against the City. He only alleges that the City was part of a conspiracy, along with the District Attorney and other state and city agencies who are not named as defendants.

The District Attorney is “entitled to absolute immunity for actions taken within the scope of his official duties in initiating and pursuing a criminal prosecution and in presenting the State’s case.” *Whitmore v. City of New York*, 80 A.D.2d 638, 639 (2d Dep’t 1981) (citations omitted). While Drakeford asserts almost entirely conclusory allegations and fails to plead the elements of the causes of action he alleges, it is clear that his allegations stem from the District Attorney’s alleged actions in “pursuing a criminal prosecution and in presenting the State’s case.” However, “an action based on the allegedly malicious or improper acts of an ADA cannot stand where, as here, the actions complained of are associated with ‘the prosecutorial phase of the criminal process’ and are thus subject to absolute immunity.” *Smith v. City of New York*, 49 A.D.3d 400, (1st Dep’t 2008) (quoting *Johnson v. Town of Colonie*, 102 A.D.2d 925, 926 (3d Dep’t 1984). *See also Drakeford v. City of New York*, 6 A.D.3d 302, 303 (1st Dep’t 2004) (“complaint of malicious prosecution is precluded by the District Attorney’s entitlement to absolute immunity from civil claims arising out of the scope of prosecution”). The complaint must therefore be dismissed against the District Attorney.

In addition, the City is not responsible for actions of the District Attorney, and accordingly may not be held liable for those actions. *See Lee v. City of Mount Vernon*, 49 N.Y.2d 1041, 1043 (1980) (the city is not responsible for District Attorney’s decisions); *Whitmore*, 80 A.D.2d at 640 (“the city would not be responsible for the prosecutor’s misconduct”); *Davis Constr. Corp. v. County of Suffolk*, 112 Misc. 2d 652, 664 (Sup. Ct.

Suff. Co. 1982) (a municipality is not responsible for the District Attorney's acts "since as a quasi-judicial officer he is immune").

Drakeford also alleges that he received ineffective assistance of counsel as a result of the fraud and conspiracy by the City defendants. Claims for ineffective assistance of counsel, however, are properly brought on direct appeal, in post-judgment motions, or by a writ for habeas corpus. *See, e.g., People ex rel. West v. Jones*, 122 A.D.2d 308, 309 (3d Dep't 1986).

Finally, with respect to Drakeford's civil conspiracy allegations against the City, "New York does not recognize a cause of action in tort for conspiracy, and [therefore] conspiracy may be alleged only to connect a defendant to an otherwise actionable tort." *Buccieri v. Franzreb*, 201 A.D.2d 356, 358 (1st Dep't 1994). *See also Riverbank Realty Co. v. Koffman*, 179A.D.2d 542, 543 (1st Dep't 1992) ("[t]here is no tort of civil conspiracy in and of itself absent the pleading of specific wrongful acts constituting independent torts."). As explained above, none of Drakeford's tort allegations are viable. As there are no independent torts alleged against the City, and there can be no freestanding cause of action for civil conspiracy, the entire complaint must be dismissed against the City. *See Salvatore v. Kumar*, 45 A.D.3d 560, 564 (2d Dep't 2007) (where all underlying causes of action are dismissed, cause of action for damages based on civil conspiracy also properly dismissed).

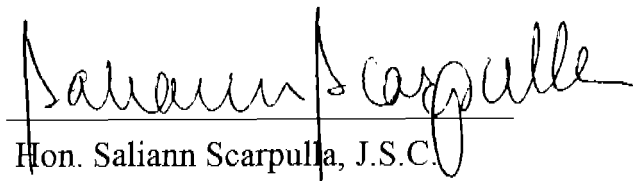
In accordance with the foregoing, it is

* 8]
ORDERED that the motion to dismiss by defendants the City of New York and the District Attorney of the County of New York, s/h/a the New York District Attorney is granted, the complaint is dismissed, and the Clerk of the Court is directed enter a judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, New York
October 5, 2009

ENTER:


Hon. Saliann Scarpulla, J.S.C.

FILED
OCT 07 2009
COUNTY CLERK'S OFFICE
NEW YORK