

Allen v Columbus

2025 NY Slip Op 34896(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 156803/2025

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 156803/2025

DEVON ALLEN, LAUREN CLAUS, and LAUREN BLOCK

MOTION DATE 07/14/2025

Plaintiffs,

MOTION SEQ. NO. 005

- v -

JOSEPH COLUMBUS,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 212, 213, 214, 215, 216, 217, 233, 238, 239, 240, 241

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, Plaintiffs Devon Allen (“Allen”), Lauren Claus (“Claus”) and Lauren Block’s (“Block”) (collectively “Plaintiffs”) motion to dismiss Defendant’s counterclaims is granted.¹

I. Background

Plaintiffs initiated this action pursuant to New York’s Agriculture and Markets Law § 123 seeking monetary and equitable relief after Defendant’s two dogs engaged in multiple episodes of violence towards Plaintiffs’ dogs. On January 4, 2025, Defendant’s dogs attacked Block’s dogs Chuckie and Grover, resulting in Chuckie’s hospitalization and Grover’s death. On May 3, 2025, Defendant’s dogs attacked Claus and Allen’s dog Penny, resulting in Penny’s hospitalization.

¹ On September 4, 2025, this Court stated on the record that the counterclaims were severed pursuant to CPLR 407. On November 6, 2025, the Court issued a written order directing the Clerk of the Court to sever the counterclaims (NYSCEF Doc. 349). It appears that order was never served properly by either party on the Clerk of the Court (*see generally Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* [accessible at the “E-Filing” page on the court’s website]), or the required filing fee was never paid. In any event, whether the severance of the counterclaims was ever properly effectuated is moot by virtue of this Decision and Order dismissing the counterclaims.

Pertinent to this motion, Defendant asserted several counterclaims against Plaintiffs, including a malicious prosecution counterclaim against Allen and Claus, and intentional infliction of emotional distress and civil conspiracy counterclaims against all Plaintiffs. Defendant claims Claus, Allen, and Allen's girlfriend, Anna, conspired to file a false police report with the New York City Police Department ("NYPD) claiming Anna was bit by Defendant's dogs to facilitate Defendant's arrest. Allegedly, the police and District Attorney never acted on the false report. Defendant also claims Plaintiffs encouraged the public to harass Defendant and his family. Plaintiffs move to dismiss the counterclaims.

II. Discussion

A. Standard

When reviewing a motion to dismiss for failure to state a claim, the Court must give the non-movant the benefit of all favorable inferences drawn from the pleadings (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). However, allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

B. Malicious Prosecution

Plaintiffs' motion to dismiss Defendant's malicious prosecution claim is granted. The elements of a malicious prosecution claim include (1) the commencement or continuation of a criminal proceeding by the defendant against the claimant; (2) the termination of the proceeding in favor of the claimant; (3) the absence of probable cause for the proceeding; and (4) actual malice (*see Mendez v City of New York*, 137 AD3d 468, 471 [1st Dept 2016]). It must be alleged that

there was “an entire lack of probable cause in the prior proceeding” and the lack of probable cause must be “patent” (*Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 613-13 [1st Dept 2015]). The Court of Appeals has maintained stringent pleading requirements for malicious prosecution claims to serve as “a buffer...against retaliatory malicious prosecution claims and unending litigation” (*Engel v CBS, Inc.*, 93 NY2d 195, 205 [1999]).

Defendant’s allegations fail to meet the stringent pleading requirements to state a malicious prosecution counterclaim. To the extent Defendant claims the malicious prosecution arises out of this proceeding, this proceeding has not been terminated in Defendant’s favor (*see, e.g. 10 Bethpage Road, LLC v 114 Woodbury Realty, LLC*, 178 AD3d 751, 757 [2d Dept 2019] [counterclaim for malicious prosecution was premature where underlying civil proceeding had not terminated in claimant’s favor]).

To the extent that Defendant bases his malicious prosecution claim on a false statement in a police report, there were never any criminal proceedings commenced based on that statement. As held by the Court of Appeals “[t]he tort of malicious prosecution protects the personal interest of freedom from unjustifiable litigation.... The essence of malicious prosecution is the perversion of proper legal procedures. Thus, it has been held that some sort of prior judicial proceeding is the Sine Qua non of a cause of action in malicious prosecution” (*Broughton v State*, 37 NY2d 451, 457 [1975]). Following *Broughton*, the First Department, along with other Appellate Courts, have dismissed malicious prosecution claims where no criminal proceeding was ever commenced (*see Fleming v Sangster*, 148 AD3d 1798, 1798 [4th Dept 2017]; *see also Haughton v Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 278 AD2d 29, 29-30 [1st Dept 2000] [“because no criminal proceeding was ever commenced against plaintiff, he has no viable claim for malicious prosecution”]). Thus, even accepting as true the allegation that Plaintiffs lied in a police report to

facilitate Defendant's arrest, these allegations fail to state a malicious prosecution claim because no criminal proceeding ever came from the allegedly false report.

C. Intentional Infliction of Emotional Distress & Civil Conspiracy

Defendant's counterclaim for intentional infliction of emotional distress is dismissed. To allege a claim for intentional infliction of emotional distress, there must be facts showing "(i) extreme and outrageous conduct, (ii) an intent to cause—or disregard of a substantial probability of causing—severe emotional distress, (iii) a causal connection between the conduct and the injury, and (iv) the resultant severe emotional distress" (*Lau v S&M Enterprises*, 72 AD3d 497, 498 [1st Dept 2010] citing *Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). "Intentional infliction of emotional distress is a highly disfavored tort under New York law" (*Zuckerbrot v Lande*, 75 Misc3d 269, 299 [Sup. Ct., New York County, 2022] [Cohen, J.] quoting *HC2, Inc. v Delaney*, 510 F.Supp.3d 86, 104 [SDNY 2020]). The elements of a claim for intentional infliction of emotional distress are difficult to satisfy (*Howell, supra* at 122).

To the extent that Defendant claims the allegedly false statement to the police constitutes behavior sufficiently extreme and outrageous to give rise to an intentional infliction of emotional distress claim, the First Department has held otherwise. Specifically, the First Department has held that a "plaintiff's factual allegation that defendant made false statements to the police, causing arrest and incarceration, was insufficient as a matter of law to constitute extreme and outrageous behavior to sustain the claim" (*Matthaus v Hadjedj*, 148 AD3d 425, 525-426 [1st Dept 2017] citing *Slatkin v Lancer Litho Packaging Corp.*, 33 AD3d 421, 422 [1st Dept 2006]).

To the extent Defendant claims intentional infliction of emotional distress arising from the allegation that Plaintiffs "fostered and encouraged public harassment of defendant and his family based on the lies they agreed to tell" this allegation is too vague and conclusory to allege

sufficiently extreme and outrageous behavior required for an intentional infliction of emotional distress claim (see, e.g. *Fleischer v Zhang*, 228 AD3d 484, 485 [1st Dept 2024]; *Drimer v Zionist Organization of America*, 194 AD3d 641, 642 [1st Dept 2021] [conclusory allegation of pattern of harassment insufficient]; *Klein v Metropolitan Child Services, Inc.*, 100 AD3d 708, 711 [2d Dept 2012] [“conclusory assertions are insufficient to set forth a cause of action sounding in the intentional infliction of emotional distress”]). There are no alleged facts as to when or how Plaintiffs specifically fostered and encouraged public harassment which precludes this Court from any finding that the alleged behavior was sufficiently extreme and outrageous.

Because there are no underlying intentional torts, the counterclaim for civil conspiracy must be dismissed (see, e.g. *Platt v Berkowitz*, 203 AD3d 447 [1st Dept 2022]; see also *Abacus Federal Savings Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010] [conspiracy to commit civil rot is not an independent cause of action]; *Linden v Lloyd’s Planning Service, Inc.*, 299 AD2d 217, 218 [1st Dept 2002]).


Accordingly, it is hereby,

ORDERED that Plaintiffs’ motion to dismiss Defendant’s counterclaims is granted in its entirety, and the counterclaims asserted against Plaintiffs are hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

12/19/25
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C..

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: