

Ariale v City of New York
2019 NY Slip Op 30629(U)
March 8, 2019
Supreme Court, New York County
Docket Number: 158403/2014
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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STEPHEN ARIALE,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, OFFICER "JOHN DOE 1", OFFICER "JOHN DOE 2",

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 116, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136

were read on this motion to/for AMEND CAPTION/PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 137, 138, 139

were read on this motion to/for DISMISSAL

Upon the foregoing documents, the Decision and Order of this Court is as follows:

Plaintiff moves to amend the pleadings and caption pursuant to CPLR §3025(b) and for summary judgment on the issue of negligence pursuant to CPLR §3212. Defendant, City, moves for dismissal of a multitude of causes of action listed in plaintiff's complaint. For the reasons set forth below, the portion of plaintiff's motion that seeks to amend the pleadings is denied, the portion of plaintiff's motion seeking summary judgment is granted and defendant's motion to dismiss is denied as moot.

CPLR §3025(b)

Plaintiff contends that by placing "John Does" in the caption he preserved his right to substitute those "John Does" with the proper names of defendants, when ascertained. While in

theory plaintiff is accurate, *if* the defendant was not a municipality, that however is not the case here.

The Appellate Division of the First Department requires that individual defendants be named in the notice of claim. See, e.g., *Cleghorne v. City of New York*, 99 A.D.3d 443, 446 [1st Dept 2012] (holding that an "action cannot proceed against the individual defendants because they were not named in the notice of claim.") (internal citations omitted). "...[A]t a bare minimum, the notice of claim must use the "Police Officer John Doe" or similar language, such as used in the complaint herein, to put the municipality on notice that its employees will be sued in their personal capacities, thus meeting the statute's notice requirements." *Alvarez v City of NY*, 134 AD3d 599, 605 [1st Dept 2015].

Plaintiff filed a notice of claim on May 7, 2014 that does not include any of the proposed defendants or "John Does" as placeholders. Therefore, adding defendants requires the filing of a new or amended notice of claim. See, e.g., *De La Cruz v. City of New York*, 221 A.D.2d 168 [1st Dept 1995] (attempt to name a new defendant hospital after the expiration of the statute of limitations constituted an attempt to add a new claim and thus required a motion to file a late notice of claim). Plaintiff did not file a new, timely notice of claim naming the proposed defendants; sought leave to amend his notice of claim; or requested permission to file a late notice of claim.

Plaintiff fails to address the controlling law in this judicial department and why this court should depart from it. Plaintiff has not satisfied a condition precedent to suit as against the proposed defendants. Accordingly, the portion of plaintiff's motion seeking to substitute the "John Does" in the caption with named police officers is hereby denied.

Additionally, the portion of plaintiff's motion seeking to amend the complain to add the negligent operation of a motor vehicle is denied. The plaintiff has not shown any reason why the original causes of action that plead negligence are insufficient to encompass the motor vehicle allegations.

Negligence

A prima facie case of negligence requires plaintiff to establish "first, the existence of a duty owing by the defendant to the plaintiff; second, defendant's failure to discharge that duty; third, injury to plaintiff proximately resulting from such failure" *Peresluha v City of New York*, 60 AD2d 226, 230 [1st Dept 1977].

It is undisputed that the plaintiff was rear handcuffed while being transported from the location of arrest to the precinct, thus not permitting him to brace himself in the event of an impact. There also does not seem to be in dispute that there were other people in the police van with him. It is undisputed that the plaintiff suffered four cervical fractures that caused paralysis while in police custody following his arrest, an arrest which was subsequently voided.

The City has argued that there are questions of fact regarding the manner in which plaintiff sustained his injuries. The City cites to statements allegedly made by plaintiff during medical treatment, as well as the testimony of Officer Liz and Sergeant Loud.

The Court appreciates defendant's arguments that there are clearly issues of fact with respect to *how* plaintiff's injuries occurred; however, that is not the dispositive issue in determining whether summary judgment as to negligence is appropriate in favor of the plaintiff. Rather, the fact that plaintiff sustained these severe injuries, while solely in the custody, care and control of members of the New York City Police Department is the dispositive issue. At the very least, defendant's conduct in allowing these severe injuries to occur was negligent. Defendant

has failed to raise an issue of fact with respect to any of the elements of negligence. The Court therefore finds the defendants negligent as a matter of law. This ruling does not mean that a jury might not find the plaintiff comparatively negligent for his actions or inactions.

In sum, viewing the evidence in a light most favorable to the defendants, the Court finds that no reasonable finder of fact could find that the defendants were not negligent.

Defendant's Motion to Dismiss

Plaintiff's attorney informed the Court that in the event of the Court's granting of summary judgment on the issue of negligence, the plaintiff would withdraw all other claims. Therefore, the defendant's motion for partial dismissal and summary judgment are denied as moot, and all other claims are deemed withdrawn.

Additionally, in motions for summary judgment the Court can search the record and make appropriate determinations. See *Carnegie Hall Corp. v City Univ. of NY*, 286 AD2d 214, 215 [1st Dept 2001]. As such, the complaint against the New York City Police Department (NYPD) is dismissed in its entirety, as the NYPD is a nonsuable entity. See Section 396 of the New York City Charter. Further, the complaint is dismissed as against "John Doe 1" and "John Doe 2" for the reasons discussed *supra*. Accordingly, it is hereby,

ORDERED that the plaintiff's motion for summary judgment is granted; and it is further

ORDERED that the defendant is found liable to plaintiff on the second and third cause of action as it relates to common law negligence and the issue of the amount of a judgment to be entered thereon shall be determined at the trial herein; and it is further

ORDERED that the first cause of action and fourth through tenth causes of action are deemed withdrawn; and it is further

ORDERED that the case against defendants New York City Police Department, "John Doe 1" and "John Doe 2" is dismissed; and it is further

ORDERED that the caption shall now read:

STEPHEN ARIALE, Plaintiff, - v - THE CITY OF NEW YORK, Defendants.

This constitutes the Decision and Order of this Court.

Form with date 3/8/2019, signature of Lyle E. Frank, J.S.C., and checkboxes for case disposition (Case Disposed, Granted, Denied, Non-Final Disposition, Granted in Part, Submit Order, Fiduciary Appointment, Other, Reference).