

Moran v Port Auth.
2014 NY Slip Op 30617(U)
March 10, 2014
Supreme Court, New York County
Docket Number: 114576/10
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS

Justice

PART 58

JUAN CARLOS MORAN and JUAN FRANCISCO MORAN,

Plaintiffs,

-v-

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY, et al.,

Defendants.

INDEX No. 114576/10

MOTION DATE _____

Motion Seq. No. 003

MOTION CAL No. _____

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

PAPERS NUMBERED

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

1

Answering Affidavits- Exhibits _____

2

Replying Affidavits _____

3

CROSS-MOTION: _____ YES ☒ NO

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

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

FILED

MAR 14 2014

NEW YORK
COUNTY CLERK'S OFFICE

Dated:

3 / 10 / 14

Donna M. Mills
J.S.C.

Check one:

☒

FINAL DISPOSITION

☐

NON-FINAL DISPOSITION

DONNA M. MILLS, J.S.C.

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

**JUAN CARLOS MORAN and JUAN FRANCISCO
MORAN,**

Plaintiffs,

- against -

THE PORT AUTHORITY, et al.,

Defendants.

**INDEX NO.
114576/10**

DECISION/ORDER

DONNA M. MILLS, J:

In this action, defendants The Port Authority of New York and New Jersey, and P.O. Michael Murray move for an Order, pursuant to CPLR §§ 3211(a)(2) and 3212, dismissing the instant action upon the grounds that this Court lacks jurisdiction over the subject matter of this action against the Port Authority due to the failure of the plaintiffs, Juan Carlos Moran and Juan Francisco Moran ("Plaintiffs"), to timely serve the summons and complaint in accordance with the mandate of New York Unconsolidated Laws § 7107 (McKinney's 2000). Defendants further move for dismissal of all remaining claims against P.O. Murray on the ground that Plaintiffs' claims are intentional torts and are time-barred pursuant to CPLR § 215(3).

The within action arises out of an incident that occurred on August 24, 2009, inside the Port Authority Bus Terminal whereby the Plaintiffs, were arrested, detained and allegedly assaulted by the above named Defendants. On February 5, 2010, all of the criminal charges against the Plaintiffs were dismissed. Plaintiffs thereafter filed a Summons and Complaint on or about November 15, 2010 seeking to recover damages incurred on August 24, 2009 when they were arrested. Plaintiffs' claim alleges claims of false imprisonment, false arrest, assault and battery, failure to intervene to prevent the violation of civil rights, unreasonable search and seizure, negligent hiring, training, retention and supervision, intentional infliction of emotional distress and punitive damages.

The question before the Court is whether the action was commenced timely. Defendants contend that Plaintiffs' false imprisonment and false arrest claims accrued on August 25, 2009 the date of their arrest, and as a consequence they needed to file their Summons and Complaint by August 25, 2010. Therefore, Defendants argue, that the Plaintiffs' Summons and Complaint, filed November 5, 2010, was not timely. Plaintiffs however, maintain that their claims accrued on the date of the last alleged underlying act, which was the dismissal of all criminal charges on February 5, 2010, and therefore the filing of the Summons and Complaint was within the one year statute of limitations.

The Port Authority has waived immunity and consented to be sued only in the event that certain jurisdictional conditions precedent are performed (see, L.1950, ch. 301, §§ 1, 7; *Trippe v. Port of N.Y. Auth.*, 14 N.Y.2d 119, 123–124, 249 N.Y.S.2d 409, 198 N.E.2d 585; *Luciano v. Fanberg Realty Co.*, 102 A.D.2d 94, 95–96, 475 N.Y.S.2d 854). In the event that these statutory conditions are not met, the Port Authority's consent to be sued is withheld (*Luciano v. Fanberg Realty Co.*, *supra*, 102 A.D.2d at p. 96, 475 N.Y.S.2d 854). Among these conditions precedent is that the action be commenced within one year after the cause of action has accrued (L.1950, ch. 301, § 7). Because this one-year period in which to commence an action against the Port Authority constitutes a condition precedent rather than a mere Statute of Limitations (see, *Kahn v. Trans World Airlines*, 82 A.D.2d 696, 699, 443 N.Y.S.2d 79; *Dislike v. New York City Tr. Auth.*, 119 Misc.2d 523, 464 N.Y.S.2d 340; see also, *Giannini v. Port Auth., of New York and New Jersey*, 127 A.D.2d 818, 511 N.Y.S.2d 940; cf. *S & J Deli v. New York Prop. Ins. Underwriting Assn.*, 119 A.D.2d 652, 501 N.Y.S.2d 93), that period cannot be extended by the toll contained in CPLR 203(b)(5) (see, *Dislike v. New York City Tr. Auth.*, *supra*; see also *Seguritan v. Northwest Airlines*, 86 A.D.2d 658, 659, 446 N.Y.S.2d 397, *affd.* 57 N.Y.2d 767, 454 N.Y.S.2d 991, 440 N.E.2d 1339).

A cause of action for false arrest and false imprisonment accrues at the time the imprisonment terminates, not when the charges are dismissed or withdrawn (*Schildhaus v. City of New York*, 23 A.D.2d 409, 261 N.Y.S.2d 909, *affd.* 17 N.Y.2d 853, 271 N.Y.S.2d 286, 218 N.E.2d 325). Since plaintiffs were released from imprisonment on August 25, 2009, the commencement of the action on November 5, 2010 was not timely (see *Caminito v. City of New York*, 25 A.D.2d 848, 269 N.Y.S.2d 826, *affd.* 19 N.Y.2d 931, 281 N.Y.S.2d 338, 228 N.E.2d 396; *Jones v. Town of Johnstown*, 41 A.D.2d 866, 342 N.Y.S.2d 927; *Molyneaux v. County of Nassau*, 22 A.D.2d 954, 256 N.Y.S.2d 123). This Court, therefore, lacks subject matter jurisdiction over the claims against the Port Authority set forth in the Complaint because Plaintiffs failed to timely commence this action in accordance with the Suability Statute (NY Unconsolidated Laws § 7101 [McKinney's 2000]).

Similarly, because causes of action to recover damages for false arrest and false imprisonment must be commenced within one year of the accrual of the cause of action, those causes of action against P.O. Michael Murray are also time-barred (see, CPLR 215[3]).

The Court has considered Plaintiffs' other arguments and find them unavailing. Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted and the complaint is dismissed in its entirety with costs and disbursements to defendants 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.

Dated:

3/10/14

So Ordered

Donna M. Mills

Donna M. Mills,

J.S.C.

Donna M. Mills, J.S.C.