

Genduso v City of New York
2024 NY Slip Op 35340(U)
March 28, 2024
Supreme Court, Richmond County
Docket Number: Index No. 750018/2018
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
KIM GENDUSO,

Plaintiff,

Present:

HON. ORLANDO MARRAZZO

v.

CITY OF NEW YORK and OFFICER JONATHAN
GLAZER.,

DECISION AND ORDER

Index. No. 750018/2018

Defendants.

Motion Nos. 005 and 007

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The following e-filed documents listed by NYSCEF as (Motions 005 and 007) document numbers 118-163, 168-169, 171, 189, and 195.

Based upon the foregoing, Defendant's motion is granted in part and denied in part.

Plaintiff's cross-motion is denied in its entirety.

FACTUAL BACKGROUND

This personal injury action arises out of an incident that occurred on January 6, 2017, when Plaintiff was arrested in her residence at 57 Gary Place, Staten Island, New York. Police Officers of The New York City Police Department (hereinafter, "NYPD") responded to a dispute between Ms. Genduso and her tenant. Plaintiff was arrested by Police Officer Jonathan Glazer for, *inter alia*, allegedly resisting arrest. The criminal complaint was subsequently dismissed on motion by the Richmond County District Attorney's Office.

Ms. Genduso commenced this action on March 31, 2018. In the complaint, she asserts the incident caused her to be assaulted, battered, taken to the ground, handcuffed, falsely arrested, and verbally abused by the defendant Police Officer in violation of her state and federal civil rights (see Section 1983 of Title 42 of The United States Code). As

a result, Plaintiff seeks damages for personal injuries she sustained and for property damage resulting from the above-described incident.

Presently before the Court is a motion (Seq. No. 005) filed by the Defendants and a cross motion made by the Plaintiff (Seq. No. 007). Defendants moves for dismissal pursuant to CPLR §3211[a][7], and in the alternative, for summary judgment of the following causes of action: (1) federal *Monell* claims pursuant to 42 USC §1983; (2) claims for negligent hiring, training, retention and supervision pursuant to state law and 42 USC §1983; (3) claim for general negligence pursuant to state law; (4) claim for cruel and unusual punishment pursuant to 42 USC §1983; (5) claims for false arrest and false imprisonment pursuant to state and federal law; and (6) claims pursuant to the 5th and 8th Amendments. Plaintiff cross-moves for summary judgment as to her intentional tort claims for assault and battery as well as her claims for false arrest and imprisonment.

LEGAL STANDARD

Summary judgment is a “drastic remedy” and will only be granted in the absence of any material issues of fact. To prevail on a motion for summary judgment, the movant must make a *prima facie* showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The movant’s initial burden is a heavy one, since on a motion for summary judgment the facts must be viewed in the light most favorable to the non-moving party (*see Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). If the moving party fails to make its *prima facie* showing, the court is required to deny the motion, regardless of the sufficiency of the non-movant’s papers (*see Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). However, if the moving party

meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). Moreover, on a motion for summary judgment, the party opposing the relief is entitled to the benefit of every favorable inference that may be drawn from the pleadings, affidavits, and competing contentions of the parties (*see Nicklas v Tedlen Realty Corp.*, 305 AD2d 385, 386 [2d Dept 2003]).

When dismissal is sought pursuant to CPLR §3211[a][7] for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703-704 [2008]).

DISCUSSION

Defendants move for summary judgment dismissing the complaint. They first argue that the false arrest, false imprisonment, and 42 USC §1983 claims should be dismissed because there was probable cause for the arrest, and they therefore have qualified immunity. Defendants then argue that the negligent hiring and retention claims should be dismissed because the police officers involved acted within the scope of their employment, and that they cannot be held liable under 42 USC §1983 on a *respondeat superior* theory, citing *Monell v. Dept. of Social Services of the City of New York*, 436 US 658 (1978). Defendants also contend that Plaintiff did not demonstrate that the alleged violation of her constitutional rights was caused by an official police policy or custom.

To prevail on a cause of action for false arrest and imprisonment, Plaintiff must demonstrate that Defendants intended to confine her, that Plaintiff was conscious of the confinement and did not consent to it, and that such confinement was not privileged (*De Lourdes Torres v Jones*, 26 NY3d 742 [2016]; *Gill v City of New York*, 146 AD3d 939, 941 [2d Dept. 2017]). Confinement is privileged if it stems from a lawful arrest supported by probable cause (*Jones v City of NY*, 206 AD3d 635 [2d Dept 2022]). Probable cause means that there is information sufficient to support a police officer's reasonable belief that the person to be arrested committed a crime (*People v Guthrie*, 25 NY3d 130 [2015]). In general, information provided by an identified person accusing another of a specific crime is legally sufficient to give a police officer probable cause to arrest the accused (*Williams v City of NY*, 114 AD3d 852 [2d Dept 2014]). However, differences between a plaintiff's and defendant's accounts as to the occurrences preceding the arrest may raise a triable issue of fact as to probable cause ((*MacDonald v Town of Greenburgh*, 112 AD3d 586 [2d Dept 2013])). A court may not weigh the credibility of witnesses on a motion for summary judgment. "The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist" (*Stukas v Streiter*, 83 AD3d 18, 23 [2d Dept 2011]).

Defendants' motion to dismiss is denied with respect to Plaintiff's false arrest and imprisonment claims because they failed to submit sufficient evidence to eliminate any issues of fact with respect probable cause. There are inconsistencies in the deposition testimonies submitted as to what transpired prior to Plaintiff's arrest and why she was arrested. Affording the Plaintiff the benefit of all favorable inferences, a triable issue of fact exists as to whether the officer's conduct was lawful, which precludes an award of

summary judgment in favor of the Defendants (*Luers v City of NY*, 205 AD3d 898, 900 [2d Dept 2022]). For the same reasons, summary judgment cannot be granted for that branch of Defendants' motion dismissing the cause of action alleging violations of 42 USC §1983 (*id.*).

A municipality may not be held liable pursuant to 42 USC § 1983 solely on a theory of respondent superior (*see Monell v New York City Dept. of Social Servs.*, 436 US 658, 691 [1978]). "To hold a municipality liable under section 1983 for the conduct of employees below the policymaking level, a plaintiff must show that the violation of his or her constitutional rights resulted from a municipal custom or policy" (*Vargas v City of New York*, 105 AD3d 834, 837 [2013], citing *Monell v New York City Dept. of Social Servs.*, 436 US at 694; *see Elie v City of New York*, 92 AD3d 716 [2012]). Here, despite the Defendants' contentions to the contrary, the allegations in the complaint sufficiently allege that the City maintained a policy or custom that caused the Plaintiff to be subjected to a denial of her Constitutional rights. Accordingly, the complaint states a cause of action against the City to recover damages for a violation of 42 USC §1983 (*Blake v City of NY*, 148 AD3d 1101, 1104 [2d Dept 2017]).

No claim may proceed against the City for its negligent hiring, retention, supervision or training when the torts allegedly committed by its employees occurred while they were acting within the scope of their employment. The City, as the employer, is liable for such torts under the theory of respondeat superior (*Acosta v City of New York*, 153 AD3d 765 [2d Dept. 2017]). Here, it is undisputed that the police officer's alleged torts occurred during the arrest and detention of the Plaintiff and that his actions were performed in the scope of his employment with the City. Plaintiff does not even assert that the police

officer acted in the way alleged for personal reasons. Accordingly, Plaintiff may not maintain a cause of action for negligent hiring and supervision (*Melendez v City of NY*, 62 Misc 3d 1206[A], 2019 NY Slip Op 50013[U], [Sup Ct, Kings County 2019]).

Plaintiff claims injuries through a violation of her Eighth Amendment right to be free from cruel and unusual punishment. It is well settled that protection under the Eighth Amendment to the United States Constitution “does not apply until after conviction and sentence” (*United States v Walsh*, 194 F3d 37, 47 [2d Cir 1999]). Plaintiff was never convicted nor sentenced as the District Attorney’s Office moved to dismiss the case against the Plaintiff. As such, Plaintiff’s claim for cruel and unusual treatment is dismissed.

Lastly, “a plaintiff seeking damages for an injury resulting from a wrongful arrest and detention may not recover under broad general principles of negligence but must proceed by way of the traditional remedies of false arrest and imprisonment” (*Secard v Department. Of Social Servs. Of County of Nassau*, 204 AD2d 425, 427 [2d Dept 1994]). This bars Plaintiff’s negligence claims as to all defendants.

Briefly turning to Plaintiff’s cross-motion, for same reasons set forth above, triable issues exist regarding Plaintiff’s claims for intentional tort claims for assault and battery as well as her claims for false arrest and imprisonment. Since Plaintiff failed to eliminate the existence of triable issues of fact regarding whether the arrest was supported by probably causes, there are triable issues of fact as to whether any contact occurred during an unlawful arrest (*Sinclair v City of NY*, 153 AD3d 877, 878 [2d Dept 2017]). Since this is not a case where there is no real dispute as to the acts or the proper inferences to be drawn therefrom, Plaintiff’s cross-motion for summary judgment must be denied.

In sum, this case raises triable issues of fact regarding Plaintiff's false arrest and imprisonment claims under state law and federal law. However, Defendants are granted summary judgment dismissing Plaintiff's claims for: (1) negligent hiring, training, retention and supervision; (2) general negligence; and (3) cruel and unusual punishment.

The Court decides the applicability of only those cause of action raised by the movant in Mot. Seq. 005 and rules as follows:

ORDERED, that Defendants' motion is granted to the extent that Plaintiff's cause of action for negligent hiring, training, retention, and supervision is dismissed; and it is further

ORDERED, that Defendants' motion is granted to the extent that Plaintiff's cause of action for general negligence is dismissed; and it is further

ORDERED, that Defendants' motion is granted to the extent that Plaintiff's cause of action for cruel and unusual punishment is dismissed; and it is further

ORDERED, that the remainder of Defendants' motion is denied; and it is further

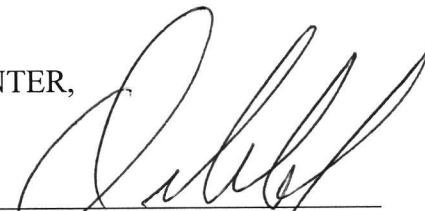
ORDERED, that Plaintiff's cross-motion is denied in its entirety.

This constitutes the Decision and Order of the Court.

Dated:

3/28/24

ENTER,


Hon. Orlando Marrazzo, J.S.C.