

**Doe v Doe**

2019 NY Slip Op 35237(U)

April 2, 2019

Supreme Court, New York County

Docket Number: Index No. 151110/2018

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

-----X

JOHN DOE,

Plaintiff,

- v -

JANE DOE,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 18, 19, 20, 21, 22, 29

were read on this motion to dismiss.

DECISION AND ORDER

Defendant moves, pursuant to CPLR 3211(a)(7), for an order dismissing plaintiff's complaint. Plaintiff opposes.

I. COMPLAINT (NYSCEF 6)

Plaintiff alleges the following:

In September 2016, defendant posted an advertisement on a website for individuals seeking to enter into "sugar daddy/sugar baby" arrangements, whereby one person pays for the expenses and needs of the other in exchange for "companionship."

In October 2016, plaintiff responded to defendant's advertisement, and the parties met for the first time, in person on October 25, 2016. That same day, they entered into an agreement whereby plaintiff would pay defendant \$2,000 per month in exchange for four meetings each month. They also agreed that "various forms of consensual sexual intimacy were permissible," and that if the arrangement was successful, it could evolve into a more traditional romantic

relationship.

Shortly after the relationship began, the parties modified the arrangement so that they would only meet four times, in exchange for \$2,000, so that defendant could spend more time on her schoolwork. Thereafter, the parties met “on quite a few occasions” and plaintiff paid defendant an allowance of \$3,500 and gave her expensive gifts such as a necklace and watch.

In January 2017, the parties renegotiated their agreement to provide that plaintiff would pay defendant \$10,000 in advance, so that their relationship would continue. On February 5, 2017, plaintiff gave defendant a check for the advanced payment. Later that day, defendant wrote plaintiff a “generally positive” letter concerning her feelings about him. However, the next day, defendant refused to comply with the renegotiated terms of the agreement, and then lied and insulted plaintiff. Subsequently, plaintiff cancelled the check.

Defendant later wrote to plaintiff, falsely stating that the check had been written to compensate her for damages she had suffered when plaintiff sexually had assaulted her on January 15, 2017. Notwithstanding his ensuing anger, plaintiff met with defendant to discuss their relationship and the false charges. That night, the parties went to plaintiff’s residence and engaged in consensual sexual acts. Plaintiff then gave defendant a \$1,000 check.

On February 12, 2017, defendant complained to her school’s department of public safety, falsely accusing plaintiff of engaging in non-consensual sexual relations with her. That same day, plaintiff was arrested by the New York City Police Department, but was later released without any charges being filed.

On February 5, 2018, plaintiff filed his summons and complaint in which he asserts claims of extortion, false arrest, and malicious prosecution. In his opposition to the instant motion (NYSCEF 19), and at oral argument thereon (NYSCEF 29), plaintiff concedes that his

first and third causes of action should be dismissed. Accordingly, only plaintiff's second cause of action for false arrest is addressed.

## II. CONTENTIONS

### A. Defendant (NYSCEF 3-7)

Defendant asserts that plaintiff fails to state a cause of action for false arrest, as he does not allege that she intended to confine him, and he also fails to allege that she "affirmatively induced" or "procured" the police to arrest him. Rather, plaintiff alleges only that defendant went to her school's department of public safety, which "resulted" in his arrest. In addition, defendant maintains, plaintiff neither alleges that she went to the police herself or was aware of how her school would handle the complaint.

Defendant also argues that plaintiff fails to allege why his confinement was not privileged and does not plead that the police lacked probable cause to arrest him. She observes that one cannot be held liable for false arrest for only furnishing information to law enforcement, which exercises independent judgment as to whether to make an arrest and file criminal charges.

### B. Plaintiff (NYSCEF 18-21)

In opposition, plaintiff argues that, given the allegations in the complaint, it is reasonable to infer, especially on a motion to dismiss, that defendant falsely reported a sexual assault with the intent of having plaintiff arrested. He asserts that whether the police had probable cause to arrest plaintiff is irrelevant, and that the sole issue is whether defendant had probable cause to believe plaintiff had committed a crime. As she fabricated her accusation, moreover, plaintiff contends, his confinement was not privileged.

Plaintiff contends that, although he never explicitly alleges that defendant talked with the police, it is reasonably inferred from the facts alleged in the complaint, and to the extent it cannot

be inferred, plaintiff submits an arrest report which reflects that defendant spoke with the police about the alleged assault. (NYSCEF 20). Thus, defendant's assertion that she only furnished information to the police is incorrect. Rather, her false report to the police resulted in his arrest.

Plaintiff submits his own affidavit in which he states that he was detained by the police for five hours after his arrest. In March 2017, he obtained a Property Clerk Invoice from the police department, and on May 2, 2017, obtained a letter, attached to his affidavit, from the New York County District Attorney's Office stating that it declined to prosecute him. In addition, he states that in August 2017, he went to the police department to inquire about his arrest, and the arresting officer stated that defendant had accused plaintiff of sexual assault and that "he believed she was lying about that accusation." (NYSCEF 21).

### III. ANALYSIS

In considering a motion to dismiss pursuant to CPLR 3211(a)(7) for a failure to state a cause of action, the court must construe the pleading liberally, accept the facts alleged to be true, and afford the plaintiff "the benefit of every possible favorable inference." (*JP Morgan Sec. Inc. v Vigilant Ins. Co.*, 21 NY3d 324, 334 [2013] [citation omitted]; *AG Cap. Funding Partners, LP v State St. Bank & Trust Co.*, 5 NY3d 582, 591 [2005]; *Leon v Martinez*, 84 NY2d 83, 87 [1994]). Nonetheless, allegations asserting bare legal conclusions are not entitled to such consideration. (*Simkin v Blank*, 19 NY3d 46, 52 [2012]).

In accepting all of the plaintiff's allegations as true, the court may not express "any opinion as to the plaintiff's ability to ultimately establish the truth of these averments before the trier of the facts." (*Cooper v 620 Properties Assocs.*, 242 AD2d 359, 360 [2d Dept 1997], quoting *219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]). "The motion must be denied if from the four corners of the pleadings 'factual allegations are discerned which taken

together manifest any cause of action cognizable at law.” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002], quoting *Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46, 54 [2001]; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

To state a claim for false arrest, the plaintiff must allege that “the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to the confinement, and that the confinement was not otherwise privileged.” (*Martinez v City of Schenectady*, 97 NY2d 78, 85 [2001]). If the plaintiff was arrested by police, he must allege that the defendant instigated his arrest or directed an officer to take him into custody. (*Du Chateau v Metro-N. Commuter R. Co.*, 253 AD2d 128, 132–133 [1<sup>st</sup> Dept 1999]).

By alleging that defendant knowingly made a false statement to the police and that he was subsequently arrested based on it, plaintiff sufficiently alleges that defendant had the requisite intent to confine plaintiff and that his arrest was not privileged. (*See Matthauss v Hadjedj*, 2016 WL 192736, \*2 [Sup Ct, NY County 2016], *affd* 148 AD3d 425 [1<sup>st</sup> Dept 2017] [plaintiff’s allegations that defendant knowingly made false report to police and that plaintiff was arrested and held in jail overnight, sufficiently demonstrated requisite intent and lack of privilege]).

To the extent that defendant contends that she reported the alleged assault only to university security, as opposed to actively inducing plaintiff’s arrest, she is contradicted by the arrest report which reflects that she had directly reported the alleged assault to the police at the stationhouse. In addition, plaintiff alleges that defendant intentionally provided false information, and that he was arrested as a result. Viewing plaintiff’s allegations in the light most favorable to him, his allegation of intent, in conjunction with the police report, permits the reasonable inference that defendant actively induced plaintiff’s arrest. (*See e.g., DeMarzo v*

DeMarzo, 150 AD3d 1202, 1203 [2d Dept 2017] [on motion pursuant to CPLR 3211[a][7] allegations supported view that defendant actively induced law enforcement by intentionally providing police with false information which defendant knew, or should have known would result in plaintiff's arrest]).

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant's motion to dismiss is granted to the extent it seeks dismissal of plaintiff's first and third causes of action, and is otherwise denied; and it is further

ORDERED, that the parties appear for a preliminary conference on June 12, 2019 at 2:15 pm at 60 Centre Street, Room 341, New York, New York.

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4/2/2019  
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: