

**Alhanafi v City of New York**

2022 NY Slip Op 32759(U)

August 16, 2022

Supreme Court, New York County

Docket Number: Index No. 157069/2020

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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RAYHANAH ALHANAFI,

Plaintiff,

- v -

THE CITY OF NEW YORK, POLICE OFFICER TUHIN KHAN, JOHN DOES, JANE DOE

Defendants.

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INDEX NO. 157069/2020

MOTION DATE 04/19/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to AMEND COMPLAINT

Upon the foregoing documents, plaintiff's motion to amend her complaint is granted.

Plaintiff Rayhanah Alhanafi commenced this tort action against defendants The City of New York (the "City"), Police Officer Tuhin Khan, John Does 1-3, and Jane Doe alleging that on July 12, 2019, Police Officer Khan and three other officers, identified as John Does 1-3, pulled plaintiff over without reasonable suspicion or probable cause, unlawfully detained her, and assaulted her while placing her under arrest (NYSCEF Doc. No. 1 [Compl. at ¶¶10-31]). Plaintiff further alleges that Officer Khan knowingly made false allegations in support of the criminal complaint upon which she was arraigned (Id. at ¶¶34-35). This criminal complaint was eventually dismissed pursuant to an adjournment in contemplation of dismissal (Id. at ¶38).

Plaintiff asserts claims against the individual defendants, pursuant to 42 USC §1983, for, inter alia, false arrest, malicious prosecution, and excessive force. She also asserts a 42 USC §1983

Monell Claim against the City and state law claims against all defendants for, inter alia, excessive force, false arrest, and malicious prosecution (Id. at ¶¶73-77).

On or about March 22, 2021, plaintiff served Combined Demands on the City, which included a demand that the City identify all of the officers involved in her arrest (NYSCEF Doc. No. 22 [Combined Demands at ¶1]). On or about March 11, 2022, plaintiff, at the direction of the Court, served a second set of demands seeking the identity of all the officers involved in plaintiff's arrest (NYSCEF Doc. No. 24 [Plaintiff's Second Set of Demands at ¶1-4]). On April 4, 2022, the City served a supplemental response containing this information (NYSCEF Doc. No. 26). Four days later, plaintiff moved to amend her complaint to name Police Officers David Tobar, Julio Jimenez, Denis Cekic, Edgar Rusi, and Sajma Hot as defendants (the "Additional Defendants"), in place of John Does 1-3 and Jane Doe.

The City does "not oppose the portion of Plaintiff's motion that seeks leave to amend [her] pleadings to add [the Additional Defendants] with respect to the federal claims, as those were timely when Plaintiff's motion to amend the pleadings was filed" but argues that "this Court should deny Plaintiff's motion in regard to the state law causes of action as the statute of limitation period has expired and the claims are time-barred" and plaintiff has not shown that she made diligent efforts to identify the Additional Defendants prior to its expiration (NYSCEF Doc. No. 16 [Schaefer Affirm. at ¶15]).

### DISCUSSION

"Leave to amend pleadings under CPLR §3025(b) should be freely given and denied only if there is prejudice or surprise resulting directly from the delay or if the proposed amendment is palpably improper or insufficient as a matter of law" (McGhee v Odell, 96 AD3d 449, 450 [1st

Dept 2012] [internal citations and quotations omitted]). In general, a proposed amendment which asserts a claim against a new party that is barred by the applicable statute of limitations is “patently devoid of merit” (See e.g., Nossov v Hunter Mtn., 185 AD3d 948, 949 [2d Dept 2020]).

The parties do not dispute that the statute of limitations for plaintiff’s state law claims expired between May 25, 2021 and July 19, 2021<sup>1</sup>. However, under the relation-back doctrine, new parties may be joined as defendants in a previously commenced action, even after the statute of limitations has expired, where the plaintiff establishes that: (1) the claims against the new defendants arise from the same conduct, transaction, or occurrence as the claims against the original defendants; (2) the new defendants are “united in interest” with the original defendants, and will not suffer prejudice due to lack of notice; and (3) the new defendants knew or should have known that, but for the plaintiff’s mistake, they would have been included as defendants (Higgins v City of New York, 144 AD3d 511, 512-13 [1st Dept 2016] [internal citations omitted]; CPLR §203). In addition, as plaintiff seeks “to apply the relation back doctrine to a later identified ‘John Doe’ defendant, pursuant to CPLR §1024, [she] also has the burden of establishing that diligent efforts were made to ascertain the unknown party’s identity prior to the expiration of the statute of limitations” (McCullough v The City of New York, 2019 NY Slip Op 34040[U], 2-3 [Sup Ct, NY County 2019] [internal citations omitted]).

Plaintiff has satisfied these requirements. There is no dispute that the claims against the Additional Defendants arise from the same event as the claims against the original defendants. Moreover, a unity of interest exists between the City and the Additional Defendants, because

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<sup>1</sup> The City maintains that the malicious prosecution claim never accrued, because the criminal charges against plaintiff were dismissed by adjournment in contemplation of dismissal but allows that if this malicious prosecution claim did accrue upon the dismissal of the criminal complaint, the statute of limitations for this claim would have expired on July 19, 2021. Ultimately, the resolution of this question is not necessary to the determination of the instant motion.

“municipalities may be liable, under the doctrine of respondeat superior, for the common law torts, such as false arrest, malicious prosecution, assault, and battery, committed by their employees” (Cartagena v The City of New York, 2020 NY Slip Op 32002[U], 4 [Sup Ct, NY County 2020] quoting Lepore v Town of Greenburgh, 120 AD3d 1202, 1204 [2d Dept 2014]). Finally, the Additional Defendants knew or should have known that, but for the plaintiff’s mistake, they would have been included as defendants, because “[a]rrest, and in particular an arrest of a violent nature, along with the commencement of proceedings puts the City and consequently, proposed officers on notice to a potential suit” (Bostic v City of New York, 2019 NY Slip Op 30991[U], 3 [Sup Ct, NY County 2019]).

The Court does not credit the City’s argument that plaintiff has not established that she made diligent efforts to determine the identity of the Additional Defendants. It is undisputed that plaintiff sought to obtain the names of the Additional Defendants repeatedly through her discovery demands, the first of which was served before the expiration of the applicable statutes of limitations (See Henderson-Jones v City of NY, 87 AD3d 498, 502 [1st Dept 2011]; see also Bostic v City of New York, 2019 NY Slip Op 30991[U], 4 [Sup Ct, New York County 2019]). Plaintiff also promptly moved to amend her complaint when the City eventually responded to these demands, over a year after the initial demand. Accordingly, to deny plaintiff’s motion where “[i]t was the defendants, in possession of this information, who did not disclose it until after the expiration of the statute of limitations . . . . would promote gamesmanship whereby litigants could intentionally withhold the names of John Does until after the expiration of the statute of limitations” (Burbano v City of New York 2018 WL 2065384 [Sup Ct, Bronx County 2018]).

In light of the foregoing, it is

**ORDERED** that plaintiff's motion to amend the complaint is granted; and it is further

**ORDERED** that the Clerk of the Court is directed to amend the caption to replace defendants "John Does 1-3" and "Jane Doe" with "Police Officer David Tobar, Police Officer Julio Jimenez, Police Officer Denis Cekic, Police Officer Edgar Rusi, And Police Officer Sajma Hot"; and it is further

**ORDERED** that plaintiff's Amended Summons and Amended Complaint in the proposed form annexed as Exhibit 1 to plaintiff's moving papers (NYSCEF Doc. No. 11) shall be deemed served upon all parties who have previously appeared in this action upon plaintiff's service of a copy of this decision and order with notice of entry on those parties; and it is further

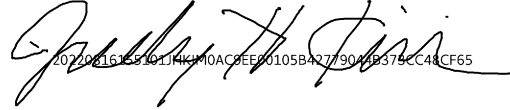
**ORDERED** that plaintiff shall, within twenty days of the date of this order, serve the Amended Summons and Amended Complaint in the proposed form annexed as Exhibit 1 to plaintiff's moving papers (NYSCEF Doc. No. 11), along with a copy of this decision order with notice of entry on the Additional Defendants in accordance with the CPLR; and it is further

**ORDERED** that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the Court's records to reflect the amended caption; and it is further

**ORDERED** that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address ([www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh))); and it is further

**ORDERED** that the defendants shall answer the amended complaint or otherwise respond thereto within twenty days from the date of said service; and it is further

This constitutes the decision and order of the Court.



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8/16/2022

DATE

JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE