

DeJesus v Martuscello
2025 NY Slip Op 35578(U)
February 28, 2025
Supreme Court, Albany County
Docket Number: Index No. 911711-24
Judge: Richard M. Platkin
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STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

LUIS DEJESUS,

Plaintiff,

DECISION & ORDER

-against-

DANIEL F. MARTUSCELLO, III,
REGINALD BISHOP, JOHN DOES 1-5,

Defendants.

Index No.: 911711-24

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

UNITED LEGAL FIGHTERS
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Attorney for Daniel F. Martuscello, III
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Hon. Richard M. Platkin, A.J.S.C.

Plaintiff Luis DeJesus brings this civil rights action pursuant to 42 USC § 1983, seeking damages for alleged constitutional violations suffered while incarcerated at Five Points Correctional Facility, where he was assaulted by an unknown inmate on December 1, 2021 (*see* NYSCEF Doc No. 2 [“Complaint”], Part III, ¶¶ 1-2).

Plaintiff alleges that correctional officer defendants named as John Does 1-5 had a duty to protect him from the inmate assault and failed to do so (*see id.*, ¶ 3).

Plaintiff further alleges that defendant Daniel F. Martuscello, III, as the Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”), is responsible for all inmates in his custody within DOCCS, and defendant Reginald Bishop, as the Superintendent of Five Points Correctional Facility, is responsible for all inmates in the custody of his facility (*see id.*, Part II, ¶ 2 [a], [b]). Martuscello and Bishop allegedly were “personally aware of the rampant violence that takes place in the yard at Five Points CF . . . [and] that the guard-to-inmate ratio posed a threat of danger to Plaintiff’s health and safety and failed to adequately address this threat” (*id.*, Part III, ¶ 4).

Plaintiff asserts a single claim of deliberate indifference under the Eighth Amendment to the U.S. Constitution against all defendants (*see id.*, Part IV, ¶¶ 6-8).

In lieu of answering, Martuscello moves under CPLR 3211 (a) (1) and (7) for dismissal of the Complaint as against him, arguing that he was not the DOCCS Commissioner at the time of the alleged assault and, in any event, plaintiff has failed to allege facts establishing his personal involvement in the alleged deprivation of plaintiff’s constitutional rights (*see* NYSCEF Doc No. 6 at 1).

The dismissal motion was filed on January 10, 2025 and made returnable on February 14, 2025, with answering papers due by February 7, 2025 (*see* NYSCEF Doc No. 5; CPLR 2214 [b]). Nonetheless, plaintiff inexplicably filed opposition papers on February 23, 2025, well after the deadline to do so had passed (*see* NYSCEF Doc Nos. 13-14). Defense counsel immediately requested the opportunity to serve a reply if the Court were “inclined to consider Plaintiff’s [untimely] opposition papers” (NYSCEF Doc No. 15).

Given the absence of any excuse for the untimely filing (*see generally* CPLR 2004), the Court declines to consider plaintiff’s opposition papers and grants the motion as unopposed.

In any event, even with the benefit of plaintiff’s belated opposition, the claim against Martuscello must be dismissed. The claim is premised on the allegation that Martuscello was the DOCCS Commissioner at the time of the alleged assault on December 1, 2021 (*see* Complaint, Part II, ¶ 2 [a]), but Martuscello submits documentary evidence showing that he did not assume the role of “Acting Commissioner” until June 2023 and did not become “Commissioner” of DOCCS until May 2024 (*see* NYSCEF Doc No. 8).

Moreover, and in any event, plaintiff has failed to allege any facts tending to establish Martuscello’s personal involvement in the alleged deprivation of plaintiff’s rights (*see Mahoney v City of Albany*, 211 AD3d 1408, 1410-1411 [3d Dept 2022]; *Lewis v Annucci*, 154 AD3d 1025, 1026-1027 [3d Dept 2017]; *see also Tangreti v Bachmann*, 983 F3d 609, 618-619 [2d Cir 2020]). Claims under 42 USC § 1983 cannot be premised upon a *respondeat superior* theory of liability (*see Richardson v Goord*, 347 F3d 431, 435 [2d Cir 2003]; *Ponder v Goord*, 2004 WL 1573880, *3, 2004 US Dist LEXIS 13750, *7 [WD NY May 22, 2004, No. 04-CV-0045E]); *accord Griner v Martuscello*, Sup Ct, Albany County, Nov. 18, 2024, Hartman, J., index No. 905322-24 [NYSCEF Doc No. 9]; *see also Farmer v Brennan*, 511 US 825, 837 [1994]).

Accordingly, it is

ORDERED that defendant Martuscello's motion to dismiss the Complaint is granted;
and it is further

ORDERED that the Complaint is dismissed as against defendant Martuscello; and
finally it is

ORDERED that plaintiff's counsel shall advise the Court regarding the status of this
action as to the remaining defendants no later than **April 1, 2025**.

This constitutes the Decision & Order of the Court, the original of which is being
uploaded to NYSCEF for entry by the Albany County Clerk. Upon such entry, counsel for
defendant Martuscello shall promptly serve notice of entry on all parties entitled thereto.

Dated: Albany, New York
February 28, 2025



RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

NYSCEF Doc Nos. 1-2, 5-9.



02/28/2025