

Rodriguez v City of New York
2016 NY Slip Op 30484(U)
March 21, 2016
Supreme Court, New York County
Docket Number: 159070/2012
Judge: Margaret A. Chan
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 52**

JOSE RODRIGUEZ & EMILY ALAMO,
Plaintiffs,

- v -

DECISION and ORDER
Index No. 159070/2012

**THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, DET. PETER
VALENTIN, POLICE OFFICERS JOHN
DOE 1-10,**

Defendants.

Margaret A. Chan, J.:

Plaintiffs' action stems from their arrest on March 9, 2011, for which they were incarcerated for two days. The underlying cases against plaintiffs were dismissed on May 14, 2012. Plaintiffs filed their Notice of Claim against defendant the City of New York on June 25, 2012. The complaint alleging six causes of action was filed on December 7, 2012. Defendants (collectively, the City) move (motion sequence 2) to dismiss plaintiffs' causes of action for false arrest and incarceration, assault and battery, and infliction of emotional distress as they are time-barred pursuant to Municipal Law § 50-i; the cause of action for violation of state civil rights as duplicative as the tort claims; the cause of action for attorney's fees as it is not a cognizable claim; and to vacate a portion of a discovery order of this court. Plaintiffs opposed the motion and filed a separate motion (motion sequence 3) to grant them leave to serve an amended complaint; compel further disclosure; for costs and sanctions; and to preclude or strike the City's Answer, to which the City opposed.

Plaintiffs' claims sounding in tort accrued when they were released from confinement on March 11, 2011. They served the Notice of Claim on June 25, 2012, long after the 90-day statute of limitations for filing a claim against a municipality as provided in GML § 50-e. Further, pursuant to GML § 50-i(1), plaintiffs had to commence an action against the City within one year and ninety days after their claims accrued. Plaintiffs filed their action on or about December 20, 2012, more than one year and ninety days after March 9 and 11, 2011, the dates their claims accrued for the assault/battery and the infliction of emotional distress, and for false arrest and false imprisonment, respectively. Thus, plaintiffs cannot seek an extension of time to serve a late claim as the court may not grant an extension after the statute of limitations has expired (*see Pierson v City of New York* 56 NY2d 950 [1982]; *Ahnor v City of New York*, 101 AD3d 581 [1st Dept 2012]).

Plaintiffs assert that the GML sections on statute of limitations are tolling provisions rather than a condition precedent and cites *Campbell v City of New York* (4 NY3d 200 [2005]), in support. The Court of Appeals in *Campbell* stated that “the year-and-90 day provision contained in section 50-i as a statute of limitations ‘has generally been regarded as a Statute of Limitations subject to the tolls’ ” as provided in CPLR Article 2 (*id.* at 208). However, plaintiffs did not assert which tolling provision in CPLR Article 2 is applicable to them. Their argument that the June 25, 2012 Notice of Claim gives the City sufficient notice of their claims and that the City does not have a plausible argument that it is prejudiced by the absence of a timely Notice of Claim necessarily dismisses the purpose of GML sections 50-e and 50-i. In any event, since no leave to file a late notice of claim was requested, the June 25, 2012 Notice of Claim is a nullity (*see Croce v City of New York*, 69 AD3d 488 [1st Dept 2010]). As such, the causes of action for false arrest, false imprisonment, assault and battery, and intentional infliction of emotional distress are dismissed as time-barred pursuant to CPLR 3211(a)(5)¹. It is noted that the intentional infliction of emotional distress claim is dismissible as against public policy (*see Dillon v City of New York*, 261 AD2d 34 [1st Dept 1999]).

As to plaintiffs’ state civil rights violation claim, their complaint alleged that incident to their unlawful arrest, aside from the harassment, they underwent threats and intimidation in violation of New York State Constitution Articles 1 §§ 11 and 12 (Complaint, ¶¶ 27-28). The City argues that the state civil rights violation claim is duplicative of the tort claims and therefore not actionable (Deft’s Aff, Point IV). And, even if this cause of action were colorable, it is nonetheless time-barred.

Plaintiffs argue that if the tort claims were dismissed, then their civil rights claim stands on its own and is viable. Plaintiffs’ argument is unpersuasive as the state civil rights claims mirror those of his tort claims of false arrest, false imprisonment and assault/battery. The allegation that the police took plaintiff Rodriguez’s money and credit cards sounds in a claim for recovery for monetary damages, and thus, inappropriate for a civil rights cause of action. Categorizing the torts claims against the City as a state civil rights claim does not overcome the statute of limitations as set by GML § 50(i). Thus, plaintiffs’ cause of action for state civil rights violation is likewise dismissed.

In sum, the first, second, third, and fifth causes of action are hereby dismissed; plaintiffs withdrew their sixth cause of action for attorney’s fees (Pltfs’

¹ Defendants’ motion cited to CPLR 3211(a)(7) rather than CPLR 3211(a)(5), however, the error is minor given their proffered facts and arguments focused on the statute of limitations issues and left no doubt as the basis of their motion to dismiss.

Aff in Opp at 9); the remaining cause of action is the fourth cause of action for malicious prosecution.

As to the branch of the City's motion to vacate a portion of this court's November 19, 2014 order, the City claims that the order calls for production of documents that are privileged and immaterial to plaintiffs' case. The part of this court's order dated November 19, 2014 (Defts' Aff in Support, exh G) that the City would like to have vacated is for the production of "[two] years of CCRB and/or IAB (should they exist) for Det. Peter Valentin prior to [and inclusive of] the date of the incident" (*id.*). The City argues that Det. Valentin's CCRB and/or IAB records for the two years prior to the incident are irrelevant to the six causes of actions alleged in the complaint. Plaintiffs characterize this branch of the City's motion as a motion to reargue/renew, and as such, it is untimely and defective as the City failed to indicate how the court misunderstood the facts or misapplied the law, or present new evidence pursuant to CPLR 2221.

The City's motion to vacate the November 19, 2014 discovery order pursuant to CPLR § 2221(a) is not proper. However, the City also moved under CPLR § 5015(a), which intends the court to retain its discretionary powers to vacate its judgments or orders (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]). Before addressing this branch of the City's motion, plaintiffs' request to amend their complaint in motion sequence 3 must be visited.

Plaintiffs' strenuous opposition to vacating a portion of the discovery order is spurred by the arresting officer, co-defendant Det. Valentin's "atrocious arrest history" of which the NYPD had knowledge; the investigation of him by the NYPD Internal Affairs; and information that he had the largest number of claims for unjustified arrests (Aff in Opp, ¶¶ 3-4). Plaintiffs sought to amend their complaint to "argue that the City should have taken Valentin off the streets long before he ever made the subject arrests" (*id.*, ¶ 5). While this is an improper motion to amend the complaint, asserted off-handedly in the attorney's affirmation in opposition, plaintiffs did file motion sequence 3 before addressing the City's motion sequence 2.

In motion sequence 3, plaintiffs move to serve an amended complaint to add causes of action for violation of plaintiffs' federal civil rights, a "municipal liability (Monell) claim," and a claim based in negligent hiring, training and retention for "failure to suspend Valentin" (Pltfs' Mot, ¶ 20). These newly proposed claims are also time-barred. Federal constitutional claims brought pursuant to 42 USC § 1983 and state claims for negligent hiring, training and retention are governed by New York's three-year statute of limitations for personal injury actions (*see* CPLR 214; *Owens v Okure*, 488 US 235, 251 [1989])[1983 actions stemming from an alleged arrest without cause are subject to a three-year statute of limitations pursuant to New York's statute of limitations of claims for personal injury]; *Connolly v McCall*,

254 F3d 36, 40-41 [2d Cir 2001]; *Legal Aid Soc. v City of New York*, 242 AD2d 423, 426 [1st Dept 1997]). Therefore, the branch of plaintiffs' motion seeking to amend the complaint is denied.

Returning to the outstanding discovery issues, the City moved to vacate a portion of this court's prior order regarding CCRB and/or IAB records for Det. Valentin and plaintiff seeks to compel those records and moves for costs and sanctions based on the City's delay in providing them. Personnel records inclusive of IAB and disciplinary action taken against officers are discoverable to the extent they contain information relevant to the action (*see Chavez v City of New York*, 33 Misc3d 1214(A) [Sup Ct, NY Cty 2011] *affd*, 99 AD3d 614 [1st Dept 2012]). As plaintiffs' claims for negligent hiring, training and retention are time-barred, the CCRB and/or IAB records for Det. Valentin spanning two years prior to the subject incident are no longer discoverable (*see Civil Rights Law* § 50-a[2]; *Flores v City of New York*, 207 AD2d 302 [1st Dept 1994]; *cf. Chavez v City of New York*, 99 AD3d 614, 615 [1st Dept 2012]). Thus, this court grants the branch of the City's motion to vacate this court's prior discovery order regarding Det. Valentin's personnel records that pre-date the instant arrest (motion sequence 2). However, CCRB and/or IAB records for the underlying incident as they relate to plaintiffs' remaining malicious prosecution claim are still relevant and material, to the extent they exist. Therefore, any CCRB and/or IAB records regarding the actions of Det. Valentin for the underlying incident shall be disclosed, in camera, within 30 days of entry of this order.

As to plaintiffs' motion seeking preclusion or to strike City's pleadings pursuant to CPLR 3126, that portion of the motion is denied (motion sequence 3) since there was no indication that the City's discovery responses were willful and contumacious, particularly now where the material the City withheld was the subject of this motion practice and is no longer relevant. The portion of plaintiffs' motion seeking costs and sanctions is also denied. Plaintiff did not proffer any legitimate reason to sanction the City's handling attorney personally. All other requests for further discovery are preserved until the parties appear for the next previously scheduled compliance conference on March 23, 2016, at 2:00 PM, in the DCM Part.

The remaining issue set forth in motion sequence 3 is plaintiffs' request to deem defendants' amended answer a nullity pursuant to CPLR 3025. Plaintiffs assert that the City served an amended answer without leave of court on March 31, 2014, and plaintiffs rejected same by letter dated April 15, 2014 (Pltfs' Mot, exh K). The City explained that it required additional time to ascertain if its representation would extend to Det. Valentin (Defts' Aff in Opp, ¶ 13). The City's delay in answering on behalf of this individual defendant was reasonable and this branch of

plaintiffs' motion is also denied (*see Myers v City of New York*, 110 AD3d 652 [1st Dept 2013]).

Accordingly, as to motion sequence 2, it is

ORDERED, defendants' motion seeking dismissal of first, second, and third causes of action are granted; it is further

ORDERED that the sixth cause of action is withdrawn; and it is further

ORDERED that the branch of the motion to vacate the November 19, 2014 discovery order by this court is granted to the extent that only CCRB and/or IAB, should they exist, for the subject incident shall be disclosed. Defendants are directed to submit to this court a Bates-stamped redacted and a separate unredacted copy of any CCRB and/ IAB records for the subject incident, with a corresponding privilege log, for an in-camera review within 30 days of entry of this order.

As to motion sequence 3, it is

ORDERED, plaintiffs' motion to amend its complaint; for preclusion, costs, and sanctions; and to deem the amended answer a nullity, is denied, and it is further

ORDERED, that the branch of plaintiffs' motion seeking further discovery is granted to the extent that the remaining discovery issues are preserved for the upcoming compliance conference on March 23, 2016.

This constitutes the decision and order of the court.

Enter:

Dated: March 21, 2016



Margaret A. Chan, J.S.C.