

Singh v City of New York

2010 NY Slip Op 33324(U)

November 29, 2010

Supreme Court, New York County

Docket Number: 113659/08

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE
J.S.C.

PART 5

Index Number : 113659/2008

SINGH, AMIRJIT

INDEX NO. _____

vs

MOTION DATE _____

CITY OF NEW YORK

MOTION SEQ. NO. _____

Sequence Number : 001

MOTION CAL. NO. _____

SUMMARY JUDGMENT

CALL # 113

The following papers, numbered 1 to _____ were read on this motion to/for summary judgment

PAPERS NUMBERED

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

1, 2

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/29/10

NOV 29 2010

[Signature]
BARBARA JAFFE 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 5

-----X
AMARJIT SINGH,

Index No. 113659/08

Plaintiff,

Motion Date: 9/21/10

-against-

Motion Seq. No.: 001

Calendar No.: 113

DECISION AND ORDER

THE CITY OF NEW YORK,

Defendant.

-----X
BARBARA JAFFE, JSC:

FILED

NEW YORK
COUNTY CLERK'S OFFICE

For City:
Mark Friesz, ACC
New York City Law Department
Special Litigation Unit
100 Church St.
New York, NY 10007
212-788-0649

By notice of motion dated June 21, 2010, submitted on default, defendant City moves pursuant to CPLR 3211(a)(7) and/or CPLR 3212 for an order granting summary dismissal of the complaint against it. The motion is granted.

I. BACKGROUND

On October 6, 2007, plaintiff was injured when he came to the aid of Susan Barron, who was being attacked on the street by Lee Coleman. (Affirmation of Mark Friesz, ACC, dated June 21, 2010 [Friesz Aff.], Exh. A).

On or about January 4, 2008, plaintiff served City with a notice of claim in which he alleged that his injuries were caused by City's negligence in breaching its duty to him by failing, among other things, to use reasonable care to provide police protection after it had notice that Coleman was about to commit harm, to apprehend Coleman despite being warned before the

attack that he had a history of mental illness and a criminal record and had been acting strangely, and to take other police action despite having actual notice of the danger, and by creating an emergency that caused plaintiff to put himself in a dangerous situation. (*Id.*).

On or about October 9, 2008, plaintiff served his complaint on City, and on or about November 3, 2008, City served its answer. (*Id.*, Exhs. B, C). In a verified bill of particulars dated April 1, 2009, plaintiff alleged that six to eight hours before the attack, Coleman's uncle had informed the police of Coleman's location and that Coleman had severe emotional and mental illnesses and a history of criminal assaults, that he was acting bizarrely that day, and that he was armed with a machete and knives and was going to kill or injure civilians. (*Id.*, Exh. D). Plaintiff also alleged that as the danger presented by Coleman invited plaintiff's rescue of Barron, City was negligent in failing to heed the warning it received about Coleman. (*Id.*).

II. CONTENTIONS

City argues that plaintiff's claims against it must be dismissed absent a special relationship between it and plaintiff, which plaintiff not only failed to plead in either his notice of claim or complaint, but cannot prove without evidence that City had promised or assured him that it would act on his behalf, that City had direct contact with him, or that he justifiably relied on any affirmative act or promise by City. (Memo. of Law, dated June 21, 2010). It also denies that there was any danger that invited rescue here, or that it had notice of the danger posed by Coleman, relying on a Co-Op City Department of Public Safety report which reflects that Coleman's uncle called the Department to report that Coleman was missing and was emotionally disturbed, and that he told the responding officers that Coleman was non-violent. (Friesz Aff., Exh. I).

III. ANALYSIS

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If this burden is not met, summary judgment must be denied, regardless of the sufficiency of plaintiff’s opposition papers. (*Winegrad*, 64 NY2d 851, 853).

Before liability for negligence may be imposed, the plaintiff must demonstrate: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; and (3) that the plaintiff was injured as a result of the breach. (*Akins v Glens Falls City School Dist.*, 53 NY2d 325, 333 [1981]).

A municipality may be held liable in negligence when the duty allegedly breached is for the benefit of a particular person or class, rather than the general public. (*McLean v City of New York*, 12 NY3d 194 [2009]). Such a duty may arise from a special relationship, as established by proof of: (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality’s agents that inaction could lead to harm; (3) some form of direct contact between the municipality’s agents and the injured party; and (4) that party’s justifiable reliance on the municipality’s affirmative undertaking. (*Cuffy v City of New York*, 69 NY2d 255, 260 [1987]). The plaintiff has a “heavy burden” of establishing the existence of a special relationship, and many claims are thus summarily dismissed. (*Pelaez v Seide*, 2 NY3d 186, n 8 [2004]). The duty to provide police protection is generally owed to the public and not to any particular person or

class. (*Rodriguez v City of New York*, 189 AD2d 166 [1st Dept 1993]).

A. Special relationship

Plaintiff has failed to plead or allege in his notice of claim and complaint any of the factors underlying a claim that he and City had a special relationship. (*See Rollins v New York City Bd. of Educ.*, 68 AD3d 540 [1st Dept 2009] [as plaintiff did not plead special relationship or factual predicate therefore in notice of claim or complaint, she could not rely on it to oppose defendant's summary judgment motion]; *Rodriguez v County of Rockland*, 43 AD3d 1026 [2d Dept 2007] [complaint failed to state negligence claim against defendant as plaintiff did not adequately allege that special relationship existed]; *Brown v City of New York*, 22 AD3d 241 [1st Dept 2005] [complaint dismissed absent allegation therein justifying inference of special relationship between plaintiff and defendant]; *Burger v County of Onondaga*, 272 AD2d 965 [4th Dept 2000], *lv denied* 95 NY2d 760 [defendant entitled to dismissal of complaint as plaintiff failed to plead justifiable reliance; defendant did not convey, directly or indirectly, any promises of protection or assistance]; *Valdes v New York City Hous. Auth.*, 244 AD2d 175 [1st Dept 1997] [complaint properly dismissed as plaintiff failed to allege facts showing existence of special relationship required in order to hold defendant liable for failing to provide adequate police protection]).

Even if pleaded properly, plaintiff's allegations do not support a claim that he had a special relationship with City, as it is undisputed that he had no direct contact with City before the attack and that City had not promised or assured him that it would act on his behalf, and that plaintiff thus could not have justifiably relied on any action or promise by City. (*Merced v City of New York*, 75 NY2d 798 [1990] [City not liable in negligence for plaintiff's death based on

police officer's failure to investigate after plaintiff's neighbor called police; no evidence plaintiff contacted police or relied on assurances by police]; *Kircher v City of Jamestown*, 74 NY2d 251 [1989] [defendant could not be liable for failing to respond to call to police reporting that plaintiff had been abducted absent special relationship, which did not exist as there had been no direct contact between plaintiff, and defendant and thus plaintiff could not have justifiably relied on promise of police protection]; *Euell v Inc. Village of Hempstead*, 57 AD3d 837 [2d Dept 2008] [as plaintiff's mother informed police that plaintiff suffered from mental illness and had ingested bottle of pills, and absent direct contact between plaintiff and police, he did not rely on any promise of protection by defendant]; *Valdes*, 244 AD2d at 175 [special relationship cannot be based on 911 call made by third-party to police]; *Harris v New York City Hous. Auth.*, 187 AD2d 362 [1st Dept 1992] [no special relationship based on phone call made to police by person other than plaintiffs; plaintiffs did not show that they relied on promise of police protection]; *Lesperance v County of St. Lawrence*, 25 Misc 3d 1244[A], 2009 NY Slip Op 52569[U] [Sup Ct, Lawrence County 2009] [plaintiff was assaulted by third-party who had violated his probation while under defendant's supervision, and he alleged that defendants were negligent as they knew of third-party's danger and violation of his probation, and thus should have prevented attack on plaintiff; no special relationship existed as plaintiff did not establish any direct contact between him and defendants, promise to act on his behalf, or justifiable reliance]).

B. Danger invites rescue

Liability for injury incurred during the course of a rescue may lie when there exists a duty of care owed by the defendant to the rescued party and a third party has placed the rescued person in a position of imminent peril. (*Velazquez v New York Health and Hosp. Corp.*, 65 AD3d 981

[1st Dept 2009]).

Here, absent any evidence that City owed a duty of care to Barron, it may not be held liable to plaintiff for the danger that invited plaintiff's rescue of Barron.

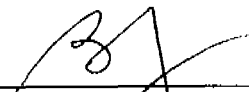
IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant City of New York's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: November 29, 2010
New York, New York
NOV 29 2010

FILED

NEW YORK
COUNTY CLERK'S OFFICE