

Estate of Benitez v City of New York
2019 NY Slip Op 33400(U)
November 14, 2019
Supreme Court, New York County
Docket Number: 152323/2017
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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INDEX NO. 152323/2017

ESTATE OF JOSE L. BENITEZ,
Plaintiff,

MOTION DATE 11/13/2019

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 were read on this motion to/for SUMMARY JUDGMENT.

This action arises out of the tragic and unfortunate suicide of New York City Police Department (NYPD) Sergeant Jose Benitez on March 10, 2015. Plaintiff alleges that the NYPD failed to take decedent's mental condition into consideration when assigning him to an overnight shift in the Video Interactive Patrol Enhancement Response (VIPER) unit, thereby causing his suicide.

Defendants, The City of New York and the New York City Police Department (City), now move for summary judgment on the grounds that the complaint fails to state a cause of action as the City did not have a duty to prevent Sgt. Benitez's suicide. Plaintiff opposes the instant motion on the grounds that there are questions of fact with respect to whether defendants had a duty to provide a safe working environment, as well as provide accommodations for employees with documented mental health conditions¹, and whether defendants negligently

¹ The Court does not address plaintiff's arguments with respect to claims of unsafe working environment and failure to provide accommodations as neither was mentioned in either the notice of claim or complaint.

violated that duty. For the reasons set forth below, the City's motion is granted, and the action is dismissed.

Facts

Sergeant Benitez was employed by the New York City Police Department from July 2006 until his passing on March 10, 2015. It was not until September 2014 when Sgt. Benitez's mental health was called into question as a result of a Facebook video posted by Sgt. Benitez and viewed by fellow officers. Lieutenant Deckert, Sgt. Benitez's commanding officer, and two other officers visited Sgt. Benitez at his home for a wellness check; upon this visit Lt. Deckert referred Sgt. Benitez to the psychiatric unit of the NYPD.

Upon examination by the psychiatric unit, whose purpose is to determine whether an officer is fit for duty and whether the officer will be placed on restricted duty, Sgt. Benitez was placed on restricted duty². Between September 2014 and December 2014, Sgt. Benitez was hospitalized on three occasions, for approximately four weeks, and diagnosed with Bipolar I disorder.

Sgt. Benitez was assigned to the VIPER unit, a non-enforcement position that did not require him to have his service weapon, from November 2014 until his suicide by hanging on March 10, 2015.

Discussion

Plaintiff's notice of claim alleges "wrongful death caused by the blatant negligence and failure to properly assess, attend, treat, and provide care for Decedent's mental state and condition, which blatant failure and neglect exacerbated Decedent's deteriorating mental condition and directly precipitated his death". Plaintiff's complaint states that "several medical

² Restricted duty meant that Sgt. Benitez was fit for duty however, would not be in possession of his firearm and would be assigned to non-patrol or enforcement duties.

professionals, including but not limited to psychologists employed by the NYPD," diagnosed decedent with bipolar disorder and that "[NYPD] negligently assigned him to a position that would precipitate decedent's untimely death." Plaintiff has failed to allege any duty much less how defendants breached that duty.

In support of its motion, defendants argue that its doctors do not treat police officers thus there cannot be a claim for alleged failure to treat or provide care. In any event, the crux of the City's argument is that it was under no duty to prevent Sgt. Benitez's suicide.

In *Cygan v New York*, the First Department held that there were two instances where liability exists for a failure to prevent a suicide. 165 AD2d 58, 67 [1st Dept 1991]. "One is where a facility such as a hospital or jail which is in actual physical custody of an individual fails to take reasonable steps to prevent a reasonably foreseeable suicide. The second is where a [...] mental health professional with sufficient expertise to detect suicidal tendencies and with the control necessary to care for the person's well-being fails to take such steps" *id* (internal citations omitted).

Here, the City was not in actual physical custody of Sgt. Benitez nor was Sgt. Benitez under the care of a mental health professional employed by the NYPD. The record is also devoid of any evidence that Sgt. Benitez had suicidal tendencies, nor that the NYPD had control over the actions or inactions of Sgt. Benitez. Consequently, the City has established its prima facie entitlement to judgment as a matter of law and plaintiff has failed to raise a triable issue of fact. Accordingly, it is hereby

ORDERED that the City's motion is granted, and the complaint is dismissed; and it is further

ORDERED that the Clerk is to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

11/14/2019

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.