

**Nowell v City of New York**

2025 NY Slip Op 33281(U)

September 3, 2025

Supreme Court, New York County

Docket Number: Index No. 155308/2021

Judge: Ariel D. Chesler

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARIEL D. CHESLER PART 62M**

*Justice*

-----X

MALCOLM NOWELL,

Plaintiff,

- v -

CITY OF NEW YORK, AND JOHN OR JANE DOE 1-10

Defendant.

-----X

INDEX NO. 155308/2021

MOTION DATE 04/03/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

In this proceeding, defendant, the City of New York (“the City”), seeks an Order (1) pursuant to CPLR 3211(a)(7) and General Municipal Law § 50-e and § 50-i, dismissing all of plaintiff’s state causes of action (first, third, fifth, seventh, ninth, eleventh, thirteenth, fifteenth, sixteenth, nineteenth, twenty-second and twenty-third) for failure to serve a notice of claim; (2) dismissing all state causes of action pursuant to General Municipal Law § 50-i and CPLR § 217-a for failing to commence an action within one year and ninety days after the happening of the event; (3) pursuant to CPLR 214(5) and CPLR 3211(a)(7) dismissing all of plaintiff’s civil right claims (second, fourth, sixth, eighth, tenth, twelfth, fourteenth, seventeenth, eighteenth, twentieth, and twenty-first) because plaintiff failed to name any individual defendants and is now time-barred from doing so; and (4) pursuant to CPLR 214(5) and CPLR 3211(a)(7) dismissing plaintiff’s Monell claim (twenty-fourth cause of action) because this cause of action is time-barred and inadequately pled.

## FACTUAL AND PROCEDURAL HISTORY

This action arises out of an incident that allegedly occurred on February 18, 2017, at approximately 3:30 a.m., around the intersection of West 207th Street and Sherman Avenue in the County, City, and State of New York. Plaintiff and a group of approximately five friends were exiting a nightclub on Sherman Street when they were set upon and allegedly violently assaulted by a crowd of approximately thirty people. Plaintiff attempted to flee the scene in his car when a member of the crowd, allegedly attempting to prevent plaintiff from leaving, jumped in front of plaintiff's car and was injured as a result. The Complaint alleges that the police then forcibly placed him under arrest "despite the fact that they knew he had not engaged in any criminal activity." The Complaint does not specifically state what plaintiff was charged with or how much time he spent in jail but alleges that all charges were dismissed against in on April 10, 2019. In sum and substance, plaintiff alleges he was unlawfully stopped, confronted, assaulted, questioned, searched, arrested and detained by the NYPD because of his race, religion, national origin, or other improper characteristic for adverse police action. Plaintiff commenced this action against the City by filing his Summons and Complaint on June 2, 2021. On August 19, 2021, the City served its Answer. To date, there is no Notice of Claim filed and plaintiff has not sought leave to file a late Notice of Claim.

## DISCUSSION

In support of the instant motion, the City argues that all of plaintiff's state law claims should be dismissed as plaintiff never served a Notice of Claim, and his time to seek leave to file a late Notice of Claim has expired. In support of this argument, the City submits an Affirmation of Adam Karp, Esq., an attorney who is employed by the Comptroller of the City of New York as the Director of Tort Claims in the Bureau of Labor and Adjustment, who affirmed that no

Notice of Claim was ever served upon the Comptroller's Office in connection with this action. The City also points to the Affirmation of Jerry Bradshaw, Unit Chief of the Communications & Docketing Services Unit in the Operations Division of the Law Department of the City of New York, wherein he affirms that no Notice of Claim was ever served upon the Law Department.

In addition, the City argues plaintiff's state law claims should also be dismissed because the action was not commenced within one year and 90 days of the date of accrual. The City points out that plaintiff's Summons and Complaint was filed on June 2, 2021, and even giving the plaintiff the benefit of the COVID-19 toll, the one year and 90 days statute of limitations expired on February 23, 2021. As such, the City argues Complaint was several months late and all the state law claims must be dismissed. Furthermore, the City argues all of plaintiff's federal civil rights claims must be dismissed as time-barred, as plaintiff failed to name any individual defendants within the required three-year statute of limitations. Lastly, the City asserts that plaintiff's Monell claim cannot survive independently of all other claims, is time-barred, and is insufficiently pled.

In opposition to the motion, plaintiff argues that all claims were timely filed under the New York City Administrative Code which was enacted on April 25, 2021. Plaintiff also argues that New York City Administrative Code eliminates the requirement that a claimant must file a notice of claim to commence an action. As such, plaintiff contends that the Complaint was timely filed, warranting denial of the City's motion to dismiss.

On a motion to dismiss pursuant to CPLR § 3211(a)(7) the Court "must take the allegations asserted within a plaintiff's complaint as true and accord plaintiff the benefit of every possible inference, determining only whether the facts as alleged fit within any cognizable legal theory." (*Samiento v. World Yacht Inc.*, 10 NY3d 70, 79 [2008]; *see also* CPLR § 3026.

Furthermore, a court may freely consider affidavits submitted by plaintiff to remedy any defects in the complaint. (*Leon v. Martinez*, 84 NY2d 83, 88 [1994]). The Court must determine “whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977]). However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” (*Myers v. Schneiderman*, 30 NY3d 1, 11 [2017] [internal citations omitted]).

### **State Law Claims**

General Municipal Law § 50-e requires a notice of claim in an action in a public corporation be served within ninety days after the claim arises. “While General Municipal Law § 50-e(5) vests courts with discretion to permit late filing of a notice of claim, ‘[t]he extensions shall not exceed the time limited for the commencement of an action...against the public corporation’ (*Hall v. City of New York*, 1 AD3d 254 [1<sup>st</sup> Dept 2003]).

Chapter Eight of the New York City Administrative Code, by its explicit language, applies only to claims that originated on and subsequent to April 25, 2021 (*see* L.L. 2021/048, section 3, Int. No. 2243-A [April 25, 2021]). Plaintiff’s claims occurred before the effective date, and thus, cannot be governed by Chapter 8 of the New York City Administrative Code.

Accordingly, the plaintiff failed to timely file a notice of claim on or before July 9, 2019, and is now precluded from filing a notice of claim against the City. As such, plaintiff’s state law claims against the City must be dismissed.

### **Federal Civil Rights Claims**

“Parties are not to resort to the “Jane Doe” procedure unless they exercise due diligence, prior to the running of the statute of limitations, to identify the defendant by name and,

despite such efforts, are unable to do so” (*Bumpus v. New York City Transit Authority*, 66 AD3d 26, 29 [2d Dept 2009]). “Any failure to exercise due diligence to ascertain the “Jane Doe’s” name subjects the complaint to dismissal as to that party” (*id.* at 30; *see also Holmes v. City of New York*, 132 AD3d 952, 954 [2d Dept 2015][action dismissed where there was “no indication in the record that the plaintiffs engaged in any pre-action disclosure or made any Freedom of Information Law Requests,” or “sought assistance from either the Criminal Court or Supreme Court to learn the identities of the individual officers before the statute of limitations had run”]).

Here, the statute of limitations for federal civil claims is 3 years, so plaintiff would be time-barred from naming any individual defendants. Plaintiff has not even filed a motion to amend the Complaint from “John Does” or “Jane Does” 1-10, and did not address this argument in their opposition papers. The only argument plaintiff raised was that all claims were timely filed. As such, plaintiff’s federal claims (second, fourth, sixth, tenth, twelfth, fourteenth, seventeenth, eighteenth, twentieth, and twenty-first) are dismissed as against the individual defendants.

### **Monell Claim against the City**

Pursuant to 42 U.S.C § 1983, a plaintiff may maintain an action against governmental actors for, inter alia, false arrest and malicious prosecution in violation of the law and Constitution of the United States” (*Crooks*, 189 AD3d at 771). However, “the government itself cannot be liable for false arrest or malicious prosecution under 42 U.S.C. § 1983 unless an official government policy, custom or widespread practice caused the violation of the plaintiff’s constitutional rights” (*De Lourdes Torres*, 26 NY3d at 762). “Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread

Here, plaintiff alleges the alleged deprivation of his constitutional rights was the result of the City's customs and/or policies but fails to plead the existence of an official policy or custom (*see* NYSCEF Doc. No. 14, ¶ 209-213). More specifically, plaintiff fails to identify the municipal custom and practice which he alleges existed and which resulted in his arrest (*Pang Hung Leung v. City of New York*, AD2d 10, 11 [1<sup>st</sup> Dept 1995] [“Broad and conclusory statements, and the wholesale failure to allege facts of the offending conduct alleged, are insufficient to state a claim under section 1983”]; [*Bryant v. City of New York*, 188 AD2d 445 [2d Dept 1992] [“Given the complete absence of any factual allegations in the complaint regarding the alleged “policies” of the municipal defendants which led to the officers’ conduct, or evidencing their approval or “ratification” of this conduct, the plaintiffs’ causes of action against these defendants pursuant to 42 U.S.C §1983 were properly dismissed”]. Thus, plaintiff failed to plead a Monell claim.

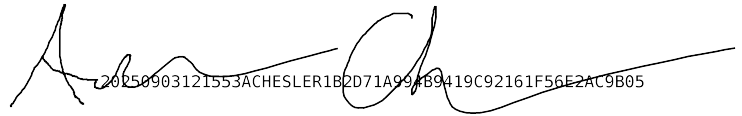
Accordingly, it is hereby

**ORDERED**, that the City's motion for an Order dismissing all of plaintiff's state causes of action (first, third, fifth, seventh, ninth, eleventh, thirteenth, fifteenth, sixteenth, nineteenth, twenty-second and twenty-third) is granted; and it is further

**ORDERED**, that the City's motion for an Order dismissing all of plaintiff's civil rights claims (second, fourth, sixth, eighth, tenth, twelfth, fourteenth, seventeenth, eighteenth, twentieth and twenty-first) is granted; and it is further

**ORDERED**, that the City's motion dismissing plaintiff's Monell claim (twenty-fourth cause of action) is granted.

This constitutes the Decision and Order of this Court.



9/3/2025

DATE

ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: