

Lasanta v City of New York
2016 NY Slip Op 31110(U)
May 24, 2016
Supreme Court, Bronx County
Docket Number: 301004/2013
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JOSE LASANTA,

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, DETECTIVE REINER
FEHRENBACH, SHIELD #4938 and POLICE
OFFICER JOHN DOE,

Defendants.

Index No.: 301004/2013

DECISION/ORDER

Present:
HON. MITCHELL J. DANZIGER

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Recitation as Required by CPLR §2219(a): The following papers
were read on this Motion for Summary Judgment

Papers Numbered

Notice of Motion & Affirmation in Support with Exhibits	<u>1</u>
Affirmation & Affidavits in Opposition with Exhibits	<u>2</u>
Reply Affirmation in Support with Exhibits.....	<u>3</u>

Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

Defendants move for summary judgment dismissing plaintiffs' complaint pursuant to CPLR §3212 or in the alternative dismissing the complaint pursuant to CPLR §3211. The complaint asserts causes of action for false imprisonment, malicious prosecution, negligence, negligent supervision, and negligent hiring.

This matter arises from the arrest of plaintiff on October 22, 2010. Plaintiff was charged with sexual assault of a minor and remained incarcerated for approximately thirteen (13) months, until a jury acquitted plaintiff of the charges. Defendants move for summary judgement dismissing plaintiff's causes of action for false imprisonment and malicious prosecution on the basis that the police had probable cause to arrest plaintiff. Defendants also seek summary judgment dismissing plaintiff's causes of action for negligent hiring and negligent supervision on the basis that Detective Reiner Fehrenbach, was acting within the scope of his employment at the time he investigated the underlying complaint and arrested plaintiff. Defendants also move to dismiss any federal §1983 claims that might be gleaned from the complaint as the plaintiff failed to plead any such claim with

the required specificity¹.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). Once movant has met his initial burden on a motion for summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). It is well settled that issue finding, not issue determination, is the key to summary judgment (*Rose v. Da Ecib USA*, 259 A.D. 2d 258 [1st Dept. 1999]). When the existence of an issue of fact is even fairly debatable, summary judgment should be denied (*Stone v. Goodson*, 8 N.Y.2d 8, 12 [1960]).

A plaintiff asserting a claim for false imprisonment must demonstrate, “that the defendant intended to confine the plaintiff; the plaintiff was conscious of the confinement; the plaintiff did not consent to the confinement; and that the confinement was not otherwise privileged.” (*Hernandez v. City of New York*, 100 A.D. 3d 433 [1st Dep’t. 2012]). Where an arrest is made without a warrant, as in this case, it is presumed that the arrest was unlawful (*Smith v. County of Nassau*, 34 N.Y.2d 18, 23 [1974]). However, the defendant can prevail provided he proves legal justification for the arrest and imprisonment which “may be established by showing that the arrest was based on probable cause (*Broughton v. State of New York*, 37 N.Y.2d 451, 458 [1975]; *Hernandez* at 433-422). “Once probable cause has been established, the defendant has met his or her burden of proof for a legal justification and the plaintiff’s cause of action sounding in false arrest must fail” (*Minott v. City of New York*, 203 A.D.2d 265, 267 [2d Dep’t., 1994]).

¹The court notes the complaint does not set forth a cause of action asserting violation of §1983 and therefore, the court does not address this portion of the motion.

Probable cause, also known as reasonable cause, exists

[w]here an officer, in good faith, believes that a person is guilty of a felony, and his belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise, he has such probable cause for his belief as would justify him in arresting without a warrant” (*Smith* at 34).

CPL §70.10(2) provides:

Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay.

Accordingly, what is required to establish probable cause for an arrest is not “proof sufficient to warrant a conviction beyond a reasonable doubt, but merely information sufficient to support a reasonable belief that an offense has been committed” (*Jenkins v. City of New York*, 2 A.D.3d 291, 292 [1st Dep’t., 2003]).

Generally, information provided by an identified citizen accusing another of the commission of a crime is sufficient to provide the police with probable cause to arrest (*People v. Moore*, 32 N.Y. 2d 67, 71, (1973). Further, a Grand Jury indictment creates a presumption of probable cause which may be overcome only by evidence establishing that the police witnesses have not made a complete and full statement of facts either to the Grand Jury or the District Attorney, that they misrepresented or falsified evidence, that they have withheld or otherwise acted in bad faith (*Colon v. City of New York*, 60 N.Y.2d 78 [1983]; *Morant v. City of New York*, 95 A.D.3d 612 [1st Dep’t., 2012]).

In the instant matter, plaintiff was arrested based upon the complaint of a minor (hereinafter referred to as “complainant”). Plaintiff appeared at the complainant’s residence on October 20, 2010 to perform pest extermination. At the time the plaintiff appeared, the complainant was in her apartment with a cleaning lady. The complainant’s mother was shopping and the complainant’s father was in the basement of the building. The record before the court establishes that the cleaning lady observed the plaintiff ask the complainant to sign his worksheet indicating that he appeared at

the apartment and performed extermination services. The complainant alleged that plaintiff asked her to come with him into the hallway because he has some candy. The cleaning lady did not observe this but testified that while she heard the door close she did not observe the complainant leaving the apartment. A few moments later, the cleaning lady heard the complainant crying. When the complainant's father returned to the apartment, the complainant alleged that plaintiff sexually assaulted her while she was in the hallway with him. The cleaning lady did not witness the alleged assault. The complainant's parents reported the alleged crime twenty-four hours later. Thereafter, Detective Reiner Fehrenbach from the Special Victim's Unit was assigned to investigate the complaint. Fehrenbach interviewed the complainant, as well as her parents and the plaintiff. The complainant identified plaintiff as the man who allegedly assaulted her in a photo array. The complainant's mother also identified the plaintiff as the exterminator in a photo array.

Based on the foregoing, the court finds that there was probable cause to arrest and confine plaintiff. Plaintiff was indicted by a Grand Jury and therefore a presumption of the existence of probable cause has been established. Plaintiff failed to present any evidence establishing that Detective Fehrenbach did not make a complete and full statement of facts to the Grand Jury or the District Attorney, that he misrepresented or falsified evidence, or that he withheld evidence or otherwise acted in bad faith. Plaintiff's contention that Fehrenbach's failure to interview the cleaning lady amounts to some sort of failure to present a full set of facts is unpersuasive as the cleaning lady herself testified that she did not witness any of the alleged assault. The cleaning lady only heard the door close and then heard the complainant crying approximately eight to ten minutes later. Detective Fehrenbach testified that he did not interview the cleaning lady because he determined she had not witnessed the alleged assault based upon his interview with the complainant and with the plaintiff. Plaintiff fails to alleged that Detective Fehrenbach falsely testified to the grand jury or informed the District Attorney's office that the plaintiff confirmed he was alone with the complainant. Under these circumstances the court finds that probable cause existed to arrest plaintiff and therefore, plaintiff's cause of action for false imprisonment is dismissed.

Summary judgment is also granted in connection with plaintiffs' claim for malicious prosecution. The elements of an action for malicious prosecution are (1) the initiation of a proceeding; (2) its termination favorably to plaintiff; (3) lack of probable cause; and (4) malice

(*Morant v. City of New York*, 95 A.D. 3d 612 [1st Dep't. 2012] quoting *Colon v. City of New York*, 60 N.Y.2d 78,82 [1983]). The existence of probable cause constitutes a complete defense to a claim of malicious prosecution (*Lawson v. City of New York*, 83 A.D. 3d 609 [1st Dep't., 2011]). As discussed above, probable cause has been established and therefore, summary judgment dismissing the malicious prosecution claims is granted.

Plaintiff's causes of action for negligent hiring and supervision, is also dismissed. The court finds that Detective Fehrenbach was acting within the scope of his employment while the underlying events occurred. Detective Fehrenbach was investigating the a complaint made against the plaintiff at the time plaintiff was arrested. "Generally, where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention" (*Karoon v New York City Tr. Auth.*, 241 AD2d 323, 324 [1st Dept 1997]). Moreover, to the extent that plaintiff alleges the defendants' failure to supervise police officers represent a custom or policy that injured the plaintiff, otherwise known as "Monell" claims (*Monell v. Department of Social Services*, 436 U.S. 658 (1978), the court dismissed the same. Under *Monell*, a municipality may not be held liable solely on the basis of *respondeat superior* (id.) Rather, a plaintiff must show "a direct causal link between a municipal policy or custom, and allege the constitutional deprivation" (*City of Canton v. Harris*, 489 U.S. 378, 385 [1989]). "It is only when the execution of the government's policy or custom...inflicts the injury that the municipality may be held liable under §1983" (id.). The element of causation has two components. The plaintiff must first prove the existence of a municipal policy or custom in order to show that the municipality took some action that caused his injuries beyond merely employing the misbehaving officer. Second, the plaintiff must establish a causal connection, also described as an "affirmative link" between the policy and the deprivation of his constitutional rights (*Vippolis v. Haverstraw*, 768 F.2d 40, 44 [2d Cir. 1985] citing *Oklahoma City v. Tuttle*, 471 U.S. 808 [1985]). However, plaintiff has failed to offer factual allegations sufficient to support his legal conclusion alleged in the complaint that a policy resulted in injury to the plaintiff (*Ashcroft v. Iqbal*, 129 S.Ct. 1937 [2009]).


Plaintiff's cause of action for general negligence is also dismissed. The complaint alleges that the false imprisonment and malicious prosecution of plaintiff were caused by the defendants'

negligence. However, as described herein above, the arrest, imprisonment and prosecution of plaintiff was based upon probable cause. Therefore, the cause of action for negligence is dismissed

Based on the foregoing, defendants' motion for summary judgment and dismissal is granted in its entirety and the complaint is dismissed.

This constitutes the decision and judgment of the court.

Dated: 5/24/16
Bronx, New York



HON. MITCHELL J. DANZIGER, J.S.C.