

Brodsky v Trump VII. Section 3, Inc.

2019 NY Slip Op 32549(U)

August 19, 2019

Supreme Court, Kings County

Docket Number: 500398/2016

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 500398/2016
Motion Date: 8-5-19
Mot. Cal. No.: 52

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DAVID BRODSKY,

Plaintiff,

-against-

DECISION/ORDER

TRUMP VILLAGE SECTION 3, INC. and CAMBRIDGE
SECURITY SERVICES, CORP.,

Defendants.

-----x

The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memos of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memos of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memos of Law.....	3
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries arising out of a false arrest, defendant, TRUMP VILLAGE SECTION 3, INC. ("Trump Village") moves pursuant to CPLR § 3212 for summary judgment dismissing the complaint.

The plaintiff, DAVID BRODSKY, brought this action seeking damages for personal injuries he claims he suffered on January 14, 2015, as a result of being assaulted, battered and falsely arrested by a security officer who worked at the building located at 464 Neptune Avenue, Brooklyn, New York. The moving defendant was the owner of the

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building and plaintiff had been residing in the building for approximately eight years prior to the incident. In his complaint, plaintiff alleges that Trump Village is vicariously liable for the intentional acts of the security officer and is liable under negligence theory.

In support of the motion, defendant submitted, among other things, plaintiff's deposition transcript. Plaintiff testified that the incident occurred at approximately 4:30 a.m., in the lobby of the building, by the elevator. At the time of the incident, plaintiff was with his girlfriend, Anna Khyudakova. He and Anna had just arrived back at the building after visiting the home of one of plaintiff's friends. After gaining entry to the building with his key, plaintiff and Anna walked to the elevator.

Plaintiff testified that while he was waiting for the elevator, a security officer that he had never seen before approached him and asked him for identification. Plaintiff claims that he later learned that the security officer was Arthur Robinson, an employee of Cambridge Security, the security company that provided security for the building. The plaintiff testified that when he refused to provide Mr. Robinson with identification, Mr. Robinson asked him to leave the building. Mr. Robinson then placed his hands on him and tried to physically escort him outside. He maintained that when he resisted, Mr. Robinson began punching him.

Anna called the police, who arrived shortly thereafter. Plaintiff testified that when the police arrived, he was on the ground and that Mr. Robinson, who was on top of him punching him. Plaintiff maintains that he never once punched Mr. Robinson back. Plaintiff told the police that he lived in the building and that he refused to give Mr. Robinson identification because he was not sure if he was really was a security officer

employed at the building. Plaintiff was nevertheless arrested, handcuffed and taken to the 60th Precinct. Once at the Precinct, he was fingerprinted and placed in a holding cell. He was brought to central booking approximately five hours later. Plaintiff claims that he spent three night in jail before he was arraigned. After his arraignment, he went back to court approximately four times at which times the charges were dismissed.

In support of its motion, defendant Trump Village contends that: (a) it can not be held liable for false arrest because there was probable cause to arrest the plaintiff, (b) it can not be held liable for false arrest under a theory of negligence, and (c) it can not be held vicariously liable for Mr. Robinson actions because he was not its employee.

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068). If the proponent fails to meet its initial burden, the Court must deny the motion regardless of the sufficiency of the opposition papers (see *Winegrad*, 64 N.Y.2d at 853; *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 29 A.D.3d 547).

With respect to defendant's first argument, the existence of probable cause constitutes a complete defense to a cause of action alleging false arrest and false

imprisonment (*see Semmig v. Charlack*, 143 A.D.3d 802, 803, 39 N.Y.S.3d 72; *Batten v. City of New York*, 133 A.D.3d 803, 805, 20 N.Y.S.3d 160; *Paulos v. City of New York*, 122 A.D.3d 815, 817, 997 N.Y.S.2d 452; *see also De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 759, 27 N.Y.S.3d 468, 47 N.E.3d 747), including a cause of action asserted pursuant to 42 U.S.C. § 1983 to recover damages for the deprivation of Fourth Amendment rights under color of state law, which is the federal-law equivalent of a state common-law false arrest cause of action (*see Betts v. Shearman*, 751 F.3d 78, 82; *see also Jenkins v. City of New York*, 478 F.3d 76, 84). When, as here, an arrest is made without a warrant, a presumption arises that it was unlawful, and the burden of proving justification is cast upon the defendant (*Smith v. County of Nassau*, 34 N.Y.2d 18, 355 N.Y.S.2d 349, 311 N.E.2d 489). CPL 140.10 provides that a police officer may arrest a person without a warrant when he has “reasonable cause” to believe such person has committed a crime. The formulation for reasonable cause has been reaffirmed several times by the Court of Appeals: “ ‘Where an officer, in good faith, believes that a person is guilty of a felony, and his belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise, he has such probable cause for his belief as would justify him in arresting without a warrant’ ” (*Smith v. County of Nassau*, *supra*, at pp. 23–24, 355 N.Y.S.2d 349, 311 N.E.2d 489, quoting from *People v. Coffey*, 12 N.Y.2d 443, 451, 240 N.Y.S.2d 721, 191 N.E.2d 263). Here, defendant’s submissions failed to eliminate triable issues of fact as to whether probable cause existed. Nothing before the Court shows why the plaintiff was arrested and it has not been established, as a matter of law, that an ordinarily prudent and cautious man, under the circumstances, would have believed that the

plaintiff committed a crime.

With respect to defendant's second argument, the Court agrees that the defendant can not recover in negligence for a claim of false arrest (*see Santoro v. Town of Smithtown*, 40 A.D.3d 736, 738, 835 N.Y.S.2d 658, 661; *Secard v. Department of Social Servs. of County of Nassau*, 204 A.D.2d 425, 427, 612 N.Y.S.2d 167; *see also Johnson v. Kings County Dist. Attorney's Off.*, 308 A.D.2d 278, 285, 763 N.Y.S.2d 635; *Antonious v. Muhammad*, 250 A.D.2d 559, 673 N.Y.S.2d 158). Accordingly, all claims of negligence against the moving defendant are dismissed.

With respect to defendant's third argument, the Court notes from the outset that a cause of action for false arrest and false imprisonment may be asserted against a private civilian. In such as case, the plaintiff must show that the private citizen took an active role in the arrest of the plaintiff, such as giving advice and encouragement or importuning the authorities to act, and that the defendant intended to confine the plaintiff (*see, DeFilippo v. County of Nassau*, 183 A.D.2d 695, 583 N.Y.S.2d 283; *Carrington v. City of New York*, 201 A.D.2d 525, 607 N.Y.S.2d 721], *Celnick v. Freitag*, 242 A.D.2d 436, 437, 662 N.Y.S.2d 37; *Quigley v. City of Auburn*, 267 A.D.2d 978, 980, 701 N.Y.S.2d 580). On this record, it has not been demonstrated, *prima facie*, that Mr. Robinson can not be held liable in false arrest and false imprisonment.

While the moving defendant claims that it can not be held vicariously liable for Mr. Robinson's actions because Mr. Robinson was not its employee, defendant did not submit any admissible proof that Mr. Robinson was not its employee at the time of the incident. The only proof submitted on this point was plaintiff's deposition transcript, wherein he

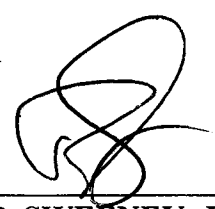
stated that he learned after the accident that Mr. Robinson was an employee of Cambridge and not the defendant. This constitutes hearsay.

For all of the above reasons, it is hereby

ORDERED that defendant's motion is **GRANTED** solely to the extent that all claims against alleged in the complaint against Trump Village sounding in negligence are **DISMISSED**. The motion is in all other respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: August 19, 2019



PETER P. SWEENEY, J.S.C.

HON. PETER P. SWEENEY, J.S.C.

KINGS COUNTY CLERK
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