

Mauricio v City of New York

2010 NY Slip Op 31445(U)

June 8, 2010

Supreme Court, New York County

Docket Number: 117595/04

Judge: Cynthia S. Kern

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

CYNTHIA S. KERN
J.S.C.

PRESENT: _____

PART 52

Index Number : 117595/2004

MAURICIO, DOLORES

vs.

CITY OF NEW YORK

SEQUENCE NUMBER : 001

DISMISS

INDEX NO. 117595/04

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion *is decided in accordance with the attached decision.*

FILED
JUN 11 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/8/10

CSK
CYNTHIA S. KERN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

6-11-10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
DOLORES MAURICIO and MARIA GRATINI,

Plaintiffs,

Index No. 117595/04

-against-

DECISION/ORDER

THE CITY OF NEW YORK and THE NEW YORK
CITY POLICE DEPARTMENT,

Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for: _____

Papers

Notice of Motion and Affidavits Annexed.....
Answering Affidavits.....
Cross-Motion and Affidavits Annexed.....
Answering Affidavits to Cross-Motion.....
Replying Affidavits.....
Exhibits.....

Numbered
FILED
1
JUN 2
11 2010
NEW YORK
COUNTY CLERK'S OFFICE

Plaintiffs commenced the instant action to recover damages they allegedly sustained when they were falsely arrested on April 1, 2004. Defendants now move to dismiss the complaint, or, in the alternative, for summary judgment dismissing the complaint. For the reasons set forth below, defendants' motion is granted.

The relevant facts are as follows. On April 1, 2004, police officers entered the apartment of plaintiff Dolores Mauricio at 602 West 139th Street in Manhattan pursuant to a valid search warrant. Ms. Mauricio fainted upon seeing the police officers and was taken to the hospital approximately 15 minutes after fainting, without regaining consciousness. The police officers

handcuffed plaintiff Maria Gratini, Ms. Mauricio's daughter, who was also present, for approximately one hour while they searched the apartment. Upon concluding their search, they released Ms. Gratini and left the apartment. Plaintiffs commenced this action asserting claims for false arrest, false imprisonment, malicious prosecution, negligent hiring and retention and civil rights violations.

Defendants are entitled to summary judgment dismissing plaintiffs' claims for false imprisonment and false arrest because the detention of Ms. Gratini was privileged and, to the extent Ms. Mauricio was detained at all, her detention was also privileged. To make out a claim for false imprisonment or false arrest, plaintiff must establish that "the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement, and that the confinement was not otherwise privileged." *Martinez v City of Schenectady*, 97 N.Y.2d 78, 85 (2001); *Johnson v Kings County District Attorney's Office*, 308 A.D.2d 278, 286 (2nd Dept 2003). Detention of an individual is "otherwise privileged" if there is probable cause for such detention. *See Paulemond v City of New York*, 11 Misc.3d 11 (2nd Dept 2006) (citing *Lee v City of New York*, 272 A.D.2d 586 (2000); *Broughton v State of New York*, 37 N.Y.2d 451 (1975)). Detention by the police pursuant to a facially valid search warrant establishes a presumption of probable cause. *See id.* In the instant case, that presumption applies as the police entered the home pursuant to an apparently valid search warrant. Plaintiffs fail to rebut that presumption. Although they assert their right to contest the propriety of the warrant, they fail to "demonstrate that the warrant was improperly procured." *Id.*; *see Lee*, 272 A.D.2d 586. They fail to substantively contest the propriety of the search warrant in any way.

Defendants are also entitled to summary judgment dismissing plaintiffs' claim for

* 4]

malicious prosecution as no criminal proceeding was ever initiated against plaintiffs. "The elements of an action for malicious prosecution are: (1) the initiation of a proceeding; (2) its termination favorably to plaintiff; (3) lack of probable cause; and (4) malice." *Colon v City of New York*, 60 N.Y.2d 78, 82 (1983). Without a showing that a criminal proceeding was ever initiated against plaintiffs, they cannot make out a cause of action for malicious prosecution.

Defendants are also entitled to summary judgment dismissing plaintiffs' §1983 claims as probable cause is a complete defense to that action. *See Molina v City of New York*, 28 A.D.3d 372 (1st Dept 2006); *Carlton v Nassau County Police Dept.*, 306 A.D.2d 365 (2nd Dept 2003) (citations omitted). In addition, plaintiffs fail to show that a violation of their constitutional rights resulted from a municipal custom or policy as required in order to establish a claim pursuant to 42 U.S.C. §1983. *See Monell v Department of Social Services of the City of New York*, 436 U.S. 658, 694-95 (1978); *Ricciuti v NYC Transit Auth.*, 941 F.2d 119, 122-23 (2nd Cir. 1991). "Though this [requirement of a municipal custom or policy] does not mean that the plaintiff must show that the municipality had an explicitly stated rule or regulation... a single incident alleged in a complaint... does not suffice to show a municipal policy. The inference that a policy existed may, however, be drawn from circumstantial proof..." *Ricciuti*, 941 F.2d at 122-23. In the instant case, plaintiffs fail to provide any evidence of a municipal custom or policy that resulted in the violation of their constitutional rights.

Finally, defendants' motion for summary judgment dismissing plaintiffs' claims for negligent retention and hiring are granted because, "where an employee is acting within the scope of his employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of respondeat superior, no claim may proceed against the

