

Johnson v City of New York
2017 NY Slip Op 30388(U)
January 9, 2017
Supreme Court, Queens County
Docket Number: 703775/14
Judge: Howard G. Lane
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IAS PART 6

RONALD JOHNSON,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

Index No. 703775/14

Motion

Date October 11, 2016

Motion

Cal. Nos. 81 and 82

Motion

Seq. Nos. 4 and 5

Papers
Numbered

Notice of Motion #81 (seq. 4)...
Exhibits.....
Aff. In Opposition.....
Aff. In Reply.....
Exhibits.....

EF 49
EF 50-56
HC-A
EF 59
EF 60

Notice of Motion #82 (seq. 5)...
Aff. In Opposition.....
Aff. In Reply.....

HC-A
EF 58
HC-B

FILED
JAN 26 2017
COUNTY CLERK
QUEENS COUNTY

Upon the foregoing papers it is ordered that the motion by defendants for an order pursuant to CPLR 3211(a)(7) dismissing all of plaintiff's federal and state law claims as against defendants Commissioner William J. Bratton and D.I. Miltiadis Marmara s/h/a Deputy Inspector Miltiadis Marmara as the Commanding Officer of the 113th Precinct as such claims are duplicative and/or otherwise fail to state a cause of action and plaintiff's motion for an Order pursuant to CPLR 3126 striking the defendants', The City of New York, Commissioner William J. Bratton, D.I. Miltiadis Marmara, and P.O. Michael Carleo's Answers for failure to be produced for depositions and to respond to plaintiff's demands for discovery and inspection dated February 19, 2015 and August 11, 2015 and to Comply with Court Orders and for an Order to preclude the defendants', The City of New York, Commissioner William J. Bratton, D.I. Miltiadis Marmara, and P.O. Michael Carleo, Sgt. Christopher Ward, P.O.

Robert Deferrari and P.O. Jose V. Asquezmiranda from offering any evidence on the issue of liability, from testifying at the time of trial and from offering any evidence at the time of trial for failure to be produced for depositions and to respond to plaintiff's demands for discovery and inspection dated February 19, 2015 and August 11, 2015 and to comply with Court Orders; and for an Order pursuant to CPLR 3126 deeming all issues to which the information requested from Answering defendants is relevant to be deemed resolved in accordance with the claims of plaintiff; and for an Order and setting the matter down for an inquest on damages, are hereby joined solely for purposes of disposition of the instant motions and are hereby decided as follows:

Defendants' motion for an order pursuant to CPLR 3211(a)(7) dismissing all of plaintiff's federal and state law claims as against defendants Commissioner William J. Bratton and D.I. Miltiadis Marmara s/h/a Deputy Inspector Miltiadis Marmara as the Commanding Officer of the 113th Precinct as such claims are duplicative and/or otherwise fail to state a cause of action is granted.

In the underlying action, plaintiff, Ronald Johnson, sues to recover damages for the alleged violation of his civil rights and for personal injuries he sustained when he was allegedly falsely arrested by members of the New York Police Department on January 17, 2014.

Defendants establish a prima facie case that plaintiff's claims as against defendants, Commissioner William J. Bratton and Deputy Inspector Miltiadis Marmara as the Commanding Officer of the 113th Precinct pursuant to § 1983, which claims are asserted in the Eighth Cause of action in the Complaint, are duplicative of claims against the municipality, (defendant, the City of New York) itself. As such, the Eighth Cause of Action as it relates to Commissioner Bratton and Deputy Inspector Marmara must be dismissed. Defendants established that when a local government entity and a municipal officer who is named only in his official capacity are both named, the suit may be dismissed as against the officer as the claims are "duplicative" and "redundant." (see, *Center for Bio-ethical Reform, Inc. v. Los Angeles County Sheriff Dept.*, 533 F3d 780 [9th Cir 2008]; *Busby v. City of Orlando*, 931 F2d 764 [11th Cir 1991]; *Doe v. Claiborne County, Tenn. By and Through Claiborne County Bd. Of Educ.*, 103 F3d 495 [6th Cir 1996].

In opposition, plaintiff fails to raise any valid points. Plaintiff asserts that defendants' motion (which plaintiff incorrectly refers to as a cross motion) is untimely. However, a

motion to dismiss pursuant to CPLR 3211(a)(7) can be made at any time pursuant to CPLR 3211(a)(e). Furthermore, plaintiff raises no substantive arguments in rebuttal of defendants' arguments herein.

Accordingly, defendants' motion is granted and the Complaint is dismissed as against defendants Commissioner William J. Bratton and D.I. Miltiadis Marmara s/h/a Deputy Inspector Miltiadis Marmara as the Commanding Officer of the 113th Precinct.

Plaintiff's motion for an order pursuant to CPLR 3126 striking the defendants', The City of New York, Commissioner William J. Bratton, D.I. Miltiadis Marmara, and P.O. Michael Carleo's Answers for failure to be produced for depositions and to respond to plaintiff's demands for discovery and inspection dated February 19, 2015 and August 11, 2015 and to Comply with Court Orders; and for an Order to preclude the defendants', The City of New York, Commissioner William J. Bratton, D.I. Miltiadis Marmara, and P.O. Michael Carleo, Sgt. Christopher Ward, P.O. Robert Deferrari and P.O. Jose V Asquezmiranda from offering any evidence on the issue of liability, from testifying at the time of trial and from offering any evidence at the time of trial for failure to be produced for depositions and to respond to plaintiff's demands for discovery and inspection dated February 19, 2015 and August 11, 2015 and to comply with Court Orders; and for an Order pursuant to CPLR 3126 deeming all issues to which the information requested from Answering defendants is relevant to be deemed resolved in accordance with the claims of plaintiff and setting the matter down for an inquest on damages, is granted solely to the following extent:

On February 24, 2016, a "So-Ordered" Stipulation was issued by Leonard N. Florio, Court Attorney Referee, wherein defendants were to provide outstanding discovery and appear for outstanding examinations before trial. It is undisputed that defendants failed to comply with the terms of this "So-Ordered" Stipulation, but are fully prepared to now provide the outstanding discovery responses and defendants have been willing to produce some of the defendants but plaintiff has adjourned the depositions. Furthermore, defendants indicate that after the motion was made, they called plaintiff in good faith to try to resolve the issues in this motion, but were informed that plaintiff wanted to proceed with motion practice. As defendants have failed to comply with a "So- Ordered" Stipulation, but have provided some excuse for non-compliance, defendants are compelled to provide all outstanding discovery within sixty (60) days after service of a copy of this order with notice of entry and defendants with the exception of defendants, Commissioner William J. Bratton, In His

Official Capacity, and Deputy Inspector Miltiadis Marmara as the Commanding Officer of the 113th Precinct, which defendants have been dismissed, supra, are to appear for outstanding EBT's on a date, time, and place mutually agreed upon by the parties, but no later than sixty (60) days from the date of service of a copy of this order with notice of entry. Should said defendants fail to comply with this Order, said defendants shall be precluded from offering any evidence at trial that would have been elicited at an EBT or contained in the responses to the outstanding discovery demands, that had not been previously provided to plaintiffs by said defendants by another disclosure device.

This constitutes the decision and order of the Court.

Dated: January 9, 2017

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Howard G. Lane, J.S.C.

FILED
JAN 26 2017
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QUEENS COUNTY