

Corse v Carthage

2021 NY Slip Op 33723(U)

December 27, 2021

Supreme Court, Nassau County

Docket Number: Index No. 601867/20

Judge: Diccia T. Pineda-Kirwan

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Short Form Order

NEW YORK SUPREME COURT - NASSAU COUNTY

Present: Honorable **DICCIA T. PINEDA-KIRWAN**
Justice

IA PART 20

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ERICK CORSE,

Index No.: 601867/20
Motion Date: 10/21/21
Seq. No.: 4
Teams: 2:00 P.M.

Plaintiff(s),

-against-

RUSSELL CARTHAGE, ET AL,

Defendant(s).

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The following numbered papers read on this motion by defendants The County of Nassau, The Nassau County Department of Social Services, and Nassau County Police Department for summary judgment.

PAPERS	NUMBERED
Notice of Motion-Affidavits-Exhibits.....	EF 55 - 69
Answering Affidavits-Exhibits.....	EF 76 - 83
Reply.....	EF 84 - 86

Upon the foregoing cited papers, and after Microsoft Teams conference, it is ordered that the motion by defendant The County of Nassau (“County”), The Nassau County Department of Social Services (“NCDSS”), and Nassau County Police Department (“NCPD”)(collectively “Nassau Defendants”) for summary judgment, is determined as follows:

Plaintiff commenced this action to recover for injuries he allegedly sustained on April 8, 2019, when he was assaulted by defendant Russell Carthage at the premises located at 186 East Pennywood Avenue, Freeport, New York (the “Premises”). Plaintiff was a resident at a shelter known as Inspiration House that is operated by defendant HDDIC, Inc. (“HDDIC”) at the Premises, though it is unclear whether plaintiff was permitted to be at the Premises at the time of the altercation. Carthage was a maintenance worker employed by HDDIC. Following the altercation, plaintiff was arrested by the NCPD based upon a complaint by Carthage, which action was ultimately dismissed on June 4, 2019. The Nassau Defendants now move for summary judgment on the issue of liability.

Initially, the Court notes that defendants NCPD and NCDSS are merely administrative arms of the municipality of the County, do not have a separate legal identity apart from the County, and therefore cannot be sued (*see Panchitkaew v Nassau County Police Dept.*, 2018 WL 3193214, *3, 2018 US Dist LEXIS 108395, *6 [ED NY, June 27, 2018, No. 18-CV-00956 (JMA)(SIL)]; *Rose v County of Nassau*, 904 F Supp 2d 244, 247 [EDNY 2012]). Thus, NCPD and NCDSS are entitled to judgment as a matter of law dismissing the causes of action asserted against them, and of the Nassau Defendants, only the County remains.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its *prima facie* burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v Felder*, 33 AD3d 645, 645-646 [2006]).

In support, the County submits, among other things, the deposition testimony of plaintiff, and Russell Bramwell, Executive Director of HDDIC, and Steven Abruzzo, a detective with the NCPD. The County also relies upon a written statement signed by Carthage, which it states in reply was inadvertently not attached as an exhibit to the motion. However, the existence of the statement and relevant quotations from it were included in the Statements of Material Facts pursuant to 22 NYCRR § 202.8-g, and admitted by plaintiff in his Counter Statement of Facts, and the statement was submitted and relied upon by both plaintiff in opposition and the County in reply. In light of the Court’s interest in making determinations on the merits, and of judicial economy, the statement will be considered.

Plaintiff’s first and second causes of action are for negligence and negligent hiring, supervision, and retention. Plaintiff alleges that the County had a duty to protect tenants at the Premises from being attacked by Carthage, that it should have had notice of Carthage’s violent propensities, and that it failed to properly interview and investigate Carthage before hiring him. As it is undisputed that Carthage was an employee of HDDIC which operated Inspiration House, and not employed by the County, plaintiff’s negligence cause of action, and cause of action for negligent hiring, supervision, and retention against the County must be dismissed.

Similarly, plaintiff's third cause of action for negligent infliction of emotional distress must also be dismissed. Plaintiff alleges that the County had a duty to protect tenants from harm and risk of injury at the premises by their employees. Since the County did not employ Carthage or operate Inspiration House, it did not owe a duty to plaintiff, and in the absence of a breach of duty, the cause of action for negligent infliction of emotional distress must fail (*see Sacino v Warwick Val. Cent. School Dist.*, 138 AD3d 717, 719 [2016]).

The next claim asserted against the County is plaintiff's eighth cause of action for *respondeat superior*. The doctrine of *respondeat superior* renders an employer vicariously liable for a tort committed by its employee while acting within the scope of employment (*see Chuchuca v Chuchuca*, 67 AD3d 948, 949 [2009]). As Carthage was not in the employ of the County, plaintiff's *respondeat superior* claim is also dismissed.

Plaintiff's ninth and tenth causes of action claim false arrest and malicious prosecution. The elements of a cause of action for false arrest or false imprisonment are: (1) defendant intended to confine plaintiff; (2) plaintiff was aware of the resulting confinement; (3) plaintiff did not consent to the confinement; and (4) the confinement was not otherwise privileged (*see Rivera v County of Nassau*, 83 AD3d 1032, 1033 [2011]). The elements of a cause of action for malicious prosecution are: (1) commencement of a criminal proceeding; (2) termination in favor of the accused; (3) the absence of probable cause; and (4) the action was commenced out of actual malice (*see Id.*).

The existence of probable cause is a complete defense to claims of false arrest, false imprisonment, and malicious prosecution (*see Martinez v City of Schenectady*, 97 NY2d 78, 85 [2001]; *Paulos v City of New York*, 122 AD3d 815, 817 [2014]). Probable cause does not require proof sufficient to warrant a conviction but merely sufficient information to support a reasonable belief that an offense has been committed by the suspected individual (*see Shaw v City of New York*, 139 AD3d 698, 699 [2016]). Generally, information provided by an identified citizen accusing another individual of a specific crime is legally sufficient to provide the police with probable cause to arrest (*see Id.*; *Nasca v Sgro*, 130 AD3d 588, 589 [2015]). A victim's report is insufficient only if there are materially impeaching circumstances which would cause a reasonable person to inquire further (*see Silverstein v New York City Police Dept.*, 167 AD3d 961, 963 [2018]). Mere denial by the accused does not constitute materially impeaching circumstances or grounds for questioning the complainant's credibility so as to raise a question of fact as to probable cause (*see Medina v City of New York*, 102 AD3d 101, 105 [2012]).

Here, the County established its entitlement to judgment as a matter of law on the causes of action alleging false arrest and malicious prosecution. The record shows the police were summoned to Inspiration House as a result of the altercation. Carthage was interviewed and signed a statement that plaintiff pulled a razor blade out and slashed him, and that he punched plaintiff for fear of further injury to himself. Carthage had a cut on his finger corroborating his account of the altercation, identified plaintiff as the perpetrator, and asked that he be arrested. This information, provided by an identified citizen accusing another individual of a specific crime, is legally sufficient to provide the police with probable cause to arrest (*see Liotta v County of Suffolk*, 157 AD3d 781, 781 [2018]). The evidence submitted also demonstrated that there were no materially impeaching circumstances that would have caused a reasonable person to inquire further prior to arresting the plaintiff (*see Id*).

In opposition, plaintiff fails to raise an issue of fact. Plaintiff's argument is based primarily upon surveillance video that contradicts Carthage's version of events. It is undisputed, however, that Detective Abruzzo was unable to access this video until a day or two after the incident, and after plaintiff had already been arrested (*see Silverstein* at 963). At the time of plaintiff's arrest the police officers had Carthage's statement which they were entitled to rely on (*see Kracht v Town of Newburgh*, 245 AD2d 424, 425 [1997]) and plaintiff does not point to any circumstances known to the officers at that time that would have raised a doubt as to his veracity (*see Curley v Village of Suffern*, 268 F3d 65, 70 [2d Cir 2001]). Thus the causes of action for false arrest and malicious prosecution are dismissed.

Plaintiff's eleventh cause of action alleges conspiracy to violate plaintiff's statutory civil rights in violation of 42 USC § 1983. Allegations of conspiracy must offer sufficient factual detail regarding an agreement among the defendants to deprive the plaintiff of the rights provided by the Constitution and laws of the United States (*see Matter of Nocro, Ltd. v Russell*, 94 AD3d 894, 895 [2012]). Here, plaintiff fails to provide any details regarding an alleged agreement between the defendants (*see Id*; *Kubik v New York State Dept. of Social Services*, 244 AD2d 606, 610 [1997]). Thus, plaintiff's eleventh cause of action is dismissed.

Plaintiff's twelfth cause of action alleges violation of his statutory civil rights in violation of 42 USC § 1983, and corresponding constitutional rights. A municipality cannot be held liable in a § 1983 action for the conduct of its employees or agents on a

respondeat superior basis, but instead a plaintiff must show that the violation of his constitutional rights resulted from a municipal custom or policy (*see Monell v Dept. of Social Services of City of New York*, 436 US 658, 694 [1978]; *Pembaur v City of Cincinnati*, 475 US 469, 478, [1986]). Put another way, the issue is whether the municipality acted improperly, not whether the employee acted improperly (*see Ramos v City of New York*, 285 AD2d 284, 302 [2001]). A single incident involving actors below the policy-making level does not suffice to show a municipal policy or custom (*see Fiacco v City of Rensselaer*, 783 F2d 319, 328 [2d Cir 1986]). The instant action is bereft of even any allegations that the alleged constitutional deprivations arose from a municipal custom or practice, which is the only basis for liability against a municipality. Thus the twelfth cause of action is dismissed.

Lastly, plaintiff's thirteenth cause of action alleging that the County was negligent in its hiring and training practices of its police officers, is dismissed. When a negligence claim is asserted against a municipality, the Court must first determine if the municipality was engaged in a proprietary function or acted in a governmental capacity when the claim arose (*see Applewhite v Accuhealth, Inc.*, 21 NY3d 420, 425 [2013]). Public entities are immune from negligence claims arising out of the performance of their governmental functions, such as here, providing police protection (*see Miller v State*, 62 NY2d 506, 510 [1984]). Additionally, whereas here, plaintiff's claims arise out of an alleged wrongful arrest and detention, he may not recover under broad general principles of negligence, but must proceed by way of the traditional remedies of false arrest and imprisonment (*see Ray v County of Nassau*, 100 AD3d 854 [2012]).

Accordingly, the motion by defendants County, NCPD and NCDSS for summary judgment is granted in its entirety.

Any request for relief not expressly granted herein is denied.

This constitutes the decision and order of the Court.

Dated: December 27, 2021



DICCIA T. PINEDA-KIRWAN, J.S.C.

ENTERED

Jan 20 2022

NASSAU COUNTY
COUNTY CLERK'S OFFICE