

Balde v City of New York
2020 NY Slip Op 30281(U)
January 30, 2020
Supreme Court, New York County
Docket Number: 151222/2017
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

Justice

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INDEX NO. 151222/2017

ABDOULAYE BALDE,

MOTION DATE 11/21/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, ROBERT GARDINO, JOHN DOBKOWSKI

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff on March 30, 2016, when he was arrested for Resisting Arrest in violation of New York Penal Law § 206.30, Obstruction of Governmental Administration in violation of New York Penal Law § 195.05, Harassment in the Second Degree in violation of New York Penal Law § 240.25, and Criminal Solicitation in violation of New York Penal Law 100.00.1 The New York County District Attorney's Office charged Plaintiff with Obstruction of Governmental Administration in violation of New York Penal Law § 195.05, Resisting Arrest in violation of New York Penal Law § 205.30, Unlicensed General Vendor-Not DNA Eligible in violation of New York State Administrative Code 20-453, Criminal Solicitation in violation of New York Penal Law § 100.00, and Harassment in the Second Degree in violation of New York Penal Law § 240.25. On October 26, 2016, Plaintiff's criminal case was dismissed.

On May 31, 2019, Plaintiff filed a Notice of Claim to recover money damages from alleged negligence, assault, battery, violation of civil rights, false arrest, false imprisonment and malicious prosecution. On December 20, 2016, Plaintiff testified at a hearing pursuant to General Municipal Law § 50-h and filed a Summons with Notice and Verified Complaint on February 7, 2017, issued was joined by service of its Answer on February 16, 2016. Which was amended on July 25, 2017. On April 10, 2018, Plaintiff testified at an examination before trial and on September 12, 2019, both Officers John Dobkowski and Robert Gardino and gave sworn testimony at their EBTs. On May 14, 2019, Plaintiff filed his Note of Issue. The instant motion for summary judgment was filed on July 11, 2019.

Plaintiff's complaint alleges five causes of action: (1) Assault and battery; (2) general negligence and negligent hiring of the police officers in question; (3) false arrest and false imprisonment, (4) malicious prosecution and (5) Monell Claims.

At the outset the Court notes that plaintiff has voluntarily agreed to discontinue his second and fifth causes of action, thus defendants motion seeking summary judgment related to same are moot. Defendants now seek summary judgment, dismissing plaintiff's causes of action for false arrest and false imprisonment as well as for malicious prosecution.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 (1957); Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. Alvarez v.

Prospect Hospital, 68 N.Y.2d 320 (1986); Winegrad v. New York University Medical Center, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. Assaf v. Ropog Cab Corp., 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 (1957).

Plaintiff essential testified at his 50-h hearing and deposition that he was merely standing on street corner talking with friends when he was approached by defendant officers who demanded his identification without cause and when he refused they proceeded to arrest him at which time he was assaulted sustaining injuries. Defendant officers testified that they observed the plaintiff, previously known to them, talking to members of the public while holding a sign advertising use of pedicabs within central park. Based on same they approached him under the belief that he was soliciting ridership of pedicabs without a proper license which is a misdemeanor. The plaintiff refused multiple request to provide his identification and license which resulted in the arrest of the plaintiff.

The existence of probable cause to arrest constitutes a privileged confinement and is therefore a complete defense to the claims of false arrest and unlawful imprisonment, Strange v. County of Westchester, 29 A.D.3d 676 (2006); Molina v. City of New York, 28 A.D.3d 372 (2006).

Plaintiff claims that the issue of probable cause is a question of fact that must be left to a trier of facts which is disputed by defendant. The court notes that there is a question of fact as to the full circumstances of the encounter between the officers and plaintiff wherein the defendant

officers claim that plaintiff pushed one officer twice and there is video of a portion of the arrest, but not the interaction in its entirety, thereby greatly reducing the value of said video evidence. However, viewing the facts in the light most favorable to plaintiff there remains no dispute that he was holding a sign advertising pedicab rides, was in the area frequently for that purpose, was known to defendant officers, did not have a license and when approached by officers adjacent to the park and that he refused to provide any identification. Such circumstances clearly demonstrate probable cause for the officers to arrest the plaintiff. Based on same the court must dismiss plaintiff's third and fourth causes of action, alleging false arrest, false imprisonment and malicious prosecution.

The sole remaining claim on behalf of plaintiff is a claim for assault and battery (excessive force) which was not addressed in the instant motion.

ORDERED that the motion to dismiss is granted to the extent that plaintiff's second, third, fourth and fifth causes of action of the complaint are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

1/30/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE