

<b>Griffin v City of New York</b>
2023 NY Slip Op 30458(U)
February 14, 2023
Supreme Court, New York County
Docket Number: Index No. 158006/2021
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JUDY H. KIM PART 05RCP**

*Justice*

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ANTHONY GRIFFIN,

Plaintiff,

- v -

THE CITY OF NEW YORK, POLICE OFFICER WALTER  
MANCILLA, SERGEANT FRANCISCO GARCIA, JOHN  
DOES 1 – 4,

Defendants.

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INDEX NO. 158006/2021

MOTION DATE 08/26/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 5, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to AMEND CAPTION/PLEADINGS.

On August 26, 2021, plaintiff commenced this action against the City of New York, New York City Police Department (“NYPD”) officers Walter Mancilla and Francisco Garcia as well as unidentified NYPD officers John Does 1-4, alleging that he was assaulted and falsely arrested by NYPD officers on May 30, 2020 (NYSCEF Doc. No. 1 [Complaint]). Plaintiff asserts claims against the individual NYPD officer defendants, pursuant to 42 USC §1983, for false arrest, denial of due process and a fair trial, malicious prosecution, First Amendment violations, and excessive force. Plaintiff also asserts a 42 USC §1983 Monell claim against the City of New York. Finally, plaintiff asserts state law claims against all defendants for false arrest, denial of due process and a fair trial, malicious prosecution, First Amendment violations, and excessive force.

Plaintiff now moves, pursuant to CPLR §3025(b) and CPLR §1024, to amend his complaint to substitute NYPD officers Sean Sloman and Marc Hummel (the “Additional Defendants”) for two of the “John Doe” defendants, explaining that a Civilian Complaint Review Board (“CCRB”)

investigation revealed their involvement in plaintiff's arrest (NYSCEF Doc. No. 49 [CCRB Findings]).

The City opposes the motion in part, arguing that it must be denied as to plaintiff's state law claims for false arrest, denial of due process and a fair trial, malicious prosecution, First Amendment violations, and excessive force because: (i) these claims are barred by the statute of limitations and cannot be saved by the relation-back doctrine; and (ii) plaintiff failed to make diligent efforts to ascertain their identities prior to the expiration of the statute of limitations such that the proposed amendment could be permitted by CPLR §1024.

### 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]).

Plaintiff's motion is granted. There is no dispute that plaintiff's federal claims against the Additional Defendants are neither palpably improper nor insufficient as a matter of law. In addition—and contrary to the City's argument—although the statute of limitations for plaintiff's state law claims elapsed on February 1, 2022<sup>1</sup> this does not, under the circumstances, present a bar to the assertion of these claims against the Additional Defendants. While it is true that, in general, a proposed amendment which seeks to add a new party is “patently devoid of merit” where the statute of limitations to assert a claim against that party has expired (See e.g., Nossov v Hunter Mtn., 185 AD3d 948, 949 [2d Dept 2020]), in this case the relation-back doctrine allows the interposition of these claims.

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<sup>1</sup> This calculation takes into account the toll issued pursuant Executive Order No. 202.8 in response to the COVID-19 pandemic.

The relation-back doctrine allows new parties to be joined in a previously commenced action even after the expiration of the statute of limitations once 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]). “[A] movant seeking to apply the relation-back doctrine to a later identified ‘John Doe’ defendant, pursuant to CPLR §1024, 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” (Garcia v City of New York, 2019 NY Slip Op 32765[U], \*2 [Sup Ct, NY County 2019]).

In this case, the claims against the Additional Defendants arise from the same events as the claims against the original defendants. Further, a unity of interest exists between the City and Additional Defendants because “municipalities may be liable, under the doctrine of respondeat superior, for common law torts, such as false arrest, malicious prosecution, assault, and battery, committed by their employees” (Cartagena v City of New York, 2020 NY Slip Op 32002[U], \*4 [Sup Ct, NY County 2020]). 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 record also establishes that plaintiff made diligent efforts to ascertain the Additional Defendants’ identities prior to the expiration of the statute of limitations by filing a pre-suit

Freedom of Information Law request on or about June 15, 2021 and making subsequent inquiries as to the status of this request (See NYSCEF Doc. No. 5) such that the amendment sought here is permissible under CPLR §1024 (See e.g., Morales v New York, 2017 NY Slip Op 30305[U], 3 [Sup Ct, New York County 2017] [“plaintiff’s September 23, 2015 FOIL request and repeated subsequent inquiries demonstrate that plaintiff exercised due diligence in attempting to ascertain the identity of C.O. Ambroise prior to the expiration of the statute of limitations”]).

Accordingly, it is

**ORDERED** that plaintiff’s motion for leave to amend the complaint and replace defendants “John Does 1-4” with “Police Officer Marc Hummel” and “Police Officer Sean Sloman” is granted; and it is further

**ORDERED** that the amended complaint shall bear the following caption:

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ANTHONY GRIFFIN,

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Plaintiff,

-against-

THE CITY OF NEW YORK,  
POLICE OFFICER WALTER MANCILLA,  
SERGEANT FRANCISCO GARCIA,  
POLICE OFFICER MARC HUMMEL,  
POLICE OFFICER SEAN SLOMAN, and  
JOHN DOES 1 and 2,

Defendants.

-----X

and it is further

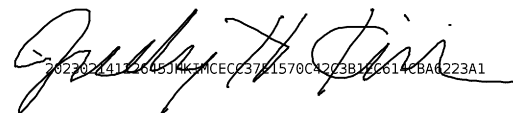
**ORDERED** that plaintiff’s Amended Summons and First Amended Verified Complaint in the proposed form annexed as Exhibit 2 to plaintiff’s moving papers (NYSCEF Doc. No. 47) shall be deemed served upon all parties who have previously appeared in the action upon plaintiff’s service of a copy of this decision and order, with notice of entry, on those parties; and it is further

**ORDERED** that plaintiff shall serve the Amended Summons and First Amended Verified Complaint in the proposed form annexed as Exhibit 2 to plaintiff’s moving papers (NYSCEF Doc. No. 47), along with a copy of this decision and order, with notice of entry, on Police Officer Marc Hummel and Police Officer Sean Sloman in accordance with the CPLR within twenty days of the date of this order; and it is further

**ORDERED** that counsel for plaintiff shall serve a copy of this decision and 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 (ww.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.



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2/14/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: