

Petras v City of New York

2009 NY Slip Op 33043(U)

December 21, 2009

Supreme Court, New York County

Docket Number: 105693/09

Judge: Saliann Scarpulla

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

PRESENT: SALIANN SCARFULLA
Justice

PART 52

Mark Petras

INDEX NO. 105693/09

City of New York - v -

MOTION DATE 10/21/09

MOTION SEQ. NO. 001

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

motion and cross-motion are decided in accordance with accompanying memorandum decision.

This constitutes Decision and Order of the Court.

Noted for filing with the County Clerk and filed with the County Clerk based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: December 21, 2009

Saliann Scarfulla
SALIANN SCARFULLA J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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
MARK PETRAS,

Plaintiff,

-against-

Index Number 105693/09
Submission Date 10/21/09
Mot. Seq. No. 001
**DECISION, ORDER
& JUDGMENT**

CITY OF NEW YORK,

Defendant.
-----X

Appearances:

For Plaintiff:

Kathy M. Lynch & Associates, PLLC
By Kathy M. Lynch, Esq.
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New York, New York 10038
212-509-2805

For Defendant:

New York City Corporation Counsel
By Anthony Bila, Esq.
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New York, New York 10007
212-788-1411

Papers considered in review of this motion for summary judgment:

Papers	Numbered
Notice of Motion and Affidavit Att.....	1
Affidavit in Opposition with Att	2
Reply Affidavit.....	

HON. SALIANN SCARPULLA, J.:

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Defendant the City of New York ("the City") moves pursuant to CPLR 3211(a) for dismissal of plaintiff Mark Petras' ("Petras") complaint in its entirety for failure to state a cause of action. Petras brings this action against the City of New York seeking compensation arising from New York County District Attorney's ("the District Attorney") failure to submit Petras' victim restitution request during the plea agreement proceeding in a criminal matter. Petras alleges that prior to the criminal proceeding, he submitted with the District Attorney a written request for restitution, but the District

Attorney's office negligently, and in dereliction of its duty, omitted to place a request for restitution before the trial court.

Petras' complaint asserts three causes of action. The first cause of action alleges that the District Attorney's negligent performance of its functions caused Petras serious economic damage and other injuries permanent in nature. The second cause of action is for negligent hiring and supervision by the City of certain members of the District Attorney's office. The third cause of action is for violation of Penal Law § 60.27 and Executive Law § 646-a.

In support of its motion to dismiss, the City argues that it was improperly sued, because with respect to actions the District Attorney takes in prosecuting criminal matters, the District Attorney's office is an agency of the State of New York, and the City has no control over its prosecutorial functions. In the alternative, the City argues that the doctrine of absolute prosecutorial immunity is a bar to any recovery sought out of the District Attorney's acts performed within the scope of its quasi-judicial prosecutorial functions.

Petras opposes the motion on the ground that the City has admitted that members of the District Attorney's office are employed by the City, and are thus under the City's control, by the City's failure to respond to a notice to admit, dated May 20, 2009, seeking this admission. In addition, Petras argues that the Penal and Executive laws impose a

[* 4]
mandatory ministerial duty on the District Attorney to seek restitution on behalf of crime victims, making the doctrine of absolute immunity inapplicable.

Discussion

When considering a CPLR 3211(a)(7) motion to dismiss based on the pleadings, the “sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v Ginzburg*, 43 N.Y.2d 268, 275 (1977). The Court presumes the allegations of the complaint to be true and accords them every favorable inference, except insofar as they consist of bare legal conclusions or are inherently incredible or flatly contradicted by documentary evidence. *Beattie v Brown & Wood*, 243 A.D.2d 395 (1st Dept 1997).

The existence of government liability for negligent performance of its official duties is contingent on the nature of the challenged action. Discretionary government actions may not serve as basis for liability sounding in negligence. *See McLean v The City of New York*, 12 N.Y.3d 194, 203 (2009); *see also Dinardo v City of New York*, 2009 N.Y.Slip. 8853, *4 (2009) (Lippman, J., concurring). In contrast, failure to diligently perform ministerial obligations may trigger liability if plaintiff can establish the existence of a special relationship that creates a duty that is “more than that owed to the public” at large. *See Lauer v City of New York*, 95 N.Y.2d 95, 100 (2000) (citation omitted).

5] “Discretionary acts involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result.” *Tango v Tulevech*, 61 N.Y.2d 34, 41 (1983) (actions of a probation officer are discretionary); *Abraham v City of New York*, 39 A.D.3d 21, 24 (2nd Dep’t 2007) (investigation of a possible viral outbreak in a school is discretionary); *but see e.g., Lapidus v State of New York*, 57 A.D.3d 83, 92 (2nd Dep’t 2008) (citations omitted) (court clerk’s duty to accurately record jury’s verdict is ministerial).

The district attorney’s actions associated with the prosecutorial phase of the court proceeding are deemed quasi-judicial and discretionary in nature and invoke the doctrine of absolute immunity to bar civil liability, even if it be assumed that such actions were done maliciously. *Rodrigues v City of New York*, 193 A.D.2d 79, 85 (1st Dep’t 1993) (citations omitted); *see also Carossia v City of New York*, 39 A.D.3d 429, 430 (1st Dep’t 2007) (finding an investigation by the Administration for Children’s Services and subsequent filing of petition for removal in the Family Court to be quasi-judicial, entitled to absolute immunity).

The District Attorney’s decision whether to submit to the court a crime victim’s request for restitution is quasi-judicial in nature, as it occurs during, and within the scope of, a sentencing stage of a criminal court proceeding. Petras’ argument that request for

restitution is a mandatory ministerial duty, with no discretion allowed, is unsupported by the current Penal and Executive laws.

Under Penal Law § 60.27(1), “the district attorney shall where appropriate advise the court . . . that the victim seeks restitution or reparation . . .” This statutory language does not limit the District Attorney’s discretion on the issue of restitution. Executive Law § 646-a also lends no support to Petras. Pursuant to this statute, the district attorney is required to provide every victim with an informational pamphlet detailing the rights of crime victims. This statute does not concern the prosecutorial activities of the district attorney. Furthermore, Executive Law § 649 provides that nothing in Executive Law, Article 23, § 640 *et seq* “shall be construed as creating a cause of action for damages or injunctive relief . . .”

Accordingly, irrespective of whether the City could be found vicariously liable for the tortious acts allegedly committed by the District Attorney’s office, these acts were quasi-judicial in nature. As such, the District Attorney is entitled to absolute immunity from civil suit for not submitting Petras’ restitution request to the court in the criminal matter. Therefore, Petras’ first and third causes of action must be dismissed. Given that the second cause of action, sounding in negligent hiring and training, is fully contingent on the first cause of action, it must also be dismissed.

Because the determination of absolute prosecutorial immunity fully resolves the present motion, the Court does not address either the issue of vicarious liability of the

City of New York for the New York County District Attorney's prosecutorial activities or the issue of the existence of a special relationship between Petras and the District Attorney.

In accordance with the foregoing, it is


ORDERED, ADJUDGED, and DECREED that the motion by the City of New York pursuant to CPLR 3211(a)(7) dismissing with prejudice plaintiff Mark Petras' complaint in its entirety is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the Clerk of the Court enter judgment accordingly.

This constitutes the decision, order and judgment of the Court.

Dated: New York, New York
December 21, 2009

ENTER:


Hon. Saliann Scarpulla, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).