

Young v City of New York
2015 NY Slip Op 32144(U)
October 22, 2015
Supreme Court, Bronx County
Docket Number: 306213/10
Judge: Larry S. Schachner
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART STP**

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JUANITA YOUNG, JAMES FERGUSON, : Index No. 306213/10
TYRELL HOLMES, JASON JAMES, :
MICHAEL BROWNE, D'NAI YOUNG and :
SARAN YOUNG, :
Plaintiffs, :

- against - : **DECISION/ORDER**

THE CITY OF NEW YORK, : **Present:**
P.O. "JOHN DOE #1," (Shield # unknown), : **Hon. Larry S. Schachner**
P.O. "JOHN DOE #2," (Shield # unknown), : Justice, Supreme Court
P.O. "JOHN DOE #3," (Shield # unknown), said :
names being fictitious and unknown, Persons :
intended being police officers and/or personnel who :
was involved in the false arrest and imprisonment :
of the plaintiffs herein, P.O. Anthony Leitao (Shield :
#94412), P.O. Davila (Shield # unknown), :
Sergeant Milligan (Shield # unknown), :
P.O. Rohman (Shield # unknown), :
P.O. Lopez-Maceda (Shield # unknown), :
P.O. Silva (Shield # unknown), :
P.O. Julio Rodriguez (Shield # unknown), and :
P.O. Frank Acosta (Shield # unknown), :
Defendants. :

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Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion for dismissal and cross motion to amend:

Papers	Numbered
Notice of Motion, Affirmation and Exhibits Annexed	1
Notice of Cross Motion, Affirmation and Exhibits Annexed	2
Reply Affirmation in Further Support of Motion and in Opposition to Cross Motion	3
Reply Affirmation in Support of Cross Motion	4

Plaintiffs commenced this action to recover damages for false arrest, false imprisonment, assault and battery, malicious prosecution, personal injuries, negligence and violation of

plaintiffs' civil rights as a result of an incident on or about August 8-9, 2009 when plaintiffs were allegedly assaulted and battered and improperly searched, in the vicinity of 1772 East Tremont Avenue, Bronx, New York, by members of the New York City Police Department (NYPD) from the 43rd Precinct. Plaintiffs James Ferguson, Tyrell Holmes, Jason James, Michael Brown, D'Nai Young and Saran Young were arrested.

Defendants City of New York (City), Anthony Leitao, Julio Davila, Derrick Milligan, Diane Rohman, Iran Lopez-Maceda, Jose Silva, Julio Rodriguez, and Frank Acosta now move for dismissal pursuant to CPLR 3211 (a) (5) and CPLR (a) (7) of various causes of action. Plaintiffs cross move to amend the complaint to add allegations concerning their *Monell* and federal civil rights claims. The motions are consolidated and decided as follows.

Plaintiffs do not oppose those portions of defendants motion seeking dismissal of the common law negligence claims, negligent hiring, retention and supervision claims against the City of New York (City) under state law, and the malicious prosecution claims of Juanita Young. Also, plaintiffs are not seeking punitive damages against the City but only against the individual defendants.

Plaintiffs' cross motion to amend the complaint to properly plead a *Monell* claim under 42 USC § 1983 is denied, as plaintiffs fail to sufficiently allege a municipal pattern and practice pursuant to which plaintiffs' constitutional rights were allegedly violated. *See Monell v Dept. of Social Serv.*, 436 US 658, 694 (1978). Plaintiffs' proposed amended pleadings do not meet the requirements of *Ashcroft v Iqbal*, 556 US 622 (2009) in that plaintiffs' conclusory allegations do not identify a specific policy of the police department, how this policy was promulgated, or specific information as to how it was adopted. Also, plaintiffs' proposed claims fail to set forth

the City's alleged municipal custom, policy, pattern or practice or any causal connection the between the municipal "policy" and the alleged violations. The allegations in plaintiffs' proposed amended complaint are conclusory and speculative and do not meet the requirements of *Ashcroft v Iqbal*, 556 US 622 (2009). Therefore, plaintiffs' *Monell* claims against the City are dismissed.

In addition, the proposed amended complaint contains causes of action that go beyond the scope of the orders of this court dated November 22, 2010 and March 2, 2011 which orders denied plaintiffs' two motions to amend the complaint to add individual police officers as defendants since they were not named in the notices of claim citing *Tannerbaum v City of New York*, 30 AD3d 357 (1st Dept 2006). Thus, plaintiff's state tort claims against the individual police officers are dismissed.

That portion of plaintiffs' cross motion to amend the complaint to add 42 USC § 1983 claims is denied as the statute of limitations for asserting federal civil rights claims against a municipality in New York State is three years. *See Owens v Okure*, 488 US 235 (1989). The subject incident occurred on August 8-9, 2009, and the court is without discretion to extend the statute of limitations.

That branch of defendants' motion seeking to dismiss the 42 USC § 1983 claims against the individual officers under the Fourth, Sixth and Fourteenth Amendments of the U.S. Constitution is granted. These causes of action are not properly pled, as they do not assert what wrongful acts were committed by each individual officer or how each individual police officer allegedly violated each plaintiff's civil rights. As these claims were not sufficiently pled in the complaint, they are dismissed. Correspondingly, plaintiffs' claims for punitive damages against

the eight individual defendant police officers are dismissed as there are no valid claims for civil rights violations remaining.

Plaintiffs' cause(s) of action alleging a violation of the New York State Constitution are dismissed. Given that plaintiffs have a common law tort remedy, there is no recovery permitted for alleged violation(s) of the state constitution. *See Martinez v City of Schenectady*, 97 NY2d 78 (2001).

Accordingly, defendants' motion to dismiss is granted to the extent that the only remaining claims are plaintiffs' state tort claims for false arrest and false imprisonment, assault and battery, and malicious prosecution, with the exception that plaintiff Juanita Young does not have a state tort claim for malicious prosecution. The caption shall be amended to reflect that the City is the only remaining defendant.

Settle order.



LARRY S. SCHACHNER, J.S.C.

Dated: October 22, 2015