

**Castillo v City of New York**

2015 NY Slip Op 31247(U)

July 10, 2015

Supreme Court, New York County

Docket Number: 150727/14

Judge: Lynn R. Kotler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
CHRISTIAN CASTILLO,

Plaintiff (s),

*-against-*

CITY OF NEW YORK and P.O. JOHN HEWITT, Shield  
No. 676

Defendant (s).  
-----X

**DECISION/ ORDER**  
Index No.: 150727/14  
Seq. No.: 001

**PRESENT:**  
Hon. Lynn R. Kotler  
**J.S.C.**

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

<b>Paper</b>	<b>Numbered</b>
Def's n/m, KH affirm, exhs.....	1
RG affirm in opp.....	2
KH reply affirm.....	3

-----X  
*Upon the foregoing papers, the decision and order of the Court is as follows:*

This is a personal injury action which arises from plaintiff's arrest on August 17, 2012. Defendants City of New York (the "City") and P.O. John Hewitt, Shield No. 676 ("defendant officer") move to dismiss plaintiffs second, third, fourth, fifth and sixth causes of action or alternatively, for an order bifurcating plaintiff's *Monell* claim for the purposes of discovery and trial. Plaintiff partially opposes the motion: plaintiff does not oppose dismissal of plaintiff's first cause of action for false arrest based on New York law, nor does plaintiff oppose dismissal of the second cause of action for intentional infliction of emotional distress or the third cause of action for negligence against the City. At the outset, based on plaintiff's lack of opposition, the motion is granted to the extent that plaintiff's first cause of action asserting a claim for false arrest, the second cause of action and the third cause of action are severed and dismissed.

The City argues that the fourth cause of action against the City, to the extent that plaintiff alleges state causes of action should be dismissed based upon plaintiff's failure to file a timely notice of claim. Plaintiff maintains that the fourth cause of action is a federal civil rights claim under 42 USC § 1983, even though the fourth cause of action does cite the Constitution of the State of New York. In light of plaintiff's concession, the fourth cause of action, to the extent that plaintiff asserts violations of the New York State Constitution, is dismissed.

Otherwise, defendants seek dismissal of the fifth cause of action asserting a *Monell* claim and the fourth and fifth causes of action against defendant officer because plaintiff's complaint is devoid of any facts showing how a custom or policy led to the deprivation of plaintiff's rights as to the *Monell* claim and . In determining whether a complaint is sufficient so as to withstand a motion to dismiss pursuant to CPLR § 3211 "the sole criterion 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" (*Guggenheimer v. Ginzburg*, 43 NY2d 268 [1977]). The facts as alleged must be accepted by the court as true, for purposes of such a motion, and are to be accorded every favorable inference (*Morone v. Morone*, 50 NY2d 481 [1980]; *Beattie v. Brown & Wood*, 243 AD2d 395 [1st Dept 1997]).

A municipality cannot be held liable under 42 USC § 1983 on a theory of *respondeat superior* (*Elie v. City of New York*, 92 AD3d 716 [2d Dept 2012] citing *Monell*, 436 US at 691). In order to assert a cause of action pursuant to 42 USC § 1983 against a municipality, "the action that is alleged to be unconstitutional must implement[ ] or execute [ ] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" (*Monell*, 436 US at 690) or have occurred because of a practice "so permanent and well settled as to constitute a 'custom or usage' with the force of law" (*Monell*, 436 US at 691).

The court notes that plaintiff's complaint is indeed barebones, and although it is styled as a "Verified Complaint", there is no verification in the court file. However, to withstand a motion to dismiss, all the complaint must have are sufficient allegations to support every element of each cause of action. Here, plaintiff has alleged sufficient facts to support his claims for violation of 42 USC § 1983 against defendant officer for false arrest, assault and battery and malicious prosecution (the fourth cause of action), the *Monell* claim (fifth cause of action) and violation of 42 USC § 1983 against defendant officer for failure to intervene (the sixth cause of action) are sufficiently pled at this stage of the litigation.

The court will, however, grant defendants alternative request seeking bifurcation of the fifth cause of action since "[a] necessary threshold predicate to [a *Monell* claim] is that the officers' actions were unconstitutional", bifurcation is proper to avoid prejudice to the defendant officer and in the interests of judicial economy (*Elie v. City of New York*, 92 AD3d 716 [2d Dept 2012]).

Accordingly, defendant's motion is granted only to the extent that the following claims are severed and dismissed: [1] plaintiff's first cause of action to the extent that he asserts a claim for false arrest; [2] the second and third causes of action; [3] the fourth cause of action to the extent that plaintiff asserts violations of the New York State Constitution; and [4] the fifth cause of action is bifurcated and stayed for purposes of discovery and trial pending trial of the remaining claims.

### **Conclusion**

In accordance herewith, it is hereby

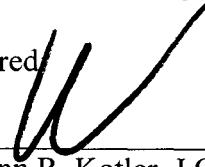
**ORDERED** that defendant's motion is granted only to the extent that the following claims are severed and dismissed: [1] plaintiff's first cause of action to the extent that he asserts a

claim for false arrest; [2] the second and third causes of action; [3] the fourth cause of action to the extent that plaintiff asserts violations of the New York State Constitution; and [4] the fifth cause of action is bifurcated and stayed for purposes of discovery and trial pending trial of the remaining claims; and it is further

**ORDERED** that defendants' motion is otherwise denied.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

Dated: July 10, 2015  
New York, New York

So Ordered   
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Hon. Lynn R. Kotler, J.C.C.