SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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KHIRY BENNETT,

Plaintiff,

- v -

CITY OF NEW YORK, RONALD KENNEDY, ROBERT CZAPLINSKI

Defendant.

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INDEX NO. 153501/2023

MOTION DATE 02/20/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion for DISMISSAL.

This matter comes before the court on the Defendants' unopposed motion to dismiss Plaintiff Khiry Bennett's ("Plaintiff") complaint in its entirety pursuant to CPLR § 3211. Defendants seek complete dismissal of Plaintiff's complaint on several grounds: (1) the untimeliness of the filing of the summons and complaint under the applicable statutes of limitations and the notice of claim requirements; (2) the failure to state a cause of action as a result of conclusory allegations and the lack of factual specificity required by CPLR § 2013; (3) the absence of a viable claim for negligent hiring, training, retention, and supervision because Robert Czaplinski acted within the scope of his employment; and (4) the failure to properly plead a federal *Monell* claim by not alleging a municipal policy or custom that caused Plaintiff's injuries. After careful consideration of the affidavit and supporting memorandum of law, and upon the record in its entirety, the court hereby issues the following decision and order.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from an alleged personal injury incident following Plaintiff's arrest on April 14, 2019. Plaintiff served a notice of claim on December 29, 2020, and appeared at a statutory hearing on April 27, 2021, pursuant to GML § 50-h. Subsequently, Plaintiff filed his summons and complaint on April 17, 2023, despite the applicable statute of limitations having expired as of January 20, 2023, when measured against the latest accruing claims following the favorable termination of the underlying criminal proceeding on June 6, 2019. An answer was filed on March 20, 2024, and on November 22, 2024, Defendants filed the present motion to dismiss. The motion is unopposed, and the court, having reviewed the record, now renders its decision.

ARGUMENT

Defendants contend that the complaint must be dismissed because it is both procedurally and substantively deficient. The arguments advanced are threefold. First, Defendants aver that the complaint is untimely filed since the applicable limitations period has lapsed – the three-year period for federal claims and the one-year and ninety-day period under GML for state claims – and Plaintiff failed to serve a notice of claim within the statutory 90-day period. Second, Defendants argue that the complaint suffers from a lack of factual specificity, being composed of bare legal conclusions that do not provide notice to the court or the parties of the underlying transactions or occurrences, in direct contravention of CPLR § 2013 and governing precedent. Third, Defendants contend that the negligent hiring, training, retention, and supervision claim is barred because Defendant Robert Czaplinski was acting within the scope of his employment, and the federal *Monell* claim is fatally deficient because Plaintiff fails to identify any municipal policy or custom that can be causally linked to his injuries.

Defendants assert that when the pleadings are reduced to conclusory statements without the requisite factual underpinnings, dismissal is not only proper but mandated by well-established case law.

DISCUSSION

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court is required to accept all factual allegations within the complaint as true and afford Plaintiff every possible favorable inference, determine whether those allegations state a cognizable legal claim. As established in *Leon v Martinez*, 84 NY2d 83, 87 (1994) and further clarified in *JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 (2015), the pleadings must be given a liberal construction; however, such deference does not extend to bare legal conclusions that lack the necessary factual detail.

The complaint at bar is replete with conclusory assertions that fail to provide the specificity required under CPLR § 2013, as noted in *Godfrey v Spano*, 13 NY3d 358, 373 (2009), and further reiterated in *DiMauro v Metropolitan Suburban Bus Auth*., 105 AD2d 236, 239 (2d Dept 1984), *Fowler v American Lawyer Media*, 306 AD2d 113, 113 (1st Dept 2003), and *Shariff v Murray*, 33 AD3d 688 (2d Dept 2006). In each of these decisions, the Court of Appeals and First and Second Appellate Divisions have made clear that allegations reduced to bare legal conclusions, absent the factual context necessary to apprise the opposing party and the court of the precise nature of the transactions or occurrences, are insufficient to state a cause of action. Here, the record before the court reveals that Plaintiff's complaint, particularly with respect to the alleged municipal policies and purported "arrest quotas," is devoid of the required factual detail and merely reiterates generalized legal conclusions. This deficiency is fatal under the pleading standards articulated in *Schuckman Realty v Marine Midland Bank, N.A*., 244 AD2d 400, 401 (2d Dept 1997) and *O'Riordan v Suffolk Ch., Local No. 852, Civ. Serv. Empls. Assn*., 95 AD2d 800, 800 (2d Dept 1983).

In addition to its failure to meet the pleading standards, the complaint is procedurally flawed on timeliness grounds. "On a motion to dismiss a cause of action pursuant to CPLR

§3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired" (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011][*quoting Island ADC, Inc. v Baldassano Architectural Group, P.C.*, 49 AD3d 815, 816 [2d Dept 2008]); *see also Gravel v Cicola*, 297 AD2d 620 [2d Dept 2002]). "The burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled or was otherwise inapplicable, or whether the action was actually commenced within the period propounded by the defendant" (*QK Healthcare, Inc. v InSource, Inc.*, 108 AD3d 56, 65 [2d Dept 2013]; *see MTGLQ Investor, LP v Wozencraft*, 172 AD3d 644 [1st Dept 2019]; *Epiphany Community Nursery School v Levey*, 171 AD3d 1 [1st Dept 2019]*; J.A. Lee Elec., Inc. v City of New York*, 119 AD3d 652 [2d Dept 2014]). A plaintiff's submissions in response to the motion "must be given their most favorable intendment" (*Benn*, 82 AD3d at 548, *supra quoting Arrington v New York Times Co*., 55 NY2d 433, 442 [1982]).

Here, Defendants have met their burden, and Plaintiff has failed to raise a question of fact as to whether the statute of limitations has been tolled or was otherwise inapplicable. Indeed, the applicable statute of limitations for Plaintiff's state law claims is one year and ninety days under GML § 50-i(1), and for federal claims, a three-year period applies. The accrual date for the latest claims is clearly delineated as the date on which the criminal action terminated favorably for Plaintiff – June 6, 2019 – rendering the complaint untimely when it was filed on April 17, 2023, even after accounting for any applicable COVID tolling. Moreover, Plaintiff's failure to serve a notice of claim within the statutory 90-day period (the notice having been served on December 29, 2020) further invalidates the complaint, as strict compliance with the notice requirement is a condition precedent to initiating a personal injury action against a municipality.

The negligent hiring, training, retention, and supervision claim is similarly doomed. Under the doctrine of respondeat superior, as expounded in *Karoon v New York City Transit Authority*, 241 AD2d 323 (1st Dept 1997) and *Ashley v City of New York*, 7 AD3d 742, 743 (2d Dept 2004), an employer cannot be held liable for such claims when an employee is acting within the scope of employment. Defendant Robert Czaplinski's actions, as acknowledged by the City in its answer, were within the scope of his employment; consequently, any claim based on negligent retention or supervision is properly precluded.

Finally, the federal *Monell* claim fails as a matter of law. As established in *Monell v New York City Dept. of Social Servs*., 436 US 658, 694 (1978) and subsequently in *Ricciuti v N.Y.C. Transit Authority*, 941 F.2d 119, 122 (2d Cir. 1991), a plaintiff seeking to impose municipal liability under 42 U.S.C. § 1983 must demonstrate that a municipal policy or custom is the proximate cause of the alleged constitutional deprivation. Here, the complaint's vague references to alleged policies and practices, without the requisite factual framework to identify a specific municipal policy or to establish a causal nexus between that policy and Plaintiff's injuries, render the claim untenable. The analysis set forth in *Connick v Thompson*, 131 S. Ct. 1350, 1359 (2011), *Harper v City of New York*, 424 Fed. Appx 36, 38 (2d Cir. 2011), and *Dwares v City of New York*, 985 F.2d 94, 100 (2d Cir. 1992), makes it clear that conclusory statements, lacking substantive factual allegations, do not satisfy the pleading requirements for a *Monell* claim. Moreover, in light of *Ashcroft v Iqbal*, 556 US 662, 678 (2009), it is manifest that the complaint's failure to go beyond mere legal assertions necessitates its dismissal.

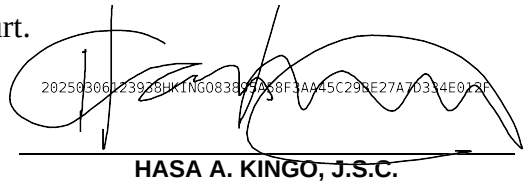
For the reasons stated, and in view of the unopposed nature of Defendants' motion, the court finds that the complaint does not state a cause of action and fails to comply with both the substantive and procedural requirements applicable to the claims asserted. Accordingly, dismissal of the complaint in its entirety is warranted. As such, it is hereby

ORDERED that the Defendants' motion to dismiss is granted; and it is further

ORDERED that Plaintiff's complaint is dismissed in its entirety with prejudice; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of Defendants, dismissing all claims contained in the complaint with prejudice as against them.

This constitutes the decision and order of the court.



3/6/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**		**NON-FINAL DISPOSITION**			
	X	**GRANTED**	**DENIED**	**GRANTED IN PART**		**OTHER**	
APPLICATION:		**SETTLE ORDER**		**SUBMIT ORDER**			
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**		**FIDUCIARY APPOINTMENT**		**REFERENCE**	