

Friedlander v State of New York

2024 NY Slip Op 35006(U)

October 11, 2024

Court of Claims

Docket Number: Claim No. None

Judge: Zainab A. Chaudhry

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STATE OF NEW YORK

COURT OF CLAIMS

State Court of Claims
Albany, N.Y.

DAVID FRIEDLANDER,

Movant,

**DECISION AND
ORDER**

UID No. 2024-062-043

v.

THE STATE OF NEW YORK,

Respondent.

Claim No. None
Motion No. M-100565

BEFORE: HON. ZAINAB A. CHAUDHRY
Judge of the Court of Claims

APPEARANCES: For Movant:
KAUFMAN LEBOWITZ & FRICK LLP
By: Alison Frick, Esq.

For Respondent:
LETITIA JAMES, New York State Attorney General
By: Charles Lim, Assistant Attorney General

Movant David Friedlander seeks permission to file a late claim pursuant to section 10 (6) of the Court of Claims Act (CCA) to assert causes of action for false arrest and battery arising from movant's March 2023 arrest by New York State Police Troopers. Movant previously filed a claim based on this arrest (Claim No. 141813) which asserted similar causes of action for false arrest and battery, as well as a third cause of action for malicious prosecution. The State interposed an answer in Claim No. 141813 and asserted affirmative defenses, including that the claim was not timely served and filed. The parties agree that Claim No. 141813 is timely with respect to the malicious prosecution cause of action because a notice of intention to file a claim was served upon the Attorney General within 90 days of the date of accrual—the date that the criminal proceeding terminated in movant's favor—and the claim was filed within one year of same (*see* CCA § 10 [3-

b]; *Dudick v Gulyas*, 277 AD2d 686, 688-689 [3d Dept 2000]; *Campo v Wolosin*, 211 AD2d 660, 660 [2d Dept 1995]). However, as the State correctly notes, the causes of action for false arrest and battery accrued on the date that movant was arrested and released from custody, and the notice of intention was therefore late as to those causes of action (*see Boose v City of Rochester*, 71 AD2d 59, 65 [4th Dept 1979]). The State has not moved to dismiss those causes of action, but this protective motion seeks to file a late claim with respect to them. The motion, brought less than one year after the accrual of the causes of action, appears timely, and the State does not contend otherwise (*see CCA § 10 [6]; CPLR 215 [3]*). For the reasons stated below, the motion is granted.

As an initial matter, the motion does not include a verified proposed claim expressly labeled as such. However, a copy of Claim No. 141813 is attached (*see Affirm in Supp, Exh A*) and, as limited to the first and second causes of action designated therein, will be construed as the proposed claim for purposes of the motion (*see CCA § 10 [6]*). The proposed claim alleges that on March 19, 2023, New York State Troopers arrested movant in his home, applied “extremely tight handcuffs” to his wrists, and transported him to the State Police barracks in Kingston (*Affirm in Supp, Exh A, ¶ 3*). Movant was “questioned about a business dispute with a local contractor” who had obtained a default judgment in a civil action against him (*id. ¶ 9*). After three hours of questioning, movant was issued an appearance ticket charging him with Grand Larceny in the Second Degree and was arraigned on that charge on April 25, 2023. At a further court appearance on July 26, 2023, all criminal charges against movant were dismissed, and the prosecutor stated on the record that “there [was] no criminality in [movant’s] case” and that the underlying matter had been appropriately resolved in civil court (*id. ¶ 17; see also id., Exh C, at 2*).

CCA § 10 (6) enumerates six factors to be weighed by the Court in connection with a late claim motion: (1) whether the delay was excusable; (2) whether the State had notice of the essential

facts constituting the claim; (3) whether the State had an opportunity to investigate the circumstances underlying the claim; (4) whether the claim appears to be meritorious; (5) whether the delay resulted in substantial prejudice to the State; and (6) whether the movant has another available remedy. This list is not exhaustive and the presence or absence of any one factor is not dispositive; rather, the Court in its discretion balances these factors in making its determination (*see Bay Terrace Coop. Section IV v New York State Employees' Retirement Sys. Policemen's & Firemen's Retirement Sys.*, 55 NY2d 979, 981 [1982]).

With respect to the first factor, movant states that he was “focused on fighting the false charges against him” (Affirm in Supp, ¶ 28). This conclusory suggestion does not constitute a reasonable excuse for the delay. As the State points out, movant provides no explanation as to why the pending criminal charges would have prevented him from bringing a timely claim. Indeed, movant would not necessarily have had a reasonable excuse even if he had been confined during the pendency of the criminal proceedings (*see Matter of Robinson v State of New York*, 35 AD3d 948, 950 [3d Dept 2006]).

Of course, the failure to establish a reasonable excuse for delay is not fatal to the motion (*see Bay Terrace*, 55 NY2d at 981). Notably, the State does not dispute movant’s assertions regarding the related factors of its notice of the essential facts and opportunity to investigate, or whether it would be substantially prejudiced by a late filing. Movant asserts that the State had notice of the essential facts and an opportunity to investigate because the notice of intention served in October 2023 set forth the relevant facts of movant’s arrest and prosecution. As movant further notes, the causes of action for which late claim relief is sought are based upon the same continuum of facts as the malicious prosecution cause of action currently pending in Claim No. 141813, which the State concedes is timely (*see Affirm in Opp*, ¶ 3). Because the State will have to litigate a

related cause of action brought by the same individual and based upon the same set of facts regardless of the outcome of this motion, there appears to be no prejudice to the State if late claim relief is granted. Movant's unrefuted factual assertions relating to these three factors are thus accepted as true, and these factors are deemed to weigh in movant's favor (*see Sessa v State of New York*, 88 Misc 2d 454, 458 [Ct Cl 1976], *aff'd* 63 AD2d 334 [3d Dept 1978], *aff'd* 47 NY2d 976 [1979]; *see also Cole v State of New York*, 64 AD2d 1023, 1024 [4th Dept 1978]).

Typically, the most important factor is the potential merit of the claim because “it would be futile to permit the filing of a legally deficient claim which would be subject to immediate dismissal, even if the other factors tend to favor the granting of the request” (*Calverley v State of New York*, 187 AD3d 1426, 1427 [3d Dept 2020], quoting *Prusack v State of New York*, 117 AD2d 729, 730 [2d Dept 1986]; *see also Swart v State of New York*, 211 AD3d 881, 883 [2d Dept 2022]). A claim has the appearance of merit if it is “not . . . patently groundless, frivolous or legally defective, and the record as a whole . . . give[s] reasonable cause to believe that a valid cause of action exists” (*Calverley*, 187 AD3d at 1427 [internal quotation marks omitted]; *see also Swart*, 211 AD3d at 883; *Sands v State of New York*, 49 AD3d 444, 444 [1st Dept 2008]).

Movant's first proposed cause of action is for false arrest, which has the same elements as false imprisonment (*see Fischetti v City of New York*, 199 AD3d 891, 892 [2d Dept 2021]). To prevail on such a claim, a claimant must ultimately establish that (1) defendant intended to confine the individual; (2) the individual was conscious of the confinement; (3) the individual did not consent to the confinement; and (4) the confinement was not privileged (*see De Lourdes Torres v Jones*, 26 NY3d 742, 759 [2016]; *Broughton v State of New York*, 37 NY2d 451, 456 [1975], *cert denied sub nom. Schanbarger v Kellogg*, 423 US 929 [1975]). Where the cause of action is based on an arrest, a key question with respect to the element of privilege is whether the arrest was made

pursuant to a warrant (*see Broughton*, 37 NY2d at 457). To that end, an arrest is privileged if it is executed in accordance with a facially valid warrant issued by a court with jurisdiction, even if it is later determined that the warrant was “erroneously or improvidently issued” (*Boose*, 71 AD2d at 66; *see also Davis v City of Syracuse*, 66 NY2d 840, 842 [1985] [internal quotation marks omitted]; *Nastasi v State of New York*, 275 AD 524, 526 [3d Dept 1949], *affd* 300 NY 473 [1949]). On the other hand, a warrantless arrest is presumptively unlawful (*see Broughton*, 37 NY2d at 458).

Here, with respect to the first three elements of the false arrest claim, the allegations in the proposed claim show that State Troopers intended to confine movant when they arrested him, and that movant was conscious of, and did not consent to, such confinement. The State does not contest that those elements are satisfied for purposes of this motion. However, with respect to the contested element of privilege, the proposed claim’s allegations are sparse, asserting only in a conclusory manner that no probable cause existed for movant’s arrest. Moreover, the most critical fact in determining privilege under these circumstances—the existence or nonexistence of a facially valid warrant—is not discussed in the proposed claim at all. Nor did the State demonstrate in opposition to the motion that a warrant had been issued for movant’s arrest. The fact that movant was later arraigned is not dispositive of the question—it is merely “some proof” of probable cause (*Broughton*, 37 NY2d at 458). As support for the proposed claim’s allegation that the arrest was unlawful because it lacked probable cause, movant submitted the transcript of a criminal court appearance which indicated that the charges against movant were dismissed mere months after they were filed based on the prosecutor’s representation that movant had not committed a crime (*see Broughton*, 37 NY2d at 458 [noting that “subsequent dismissal” of charges may evince lack of justification for an arrest]). Thus, at this juncture, so much of the proposed claim as is premised

on the false arrest cause of action cannot be deemed patently groundless or frivolous, and has at least a minimally sufficient appearance of merit.

The cause of action for battery likewise has a minimal appearance of merit. “Battery is the unjustified touching of another person, without that person’s consent, with the intent to cause a bodily contact that a reasonable person would find offensive” (*Rivera v State of New York*, 34 NY3d 383, 389 [2019]). A claim for battery “may be based upon contact during an unlawful arrest,” such as if the arrest is not based upon probable cause (*Macareno v City of New York*, 187 AD3d 1164, 1167 [2d Dept 2020]; see *Wyllie v District Attorney of County of Kings*, 2 AD3d 714, 718 [2d Dept 2003]). In addition, a cause of action for battery lies where an officer “uses excessive force in effectuating an arrest” (*Shirvanion v State of New York*, 64 AD3d 1113, 1114 [3d Dept 2009]). Claims of excessive force are “analyzed under the 4th Amendment [of the US Constitution] and its standard of objective reasonableness” (*id.* [internal quotation marks omitted]), which involves an “intensely factual” inquiry that is generally left for the trier of fact (*Relf v City of Troy*, 169 AD3d 1223, 1224 [3d Dept 2019] [internal quotation marks omitted]). Here, to the extent the allegations in the verified proposed claim state that movant was subjected to an offensive, nonconsensual touching through the application of tight handcuffs to his wrists, and that this contact occurred either during an unlawful arrest or involved the use of excessive force, movant has met the minimally required burden to show the appearance of merit. Notably, beyond the issue of probable cause, the State does not direct any argument specifically toward the merits of the cause of action for battery or excessive force.

With respect to the last factor, movant has failed to argue that he lacks an alternative remedy. The State argues that such a remedy exists to the extent that movant may pursue his timely malicious prosecution cause of action brought in Claim No. 141813. Although the State is

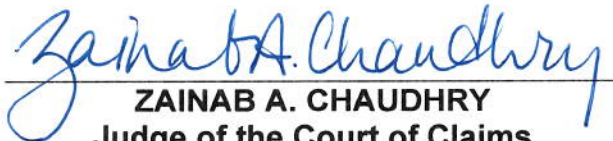
technically correct that the previously filed claim provides and constitutes an alternative remedy—which would ordinarily result in this particular factor weighing against the grant of late claim relief—the presence of that pending claim actually weighs in favor of granting such relief under the unique circumstances presented here. Given the bare minimum showing of an appearance of merit as to movant’s arrest-based claims, which notably were both unsupported by any detailed allegations or sworn statements by movant as to the circumstances of the arrest and how it occurred, it is of significant weight to the Court in determining the propriety of late claim relief that movant’s cause of action for malicious prosecution arising out of the same incident remains pending. As discussed above, the State is already involved in defending the conduct of the State Police with respect to movant’s arrest, and it has long had notice of the essential facts and an opportunity to investigate the incident. The State will thus suffer no prejudice or any significant additional burden in defending against two other closely related causes of action arising from movant’s arrest. In sum, after carefully considering and weighing the relevant statutory factors, the Court finds that late claim relief is warranted.

Finally, however, to the extent movant requests that the Court “deem timely” the false arrest and battery causes of action initially asserted in Claim No. 141813 (Affirm in Supp, ¶ 1), the Court lacks authority to grant such relief *nunc pro tunc* (see CCA § 10 [6]; *Byrne v State of New York*, 104 AD2d 782, 783 [2d Dept 1984], *lv denied* 64 NY2d 607 [1985]). Thus, if movant wishes to pursue these two causes of action, he must file and serve a new claim in accordance with the directives below. Accordingly, it is hereby

ORDERED that the application for late claim relief is GRANTED with respect to the first and second causes of action in the proposed claim; and it is further

ORDERED that, within sixty (60) days of the date of filing of this Decision and Order, movant shall file with the office of the Clerk of the Court a claim limited to the first and second causes of action in the proposed claim; and within that same period, movant shall serve a copy of the claim upon the Office of the Attorney General personally or by certified mail, return receipt requested. In serving and filing the claim, movant is directed to follow all of the requirements of the Court of Claims Act, including section 11-a regarding the filing fee, and the Uniform Rules of the Court of Claims.

October 11, 2024
Albany, New York


ZAINAB A. CHAUDHRY
Judge of the Court of Claims

Papers Considered:

1. Notice of Motion and Affirmation of Alison Frick, Esq., in Support of Motion, with Exhibits A-C; and
2. Affirmation of Assistant Attorney General Charles Lim in Opposition to Motion, with Exhibit A.