

Arias v City of New York
2019 NY Slip Op 30695(U)
March 18, 2019
Supreme Court, New York County
Docket Number: 161050/2013
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

JUAN ARIAS, Plaintiff, - v - THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, JOHN FERRARA, ZULFIQAR AHMED, WILLIAM CHAN, DIONISIO MORELLI, JOSIE SOVOLJ Defendant. INDEX NO. 161050/2013 MOTION DATE 03/06/2019 MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the Decision/Order of this court is as follows:

This is an action to recover damages sustained as a result of plaintiff's alleged false arrest, false imprisonment and malicious prosecution. Plaintiff also alleges that members of the New York City Police Department used excessive force. Plaintiff was arrested on August 3, 2012, indicted on August 8, 2012 then subsequently acquitted after a jury trial on April 29, 2013.

Defendants move for an order, pursuant to CPLR §3212, granting them summary judgment on plaintiff's state and federal false arrest claims because the allegations of a complaining witness provided probable cause to arrest plaintiff; pursuant to CPLR §3212, granting them summary judgment on plaintiff's state and federal malicious prosecution claims on the additional grounds that the grand jury indictment gave rise to a presumption of probable cause and because there is no evidence that the defendants acted with malice; pursuant to CPLR §3211 and/or CPLR §3212, dismissing any claims for negligent hiring, supervision, and retention under state law, as the officers involved in plaintiff's arrest and detainment were acting

within the scope of their employment; pursuant to CPLR §3211, dismissing plaintiff's state claim for excessive force as time-barred; and pursuant to CPLR §3211 and CPLR §3212, dismissing plaintiff's federal claims of excessive force under 42 U.S.C. § 1983 because they are inadequately pled and because the record does not demonstrate that plaintiff sustained a constitutional injury.

Plaintiff opposes the instant motion on the basis that questions of fact exist with respect to the existence of probable cause for plaintiff's arrest and ensuing prosecution and cross-moves this Court pursuant to CPLR §3025(b) to amend his complaint, to the extent this Court deems his original complaint insufficient to plead a cause of action for excessive force pursuant to 42 USC §1983.

It is well settled law that probable cause is a defense to wrongful arrest and malicious prosecution. In this instance, an indictment was returned which was upheld by the Supreme Court, Criminal Term. The City established its entitlement to judgment as a matter of law, on all claims of false arrest, false imprisonment and malicious prosecution, by submitting evidence demonstrating that there was no unlawful confinement; the officers had probable cause to arrest plaintiff based upon an officer's observations coupled with the complaint of another person that plaintiff was one of the individuals that robbed him (see Kramer v City of New York, 173 AD2d 155, 155–56 [1st Dept 1991] [“The information given to the officer by the identified citizen, accusing plaintiffs of a specific crime, was legally sufficient to provide the officer with probable cause to arrest”]; People v Bigelow, 66 NY2d 417, 423–24 [1985] [“Probable cause may be supplied, in whole or part, through hearsay information”]). The Court similarly finds that plaintiff's seizure was not unlawful (see generally People v De Bour, 40 NY2d 210, 215-18

[1976] [noting “not every encounter is a seizure” and a “right to be free from an official interference by way of inquiry” is not absolute]).

In opposition, plaintiff fails to raise genuine, material issues of fact requiring a trial in this regard (see Agront v City of New York, 294 AD2d 189, 189–90 [1st Dept 2002] [summary judgment appropriate where the basic “facts leading up to the arrest, and the inferences to be drawn therefrom, were not in dispute”]). To the extent plaintiff claims that the officers did not adequately investigate is irrelevant to the inquiry and is therefore insufficient to oppose defendants’ prima facie showing (see id. [“The alleged conflicting evidence uncovered in the course of the police investigation is relevant to the issue of whether guilt beyond a reasonable doubt could have been proven at a criminal trial, not to the initial determination of the existence of probable cause”]).

Plaintiff’s negligent hiring, training and retention is also dismissed as the City concedes the officers were acting within the scope of their employment (see Karoon v N.Y. City Transit Auth., 241 AD2d 323 [1st Dept 1997]). Plaintiff fails to adequately plead a Monell 42 USC § 1983 claim as the complaint fails to allege a custom, policy or widespread practice by the City to deprive him of his constitutional rights (see De Lourdes Torres v Jones, 26 NY3d 742, 768-69 [2016]; Leung v City of New York, 216 AD2d 10, 11 [1st Dept 1995] [claim “must be pleaded with specific allegations of fact”]). As the Court notes above, there was no unlawful seizure (see generally People v De Bour, 40 NY2d at 210).

Plaintiff’s state law claims of assault and battery are dismissed as it is undisputed that these claims are time barred. As to the federal excessive force claims, the Court deems plaintiff’s original complaint sufficient to state a cause of action pursuant to 42 USC §1983 as

against JOHN FERRARA, only and not ZULFIQAR AHMED¹. A person has a private right of action under 42 USC § 1983 against an individual who, acting under color of law, violates federal constitutional or statutory rights (Delgado v City of New York, 86 AD3d 502, 511 [1st Dept 2011]) [“A complaint alleging gratuitous or excessive use of force by a police officer states a cause of action under the statute (42 USC § 1983) against that officer.”] For that reason, plaintiff’s cross-motion is granted as it seeks to add allegations against Officer Ahmed² and thus the action is dismissed as to all parties except JOHN FERRARA and ZULFIQAR AHMED. Defendants argue that plaintiff’s lack of medical treatment makes his excessive force claims incredible. The Court rejects this argument and finds that an issue of fact exists as to the reasonableness of the force used, if any, by John Ferrara and Zulfiqar Ahmed.

Based on the foregoing, defendants’ motion to dismiss is granted in part and plaintiff cross-motion is granted in part. Accordingly, it is hereby

ORDERED that the defendant’s motion for summary judgment is granted to the extent of granting partial summary judgment in favor of all defendants and against plaintiff on the first through seventh causes of action as follows; and it is further

ORDERED that the first through seventh causes of action are severed and the balance of the claims are continued; and it is further

ORDERED that the action shall continue as to the eighth cause of action only as against JOHN FERRARA and ZULFIQAR AHMED, with the eighth cause of action dismissed as to all other defendants; and it is further

¹ Plaintiff’s proposed complaint includes particularized allegations against Officer Ahmed.

² It is undisputed that the action should be dismissed as against William Chan, Dionisio Morelli and Josie Sovoli, as such the action is dismissed against those individuals without opposition.

ORDERED that the plaintiff's motion for leave to amend the complaint is granted as to JOHN FERRARA and ZULFIQAR AHMED only; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers with the amended caption shows below, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint with the amended caption shown below, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

-----X
JUAN ARIAS,

Plaintiff,

- v -

JOHN FERRARA and ZULFIQAR AHMED,

Defendant.
-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being subtracted pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)].

ORDERED that the parties are directed to appear for an early settlement conference on May 7, 2019 at 9:30 A.M., Part DCM, Room 103, 80 Centre Street, New York, New York; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

3/18/2019
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

LYLE E. FRANK, J.S.C.

**HON. LYLE E. FRANK
J.S.C.**