

Clavasquin v City of New York
2012 NY Slip Op 33316(U)
January 19, 2012
Supreme Court, Bronx County
Docket Number: 17454/06
Judge: Stanley B. Green
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NEW YORK SUPREME COURT - COUNTY OF BRONX

IA-6M

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-6M

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MARION CLAVASQUIN,

Plaintiff(s),

- against-

INDEX No.: 17454/06

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER JOHN CAREY,
SHIELD #21712, 44TH PRECINCT, and POLICE
OFFICER BRENDAN KENEFICK, SHIELD # 11358,
44TH PRECINCT,

Defendant(s)

Present:

HON. STANLEY GREEN
J.S.C.

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The following papers numbered 1 to 2 read on this motion

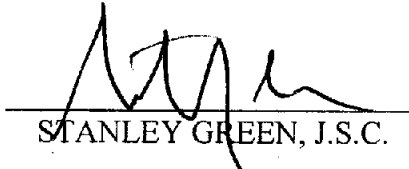
No. on the Calendar of

PAPERS NUMBERED

Notice of Motion -Exhibits and Affidavits Annexed.....	1
Answering Affidavit and Exhibits.....	2
Replying Affidavit and Exhibits.....	
Sur-reply Affidavits and Exhibits.....	
Stipulation(s) - Referee's Report - Minutes.....	
Memoranda of Law.....	

Upon the foregoing papers, this motion is decided in accordance with the attached memorandum decision.

Dated: January 19, 2012


STANLEY GREEN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-6M

-----X
MARION CLAVASQUIN,

INDEX No. 17454/06

Plaintiff(s),

- against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER JOHN CAREY,
SHIELD #21712, 44TH PRECINCT, and POLICE
OFFICER BRENDAN KENEFICK, SHIELD #11358, 44TH
PRECINCT,

Defendant(s)

DECISION

-----X
HON. STANLEY GREEN:

The motion by defendants for an order pursuant to CPLR §3211 and/or §3212 granting summary judgment dismissing the complaint is granted to the extent that plaintiff's cause of action for malicious prosecution under New York State law and pursuant to 42 USC § 1983 are dismissed and plaintiff's causes of action against the City of New York and The City of New York s/h/a New York City Police Department for violation of 42 USC §1983 and for negligent hiring and supervision are dismissed.

Plaintiff commenced this action to recover damages for personal injuries allegedly sustained as a result of defendants' false arrest and imprisonment, assault and battery and malicious prosecution. According to plaintiff, on April 16, 2006 at approximately 3:30 a.m., he was walking with some friends back to a party after intervening in an argument between two men when a police car arrived and pulled over in front of him. He explained that he had stopped a

fight and everything was okay. The police drove away and plaintiff continued walking with his friends toward Walton Avenue. As he walked, two police cars came and stopped in front of him. All of the officers exited their cars. According to plaintiff, Officer Carey came up to him and grabbed him, pushing his face and chest into a gate on the front of a bodega. Officer Carey then allegedly punched plaintiff on the left side of his face and pushed him to the ground where Officer Kenefick handcuffed him. Plaintiff claims that Officer Carey punched him again while he was on the ground and then kicked him in his left eyebrow with his heel.

Plaintiff was charged with resisting arrest, obstructing governmental administration, attempted assault in the third degree, disorderly conduct and harassment in the second degree. However, on August 31, 2006, plaintiff received an adjournment in contemplation of dismissal (ACD) and the case was terminated on February 28, 2007.

Plaintiff's complaint contains causes of action for: (1) assault and battery; (2) malicious prosecution; (3) false arrest and false imprisonment; (4) negligent hiring, retention, training and supervision; (5) violation of 42 USC §1983, including assault and battery, false arrest and confinement and malicious prosecution; and (6) violation of 42 USC §1983, including assault and battery, false arrest and confinement and malicious prosecution stemming from the City's failure to implement an educational policy for its police officers.

Defendants dispute plaintiff's version of events and claim that plaintiff was placed against the gate after he refused an order to back away and pushed Officer Kenefick and attempted to push past Officer Carey. According to Officer Carey, after plaintiff made a fist, he feared for his safety so he grabbed plaintiff by the shoulder and brought him to the ground. Officer Carey claims that plaintiff rolled over on his back and began punching him, so he

returned the punches in order stop the attack. Plaintiff was then handcuffed and taken to the precinct.

Defendants seek dismissal of plaintiff's claims for malicious prosecution under state and federal law on the ground that plaintiff did not plead and cannot prove that there was a favorable adjudication of the case against him. Defendants seek dismissal of plaintiff's §1983 claims against the City on the ground that the complaint does not allege facts sufficient to state a claim against the City for violation of 42 USC §1983.

Defendants also seek an order granting summary judgment dismissing: (1) plaintiff's claims for false arrest, false imprisonment and malicious prosecution asserted in the fourth cause of action on the ground that there was probable cause to arrest plaintiff; (2) plaintiff's 42 USC 1983 claims against Officer Carey and Officer Kenefick on the ground that they are immune from suit for their objectively legally reasonable acts and/or omissions; (3) plaintiff's cause of action for assault, battery and use of excessive force on the ground that defendant officers had the right to use some degree of physical coercion and under the "reasonableness standard," the officer's use of force was objectively reasonable; (4) plaintiff's cause of action for negligent hiring, retention and supervision on the ground that the defendant police officers were acting within the scope of their employment at the time of the alleged incident (Karoon v. NYCTA, 241 AD2d 323).

Plaintiff acknowledges that his claims for malicious prosecution must be dismissed, but contends that the motion should be denied as to his remaining causes of action because the complaint alleges sufficient facts to state a claim against the City pursuant to 42 USC §1983 and triable issues of fact exist as to what occurred, precluding a grant of summary judgment.

“Municipalities may be sued directly under §1983 for constitutional deprivations inflicted upon private individuals pursuant to a governmental custom, policy, ordinance, regulation, or decision (Smith v. City of New York, 290 F. Supp.2s 317). However, a municipal policy cannot be inferred from a single incident of an alleged deprivation of an individual’s civil rights (Oklahoma City v. Tuttle, 471 US 808) and a plaintiff must plead factual content that “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Thus, a complaint which alleges only that a municipality “permitted and tolerated a pattern and practice of unreasonable use of force” does not state a claim, where no facts plausibly suggesting that the municipality has a custom or practice of permitting and tolerating the use of excessive force.

Here, plaintiff alleges that defendants’ actions deprived him of his rights under the 4th and 14th Amendments to the US Constitution, that the defendant police officers’ supervisors knew that the officers were likely to violate the Constitutional rights of civilians and failed to implement a policy or to train and adequately supervise its police officers in the fundamental law of arrest and search and seizure, but these conclusions are not supported by any factual content other than the single incident alleged in this case. Accordingly, plaintiff’s cause of action against the City of New York under 42 USC §1983 is dismissed.

With respect to plaintiff’s cause of action for negligent hiring or supervision, where a claim of vicarious liability exists, liability may not be imposed on a negligent hiring theory because if the employee was not negligent, there is no basis for imposing liability on the employer, and if the employee was negligent, then the employer is vicariously liable regardless of the reasonableness of the hiring or retention or the adequacy of the training (Karoon v. New York

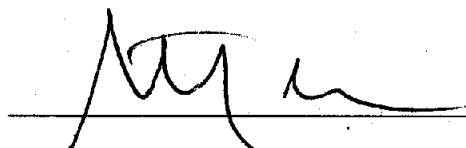
City Transit Authority, 241 AD2d 323). Here, the City of New York has admitted that defendant police officers were acting within the scope of their employment at the time of the incident. Accordingly, plaintiff's cause of action for negligent hiring or supervision is also dismissed.

As to plaintiff's remaining causes of action for false arrest, false imprisonment, assault and battery and use of excessive force, the discrepancies between plaintiff's deposition testimony and the testimony of defendant police officers raises triable issues of fact as to what transpired before and during plaintiff's arrest and whether there was probable cause to arrest plaintiff (cf., Sirlin v. Town of New Castle, 35 AD3d 713), which preclude a grant of summary judgment.

Accordingly, defendants' motion is granted only to the extent that plaintiff's causes of action for malicious prosecution under State and Federal law and causes of action against the City of New York pursuant to 42 USC § 1983 and for negligent hiring and supervision are dismissed.

This constitutes the decision and order of the court.

Dated: January 19, 2012


STANLEY GREEN, J.S.C.