

Ewa v City of New York
2018 NY Slip Op 32974(U)
October 5, 2018
Supreme Court, Richmond County
Docket Number: 100005/17
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C-2

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KATHY EWA,
Plaintiff(s),

-against-

DECISION AND ORDER

Index No. 100005/17

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT (NYPD), NYPD POLICE
OFFICERS: DET. JAMES MCKENNA, DET.
LOUIS DARIA, OFFICERS INVOLVED IN THE
INCIDENT, 'JOHN DOES', JANE DOES', DR.
MARIA JACQUELINE NIETO, CANCER/
ONCOLOGY: WYCKOFF HEIGHTS MEDICAL
CENTER, DR. JOEL IDOWU, FORENSIC
PSYCHIATRIST; RICHMOND UNIVERSITY
MEDICAL CENTER,
Defendant(s).

Motion Nos. 3058 - 005
3142 - 006
3265 - 007

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The following papers numbered "1" to "3" were marked fully submitted on the 12th of

September 2018.

Papers
Numbered

Notice of Motion to Dismiss by Defendant MARIA
JACQUELINE NIETO, M.D., with Supporting Papers,
Exhibits (MS_3058-005)1

Notice of Motion to Dismiss by Defendant JOEL
IDOWU, M.D., with Supporting Papers, Exhibits (MS_3142-006).....2

Notice of Motion to Dismiss by Defendants
THE CITY OF NEW YORK and THE CITY OF NEW
YORK s/h/a NEW YORK CITY POLICE DEPARTMENT,
with Supporting Papers, Exhibits (MS_3265-007).....3

Upon the foregoing papers and after oral argument, defendants' respective motions are
granted and this action is dismissed in its entirety.

Pro-se plaintiff KATHY EWA commenced this action to recover damages for injuries allegedly sustained by her as a result of wrongful incarceration by police officers employed by defendant NEW YORK CITY POLICE DEPARTMENT.² More specifically, it has been alleged that on April 30, 2015, plaintiff was unlawfully arrested and handcuffed outside her home located in Staten Island, New York, without either a warrant or probable cause. Plaintiff alleges that the arrest was based on a false complaint made by defendant DR. MARIA JACQUELINE NIETO of WYCKOFF HEIGHTS MEDICAL CENTER, in collusion with defendant DR. JOEL IDOWU, FORENSIC PSYCHIATRIST at RICHMOND COUNTY MEDICAL CENTER, to the defendant NEW YORK CITY POLICE DEPARTMENT.

According to plaintiff, defendant police officers used excessive force in front of her neighbors by forcefully twisting and squeezing plaintiff's arms into tight handcuffs, resulting in bruises and severe redness. Plaintiff also alleges, *inter alia*, negligent and intentional infliction of emotional distress, assault, battery, invasion of privacy, police brutality, gross negligence, libel, slander, defamation, and violations of both federal and state civil rights laws. In addition, plaintiff alleges that all defendants were acting in concert, and in the course of their employment on the night of her wrongful arrest, and therefore their actions raise a cause of action for negligent hiring and retention. As a result, plaintiff alleges to have sustained, *inter alia*, pain and suffering, physical injury, loss of earnings, loss of enjoyment of life, loss of freedom, emotional distress, mental anguish, shame, humiliation, and damage to her reputation. According to plaintiff, all criminal charges against her were eventually dropped and dismissed by the Brooklyn District Attorney on August 6, 2015, and her record was immediately sealed.

² The action was originally commenced in Kings County and was subsequently transferred to Richmond County pursuant to an Order dated October 7, 2016 by Justice Dawn Jiminez-Salta.

In the current applications, the defendants each move pursuant to CPLR §3126 for dismissal of the complaint due to plaintiff's failure to comply with this Court's Orders dated December 8, 2017 and May 17, 2018.

Each of the defendants argue that in spite of their good faith attempts at resolving the issue of non-compliance with discovery demands and the prior Court orders, plaintiff continually does not comply with the discovery process. Plaintiff has not submitted written opposition to defendants' motions.

It is well settled that the drastic sanction of striking a pleading should not be invoked unless the default is shown to be deliberate and contumacious (*see e.g., Mayers v. Consolidated Charcoal Co.*, 154 AD2d 277). On the return date of September 12, 2018, plaintiff requested and was provided with a stenographer to record oral argument. Based upon her statements that she is "not a lawyer" and "doing her best," the Court is still of the opinion that plaintiff's failure to comply derives from her lack of knowledge and misinterpretation of substantive law and procedural rules of the Court. The Court has afforded plaintiff ample time to avoid the penalties of the Order dated December 8, 2017, as well as the most recent order dated May 17, 2018. As a *pro se* litigant, Ms. Ewa does not acquire a greater right than any other litigant and cannot utilize a *pro se* appearance to deprive the defendants of the same rights enjoyed by other defendants without *pro se* adversaries (*In re Evert*, 72 AD3d 1081, 1082 [2d Dept. 2010]). Further, the Court cannot excuse repeated non-compliance with its Orders and the rules of procedure (*Dinstber v. GEICO Ins. Co.*, 32 AD3d 893 [2d Dept. 2006] and *Batshever v. Jafar*, 73 AD3d 1108 [2d Dept. 2010]), otherwise the credibility of Court orders and integrity of the judicial system is compromised (*See, Kihl v. Pfeffer*, 94 NY2d 118, 123 [1999]).

Accordingly, it is

ORDERED, that defendants' motions are granted without written opposition and this action is dismissed in its entirety; and it is further

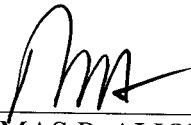
ORDERED, that defendants shall serve a copy of this Order with Notice of Entry upon all parties; and it is further

ORDERED that clerk shall enter judgment accordingly.

Dated:

OCT 05 2018

ENTER,



HON. THOMAS P. ALIOTTA, J.S.C.