

**Graves v City of New York**

2020 NY Slip Op 30519(U)

February 19, 2020

Supreme Court, New York County

Docket Number: 451911/2019

Judge: Dakota D. Ramseur

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR PART IAS MOTION 5
Justice
INDEX NO. 451911/2019
ROBERT GRAVES, Plaintiff, MOTION DATE 02/04/2020
-v- MOTION SEQ. NO. 001
THE CITY OF NEW YORK, P.O. ZUEL CLEMENT TAX DEFENDANTS. DECISION + ORDER ON MOTION
REG. NO. 945594, P.O. JOHN DOE,

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12 were read on this motion to/for DISMISSAL

In this action alleging state and federal civil rights violations and personal injuries, Defendants City of New York and P.O. Zuel Clement (collectively the "City") move, pursuant to CPLR 3211(a)(5) and (7), to dismiss the claims as time-barred and for failure to state a claim. Plaintiff has failed to oppose. For the reasons below, the motion is granted, and the Complaint is dismissed.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Plaintiff alleges detention and arrest for an open container violation by NYPD members on October 5, 2012 (NYSCEF 7 ¶ 10 [Complaint]). Plaintiff alleges that during the arrest, officers punched Plaintiff in the face, pushed Plaintiff into a wall, and slammed Plaintiff against the wall several times (id.). All charges were dismissed for failure to prosecute on January 15, 2013 (id.). Plaintiff commenced this action in Kings County Supreme Court on January 19, 2016, alleging (1) state law causes of action for negligent hiring, training, and supervision and intentional

1 After transfer from Kings County, Plaintiff's counsel apparently never entered an appearance on the NYSCEF docket. On February 6, 2020, the Court left an unreturned voicemail with Plaintiff's counsel at the number listed in Plaintiff's Complaint, and was again unable to reach Plaintiff's counsel on February 19, 2020.

infliction of emotional distress; and (2) federal claims of false arrest, false imprisonment, excessive force, assault, failure to intervene, malicious prosecution, and municipal liability (*Complaint* ¶ 8, *et seq.*). On December 9, 2016, Justice Dawn Jimenez-Salta ordered the action transferred to New York County (*NYSCEF* 2).<sup>2</sup>

General Municipal Law § 50-i(1)(c) requires that any action against a city “be commenced within one year and ninety days after the happening of the event upon which the claim is based.”

## DISCUSSION

### *I. Standard for motions to dismiss*

On a CPLR 3211 motion to dismiss, a court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). “[O]n such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff (*Alden Global Value Recovery Master Fund, L.P. v KeyBank N.A.*, 159 AD3d 618 [1st Dept 2018]). “[T]he criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” and the court “determine[s] only whether the facts as alleged fit within any cognizable legal theory” (*Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]).

### *II. State claims*

A cause of action for negligent hiring, training and retention, accrue on the date of the arrest (*Murray v City of New York*, 283 AD2d 560, 561 [2d Dept 2001]). Similarly, a claim for intentional infliction of emotional distress begins to accrue on the date of the underlying injury

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<sup>2</sup> Like this order, Justice Jimenez-Salta’s order notes that it was granted upon Plaintiff’s default.

(*Wilson v Erra*, 94 AD3d 756, 756 [2d Dept 2012]; *Long v Sowande*, 27 AD3d 247, 249 [1st Dept 2006] [claim for intentional infliction of emotional distress accrued on the date on which defendant learned that her property had been auctioned and on which she suffered emotional distress]). Here, the claims for negligent hiring, training and retention and intentional infliction of emotional distress began to accrue on October 5, 2012, the date of Plaintiff's arrest. Because those claims are subject to a 1 year and 90-day statute of limitations, the filing of the Summons and Complaint on January 19, 2016 rendered the claims untimely filed, and they must therefore be dismissed.

### III. Federal claims

The City argues that to the extent that Plaintiff alleges a *Monell* violation, Plaintiff has not properly pled that claim (*see Monell v New York City Dept. of Social Services*, 436 US 658 [1978]). Indeed, "...a municipality can be found liable under § 1983 only where the municipality *itself* causes the constitutional violation at issue. *Respondeat superior* or vicarious liability will not attach under § 1983. It is only when the 'execution of the government's policy or custom . . . inflicts the injury' that the municipality may be held liable under § 1983" (*City of Canton v Harris*, 489 US 378, 385 [1989] [emphasis in original, holding that plaintiff's claim that the city's failure to provide training to municipal employees resulted in constitutional deprivation is cognizable under § 1983, but can only yield liability against a municipality where that city's failure to train reflects deliberate indifference to the constitutional rights of its inhabitants (*City of Canton v Harris*, 489 US 378, 392 [1989])], citing *Monell*, 436 US 658). However, accepting the facts as alleged in the complaint as true, and according Plaintiff the benefit of every possible favorable inference, Plaintiff does allege here that the City exhibited deliberate indifference by implementing policy and/or retaining a custom of "encourag[ing] and

harass[ing] officers to “make as many arrest[s] as possible without concern for the validity of those arrests” (*Complaint* ¶ 13). Accordingly, that branch of the City’s motion is denied. For the reasons below, however, the Complaint is nevertheless dismissed as untimely.

“Under federal law, which governs the accrual of claims brought under § 1983, a claim accrues once the plaintiff knows or has reason to know of the injury which is the basis of his action” (*Veal v Geraci*, 23 F3d 722, 724 [2d Cir 1994]). Under federal law, a 1983 claim accrues “when the plaintiff knows or has reason to know of the injury which is the basis of his action”; for violations implicating false arrest or excessive force, that is the date of the underlying incident (*Hogan v Fischer*, 738 F3d 509, 518 [2d Cir 2013] [holding that civil rights violations stemming from assault on prisoner began to accrue upon the assault itself]; *Covington v City of NY*, 171 F3d 117, 123 [2d Cir 1999] [“...causes of action for false arrest accrue at the time of the arrest.”]; *Cooper v City of NY*, 2019 US Dist LEXIS 131572, at \*37 [EDNY Aug. 5, 2019, No. 17-CV-1517 [false arrest and imprisonment claims accrued on the date that plaintiff was given a desk appearance ticket]). Here, Plaintiff’s federal false arrest, false imprisonment, excessive force, battery, and failure to intervene claims all began to accrue on October 5, 2012, the date of Plaintiff’s interactions with the officers. Because the three-year statute of limitations expired on October 5, 2016, Plaintiff’s January 19, 2016 Summons and Complaint were untimely.

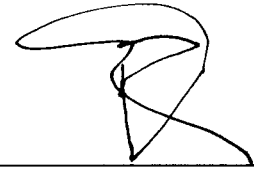
Similarly, federal claims for malicious prosecution accrue when the criminal proceedings have terminated in the plaintiff’s favor (*Heck v Humphrey*, 512 US 477, 489 [1994]). Here, Plaintiff’s federal malicious prosecution claim began to accrue on January 15, 2013, the date that Plaintiff’s charges were dismissed. Accordingly, his January 19, 2016 Complaint was filed four days after the statute of limitations expired.

CONCLUSION AND ORDER

For the reasons above, it is hereby

ORDERED and ADJUDGED that the City's motion to dismiss (sequence 001) is GRANTED, and the Clerk of Court shall enter judgment accordingly in favor Defendants dismissing the Complaint; and it is further

ORDERED that the City shall, within 20 days, serve a copy of this order with notice of entry upon Plaintiff.



2/19/2020  
DATE

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DAKOTA D. RAMSEUR, 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: