

Alatorre v Port Auth. of N.Y. & N.J.

2023 NY Slip Op 34160(U)

December 1, 2023

Supreme Court, New York County

Docket Number: Index No. 156237/2020

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

ANTHONY J. ALATORRE,

Plaintiff,

- v -

PORT AUTHORITY OF NEW YORK & NEW JERSEY, THE
PORT AUTHORITY POLICE DEPARTMENT, PORT
AUTHORITY POLICE OFFICER MELISSA RUBIO, JOHN
AND JANE DOES

Defendants.

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INDEX NO. 156237/2020

MOTION DATE 09/15/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

In this action arising out of plaintiff Anthony J. Alatorre’s arrest at the Port Authority Bus Terminal (PABT) On September 19, 2019, plaintiff asserts seven causes of action for assault and battery, negligent hiring, false arrest, false imprisonment, intentional infliction of emotional distress, civil rights violations, and punitive damages. Defendants The Port Authority of New York and New Jersey, The Port Authority Police Department, and Port Authority Police Officer Melissa Rubio move for summary judgment pursuant to CPLR § 3212 to dismiss the complaint (motion seq no 001).

BACKGROUND

The parties versions of what transpired on September 19, 2019 between plaintiff and the PABT officers are very different. According to defendants on September 19, 2019, plaintiff was arrested at PABT after Officer Rubio received a dispatch call regarding a disorderly male at Gate 80 swinging a skateboard and when asked to leave, refused (Alatorre EBT, NYSCEF Doc No 24

at 49; Rubio EBT, NYSCEF Doc No 26 at 37). Officer Gregory Mannino and Port Authority Sergeant Wilfred Quashie, who were assigned to patrol the PABT that day, joined Officer Rubio in the confrontation and arrest of plaintiff (Quashie EBT, NYSCEF Doc No 27 at 14; NYSCEF Doc No 26 qt 42). Upon arriving, Officer Rubio observed plaintiff being “very loud . . . , yelling, screaming . . . , pretty much causing a scene, and a lot of people were kind of terrified” (NYSCEF Doc No 26 at 40). The officers attempted to calm plaintiff down and asked him for a boarding ticket since plaintiff was in an area for ticketed passengers only (NYSCEF Doc No 27 at 16-19). Plaintiff was unable to produce a boarding ticket and uncooperative after the officers asked him to leave the area so they decided to arrest and forcibly remove him (NYSCEF Doc No 26 at 48-50). Plaintiff resisted arrest and was taken down to the floor, handcuffed, and then forcibly escorted to the PABT’s police desk for processing (NYSCEF Doc No 27 at 11, 20).

Plaintiff’s telling of the encounter leading up to his arrest is completely different from the testimony submitted by defendants. Plaintiff testified that, on September 19, 2019 he and his roommate, Francis Cullen were at the PABT to take a bus to Atlantic City (Alatorre EBT, NYSCEF Doc No 24 at 47). Mr. Cullen purchased tickets for himself and plaintiff and the two waited in line for the bus to begin loading (*Id.* at 52). While they were waiting plaintiff then left to use the restroom where he witnessed a man that plaintiff described as “looking homeless” speaking with a small child in the bathroom (*Id.* at 57). Plaintiff then confronted the man telling him that “You shouldn’t be talking to other people’s children” (*Id.* at 58-59). The man then got aggressive with plaintiff whereupon plaintiff left the bathroom in an attempt to find a police officer to relate what just transpired (*Id.* at 59).

Plaintiff testified that he approached two officers and told them about the encounter in the bathroom (Alatorre EBT, NYSCEF Doc No 24 at 62). Plaintiff claims the officers became upset

because of his choice of language in relaying the situation and began to question him about whether he had a bus ticket (*Id.* at 62-63). Plaintiff then returned to the bus line with Mr. Cullen when he was approached by four police officers who immediately began to place him in handcuffs (*Id.* at 67). Plaintiff testified that the officers did not offer a reason for the arrest despite his repeatedly asking them why he was being arrested (*Id.* at 72).

Plaintiff testified that he was then dragged to an elevator and while in the elevator he was pressed against the wall and his arms were lifted, while still handcuffed, allegedly causing his collarbone to “pop” (NYSCEF Doc No 24, p 71). Plaintiff then alleges he was grabbed by his hair and his head was rammed against the elevator wall, causing him to lose consciousness (*Id.* at p 79). EMS was called according to Officer Quashie because plaintiff had a bruise on his forehead from falling to the ground and a bruise on one of his arms from the hold that was used to bring him to the ground, (NYSCEF Doc No 27, pp 23-24).

Mr. Cullen observed the events unfold and testified that plaintiff returned to the bus line and began to tell him about the encounter with the man in the bathroom and his interaction with the officers (Cullen EBT, NYSCEF Doc No 25 at 35-38). Cullen testified that plaintiff was then approached by a plain clothes police officer, who removed plaintiff from the line, and then arrested him (*Id.* at 42-44). Cullen further testified that plaintiff was dragged to the elevator and recalls hearing a loud bang when plaintiff was brought into an elevator to go up to the police desk (*Id.* at 55).

Plaintiff submits a medical report from Thomas Pobre, M.D., conducted on September 24, 2019, that lists the following impressions: (1) cervical spine strain/injury with radicular symptoms; (2) right shoulder pain with clavicular fracture; (3) post-traumatic headaches,

dizziness, and lightheadedness; and (4) post-traumatic nervousness and depression (Selected Medical Reports, NYSCEF Doc No 36).

DISCUSSION

“It is well settled that ‘the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact’” (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). “Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action” (*Cabrera v Rodriguez*, 72 AD3d 553, 553-54 [1st Dept 2010]). “The court’s function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility” (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-11 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined “in the light most favorable to the non-moving party” (*Schmidt v One New York Plaza Co. LLC*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Id.*).

Negligent Hiring, Intentional Infliction of Emotional Distress, & Monell

Since plaintiff does not oppose the dismissal of his claims for negligent hiring, intentional infliction of emotional distress, and *Monell* violations they will be deemed withdrawn and will be dismissed. (*Gibbons v Alicart Rest. Group*, 193 AD3d 480 [1st Dept 2021] [dismissing claims against one defendant when plaintiff offered no opposition to motion for summary judgement]).

Excessive Force

Defendants argue that plaintiff's claim for assault, battery, and excessive force should be dismissed because the amount of force used, if any, was *de minimis*. Plaintiff responds that there is an issue of fact as to excessive force due to the testimony of plaintiff and Cullen.

“Because of its intensely factual nature, the question of whether the use of force was reasonable under the circumstances is generally best left for a jury to decide” (*Butler v City of New York*, 198 AD3d 561 [1st Dept 2021] quoting *Holland v City of Poughkeepsie*, 90 AD3d 841, [2d Dept 2011]). When a “plaintiff’s account of the events [concern]ing his detention differ[] markedly from the accounts of the officers,” plaintiff must be afforded “the benefit of all favorable inferences, [and] a triable issue of fact exists as to whether the officers’ conduct was lawful” (*Luers v City of New York*, 205 AD3d 898, 900 [2d Dept 2022]). Here, the conflicting testimony of, on one hand, plaintiff and Cullen, versus the testimony from Officer Rubio and Segreant Quashie creates an issue of fact that is best left resolved at trial (*id.*).

Accordingly, that part of defendants’ motion seeking summary judgment dismissing plaintiff’s excessive force cause of action will be denied.

False Arrest & False Imprisonment

“False arrest and false imprisonment are two different names for the same common-law tort” (*Metwally v City of New York*, 215 AD3d 820, 822 [2d Dept 2023] [internal quotations and

citation omitted]; see also *Roberts v City of New York*, 171 AD3d 139 [1st Dept 2019] [using the terms “false arrest” and “false imprisonment” interchangeably]. “A plaintiff alleging a claim for false arrest or false imprisonment must show that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to it, and that the confinement was not otherwise privileged” (*Roberts*, 171 AD3d at 145-46 [internal quotations and citations omitted]). “The existence of probable cause to arrest serves as a legal justification for the arrest and is a complete defense to such claims” (*Roberts*, 171 AD3d at 146 [internal quotations and citations omitted]). “Probable cause consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe plaintiff guilty” (*Cardoza v City of New York*, 139 AD3d 151 [1st Dept 2016]).

Here, the first two elements of a false imprisonment and false arrest claim are satisfied. Defendants admit they intentionally confined plaintiff without consent, and plaintiff was aware of the confinement. The only element at issue is whether the confinement was privileged. Defendants claim that since they had probable cause to arrest plaintiff their actions are privileged. Defendants argue that they had probable cause to arrest plaintiff for Disorderly Conduct, Trespass, and for Resisting Arrest (NYSCEF Doc No 19 at 17). However, plaintiff has offered evidence which contradicts defendant’s claims of probable cause.

As for Disorderly Conduct the defendants claim that they received a dispatch call regarding a disorderly male at Gate 80 and upon arrival, observed plaintiff terrifying people in the area (NYSCEF Doc No 26 at 40). However, plaintiff and Cullen’s testimony contradicts defendants’ allegations that plaintiff was harassing other people in the area when the police arrested him. Defendants also contend that they had probable cause to arrest plaintiff for Trespass, since they asked him to show them a ticket and he was unable to produce one

(NYSCEF Doc No 19 at 18). Plaintiff however contends that he did have a ticket and was not asked to present one prior to being pulled out of line (NYSCEF Doc No 24 at 76; *see also* Exhibit K, NYSCEF Doc No 35 [scan of plaintiff's purchased bus tickets for the day in question]). Finally, defendants contend that they had probable cause to arrest plaintiff for Resisting Arrest. However, again plaintiff offers evidence which contradicts this in the form of his and Cullen's testimony (Alatorre EBT, NYSCEF Doc No 24 at 77; Cullen EBT, NYSCEF Doc No 25 at 50).

Viewing the evidence in the light most favorable to the non-moving party, shows that there is a triable issue of fact as to whether probable cause existed to arrest plaintiff. Accordingly, that part of defendants' motion seeking summary judgment dismissing plaintiff's claim for false arrest and false imprisonment will be denied.

Qualified Immunity

Probable cause for arrest serves as a complete bar to a claim seeking to overcome qualified immunity (*Holland*, 90 AD3d at 844). "To be entitled to qualified immunity, it must be established that it was objectively reasonable for the police officer involved to believe that his or her conduct was appropriate under the circumstances, or that officers of reasonable competence could disagree as to whether his or her conduct was proper" (*Delgado v City of New York*, 86 AD3d 502, 510 [1st Dept 2011]).

However, as shown above an issue of fact remains as to whether probable cause existed to arrest the plaintiff. Viewing the evidence presented in the light most favorable to the plaintiff could lead a reasonable fact finder to conclude that the officers were not acting objectively reasonable in light of the circumstances. Accordingly, that part of defendants' motion seeking

summary judgment dismissing plaintiff's claims as against Officer Rubio and Sergeant Quashie individually will be denied.

Punitive Damages

“As a government entity, the Port Authority is immune from punitive damages” (*Rose v Port Auth. Of New York & New Jersey*, 13 F Supp 2d 516, 524 [SD NY 1998]).

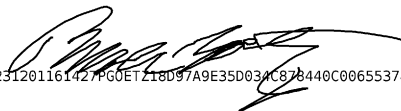
Accordingly, that part of defendants' motion seeking summary judgment dismissing plaintiff's claim for punitive damages against the Port Authority will be granted.

CONCLUSION

Accordingly, it is

ORDERED that plaintiff's claims for negligent hiring, intentional infliction of emotional distress, and *Monell* violations are deemed withdrawn and dismissed; and it is further

ORDERED that part of defendants' motion seeking summary judgment dismissing plaintiff's claim for punitive damages against the Port Authority of New York and New Jersey is granted and the claim is dismissed and the motion is otherwise denied.


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12/1/2023

DATE

PAUL A. GOETZ, 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