

Alexander v Kelly

2010 NY Slip Op 32935(U)

September 23, 2010

Sup Ct, NY County

Docket Number: 402831/08

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C.

PART 52

Index Number : 402831/2008

ALEXANDER, PAUL

vs

KELLY, RAYMOND

Sequence Number : 001

DISMISS

INDEX NO. 402831/08

MOTION DATE _____

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 is decided in accordance
with the annexed decision.

FILED
SEP 30 2010
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 9/23/10

CYNTHIA S. KERN
J.S.C.

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):

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

-----X
PAUL ALEXANDER,

Plaintiff,

-against-

RAYMOND KELLY, NYC POLICE DEPT., DA
ROBERT MORGENTHAU, ADA ADRIANE ROSEN,
LT. ROBERT CORCORAN, 9TH PRECINCT, MAYOR
MICHAEL BLOOMBERG,

Defendants.
-----X

Index No. 402831/08

DECISION/ORDER

FILED
SEP 30 2010
COUNTY CLERK'S OFFICE
NEW YORK

HON. CYNTHIA KERN, J.S.C.

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

| Papers | Numbered |
|--|---------------|
| Notice of Motion and Affidavits Annexed..... | <u>1</u> |
| Answering Affidavits and Cross Motion..... | <u>2</u> |
| Replying Affidavits..... | <u> </u> |
| Exhibits..... | <u>3</u> |

Paul Alexander ("plaintiff") commenced the instant action to recover damages for personal injuries allegedly sustained by plaintiff following his April 19, 2007 arrest and subsequent trial and conviction. Police Commissioner Raymond Kelly, the New York City Police Department ("NYPD"), District Attorney Robert Morgenthau, Assistant District Attorney Adrienne Rosen (spelled in the caption as Adriane Rosen) and Mayor Michael Bloomberg (collectively the "City") move for an order dismissing the complaint or granting summary

judgment on the ground that plaintiff has failed to state a valid cause of action. The City's motion is denied for the reasons set forth below.

The relevant facts are as follows. On the evening of April 19, 2007, in the vicinity of Houston and Avenue D in Manhattan, Lieutenant Robert Corcoran ("Corcoran") of the New York City Police Department ("NYPD") pulled over plaintiff for a traffic violation of driving a car without front or back license plates. Plaintiff was driving the car accompanied by several young women passengers. Corcoran testified that after pulling over plaintiff, he discovered that the temporary license plate affixed to the car was forged. At this point, Corcoran conducted a search of plaintiff and found marijuana in a pocket of plaintiff's shirt. According to Corcoran, plaintiff divulged that he had just gotten out of jail after serving time for child pornography and offered to pay Corcoran money in exchange for letting him go. Plaintiff was arrested and subsequently tried and convicted of bribery in the third degree and unlawful possession of marijuana. Corcoran subsequently testified at plaintiff's trial that during the course of his interaction with plaintiff the night of his arrest, Corcoran told plaintiff that if "he ever came back to the projects after our business was concluded that evening to fuck little girls and get them high, I'd put one in his head and I'd throw him in the river." Plaintiff does not dispute Corcoran's words but further submits that Corcoran had put a gun to plaintiff's head while uttering those words. Plaintiff brings suit against Police Commissioner Raymond Kelly, NYPD, District Attorney Cyrus Vance, Assistant District Attorney Adrienne Rosen, Lieutenant Corcoran, the 9th Precinct and Mayor Michael Bloomberg for "the death threat made by" Lieutenant Corcoran. Former District Attorney Robert Morgenthau was a named party in prior captions. However, plaintiff has replaced District Attorney Morgenthau with current District Attorney Cyrus Vance

in his caption.

A telephone conference between the parties in the presence of the court was held on August 19, 2010. As it was not made clear within the four corners of plaintiff's complaint what the cause of action is in this matter, there was discussion during the conference regarding the nature of plaintiff's complaint. During this conference, plaintiff stipulated that he was not bringing claims for malicious prosecution or false arrest and/or imprisonment. Instead, he was bringing a claim for intentional infliction of emotional distress. Counsel for the City did not request an opportunity to further brief this issue. Based on the discussions held during the telephonic conference of August 19, 2010, the court will ground its analysis under the doctrine of intentional infliction of emotional distress.

The individual claims against District Attorneys Robert Morgenthau, Cyrus Vance and Assistant District Attorney Adrienne Rosen are dismissed as the doctrine of absolute prosecutorial immunity bars civil claims against district attorneys arising out of their performance of quasi-judicial functions in prosecuting crimes. *See Tannenbaum v. City of New York*, 30 A.D.3d 357, 358 (1st Dept 2006). Further, as plaintiff fails to allege any claims in his papers against Police Commissioner Raymond Kelly or Mayor Michael Bloomberg, the complaints against Kelly and Bloomberg are also dismissed.

In order to make out a claim for intentional infliction of emotional distress, a plaintiff must prove "(i) extreme and outrageous conduct, (ii) an intent to cause-or disregard of a substantial probability of causing- severe emotional distress, (iii) a causal connection between the conduct and the injury, and (iv) the resultant severe emotional distress. *Lau v. S & M Enterprises*, 72 A.D.3d 497 (1st Dept 2010). The conduct must rise to that level "which so transcends the

