

Anderson v JP Morgan Chase Bank, N.A.

2019 NY Slip Op 32509(U)

August 23, 2019

Supreme Court, New York County

Docket Number: 150566/2014

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

DARNELL ANDERSON, Plaintiff, - v - JP MORGAN CHASE BANK, N.A., THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, JOHN DOES 1-7 THE NAMES BEING UNKOWN BUT WHOM ARE INTENDED TO BE NYPD OFFICERS WHO ARRESTED THE PLAINTIFF ON FEBRUARY 21, 2012, JP MORGAN CHASE & CO Defendant. INDEX NO. 150566/2014 MOTION DATE 08/14/2019 MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for JUDGMENT - SUMMARY

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.

Defendants, The City Of New York, and The New York City Police Department, "John Does" #1-7 (City), move for an Order pursuant to CPLR § 3211 (a)(7) dismissing the complaint, and pursuant to CPLR § 3212 granting partial summary judgment in favor of the City.

Defendant, JP Morgan Chase & Co., (Chase), also move for summary judgment pursuant to CPLR § 3212. Plaintiff opposes both motions.

Plaintiff was arrested on February 21, 2012 at approximately 5:00 pm while inside Chase Bank located at 350 West 125th Street. Plaintiff was released from custody on March 15, 2012

and May 16, 2013 accepted an Adjournment in Contemplation of Dismissal (ACD). Plaintiff's case was dismissed and sealed on November 15, 2013. Plaintiff filed a Notice of Claim upon the City on December 7, 2013. Plaintiff commenced this action on January 14, 2014.

Summary Judgment Standard

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]).

Once movant has met his initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). A mere shadowy semblance of an issue of fact or bald, conclusory allegations will not suffice to defeat a motion for summary judgment (*Mallad Construction Corp. v County Federal Savings & Loan Assoc.*, 32 NY2d 285, 290 [1973]; *Morowitz v Naughton*, 150 A.2d 536 [2d Dept 1989]). It is well settled that issue finding, not issue determination, is the key to summary judgment (*Rose v Da Ecib USA*, 259 AD 2d 258 [1st Dept 1999]). When the existence of an issue of fact is even debatable, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12 [1960]).

City's Motion

State Law Claims of False Arrest/Imprisonment and Malicious Prosecution

It is undisputed that plaintiff's state law claims of false arrest/imprisonment and excessive force are untimely. Plaintiff's cause of action for excessive force began to accrue on the date of his arrest, the date he alleges the force occurred, February 21, 2012. Pursuant to General Municipal Law §50-e Plaintiff was required either to file a notice of claim within 90 days of the date of the occurrence or to seek leave to serve a late notice of claim prior to May 21, 2013, for his excessive force claims. Plaintiff did neither; as a result, plaintiff's excessive force claims are time barred.

Plaintiff's causes of action for false arrest/imprisonment began to accrue upon his release from custody on March 15, 2012. Thus, plaintiff had until June 13, 2012 to file a timely notice of claim with the City and had until June 13, 2013 to timely commence an action for those claims. Plaintiff did neither; thus, his state law claims of false arrest/imprisonment are time-barred.

Plaintiff's cause of action for malicious prosecution, though timely, must also fail. To establish a claim of malicious prosecution plaintiff must prove (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. *De Lourdes Torres v Jones*, 26 NY3d 742 [2016].

Contrary to plaintiff's assertion, there is no question of fact as to whether the criminal action terminated favorably. Plaintiff's acceptance of an Adjournment in Contemplation of Dismissal is not a favorable determination for the purposes of maintaining a malicious prosecution cause of action *Hollender v Trump Vil. Coop.*, 58 NY2d 420, 426 [1983] ("For the adjournment in contemplation of dismissal, being as unadjudicative of innocence as it was of

guilt, by its very nature operated to bar recovery"); *Eke v The City of New York*, 116 AD3d 403 [1st Dept 2014]("...a plaintiff's acceptance of an ACD precludes a claim for malicious prosecution"); *see also Smith-Hunter v Harvey*, 95 NY2d 191 [2000] (recognizing that an ACD is a compromise disposition requiring the consent of the prosecutor, judge and defendant).

Plaintiff cannot satisfy the elements of his claim of malicious prosecution as a matter of law; thus, the cause of action for malicious prosecution is dismissed.

Federal Causes of Action

Plaintiff's federal 'Monell' claims against the City and his federal claims for false arrest/false imprisonment, malicious prosecution, and excessive force also fail.

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"]). Plaintiff fails to plead any policy or practice, nor does his opposition adequately identify any facts or circumstances to support a proper 'Monell' claim.

Plaintiff cannot sustain an action against the City based on *respondeat superior*. Although, "a person has a private right of action under 42 USC § 1983 against police officers who, acting under color of law, violate federal constitutional or statutory rights." *Delgado v City of New York*, 86 AD3d 502, 511, [1st Dept 2011], such officers must be identified.

Further, as the City of New York, itself, did not cause the alleged constitutional violation, "[i]t cannot be held liable pursuant to 42 USC § 1983 based solely upon the doctrine of respondeat superior or vicarious liability" for the alleged actions or comments of one police officer. *Liu v New York City Police Dep't*, 216 AD2d 67, 68 [1st Dept 1995].

Although plaintiff properly included "John Does" in the summons and complaint as placeholders, pursuant to CPLR §1024, plaintiff has failed to comply with CPLR § 306-b.¹ As stated above, plaintiff does not adequately plead federal claims for false arrest/false imprisonment and excessive force, accordingly those claims are dismissed.

Chase's motion

In support of its motion for summary judgment Chase argues that it did not actually confine the plaintiff and as a result of plaintiff's behavior and threats and it was reasonable for a bank employee to call 911. Further, in response to plaintiff's opposition, Chase argues that its statements to police were not the basis of plaintiff's arrest, rather plaintiff's own conduct when confronted by police was the cause of his arrest.

It is well settled that "the mere reporting of a crime to police and giving testimony are insufficient" to support a claim for malicious prosecution (*Present v Avon Prods.*, 253 AD2d 183, 189, lv dismissed 93 NY2d 1032 [1st Dept 1999]; *see also, Viza v Town of Greece*, 94 AD2d 965, 966 [4th Dept 1983]; *DeFilippo v County of Nassau*, 183 AD2d 695, 696 [2d Dept 1992]).

There is no evidence in this case that Chase did anything other than provide the police with information. This conduct by a civilian complainant is insufficient to support a claim for false arrest, false imprisonment or malicious prosecution (*Du Chateau v Metro-North Commuter R.R. Co.*, 253 AD2d 128, 131 [1st Dept 1999] [a civilian complainant will not be held liable for malicious prosecution by merely seeking police assistance or turning information over to law enforcement authorities, who are then free to exercise their own judgment as to whether an arrest is warranted]).

¹ Pursuant to CPLR 306-b once a John Doe complaint is filed, a plaintiff must serve it on the correct defendant "within one hundred twenty days after the commencement of the action."

In opposition, plaintiff cites *Biswas v City of New York*, 973 F Supp 2d 504, 519, [SDNY 2013]. However, that case is distinguishable from the instant action based on the unique circumstances of that case. In *Biswas*, the complainant had received threatening emails and alleged they were from plaintiff. Complainant did not witness plaintiff send the threatening emails, nonetheless contacted police and plaintiff was arrested based solely on the complainant's allegation. The plaintiff in *Biswas* was later found to be innocent and where charges against the plaintiff were immediately dropped, was held for 2 hours prior to being turned over to the police, with some question as to whether much of the electronic evidence against the plaintiff could possibly have been obtained. The court found both that there was a question of fact as to whether the arrest by the police was based on probable cause, and whether the defendants had intentionally fabricated evidence against the plaintiff. The Court first, however, reiterated the well settled law, discussed above regarding civilian witnesses, that "[a] civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for false arrest or malicious prosecution." *Id.* (citing *Mesiti v. Wegman*, 307 A.D.2d 339, 763 N.Y.S.2d 67, 69 [2d Dept 2003])

Here, the bank employee, an apparent stranger to the plaintiff, witnessed behavior that that employee perceived was threatening and called police. The bank employee was not motivated to provide the police with false information. Plaintiff provided no evidence in admissible form to in any way show that any of the Chase employees intentionally lied to the police or in any way fabricated evidence. The Court finds that the arrest was privileged as a matter of law based on the fact that there had apparently been a dispute in a Chase branch, the

police believed a threat had been made, the plaintiff was found in another Chase branch, and exhibited behavior that aroused suspicion upon arrival by the police.

Plaintiff's allegation that defendant, Chase, made false statements to the police to induce his arrest and prosecution are insufficient to state a claim for either false arrest or malicious prosecution. Plaintiff's mere denials and accusations, without more, are insufficient to defeat the motion for summary judgment. Accordingly, it is hereby

ORDERED defendants' motions for summary judgment are granted and the complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk enter judgment accordingly.

8/23/2019

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

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