

Coury v City of New York

2025 NY Slip Op 31594(U)

April 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 1945/2015

Judge: Patria Frias-Colón

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 25
HON. PATRIA FRIAS-COLÓN, J.S.C.

-----X
Ron Coury,

PLAINTIFF,

-against-

The City of New York, its Agents and/or Employees; Charles Hynes, Kings County District Attorney, its Agents and/or Employees; and the New York City Police Department, its Agents and/or Employees including Arresting Officers “John Doe” and/or “Jane Doe”,

DEFENDANTS.
-----X

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DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and/or 3212(b) of papers considered on review of this motion:

NYSCEF Doc. #s 12-23, 38-39 by Deft. City
NYSCEF Doc. #s 10-37 by Plaintiff

Upon the foregoing cited papers and following oral argument held on July 24, 2024, pursuant to CPLR § 3212 Defendants’ Motion for Summary Judgment is GRANTED in its entirety.

Background

Plaintiff alleges that on April 27, 2013, he was falsely arrested at his place of business, 93 Lounge, Inc. located at 315 93rd Street in Brooklyn, New York¹. Plaintiff obtained a Worker’s Compensation insurance policy on January 4, 2013, which was paid one year in advance. However, the policy was cancelled effective April 21, 2013². On April 27, 2013, during an inspection of the premises, it was determined that Plaintiff was operating the establishment without valid insurance coverage and was arrested³.

Plaintiff commenced the instant action asserting causes of action for false arrest, malicious prosecution, abuse of process, negligence, and violation of civil rights under 42 U.S.C. § 1983. The causes of action sounding in false arrest and violation of civil rights were previously dismissed by Order dated October 12, 2018⁴.

¹ NYSCEF Doc. #1.

² NYSCEF Doc. #22.

³ NYSCEF Doc. #32.

⁴ NYSCEF Doc. #21.

Discussion

A party seeking summary judgment bears the burden of establishing, through admissible evidence, a *prima facie* entitlement to judgment as a matter of law by demonstrating the absence of any material issue of fact. See *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728 (2014) (citing *Alvarez v Prospect Hosp.*, 68 N.Y.2d 320 [1986]). If this burden is not met, the motion must be denied, regardless of the sufficiency of the opposing papers “regardless of the sufficiency of the opposing papers.” *Id.* (citing *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499 [2012]). “A motion for summary judgment is a drastic remedy that should be granted only where there is no clear triable issue of fact presented.” *Marino v. Jamison*, 189 A.D.3d 1021 (2d Dept. 2020).

Malicious Prosecution

To establish a claim for malicious prosecution, a plaintiff must demonstrate: (1) the initiation or continuation of a criminal proceeding, (2) its termination in plaintiff's favor, (3) lack of probable cause, and (4) actual malice. *Broughton v. State of New York*, 37 N.Y.2d 451, 456 (1975). Probable cause consists of such facts and circumstances as would leave a reasonably prudent person in like circumstances to believe plaintiff guilty. *Colon v. City of New York*, 60 N.Y.2d 78, 82 (1983) (Citations omitted). Failure to establish any one element is fatal to the claim. See *Covert v. County of Westchester*, 202 A.D.2d 384 (2d Dept. 1994).

While it is undisputed that the criminal proceedings were terminated in Plaintiff's favor on October 1, 2014, Plaintiff has failed to raise a triable issue of fact as to the existence of probable cause. Although the criminal case resolved in Plaintiff's favor on October 1, 2014⁵, the evidence demonstrates that as of April 26, 2013, Plaintiff's Worker's Compensation policy had been cancelled⁶, and this information was relayed to the NYPD by Inspector Ismael Correa of the Workers' Compensation Board Bureau of Compliance. When the NYPD officer went to the subject location, the subsequent arrest was made based on that information and upon observing five employees actively working at the premises, constituting a violation of the applicable code punishable as a Class E felony⁷.

Plaintiff's contention that he was unaware of the cancellation, and that the arrest was orchestrated to humiliate him, even if true, would not support a finding of malicious prosecution. Furthermore, Plaintiff has not submitted competent evidence of actual malice. As such, the malicious prosecution claim is dismissed.

Abuse of Process

⁵ NYSCEF Doc. #37.

⁶ NYSCEF Doc. #22.

⁷ Failure to secure the payment of compensation for five or less employees within a twelve-month period shall constitute a misdemeanor, and is punishable by a fine of not less than one thousand nor more than five thousand dollars. Failure to secure the payment of compensation for more than five employees within a twelve-month period shall constitute a class E felony, and is punishable by a fine of not less than five thousand dollars nor more than fifty thousand dollars in addition to any other penalties otherwise provided by law. N.Y. Workers' Comp. Law § 52 (Consol., Lexis Advance through 2025 released Chapters 1-49, 61-113).

Plaintiff's cause of action for abuse of process is likewise dismissed. Pursuant to General Municipal Law § 50-e, a notice of claim must be served within 90 days of the accrual of the claim and must include each cause of action the plaintiff intends to assert. Plaintiff failed to include a claim for abuse of process in his Notice of Claim. New theories of liability not contained therein may not be asserted subsequently. *See Scott v. City of New York*, 40 A.D.3d 408 (1st Dept. 2007); *Mazzilli v. City of New York*, 154 A.D.2d 355 (2d Dept. 1989).

Plaintiff's reliance on his testimony at a General Municipal Law § 50-h hearing to cure the defect is unavailing. A cause of action, not pled in the notice of claim, cannot be inferred from the other causes of action that were in fact pled nor may Plaintiff rely on his testimony at his General Municipal Law §50-h hearing to rectify any deficiencies in the notice *Mazzilli*, 154 A.D.2d at 357; *Scott*, 40 A.D.3d at 410. Finl, new theories of liability or substantive changes to facts are not technical in nature and are not permitted as amendments under the GML. *See Robinson v. City of New York*, 2016 NY Slip Op 03156 (2d Dept 2016); *Mahase*, 3 A.D.3d at 411; *Barksdale v. N.Y. City Transit Auth.*, 294 A.D.2d 210, 211 (1st Dept 2002).

Accordingly, the claim for abuse of process is dismissed.

Negligence

Plaintiff's general negligence claims, including those for negligent evaluation, administration, supervision, and investigation, must be dismissed. There is no cognizable cause of action in New York for negligent investigation of a crime by police officers. *Coyne v. State*, 120 A.D.2d 769, 770 (3d Dept. 1986). A governmental entity cannot be held liable for negligence in the performance of a governmental function, including police and fire-fighting activity. *Id.* Further, because the arresting police officer was acting within the scope of his employment⁸, Plaintiff may not assert separate claims for negligent hiring or supervision. *See Karoon v. New York City Transit Authority*, 659 N.Y.S.2d 27 (1st Dept. 1997); *Neiger v. City of New York*, 72 A.D.3d 633 (2d Dept. 2010); *Kourtalis v. City*, 191 A.D.2d 480 (2d Dept. 1993).

As such, these causes of action are dismissed.

Claims against the NYPD

Plaintiff's claims against the New York City Police Department are dismissed on the ground that the NYPD is not a suable entity. Pursuant to Chapter 17, § 396 of the New York City Charter, actions must be brought against the City of New York and not its individual agencies. *Metwally v. City of N.Y.*, 215 A.D.3d 820, 823, (2d Dept 2023).


Conclusion

⁸ NYSCEF Doc. #14 at pg.12 ¶12-pg.13 ¶3.

Defendants have met their *prima facie* burden of demonstrating entitlement to judgment as a matter of law. Plaintiff failed to raise a triable issue of fact as to any of the remaining claims. Therefore, Defendants' motion for summary judgment is granted and the complaint is dismissed with prejudice.

This constitutes the Decision and Order of the Court.

Date: April 25, 2025
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.