

**Enoch v Ebmeyer**

2021 NY Slip Op 32016(U)

August 30, 2021

Supreme Court, Wayne County

Docket Number: 85096

Judge: Daniel G. Barrett

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At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 28<sup>th</sup> day of May, 2021.

PRESENT: Honorable Daniel G. Barrett  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

JANET E. ENOCH, STEVE O. HINDI AND  
MICHAEL KOBLISKA,

Plaintiffs

DECISION  
Index No. 85096

-vs-

JEFFREY EBMEYER, JERROD TRULIN,  
ROBERT FROST, TIMOTHY OWENS,  
SCOTT CARR, MARSHAL FARMS GROUP, LTD.,  
KENNETH VANFLEET, JR., MICHAEL KAPLAN,  
PAUL REED AND JOHN DOES 1-10,

Defendants

Each of the Defendants has filed a motion seeking dismissal of the complaints against them.

Although there are three Plaintiffs their claims are distinct. Plaintiff, Michael Kobliska, is the driver of the van which was stopped by Defendant, Trooper Trulin. Plaintiffs, Janet e. Enoch and Steve O. Hindi, were passengers in the van driven by Plaintiff Kobliska.

## PROCEDURAL OVERVIEW

Including this action, two other actions have been filed by these three Plaintiffs stemming from the events which occurred on November 13, 2016. Some of the Defendants in this case were deposed as non-party witnesses in the other cases. The Plaintiffs are represented by the same counsel in all three cases. This presents a unique situation in that depositions taken in the other cases provide us with detailed facts about what occurred. No depositions of the Defendants have occurred in this action.

## CONSPIRACY CAUSES OF ACTION

Prior to this application, the Marshall Defendants had filed a motion to dismiss. The Complaint which was the subject of the prior application did not contain conspiracy causes of action. The initial Complaint was subsequently amended to contain two causes of action relating to claims of conspiracy. The Plaintiffs claim the defense is barred from filing this motion at this time because of their prior application to dismiss.

If CPLR 3211 is unavailable, the defendant can raise the objection just as well with a summary judgment motion under CPLR 3212 based on the grounds in CPLR 3211(a)(7) Siegel's New York Practice Sixth Edition, P. 519.  
(See *Oakley v County of Nassau*, 127 A.D. 3d 946 ([2d Dep't 2015])).

Since we have established that a summary judgment is a permissible vehicle to bring a motion for failure to state a cause of action, the allegations of the Amended Complaint must be examined.

In order to survive a motion to dismiss a 1983 USC conspiracy claim, the plaintiff must allege (1) agreement between two or more state actors (or a state actor and a private party); (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act in furtherance of the goal of causing damages. Complaints containing only conclusory, vague or general allegations that the defendants engaged in a conspiracy to deprive the plaintiff of his constitutional rights are purposely dismissed. It is well settled that although a plaintiff is not required to list the place and date of defendant's meetings and the summary of their conversations, when he pleads a conspiracy the pleadings must present facts tending to show agreement and concerted action, Christian v Town of Riga, 649 F. Supp 2d 84. (See also Mitchell v County of Nassau, 786 F. Supp. 2d 545 and Scarphone v Village of Ossining, 23 A.D. 3d 540 [2d Dep't 2005]). It is the position of this Court that the second and third causes of action alleging conspiracy are conclusory, vague and general and are dismissed.

In addition, three Marshall Farms Group, LTD., employees have been deposed relative to the drone sighting and the report issued to the authorities. These three employees are Defendants Paul Reed, Michael Kaplan and Kenneth VanFleet, Jr.. Neither of these three employees had any contact with the State Defendants prior to the stop. Mr. VanFleet placed the call regarding the drone to the 911 operator and not directly to the State Defendants. Rather, it was the State Defendants rendering aid to the Wayne County Sheriff's Office relative to this call.

### **NEGLIGENCE CAUSE OF ACTION**

In an earlier application this Court denied the application of the Marshall Farms Defendants to dismiss the cause of action dealing with negligence. Upon further reflection and the presentation of additional information, this Court is reversing that Decision. The essence of the pleadings is an action for false arrest and improper detention. Consequently the Plaintiffs "may not recover under broad general principles of negligence... but must proceed by way of the traditional remedies of false arrest and imprisonment" Simon v State of New York, 12 A.D. 3d 171 (2004 1<sup>st</sup> Dep't).

## **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CAUSES OF ACTION**

Previously Marshall Farms Defendant moved against this cause of action and this Court denied the motion to dismiss. Upon further reflection, the Court must dismiss the negligent infliction of emotional distress against the Marshall Defendants as well as the remaining Defendants. A claim for negligent infliction of emotional distress should be dismissed where the conduct for the underlying claim may be redressed by way of traditional court remedies such as battery, false arrest and malicious prosecution (see Druschke v Banana Republic, Inc., 359 F. Supp. 2d 308 [2005]). In Druschke, the court dismissed the negligent infliction of emotional distress claim indicating that it was duplicative of tort claims for battery, false arrest and malicious prosecution.

## **CAUSE OF ACTION FOR RESPONDENT SUPERIOR**

All the remaining causes of action against the Marshall Farm Defendants have been dismissed. Consequently, there remains no primary liability by which Defendant Marshall Farms Group, LTD, could be vicariously liable. (See Karunduman v Newsday, Inc., 51 N.Y. 2d 531).

## **INFORMATION REGARDING THE STOP**

On the day in question, Defendant Paul Reed, an employee of Marshall Farms was bow hunting on Marshall Farms property with his eleven year old son on his day off. He observed the drone and thought it was a drone owned by Marshall Farms. Upon closer examination he noticed that this drone was larger. The drone came to within ten to fifteen feet above Defendant Reed's head.

Mr. Reed got into his pick up truck and was exiting the Marshall Farms' property. As he was leaving he observed the drone landing on a pad. In the process of landing he observed the drone almost struck an unidentified vehicle traveling on Lake Bluff Road. Mr. Reed approached the three Plaintiffs and failed in an attempt to engage them in

conversation. Rather than conversing, they pointed a camera at him. By phone he reported this drone sighting to fellow Marshall employee, Jacob Salerno who was in the check point. Mr. Salerno forwarded the information to Defendant Michael Kaplan, a security guard. Mr. Kaplan in turn forwarded the information to Defendant Kenneth VanFleet, Jr., Director of Support Services and Corporate Security.

Mr. VanFleet testified his first knowledge was he received a call from security guard Michael Kaplan over the sight and it nearly struck the individual that reported the incident in addition to a car that had been passing on Lake Bluff Road. The drone had been operated in a reckless manner. Defendant VanFleet called 911 and indicated they had an incident where an employee was nearly struck by a drone, the drone nearly struck a vehicle, and it was operating in a suspicious manner over Marshall Farms. After reporting the incident to 911 Mr. VanFleet instructed Defendant Kaplan to follow the vehicle that was departing in a safe manner and give instructions as to the route so that information could be conveyed to the 911 dispatcher.

#### **CLAIMS AGAINST DEFENDANT TIMOTHY OWENS**

Defendant Timothy Owens is a retired New York State Trooper. At the time of this even he was involved in an internal affairs investigation as a result of a complaint about the stop. He had no involvement in the stop or detention of the Plaintiffs. All claims against Defendant Timothy Owens are dismissed.

#### **CLAIMS AGAINST DEFENDANT ROBERT FROST**

Defendant Robert Frost is a retired investigator for the New York State Police.

Mr. Frost was familiar with prior incidences at Marshall Farms. One incident involved people breaking in and releasing animals. Another incident involved an animal rights group that had threatened Marshall Farms employees - posting their photos and home addresses with pictures of their homes and calling for their death. Other incidents involved approaching the sight, getting out and taking photos and then fleeing when

security personnel came around. He indicated that the frequencies of these events was pretty continual with one or two a year and then maybe a skip year. He described Marshall Farms as a controversial sight. He personally investigated a number of these incidents during his years with the Counter-terrorism Unit. Starting in 2012 -2013, for a period of seven years.

On the day of the stop he arrived at the trooper barracks after the Plaintiffs had been released. Defendant Frost had no role to play in the actual stop and/or the detention of the Plaintiffs so all claims against him are dismissed.

### **CLAIMS OF PLAINTIFF MICHAEL KOBLISKA**

Plaintiff, Michael Kobliska was driving the van south on Route 414 on the day in question when he was pulled over by Trooper Trulin. Trooper Trulin had received a radio transmission and a notification on his computer to bolo (be on the lookout) for a van which fit the description of the van operated by Plaintiff Kobliska. From the depositions, Defendant VanFleet placed a 911 call regarding the suspicious operation of a drone over the Marshall Farms property. The call was received by the Wayne County Sheriff's Office. The Wayne County Sheriff's Office broadcast a bolo call to enforcement agencies. From the broadcast Defendant Trulin knew Plaintiffs flew a drone over Marshall Farms and called in a complaint about the drone. When Marshall Farms security arrived at the scene the Plaintiffs left the scene in a van with out of state license plates.

After the stop, Defendant Trulin informed Plaintiff Kobliska that "I stopped you for your vehicle was observed flying a drone over private property. I just like to know what you were doing up there and can I see your ID". According to Defendant Trulin, about an hour and a half into the stop Plaintiff Kobliska identified himself. Plaintiff Kobliska testified he was allowed to leave the scene after he identified himself about one hour and fifteen minutes after the stop. When he was permitted to leave the scene he went to the Lyons New York State Police Station where the other Plaintiffs were taken. Plaintiff Kobliska refused to identify himself until he was told by Trooper Trulin that he would have his vehicle towed for failure to identify himself.

It is the view of this Court that Defendant Trulin stopped the Plaintiff's van pursuant to a reasonable suspicion that the driver had been engaged in criminal activity. (See People v Clark, 191 A.D. 3d 1485 [4<sup>th</sup> Dep't 2021]). Therefore the Plaintiff's Kobliska's claim is dismissed because the stop was reasonable.

### **CLAIMS OF PLAINTIFFS JANET E. ENOCH AND STEVE O. HINDI**

The motion to dismiss the against these two Plaintiffs is denied. After Plaintiff, Kobliska, was released, Defendant Sergeant Ebmeyer instructed Defendant Trulin to obtain the identification of these two Plaintiffs. At the scene Plaintiff Kobliska provided some form of identification but Trooper Trulin could not confirm it with the technology he had in his vehicle. At the scene Plaintiff Enoch refused to provide her identification. Consequently Plaintiff Hindi was transported to the New York State Police barracks in Lyons in Defendant Trooper Trulin's vehicle and Plaintiff Enoch was transported to the barracks in a Wayne County Sheriff's vehicle. Both Plaintiff were handcuffed at the scene and when they arrived in the trooper barracks were continued to be handcuffed. Prior to processing Plaintiff Enoch revealed her identification and both identifications were confirmed and the Plaintiffs were released.

### **CLAIMS AGAINST JERROD TRULIN**

The application to dismiss is denied with respect to Plaintiffs Enoch and Hindi. It is granted with respect to the claims of Plaintiff Michael Kobliska.

### **CLAIMS AGAINST JEFFREY EBMEYER**

This application to dismiss is denied with respect to Plaintiffs' Enoch and Hindi. It is granted with respect to the claims of Plaintiff Michael Kobliska.

**CLAIMS AGAINST SCOTT CARR**

This application of the dismissal of all claims against Scott Carr is granted. He was not involved in this prior to the stop and there is no indication he is involved in detaining Plaintiffs Enoch and Hindi.

**CLAIM AGAINST MARSHALL FARM GROUP, LTD., KENNETH VANFLEET, JR., MICHAEL KAPLAN AND PAUL REED**

The application to dismiss all claims against Marshall Farms Group, LTD., Kenneth VanFleet, Jr., Michael Kaplan and Paul Reed is granted.

**DISMISSAL OF VIOLATION OF 42 USC 1981**

At oral argument Plaintiffs agreed to discontinue this claim.

This constitutes the Decision of the Court. Counsel for State Defendants to prepare an Order consistent with this Decision.

Dated: August 30, 2021  
Lyons, New York



Daniel G. Barrett  
Acting Supreme Court Justice