

Cruz v City of New York

2025 NY Slip Op 33738(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 451063/2020

Judge: Ariel D. Chesler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

MIGUEL CRUZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT OFFICER THOMAS KETCHAM, SHIELD
NO. 23642, POLICE OFFICERS JOHN DOES 1, 2, 3, ETC.
(THE NAME JOHN DOE BEING FICTITIOUS AS THE
TRUE NAMES OF SAID OFFICERS ARE CURRENTLY
NOT KNOWN), ALL OF WHOM ARE SUED IN THEIR
INDIVIDUAL CAPACITIES,

Defendant.

-----X

INDEX NO. 451063/2020
MOTION DATE 01/29/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this motion, Plaintiff seeks leave to amend the complaint to insert the true names of the John Doe defendants as NYPD Officer James McHugh (Shield No.26905) and NYPD Sergeant Scott Burton (Shield No. 728), deeming the amended complaint as served on the appearing defendants, and permitting service on the newly added defendants.

This action concerns claims arising from Plaintiff's arrest in November 2016. The action was commenced in February 2019 and sets forth claims under the Federal and State Constitutions. The matter was initially commenced in Bronx County and transferred to New York County in August 2019. A case scheduling order was not issued by the Court until March 31, 2021. Between March 2022 and August 2023, the Court ordered Defendants to respond to

Plaintiff's March 2022 discovery demands, including producing the names of the John Doe defendants, seven times.

Ultimately, during the deposition of Officer Thomas Ketcham on February 14, 2024 Plaintiff learned the true identities of John Does 1 and 2. Specifically, Defendant Ketcham testified that James McHugh was his assigned partner during the arrest of Plaintiff Cruz and was involved in the discussion regarding the arrest and/or the charge against Mr. Cruz. Defendant Ketcham also testified that former-Sergeant Scott Burton appeared on the scene at Defendant Ketcham's request and, after hearing the "whole story" from Officers Ketcham and McHugh stated, "That's good enough for an arrest," and, "Place him in custody."

In October 2024, the Court ordered the City to produce both Officer McHugh and Sergeant Burton for depositions, which were scheduled for February 2025 (see NSYCEF Doc 30). Plaintiff now seeks to amend the complaint to add their names.

Plaintiff argues that the motion should be granted because Defendants should not be able to benefit from their own willful misconduct in not responding to discovery demands. Plaintiff notes that Defendants had the names of the officers but chose not to disclose them until two years after Plaintiff demanded their names. Plaintiff adds that he diligently sought the identities of the John Doe Defendants in a timely manner.

CPLR § 3025(b) permits a party to amend or supplement a pleading "at any time by leave of court" and provides that that "[l]eave shall be freely given upon such terms as may be just." Notably, "motions for leave to amend pleadings should be freely granted . . . absent prejudice or surprise resulting therefrom . . . , unless the proposed amendment is palpably insufficient or patently devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]).

Plaintiff insists that the proposed amendment has merit, and that Defendants will not be prejudiced were the motion granted. Specifically, Plaintiff notes that Defendants will not be prejudiced or surprised as the original complaint referenced John Doe Defendants, and the Defendants had five years to share their names. Plaintiff also asserts that he can amend the complaint after the statute of limitations under the “relation back” doctrine.

In opposition, Defendants contend that the amendment lacks merit because the statute of limitations on the federal claims expired before the request to amend, and because the limitations period on the state claims expire before the initial complaint was filed.

Defendants next assert that the relation back doctrine does not apply. In this regard, Defendants claim that the proposed defendants are not united in interest with the existing defendants, that the proposed defendants had no reason to know that an action would have been brought against them, and that Plaintiff failed to show how they made diligent efforts to identify the intended parties prior to the expiration of the statute of limitations.

In reply, Plaintiff notes that all of its state and federal claims were timely. Plaintiff also asserts that he diligently sought the identities of the intended defendants. Specifically, Plaintiff pointed out the case scheduling order is issued by the Court and not controlled by Plaintiff. Plaintiff also detailed the numerous efforts he made to learn the officers’ identities.

Here, Plaintiff has demonstrated the merits of the proposed amendments, and at the least that they are not palpably insufficient or devoid of merit. Indeed, Plaintiff showed that the two officers were involved with Plaintiff’s arrest. Plaintiff also convincingly explained the reasons for the delay in learning the names in that the Defendants failed to produce the names for years requiring numerous orders from the Court.

With regard to the “relation back” doctrine, the doctrine focuses on the notice and prejudice to the added party. Here, there is no dispute that the allegations against the proposed officer Defendants arose out of the same occurrence as those against the existing Defendants (*see Nemeth v. K-Tooling*, 40 NY3d 405, 413 [2023]; *Buran v. Coupal*, 87 N.Y.2d 173, 178 [1995]).

To determine whether this second prong of the relation back test is met, we look to whether the parties’ interest “in the subject-matter is such that they stand or fall together and that judgment against one will similarly affect the other” (*Nemeth*, 40 NY3d at 415 [citation omitted]). Parties are considered united in interest where one party is vicariously liable for the other, but this is not a prerequisite to the doctrine (*Nemeth*, 40 NY3d at 415).

Here, it could be said that the proposed officer Defendants are united in interest with the current Defendants because the claims also concern the arrest of Plaintiff and the claims will stand or fall together. It could also be said that the fact that the City is not liable under a theory of vicarious liability or respondeat superior for any judgment against the individual officers is not dispositive. Notably, “[t]he reality as observed in practice . . . is that the City and police officers have a practical unity of interest. The practice is for the City to pay any officers damages in almost all Section 1983 cases. New York City has a statutory obligation to indemnify individual policer officers for their tortious conduct” (*see DaCosta v. City of New York*, 296 F.Supp.3d 569, 586 [EDNY 2017]). However, the First Department has consistently held that there is no unity of interest in these circumstances (*see Diaz v. City of New York*, 160 AD3d 457, 458 [1st Dept 2018]).

As to the third prong, the issue is whether the new party should have known that, but for a mistake, they would have been named in the original pleading. First, this is not a case where application of the doctrine rewards the amending party's litigation tactics (*Nemeth*, 40 NY3d at

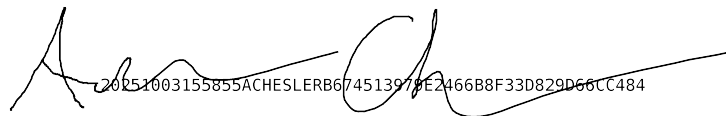
414). Yet, fatally here, the controlling First Department jurisprudence requires plaintiffs to exercise due diligence in identifying unknown officers prior to expiration of the limitations period (*see Diaz, supra* at 458; *see also Burbano v. New York City*, 172 AD3d 575 [1st Dept 2019]). While Plaintiff made many efforts to the learn the officers’ names and is rightly frustrated by the Defendants’ discovery delays, Plaintiff demonstrates no such efforts prior to the limitations period ending.

Although, given the foregoing, the motion must be denied, it seems to the Court that this recurring issue must be taken up, perhaps by the Legislature. Indeed, in the view of the Court, fairness to all – Plaintiffs like the one in this case, and potential police officer Defendants – a mechanism should exist to identify officers involved in arrests swiftly and voluntarily upon the filing of a suit such as this one. Such a mechanism will ensure that Plaintiffs can name all proper Defendants, and will in turn ensure that all Defendants are timely notified and served with a complaint.

Accordingly, it is hereby

ORDERED that the motion is denied.

This constitutes the Decision and Order of this Court.



20251003155855ACHESLERB67451397FE2466B8F33D829D66CC484

10/3/2025
DATE

ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE