Meighan v City of New York
2020 NY Slip Op 32521(U)
July 29, 2020
Supreme Court, New York County
Docket Number: 159241/2019
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** **IAS MOTION 62**

Justice

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AKBAR MEIGHAN,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, SERGEANT LORA RACHID OF THE 25TH PRECINCT, POLICE OFFICER SYLWESTE NIWA, JOHN DOES 1-2, PERSONS EMPLOYED BY THE CITY OF NEW YORK

Defendant.

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INDEX NO. 159241/2019

MOTION DATE 4/9/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendants' motion to dismiss and plaintiff's cross-motion seeking leave to file an amended complaint are decided as follows:

On December 8, 2015, plaintiff was arrested and thereafter prosecuted. Plaintiff alleges that the criminal charges underlying this case were dismissed on September 27, 2016. Plaintiff filed the instant Complaint on September 23, 2019. Plaintiff's complaint alleges causes of action for 1. Municipal "Monell" Liability, 2. False Arrest, 3. Excessive Force, 4. Detention and Confinement, 5. Failure to Train and 6. Malicious Prosecution. On October 16, 2019, the City of New York joined issue by service of its Answer and Combined Demand and on January 24, 2020, Defendants filed an Amended Answer maintaining the affirmative defense that the litigation had not been commenced within the statute of limitations. Defendants now seek dismissal of plaintiff's second through fifth causes of action brought pursuant to 42 U. S. C. § 1983 alleging that all of his claims were filed outside the applicable three year statute of limitations and should be

dismissed as the date on which Plaintiff claims he was arrested and subjected to excessive force is December 8, 2015, but he did not file his Complaint until September 23, 2019. Defendants also seek dismissal of plaintiff's Monell cause of action for failing to plead sufficient facts to maintain said cause of action.

Although the United States Congress has not provided a federal statute of limitations for personal injury claims, in determining the statute of limitations for claims brought pursuant to 42 U.S.C. § 1983 courts are instructed to "apply the most appropriate state statute of limitations." *Pauk v. Board of Trustees of City Univ. of N.Y.*, 654 F2d 856, 861 (2d Cir. 1981) (citing *Board of Regents v. Tomanio*, 446 U.S. 478 (1980); *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975)." The Court of Appeals for the Second Circuit has consistently held that the appropriate statute of limitations for section 1983 actions brought in the Federal courts in New York is CPLR 214." *Fields v. Board of Higher Education*, 94 A.D.2d 202, 205 (1st Dept. 1983). CPLR 214 sets a three year statute of limitations from the date a claim for personal injury accrues to a plaintiff. Here, plaintiff's causes of action challenged by defendants accrued on December 8, 2015 and are therefore barred by the statute of limitations. Plaintiff's cross-motion seeking leave to serve an amended complain concedes that causes of action two through five are untimely and does not seek to reassert them in the amended complaint.

Defendants seek dismissal of plaintiff's "Monell" causes of action as insufficiently pled. As discussed in *Bradley v. City of New York*, No. 08-CV-1106 (NGG), 2009 WL 1703237, at *1 (E.D.N.Y. June 18, 2009);

> To state a claim on which relief can be granted, a complaint must plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The pleading obligation "requires more than labels and conclusions and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (internal quotation marks and alteration omitted). *Twombly* 's "flexible

'plausibility standard' ... means that a pleader must amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible,"* but does not mandate "a universal standard of heightened fact pleading." *Iqbal v. Hasty,* 490 F.3d 143, 157–58 (2d Cir.2007). Nonetheless, the factual allegations "must be enough to raise a right to relief above the speculative level," *Twombly,* 544 U.S. at 555, that is, there must be "enough facts to nudge plaintiffs' claims across the line from conceivable to plausible," *In re Elevator Antitrust Litig.,* 502 F.3d 47, 50 (2d Cir.2007)…

…It is well-established that a municipality may not be held liable under Section 1983 on the basis of *respondeat superior. Monell v. Dep't of Social Servs.,* 436 U.S. 658, 690–91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)…

… to establish municipal liability under Section 1983, a plaintiff must show one of the following: (1) a formal policy, promulgated or adopted by the City, *Monell*, 436 U .S. at 690; (2) that an official with policymaking authority took action or made a specific decision which caused the alleged violation of constitutional rights, *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483–84, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986); or (3) the existence of an unlawful practice by subordinate officials was so permanent or well settled so as to constitute a "custom or usage" and that the practice was so widespread as to imply the constructive acquiescence of policymaking officials, *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988). If liability is based on failure to train or supervise, a plaintiff must show "deliberate indifference to the rights of those with whom the municipal employees will come into contact," *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989); Jenkins v. City of New York, 478 F.3d 76, 94 (2d Cir.2007). To establish that the policymaker took action or constructively acquiesced to an unlawful practice, a plaintiff must show that the policymaking official "had notice of a potentially serious problem of unconstitutional conduct, such that the need for corrective action or supervision was 'obvious,' ... and the policymaker's failure to investigate or rectify the situation evidences deliberate indifference, rather than mere negligence or bureaucratic inaction." *Amnesty Am. v. Town of West Hartford*, 361 F.3d 113, 129 (2d Cir.2004) (quoting *Vann v. City of New York*, 72 F.3d 1040, 1049 (2d Cir.1995)). Moreover, "[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which can be attributed to a municipal policymaker." *City of Oklahoma v. Tuttle*, 471 U.S. 808, 823–24, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985).

In terms of what a complaint must allege to survive a Motion to Dismiss, the Second Circuit has held that " 'the mere assertion ... that a municipality has such a custom or policy is insufficient in the absence of allegations of fact tending to support, at least circumstantially, such an inference.' " *Dwares v. City of New York*, 985 F.2d 94, 100 (2d Cir.1993), overruled on other grounds, *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993); see also *Smith v. City of New York*, 290 F.Supp.2d 317, 322 (E.D.N.Y.2003) (holding that a conclusory, boilerplate assertion of a municipal policy or custom was insufficient to survive motion to dismiss); *Econ.*

> *Opportunity Comm'n v. County of Nassau, Inc*., 47 F.Supp.2d 353, 370 (E.D.N.Y.1999) (dismissing municipal liability claim where plaintiffs "d[id] not proffer any facts in support of the conclusory allegation that the defendants' conduct amounts to a custom or policy, or that this custom or policy caused the plaintiffs' injuries."). To establish municipal liability under *Tuttle* and *Pembauer*, a plaintiff must "allege actual conduct by a municipal policymaker." *Walker*, 974 F.2d at 296–97; *Pembauer*, 475 U.S. at 481 ("Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered.").

Here, plaintiff's first cause of action as alleged in his original complaint consists of nothing more than legal conclusions that the City of New York maintains policies which resulted in violations of plaintiff's civil rights, which are supported by no factual allegations.

It is well settled law that motions for leave to amend the pleadings are to be freely granted, as long as there is no prejudice or surprise to the adversary (CPLR 3025(b); Wirhouski v. Armoured Car & Courier Serv., 221 AD2d 523 [2d Dept 1995]); and the proposed amendment is not "palpably insufficient" or "patently devoid of merit" (*Sheila Props., Inc. v. A Real Good Plumber, Inc*., 59 AD3d 424 [2d Dept 2009]).

Plaintiff seeks to amend his complaint to allege Monell causes of action as follows:

> 40. Defendant City knew or should have known that there was a serious widespread and ongoing problem within the NYPD and the District Attorney's Offices with unfounded and malicious prosecutions, and that employees (including Sgt. Rachid, P.O. Niwa, and Officers) routinely commenced criminal prosecutions against individuals without probable cause to believe any crime had been committed by the arrestee.
> 41. However, Defendant City maintained a policy of deliberate indifference to the rights of citizens to be free from malicious prosecution; failed to promulgate and implement policies and procedures ensuring and requiring proper police investigation before initiating criminal proceedings or swearing out a criminal complaint; failed to promulgate and implement policies and procedures to ensure that employees refrain from commencing criminal proceedings without probable cause for doing so; failed to promulgate and implement a system for the review or audit of ongoing criminal proceedings to ensure that probable cause is present during all stages of the proceedings; failed to appropriately discipline employees who commence or continue criminal proceedings in the absence of probable cause, as well as those who supervise such employees; failed to implement measures to ensure that employees such as District Attorneys and police officers are

> appropriately supervised by qualified and well-trained staff; authorized, tolerated, and ratified the misconduct of police officers and District Attorneys; and failed to intervene when employees, officers, agents, and/or contractors violated well-established statutory and constitutional rights.
> 42. Defendant City knew or should have known that those failures would cause the violation of the constitutional rights of citizens who come in contact with the NYPD and District Attorneys.
> 43. As a direct result of these failures, Plaintiff was maliciously prosecuted without probable cause to believe he had committed a crime and the criminal proceedings terminated in Plaintiff's favor.

Plaintiff's proposed third cause of action alleging failure to train is similarly pled. Plaintiff's proposed amendments contain no allegations of fact tending to support, at least circumstantially, the policies that plaintiff is alleging. Plaintiff further fails to allege actual conduct by a municipal policymaker. The proposed amendments do not contain any written policy, action of a policymaking official, or other instances of alleged wrongdoing by the City or the individually named police officers amounting to a custom or policy. As such, plaintiff's proposed amendments are without merit and plaintiff's cross-motion must be denied.

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

ORDERED that counsel are directed to file a Request for a Preliminary Conference.

7/29/2020
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION		
	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART		[ ] OTHER
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT		[ ] REFERENCE