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| <b>Christian v City of New York</b>  |
| 2014 NY Slip Op 31645(U)   |
| May 9, 2014  |
| Supreme Court, Bronx County  |
| Docket Number: 23889/13  |
| Judge: Mitchell J. Danziger  |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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DEMONT CHRISTIAN,

**DECISION AND ORDER**

Plaintiff(s), Index No: 23889/13

- against -

THE CITY OF NEW YORK AND POLICE OFFICER  
DEBRALEE HART, SHIELD NO. 4800, SGT ROBERT  
AVILES, TAX ID: 915265, AND JOHN AND JANE  
DOE 1 THROUGH 2, INDIVIDUALLY AND IN THEIR  
OFFICIAL CAPACITIES (THE NAMES JOHN AND  
JANE BEING FACTITIOUS, AS THE TRUE NAMES  
ARE PRESENTLY UNKNOWN),

Defendant(s).

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In this action for alleged personal injuries arising from plaintiff's arrest and subsequent imprisonment defendants move seeking an order pursuant to, *inter alia*, CPLR § 3211(a)(7) dismissing plaintiff's complaint in its entirety insofar as it fails to state a cause of action. Specifically, defendants aver that plaintiff's claim is one for negligent investigation, which claim is cognizable under these facts as a matter of law. Plaintiff opposes the instant motion asserting, *inter alia*, that his claim is in fact cognizable and as such the instant motion should be denied.

For the reasons that follow hereinafter, defendants' motion is granted

Within his complaint, and to the extent relevant, plaintiff alleges that on December 9, 2011, he was arrested by the individual defendants and thereafter detained on grounds that he had an outstanding bench warrant. Plaintiff was detained for a period of 3 and one-half days and was thereafter released. Plaintiff's first cause of action alleges that defendants were negligent insofar as they failed to properly investigate and ascertain that although plaintiff had been issued a bench warrant for failing to appear in court, the same had been resolved on October 21, 2011. To the extent that the individually named defendants were acting within the scope of their employment, plaintiff alleges that defendant THE CITY OF NEW YORK (the City) is vicariously liable for their actions. Plaintiff's second cause of action alleges that the City was negligent in its training and supervision of the individual defendants

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]).

Defendants' motion seeking dismissal of the complaint is granted insofar as a review of the complaint evinces that it fails to state a cognizable cause of action.

It is well settled that in this State, in cases alleging police misconduct, the law does not recognize a cause of action for negligent investigation (*Medina v City of New York*, 102 AD3d 101, 108 [1st Dept 2012]; *Johnson v Kings County Dist. Attorney's Off.*, 308 AD2d 278, 284-285 [2d Dept. 2003]). Accordingly,

a plaintiff seeking damages for an injury resulting from a wrongful arrest and detention may not recover under broad

general principles of negligence ... but must proceed by way of the traditional remedies of false arrest and imprisonment

(*Antonious v Muhammad*, 250 AD2d 559, 559-560 [2d Dept 1998] [internal quotation marks omitted]; *Santoro v Town of Smithtown*, 40 AD3d 736, 738 [2d Dept 2007]). Accordingly, a cause of action sounding in false arrest, imprisonment or malicious prosecution must be pled as such and the failure to do so warrants dismissal (*Medina* at 108 ["The cause of action alleging negligence, including negligent hiring, retention, and training, must be dismissed because no cause of action for negligent investigation lies in New York."]; *Johnson* at 285 [Court dismissed plaintiff's claim for negligent investigation on grounds that no such claim was cognizable under New York State law.]

Here, taking all the allegations in plaintiff's complaint as true, his salient cause of action is for negligent investigation, which as discussed above is not cognizable in this State (*Medina* at 108; *Johnson* at 278). Insofar as plaintiff's claim for vicarious liability and negligent training and supervision are also premised on his claim for negligent investigation, these claims must also be dismissed (*Medina* at 108). Plaintiff's reliance on *Boland v State of New York* (218 AD2d 235 [3d Dept 1996]) is unavailing since, contrary to his assertion, the holding in *Boland* is not - as posited - that the municipality therein was liable for failing to perform a ministerial duty, but rather, that the State's voluntary

assumption to act in that case, created a special duty, a violation of which gave rise to liability (*id.* at 240). Certainly, this Court is well aware that unlike governmental functions, the violation of which do not give rise to liability absent a special duty (*McLean v City of New York*, 12 NY3d 194, 202 [2009]), "when the action [by a government] is exclusively ministerial, the officer [and thus, the municipality] will be liable if it is otherwise tortious and not justifiable pursuant to statutory command" (*id.* at 240). However, while plaintiff avers that the maintenance of an accurate warrant database is ministerial, he not only fails to plead it within his complaint but fails to proffer any law supporting it. It is hereby

**ORDERED** that plaintiff's complaint be dismissed. 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 : May 9, 2014  
Bronx, New York

  
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MITCHELL J. DANZIGER, J.S.C.