

Vargas v City of New York

2025 NY Slip Op 33178(U)

August 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 516797/2020

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
Rolando Vargas,

PLAINTIFF,

-against-

The City of New York and John Does-Police
Officers as yet unidentified,

DEFENDANTS.
-----X

Index # 516797/2020
Cal. # 48 Mot. Seq. # 3

DECISION/ORDER

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

NYSCEF Doc. #s 37-56 by Defendants
NYSCEF Doc. #s 60-61 by Plaintiff

Upon the foregoing cited papers and after oral argument on September 4, 2024, pursuant to CPLR §§ 3212, 3211(a)(7) and 3125, Defendant The City of New York’s (“City”) motion for summary judgment and dismissing Plaintiff’s complaint is DENIED.

BACKGROUND

This action arises from Plaintiff’s arrest on September 22, 2019, near Halsey Street in Kings County.¹ Police responded to 911 calls reporting a fight in which a bottle was allegedly thrown.² Charles Gunter, the complainant, reported to officers that Plaintiff had thrown a bottle at him.³ Relying on Mr. Gunter’s account, officers arrested Plaintiff for “putting someone in fear of their safety.”⁴ Plaintiff was subsequently charged with menacing in the third degree and harassment in the second degree.⁵

Plaintiff commenced this action asserting causes of action including false arrest and imprisonment, negligent hiring and retention, intentional and negligent infliction of emotional distress, malicious prosecution, federal civil rights claims under 42 U.S.C. § 1983, and punitive damages.⁶ By stipulation, most claims were discontinued, leaving only false arrest/false imprisonment and malicious prosecution.⁷

The City argues summary judgment should be granted because probable cause existed to

¹ NYSCEF Doc. #s 40 and 41.

² NYSCEF Doc. #s 38 at p. 1; 61 at p. 1; and 49.

³ NYSCEF Doc. #s 38 at pp. 1-2; 50; and 51.

⁴ NYSCEF Doc. #s 38 at p. 2; 46 at p. 23:22-25; and 52.

⁵ NYSCEF Doc. #s 38 at p. 3; and 53.

⁶ NYSCEF Doc. # 41.

⁷ NYSCEF Doc. # 48.

arrest and charge Plaintiff. It relies on the complainant's 911 call, his statements at the scene, the officers' observations, and the criminal court complaint.⁸ Plaintiff counters that triable issues of fact exist because multiple eyewitnesses contradicted Mr. Gunter's version before Plaintiff was arrested, raising doubts as to probable cause.⁹

STANDARD OF REVIEW

Summary Judgment

A movant bears the burden of establishing, *prima facie*, entitlement to judgment as a matter of law through admissible evidence demonstrating the absence of material factual disputes. *See* CPLR 3212(b); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980); *Korn v. Korn*, 135 A.D.3d 1023, 1024 (3d Dept. 2016). Failure to make this showing requires denial of the motion, regardless of the sufficiency of opposition. *Winegrad v. N.Y.U. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985).

If the movant satisfies this burden, the nonmovant must produce evidence in admissible form raising triable issues of fact. *See* CPLR 3212; *Alvarez*, 68 N.Y.2d at 324; *Zuckerman*, 49 N.Y.2d at 562. Conclusory or speculative assertions are insufficient. *Banco Popular N.A. v. Victory Taxi Mgmt.*, 1 N.Y.3d 381, 383 (2004). On summary judgment, evidence is viewed in the light most favorable to the nonmovant, with all favorable inferences drawn. *Fortune v. Raritan Bldg. Servs. Corp.*, 175 A.D.3d 469, 470 (2d Dept. 2019); *Emigrant Bank v. Drimmer*, 171 A.D.3d 1132, 1134 (2d Dept. 2019).

Dismissal pursuant to CPLR § 3211(a)(7)

On a motion to dismiss, the complaint is liberally construed, allegations are accepted as true, and plaintiffs are afforded every favorable inference. *Cortlandt St. Recovery Corp. v. Bonderman*, 31 N.Y.3d 30, 38 (2018). The sole inquiry is whether the facts alleged, if proven, fit within any cognizable legal theory. *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11 (2005).

“Unlike a motion for summary judgment where the court searches the record and assesses the sufficiency of the parties’ evidence, on a motion to dismiss the court merely examines the adequacy of the pleadings.” *Davis v. Boehm*, 24 N.Y.3d 262 (2014). The “ultimate question is whether, accepting the allegations and affording these inferences, plaintiff can succeed upon any reasonable view of the facts stated.” *Perez v. Y & M Transportation Corp.*, 196 N.Y.S.3d 145 (2d Dept. 2023), quoting *Doe v. Bloomberg L.P.*, 36 N.Y.3d 450 (2021). However, “dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017); *Pinnacle Capital, LLC v. O’Bleanis*, 214 A.D.3d 913, 915 (2d Dept. 2023).

⁸ NYSCEF Doc. # 39 at p. 8.

⁹ NYSCEF Doc. # 60 at pp. 5-9.

DISCUSSION

a. False Arrest, False Imprisonment, and Malicious Prosecution claims

Based on Mr. Gunter's account of the incident and complaint against the Plaintiff, City Defendants argue that officers had probable cause for Plaintiff's arrest.¹⁰ In support of their motion, the City Defendants submitted, among other things, EBT transcript of Plaintiff and EBT of arresting Officer Perry, body worn camera footage, the arrest report, the complaint report, and the criminal court file.¹¹ Plaintiff argues that the record clearly indicates triable issues of fact as to these claims, specifically that there were other witnesses that claimed Plaintiff did not throw any bottle, calling Mr. Gunter's account into question.¹²

To establish false arrest or imprisonment, Plaintiff must show: (1) intent to confine, (2) awareness of confinement, (3) lack of consent, and (4) confinement not otherwise privileged. *Metwally v. City of New York*, 215 A.D.3d 820 (2d Dept. 2023) (quoting *Luers v. City of New York*, 205 A.D.3d 898 [2d Dept. 2022]). Malicious prosecution requires, in addition, that the proceeding was initiated without probable cause and terminated favorably to Plaintiff. Probable cause is a complete defense to both claims. *Okunubi v. City of New York*, 109 A.D.3d 888 (2d Dept. 2013). Probable cause consists of such facts and circumstances that would lead a reasonably prudent person under similar circumstances to believe the plaintiff is guilty. *Luers v. City of New York*, 205 A.D.3d at 899; *Jones v. City of New York*, 206 A.D.3d 635, 638 (2d Dept. 2022), *lv to appeal denied*, 39 N.Y.3d 970 (2022). Probable cause "is a question of law to be decided by the court only where there is no real dispute as to the facts or the proper inferences to be drawn." *Sloane v. City of New York*, 168 A.D.3d 1015 (2d Dept. 2019) (quoting *Diederich v. Nyack Hosp.*, 49 A.D.3d 491 [2d Dept. 2008]).

Generally, an identified citizen's accusation provides sufficient probable cause to arrest. *Rapuzzi v. City of New York*, 186 A.D.3d 1548 (2d Dept. 2020). Such an accusation becomes insufficient only if there exist "materially impeaching circumstances" requiring further inquiry. *Silverstein v. New York City Police Dept.*, 167 A.D.3d 961 (2d Dept. 2018). A mere denial by the accused is not enough. *Medina v. City of New York*, 102 A.D.3d 101 (2d Dept. 2012).

Here, the City failed to establish its *prima facie* entitlement to judgment. The record, including body-worn camera footage and deposition testimony, shows that officers were aware of (1) conflicting eyewitness accounts undermining Mr. Gunter's credibility,¹³ and (2) a preexisting acrimonious relationship between Mr. Gunter's family and Plaintiff.¹⁴ These circumstances could

¹⁰ NYSCEF Doc. # 39 at pp. 7-13.

¹¹ NYSCEF Doc. #s 45-46; 50-53.

¹² NYSCEF Doc. # 60 at pp. 3-8.

¹³ The body camera footage depicts multiple officers discussing Mr. Gunter's claim that a bottle was thrown at him and stating said claim "doesn't make sense" (NYSCEF Doc. # 50); *See Sital v. City of New York*, 60 A.D.3d 465 (1st Dept. 2009) (where the Court found a rational jury could have found that there was no probable cause for plaintiff's arrest because the investigating officer had doubts about the complaining victim's credibility).

¹⁴ The body camera footage depicts an officer speaking with a witness and stating "I know you guys have been having back and forth forever" when speaking about the two families involved in the incident (NYSCEF Doc. # 50); Compare *Silverstein*, 167 A.D.3d at 963 ("The inference to be drawn from the record is that the police had no reason to know of a longstanding acrimonious relationship between the plaintiff and the infant defendant's family...").

reasonably have required officers to question Mr. Gunter's report before making an arrest. Because such evidence raises factual issues as to whether probable cause existed for both the arrest and subsequent prosecution, summary judgment is inappropriate.

The City Defendants' motion for summary judgment dismissing Plaintiff's remaining claims for false arrest, false imprisonment, and malicious prosecution is denied in its entirety.

This constitutes the Decision and Order of the Court.

Date: August 21, 2025
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.