

<b>Hanna v City of New York</b>
2016 NY Slip Op 31082(U)
March 23, 2016
Supreme Court, New York County
Docket Number: 162475/14
Judge: James E. d'Auguste
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 62

-----X  
BESHOY HANNA,

Plaintiff,

-against-

THE CITY OF NEW YORK, "JOHN DOE I" and  
"JOHN DOE II" (the names "JOHN DOE" being  
fictitious and intended to designate the police officers),

Defendants.  
-----X

**DECISION AND ORDER**

Index No. 162475/14

Mot. Seq. No. 001

**Hon. James E. d'Auguste**

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF  
THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1, 2 (Exs. A-F)
AFFIRMATION IN OPPOSITION TO MOTION.....	3 (Exs. A-B)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

The motion by plaintiff Beshoy Hanna seeking an order, pursuant to CPLR 3025(b), for leave to file an amended summons and verified complaint to substitute non-parties P.O. Salvatore Matagrano and P.O. Brian Boisseau as defendants in place of "John Doe I" and "John Doe II" is denied without prejudice to file a new motion.

The facts, as relevant to this motion, are as follows: On December 22, 2013, Hanna allegedly suffered personal injuries during his arrest. On January 17, 2014, Hanna served a notice of claim<sup>1</sup> on defendant The City of New York (the "City") alleging, *inter alia*, false arrest against the City, The New York City Police Department ("NYPD"),<sup>2</sup> and "John Does" as police

---

<sup>1</sup> The Court notes that the notice of claim served on the city contains the name "Beshony Hanna," but presumes this is a typographical error.

<sup>2</sup> Although the NYPD is listed in the notice of claim, it is a non-suable entity and is not legally subject to suit. N.Y. City Charter, Ch. 17 § 396; *Alvarez v. City of New York*, 134 A.D.3d 599, 600 (1st Dep't 2015) (Sweeny, J., concurring) (dismissing claims "against the NYPD on the ground that it is a 'non-suable entity'").

officers at the time unknown and unidentified. The notice of claim did not specifically mention Matagrano or Boisseau as defendants. On December 17, 2014, Hanna filed a summons and verified complaint against the City and two “John Doe” defendants.<sup>3</sup> The instant motion to amend the caption was served on October 16, 2015.

As an initial matter, the relation back doctrine is inapplicable to the instant action. The relation back doctrine, for CPLR 203 purposes, permits the correction of a mistake in naming or failing to name a party. In instances where “John Doe” defendants are named, courts have repeatedly held that ignorance of a party’s identity does not equate to a mistake of that party’s identity. *Tucker v. Lorieo*, 291 A.D.2d 261, 262 (1st Dep’t 2002); *Vasconcellos v. City of New York*, 2014 WL 4961441, at \*7 (S.D.N.Y. Oct. 2, 2014) (applying New York law); *Ceara v. Deacon*, 68 F. Supp. 3d 402 (S.D.N.Y. 2014) (same). The relation-back doctrine, contained in CPLR 203, permits the substitution of a “John Doe” designation for a newly identified defendant when the plaintiff complies with the procedure contained in CPLR 1024, set forth *infra*. *Tucker*, 291 A.D.2d at 262; *Temple v. N.Y. Cmty. Hosp.*, 89 A.D.3d 926, 927-28 (2d Dep’t 2011). “The general rule is that John Doe pleadings cannot be used to circumvent statutes of limitations because replacing a John Doe with a named party constitutes a change in the party sued.” *Vasconcellos*, 2014 WL 4961441, at \*5 (internal quotation marks and citation omitted).

The applicable provision under which Hanna could arguably obtain the relief sought is CPLR 1024; however, Hanna has failed to meet the requirements for relief pursuant to this statute. Hanna has also not demonstrated that a genuine effort was made to ascertain the police officers’ identities as required by CPLR 1024. CPLR 1024 permits the use of a “John Doe” designation when filing an action in place of an unknown defendant, provided that plaintiff exercised due diligence in attempting to ascertain that defendant’s identity prior to the running of

---

<sup>3</sup> The instant motion asserts that the summons and verified complaint was initially filed in the Supreme Court, Kings County Clerk’s office, but there is no such indication of this in the NYSCEF docket for the within action.

[\* 3]

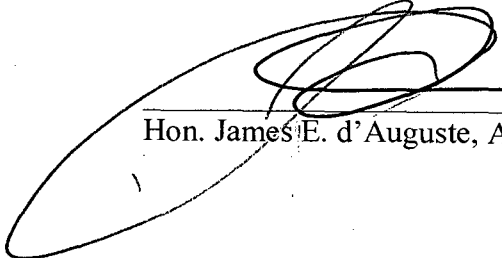
the statute of limitations. *Tucker*, 291 A.D.2d at 261-62; *Temple*, 89 A.D.3d at 927. Hanna served discovery demands dated March 12, 2015, twelve days prior to the expiration of the statute of limitations, to demonstrate that some effort was made to ascertain the identities of the two “John Doe” officers in accordance with CPLR 1024. However, Hanna’s submission lacks any affidavit of service to show when the discovery demands were actually served. *See Garber Aff. Ex. D*. In order to rise to the level of “due diligence,” it appears that Hanna should have used any means available to obtain the identities of the “John Doe” defendants. *Temple*, 89 A.D.3d at 928; *Holmes v. City of New York*, 132 A.D.3d 952, 954 (2d Dep’t 2015). Further, there is no indication that Hanna made any Freedom of Information Law requests nor did he seek “assistance from either the Criminal Court or the Supreme Court to learn the identities of the individual officers before the statute of limitations had run.” *Holmes*, 132 A.D.3d at 954.

Additionally, the City affirms in its opposition that in order to respond to Hanna’s discovery demands, the City required a signed authorization from plaintiff in order to obtain his NYPD records. Despite multiple attempts to acquire said authorization, the City asserts that it eventually received the authorization necessary to obtain Hanna’s arrest records in late July 2015, after the statute of limitations had expired. The City also indicates that in order to obtain Hanna’s complete criminal court file, it required a “So Ordered” unsealing order to be provided by Hanna and it is unclear whether such order was ever provided to the City. Hanna’s submission fails to show that he “diligently sought to gain access to the records contained in the file for the criminal proceeding prior to the expiration of the statute of limitations.” *Holmes*, 132 A.D.3d at 954.

Accordingly, Hanna’s motion for leave to file an amended complaint substituting non-parties P.O. Salvatore Matagrano and P.O. Brian Boisseau for “John Doe I” and “John Doe II,” respectively, is denied without prejudice to file another motion. Hanna may file another motion upon a detailed description of exactly what efforts he made to obtain the identities of the “John

[\* 4]  
Doe” officers prior to the expiration of the statute of limitations. This constitutes the decision and order of this Court.

Dated: March 23, 2016



---

Hon. James E. d'Auguste, A.J.S.C.