

Weissbrod v City of New York
2020 NY Slip Op 30224(U)
January 28, 2020
Supreme Court, New York County
Docket Number: 161111/2014
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART 62

62 Justice

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AMY WEISSBROD,

Plaintiff,

- v -

CITY OF NEW YORK, NELLIE MALAVE, P.O. ROSS,
SERGEANT SHIMSCRY

Defendant.

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INDEX NO. 161111/2014

MOTION DATE 01/23/2020

MOTION SEQ. NO. 004

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 53, 54, 55, 56, 57, 58, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing papers, it is ordered that this motion is determined as follows:

The instant action arises from an August 9, 2013 incident, in which defendants, acting under color of state law, allegedly unlawfully arrested and detained Ms. Weissbrod at approximately 12:05 P.M. in the vicinity of the Broadway and West 81st Street, County and State of New York. Plaintiff served a Notice of Claim on or about, November 6, 2013. Plaintiff commenced this action by e-filing a Summons with Notice on the New York County Clerk's Office on November 7, 2014, which was served upon the Defendant City of New York on the same day. Plaintiffs original Complaint alleges six causes of action 1) Deprivation of Federal Civil Rights Under 42 USC § 1983; 2) Excessive Force Under 42 USC § 1983; 3) Respondeat Superior Liability of the City of New York for State Law Violations; 4) Assault and Battery; 5) Negligence Under the Laws of the State of New York; and 6) Intentional and/or Negligent Infliction of Emotional Distress Under the Laws of the State of New York. Per Plaintiffs Complaint, the alleged acts occurred while she was in NYPD custody beginning on August 9, 2013, through August 10, 2013

when she was released from confinement. Plaintiff now moves to amend her complaint to allege twelve causes of action 1) False Arrest and False Imprisonment- State Law; 2) False Arrest and False imprisonment under 42 USC § 1983 against individual defendants; 3) Assault and Battery- State Law; 4) Excessive Force under 42 USC § 1983 against individual defendants; 5) Malicious Prosecution- State Law; 6) Malicious Prosecution under 42 USC § 1983 against individual defendants; 7) Malicious Abuse of Process- State Law; 8) Malicious Abuse of Process under 42 USC § 1983 against individual defendants; 9) Failure to Intervene- State Law; 10) Failure to Intervene under 42 USC § 1983 against individual defendants; 11) Negligent Hiring, Retention and Supervision- State Law; and 12) Municipal Monell under 42 USC § 1983 against the City.

In Probst v. Albert Einstein Medical Center, 82 A. D. 2d 739 (1st Dept. 1981), the Court held that "[generally, leave to amend a complaint is freely given (CPLR 3025, subd [b]). However, leave will not be given where the proposed amendments do not state valid grounds for relief (East Asiatic Co. v Corash 34 AD2d 432)." See also, Balsam v. Delma Eng'g Corp., 139 A.D.2d 292 (1st Dept. 1988) holding that "generally, absent prejudice or surprise, leave to amend a pleading should be freely given (CPLR 3025 [b]), leave must be denied where the new matter is legally insufficient. (See, Probst v Einstein Med. Center, 82 AD2d 739; cf., Newton v Aqua Flo Co., 106 AD2d 919; see. 3 Weinstein-Korn-Miller, NY Civ Prac para. 3025. 15, at 30-610.)."

Defendants oppose plaintiff's motion, citing law of the case, that the actions are time barred by the relevant statutes of limitations and that plaintiff has failed to state the pleading requirements for valid causes of action. There is no allegation that the claims asserted in plaintiff's original complaint were not timely filed.

In a decision dated December 11, 2018, the Court denied, with leave to renew upon a more detailed proposed amended complaint, plaintiff's first motion seeking to amend the complaint. As

plaintiff was granted leave to renew, defendant's argument regarding law of the case is inapplicable.

It is undisputed that the relevant state of limitation is one year and ninety days for plaintiff's state law claims and three years for plaintiff's federal law claims and that such claims were timely under plaintiff's original complaint. Pursuant to CPLR § 203 (f), provided that the original pleading gave notice of the transactions or events to be proved pursuant to the amended pleading, "a claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed...." CPLR § 203 (f). Here, plaintiff provided the defendants with detail of the incident. The original summons and complaint details plaintiff's account of the relevant facts with approximately five pages of specific information, which has not changed in plaintiff's proposed amended complaint. Defendants will not be prejudiced by any of the proposed additional claims to the complaint, as all claims proposed to be added are clear within the plaintiff's original summons and complaint.

As to plaintiff's twelfth proposed cause of action seeking *Monell* liability against the city, in Batista v. Rodriguez, 702 F.2d 393, 397 (2d Cir. 1983), the Court stated that "to hold a city liable under § 1983 for the unconstitutional actions of its employees, a plaintiff is required to plead and prove three elements: (1) an official policy or custom that (2) causes the plaintiff to be subjected to (3) a denial of a constitutional right." Accordingly, factual allegations that one or more police officers deprived plaintiff of a federally protected right is not, itself, a sufficient claim for imposing § 1983 liability against the City. See Monell, 436 U.S. at 694; Walker v. City of New York, 974 F.2d 293 (2d Cir. 1982), cert denied, 507 U.S. 961 (1993). A single isolated incident alleged in a complaint, especially where the alleged incident involves only employees below the policymaking level, will not suffice to establish a municipal policy or custom. City of Oklahoma

v. Turtle, 471 U.S. 808, 824 (1985); Cabbie v. City of New York, 2009 U.S. Dist. LEXIS 26478, at *18 (S.D.N.Y. 2009); Brodeur v. City of N.Y., 2002 U.S. Dist. LEXIS 4500, at 1*7 (S.D.N.Y.2002) (court dismissed complaint against City where complaint "flatly asserts a policy but contains no factual allegations sufficient to establish a municipal policy or custom"); George v. Burton, 2001 U.S. Dist. LEXIS 24, at *5-6 (S.D.N.Y. 2001) (court dismissed complaint with prejudice where plaintiff "failed to proffer any facts in his complaint from which we can infer such a pattern or practice"). Plaintiff's proposed complaint contains no factual allegations, only a series of conclusions based upon information and belief.

ORDERED that the plaintiff's motion for leave to amend the complaint is granted, in part, as follows: leave is granted to amend the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh causes of action and to this extent the proposed amended complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that leave to amend the complaint is denied with respect to the proposed twelfth cause of action and that cause of action is stricken; and it is further

ORDERED that the defendant shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service.

1/28/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE