

**Jiang v Corpuz**

2024 NY Slip Op 33756(U)

October 10, 2024

Supreme Court, Kings County

Docket Number: Index No. 529942/2022

Judge: Lisa S. Ottley

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  
COUNTY OF KINGS – PART 24

-----X  
KEVIN JIANG,

Plaintiff,

-against-

BRIANA CORPUZ,

Defendant.  
-----X

Mot. Seq. # 2

Index # 529942/2022

**DECISION and ORDER**

**HON. LISA S. OTTLEY**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Summary Judgment submitted on April 1, 2024:

Papers	Numbered
Notice of Motion and Affirmation .....	1&2 [Exh. A-H]
Affirmation/Affidavit in Opposition.....	3 [Exh. A]
Affirmation in Reply.....	4

Plaintiff, Kevin Jiang, commenced this action against the defendant, Briana Corpuz, as a result of the defendant providing false information to both the St. John’s University Security Office, and New York City Police Department, which caused the plaintiff to be handcuffed, arrested, and detained overnight in jail, as well as having to retain an attorney at a cost of \$5,000 to represent him and appear in criminal court on three court appearances. Defendant moves for an order pursuant to CPLR 3212 granting summary judgment in favor defendant and against plaintiff. Plaintiff opposes the motion in its entirety.

**Facts**

At the time of this incident, both the plaintiff and defendant were students at St. John’s University and friends. Briana Corpuz owned a white 2015 Infiniti Q50 automobile and was married to Song Hun “Peter” Kim, who was on suspension from St. John’s University and was not allowed to be on the school’s campus. Mr. Kim, Mr. Jiang, and Ms. Corpuz as acquaintances would socialize together on occasion. On March 25, 2019, Peter Kim while driving the defendant’s vehicle, drove the defendant, Briana Corpuz, to the St. John’s University campus, dropping her off for a 7:00 p.m. class. After dropping the defendant off, Peter Kim was involved in an incident with the defendant’s vehicle that was reported by Robert DiStasio, who reported to the SJU campus security that he was almost hit by an Infiniti when he was coming out of class. Mr.

DiStasio stated that he could see the driver's face through the car's tinted windows but did not recognize the driver but saw that the driver was an Asian male. He further stated that he did not know either Peter Kim, Briana Corpuz, or Kevin Jiang.

Once the video of the incident was retrieved, the license plate number of the car involved was recovered, it was identified as the vehicle owned by defendant, Briana Corpuz. Ms. Corpuz testified at her deposition that it was her belief that Peter Kim was driving her vehicle while on suspension from St. John's University, but she was unaware that Peter Kim had attempted to hit a student while driving her car. The defendant further testified that she told a lie to Officer Conaghan when she stated that the plaintiff, Kevin Jiang, was driving her vehicle on the evening of the incident because she believed Mr. Jiang was allowed on campus and would not get in trouble for driving the car. Thereafter, a text conversation was initiated by the defendant with Officer Conaghan, and during the text messaging, when asked who was driving her vehicle, Ms. Corpuz responded that Kevin Jiang was the person driving the vehicle. Ms. Corpuz also phoned the plaintiff three times on the evening of March 25, 2019, and informed plaintiff that she told the authorities that he was driving her car and wanted to fill him in on the details but did not ask Mr. Jiang if he would agree to what she told the authorities. The plaintiff's photo was placed in a photo lineup at the 107<sup>th</sup> precinct where his photo was picked out by Robert DiStasio. After being identified by Mr. DiStasio, an I-Card was initiated for plaintiff's arrest. On April 4, 2019, after arriving at the campus security office, the plaintiff learned and was told that he was the driver of a vehicle that almost hit a student on campus. The plaintiff attempted to explain, but he was taken into custody, placed under arrest, and charged with felony reckless endangerment which was later reduced to an A misdemeanor. On plaintiff's third criminal court appearance, the charges against Mr. Jiang were dismissed on July 11, 2019.

### Summary Judgment

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2<sup>nd</sup> Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action." See, Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. See, Marine Midland Bank, N.A. v. Dino v. Artie's Automatic Transmission Co., 168 A.D.2d 610 (2<sup>nd</sup> Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, CPLR 3212[b]; Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

"False arrest and false imprisonment are two different names for the same common-law tort (see, *Fischetti v. City of New York*, 199 A.D.3d 891, 158 N.Y.S.3d 163 [2<sup>nd</sup> Dept., 2021]). The elements of the tort are intent to confine the plaintiff, the plaintiff was conscious of the confinement, the plaintiff did not consent to the confinement, and the confinement was not otherwise privileged." See, *Wieder V. Home Depot U.S.A., Inc.*, 208 A.D.3d 535, 172 N.Y.S.3d 474 (2<sup>nd</sup> Dept., 2022). Under the common law, a plaintiff may bring suit for false arrest and imprisonment against one who has unlawfully robbed plaintiff of his or her freedom from restraint or movement.

The elements of the tort of malicious prosecution are: (1) the commencement or continuation of a criminal proceeding by defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice.

In the case at bar, the defendant argues that she cannot be held liable for false arrest or malicious prosecution unless she affirmatively procured or instigated the wrongful arrest, and defendant simply providing false information to the police is not enough, therefore summary judgment should be granted in favor of defendant dismissing the complaint in its entirety. In opposition to defendant's motion for summary judgment, the plaintiff argues that a genuine issue of material fact as to whether Ms. Corpuz is liable for the false arrest and malicious prosecution of the plaintiff, Kevin Jiang, and defendant has failed to meet her burden under CPLR 3212 as a matter of law. This court agrees. A plaintiff can refute a prima facie showing of entitlement to summary judgment dismissing a claim of false arrest, imprisonment, and malicious prosecution where he or she raises a triable issue of fact as to whether the defendant played an active role in the prosecution, such as giving advice and encouragement or importuning the authorities to act. See, *Ruderman v. Stern*, 6 Misc.3d 1015(A0, 800 N.Y.S.2d 356 (Sup. Ct., Kings, Co., 2004), citing, *Kochis v. Revco Pharmacy*, 9 A.D.3d 449, 779 N.Y.S.2d 923 (2004).

"Although a civilian complainant generally cannot be found liable for false imprisonment merely for providing information to the police which turns out to be wrong, a private person can be liable for false imprisonment for actively participating in the arrest such as 'importuning the authorities to act.'" See, *Wieder V. Home Depot U.S.A., Inc.*, *supra*. The facts of this case establish that the plaintiff would not have been arrested if the defendant, Ms. Corpuz, had not intentionally provided the name of the plaintiff, as the driver of her vehicle, which she knew was driven by her husband, Peter Kim. Defendant's attorney states that Ms. Corpuz is "truly sorry for this terrible mistake but is not civilly liable." Defendant further argues that she was not in the car when it happened, and neither knew nor was told by her husband, Peter Kim, about the incident. However, upon learning about the incident, the defendant knowingly misrepresented to the authorities that the plaintiff was driving her vehicle and never attempted to rectify the situation that she created by supplying false information which resulted in the plaintiff, Kevin Jiang, being arrested and imprisoned.

In Mesiti v. Wegman, 307 A.D.2d 339, 763 N.Y.S.2d 67 (2<sup>nd</sup> Dept., 2003), the court addressed three issues, false arrest, imprisonment, and malicious prosecution, and held that the jury reasonably found that the defendant acted with undue zeal by affirmatively instigating the plaintiff's arrest. In the case at bar, the information provided to school security, as well as the police was known to be false, yet the defendant voluntarily provided the plaintiff's name as the driver of the vehicle even when she knew her husband, Peter Kim, was the driver of the vehicle. The arrest, imprisonment, and prosecution of the plaintiff, Kevin Jiang, could have been avoided had the defendant, Brianna Corpuz, not intentionally provided the false information. See, Coscia v. El Jamal, 156 A.D.3d 861, 69 N.Y.S.3d 320 (2<sup>nd</sup> Dept., 2017).

Based the facts and viewing the evidence in the light most favorable to the plaintiff, the court finds that plaintiff has raised triable issues of fact. See, DeLourdes Torres v. Jones, 26 N.Y.3d 742, 27 N.Y.S.3d 468 (2016); Coscia v. El Jamal, 156 A.D.3d 861, 69 N.Y.S.3d 320 (2<sup>nd</sup> Dept., 2017).

Accordingly, defendant's motion is hereby denied in its entirety.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York  
October 10, 2024

  
\_\_\_\_\_  
HON. LISA S. OTTLEY, J.S.C.  
HON. LISA S. OTTLEY  
KINGS COUNTY CLERK  
FILED  
OCT 21 A 11:30