

Medellin v City of New York
2024 NY Slip Op 35226(U)
January 5, 2024
Supreme Court, Queens County
Docket Number: Index No. 709972/2019
Judge: Chereé A. Buggs
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6short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice
-----X
VICTORIA EMILY MEDELLIN,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT and POLICE OFFICER JOHN DOE,
first and last name being fictitious,

Defendants.

-----X

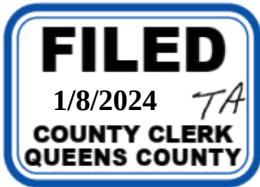
IAS PART 30

Index No.: 709972/2019

Motion Date: 11/6/2023

Motion Cal. No.: 12

Motion Sequence No.: 2



The following efile papers numbered 26-33, 38-40, 44 submitted and considered on this motion by Defendant The City of New York, and The City of New York s/h/a New York City Police Department (hereinafter referred to as “NYPD” or collectively “City”) seeking an Order (1) Pursuant to CPLR 3211(a)(7), dismissing all of Plaintiff’s federal claims pursuant to 42 U.S.C. § 1983, as Plaintiff failed to enumerate and serve named Defendants alleged to be acting under color of law; (2) Pursuant to CPLR 3211(a)(7), dismissing Plaintiff’s claim for negligent hiring, training, retention, and supervision pursuant to state law, as all NYPD police officers were acting within the scope of their employment when lawfully affecting Plaintiff’s arrest; (3) Pursuant to CPLR 3125(c), 1024 and 306(b), dismissing Plaintiff’s complaint in its entirety as against Defendants “JOHN DOES”; (4) Pursuant to CPLR 3211(a)(7), dismissing Plaintiff’s claims for assault and battery under state law for failure to state a cause of action; and (5) Pursuant to CPLR 3211(a)(7), dismissing Plaintiff’s claims for punitive damages as it fails to state a claim for which relief can be granted.

<u>Motion Sequence 2</u>	<u>Papers Numbered</u>
Notice of Motion- Affirmation in Support- Affidavits-Exhibits.....	EF 26-33
Affirmation in Opposition-Affidavits-Exhibits.....	EF 38-40
Affirmation in Reply-Affidavits-Exhibits.....	EF 44

Relevant Factual and Procedural History

This matter originated out of an alleged violation of civil rights and personal injuries sustained by Plaintiff Victoria Emily Medellin (hereinafter “Medellin”) on October 10, 2018, near or around 54-19 108th Street located in Queens, New York, when a police officer arrested Medellin following her escalated argument with her ex-husband and father-in-law. While the police officer was escorting her to the police vehicle, Medellin’s feet were caught in a pot hole and twisted, causing her injury. Medellin asserted that while effecting an arrest during a domestic dispute, NYPD used excessive force causing her severe and permanent injuries. Medellin was two months pregnant at the time, exacerbating her stress and resulting in pregnancy complications.

Medellin served a notice of claim on January 9, 2019, and sat for a 50-h hearing pursuant to General Municipal Law (GML) §50-h, on May 15, 2019. Medellin then commenced the action by filing a summons and complaint on June 7, 2019. The discovery process ensued, including the compliance conferences held on April 6, 2021; January 13, 2022; May 4, 2022, depositions of the parties on August 8, 2022 and October 28, 2022, and the filing of a Note of Issue on March 29, 2023. The City has responded with this motion to dismiss, arguing multiple points for dismissal based on procedural and substantive grounds.

In support of their motion, the City first argues that Medellin’s Federal Claims according to 42 USC §1983 should be dismissed due to Medellin’s failure to name any individual acting under color of law before the statute of limitations expired. The City claims that the statute of limitation for Medellin to amend her complaint expired on May 25, 2022, and that Medellin was well aware of the officers involved 120 days before the expiration date, since the city had submitted documents enumerating the officers involved in her arrest pursuant to the Preliminary Conference Order dated January 26, 2022, and yet Medellin still failed to amend her complaint before the expiration.

City also alleged that Medellin’s negligent hiring, training, retention, and supervision claims should be dismissed since Medellin failed to identify who the alleged officers were which the City negligently hired, supervised, or trained, and that as officers acted within the scope of their employment, negating the specific claims of negligent hiring, training, retention, and supervision

As to the merit of Medellin’s claims for assault and battery, City contended that these claims should be dismissed as there was no intent or wrongful physical contact by the officers during a lawful arrest. They asserted that the force used was reasonable and necessary for the arrest, and any injury the Plaintiff sustained (twisting her ankle) was due to her own actions and not excessive force by the officers.

Further, City asserted that Medellin’s punitive damages claim against them should be dismissed since punitive damages against a municipality are barred as a matter of law under 42 U.S.C. § 1983 and that the Plaintiff’s complaint lacks a proper claim for such damages. Regarding Medellin’s *Monell* claim, (see *Monell v Dept. of Social Servs.*, 436 US 658 [1978]) City argued that it requires a showing of a policy or custom of the municipality leading to a constitutional violation,

which Medellin insufficiently pleaded. They claim that Medellin has not shown a direct causal link between a city policy or custom and the alleged injury. The City's motion further seeks dismissal based on various procedural grounds, including failure to state a cause of action under CPLR § 3211(a)(7), inability to proceed against unnamed individuals like "Police Officers John Doe", and procedural deficiencies under CPLR sections 1024 and 306(b). City also maintained that NYPD is not a suable entity and thus any claims against it should be dismissed

To be clear, Medellin did not file a cross-motion, therefore the papers she submitted will be considered opposition papers. In opposition, Medellin claims that the amendment to add Officer Christopher Valencia (hereinafter "Valencia") as a defendant is timely and appropriate under CPLR 203(f) and CPLR 3025(b) at this juncture, as the defendants have identified him as the responsible officer, and that the amendment is deemed necessary for complete relief in the action. Medellin then claimed that the force used by Valencia was excessive and unreasonable given that she was compliant and posed no resistance during the arrest. Medellin's injuries, including a twisted and fractured ankle, are cited as evidence of the excessive force used. Medellin maintained Valencia's actions constituted assault and battery. The argument is that despite Medellin exhibiting no resistance, Valencia aggressively moved her to the squad car, failing to notice her leg was lodged in a hole, leading to severe injuries. Valencia pleaded for the Court's recognition of these actions as civil assault and battery under 42 USC §1983, emphasizing the objective unreasonableness of the force used, considering Medellin's compliance and resulting severe injuries. Medellin then argues against dismissal, suggesting that further discovery, including body camera footage and the Valencia's service record, could further provide a complete picture of the incident. This additional evidence could potentially support her claims of excessive force and improper conduct by Valencia. Medellin argued that this court should liberally grant amendment to her complaint to ensure justice and fairness. Medellin stressed that amendments should be allowed unless there is significant prejudice to the opposing party, which is not the case here.

In reply, City highlight that the Plaintiff failed to oppose several claims for dismissal in their motion, including negligent hiring, malicious prosecution, false arrest, punitive damages, and the dismissal of the NYPD and "John Does." Therefore, they argue these should be dismissed as unopposed. City then reiterated that Medellin's proposed amendment to Valencia is time-barred due to the statute of limitations for federal claims under 42 USC § 1983. They also argue that the amendment is procedurally improper under CPLR 2214(b) and lacks merit, emphasizing that judicial resources should not be wasted on amendments without underlying merit. City further asserted that Medellin cannot utilize the relation-back doctrine to include Valencia as he was not "united in interest" with City nor had any reason to anticipate being named in the lawsuit due to the passing of the statute of limitations. They argued that Medellin has not demonstrated that she made timely efforts to identify the correct party before the statute of limitation expired, or that Valencia should have known of the pending action. City further contend that since there are no viable federal claims, the federal standard of objectively reasonable force does not apply. And, Medellin contributed to her own injury and that any force used by the police was reasonable and within the scope of effectuating an arrest. Regarding the assault and battery claim, City contested that officers are permitted by law to use a certain degree of force to effectuate an arrest. They contended that the Medellin did not

adequately oppose their argument for probable cause for the arrest, and therefore, any physical contact made during the lawful arrest does not constitute assault or battery. Finally, the City addressed the Plaintiff's attempt to assert municipal liability under a *Monell* claim, which they say the Plaintiff failed to plead properly or oppose in their initial motion, thus should be considered abandoned or dismissed.

Law and Application

CPLR 3211 (a) motion to dismiss provides:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

1. a defense is founded upon documentary evidence; or
2. the court has not jurisdiction of the subject matter of the cause of action; or
3. the party asserting the cause of action has not legal capacity to sue; or
4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires; or
5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds; or
6. with respect to a counterclaim, it may not properly be interposed in the action; or
7. the pleading fails to state a cause of action; or...

CPLR 3215 (c) provides:

If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed. A motion by the defendant under this subdivision does not constitute an appearance in the action.

CPLR 3025(b) provides:

Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

CPLR 1024 provides:

A party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly.

CPLR 306(b) provides:

Whenever service is made pursuant to this article by delivery of the summons to an individual, proof of service shall also include, in addition to any other requirement, a description of the person to whom it was so delivered, including, but not limited to, sex, color of skin, hair color, approximate age, approximate weight and height, and other identifying features.

CPLR 203 (f) provides:

A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the standard is whether the pleading states a cause of action and, [i]n considering such a motion, the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*see Houtenbos v Fordune Assn., Inc.*, 200 AD3d 662 [2d Dept 2021]; citing *Sokol v Leader*, 74 AD3d 1180, 1181

[2d Dept 2010]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (see *Silvers v Jamaica Hosp.*, 218 AD3d 817, 818 [2d Dept 2023]; citing *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

First, this court notes that Medellin failed to oppose several claims for dismissal, including negligent hiring, training, retention, and supervision; the federal claims including malicious prosecution, false arrest and imprisonment; punitive damages; the dismissal of "John Does," the NYPD, and the Monell claim. As these were unopposed and pursuant to precedent such as *Josephson LLC v Column Fin., Inc.*, 94 AD3d 479, 480 [1st Dept 2012], these claims are deemed abandoned and are hereby dismissed.

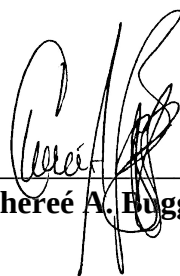
Secondly, despite that a cross motion to amend caption is mentioned in Medellin’s opposing papers, based on the record, no such motion had been filed. Hence this court shall view these sections of Medellin’s paper only in the context of opposition to the City’s motion, and not as cross-motion to amend caption. The remaining part of Medellin’s opposition contains that the force used by the City was not objectively reasonable and that Valencia’s actions constitute assault and battery. Regarding reasonable force, 42 USC § 1983 requires a named state actor, and Medellin failed to name one within the time period of the statute of limitations (see Fed Rules Civ Pro rule 15), despite having the names of the officers involved from the documents submitted by the city pursuant to the order of the preliminary conference, 120 days before the expiration of the statute of limitation. Even if the court choose to entertain this argument. This court further finds that the City did not use unreasonable force when escorting Medellin to the police vehicle, especially when Medellin testified that she was walking willingly and that she was unsure whether the officer was “pushing” her or even behind her when her foot got caught in the pothole.

As for Medellin’s claim that officer Valencia actions constitutes assault and battery, Valencia was not named as a party in this case. Further, under NY Penal §35.30, the officers are permitted to use a degree of force, including utilizing handcuffs, to effectuate an arrest. Restraining Medellin in handcuff and escorting her to the police vehicle does not show “some evidence of force exercised in excess of what is inherent in an arrest” (see *Sylvester v City of New York*, 23 Misc 3d 1139(A) [Sup Ct, NY County 2009]), especially when Medellin testified that she was walking to the police vehicle “willingly”.

Therefore, the motion is granted in its entirety.

This constitute the decision and Order of the Court.

Dated: January 5, 2024



Hon. Chereé A. Buggs, JSC

