Victor v County of Suffolk
2014 NY Slip Op 32438(U)
September 10, 2014
Sup Ct, Suffolk County
Docket Number: 26661/2013
Judge: W. Gerard Asher

[* 1]

COPY

SHORT FORM ORDER

INDEX No. 26661/2013

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 32 - SUFFOLK COUNTY

PRESENT:

Hon. W. GERARD ASHER
Justice of the Supreme Court

MOTION DATE 4/22/14
ADJ. DATE 4/22/14
Mot. Seq. # 001 - MG

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HAROLD VICTOR,

Plaintiffs,

- against -

COUNTY OF SUFFOLK, KAREN VICTOR,

Defendants.

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Upon the following papers numbered 1 to 22 read on this motion to dismiss; Notice of Motion/ Order to Show Cause and supporting papers 1 - 3; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 4 - 22; Replying Affidavits and supporting papers ____; Other __; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendant County of Suffolk for an order pursuant to CPLR 3211 (a) (7) dismissing the complaint as asserted against it and for an order pursuant to CPLR 3212 dismissing the complaint as against it is granted.

Plaintiff commenced this action for *inter alia*, malicious prosecution against defendant County of Suffolk ("Suffolk County") and defendant Karen Victor, his ex-girlfriend–plaintiff states in his complaint that he was never married to her but "lived together [with her] as husband

and wife for thirty-five to forty years." Plaintiff asserts two causes of action against Suffolk County. The first cause of action is "under 42 USC 1983: malicious prosecution which deprived the plaintiff of his liberty in violation of his rights under the fourth and fourteenth amendments of the United States Constitution" and the second cause of action is "under 42 USC 1983: denial of the plaintiff's right to a speedy trial guaranteed by the sixth and fourteenth amendments to the United States Constitution." In the complaint, the plaintiff claims that he was arrested on August 30, 2010 based on a complaint by defendant Karen Victor that he had threatened to kill her in a telephone conversation on August 22, 2010. Thereafter, he was charged with aggravated harassment based on a supporting deposition by Karen Victor. At arraignment, he pleaded not guilty. The matter was adjourned on numerous occasions and on March 1, 2012, the plaintiff made a motion to dismiss based on the People's violation of his statutory and state constitutional rights to a speedy trial (*see* CPL 30.30, 30.20). After his motion was denied, he made a second motion for the same relief, and his second motion was granted on November 27, 2012, dismissing the case.

The sole criterion when determining a motion to dismiss a complaint for failure to state a cause of action pursuant to CPLR 3211 (a) (7) is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law (*see* ***Guggenheimer v Ginzburg***, 43 NY2d 268, 401 NYS2d 182 [1977]; ***Quinones v Schapp***, 91 AD3d 739, 937 NYS2d 262 [2d Dept 2012]).

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact (*see* ***Rotuba Extruders, Inc. v Ceppos***, 46 NY2d 223, 413 NYS2d 141 [1978]; ***Andre v Pomeroy***, 35 NY2d 361, 362 NYS2d 131 [1974]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient proof to demonstrate the absence of any material issues of fact (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923, 925 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316, 318 [1985]). Further, the credibility of the parties is not an appropriate consideration for the Court (***S.J. Capelin Assocs., Inc. v Globe Mfg. Corp.***, 34 NY2d 338, 357 NYS2d 478 [1974]), and all competent evidence must be viewed in a light most favorable to the party opposing summary judgment (***Benincasa v Garrubbo***, 141 AD2d 636, 637, 529 NYS2d 797, 799 [2d Dept 1988]). Once a prima facie showing has been made, the burden shifts to the party opposing the summary judgment motion to produce evidence sufficient to establish the existence of a material issue of fact (*see* ***Alvarez v Prospect Hosp.***, *supra*).

Here, the plaintiff asserts in his complaint that Suffolk County violated his right to liberty, guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution, by maliciously prosecuting him, and also asserts that Suffolk County violated his right to a speedy trial, guaranteed by the Sixth and Fourteenth Amendments of the United States

Constitution.

"The elements of an action for malicious prosecution are (1) the initiation of a proceeding, (2) its termination favorably to plaintiff, (3) lack of probable cause, and (4) malice" (***Colon v City of New York***, 60 NY2d 78, 82, 468 NYS2d 453, 455 [1983]). Here, Suffolk County established its prima facie entitlement to judgment dismissing the complaint as asserted against it by demonstrating that there was probable cause to arrest the plaintiff (*see* ***Harris v County of Nassau***, ___ AD3d ___, 2014 NY Slip Op 05949 [2d Dept 2014]). Specifically, the County acted upon information provided by a known citizen informant that provided it with probable cause to arrest the plaintiff (*see* ***Rivera v County of Nassau***, 83 AD3d 1032, 922, NYS2d 168 [2d Dept 2011]). In addition, there is no evidence that the prosecution of the plaintiff by the County was motivated by actual malice (*see* ***Torres v Jones***, ___ AD3d ___, 2014 NY Slip Op 05784 [2d Dept 2014]). In opposition, the plaintiff failed to raise a triable issue of fact as to whether there was a lack of probable cause or his prosecution was motivated by actual malice (*see id.*). Thus, plaintiff's cause of action against Suffolk County for malicious prosecution is dismissed.

Insofar as the defendant asserts a cause of action for violation of 42 USC § 1983, "[u]nder 42 USC § 1983, a party may pursue a civil claim for damages and injunctive relief against any person who acts under color of state law to deprive that party of a constitutional right" (***Rodgers v City of New York***, 106 AD3d 1068, 1071, 966 NYS2d 466, 470 [2d Dept 2013]). In the case at hand, the plaintiff asserts that his right to liberty, as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution, was violated as a result of Suffolk County's alleged malicious prosecution of him. However, it has been held that where, as here, a plaintiff's arrest and prosecution are supported by probable cause, there is no unreasonable seizure of the plaintiff's person in violation of the Fourth Amendment (*id.*). In addition, as noted above, there is no evidence that the County's prosecution of the plaintiff was motivated by actual malice (*see* ***Torres v Jones***, *supra*). Thus, Suffolk County established its prima facie entitlement to dismissal of this cause of action as well. Defendant has failed to raise a triable issue of fact as to whether his right to liberty was violated by the County's alleged malicious prosecution of him (*see* ***Alvarez v Prospect Hosp.***, *supra*). As a result, insofar as defendant alleges a cause of action for violation of 42 USC § 1983, based on the alleged violation of his right to liberty due to the County's alleged malicious prosecution of him, it is dismissed.

With respect to plaintiff's second cause of action against Suffolk County for violation of 42 USC § 1983, based on the alleged violation of his right to a speedy trial, guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, the plaintiff alleges in his complaint that the Suffolk County District Attorney failed to properly train his employees. Specifically, in his criminal proceeding, the assistant district attorneys repeatedly answered ready for trial before they were actually ready, as the complaining witness was never present in court, thereby depriving him of his Constitutional right to a speedy trial. Plaintiff further alleges that

even though the complaining witness was not present when the People declared readiness on prior adjournments, the People argued that the prior adjournments should not be charged to them for speedy trial purposes since the complainant was suffering from multiple sclerosis, which prevented her from being present in court on those days. The plaintiff alleges that the tactics used by the People were pure gamesmanship and were inconsistent with the People obligations to only answer ready when they were in fact ready for trial.

It is well settled that:

> "a municipality may not be held liable for the unconstitutional acts of its municipal employees on the basis of respondent superior . . . Instead, a municipality can be found liable under 42 USC § 1983 for deprivation of constitutional rights only where the municipality itself causes the constitutional violation at issue. In other words, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983" (***Johnson v Kings County Dist. Attorney's Off.***, 308 AD2d 278, 293, 763 NYS2d 635, 646 [2d Dept 2003] [internal citations and quotation marks omitted]).

Further,

> "a claim of inadequate training or supervision will trigger municipal liability only when the failure to train amounts to deliberate indifference to the rights of persons with whom municipal employees come into contact . . . three requirements must be met before a municipality's failure to train or supervise constitutes deliberate indifference to the constitutional rights of citizens. First, plaintiffs must show that the policymaker knows to a moral certainty that employees will encounter a given situation . . . Second, plaintiffs must show that the situation either presents the employee with a difficult choice, the kind which training will make less difficult, or that there is a history of employees mishandling the situation. Finally, plaintiffs must show that the wrong choice by the municipal employee will frequently result in the deprivation of a citizen's constitutional rights (*id.* at 293-294, 763 NYS2d at 646-647 [internal citations and quotation marks omitted]).

In the case at hand, Suffolk County established its entitlement to dismissal of the aforementioned cause of action as the assistant district attorney's announcement of readiness for trial on various adjourned dates and requests that certain adjournments not be charged to them, did not result from a policy, regulation, or custom of Suffolk County (*see* ***Hudson Val. Mar.,***

Inc. v Town of Cortlandt, 79 AD3d 700, 912 NYS2d 623 [2d Dept 2010]). In opposition, the plaintiff failed to raise a triable issue of fact as to the existence of any such relevant policy, regulation or custom (*id.*). In addition, Suffolk County established its entitlement to dismissal of the aforementioned cause of action insofar as it alleges that Suffolk County failed to train or supervise its employees (*see* ***Holland v City of Poughkeepsie***, 90 AD3d 841, 935 NYS2d 583 [2d Dept 2011]). Contrary to the assertions made by the plaintiff in his complaint, there is no rule that the People can only declare readiness when the complaining witness is present in court. Pursuant to CPL 30.30, readiness for trial requires both a statement of readiness and actual readiness to proceed to trial (*see* ***People v Kendzia***, 64 NY2d 331, 486 NYS2d 888 [1985]). Actual readiness means that there is no longer any legal impediment to proceed to trial (*see* ***People v England,*** 84 NY2d 1, 613 NYS2d 854 [1994]). "The inquiry is whether the People have done all that is required of them to bring the case to a point where it may be tried" (*id.* at 4, 613 NYS2d 854 at 856). Furthermore, adjournments are not chargeable to the People for purposes of speedy trial pursuant to CPL 30.30 when exceptional circumstances exist including where a witness is unavailable due to medical reasons (*see* CPL 30.30 [4] [g]; ***People v Moore***, 234 AD3d 567, 651 NYS2d 590 [2d Dept 1996]). Thus, the Court finds that the People's declaration of readiness without the presence of the complaining witness in the courtroom and the People's request that adjournments not be charged to them when they were not ready because the complaining witness was not available due to medical reasons, did not constitute a "deliberate indifference" to the plaintiff's constitutional right to a speedy trial, and was not the result of the failure by the Suffolk County District Attorney to properly train and supervise assistant district attorneys. In opposition, the plaintiff failed to raise a triable issue of fact (*see* ***Holland v City of Poughkeepsie***, *supra*).

Accordingly, Suffolk County's motion is granted and the complaint is dismissed as asserted against it.

Dated: Sept. 10, 2014

W. Gerard Asher
J.S.C.

_____ **FINAL DISPOSITION** ___X___ **NON-FINAL DISPOSITION**