

**Betancourt v City of New York**

2015 NY Slip Op 30586(U)

March 3, 2015

Sup Ct, Bronx County

Docket Number: 305607-2012

Judge: Douglas E. McKeon

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX - PART 19A

DECISION & ORDER

-----X  
VICTOR BETANCOURT,

Plaintiff,

- against -

Index no. 305607-2012

THE CITY OF NEW YORK, et al.,

Defendants.  
-----X

**Hon. Douglas E. McKeon**

Defendants' motion for relief under CPLR 3211 is decided as follows:<sup>1</sup>

On June 29, 2012, plaintiff commenced this action to recover damages against defendants, asserting a number of causes of action predicated on alleged police misconduct. By an order dated April 25, 2014, the Honorable Lizbeth Gonzalez decided a motion by plaintiff seeking leave to file and serve a supplemental summons and amended complaint, and a related cross motion by defendants seeking dismissal of certain portions of the complaint. As is relevant to this motion, Justice Gonzalez granted plaintiff's motion to the extent of permitting him to substitute Police Officer Velazquez and Sergeant Bennett for two "John Doe" defendants; she did not grant that aspect of plaintiff's motion that sought to add Police Officers Parker and Donzo as party defendants. Justice Gonzalez dismissed plaintiff's third cause of action, which sought damages based on defendants' alleged negligence, carelessness and recklessness in failing to provide him with adequate medical care and treatment. Justice Gonzalez memorialized that

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<sup>1</sup>By an order, dated December 19, 2014 and filed on January 12, 2015, Justice Danziger recused himself from presiding over this action. The action was reassigned to Part 19A.

plaintiff withdrew his claims against the New York City Police Department (NYPD), and his fourth cause of action, which sought damages for violations under the New York State Constitution.

Plaintiff filed and served a first amended complaint (dated September 8, 2014) containing five causes of action. Defendants have moved to dismiss the first amended complaint as against defendant Donzo, and to dismiss certain aspects of it as to the remaining defendants. Defendants assert that the first amended complaint violates Justice Gonzalez's order, which dictates the contents of that complaint, and therefore violates the law of the case doctrine. Specifically, defendants contend that plaintiff violated Justice Gonzalez's order by (1) adding Officers Parker and Donzo as party defendants; (2) asserting a claim for negligence, carelessness and recklessness in failing to provide plaintiff with medical care and treatment; (3) making allegations against the NYPD; and (4) asserting claims under the New York State Constitution.

Plaintiff consents to the dismissal of the first amended complaint as against Officer Donzo, and offers to withdraw his causes of action under the New York State Constitution. He also acknowledges that he has no cause of action against the NYPD. He opposes that aspect of the motion seeking dismissal of the first amended complaint as against Officer Parker, arguing that Justice Gonzalez's order does not preclude the assertion of claims against that officer.

"The law of the case doctrine 'is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned'" (*Oyster Bay Associates Ltd. Partnership v Town Bd. of Town of Oyster Bay*, 21 AD3d 964, 965-966 [2d Dept 2005], quoting *Martin v City of Cohoes*, 37 NY2d 162, 165 [1975]). "Under the doctrine, parties or their privies are precluded from relitigating an issue decided in an ongoing action where there previously was a full and fair

opportunity to address the issue” (*Carmona v Mathisson*, 92 AD3d 492, 493 [1st Dept 2012] [internal quotation marks and brackets omitted]).

Here, Justice Gonzalez decided that Officer Parker should not be added as party defendant. Justice Gonzalez granted plaintiff’s motion to file and serve a supplemental summons and amended complaint to the extent of permitting him to substitute Officer Velazquez and Sergeant Bennett for two “John Doe” defendants; she clearly (albeit tacitly) denied that aspect of plaintiff’s motion that sought to add Officer Parker as a party defendant. Moreover, the parties had a full and fair opportunity to litigate the issue of whether Officer Parker should be added as a party defendant. Indeed, plaintiff sought that relief in her motion. Thus, the law of the case doctrine precludes plaintiff from relitigating the point.<sup>2</sup> The law of the case doctrine also precludes plaintiff from asserting a claim against defendants for negligence, carelessness and recklessness in failing to provide plaintiff with medical care and treatment, as Justice Gonzalez dismissed that cause of action and the parties had a full and fair opportunity to litigate the matter.

In light of plaintiff’s concessions in his opposition to the present motion, and the court’s conclusion that plaintiff is precluded from relitigating whether Officer Parker should be added as a party defendant and precluded from asserting a cause of action against defendants for negligence, carelessness and recklessness in failing to provide plaintiff with medical care and treatment, the first amended complaint is dismissed as against Officers Parker and Donzo; the first cause of action in that complaint is dismissed as to the remaining defendants to the extent that it is premised on the allegation that defendants denied plaintiff adequate medical attention

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<sup>2</sup>Although the law of the case doctrine is not without exceptions, plaintiff has not argued (let alone established) that any of the recognized exceptions apply to Justice Gonzalez’s determination not to afford plaintiff leave to add Officer Parker as a party defendant.

(see first amended paragraph, dated Sept. 8, 2014, paragraph nos. 77, 80); and the third and fourth causes of action in that complaint are dismissed as to the remaining defendants to the extent that those causes of action are premised on defendants' alleged violations of plaintiff's rights under the New York State Constitution.

The court notes that it does not perceive any cause of action against the NYPD in the first amended complaint. Although mention is made of the NYPD in that complaint, it is not listed in the caption, and none of the causes of action (which are lodged against "the defendants") are asserted against it.

Accordingly, it is hereby ordered that the motion is granted to the extent that the first amended complaint (dated September 8, 2014) is dismissed as against Police Officers Tristan Parker and Mohammed Donzo; and it is further,

Ordered that the first cause of action in that complaint is dismissed as to the remaining defendants to the extent that it is premised on the allegation that defendants denied plaintiff adequate medical attention; and it is further,

Ordered that the first, third and fourth causes of action in that complaint are dismissed as to the remaining defendants to the extent that those causes of action are premised on defendants' alleged violations of plaintiff's rights under the New York State Constitution.

This constitutes the decision and order of the court.

Dated: March 3, 2015



Douglas E. McKeon, J.S.C.