

**Lebron v City of New York**

2017 NY Slip Op 31110(U)

May 9, 2017

Supreme Court, Queens County

Docket Number: 10543/14

Judge: Howard G. Lane

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ultimately declined to pick up the plaintiff and he was released.

The plaintiff's second verified amended complaint alleges seven (7) causes of action. The first cause of action sounds in false arrest against defendants The Port of Authority of New York and New Jersey and Detective Brandie Jones. The second cause of action alleges that defendants The Port of Authority of New York and New Jersey and Detective Brandie Jones placed the plaintiff in imminent fear of physical contact. The third and fourth causes of action sound in false arrest and false imprisonment as against all defendants. The fifth cause of action alleges malicious prosecution as against all defendants. The sixth cause of action as against defendants Port Authority Detective Jones and assistant district attorneys for a violation of his fourth and fourteenth amendment rights pursuant to 42 USC §§ 1983 and 1988 and deprived him of his rights to be free from assault, battery, illegal search and seizure, false arrest, malicious prosecution, freedom from use of excessive force, freedom from unlawful imprisonment and freedom from loss of his liberty. The seventh cause of action asserts a so-called Monell claim against the municipal defendants for failing to adequately train and supervise their prosecutors, police and personnel in matter involving identification processing and extradition of persons arrested pursuant to fugitive warrants in violation of his fourth and fourteenth amendment rights.

Defendants The City of New York, Assistant District Attorney Patrick James, Assistant District Attorney George Farrugia, Assistant District Attorney Lissa Yang and other Queens Assistant District Attorneys s/h/a John/Jane Doe I-III seek summary judgment dismissing the plaintiff's claims against them on the grounds, inter alia, that the plaintiff failed to serve The City of New York with a timely notice of claim and also that they are cloaked with absolute immunity from civil liability for their actions in this case. The plaintiff opposes the motion on the grounds that he filed a timely notice of claim and the defendants' actions preclude them from obtaining summary judgment in this case.

That branch of the motion which seeks dismissal of the plaintiff's complaint for failure to file a timely notice of claim is denied as without merit.

Turning to the motions for summary judgment, it is beyond cavil that the proponent of a summary judgment motion bears the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]);

*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Thus, a defendant seeking summary judgment must establish its prima facie entitlement to judgment in its favor as a matter of law by affirmatively demonstrating, the merits of its defense (*Mondello v DiStefano*, 16 AD3d 637 [2005]).

The defendants have sufficiently demonstrated that summary judgment dismissing the second cause of action against them is warranted as a matter of law. "A plaintiff seeking damages for an injury resulting from a wrongful arrest and detention 'may not recover under broad general principles of negligence ... but must proceed by way of the traditional remedies of false arrest and imprisonment'" (*Antonious v Muhammad*, 250 AD2d 559, 559-560 [1998], quoting *Boose v City of Rochester*, 71 AD2d 59, 62 [1979]; see *Heath v State of New York*, supra). Thus, the plaintiff's second cause of action for damages arising from his allegation that the actions of defendants The Port of Authority of New York and New Jersey and Detective Brandie Jones placed him in imminent fear of physical contact must be dismissed. Accordingly, those branches of the motions which seek summary judgment dismissing the second cause of action as against all defendants are granted and the second cause of action is hereby severed and dismissed.

The plaintiff's third, fourth, fifth and sixth causes of action alleging false arrest, false imprisonment, malicious prosecution and liability under 42 USC § 1983 and 1988 as against the Assistant District Attorney defendants is also to be dismissed. District Attorneys are immune from civil liability for activities "intimately associated with the judicial phase of the criminal process," meaning "initiating a prosecution and in presenting the State's case" (*Imbler v Pachtman*, 424 US 409, [1976]; *Covillion v Town of New Windsor*, 123 AD2d 763 [1986]). This immunity is derived from the common-law rule of immunity conferred upon prosecutors (see *Imbler v Pachtman*, supra).

Here, the allegations in the plaintiff's complaint that upon his arrest, the Assistant District Attorneys failed to thoroughly investigate the matter and obtain his fingerprints and other identifying evidence in order to determine whether he was the Massachusetts fugitive and unnecessarily detained him and delayed dismissal of this action clearly address conduct which falls within the ambit of the Assistant District Attorneys' quasi-judicial capacity (*Minicozzi v City of Glen Cove*, 97 AD2d 815 [1983]). As such, they are absolutely immune for their actions in this case.

Accordingly, those branches of the motions which seek summary judgment dismissing the third, fourth, fifth and sixth

causes of action against the Assistant District Attorney defendants are granted and those claims are hereby severed and dismissed.

As to defendants The City of New York and the Port Authority defendants, which are not immune for the police and prosecutors' actions herein, their requests for summary judgment are denied. They have failed to demonstrate their entitlement to an award of summary judgment dismissing the claims against them alleging false arrest/false imprisonment and malicious prosecution. In an action to recover damages for false imprisonment the plaintiff must show that: (1) the defendant intended to confine him or her, (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement, and (4) the confinement was not otherwise privileged (see *Broughton v State of New York*, 37 NY2d 451 [1975]). The elements of the tort of malicious prosecution are: (1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding, and (4) actual malice (see *Broughton v State of New York*, *supra*).

The first three (3) elements of the false arrest and imprisonment claim are not in dispute. Thus, liability for the City and Port Authority defendants herein hinges on whether the plaintiff's confinement was otherwise privileged (see, *Johnson v Kings County District Attorneys Office*, 388 AD2d [2003]). "An arrest made pursuant to a warrant valid on its face and issued by a court having jurisdiction of the crime and person is privileged" (*Boose v City of Rochester*, *supra* at 66, citing *Broughton v State of New York*, *supra*). A finding of justification pursuant to CPL 570.34 "serves as a complete defense to a claim for false arrest and imprisonment and eliminates an essential element of a claim for malicious prosecution" (*Heath v State of New York*, 229 AD2d 912 1996]).

CPL 570.34 provides: "The arrest of a person in this state may be lawfully made also by any police officer ... upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year." Upon applying this language to the present case, the court finds the defendants have failed to establish that the information contained in the subject Massachusetts warrant; to wit- the plaintiff's date of birth and a similar but different surname, provided reasonable information justifying the plaintiff's arrest. They also provided conflicting information, inter alia, as to whether they matched

the plaintiff's social security number to the social security number of the Massachusetts fugitive and failed to demonstrate that they compared the plaintiff's fingerprints and photograph to those of the fugitive.

Thus, the Port Authority defendants and defendant City have failed to meet their summary judgment burden by tendering sufficient proof to establish that they had a valid directive for the arrest and incarceration of the plaintiff or, in other words, that the subject warrant, without more, provided probable cause for the plaintiff's arrest (see *Heath v State of New York, supra*). Therefore, The City and Port Authority defendants' contentions that the plaintiff's claims for false arrest/false imprisonment and malicious prosecution are not viable claims are not supported by the evidence they submit herein in support of their motion for summary judgment. Issues of fact exist as to whether the Port Authority defendants possessed probable cause for the arrest (see *Johnson v Kings County District Attorneys Office, 388 AD2d [2003]*). Accordingly, these branches of the motions for summary judgment are denied.

Further, regarding the plaintiff's causes of action for alleged violations of his federal civil rights against the Port Authority defendants and as to defendant City's liability in light of the unresolved issue of whether the assistant district attorney defendants conducted a prompt and thorough inquiry regarding whether the plaintiff was the fugitive indicated in the Massachusetts warrant (see generally *Alvarez v Prospect Hospital, 68 NY2d 320 [1986]*; *Zuckerman v City of New York, 49 NY2d 557 [1980]*), summary judgment is denied. This is particularly so in light of the fact that plaintiff was previously arrested and the charges were dismissed on the same warrant in August 1995, after it was determined that the plaintiff was not the named fugitive. Indeed, there is a complaint room dismissal form in the record demonstrating that said determination was made after a fingerprint and photo comparison (*Johnson v Kings County District Attorneys Office, 388 AD2d [2003], supra*).

Accordingly, those branches of the motion which seek dismissal of the plaintiff's sixth and seventh causes of action as against the Port Authority defendants and defendant City are also denied.

This constitutes the decision and order of the court.

Dated: May 9, 2017

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HOWARD G. LANE, J.S.C.