

**Medina v City of New York**

2014 NY Slip Op 31174(U)

March 13, 2014

Supreme Court, Bronx County

Docket Number: 2359/12

Judge: Mitchell J. Danziger

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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JUAN MEDINA,

**DECISION AND ORDER**

Plaintiff(s), Index No: 2359/12

- against -

THE CITY OF NEW YORK AND POLICE OFFICERS  
"JOHN/JANE DOES" (THE NAMES BEING  
FICTITIOUS, AND WHO ARE EMPLOYEES OF THE  
NEW YORK CITY POLICE DEPARTMENT WHO ARE NOT  
YET IDENTIFIED,

Defendant(s).

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In this action for alleged personal injuries arising from, *inter alia*, plaintiff's false arrest, malicious prosecution, and violations of 42 USC § 1983<sup>1</sup>, defendant THE CITY OF NEW YORK (the City) moves seeking an order pursuant to CPLR § 3211(a)(7) dismissing plaintiff's fifth cause of action for for violations of 42 USC § 1983 by defendant THE CITY OF NEW YORK (the City). The City avers that this claim was not pled with the requisite specificity required by law in that it fails to allege that the City's liability stems from an alleged custom and practice which violated plaintiff's constitutional rights. Plaintiff doesn't directly oppose the relief sought by the City, instead, he cross-

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<sup>1</sup>Inasmuch as this Court dismissed all of plaintiff's other causes of action by its order dated October 11, 2013, plaintiff's fifth cause of action is the only cause of action which remains.

moves for an order granting him leave to amend his complaint to name and identify the officers which he alleges committed the torts alleged. As to these officers, plaintiff asserts that the complaint does in fact state a cause of action under 42 USC § 1983. The City opposes plaintiff's cross-motion insofar as he fails to annex his proposed amended complaint with his moving papers.

For the reasons that follow hereinafter, the City's motion is granted and the plaintiff's cross-motion is denied.

Within his complaint, to the extent relevant, plaintiff alleges that on May 6, 2011, he was falsely arrested and detained by multiple members of the New York City Police Department. Thereafter, plaintiff alleges that he was unlawfully detained and maliciously prosecuted. Plaintiff's fifth cause of action alleges that the foregoing acts violated his constitutional rights and, thus, violated 42 USC § 1983. Plaintiff alleges that he was damaged as a result of the foregoing.

In New York State, on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) all allegations in the complaint are deemed to be true (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Cron v Hargro Fabrics*, 91 NY2d 362, 366 [1998]). All reasonable inferences which can be drawn from the complaint and the allegations therein stated shall be resolved in favor of the plaintiff (*id.*). CPLR § 3013, states that

[s]tatements in a pleading shall be sufficiently particular to give the court

and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

As such, a complaint must contain facts essential to give notice of a claim or defense (*DiMauro v Metropolitan Suburban Bus Authority*, 105 AD2d 236, 239 [2d Dept 1984]). Vague and conclusory allegations will not suffice (*id.*); *Fowler v American Lawyer Media, Inc.*, 306 AD2d 113, 113 [1st Dept 2003]); *Shariff v Murray*, 33 AD3d 688 (2nd Dept. 2006); *Stoianoff v Gahona*, 248 AD2d 525, 526 [2d Dept 1998]). When the allegations in a complaint are vague or conclusory, dismissal for failure to state a cause of action is warranted (*Schuckman Realty, Inc. v Marine Midland Bank, N.A.*, 244 AD2d 400, 401 [2d Dept 1997]; *O'Riordan v Suffolk Chapter, Local No. 852, Civil Service Employees Association, Inc.*, 95 AD2d 800, 800 [2d Dept 1983]).

While it is often argued that in cases alleging violations of 42 USC § 1983 any motion to dismiss should be decided under the federal pleading standards, particularly those promulgated by *Ashcroft v Iqbal* (556 US 662, 678 [2009]), it is well settled that even after the decision in *Ashcroft*, this State's courts have consistently applied the standards promulgated by New York State case law when confronted with a motion seeking to dismiss a cause of action pursuant to 42 USC § 1983, on grounds that the complaint fails to state a cause of action (*Vargas v City of New York*, 105

AD3d 834, 834-837 [2d Dept. 2013] [In granting defendants' motion seeking to dismiss plaintiff's claim pursuant to 42 USC § 1983 for failure to state a cause of action, the court applied the standards promulgated by CPLR § 3211(a)(7) and the case law interpreting it.]; *Nasca v Sgro*, 101 AD3d 963, 963-965 [2d Dept 2012] [same]].

Here, the Court's inquiry is whether, the complaint - more specifically, the fifth cause of action - states sufficient essential facts to state a cause of action pursuant to 42 USC § 1983 against the City. As established by *Monell v Department of Social Services of City of New York* (436 US 658 [1977]), a municipality bears liability under 42 USC § 1983 only where the action by its agent "is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" (*Monell* at 690).

Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 person, by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental custom even though such a custom has not received formal approval through the body's official decision making channels

(*id.* [internal quotation marks omitted]). Accordingly, municipal liability under 42 USC § 1983 only lies if the municipal policy or

custom actually caused the constitutional tort and not merely because the municipality employs a tortfeasor who perpetrated a constitutional tort (*id.* at 691). In other words, causation is an essential element to municipal liability and that is why no municipal liability will lie under 42 USC § 1983 solely on a theory of *respondeat superior* (*id.*).

A review of plaintiff's fifth cause of action evinces that it fails to allege that the City's liability stems a custom and practice, which custom violated plaintiff's constitutional rights and, thus, violated 42 USC § 1983. Accordingly, since a motion to dismiss for failure to state a cause of action under 42 USC § 1983 should be granted where the complaint fails to allege any facts from which it could be reasonably inferred that the defendants had a policy or custom of which caused the constitutional tort alleged (*Vargas* at 837; *Cozzani v County of Suffolk*, 84 AD3d 1147, 1147 (2d Dept 2011) ["Although the complaint alleged as a legal conclusion that the defendants engaged in conduct pursuant to a policy or custom which deprived the plaintiff of certain constitutional rights, it was wholly unsupported by any allegations of fact identifying the nature of that conduct or the policy or custom which the conduct purportedly advanced.]; *R.A.C. Group, Inc. v Board of Educ. of City of New York*, 295 AD2d 489, 490 [2d Dept 2002] ["because the plaintiffs failed to plead the existence of a specific policy or custom which deprived them of a constitutional

right in violation of 42 USC § 1983, that cause of action must be dismissed as well.")), the fifth cause of action must be dismissed.

Plaintiff's cross-motion seeking leave to amend his complaint to identify and name the officers who allegedly wronged him is denied. On a motion to seeking leave to amend the complaint, the court must examine the proposed pleading for patent sufficiency. Thus, it is axiomatic that the proposed pleading must be provided such and that a failure to annex the proposed pleading warrants denial (*Muro-Light v Farley*, 95 AD3d 846, 847 [2d Dept 2012]; *Pollak v Moore*, 85 AD3d 578, 579 [1st Dept 2011]; *Loehner v Simons*, 224 AD2d 591, 591 [2d Dept 1996]; *Branch v Abraham and Strauss Department Store*, 220 AD2d 474, 475 [2d Dept. 1995]). Here, plaintiff fails to annex his proposed amended complaint to his cross-motion, and instead, in response to the City's opposition, he provides it with his reply. The law is clear in that reply papers seeking to introduce new evidence to cure deficiencies should be rejected (*Migdol v City of New York*, 291 AD2d 201, 201 [1st Dept. 2002] [Court rejected affidavit submitted with reply papers since it sought to remedy deficiencies in the moving papers rather than respond to arguments made by opponent.]; *Lumbermens Mutual Casualty Company v Morse Shoe Company*, 218 AD2d 624, 625-626 [1st Dept 1995] [Court rejected defendant's reply papers which included two new documents provided to support a new assertion not previously made in initial motion.]; *Ritt v Lenox Hill Hospital*, 182 AD2d 560, 562

[1st Dept 1992] [Court rejected defendant's reply papers which contained a medical affidavit designed to cure the conclusory affidavit submitted with its moving papers.]). Accordingly, plaintiff's submission of the proposed amended complaint with his reply papers is an attempt to cure a deficiency in his moving papers. The Court, therefore, rejects the amended complaint and denies plaintiff's cross-motion. It is hereby

**ORDERED** that the fifth cause of action be hereby dismissed action, and that thus the complaint be dismissed as well. It is further

**ORDERED** that the City serve a copy of this Decision and Order with Notice of Entry upon plaintiff within thirty (30) days hereof.

This constitutes this Court's decision and Order.

Dated : March 13, 2014  
Bronx, New York

  
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MITCHELL J. DANZIGER, J.S.C.