

Hutcherson v City of New York
2018 NY Slip Op 33415(U)
November 14, 2018
Supreme Court, Bronx County
Docket Number: 306037/2014
Judge: Ruben Franco
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX – IAS PART26

ALICIA HUTCHERSON, TYLISHA HUTCHERSON,
 SHAKEYA GORDON and DAVID REARDON,

Plaintiffs,

-against-

Index No. 306037/2014

CITY OF NEW YORK, COMMISSIONER
 WILLIAM BRATTON IN HIS OFFICIAL CAPACITY,
 DEPUTY INSPECTOR PHILIP P. RIVERA AS THE
 COMMANDING OFFICER OF THE 46th PRECINCT
 AND POLICE OFFICERS “JOHN DOES” (names to
 be fictitious as they are currently unknown),,

**MEMORANDUM
 DECISION/ORDER**

Defendants.

HON. RUBEN FRANCO

This is an action alleging false arrest, false imprisonment, assault, battery, malicious prosecution, negligent hiring, training, supervision and retention, as well as Monell claims (Monell v. Dept. of Social Serv. of City of New York, 456 U.S. 658, 690-695 [1978]).

Defendants City of New York, Commissioner William Bratton, and Deputy Inspector Philip P. Rivera, as Commanding Officer of the 46th Precinct (collectively, “the City”), move for summary judgment pursuant to CPLR § 3212. The City also seeks costs and sanctions pursuant to 22 NYCRR § 130-1.1 (a)(1) and CPLR § 8303-a.

The facts, as culled from the pleadings, deposition testimony, and exhibits, are as follows: Based upon an affidavit of Police Officer Emilio Gomez of the Transit Manhattan Task Force of the New York City Police Department, Supreme Court Justice Maxwell Wiley issued a Search Warrant, dated June 12, 2014, authorizing the NYPD to search the premises at 10 W. 182nd Street, Apartment 5DW, Bronx County (“the subject apartment”), for electronic equipment, such

as, cell phones, MP3 players, iPods, as well as credit cards, etc., between the hours of 6:00 A.M. and 9:00 P.M., within ten days of the date of Search Warrant. On June 19, 2014, the NYPD executed the Search Warrant, entering the subject apartment at approximately 7:00 A.M. Present in the subject apartment were the plaintiffs, Montinik, the son of plaintiffs Alicia Hutcherson and David Reardon, and Sincere, the son of plaintiff Tylisha Hutcherson. Montinik and Sincere were both infants. The police officers handcuffed the plaintiffs, and detained them while the subject apartment was searched. No injuries were alleged to have been sustained by plaintiffs, except that Alicia claims to have incurred a bruise on her arm when grabbed by one of the police officers, for which she sought no medical treatment. During the execution of the search, the police officers removed the handcuffs from Alicia so that she could feed her son Montinik. Upon the completion of the search of the subject apartment, the handcuffs were removed from the other plaintiffs. The plaintiffs allege that the detention lasted approximately two hours. None of the plaintiffs were arrested, removed from the subject apartment, given summonses, or criminally prosecuted.

The elements of a cause of action for 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, 37 N.Y.2d 451, 457 [1975]).

A prior judicial proceeding is the *sine qua non* of an action for malicious prosecution (see Broughton v. State of New York, *id.* at 457 [1975]; Boose v. City of Rochester, 71 A.D.2d 59, 65 [4th Dept. 1979]). Although plaintiffs were detained pursuant to the court-issued search warrant,

no judicial proceeding was instituted against them, thus, a claim for malicious prosecution, state or federal, does not lie. Accordingly, plaintiffs' claims for malicious prosecution are dismissed.

The elements of a cause of action for false arrest and imprisonment are: (1) the defendant intended to confine the plaintiff; (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 N.Y.2d 451,457 [1975]).

The existence of probable cause constitutes a complete defense to a cause of action alleging false arrest and false imprisonment (see Harris v. City of New York, 153 A.D.3d 1333 [2nd Dept. 2017], citing Shaw v. City of New York, 139 A.D.3d 698,699 [2nd Dept. 2016] and Paulos v. City of New York, 122 A.D.3d 815, 817 [2nd Dept. 2014]). Where, as here, a court issues a search warrant, there is a presumption of probable cause for the detention of the occupants of the premises to be searched, which the plaintiff has the burden of rebutting (see Harris v. City of New York, *supra*, citing Ali v. City of New York, 122 A.D.3d 888, 890 [2nd Dept. 2014] and Lee v. City of New York, 272 A.D.2d 586, 587 [2nd Dept. 2000]). In order to rebut the presumption of probable cause, a plaintiff must establish that the officer procured the warrant based upon his or her own false or unsubstantiated statements (see Harris v. City of New York, *supra*; Ali v. City of New York, *supra*).

The City through its submission of the court-issued search warrant established, *prima facie*, the existence of probable cause for the detention of plaintiffs during the police officers' search of the subject apartment, which has not been rebutted by the plaintiffs.

Accordingly, plaintiffs claims for false arrest and false imprisonment are dismissed. Plaintiffs claims for assault and battery are also dismissed. Police officers executing a search

warrant are privileged to use reasonable force to effectuate the detention of the occupants of the place to be searched (see Harris v. City of New York, *supra*, citing Boyd v. City of New York, 149 A.D.3d 683, 684 [2nd Dept. 2017] and Ali v. City of New York, *supra*). The only plaintiff making a claim for an injury as a result of the detention is Alicia, who alleges that she sustained a bruise on her arm while being handcuffed. However, she failed to raise a triable issue of fact regarding the propriety of the level of force used in handcuffing her, and she submitted no medical evidence of the alleged injury (see Harris v. City of New York, *supra*).

In cases alleging police misconduct, the courts of this State do not recognize a cause of action for general negligence or negligent investigation (see Medina v. City of New York, 102 A.D.3d 101, 108 [1st Dept. 2012]; Johnson v. Kings County Dist. Attorney's Off., 308 A.D.2d 278, 284-285 [2nd Dept. 2003]). Plaintiffs seeking damages for unlawful arrest and imprisonment may not recover under broad principles of negligence, but must proceed by way of the traditional remedies of false arrest and imprisonment (see Antonious v. Muhammad, 250 A.D.2d 559, 559-560 [2nd Dept. 1998]). Further, a claim for negligent hiring, training, retention and supervision is not viable when a municipality's police officers were acting within the scope of their employment, as was the case here (see, Karoon v. New York City Transit Auth., 241 A.D.2d 323 [1st Dept. 1997]; Leftenant v. City of New York, 70 A.D.3d 596 [1st Dept. 2010]; Griffin v. City of New York, 67 A.D.3d 550 [1st Dept. 2009]).

Accordingly, plaintiffs claims sounding in general negligence and for negligent hiring, training, retention and supervision, are dismissed.

The Monell claim asserted against the City of New York, Commissioner William Bratton and Deputy Inspector Philip P. Rivera, under 42 USC §1983 are not pled with sufficient

specificity to make out a plausible claim (see for example, Ashcroft v. Iqbal, 556 U.S. 662 [2009]; Walker v. City of New York, 974 F.2d 293 [2nd Cir 1992]), and plaintiffs have failed to demonstrate that the actions taken by the police officers resulted from official municipal policy or custom (see Delgado v. City of New York, 86 A.D.3d 502 [1st Dept. 2011]; Leftenant v. City of New York, *supra*, at 597, citing Monell v. Dept. of Social Serv. of City of N.Y., 436 U.S. 658, 690-691(1978)). Moreover, a single incident of objectionable conduct committed by the police department is insufficient to establish the existence of policy or custom for Section 1983 purposes (see Saidin v. Negron, 136 A.D.3d 458 [1st Dept. 2016]; Bouet v. The City of New York, 125 A.D.3d 539 [1st Dept. 2015]; Dillon v. Perales, 181 A.D.2d 619 [1st Dept. 1992]).

Accordingly, plaintiffs' Monell claims are dismissed.

The branch of the City's motion seeking costs and sanctions against plaintiffs pursuant to 22 NYCRR § 130-1.1 and CPLR § 8303-a, is denied in the exercise of the court's discretion.

This constitutes the Decision and Order of the court.

Dated: November 14, 2018



Ruben Franco, J.S.C.

HON. RUBÉN FRANCO