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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN FREED JUSTICE OF SUPREME COURT **PART** 5

Justice

Index Number : 101484/2012
JULES, PATRICK
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
DISMISS CAL # 39

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

FILED

MAR 26 2013

NEW YORK
COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 3-19-13

MAR 19 2013

HON. KATHRYN FREED, J.S.C.
JUSTICE OF SUPREME COURT

1. CHECK ONE: ..... ☑ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

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PATRICK JULES,

Plaintiff,

-against-

THE CITY OF NEW YORK, and
P.O. SEMIH SEZEN,

Defendants.

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DECISION/ORDER
Index No.: 101484/2012
Seq. No.: 001

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR §2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED	1-3
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED	
ANSWERING AFFIDAVITS	4
REPLYING AFFIDAVITS	
EXHIBITS	
STIPULATIONS	
OTHER	

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Defendants move for an Order pursuant to CPLR§ 3211(a)(7), dismissing the complaint and all cross-claims or in the alternative, pursuant to CPLR §3212 granting them summary judgment, dismissing the complaint and all cross-claims. Plaintiff opposes.

After a review of the papers presented, all relevant statutes and case law, the Court grants the motion.

Factual and procedural background:

It is undisputed that the instant claim emanates from an incident occurring on March 23, 2009, when plaintiff was driving on Second Avenue in New York, New York in a vehicle with tinted windows. He was stopped by P.O. Semih Sezen, who informed him that he had been stopped because the tint on his windows was too dark. According to plaintiff, P.O. Sezen then asked to see his license and registration. Upon receiving them, he proceeded to his patrol car. When P.O. Sezen emerged, he advised plaintiff that his license was suspended, that he was under arrest for driving with a suspended license and had to accompany him to the precinct. Plaintiff was then handcuffed and taken to the 17th precinct, placed in a holding cell, fingerprinted and photographed.

He was held at the precinct for approximately three hours. While at the precinct, the officers made disparaging comments to him, such as "why didn't you pay your child support?" Plaintiff ultimately received a Desk Appearance Ticket and was then released. He subsequently contacted the Department of Motor Vehicles (hereinafter, "DMV") regarding the status of his license, and was informed that his license had been suspended for an unpaid ticket he had received for cell phone use. Plaintiff paid the $35.00 fine on March 24, 2009. He then searched his files and found the cancelled check revealing that in 2007 he had paid $90.00 on July 24th and $35.00 on August 29th for this ticket. The DMV sent plaintiff a letter confirming all of the payments he had tendered for the cell phone ticket.

A month later, plaintiff appeared on the designated date in New York County Criminal Court regarding the suspended license charge. He showed the presiding Judge a copy of his cancelled checks and the Judge dismissed the charge at that time.

Believing that P.O. Sezen did not have any probable cause for stopping him, and that his subsequent detention was thus, unlawful, plaintiff commenced the instant action via the filing of a summons and complaint on February 9, 2012. Issue was joined on March 2, 2012, when the City served its Verified Answer. On May 2, 2012, plaintiff personally served P.O. Sezen in Staten Island. On June 6, 2012, defendants served an Amended Answer adding an appearance on behalf of P.O. Sezen.

Positions of the parties:

Defendants argue that the causes of action alleging punitive damages in plaintiff's complaint should be dismissed because they are not recoverable against a municipality. Defendants also argue that plaintiff's claim of a civil rights violation must also be dismissed due to the fact that plaintiff failed to articulate these violations with any specificity. They argue that any 42 USC § 1983 claim against the City of New York warrants dismissal where a plaintiff has failed to allege any specific facts which show a particular policy leading to the alleged civil rights violation.

Plaintiff argues that defendants' summary judgment motion is premature, due to the fact that all necessary discovery remains outstanding. Depositions have not yet been held and bills of particulars have not yet been exchanged. Plaintiff also argues that summary judgment is not warranted where there are material facts in dispute concerning his claims of false arrest and imprisonment. Plaintiff further argues that defendants are not entitled to qualified immunity when an individual's constitutional rights have been violated.

Conclusions of law:

"The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (Dallas-Stephenson

v. Waisman, 39 A.D.3d 303, 306 [1st Dept. 2007], citing Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of material fact (*see* Zuckerman v. City of New York, 49 N.Y.2d 557 [1989]; People ex rel Spitzer v. Grasso, 50 A.D.3d 535 [1st Dept. 2008]). "Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose, as is reliance upon surmise, conjecture or speculation" (Morgan v. New York Telephone, 220 A.D.2d 728, 729 [2d Dept. 1985]). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied (Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 [1978]; Grossman v. Amalgamated Hous. Corp., 298 A.D.2d 224 [1st Dept. 2002]).

The Court has reviewed the contents of plaintiff's complaint. First, it notes that it is horn book law that punitive damages are not recoverable against a municipality (Krohn v. New York City Police Department, 2 N.Y.3d 329 [2004]). Therefore, plaintiff's fifth cause in his complaint seeking punitive damages must be dismissed. Moreover, plaintiff's first cause of action alleging false arrest and malicious prosecution, his second cause of action alleging a "Monell claim," his third cause of action alleging egregious conduct and his fifth cause of action alleging "failure to intervene to prevent the violation of [his] civil rights as against all defendants," also necessitate dismissal. The Court notes that pursuant to the facts as presented by both parties, the Motor Vehicles Bureau had suspended plaintiff's license, and therefore the actions of Officer Sezen were dictated according to that suspension.

The only vehicle for an individual to seek a civil remedy for violations of constitutional rights committed under color of any statute, ordinance, regulation, custom or usage of any State is

a claim brought pursuant to 42 U.S.C.§ 1983 (*see* Vreeburg v. Smith, 192 A.D.2d 41 [2d Dept. 1993]). In order to assert a claim against a municipality for civil rights violations pursuant to 42 USC§ 1983, based on alleged tortious actions of its employees, a plaintiff must allege and plead that the alleged actions resulted from an official municipal policy or custom (*see* Monell v. Dept. of Social Servs. of City of New York, 436 U.S. 658 [1978]; Leftenant v. City of New York, 70 A.D.3d 596 [1st Dept. 2010]; Leung v. City of New York, 216 A.D.2d 10 [1st Dept. 1995]; Chavez v. City of New York, 33 Misc.3d 1214(A), 939 N.Y.2d 739, 2011 N.Y. Slip Op. 5193(U) (N.Y. Sup. 2011), *affd.* 99 A.D.3d 614 [1st Dept. 2012]). There is no respondeat superior liability for a municipality under 42 USC §1983 and, accordingly, the violation of plaintiff's civil rights by municipal employees, without more, will not render the municipality liable for such violation(s) (*see* Monell, 436 U.S. 658 at 694; *see also* Ramos v. City of New York, 285 A.D.2d 284, 302 [1st Dept. 2001]).

"The requirement of pleading an official policy or custom or a municipality through which a constitutional injury has been inflicted upon a plaintiff applies only to 42 USC § 1983 claims against a local government, and not to such claims against individual defendants in their official capacities" (Bonsone v. County of Suffolk, 274 A.D.2d 532, 534 [2d Dept. 2000]). However, "[i]n order to state a claim [against an individual defendant], under that statute, the plaintiff must allege, at a minimum, conduct by a person acting under color of law which deprived the injured party of a right, privilege or immunity guaranteed by the Constitution or the laws of the United States" and said claim is subject to dismissal where "no Federally protected right was clearly" alleged (DiPalma v. Phelan, 81 N.Y.2d 754, 756 [1992]).

Moreover, to recover on a 42 USC §1983 claim against a municipality, a plaintiff must specifically plead and prove three elements: 1) an official policy or custom that 2) causes plaintiff

to be subjected to and 3) a denial of a constitutional right (Monell, 436 U.S. 658 at 695).

In the case at bar, the Court finds that defendants have established a prima facie entitlement to judgment as a matter of law. Indeed, plaintiff's civil rights claims contained in his complaint warrant dismissal, in that they are conclusory in nature, and fail to plead the aforementioned there elements. In relation to summary judgment, these conclusory statements are not evidence in admissible form, sufficient to raise a triable issue of fact. Therefore, plaintiff has also failed to defeat the instant summary judgment motion.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed, and the Clerk is directed to enter judgment in favor of defendants; and it is further

ORDERED that defendant City shall serve a copy of this order on all other parties and the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled; and it is further

ORDERED that this constitutes the decision and order of the Court.

DATED: March 19, 2013

MAR 19 2013

FILED

MAR 26 2013

COUNTY CLERK'S OFFICE
NEW YORK

Hon. Kathryn E. Freed
HON. KATHRYN FREED
JSC
JUSTICE OF SUPREME COURT