

Joseph v City of New York

2021 NY Slip Op 30485(U)

February 23, 2021

Supreme Court, New York County

Docket Number: 152411/2014

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

-----X

DAVE JOSEPH,

Plaintiff,

- v -

THE CITY OF NEW YORK, PO JOSE RIVERA, PO JOHN DOE

Defendant.

-----X

INDEX NO. 152411/2014
MOTION DATE N/A
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

were read on this motion to/for DISMISSAL.

This action arises out of alleged personal injuries sustained by plaintiff as a result of an interaction with members of the New York City Police Department on July 3, 2013. Defendants, The City of New York and PO Jose Rivera, hereinafter referred to collectively as "City", move this Court to vacate or modify its decision dated June 3, 2020, dismiss plaintiff's fourth, seventh and ninth causes of action, and dismiss all causes of action as against defendant PO John Doe.

Plaintiff partially opposes the instant motion and cross-moves to compel the production of specific Civilian Complaint Review Board documents as well as the personnel file and disciplinary history of Sergeant Jonathan Ringel. For the reasons set forth below, the City's motion is granted in part and plaintiff's cross-motion is granted to the extent specified below.

Preliminarily, plaintiff does not oppose the portion of the City's motion that seeks dismissal of the fourth cause of action and all claims as against PO John Doe. Accordingly, those portions of the City's motion are granted without opposition.

City's Motion to Dismiss

On a motion to dismiss pursuant to CPLR 3211 (a) (7), “the facts as alleged in the complaint [are] accepted as true, the plaintiff is [given] the benefit of every possible favorable inference,” and the court must determine simply “whether the facts as alleged fit within any cognizable legal theory.” *Mendelovitz v Cohen*, 37 AD3d 670, 671 [2d Dept 2007]. It is well settled that “conclusory allegations-claims consisting of bare legal conclusions with no factual specificity-are insufficient to survive a motion to dismiss.” *Godfrey v Spano*, 13 NY3d 358, 373 [2009].

The City argues that plaintiff’s seventh cause of action, the ‘*Monell*’ claim, should be dismissed because plaintiff fails to properly plead facts to state a claim. In support of this argument, the City cites *Thomas*, a First Department case with a similar complaint to the one in the instant action. *Thomas v City of New York*, 154 AD3d 417 [1st Dept 2017]. In *Thomas*, the First Department held that the plaintiff’s allegations of wrongful hiring and training were conclusory. *Id.* at 418. The Court also held that while the plaintiff’s allegation that “officers were encouraged to make arrests without concern for their validity” was less conclusory, it was still inadequate as it failed to link the alleged unconstitutional custom or practice to his arrest. *Id.* at 418-19.

Reviewing the complaint in *Thomas* and the complaint in the instant action, it appears plaintiff’s complaint suffers from similar deficiencies. Plaintiff fails to adequately plead a ‘*Monell*’ 42 USC § 1983 claim as the complaint fails to sufficiently allege a custom, policy or widespread practice by the City to deprive him of his constitutional rights (*see De Lourdes Torres v Jones*, 26 NY3d 742, 768-69 [2016]; *Leung v City of New York*, 216 AD2d 10, 11 [1st Dept 1995] [claim “must be pleaded with specific allegations of fact”]). Plaintiff fails to

adequately identify any facts or circumstances to support a proper '*Monell*' claim, nor did he cross-move to amplify his pleadings.

During oral argument, plaintiff reasoned that disclosure of disciplinary records of a non-party witness would enable him to establish a '*Monell*' claim, however plaintiff cannot sustain an action against the City based on *respondeat superior*. Although, "a person has a private right of action under 42 USC § 1983 against police officers who, acting under color of law, violate federal constitutional or statutory rights." *Delgado v City of New York*, 86 AD3d 502, 511, [1st Dept 2011], that private right of action is against the individually named defendant not the municipality.

Further, as the City of New York, itself, did not cause the alleged constitutional violation, "[i]t cannot be held liable pursuant to 42 USC § 1983 based solely upon the doctrine of respondeat superior or vicarious liability" for the alleged actions or comments of one police officer. *Liu v New York City Police Dep't*, 216 AD2d 67, 68 [1st Dept 1995]. Accordingly, plaintiff's seventh cause of action is dismissed.

As to the City's motion to dismiss plaintiff's ninth cause of action, the City has established entitlement to dismissal of that claim. Plaintiff's ninth cause of action alleges that PO Jose Rivera and Po John Doe conspired to, *inter alia*, falsely arrest/imprison, and maliciously prosecute plaintiff. Plaintiff's complaint is devoid of any factual allegations to support a conspiracy claim. In opposition, plaintiff proffers that the fact that PO Jose Rivera and Sergeant Jonathan Ringel are partners, work closely together and prepared memo book entries for the underlying incident at or about the same time is sufficient to state a claim for conspiracy. The Court does not agree. Plaintiff's description of an alleged conspiracy is nothing more than what appears to be regular practice of officers that work in tandem. Nothing in the plaintiff's

complaint or opposition states facts that demonstrate that there is (1) an agreement between state actors or between a state actor and a private entity; (2) to act in concert to cause an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages. *Pangburn v Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999); *Hill v City of New York*, 2005 WL 3591719, at *5-6 (E.D.N.Y. 2005).

Additionally, the City requests that the information disclosed in this litigation be subject to a confidentiality agreement. Plaintiff opposed the City's request. The Court finds that because these records are publicly available there is no basis to request a confidentiality agreement. The Court has reviewed the City's arguments and finds them unavailing, accordingly that portion of the City's motion is denied.

Plaintiff's Cross-Motion

The Court deems it necessary to explain its position with respect to the repeal of Civil Rights Law (CRL) §50-a and its relationship to disclosure in civil litigation. While the Court understands that the repeal of CRL §50-a eliminates the requirement of *in camera* reviews of disciplinary records, this Court does not deem the repeal of CRL §50-a as a supplant to the requirements in CPLR §3101. It appears that the legislative intent, behind the repeal of CRL §50-a, was to increase public disclosure of records and not to burden attorneys in civil litigation with unfettered and unlimited discovery obligations. Thus, as with any other record or document sought in civil discovery, the rules of materiality and relevancy still apply. Accordingly, the Court will analyze the respective parties' requests under the standard set forth in the CPLR and established case law.

Plaintiff argues that in light of the repeal of Civil Rights Law 50-a, the Court's prior order directing an *in camera* review of documents withheld and/or previously disclosed and

redacted by the City, should be modified to compel the City to provide the documents unredacted. As to the documents related to Police Officer Rivera that the Court is ordering disclosure of as indicated below, redaction is not necessary except as to personal identifying information so *in camera* review is not required. The remaining documents that are determined not to be discoverable do not require *in camera* review either.

In support of his motion, plaintiff cites to an abundance of federal case law that dictate disclosure requirements of named defendants. The Court does find those cases instructive as to plaintiff's requests for PO Jose Rivera's personnel files and disciplinary records, however, those cases do not support the basis for plaintiff's discovery demands as to Sergeant Jonathan Ringel, a non-party witness. Plaintiff also requests entire Civilian Complaint Review Board (CCRB) case files for incidents other than the one in question. Specifically, plaintiff requests CCRB 200600952 regarding substantiated allegations of use of force and abuse of authority on January 19, 2006, CCRB 200707282 regarding a frisk on May 22, 2007 and CCRB 201301759 regarding use of force on February 19, 2013. The Court does not find that plaintiff has established entitlement to these records, that they are relevant or material to the instant action, or that the material sought will likely lead to admissible evidence. However, the Court finds that plaintiff is entitled to the case summaries of the CCRB files enumerated above, and if upon receipt of those summaries plaintiff can demonstrate a legal basis for the entire files, plaintiff may request a conference with the Court.

Plaintiff is most certainly entitled to the entire CCRB file regarding the subject incident that is the basis of this litigation. In fact, in its underlying motion papers the City agrees to provide the following, 1) Police Officer Jose Rivera's Central Personnel Index for eight (8) years prior to the date of incident up to and including the date of the order in this case, as Officer

Rivera was not employed for ten years prior to the incident; 2) the CCRB case summaries and IAB closing forms for substantiated and unsubstantiated complaints against Police Officer Jose Rivera for the same time period limited to complaints similar to plaintiff's allegations in the complaint, which would be complaints relating to false arrest, false imprisonment and excessive force; and 3) a copy of Officer Rivera's personnel file, subject to redactions for privileged and personal identifying information. As such that portion of plaintiff's cross-motion is granted without opposition. Similarly, to the extent not already provided by the City, plaintiff is entitled to the IAB Resume and CCRB history of PO Jose Rivera. As to records relating to Sergeant Ringel, for the same reason listed above, plaintiff has not established entitlement to those records. All documents provided by the City shall be redacted to exclude all personal identifying information. It is hereby

ORDERED that this Court's order date June 3, 2020, is vacated; and it is further

ORDERED that the City's motion to dismiss the fourth, seventh and ninth causes of action is granted; and it is further

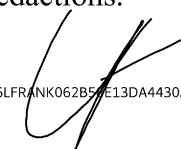
ORDERED that the City's motion to dismiss all claims as against PO John Doe is granted without opposition; and it is further

ORDERED that the plaintiff's cross-motion is granted to the extent indicated above; and it is further

ORDERED that the City is to comply with the directives above within 90 days of the service of this Order with notice of entry; and it is further

ORDERED that the City is to provide a privilege log for all redactions.

2/23/2021
DATE

20210223125006LFRANK062B57E13DA4430AA108B4106C89974C


LYLE E. FRANK, J.S.C.

CHECK ONE:

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: