

**Allah v City of New York**

2025 NY Slip Op 34490(U)

July 7, 2025

Supreme Court, Bronx County

Docket Number: Index No. 33408-2019E

Judge: Myrna Socorro

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E # 002

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART IA33**

-----X  
**Lordikim Allah,**

**Plaintiff,**

**-against-**

**City of New York, Police Officer Jonathan Benedict  
(Shield # 7783), Undercover Police Officer  
(Shield #274),**

**Defendants.**  
-----X

**Index No. 33408-2019E  
Motion Seq. No 2**

**DECISION AND ORDER  
Hon. Myrna Socorro, J.S.C.**

Recitation as required by CPLR §2219 of the papers filed and read in defendants’ motion sequence no. 2, seeking dismissal of plaintiff’s claims, marked submitted on January 29, 2025:

Papers	NYSCEF Doc. No.
Notice of Motion for Summary Judgment, Affirmation in Support and Exhibits	# 29-62
Affirmation in Opposition and Exhibits	# 65-73
Affirmation in Reply	

Motion by the City of New York and Police Officer Jonathan Benedict (Shield #7783) (hereafter “City”), for an order seeking dismissal and/or summary judgment of plaintiff’s claims, is decided as follows:

This action stems from the plaintiff’s arrest on November 3, 2017, at 1307 Pugsley Avenue, Bronx, New York (“Subject Premises”). In his deposition, plaintiff testified the Subject Premises was a commercial property with two floors: the ground level which contained a recording studio, and the basement level, which acted as his residence for approximately two years up to the date of the arrest. Plaintiff continued that on the date of his arrest, he was in the back room the ground level recording studio, which contained no doors or windows, and was informed by a woman on the premises that there was a commotion in the reception area of the studio. According to his testimony, plaintiff then left the room and encountered multiple police officers, who placed him under arrest and conducted a search of the Subject Premises.

On November 3, 2017, Officer Benedict was conducting an undercover operation at the Subject Premises, wherein an undercover officer knocked on the front door of the location and proceeded to enter. Once inside, the undercover officer communicated to the field team he had made a positive agreement for prostitution, and indicated to the team to move in. Officer Benedict then entered and conducted a search for the undercover officer during which he encountered a female who was apprehended for prostitution. Plaintiff was subsequently arrested for permitting prostitution to occur in his establishment.

Plaintiff commenced the instant action on November 12, 2019. The City now moves for summary judgment, pursuant to CPLR §3211(a)(5) and §3212, on plaintiff's claims for false arrest and false imprisonment under federal and state law; pursuant to CPLR §3211(a)(7) and §3212 for summary judgment on plaintiff's malicious prosecution claims, *Monell* claims, and negligent hiring, training, retention, and supervision claims; and pursuant to CPLR §3211(a)(8), §3215©, and §306-b, dismissing all claims against "undercover police officer" because service was not completed within 120 days of the complaint being filed.

Plaintiff partially opposes the City's application. Plaintiff consents to the dismissal of his claim for negligent hiring, training, retention, and supervision and to the dismissal of all claims against the undercover police officer in this action. As such, these claims are dismissed on consent of plaintiff.

Further, plaintiff states his affirmation in opposition relates exclusively to his false arrest and false imprisonment claim pursuant to 42 U.S.C. § 1983, and his state law claims for malicious prosecution.

Failure to oppose parts of defendant's motion for summary judgment deem those claims abandoned. *Josephson LLC v. Column Fin., Inc.*, 94 AD3d 479 [1st Dept 2012]. Therefore, plaintiff's *Monell* claims are dismissed as unopposed, as plaintiff fails to raise any argument in their papers opposing said branch of defendant's motion.

### **Summary Judgment Standard of Review**

The court's function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility. *Genesis Merchant Partners LP v Gilbride, Tusa, Last & Spellane LLC*, 157 AD3d 479 [1st Dept 2018]; *Meredian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508; 894 NYS 2d 422 [1st Dept 2010].

Summary judgment is a drastic remedy and is to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact. See CPLR § 3212[b]; *Friends of Thayer Lake LLC v. Brown*, 27 NY3d 1039; 33 NYS 3d 853 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]. The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]. If the movant fails to make such prima face showing then the motion must be denied regardless of the sufficiency of the opposing papers. *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY 2d 851; 487 NYS 2d 316 (1985).

Once the movant has made a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. See *Zuckerman v City of New York*, 49 NY2d 557 [1980];

Alvarez v Prospect Hosp., 68 NY 2d 320; 508 NYS 2d 923 [1986]; and *Pemberton v New York City Tr. Auth.*, 304 AD2d 340 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment. See *Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381 [2004].

### **Plaintiff's Claims for False Arrest and False Imprisonment**

In support of their motion to dismiss plaintiff's claims, City argues there was probable cause for the arresting officer to arrest plaintiff for permitting prostitution on his premises based on the undercover operation the conducted by the officers.

In opposition, plaintiff argues there was a lack of probable cause for his arrest for several reasons. First, plaintiff argues the arresting officer's identifying information is entirely missing from the record, and therefore it is impossible to ascertain whether he obtained a reasonable belief that plaintiff was in the process committing a criminal offense. Second, plaintiff argues there is no evidence supporting the allegation that he was aware of the prostitution that was occurring on the Subject Premises. Plaintiff avers the City has failed to set forth a single fact to demonstrate that he was aware the female apprehended on the Subject Premises intended to engage in prostitution.

When analyzing §1983 claims for false arrests, Courts generally apply the law of the state in which the arrest occurred. *Davis v Rodriguez*, 364 F3d 424 [2d Cir 2004]. In New York State, to establish a claim for false arrest and false imprisonment, a plaintiff must establish: (1) he was intentionally confined by the defendant; (2) plaintiff was aware of the confinement; (3) plaintiff did not consent to the confinement; and (4) the confinement was not otherwise privileged. *Broughton v. State of New York*, 37 NY 2d 451, 456 (1975). Further, probable cause is an absolute defense to a false arrest claim. *Jagely v. Couch*, 439 F3d 149 [2d Cir 2006].

A showing of probable cause requires information sufficient to establish a reasonable belief that an offense has been or is being committed. *People v. Bigelow*, 66 NY2d 417, 423 [1985].

While the application of handcuffs is not dispositive of whether the detention of a suspect rises to the level of an arrest, "there is no question that the use of handcuffs is a drastic limitation on the liberty of the detainee and, in the absence of probable cause, may only be resorted to where strongly justified by the circumstances." *People v. Acevedo*, 179 AD2d 465 [1st Dept 1992]. When the circumstances are such that detainees do not resist arrest, are not armed and dangerous, and there is no risk of a suspect fleeing, Courts have held the suspect is arrested upon the application of handcuffs. *Id.* at 466; *People v. Blanding*, 116 AD3d 498 [1st Dept 2014]; *People v. Perez*, 116 AD3d 498 [1st Dept 2014].

The Court notes City's arguments regarding probable cause to arrest plaintiff for violations of criminal Weapon in the Fourth Degree, criminal possession of a firearm, criminal possession of a controlled substance in the Fifth Degree, criminal possession of a controlled substance in the Seventh Degree, and possession of ammunition. However, the controlled substances and firearms found at the Subject Premises were found after plaintiff was placed in handcuffs. The record does not contain any evidence supporting that the plaintiff was armed or dangerous, that he resisted his arrest, or that he intended to flee. Therefore, like in *Blanding*, here, the arrest occurred when the plaintiff was placed in handcuffs. 116 AD3d at 498. Accordingly, the present inquiry for the Court to determine is whether there was probable cause to arrest plaintiff for violation of Penal Law 230.40, Permitting Prostitution, not whether probable cause existed for the arrest of contraband found after he was placed in handcuffs.

Upon review of the motion papers, the Court does not find City has tendered sufficient evidence to demonstrate the absence of any material issue of fact as to whether there was probable cause to arrest plaintiff, and therefore they are not entitled to summary judgment as to plaintiff's false arrest and false imprisonment claims. *Winegrad v N.Y. Univ. Med. Ctr*, 64 NY 2d 851; 487 NYS 2d 316 (1985). Plaintiff testified during his deposition that the room he was in when the officers arrived had no windows and no doors, and he was unaware of the commotion in the entry way of the building. Additionally, a review of City's Statement of Facts reveals the undercover officer made a positive agreement for prostitution with the woman who was apprehended on the Subject Premises for engaging in prostitution (NYSCEF Doc. 30, Page 3).

Importantly, the Court notes the "Backpage.com" Advertisement that the undercover officer was allegedly responding to at the Subject Premises has not been memorialized in the evidence of the instant motion. Moreover, the record is devoid of any of the communication of the undercover officer responding to the aforementioned advertisement. Finally, the record does not contain a copy of the criminal complaint which launched the undercover investigation conducted by the Bronx Vice team.

Therefore, this Court finds a triable issue of fact as to whether the arresting officer maintained probable cause to arrest plaintiff for violating Penal Law 230.40, Permitting Prostitution.

Accordingly, City Defendant's motion to dismiss plaintiff's claim for false arrest and false imprisonment is **denied**.

#### **Plaintiff's State Law Malicious Prosecution Claims**

In support of this branch of their motion, City argues plaintiff cannot meet the burden of establishing actual malice and therefore his claim must fail. City continues that they have proffered sufficient evidence to show probable cause, and therefore are entitled to dismissal of plaintiff's state and

federal malicious prosecution claims.

Plaintiff argues in opposition, that Defendants have failed to establish a *prima facie* entitlement to summary judgment on his claims of malicious prosecution because of conflicting versions of events proffered from himself and the police department regarding the circumstances of his arrest. He continues there is sufficient evidence of actual malice, there was a lack of probable cause for plaintiff's arrest, there was an illegal search of the Subject Premises conducted, the prosecution was supported by illegally seized evidence, and the alleged false claims of 269 Oxycotin pills recovered from the premises included in the Superseding information signed by P.O. Benedict.

Plaintiff additionally argues there is evidence of P.O. Benedict and Undercover Police Officer (Shield #274) attempts to prolong his prosecution, as they signed their supporting depositions on February 14, 2018, six days before the prosecution filed the Superseding Information. At the time the Superseding Information was filed, the weapon and ammunition chargers were already dismissed.

To recover for the tort of malicious prosecution, a plaintiff must establish: (1) that the City commenced a criminal proceeding; "[2] that it was terminated in favor of the accused; [3] that it lacked probable cause; and [4] that the proceeding was brought out of actual malice." (*Cantalino v. Danner*, 96 N.Y.2d 391, 394 (2001).

To show that a criminal proceeding as brought out of actual malice, a plaintiff must demonstrate that defendant commenced the proceeding due to wrong or improper motive. *Du Chateau v. Metro-North Commuter R. Co.*, 253 AD2d 128, 132 [1st Dept. 1999].

The Court reiterates that plaintiff only opposes the dismissal of his state law malicious prosecution claims. As such, plaintiff's federal law malicious prosecution claim is dismissed as unopposed.

Further, upon review of the arguments and motion papers, the Court finds that the record does not support the underlying criminal proceeding was brought out of actual malice. Plaintiffs' allegations of the attempts of Officer Benedict and Undercover Officer to prolong his prosecution are not sufficiently substantiated as to raise a triable issue of fact as to actual malice. Moreover, the Court has considered plaintiff's additional argument as to whether actual malice existed and finds them unavailing. Accordingly, Defendants are entitled to summary judgment on plaintiff's state law malicious prosecution claims. *Burgos-Lugos v. City of New York*, 146 AD3d 660, 662 [1st Dept. 2017]. Accordingly, Defendants' motion for summary judgment as to plaintiff's claim for state law malicious prosecution is **granted**.

Accordingly, based on the above, it is hereby,

**ORDERED**, that branch of City Defendants' motion for summary judgment on plaintiff's federal and state law claims for false arrest and false imprisonment is **DENIED**; and it is further

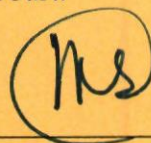
**ORDERED**, that branch of City Defendants' motion for summary judgement as to plaintiff's state law malicious prosecution claims is **GRANTED**; and it is further

**ORDERED**, that branch of City Defendants' motion to dismiss plaintiff's *Monell* claims, his claim for negligent hiring, training, retention, and supervision, and to the dismissal of all claims against the undercover police officer in this action, is **GRANTED**; and it is further

**ORDERED**, that movant shall serve a copy of this Decision and Order with Notice of Entry within thirty (30) days from the date of this Decision and Order.

This constitutes the Decision and Order of the Court.

Dated: July 7, 2025



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**Hon. Myrna Socorro, J.S.C.**