

Cuatetl v City of New York

2023 NY Slip Op 33925(U)

November 2, 2023

Supreme Court, New York County

Docket Number: Index No. 160109/2021

Judge: Judy H. Kim

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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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TOMAS CUATETL,

Plaintiff,

- v -

THE CITY OF NEW YORK, CORRECTION OFFICERS
JOHN DOE 1-12,

Defendant.

-----X

INDEX NO. 160109/2021

MOTION DATE 08/15/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22

were read on this motion to AMEND CAPTION/PLEADINGS.

On November 7, 2021, plaintiff commenced this action against defendants the City of New York (the “City”) and unidentified New York City Department of Correction (“DOC”) officers John Does 1-12, alleging that he was assaulted by DOC officers on August 20, 2020 (NYSCEF Doc. No. 1 [Compl.]). Plaintiff now moves, pursuant to CPLR §§3025 and 1024, to amend his complaint to substitute DOC officers Dennis McLaughlin and Idris Olayokun for two of the “John Doe” defendants and assert, against the McLaughlin and Olayokun: (i) state law claims for assault and battery, prima facie tort, constitutional violations, and discrimination pursuant to Administrative Code §8-107 (also known as the New York City Human Right Law or “NYCHRL”); and (ii) a federal claim for failure to intervene pursuant to 42 USC §1983. Plaintiff’s motion is granted on default and for the reasons set forth below.

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]).

Here, plaintiff’s state law claims under the New York State Constitution and NYCHRL as well as his federal law claim against McLaughlin and Olayokun are neither palpably improper nor insufficient as a matter of law. While the statute of limitations for plaintiff’s state law claims of assault and battery and prima facie tort expired on November 4, 2021, the relation-back doctrine permits the interposition of these claims.

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 McLaughlin and Olayokun arise from the same events as the claims against the original defendants. The City is also united in interest with McLaughlin and

Olayokun because “municipalities may be liable, under the doctrine of respondeat superior, for common law torts, such as ... 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]). Further, McLaughlin and Olayokun knew or should have known that, but for plaintiff’s mistake, they would have been included as defendants because the violent nature of the incident, together with the commencement of this action, put the City as well as McLaughlin and Olayokun on notice of a potential action (See Bostic v City of New York, 2019 NY Slip Op 30991[U], 3 [Sup Ct, NY County 2019] [“[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”]).

Plaintiff has also established that he made diligent efforts to ascertain McLaughlin and Olayokun’s identities prior to the expiration of the statute of limitations by filing a pre-suit Freedom of Information Law request on January 20, 2021 and a subsequent request to Correctional Health Services for plaintiff’s medical records in March 2021 (See NYSCEF Doc. Nos. 20 and 21) such that the amendment sought here is permitted by 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 [Correction Officer] 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 1-12” with “Correction Officer Dennis McLaughlin” and “Correction Officer Idris Olayokun” is granted; and it is further

ORDERED that the amended complaint shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TOMAS CUATETL,

Index No. 160109/2021

Plaintiff,

-against-

CITY OF NEW YORK, CORRECTION OFFICER
DENNIS MCLAUGHLIN, CORRECTION OFFICER
IDRIS OLAYOKUN, and CORRECTION OFFICERS
JOHN DOES 1-5,

Defendants.

-----X

and it is further

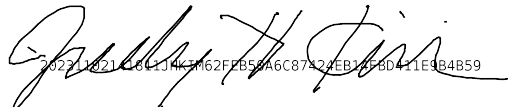
ORDERED that plaintiff’s First Amended Summons and First Amended Verified Complaint in the proposed form annexed as Exhibit D to plaintiff’s moving papers (NYSCEF Doc. No. 22) shall be deemed served upon all parties who have previously appeared in the action upon plaintiff’s service of a copy of this decision and order, with notice of entry, on those parties; and it is further

ORDERED that plaintiff shall serve the First Amended Summons and First Amended Verified Complaint in the proposed form annexed as Exhibit D to plaintiff’s moving papers (NYSCEF Doc. No. 22), along with a copy of this decision and order, with notice of entry, on Correction Officer Dennis McLaughlin and Correction Officer Idris Olayokun 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 www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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11/2/2023
DATE

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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE