

Lawrency v City of Mount Vernon

2018 NY Slip Op 34390(U)

March 13, 2018

Supreme Court, Westchester County

Docket Number: Index No. 53456/2014

Judge: William J. Giacomo

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.**

----- X
SYLVESTER R. LAWRENCY,

Plaintiff,

Index No. 53456/2014

– against –

DECISION & ORDER

THE CITY OF MOUNT VERNON,

Defendant.
----- X

In an action to recover damages for personal injuries, the plaintiff moves for summary judgment on the issue of liability, pursuant to CPLR 3212:

Papers Considered

1. Notice of Motion/Affirmation of Jocelyne S. Kristal, Esq./Exhibits A-K;
2. Affirmation of Steven J. Bushnell, Esq. in Opposition/Exhibits A-F;
3. Plaintiff's Reply.

Factual and Procedural Background

On January 16, 2013, plaintiff walked into the City of Mount Vernon police department to report his lost driver's license. Based upon the mistaken belief that there was an outstanding 2008 bench warrant against him for traffic violations, plaintiff was arrested. He was released the next day, January 17, 2013, as it was revealed that the warrant had been vacated.

Plaintiff commenced this action against, inter alia, the City of Mount Vernon with the filing of a summons and complaint on March 10, 2014. The complaint asserted a cause of action for negligence and a cause of action for violation of 42 USC 1982, et seq. Thereafter, defendants filed a notice of removal to federal court. In an order dated April 1, 2015, the United States District Court for the Southern District of New York (Seibel, J.) dismissed plaintiff's claims arising under 42 USC 1983 with prejudice. The Court declined to exercise supplemental jurisdiction over plaintiff's remaining state law claim and therefore, the case was remanded to the Supreme Court, Westchester County.

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Upon remand, plaintiff moved, pursuant to CPLR 3025(b), for leave to file an amended complaint to add causes of action for false arrest and false imprisonment. In an order dated November 2, 2017, this Court denied plaintiff's motion for leave to amend the complaint to add causes of action for false arrest and false imprisonment on the grounds that the statute of limitations expired.

Plaintiff now moves for summary judgment on the issue of liability. Plaintiff argues that the City of Mount Vernon was negligent when its police department failed to remove the bench warrant from the New York State Police Information Network ("NYSPIN") after plaintiff paid the requisite fines and the Mount Vernon City Court vacated the warrant. Plaintiff argues that the act of entering a vacated warrant into the NYSPIN system is not a discretionary act but a ministerial act.

In support of his motion, plaintiff submits excerpts from the deposition testimony of Lawrence Darden, the chief clerk of the Mount Vernon City Court. Mr. Darden testified that on July 11, 2008, the warrant in question was vacated and the fine and the suspension fees were paid by the plaintiff. On July 29, 2008, the plaintiff paid the surcharge. In order to recall the warrant, the City Court completed a form known as a warrant recall sheet that is delivered to the police department at the end of the day notifying them that the warrant has been recalled.¹

Police Officer Brian Kennedy testified on behalf of the City of Mount Vernon. He testified that the police department is responsible for entering and vacating a warrant on the NYSPIN system. He testified, "[i]n our department we are responsible once they come from the court to the police department for entering [warrants] and removing [warrants] from NYSPIN".

In opposition, defendant argues that plaintiff failed to demonstrate that a special relationship existed between plaintiff and the City of Mount Vernon, and therefore, defendant did not owe plaintiff a duty.

In reply, plaintiff argues that the City of Mount Vernon accepted the procedures that the Mount Vernon City Court instituted which assigned the police department with the responsibility of vacating warrants in the NYSPIN system. Thus, plaintiff argues that the special relationship element is automatically inferred. Plaintiff argues that he formed a special relationship with the Mount Vernon City Court when he paid his fines in person to the Chief Clerk and that plaintiff justifiably relied on the implicit assurance that once he paid his fine, the warrant would be removed from the NYSPIN system and he would no longer be subject to arrest.

¹ Plaintiff commenced an action against the State of New York in the Court of Claims based upon any alleged negligence of the court. The Court of Claims, in a decision and order entered November 22, 2016 (Mignano, J.), dismissed the claim holding that the claimant failed to submit any evidence that the New York Stated Unified Court System has either the jurisdiction or the obligation to do more than properly recall and vacate the warrant and then notify the police that the warrant has been recalled and vacated.

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Discussion

The failure to retire an outstanding warrant against plaintiff after the underlying charge had been resolved is a ministerial act (*see Glowinski v Braun*, 105 AD2d 1153 [4th Dept 1984]; *Shaw v Town of Camillus*, 288 AD2d 902 [4th Dept 2001]). Ministerial actions may be a basis for liability, "but only if they violate a special duty owed to the plaintiff, apart from any duty to the public in general" (*Tara N.P. v Western Suffolk Bd. of Coop. Educ. Servs.*, 28 NY3d 709, 716 [2017] quoting *McLean v City of New York*, 12 NY3d 194, 203 [2009]). Thus, where a municipality is exercising a nondiscretionary governmental function, it will not be held liable unless it owed a "special duty" to the injured party (*see Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 426 [2013]; *Valdez v City of New York*, 18 NY3d 69, 75 [2011]; *Turturro v City of New York*, 127 A.D.3d 732 [2d Dept 2015]).

"There are three recognized situations in which a special duty may arise: '(1) when the municipality violates a statutory duty enacted for the benefit of a particular class of persons; (2) when it voluntarily assumes a duty that generates justifiable reliance by the person who benefits from the duty; or (3) when the municipality assumes positive direction and control in the face of a known, blatant and dangerous safety violation' " (*Rennix v Jackson*, 152 AD3d 551, 553 [2d Dept 2017] quoting *Pelaez v Seide*, 2 NY3d 186, 199-200 [2004]).

A special relationship based upon a duty voluntarily assumed by the municipality requires proof of the following four elements: "(1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking" (*Cuffy v City of New York*, 69 NY2d 255, 260 [1987]; *Destefano v City of New York*, 149 AD3d 696, 698 [2d Dept 2017]).

It is the plaintiff's obligation to prove that the government defendant owed a special duty of care to the injured party because duty is an essential element of the negligence claim itself (*Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 426 [2013]). Where the plaintiff fails to meet this burden, the analysis ends and liability may not be imputed to the municipality (*see Lauer v City of New York*, 95 NY2d 95, 102 [2000] [holding that no special relationship existed where the Medical Examiner never undertook to act on plaintiff's behalf as he made no promises or assurances to plaintiff and assumed no affirmative duty upon which plaintiff might have justifiably relied. In addition, the plaintiff did not allege any personal contact with the Medical Examiner]).

In *Gonzalez v State of New York*, 156 AD3d 764 (2d Dept 2017), the claimant's driver license was suspended due to an outstanding fine. The claimant alleged that the New York State Department of Motor Vehicles ("DMV") was negligent in failing to properly record his payment of the fine. As a result, the claimant's license suspension was not

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voided, and the claimant was subsequently arrested, detained overnight, and charged with driving with a suspended license. The charge was withdrawn after the recordkeeping error was discovered. The Second Department held that the State's motion to dismiss the claim, pursuant to CPLR 3211(a)(7), was properly granted. In order to establish that the DMV voluntarily assumed an affirmative duty to act, the claimant had to allege that the DMV voluntarily undertook an obligation to him beyond what was owed to the public generally. The Court held that the allegations contained in the claimant's pleadings revealed nothing beyond what any member of the general public could expect from a routine interaction with DMV personnel to contest, and later settle, a fine.

Here, on its motion for summary judgment, plaintiff failed to prove that the City of Mount Vernon owed him a special duty of care. In fact, plaintiff failed to address the issue of whether a special duty existed until its reply papers and only after the defendant raised the argument in opposition.

In order to establish that the City of Mount Vernon voluntarily assumed an affirmative duty to act, the plaintiff was required to demonstrate, as a matter of law, that the City of Mount Vernon voluntarily undertook an obligation to him beyond what was owed to the public generally (*see Applewhite v Accuhealth, Inc.*, 21 NY3d at 426). The evidence demonstrates nothing beyond what any member of the general public could expect from a routine interaction with the City Court of Mount Vernon personnel to contest, and later settle, a fine. Therefore, since no special relationship arose, the complaint must be dismissed.

Accordingly, the plaintiff's motion for summary judgment is DENIED. The Court searches the record and grants summary judgment to the defendant dismissing the complaint (*see Gonzalez v State of New York*, 156 AD3d 764).

Dated: White Plains, New York
March 13, 2018



HON. WILLIAM J. GIACOMO, J.S.C.

H: ALPHABETICAL MASTER LIST – WESTCHESTER/Lawrenczy v. City of Mount Vernon