Crawford v New York City
2010 NY Slip Op 34110(U)
June 14, 2010
Supreme Court, New York County
Docket Number: 114790/09
Judge: Karen S. Smith

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KAREN S. SMITH PART 62

Justice

ALGI CRAWFORD,

Plaintiff,

- v -

NEW YORK CITY, NEW YORK CITY POLICE DEPARTMENT, THE NEW YORK COUNTY DISTRICT ATTORNEY, POLICE OFFICER AARON THORNE, SHIELD 17386 and SERGEANT DANIEL MILLER, Individually and as employees of the New York City Police Department,

Defendants.

INDEX NO. 114790/09

MOTION DATE 4/22/10

MOTION SEQ. NO. 001

MOTION CAL. NO.

RECEIVED
JUN 17 2010
MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

The following papers, numbered 1 to 7 were read on this motion to/for Late notice of claim

	PAPERS NUMBERED
Notice of Motion — Affidavits – Exhibits	1
Answering Affidavits — Exhibits	2, 3
Reply	4
Sur-Reply	5
Response to Sur-Reply	6, 7

FILED
JUN 21 2010
NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: ☐ Yes ☒ No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon the foregoing papers, it is ORDERED that plaintiff's motion for leave to serve and file a late notice of claim is granted, as provided more fully below.

Plaintiff alleges that on August 12, 2008, at approximately 11:50 p.m., while he was driving his motor vehicle in Manhattan, he was stopped by the named defendant police officers for a traffic violation. When defendant Police Officer Aaron Thorne approached plaintiff's vehicle, he asked plaintiff to exit and stand at the rear of the vehicle. While Officer Thorne inspected plaintiff's driver's license, proof of insurance and registration documents, defendant Sergeant Daniel Miller conducted a search of the vehicle and discovered a handgun in the glove compartment. Plaintiff was then arrested and arraigned on August 13, 2008. On August 21, 2008, plaintiff was indicted on a charge of Criminal Possession of a Weapon in the Second Degree and released on $5000 bail, "approximately three weeks after his arrest."

On or before October 10, 2008, plaintiff filed an Omnibus Motion which sought suppression of the handgun, contending that the automobile search was illegal. On November 12, 2008, the request for a hearing was granted but, although scheduled, did not go forward because the District Attorney's Office was not prepared to proceed on December 8, 2008, January 14, 2009, February 11, 2009, March 11, 2009 and March 24, 2009. Finally, on March 31, 2009, Hon. Rena K. Uviller, J.S.C., held the hearing and on April 6, 2009 rendered a written decision in which he determined that because the search "was not based upon any reasonable suspicion that [defendant] was engaged in any criminal activity or posed a threat to the officers, the search was unauthorized." Thereafter, on May 4, 2009, plaintiff filed a Notice of Claim with the New York City Police Department, the City of New York and the New York County District Attorney's Office.

It is well-settled that where a plaintiff has failed to file a notice of claim with the City of New York within 90 days after accrual of his or her claim, plaintiff may seek leave to serve a late notice of claim within the time provided for commencement of the action, here 1 year and 90 days. (GML § 50-e[5]). Where an application for leave to serve a late notice of claim is timely brought, the Court's primary consideration is whether the City or its carrier acquired actual knowledge of the essential facts constituting the claim within 90 days or a reasonable time thereafter. (GML § 50-e[5]) In addition, the Court must consider all other relevant facts, including the reason for the delay and any resulting prejudice to respondent. (GML § 50-e[5]).

Here, plaintiff's causes of action for false arrest and imprisonment accrued at the time of his release from custody, which plaintiff estimated at three weeks after his arrest. There is no dispute that the Notice of Claim plaintiff served on May 4, 2009 was served more than 90 days after accrual of these causes of action. As to plaintiff's claim for malicious prosecution, although it did not accrue until the charges against him were dismissed on May 13, 2009, plaintiff filed his Notice of Claim prior to this date but after the Court had ruled that the search of his vehicle was unconstitutional. As the City correctly stated at oral argument on this motion, in those instances in which plaintiff filed his Notice of Claim prior to the claim for malicious prosecution accruing, it is a legal nullity. (*Guzman v City of New York*, 236 AD2d 444 [2d Dept 1997]). While plaintiff initially only sought leave to serve a late notice of claim as to the false arrest and imprisonment claims, and not malicious prosecution, after oral argument on this and other issues, the Court directed the parties to submit supplemental papers. Based on those submissions and the oral argument, the Court treats this application as one for leave to serve late notice of claim as to all relevant claims.

Plaintiff argues that he waited to file a notice of claim until after a determination on the criminal omnibus motion was rendered, since a claim for false arrest and imprisonment would only be viable if no probable cause for the arrest existed. As such, plaintiff contends that it was reasonable to file and serve the notice of claim after Judge Uviller issued her written decision on the subject. Further, plaintiff cites to his omnibus motion and the active involvement of the named police officers in the search and arrest as evidence of actual knowledge of the essential facts underlying the claims and the active involvement of the DA's office in his prosecution provided it with actual knowledge of same. And, since all of those involved remain in the employ of the City of New York or the DA's Office, and the incidents on the date in question have been well-documented during the criminal action, both on the record and in written motion, plaintiff dismisses any argument the defendants might have that the delay here will prejudice them.[1]

The City of New York opposes the motion, contending that plaintiff cannot show that it received notice of the essential facts within 90 days of the accrual of plaintiff's claims for false arrest and imprisonment. The City emphasizes those cases in which courts have found that a police report cannot constitute actual knowledge, citing to *Matter of Felice v Eastport/South Central School District*, 50 AD3d 138 (2d Dept 2008), where the Court found that mere knowledge of an injury via an injury report did not satisfy the "actual knowledge" factor for purposes of a late notice of claim. The City also cites to *Matter of Wright v City of New York*, 2009 NY Slip Op 07856 (2d Dept 2009), in which the Court rejected a police report created by a police officer who responded to the scene of an accident as a basis for finding that the City had actual knowledge, particularly where the report merely described the accident and had no evidence of any alleged negligence by the City. Here, the City likewise argues that there is no evidence in the arrest records, criminal complaint or other documents that would have provided the City with actual knowledge of the claims asserted by plaintiff. In addition, the City contends that plaintiff has failed to meet his burden to establish that it will not suffer prejudice by virtue of the delay, and that plaintiff has failed to offer a reasonable excuse for his delay. The City does not offer any evidence that it would be prejudiced.

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[1] At oral argument, the Court noted and the defendants argued that plaintiff's motion papers were insufficient to support the arguments of plaintiff's counsel, in that supporting documentation and proof was not annexed thereto. In his supplemental submission, to which defendants had an opportunity to respond, plaintiff has remedied those deficiencies, annexing to his motion, *inter alia*, the arrest report, a copy of the omnibus motion in the criminal action, the DA's response to the omnibus motion, two decisions and orders by Hon. Rena K. Uviller, hearing transcripts, and a recommendation for dismissal by the DA's office.

The City's reliance on cases in which police *reports* were alleged to form the basis of its actual knowledge, is inapposite. Plaintiff here is not contending that the police and the City of New York obtained actual knowledge through information contained in police reports. Rather, plaintiff argues that actual knowledge of the underlying facts can be imputed to the City based on the fact that the officers themselves had actual knowledge of the events leading up to his arrest and that it was the conduct of the named officers that forms the basis of his claims. The City, in its response to plaintiff's sur-reply, rejects this argument and treats as incredulous plaintiff's suggestion that the police officers should have known that the subject search and subsequent arrest based on that search was unlawful. Whether the officers should or should not have known that the circumstances of their search of plaintiff's vehicle were unconstitutional is not an issue for determination on this application. However, there is ample case law to support the assertion that where "it is the acts of the police which give rise to the very claim set forth," actual knowledge may be imputed to the City of New York and the New York City Police Department. (*Ragland v New York City Housing Authority*, 201 AD2d 7, 10 [2d Dept 1994], *quoting Caselli v City of New York*, 105 AD2d 251, 255 [2d Dept 1984]; *see also Grullon v City of New York, et al.*, 222 AD2d 257 [1st Dept 1995] [Police and district attorney investigation leading to arrest and prosecution constitutes actual knowledge]; *Justiniano v New York City Housing Authority Police*, 191 AD2d 252 [1st Dept 1993] ["Where, as here, the claim is for false imprisonment and malicious prosecution, such knowledge may be imputed to the municipality through the officers in its employ who made the arrest or initiated the prosecution"]). Here, the criminal complaint and the testimony of Police Officer Aaron Thorne at the March 31, 2009 suppression hearing clearly demonstrate that the police officers who pulled plaintiff over for a traffic violation and conducted a search of his vehicle, then arrested him, had actual knowledge of the essential facts constituting plaintiff's claims.

The New York County District Attorney's Office also opposes the motion, principally on the basis that plaintiff's claims against it lack merit, but also because plaintiff has failed to show that it had actual knowledge of the essential facts underlying the claims within 90 days of their respective accrual.[2] While the DA's Office is correct that there appears to be no evidence that it obtained actual knowledge of the essential facts underlying plaintiff's claims for false arrest and imprisonment within 90 days of plaintiff's release from custody, this is not true with regard to those claims for malicious prosecution. The transcript from the parties' appearance before the Hon. Roger Hayes, J.S.C., on February 22, 2009, and the subsequent hearing before Justice Uviller on March 31, 2009, in addition to the written decision by Justice Uviller dated April 6, 2009, provided the DA's Office with sufficient information to conduct an investigation within 90 days of plaintiff's malicious prosecution claim accruing. While the DA's Office makes numerous arguments regarding the merits of plaintiff's claim and his ability to obtain the ultimate relief sought in his complaint, ordinarily the merits of an action are not to be determined on an application for leave to serve and file late notice of claim, (*Weiss v. City of New York*, 237 AD2d 212 [1st Dept 1997] [Emphasis added]; *see also Strauss v. New York City Transit Authority*, 195 AD2d 322 [1993]), and the Court sees no reason to do so here.

As there appears to be no real prejudice to the parties as a result of the brief delay, and as each of the defendants appear to have obtained actual knowledge of the essential facts within 90 days of the claims accruing, plaintiff's application shall be granted. It should be noted that, while plaintiff has alleged causes of action for false arrest and imprisonment against the DA's Office in his complaint, the proposed notice of claim annexed to his sur-reply memorandum in support of this application does not allege facts that would give rise to such claims. The only facts alleged in the proposed notice of claim relating to the DA's Office is that, with knowledge that the search of plaintiff's car was unlawful, that office continued its prosecution of plaintiff. It is axiomatic that, on an application for leave to serve and file a late notice of claim, the Court may only grant such leave as to those claims actually contained in the proposed notice which, in this case, does not include claims for false arrest or imprisonment against the DA's Office.

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[2] Although the DA's office initially argued that it had never received a notice of claim, plaintiff subsequently provided proof of service and it no longer appears to be an issue.

Accordingly, it is

ORDERED that plaintiff's leave to serve and file late notice of claim is granted as stated herein; it is further

ORDERED that the proposed notice of claim annexed as Exhibit T to plaintiff's sur-reply memorandum shall be deemed served *nunc pro tunc* as of the date of service of this petition, upon filing of proof of service and a copy of this decision and order with notice of entry with the Clerk of the Court (60 Centre Street); it is further

ORDERED that plaintiff serve a copy of this decision and order with notice of entry hereof and upon all parties, upon the Clerk of the Court, and upon the Clerk of the DCM Office (80 Centre Street) within 30 days of entry hereof; it is further

This constitutes the decision and order of the Court.

Dated: June 14, 2010

Hon. Karen S. Smith, J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST