

Pashko v City of New York

2019 NY Slip Op 33398(U)

November 15, 2019

Supreme Court, New York County

Docket Number: 151068/2016

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

-----X

VICTOR PASHKO,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, HON. WILLIAM BRATTON, POLICE OFFICERS JOHN DOES NOS. 1 TO 10

Defendant.

-----X

INDEX NO. 151068/2016
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for DISMISSAL

Upon the foregoing documents, the defendant's motion to dismiss is granted in part and denied in part. 1

This case arises as a result of alleged actions on the plaintiff by New York City Police Officers on November 11, 2014, while they responded to reports of a robbery at 23 West 47th Street.

First and foremost, the Court notes that plaintiff's counsel has agreed to the dismissal of William Bratton from the action so the complaint is dismissed as against him. The plaintiff's counsel has also acknowledged that the negligent supervision claims must be dismissed because the police officers were acting within the scope of their employment. See Karoon v. New York City Transit Authority, 241 A.D.2d 323, 324 (1st Dep't. 1997) (an employee "is acting within the scope of employment, thereby rendering the employer liable for any damages caused by the

1 The Court would like to thank Amanda Gerstman for her assistance in this matter.

employee's negligence under a theory of *respondeat superior*, no claim may proceed against the employer for negligent hiring or retention"). In addition, a municipality may not be held liable under 42 U.S.C. § 1983 on the basis of *respondeat superior*. *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 694–95 (1978). Instead, "[t]he Plaintiff must first prove the existence of a municipal policy or custom in order to show that the municipality took some action that caused him injuries Second, the Plaintiff must establish a causal connection – an affirmative link – between the policy and the deprivation of his constitutional rights." *Vippolis v. Vill. of Haverstraw*, 768 F.2d 40, 44 (2d Cir. 1985). The Court agrees with the City of New York that the complaint as it relates to claims under federal law against the plaintiff must be dismissed because the complaint does not set out any pattern or practice by the City, nor are there any actions of individual officers alleged in the complaint. Moreover, it is beyond the statute of limitations for the plaintiff to bring individual officers into the case.

The Court however denies the motion to dismiss as it relates to false arrest and detainment, as well as those for assault and battery and excessive force. The City claims that the actions by the police were privileged and thus, these claims must be dismissed. However, considering the facts in the light most favorable to the plaintiff, the motion to dismiss these charges is simply premature. According to the complaint and the 50(h) hearing, the plaintiff was detained by handcuffs in the building, was then taken out of the building, and was continued to be detained once outside of the building. It is alleged that there was force used on the plaintiff in order for this to occur. The police officer is only entitled to stop and briefly detain a person to investigate based on "reasonable suspicion." *Floyd v. City of New York*, 959 F. Supp. 2d 540 (SDNY 2013). As it is questionable that "reasonable suspicion" existed in this case regarding the initial stop of Mr. Pashko, discovery is necessary for there to be more detail of this fleshed out.

Moreover, even if the arrest and detainment was privileged, the City has failed to show that the force used was only the force necessary to effectuate a lawful arrest, and thus has failed to meet their burden in this motion.

As to the defamation action, the Court notes that while plaintiff did not specifically bring a cross motion, the plaintiff's opposition papers to the defendants' motion does request an opportunity to replead the plaintiff's defamation claims. Courts will dismiss a cause of action for defamation where the complaint fails to state, "whether the utterances were verbal or written, the specific time and location at which the utterances were made and, most critically, [failed] to identify a single person who allegedly heard the offending utterances." *Vertical Sys. Analysis, Inc. v. Balzano*, 171 A.D.3d 621, 622 (1st Dept. 20190); see also *Dillon v. City of New York*, 261 A.D.2d 34 (1st Dept. 1999) ("The complaint also must allege the time, place and manner of the false statement and specify to whom it was made"). The Court agrees with the defendant that the defamation claims are insufficient based on their conclusory language and lack of specificity; however, the Court will grant the plaintiff an opportunity to replead this claim.

Based on the foregoing, it is hereby

ORDERED that the defendant's motion to dismiss is granted in part, in that the first five causes of action of plaintiff's complaint are dismissed with the proviso that the plaintiff may serve an amended complaint as to the defamation cause of action within 30 days of the date of this order with the defendant serving an answer within 20 days of service of such amended complaint; and it is further

ORDERED that the defendant's motion to dismiss the sixth cause of action is denied.

11/15/2019

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

LYLE E. FRANK J.S.C.

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