

Alam v City of New York
2021 NY Slip Op 31440(U)
April 23, 2021
Supreme Court, New York County
Docket Number: 451193/2015
Judge: Dakota D. Ramseur
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAKOTA D. RAMSEUR PART 5

Justice

-----X

FEROZ ALAM,

Plaintiff,

- v -

THE CITY OF NEW YORK, MICHAEL WOLKWITZ

Defendants.

-----X

INDEX NO. 451193/2015

MOTION DATE 01/08/2020

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Plaintiff, Feroz Alam, commenced this action seeking damages for, among other claims, false arrest, false imprisonment, assault and battery, and malicious prosecution, stemming from plaintiff's arrest on July 20, 2012. Co-defendant, the City of New York (City), now moves pursuant to CPLR 3211(a)(7) to dismiss the complaint, or, in the alternative, pursuant to CPLR 3212 for summary dismissal of the complaint. Plaintiff opposes the motion to the extent that there was no probable cause for his arrest. Co-defendant, Michael Wolkwitz (Wolkowitz), has not appeared in this action. For the foregoing reasons, the City's motion is granted.

BACKGROUND

On the date of the incident giving rise to this action, plaintiff was employed as a manager of Lincoln Plaza Cinema located at 1886 Broadway, New York, New York (premises). On the same day, an unidentified woman fell and was injured on the premises. An employee of the cinema called 911, and emergency medical technicians (EMTs) reported to the premises. Plaintiff testified that as part of his duties as manager, he was required to obtain the personal information of anyone injured on the premises. To this end, plaintiff asked the responding EMTs for plaintiff's personal information, to which the EMTs asked plaintiff to step aside. Soon thereafter, as the EMTs were assisting the woman toward the exit of the premises, plaintiff asked the injured woman's friend for her personal information, when one of the EMTs, Wolkwitz, pushed plaintiff aside. In response, plaintiff pushed Wolkwitz, and a physical fight ensued where both plaintiff and Wolkwitz exchanged closed fist punches. At one point in the fight, plaintiff had Wolkwitz in a headlock.

Lea Marie Vazquez (Vazquez), an EMT responding to the 911 call and Wolkwitz's partner, testified that she "saw [plaintiff] on top of my partner punching" (NYSCEF # 82 at 31). Vazquez used her radio to call for a code "1085," which signifies an ambulance in need of assistance. Alexis Castillo, a dispatcher employed by the Fire Department of the City of New

York, testified that in response to Vasquez's call for assistance he sent a message to the New York Police Department (NYPD) indicating that the Wolkwitz and Vazquez were being assaulted (NYSCEF # 79 at 20:3-15).

Sergeant Alberto Santana, a sergeant with the NYPD, testified that Wolkwitz and Vazquez told Officer Sokratis Toumanidis, Sargent Santana's partner, that plaintiff blocked them from providing medical assistance to the injured woman and that plaintiff and an EMT had a verbal altercation that escalated to a physical altercation (NYSCEF # 80 at 14:14-15:4). Sergeant Santana indicated that plaintiff was arrested and charged with assault in the third degree, obstruction of EMS, and harassment.

Officer Toumanidis testified that when he arrived at the premises, he was told by two other police officers who were already there that plaintiff would not let the EMT workers leave the location with the patient (NYSCEF # 81 at 13:23-14:9). Officer Toumanidis further testified that Wolkwitz indicated that plaintiff got in front of the EMT and said, "you're not going anywhere until we get her information" (*id.* at 14:20-15:16). Officer Toumanidis further testified that Wolkwitz said he asked plaintiff to move out of his way, and that plaintiff bumped into Wolkwitz, triggering the altercation. Officer Toumanidis also testified that he spoke with a bystander who witnessed the incident, and that the bystander told Officer Toumanidis that plaintiff obstructed the EMT workers and had Wolkwitz in a headlock (*id.* at 15:25-16:5).

DISCUSSION

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of N. Y.*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

To succeed on a claim for false arrest and false imprisonment, a plaintiff must show that: (1) the defendant intended to confine him; (2) the plaintiff was conscious of the confinement; (3) the plaintiff did not consent to the confinement; and, (4) the confinement was not otherwise privileged (*Broughton v State of New York*, 37 NY2d 451, 456 [1975]).

The existence of probable cause is a complete defense to false arrest and malicious prosecution claims (*Drummond v Castro*, 522 F Supp 2d 667, 677 [SDNY 2007], citing *Graebe v Falchetta*, 726 F Supp 36, 38 [EDNY 1989], *affd* 946 F2d 883 [2d Cir 1991]). "Moreover, if police officers of reasonable competence could disagree as to whether there was probable cause, there is 'arguable' probable cause sufficient to warrant qualified immunity for the defendant officers (*Boyd v City of NY*, 336 F3d 72, 76 [2d Cir 2003]; *Cerrone v Brown*, 246 F3d 194, 202-203 [2d Cir 2001] ["...to be entitled to qualified immunity, [officers] need only have possessed 'arguable' probable cause..., not actual probable cause]).

Under Criminal Procedure Law (CPL) § 140.10(1),

“[a] police officer may arrest a person for: (a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence; and (b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.”

Accordingly,

“[p]roof beyond a reasonable doubt is not required, but merely information sufficient to support a reasonable belief that an offense has been committed. Further in determining whether a police officer had probable cause to effect an arrest, the emphasis should not be narrowly focused, but rather, should consider all of the facts and circumstances together; such a synoptic evaluation is essential because viewed singly, these facts and circumstances may not be persuasive, yet when viewed together the puzzle may fit and probable cause found

(*Marrero v City of NY*, 33 AD3d 556, 557 [1st Dept 2006]).

“The issue of probable cause is a question of law to be decided by the court only where there is no real dispute as to the facts or the proper inferences to be drawn from such facts” (*Parkin v Cornell Univ., Inc.*, 78 NY2d 523, 529 [1991]). “Where there is conflicting evidence, from which reasonable persons might draw different inferences the question is for the jury” (*id.*; see e.g. *Mendez v City of NY*, 137 AD3d 468, 470 [1st Dept 2016]).

Here, the City demonstrates, and plaintiff does not refute, that plaintiff was engaged in a physical altercation with Wolkwitz and that plaintiff prevented the EMTs from leaving the premises. Thus, the City demonstrates prima facie probable cause for plaintiff’s arrest and prosecution. In opposition, plaintiff argues that the responding officers failed to review the video footage showing the events leading up to the physical altercation, which plaintiff claims demonstrates that Wolkwitz incited the altercation. However, the video footage is “[r]elevant to the issue of whether guilt beyond a reasonable doubt could have been proven at a criminal trial, not to the initial determination of the existence of probable cause” (*Agront v City of New York*, 294 AD2d 189, 190 [1st Dept 2002], citing *Gisondi v Town of Harrison*, 72 NY2d 280, 285 [1988]). Plaintiff’s argument that the officers failed to follow the NYPD Patrol Guide is also unavailing in light of the above, and in any event, plaintiff fails to attach the applicable sections.

Plaintiff claims for assault and battery and excessive force are also dismissed as plaintiff fails to respond to the City’s showing that there is no evidence supporting those claims. Further, plaintiff’s purported federal claims under 42 USC § 1983 and § 1985 claims fail as he fails to allege a conspiracy, custom or policy by the City to deprive her of her legal and constitutional rights (see *Finn v Anderson*, 592 Fed Appx 16, 20 [2d Cir 2014]; *Leung v City of New York*, 216 AD2d 10, 11 [1st Dept 1995]). The complaint also fails to state a cause of action for negligent and/or intentional emotional distress (see *Dillon v. City of New York*, 261 AD2d 34, 41 [1st Dept 1999]). Plaintiff does not oppose the branches of the City’s motion to dismiss the aforesaid claims.


Accordingly, it is hereby

ORDERED that the City of New York's motion pursuant to CPLR 3211(a)(7) and CPLR 3212 to dismiss the complaint is granted, and the complaint is dismissed as against the City of New York; and it is further

ORDERED that this matter be re-assigned to a Justice of a non-City part, as the City of New York is neither a plaintiff nor defendant in this action; and it is further

ORDERED that the City of New York shall serve a copy of this decision and order, with notice of entry, within fourteen (14) days of entry.

This constitutes the decision and order of the Court.



4/23/2021
DATE

DAKOTA D. RAMSEUR, J.S.C.

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