

Metwally v New York City Taxi & Limousine Commn.

2023 NY Slip Op 31146(U)

April 12, 2023

Supreme Court, New York County

Docket Number: Index No. 450253/2019

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

car (Id. at pp. 11-13). In response, the TLC officers handcuffed him (Id. at pp. 12-13). Plaintiff denied using any physical force with the TLC officers at any point (Id. at p. 16). Following his arrest, New York City Police Department (“NYPD”) officers arrived at the scene of the incident but declined to arrest plaintiff (Id. at pp. 21-23). However, plaintiff remained handcuffed and was taken to Bellevue Hospital where he was issued summonses by the TLC officers and then released at approximately 5:30 am the next day (Id. at pp. 25-27, 49).

The City Defendants now move for an order, pursuant to CPLR §3211(a)(7): (i) dismissing plaintiff’s claims for false arrest and imprisonment on the grounds that probable cause existed to effectuate plaintiff’s arrest; (ii) dismissing plaintiff’s claim for negligence as duplicative of his false arrest claim; (iii) dismissing plaintiff’s civil rights violations under 42 U.S.C. §1983, for failing to state a cause of action; and (iv) dismissing plaintiff’s complaint as against the TLC on the grounds that it is a non-suable entity.

In support of their motion to dismiss, the City Defendants submit the affidavit of defendant Burgess, a TLC inspector, attesting that on October 16, 2014, he and his partner Terrell Montgomery stopped plaintiff’s vehicle after observing plaintiff turn down a one-way street in the wrong direction (NYSCEF Doc. No. 26 [Burgess Aff. at ¶¶5-6]). Burgess discovered that plaintiff’s vehicle was not registered with the TLC (Id. at ¶7). According to Burgess, at some point during the stop, plaintiff grabbed a “wooden stick, approximately three feet long” from his trunk and waved it in at Burgess in a threatening manner before rushing towards Burgess and grabbing his right arm, at which point Burgess handcuffed plaintiff and issued him summonses for failure to comply and for driving an unlicensed vehicle-for-hire (Id. at ¶¶8-10).

The City Defendants also move, pursuant to CPLR §3025(b), to amend their answer to include the defense of a prior general release. In support of this branch of their motion, the City

Defendants submit a General Release (the “Release”) executed by plaintiff in connection with a false arrest action he commenced in Supreme Court, Queens County, entitled Osama E. Metwally v The Port Authority of New York and New Jersey, Port Authority Police Department, Detective William Prentice, and City of New York, under index number 705076/2017 (the “Queens County Action”) (NYSCEF Doc. No. 28 [General Release]).

As pertinent here, this Release was the basis for the City’s motion to dismiss a separate false arrest action brought by plaintiff in Supreme Court, New York County, entitled Osama Metwally v City of New York, et al., under index number 450863/2016 (the “2016 Action”). In this action, however, the City Defendants only move to amend their answer to assert a defense based on the Release and do not move to dismiss on this ground, explaining that

The adjudication of the [2016 Action] will determine the standard for a motion to dismiss on the ground of general release for the subject case. Accordingly, a motion to dismiss with respect to Plaintiff’s prior general release is not yet ripe in the subject case because a motion [in the 2016 Action] is currently pending

After this motion was fully submitted, the City’s motion in the 2016 Action was granted in a decision and order dated November 28, 2022 (See Metwally v City of NY, 2022 NY Slip Op 34019[U] [Sup Ct, NY County 2022])(NYSCEF Doc. No. 129).

DISCUSSION

As an initial matter, the City Defendants’ motion to dismiss this action as against the TLC is granted without opposition, as the TLC is a non-suable entity pursuant to Chapter 17, Section 396 of the New York City Charter (See Matter of Carpenter v NY City Hous. Auth., 146 AD3d 674, 674 [1st Dept 2017]). Accordingly, the Court turns to that branch of the City Defendants’ motion to dismiss plaintiff’s claims for negligence, civil rights violations under 42 U.S.C. §1983, and false arrest and imprisonment pursuant to CPLR §3211(a)(7).

On a motion to dismiss under CPLR §3211(a)(7), the pleading is to be afforded a liberal construction and the court should accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (See Leon v Martinez, 84 NY2d 83 [1994]).

Plaintiff's claims for negligence and civil rights violations under 42 U.S.C. §1983 are dismissed. As the damages that plaintiff seeks arose from his arrest and detention, he may not recover under general principles of negligence (Ferguson v Dollar Rent A Car, Inc., 102 AD3d 600, 601 [1st Dept 2013]). In addition, "plaintiff's failure to specifically plead the existence of an official policy or custom which deprived him of a constitutional right in violation of 42 USC §1983" mandates the dismissal of this claim against the City Defendants (Liu v New York City Police Dept., 216 AD2d 67, 68 [1st Dept 1995]).

However, that branch of the City Defendants' motion to dismiss plaintiff's claims for false arrest and imprisonment, based upon the affidavit of Burgess, is denied. In the context of a motion to dismiss under CPLR §3211(a)(7), "[w]hen evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate" (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). Indeed, "[a]ffidavits submitted by a defendant will almost never warrant dismissal under CPLR §3211 unless they establish conclusively that [the plaintiff] has no cause of action" (Nasca v Sgro, 130 AD3d 588, 588-589 [2d Dept 2015]). Here, Burgess' affidavit conflicts with plaintiff's GML §50-h testimony regarding the circumstances giving rise to plaintiff's arrest—i.e., whether plaintiff waved the wooden stick in a threatening manner at Burgess or grabbed his right arm—and, therefore, fails to

establish, conclusively, that the TLC officers had probable cause to effectuate plaintiff's arrest such that dismissal of plaintiff's false arrest and imprisonment claims would be warranted (Meltzer v Meltzer, 41 AD3d 558, 558 [2d Dept 2007]; Ashanti v City of New York, 72 Misc 3d 1225[A], 2023 NY Slip Op 50032[U], *3 [Sup Ct, NY County 2023]).

Finally, the Court grants that branch of the City Defendants' motion, pursuant to CPLR §3025(b), seeking leave to amend their answer and assert the defense of release. "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]) and the amendment sought here is neither palpably improper nor insufficient as a matter of law¹ (See Sotomayor v Princeton Ski Outlet Corp., 199 AD2d 197, 197 [1st Dept 1993]). In opposition, plaintiff contends that the failure to exclude the instant action from the ambit of the Release was a mistake, either mutual or unilateral, and that the Release should be rescinded or reformed to comport to the intent of the parties. However, these arguments, and the cases upon which plaintiff relies, were considered and rejected by this Court in the 2016 Action (See Metwally v City of NY, 2022 NY Slip Op 34019[U] [Sup Ct, NY County 2022]) and the Court sees no reason to revisit them now. In light of the City's puzzling refusal to independently move to dismiss this action on the basis of the Release, the Court declines to, sua sponte, address the issue of whether this action is also barred by the Release.

¹ Although the City Defendants have not submitted a proposed Amended Answer in support of their motion, as required by CPLR §3025(b), the Court overlooks this technical defect as the amendment sought is limited and clearly described in plaintiff's moving papers (See CPLR §2001; Medina v City of New York, 134 AD3d 433, 433 [1st Dept 2015]).

Accordingly, it is

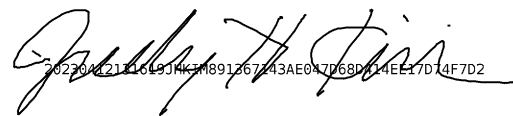
ORDERED that the branch of the motion by the City of New York, the New York City Taxi and Limousine Commission and O. Burgess to dismiss this action, is granted in part, to the extent that plaintiff’s claims for negligence and civil rights violations under 42 U.S.C. §1983 are dismissed, and otherwise denied; and it is further

ORDERED that the branch of the motion by the City of New York, the New York City Taxi and Limousine Commission and O. Burgess to amend their answer is granted; and it is further

ORDERED that counsel for the City of New York shall serve a copy of this order, with notice of entry, on plaintiff as well as on the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk’s Office (60 Centre St., Rm. 119) within fifteen days from the date of this decision and order; and it is further

ORDERED that such service upon the Clerk of the Court 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 “Efiling” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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4/12/2023

DATE

HON. 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