

**Christenson v City of New York**

2021 NY Slip Op 33962(U)

December 23, 2021

Supreme Court, Queens County

Docket Number: Index No. 718332/2018

Judge: Tracy Catapano-Fox

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
BETH CHRISTENSON,

Plaintiff,

-against-

THE CITY OF NEW YORK, STEPHEN MCCAIN-  
JOHN P.O. OF QUEENS DET. AREA 111, SHIELD  
#14890, TAX ID #947110, OTHER NEW YORK  
CITY POLICE OFFICERS UNDER DOCKET  
#CR-044080-17/QN WHOSE NAMES ARE NOT  
KNOWN AT THIS TIME N/H/A JOHN/JANE DOE  
I-V, AS IT PERTAINS TO THE INCIDENT THAT  
AROSE ON NOVEMBER 6, 2017 AND NO OTHER,

Defendants.  
-----X

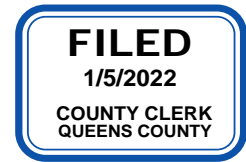
Index No. 718332/2018

Part 6

Motion Date: October 4, 2021

Calendar No. 5

Sequence No. 2



The following papers numbered 1 to 6 read on this motion by defendants to dismiss plaintiff's causes of action in her Complaint pursuant to CPLR §3211(a)(7) and §3212.

Papers  
Numbered

Notice of Motion, Affirmation, Exhibits.....1-4  
Affirmation in Opposition.....5-6

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendants' motion to dismiss plaintiff's Complaint pursuant to CPLR §3211(a)(7) and §3212 is granted without opposition as to plaintiff's seventh cause of action and denied as to the remaining causes of action.

Plaintiff commenced this action for false arrest, false imprisonment, assault and battery, malicious prosecution, and federal and state civil rights violations stemming from her arrest for Unlawful Eviction on November 6, 2017 and ending with the dismissal of the charge on July 5, 2019. Plaintiff filed the Summons and Complaint on November 30, 2018, and issue was joined

on or about December 26, 2018.

It is noted that plaintiff conceded defendants' claim to seek dismissal of her seventh cause of action alleging *Monell* violations of a municipal policy or custom, and therefore the seventh cause of action is dismissed. (*Brown v. City of New York*, 2021 NY Slip Op. 01743 [2d Dept. 3/24/2021].)

To prevail on a cause of action to recover damages for false arrest or imprisonment, the plaintiff must demonstrate that the defendant intended to confine the plaintiff, the plaintiff was conscious of the confinement, the plaintiff did not consent to the confinement and the confinement was not privileged. (*De Lourdes Torres v. Jones*, 26 NY3d 742, 759 [2016].) To prevail on a malicious prosecution claim, the plaintiff must establish the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, the termination of the proceeding in favor of the accused, the absence of probable cause for the criminal proceeding, and actual malice. (*Id.* at 760.) The existence of probable cause constitutes a complete defense to causes of action involving false arrest, false imprisonment, and malicious prosecution. (*Paulos v. City of New York*, 122 AD3d 815, 817 [2<sup>nd</sup> Dept. 2014].) Further, a governmental entity cannot be liable for false arrest or malicious prosecution under 42 U.S.C. §1983 unless an official government policy, custom or widespread practice caused the violation of plaintiff's constitutional rights. (*Torres v. Jones*, 26 NY3d at 762.)

Defendants failed to eliminate all triable issues of fact with regard to plaintiff's causes of action, and therefore defendants' motion to dismiss is denied. Defendants' argument that they had probable cause to arrest plaintiff is not based upon sufficient evidence to eliminate all issues of fact under CPLR §3211, as they failed to reasonably inquire into the circumstances between plaintiff and her son before arresting plaintiff.

The relevant issue in this motion is what inquiry were defendants required to do to establish probable cause to arrest plaintiff. Probable cause requires only information sufficient to support a reasonable belief that an offense has been committed. (*Nasca v. Sgro*, 130 A.D.3d 588, 589 [2d Dept. 2015].) However, the existence or absence of probable cause becomes a question of law only when there is no real dispute as to the facts or the proper inferences surrounding the arrest. (*Rapuzzi v. City of New York*, 186 A.D.3d 1548 [2d Dept. 2020].)

While the standard for probable cause is minimal, it is not without some burden upon defendants to pursue a reasonable investigation into allegations made before making an arrest.

(*Silverstein v. New York City Police Dept.*, 167 A.D.3d 961, 963 [2d Dept. 2018][“A victim’s report is insufficient only if there are ‘materially impeaching circumstances’ which cause a reasonable person to inquire further”].) It is against public policy for the police to accept the word of one individual to the exclusion of all other reasonable inquiry, as it violates the rights of citizens to be free from police abuse and overreach. Although there may be circumstances in which one witness’ statement is sufficient to establish probable cause, to ensure the protection of individuals’ rights, there must be a reasonable inquiry into the facts and circumstances presented by a witness before the police have probable cause to make an arrest. (*See Nasca, supra.* at 589.)

In this case, there was insufficient evidence to eliminate all issues of fact as to whether defendants had probable cause to arrest plaintiff. Defendants argue in their moving papers that they had probable cause for the arrest because a civilian complainant identified plaintiff as a perpetrator of a crime. Specifically, Detective McCain-John testified that on November 5, 2017, plaintiff’s son positively identified plaintiff as the perpetrator of the unlawful eviction, and plaintiff’s son told uniform police officers that his mother would not let him back into the apartment, and his mother changed the locks on the door. Detective McCain-John further testified that he had the Complaint filed by plaintiff’s son, and after speaking with plaintiff, arrested plaintiff for Unlawful Eviction.

Defendants inexplicably argue that they had no reason to question plaintiff son’s veracity because he is plaintiff’s son. However, the mere nature of the relationship between the parties did not permit defendants to assume plaintiff’s son was credible, especially in light of the previous Order of Protection between the parties, and plaintiff voluntarily coming to the 111<sup>th</sup> Precinct to file a Complaint against her son. Further, unlike *Nasca*, where the police had the Complaint, and Order of Protection against the plaintiff, and an eyewitness statement observing the plaintiff violating the Order of Protection, here defendants had conflicting information from plaintiff and her son that necessitated further inquiry before determining there was probable cause to arrest plaintiff. Also, unlike *Silverstein*, there were materially impeaching circumstances that would have caused a reasonable person to inquire further, as plaintiff had a prior Order of Protection against her son and had voluntarily come to the 111<sup>th</sup> Precinct to seek police protection from her son. (*Compare Silverstein, supra* at 963 [“the police had no reason to know of a longstanding acrimonious relationship between the plaintiff and the infant defendant’s family as alleged in the Complaint”].)

Here, the facts do not clearly establish that defendants had probable cause to arrest plaintiff at the 111<sup>th</sup> Precinct. The facts demonstrate that plaintiff went to the precinct voluntarily seeking

police assistance with the situation involving her son, and that rather than investigating her statements with regard to the home, they preemptively arrested plaintiff for Unlawful Eviction based solely upon her son's unsupported statements. These facts are undisputed by defendants, and they merely allege that his statements alone provided probable cause for the arrest. Defendants fail to explain why they relied on the son's statements without further inquiry, especially in light of plaintiff's conflicting allegations, and plaintiff's evidence that established she did not permit her son to live in the home, that her son had a heroin problem, and that he had forcefully attempted to enter her job earlier in the day prior to the arrest. It is undisputed that defendants did not seek further inquiry as to the son's entitlement to reside in plaintiff's home after hearing plaintiff's version of the events, an inquiry which may have led to a different result rather than arresting plaintiff. As defendants failed to engage in a reasonable inquiry to ascertain the conflicting versions of events prior to making the arrest, defendants did not establish as a matter of law they had probable cause to arrest plaintiff for Unlawful Eviction.

Defendants' argument that plaintiff's claims of excessive force, assault and battery must be dismissed because they are solely based upon the use of handcuffs to effectuate the arrest is without merit, as they failed to present sufficient facts to eliminate all issues of fact as to these claims. Defendants further failed to eliminate all issues of fact as to whether their actions constituted actual malice, as the failure to perform a reasonable inquiry into the facts and circumstances may be seen by a jury as so egregious as to constitute reckless disregard for proper police procedure. (*See Haynes v. City of New York*, 29 A.D.3d 521 [2d Dept. 2006].) Finally, as defendants failed to establish as a matter of law that they had probable cause for the arrest, they failed to establish entitlement to dismissal of the eighth cause of action for negligent hiring, retention, training and supervision.

Accordingly, defendant's motion to dismiss plaintiff's Complaint pursuant to CPLR §3211 is granted, solely to the extent that plaintiff's seventh cause of action is dismissed and denied as to all remaining causes of action.

This constitutes the decision and Order of the Court.

Dated: December 23, 2021

  
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Tracy Catapano-Fox, J.S.C.

