

Feldman v City of New York

2024 NY Slip Op 32737(U)

August 6, 2024

Supreme Court, New York County

Docket Number: Index No. 155049/2019

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M

Justice

-----X

ELIJAH FELDMAN,

Plaintiff,

- v -

CITY OF NEW YORK, POLICE OFFICER 'FNU'
WHITEMAN, POLICE OFFICER 'FNU' ESPINOSA, POLICE
OFFICER(S) JOHN/JANE DOE(S)

Defendant.

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INDEX NO. 155049/2019
MOTION DATE 04/09/2024
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to AMEND CAPTION/PLEADINGS.

In this matter, the court is called upon to consider Plaintiff Elijah Feldman's ("Plaintiff") motion to substitute the named officer "FNU Whiteman" for Detective Michael Whiteman and to add Sergeant John Toscano as defendants, or, in the alternative, to permit Plaintiff to file an amended complaint adding Detective Michael Whiteman and Sergeant John Toscano. The City of New York (hereinafter collectively "defendants" or "the City") opposes the motion. Upon review of the parties' submissions and the applicable law, the court denies Plaintiff's motion.

BACKGROUND AND ARGUMENTS

Plaintiff alleges that he was subjected to excessive force and deprivation of his rights during his arrest on February 17, 2018. Plaintiff commenced this action on May 17, 2019. Subsequently, on October 25, 2019, Plaintiff filed an Order to Show Cause (OSC) to be produced for a 50-h hearing. The OSC was granted, but the matter was marked as disposed. The matter was later restored on August 25, 2021, by stipulation.

In support of the instant motion, Plaintiff argues that he is entitled to substitute the officers because he was diligent in trying to ascertain their identities. Plaintiff claims that despite his efforts, including filing a FOIL request, he did not receive a response and was forced to convince the New York City Law Department to stipulate to having the case restored.

In opposition, defendants contend that the statute of limitations has expired on Plaintiff's claims. In addition, defendants aver that Plaintiff has failed to exercise the required diligence to timely identify and name the newly proposed individual defendants within the statute of limitations for each of the state law claims, and the relation-back doctrine does not apply.

DISCUSSION

Pursuant to CPLR §3025, a party may amend a pleading “at any time by leave of court” (CPLR §3025[b]). Although leave to amend the pleadings is “freely given upon such terms as may be just” (CPLR §3025[b]), where the statute of limitations has expired against a proposed additional defendant, the plaintiff bears the burden of demonstrating the applicability of the relation-back doctrine (*see Garcia v. New York-Presbyt. Hosp.*, 114 AD3d 615, 615 [1st Dept 2014]; *Rivera v. Wyckoff Hgts. Med. Ctr.*, 175 AD3d 522, 523-524 [2d Dept 2019]).

The statute of limitations for state law claims is one year and ninety days from the date on which the claim accrues. Claims for false arrest and false imprisonment accrue once an individual is released from physical custody or confinement (*see Palmer v. City of New York*, 226 AD2d 149, 149 [1st Dept 1996]). State law claims for malicious prosecution accrue when the criminal proceeding terminates favorably to the plaintiff (*see Boose v. City of Rochester*, 71 AD2d 59, 65 [4th Dept 1979]). Claims for assault and battery accrue when the tortious acts occur (*see Grullon v. City of New York*, 222 AD2d 257, 257 [1st Dept 1995]). The statute of limitations for Plaintiff’s state law claims for assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, training, and retention, and respondeat superior accrued on the date of the incident, February 17, 2018. Thus, the statute of limitations for Plaintiff’s state law claims expired on May 18, 2019.

New York State has a three-year statute of limitations for general personal injury actions (*see* CPLR §214). Accordingly, if Plaintiff were to allege federal claims against individual defendants, the statute of limitations would be three years. With regard to 42 U.S.C. § 1983 claims, the cause of action accrues when “the plaintiff knows or has reason to know of the injury which is the basis of his or her action” (*see Rimany v. Town of Dover*, 72 AD3d 921 [2d Dept 2010]). Plaintiff’s federal law claims of false arrest and excessive force accrued on February 17 or February 18, 2018, and were thus set to expire on February 17 or 18, 2021. Governor Andrew Cuomo’s Executive Order imposed a toll on civil deadlines in response to the COVID-19 crisis on March 19, 2020, which was lifted on November 4, 2020. Therefore, accounting for the tolling period, Plaintiff’s 42 U.S.C. § 1983 claims expired on or about October 5 or 6, 2021. Regarding any claims of malicious prosecution, those claims accrue upon a favorable termination of the criminal proceeding. Here, Plaintiff was convicted on February 14, 2020, and therefore cannot meet the favorable termination element of malicious prosecution. Nonetheless, any federal malicious prosecution claims would have expired on October 2, 2023, inclusive of the COVID toll.

Based on the foregoing, it is inarguable that Plaintiff’s causes of action as against the proposed additional defendants are time-barred. Nevertheless, Plaintiff contends that amendment should be permitted on account of Plaintiff’s diligent efforts to ascertain the identity of the proposed additional defendants. Under CPLR §1024, a plaintiff must show that he or she made timely efforts to identify the correct party before the statute of limitations expired (*see Holmes v. City of New York*, 132 AD3d 952, 953 [2d Dept 2015]). Failure to exercise due diligence to identify “John Doe” defendants prior to the statute of limitations warrants dismissal of the complaint as to that individually named defendant (*see Bumpus v. New York City Tr. Auth.*, 66 AD3d 26, 35 [2d Dept 2009]).

In this case, Plaintiff has failed to demonstrate sufficient diligence. The record lacks evidence of when Plaintiff filed the FOIL request or any other diligent efforts. Merely stating that Plaintiff had a difficult time litigating the case does not satisfy the requirement of timely efforts to identify the defendants. Plaintiff did not provide an affidavit of diligent efforts, nor is there any description or indication that any efforts, let alone diligent efforts, were made to identify a member of service before the expiration of the statute of limitations on the state and federal law claims. Furthermore, Plaintiff was in possession of the proposed defendants' identities for over two years and failed to make any motions to add them. Indeed, as underscored by the City's counsel during oral argument before the court on August 6, 2024, the City provided a Case Scheduling Order response to Plaintiff in July 2022 that named both officers and contained both officers contact information. Nevertheless, Plaintiff did not move to add the officers until two years after this disclosure. That failure, compounded by Plaintiff's failure to take significant action to ascertain the officers' identities or even to FOIL any documents before the expiration of the statute of limitations, demonstrates an absence of sufficient diligent.

Nevertheless, the relation-back doctrine allows a party to be added after the expiration of the statute of limitations if three conditions are met: (1) the claim arises out of the same conduct, transaction, or occurrence; (2) the additional party is united in interest with the original party; and (3) the additional party knew or should have known that but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against the additional party as well (*see Bumpus*, 66 AD3d at 35).

While it is axiomatic that the claims against the proposed defendants arose out of the same conduct as the original claims, this alone is insufficient. Indeed, the City concedes that the claims which Plaintiff now seeks to assert against the proposed defendant officers, which are otherwise time-barred, arose out of the same transaction as the claims asserted against the City in the original complaint. However, Plaintiff has failed to establish that Detective Whiteman and Sergeant Toscano are united in interest with the originally named defendants within the meaning previously contemplated by courts analyzing the relation-back doctrine. Unity of interest fails if there is a possibility that the new defendants may have a defense unavailable to the original defendants. Here, as highlighted by the City's counsel at oral argument before the court on August 6, 2024, the proposed new defendants may have individual defenses such as qualified immunity that the City would not be able to assert. As such, it is self-evident that the proposed new defendants are not united in interest with the City. The Appellate Division, First Department, in *Diaz v. City of New York*, 160 AD3d 457 (1st Dept 2018), held that officers were not "united in interest" with the City, and the plaintiff failed to show that the failure to name defendants was a mistake. Here, the proposed defendants are not united in interest with the City, as the individual officers may assert separate defenses (*see Connell v. Hayden*, 83 AD2d 30 [2d Dept 1981]). Moreover, there is no evidence that the proposed defendants knew or should have known that but for Plaintiff's delay that an action would have been brought against them. The mere involvement of officers in the subject arrest does not automatically impute them with notice of a cause of action (*see Caselli v. City of New York*, 105 AD2d 251 [2d Dept 1984]).

Plaintiff's motion fails to set forth any substantive argument supporting the notion that the proposed defendant officers either knew or should have known that they would have been named as defendants in the case but for Plaintiff's delay. It is inconceivable that the proposed defendant

officers should have reasonably anticipated being named as defendants in this case three years after the date of the incident. Detective Whiteman and Sergeant Toscano could not be expected to have notice that an action would have been brought against them. Mere involvement in the arrest alone does not create knowledge of any wrongdoing nor does it automatically impute knowledge of the existence of a subsequent personal injury lawsuit against them. Furthermore, Plaintiff was convicted at trial, further cementing that the involved officers would have had no reason to believe they would be sued for lawful arrest and prosecution.

As Plaintiff has failed to establish that Detective Whiteman and Sergeant Toscano are united in interest with the original defendants in this action and that these proposed defendants should have known that, but for an excusable mistake or want of due diligence by Plaintiff, they would have been named as defendants in the original complaint, the relation-back doctrine does not apply. Plaintiff’s motion to relate state law and federal law claims against the proposed defendant officers back to the original date of the complaint is hereby denied.

Finally, allowing Plaintiff to amend the complaint would prejudice the defendants. The causes of action are time-barred, which is inherently prejudicial. Moreover, the delay in identifying and naming the correct defendants cannot be excused by the procedural difficulties faced by Plaintiff. Plaintiff’s instant motion was filed nearly five years after his state law claims expired and over two years after his federal law claims expired, not including federal malicious prosecution claims which expired nearly six months prior to Plaintiff filing the instant motion.

Considering the foregoing, Plaintiff has not met the requirements to substitute the named officer “FNU Whiteman” for Detective Specialist Michael Whiteman or to add Sergeant John Toscano as defendants. While it was a closer call as to Detective Specialist Michael Whiteman, the other factors considered by the court weigh heavily against granting the motion. Therefore, it is hereby

ORDERED that Plaintiff’s motion is denied in its entirety.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

8/6/2024
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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