Stein v City of New York
2013 NY Slip Op 34184(U)
June 17, 2013
Supreme Court, New York County
Docket Number: 106600/2011
Judge: Kathryn E. Freed

[* 1]

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

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DARREN STEIN,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT AND JOHN DOES ONE THROUGH FIVE,

Defendants.

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AMENDED
DECISION/ORDER
Index No. 106600/2011
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	1-2
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED	
ANSWERING AFFIDAVITS	
REPLYING AFFIDAVITS	
EXHIBITS	3-4
OTHER	

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

Defendants, hereinafter, "the City," moves for an Order pursuant to CPLR§3211(a)(7) and/or CPLR§3212, dismissing plaintiff's 42 U.S.C. § 1983 claim as well as his claim for punitive damages. No opposition has been received.

After a review of the instant motion, all relevant statutes and case law, the Court **grants** said motion.

Factual and procedural background:

According to defendant, on December 30, 2010, plaintiff was arrested for disorderly conduct

after being escorted out of a Phish concert held at Madison Square Garden in New York County. In his Summons and Complaint, plaintiff alleges that he was lawfully upon a public sidewalk when he was assaulted and battered by Police Officers' John Doe, thus sustaining physical and emotional injuries. Following this incident, plaintiff served a Notice of Claim on January 24, 2011. He also served a Summons and Complaint on July 6, 2012. Issue was subsequently joined via service of the City's Answer on July 21, 2011.

Defendant's position:

Defendant City argues that plaintiff's Second Cause of Action alleging a 1983 claim against it necessitates dismissal because it is based upon a single, conclusory sentence. Said Second Cause of Action states in pertinent part that "[b]ased upon the foregoing, plaintiff seeks damages for violations of the 28 U.S.C.§1983 and violations of the Constitution of the State of New York, including but not limited to legal fees for the prosecution of this action." The City also argues that plaintiff has failed to allege a municipal pattern of practice pursuant to which plaintiff's constitutional rights were allegedly violated. The City further argues that plaintiff's claim fails because it is improperly pled in that the City cannot be held liable on a theory of respondeat superior.

Conclusions of law:

It is well settled that "[o]n a motion to dismiss the complaint pursuant to CPLR§ 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept the facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Leon v. Martinez, 84 N.Y.2d 83, 87 [1994]; *see also* Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 [1977]; Breytman v. Olinville Realty, LLC, 54 A.D.3d 703, 704 [2d Dept. 2008], *lv dismissed* 12 N.Y.3d 878 [2009]; 511 W. 232nd Owners Corp. v. Jennifer Realty, Corp.,98 N.Y.2d 144 [2002]).

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 432 USC §1983 based on the alleged tortious actions of its employees, the 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. 2010]).

"The requirement of pleading an official policy or custom of 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, 91 N.Y.2d 754, 756 [1992]).

Moreover, to recover on a §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, 432 U.S. 658 at 695). Toward this end, liability may be imposed upon a municipality only where the conduct complained of "implements or executes

a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" (Monell, 436 U.S. 658 at 690). Indeed, conclusory assertions are insufficient to assert the necessary elements of a civil rights claim. Furthermore, "a municipality can be found liable under § 1983, only when the municipality itself causes the Constitutional violation" (City of Canton v. Harris, 489 U.S.378, 385 [1989] citing Monell, 436 U.S.658 at 691).

In the case at bar, the Court finds that plaintiff has failed to sufficiently plead the necessary elements which would constitute a §1983 violation. Moreover, plaintiff's claim for punitive damages lacks merit in that the Court of Appeals has consistently held that a municipality is not liable for punitive damages flowing from its employee's alleged misconduct (Krohn v. New York City Police Dept., 2 N.Y.3d 329, 336 [2004]; Sharapata v. Town of Islip, 56 N.Y.2d 332, 339 [1982]).

Therefore, in accordance with the foregoing, it is hereby

ORDERED that the instant motion to dismiss the complaint herein is granted to the following extent: the punitive damages part of the first cause of action of the verified complaint is hereby dismissed and the second cause of action of the verified complaint, for a §1983 violation, is dismissed in its entirety. Therefore, only the compensatory damages part of the first cause of action of the verified complaint remains against the City, and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), both located at 60 Centre Street; and it is further

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

FILED
JUN 26 2013
COUNTY CLERK'S OFFICE
NEW YORK

DATED: June 17, 2013

JUN 17 2013

ENTER

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

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT