

Rhodes v Atlantic Auto Spa Corp.

2025 NY Slip Op 34786(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 509516/2023

Judge: Inga M. O'Neale

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KINGS COUNTY CLERK
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2025 DEC 12 A 9:33

At City Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 12 day of December, 2025

Present: HON. INGA M. O'NEALE
Justice, Supreme Court

ASSATA RHODES,

Index No.: 509516/2023

Plaintiff(s),

-against-

ATLANTIC AUTO SPA CORP. et al,
Defendant(s).

	<u>NYSCEF Doc #</u>
The following papers numbered 1 to _____ read on this motion	<u>Papers Numbered</u>
Notice of Motion-Order to Show Cause And Affidavits (Affirmations) Annexed _____	98-102, 104-114
Answering Affidavit (Affirmation) _____	119, 121-125, 126-128, 129-131
Reply Affidavit (Affirmation) _____	115-116
Other _____	103, 120, 129

Upon the foregoing papers, defendants the City of New York, Bradford S. Lander, Ryon N. Malcolm, Keechant L. Sewell and Eric Leroy Adams (collectively, the "City") move for an order, pursuant to CPLR 3211 (a)(7), dismissing the complaint as asserted against them. Plaintiff Assata Rhodes (plaintiff) cross-moves for an order: (1) denying the City's motion to dismiss; (2) pursuant to CPLR 3024(b), to strike any scandalous or prejudicial matter; (3) pursuant to CPLR 3126 and 22 NYCRR 130-1.1, imposing sanctions against the City including, but not limited to, preclusion, an adverse inference and/or striking the City's answer; or, in the alternative, (4) pursuant to CPLR 3124, compelling the City to comply with the Preliminary Conference Order; and (5) scheduling an inquest on damages as against the non-municipal defaulting defendants Atlantic Auto Spa Corp. and Michael A. Rodriguez.

Background

The instant action arises from the December 3, 2022 ticketing, towing and impounding of plaintiff's motor vehicle. In the complaint, plaintiff asserts causes of action sounding in unlawful search, unlawful seizure, breach of fiduciary duty, replevin, conversion, unjust enrichment and

respondent superior (NYSCEF Doc #69). Plaintiff seeks to recover \$715,910.76 based upon a self-imposed Fee Assessment (*id.*).

Analysis

“On a motion to dismiss for failure to state a cause of action under CPLR 3211 (a)(7), ‘a court must accept the facts as alleged in a complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’ ” (*Kefalas v Pappas*, 226 AD3d 757, 759-60 [2d Dept 2024], quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). “However, such favorable treatment is not limitless, and dismissal is warranted if the plaintiff fails to assert facts in support of the claim. Allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” (*Kefalas*, 226 AD3d at 759-60; internal citation and quotation marks omitted).

With respect to those portions of the City’s motion seeking to dismiss plaintiff’s causes of action sounding in unlawful search and unlawful seizure, under the circumstances of this case (*see generally People v Padilla*, 21 NY3d 268, 272 [2013]; *People v Sullivan*, 29 NY2d 69, 72-77 [1971]; *People e v King*, 188 AD3d 721, 722 [2d Dept 2020]; *People v Nelson*, 127 Misc2d 583, 584-586 [Sup Ct, Kings County, 1985]), the Court finds that the City’s actions taken to perform an inventory search of plaintiff’s vehicle were reasonable to ascertain the vehicle identification number which was covered ((NYSCEF Doc #99, Affirmation in Support of Motion, ¶ 1; NYSCEF Doc #105, Affirmation in Opposition to motion and in Support of Cross-Motion, ¶ 20; NYSCEF Doc #58, #61, #69, #97, #99). Notably, the towing of plaintiff’s vehicle occurred after New York City Police Department officers responded to a 311 complaint that “VEHICLE WAS PARKED WITH FORGE[D] PLATES COVERED VIN AND NO REGISTRATION” (NYSCEF Doc #97, page 23). Indeed, the NYPD Property Clerk invoice also indicates, among other things, that:

“FRONT LICENSE PLATE WHITE WITH BLACK LETTERING STATING ‘NO DRIVER LICENSE OR INSURANCE REQUIRED. PRIVATE. NOT FOR COMMERCE USE – PRIVATE MODE OF TRAVEL.’ REAR LICENSE PLATE WHITE BACKGROUND WITH BLACK LETTERING THAT SAYS, ‘DOT EXEMPT’ UNDERNEATH IT SAYS ‘PR1V4T3, FOR NON-COMMERCIAL USE ONLY’” (NYSCEF Doc #97, page 25).

As such, the court grants that portion of the City's motion to dismiss plaintiff's causes of action sounding in unlawful search and unlawful seizure as asserted against it.

With respect to that portion of the City's motion seeking to dismiss plaintiff's cause of action sounding in breach of fiduciary duty, the Court notes that "[t]he elements of a breach of fiduciary duty cause of action are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct, which elements must be pleaded with the particularity required by CPLR 3016 (b)" (*Stinner v Epstein*, 162 AD3d 819, 820 [2d Dept 2018]). "... [T]he actual relationship between the parties determines the existence of a fiduciary duty" (*Carbon Capital Mgt., LLC v American Express Co.*, 88 AD3d 933, 938 [2d Dept 2011]). Here, plaintiff failed to demonstrate the existence of a fiduciary relationship between herself and the City or to allege sufficient facts to support an element of misconduct by the City (*see generally People v King*, 188 AD3d at 722). In this regard, that portion of the City's motion to dismiss plaintiff's cause of action sounding in breach of fiduciary duty as asserted against it is granted.

With respect to those portions of the City's motion seeking to dismiss plaintiff's causes of action sounding conversion and replevin, the Court notes that "[a] conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. By contrast, replevin, a provisional remedy which may be used as an incident to an action to recover a chattel, requires a plaintiff to establish that the defendant is in possession of certain property of which the plaintiff claims to have a superior right ..." (*Agudas Chasidei Chabad of United States v Simpson*, 239 AD3d 796, 797-98 [2d Dept 2025], internal citations and quotation marks removed). For the reasons previously stated regarding the towing and impounding of plaintiff's vehicle, the Court finds that plaintiff has failed to state a cause of action for conversion. As such, plaintiff's cause of action sounding in conversion as against the City is dismissed. Turning to plaintiff's cause of action sounding in replevin, the Court notes that plaintiff has regained possession of the subject vehicle. Indeed, plaintiff's vehicle along with the plates described by plaintiff as "two white, metal sheets, with characters, in black, printed upon them ..." (NYSCEF Doc #69) were lawfully transferred to the NYPD Property Clerk (*see generally Gonzalez v Port Auth. Of NY & NJ*, 119 AD2d 628, 629 [2d Dept 1986]). There is no indication that the forged license plates were unlawfully disposed of by the City (*see id.*). In this regard, no cause of action for replevin lies against the City.

With respect to plaintiff’s cause of action sounding in unjust enrichment, the Court notes that plaintiff has not alleged that the City was unjustly enriched by the towing and impounding of the subject vehicle.

With respect to plaintiff’s remaining claim sounding in respondeat superior, the Court notes that vicarious liability pursuant to the doctrine of respondeat superior must attach to an underlying cause of action (*see generally Rateau v City of New York*, 2009 WL 3148765, * 15, US Dist Ct, ED NY, Matsumoto, J., Sept. 29, 2009, No. 06-CV-4751 [KAM][CLP]). In this regard, plaintiff’s claim sounding in respondeat superior is likewise dismissed.

In light of the foregoing, the Court denies those portions of plaintiff’s cross-motion against the City. In any event, plaintiff failed to demonstrate that the City engaged in willful or contumacious behavior or acted in bad faith in response to court-ordered discovery to warrant the striking of their pleadings or an adverse inference (*see Borchkhadze v McMahon*, 235 AD3d 944, 946 [2d Dept 2025]). In the exercise of the Court’s discretion, the Court declines to award sanctions against the City (*see* 22 NYCRR 130-1.1; *see generally Finley v Finley*, 233 AD3d 654, 655 [2d Dept 2024]).

With respect to that portion of plaintiff’s cross-motion seeking to schedule an inquest as against the defaulting defendants Atlantic Auto Spa Corp. and Michael A. Rodriguez, that portion of plaintiff’s cross-motion is granted to the extent that an inquest will be held at the time of trial.

In this regard, the caption is hereby amended and shall hereinafter read as follows:

ASSATA RHODES,

Index No.: 509516/2023

Plaintiff(s),

-against-

**ATLANTIC AUTO SPA CORP. and MICHAEL A.
RODRIGUEZ,**

Defendant(s).

As the City is no longer a party to the instant action, the instant action is hereby respectfully overridden and transferred to a randomly assigned IAS Part.

Conclusion

Accordingly, the City’s motion to dismiss the complaint as asserted against the defendants the City of New York, Bradford S. Lander, Ryon M. Malcolm, Keechant L. Sewell and Eric Leroy Adams is granted and the complaint is dismissed as against said defendants only. Those portions of plaintiff’s cross-motion seeking relief as against the City are denied as moot. That portion of plaintiff’s cross-motion seeking to schedule an inquest as against the defaulting defendants Atlantic Auto Spa Corp. and Michael A. Rodriguez is granted to the extent that an inquest will be held at the time of trial. Any relief requested not specifically addressed herein is denied.

The foregoing constitutes the decision and order of the Court.

ENTER:



DEC 08 2025

Hon. Inga M. O’Neale
J.S.C.

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