

Santiago v Agadjani
2020 NY Slip Op 32255(U)
May 15, 2020
Supreme Court, Queens County
Docket Number: 714118/2019
Judge: Leslie J. Purificacion
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Part 39

-----X
LUCIAN SANTIAGO,

Index Number 714118/2019

Plaintiff,

DECISION/ORDER

FILED

- -against--

5/15/2020

11:46 AM

Motion Sequence: 1

MAKSUD TRAX AGADJANI and TRAX NYC
CORP.,

**COUNTY CLERK
QUEENS COUNTY**

Defendants.
-----X

The following papers numbered 1-9 read on defendants' motion, pursuant to CPLR 3211(a)(7) and 3211(c), to dismiss the complaint.

PAPERS
NUMBERED

N.M., Memo of Law, Exhibits and Service...	1-4
Opp., Aff., Exhibits and Service.....	5-7
Reply and Service.....	8-9

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

Plaintiff commenced this action for false arrest, intentional infliction of emotional distress and prima facie tort by the filing of a summons and complaint on August 15, 2019. Defendants now make this pre-answer motion, pursuant to CPLR 3211(a)(7) and 3211 (c), dismissing the complaint.

At the outset, the court declines to treat the motion as a summary judgment motion and shall proceed as a motion to dismiss for failure to state a cause of action. It is undisputed that plaintiff Luciano Santiago (hereinafter "Santiago") was an employee

of defendant Trax NYC Corp. (hereinafter "Trax"), a jewelry store located at 604 West 47th Street in New York County. Co-defendant Maksud Agadjani (hereinafter "Agadjani") is the chief executive officer and principal of Trax. In February of 2019, Santiago was arrested for allegedly stealing jewelry from the store based upon information and video surveillance provided to the New York Police Department (hereinafter "NYPD") by Agadjani. The District Attorney of New York County decided not to prosecute Santiago and the charges against him were dismissed.

According to plaintiff Santiago's summons and verified complaint, defendants made false allegations against the plaintiff which caused the NYPD to arrest Santiago. Santiago further states that the defendants made these false allegations on various occasions and gave encouragement importuning the NYPD with the intention of having the plaintiff arrested and confined. Santiago was conscious of his arrest and confinement and did not consent to same. Finally, Santiago alleges that the arrest and confinement were not privileged since the defendants' allegations were all fabricated.

In support of their application, the defendants submit an affidavit from Agadjani who provided a narrative of his version of the events leading up to and his role in Santiago's arrest. Agadjani also stated what information and evidence he provided to the NYPD, including video surveillance that he personally edited and superimposed with a verbal description of what was occurring in real time. Defendants' also submit still photos from said video surveillance of the alleged larceny. In opposition to the motion, plaintiff provides an affidavit where he gives an account of his version of the

facts of the case and elaborates as to why he believes the defendants made false allegations against him.

In determining whether a complaint is sufficient to withstand a motion to dismiss pursuant to CPLR §3211(a)(7), the sole criterion is whether the pleading states a cause of action (*Cooper v 620 Prop. Assoc.*, 242 AD2d 359, citing *Weiss v Cuddy & Feder*, 200 AD2d 665). If from the four corners of the complaint factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion to dismiss will fail (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144; *Cooper, supra*, 242 A.D.2d). The court's function is to "accept ... each and every allegation forwarded by the plaintiff without expressing any opinion as to the plaintiff's ability ultimately to establish the truth of these averments before the trier of the facts" (*Cooper*, 242 AD2d, quoting *219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506). Furthermore, the pleading is to be liberally construed and the pleader afforded the benefit of every possible favorable inference (*511 West 232nd Owners Corp., supra*).

In the instant motion, the gist of defendants' arguments are tailored toward a presumption that the motion would be treated as one for summary judgment. However, as the court declines to do so, the question before the court is not whether the plaintiff will ultimately establish his causes of action but whether he has stated a cause of action. The court finds that the plaintiff has stated a cause of action for false arrest by setting forth the essential elements of the cause of action by alleging that the defendant Agadjani, personally and as an agent of Trax, knowingly provided false

information to the police and as a result, plaintiff was subsequently arrested and incarcerated (see Matthaus v. Hadjedi, 148 A.D.3d 425; Neuman v Echevarria, 171 A.D.3d 767; D'Amico v. Correctional Medical Care, Inc., 120 A.D.3d 956; DeMarzo v DeMarzo, 150 A.D.3d 1202). In addition, the plaintiff has stated a claim for prima facie tort. Plaintiff has alleged that the defendants intentionally harmed him, which resulted in his loss of earnings and damage to his reputation and future earnings without justification by their actions(see Diorio v Ossining Union Free School District, 96 A.D.3d 710). Finally, plaintiff has failed to state a cause of action for intentional infliction of emotional distress. The conduct alleged by the plaintiff against the defendants does not rise to the type of extreme and outrageous conduct required for a cause of action for intentional infliction of emotional distress (see Matthaus v. Hadjedi, 148 A.D. 3d 425).

Accordingly, the defendants' motion is granted to the extent that plaintiff's cause of action for intentional infliction of emotional distress is dismissed.

In all other respects, the motion is denied.

Date: 5/15/20

FILED

**5/15/2020
11:46 AM**



Hon. Leslie J. Purificacion, J.S.C.

**COUNTY CLERK
QUEENS COUNTY**