Doumbouya v City of New York
2015 NY Slip Op 31894(U)
September 3, 2015
Supreme Court, Bronx County
Docket Number: 25668/2014E
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX Part 24

IBRAHIM DOUMBOUYA,

Plaintiff,

-against-

THE CITY OF NEW YORK, DETECTIVE MICHAEL MICHILLENA and POLICE OFFICERS JOHN and/or JANE DOE NUMBERS 1 – 10,

Defendants.

25668
Index No. 20087/2014E
Present: Hon. Sharon A. M. Aarons

Recitation, as required by CPLR 2219(a), of the papers considered in the review of motion(s) and/or cross-motion(s), as indicated below:

Papers	**Numbered**
Notice of Motion and Affidavits Annexed	**1**
Answering Affidavits	**2**
Replying Affidavits	**3**

Upon the foregoing papers, the foregoing motion is decided as follows:

Defendants move for dismissal of the complaint pursuant to CPLR 3211(a) (7). Plaintiff submits written opposition. The motion is granted.

Plaintiff seeks damages for malicious prosecution, violation of civil rights pursuant to 42 USC § 1983, violation of civil rights pursuant to 42 USC § 1985(3), attorneys fees pursuant to 42 USC § 1988, and violation of civil rights pursuant to 42 USC § 1981. The underlying criminal action against the plaintiff began on May 8, 2013, when police officers in a marked car observed the plaintiff and others in a parking lot adjacent to Webster Avenue unloading boxes from a truck, and placing the boxes into a van. When the police officers made a u-turn to investigate, one member of the group ran to his car and fled. The officers approached and opened the boxes, which contained cigarettes which lacked tax stamps. Upon making this discovery, the plaintiff and the driver of the truck were arrested. The plaintiff was charged criminally with Possession or Sale of Unstamped Cigarettes, but the charges against him were eventually dismissed.

In support of the motion, the defendants submit the notice of claim, the pleadings, and the plaintiff's 50-h hearing testimony. The defendants allege that no claim for false arrest or malicious prosecution can be stated, as probable cause existed for the plaintiff's arrest and prosecution. Further, the defendants assert that because probable cause to arrest existed, no federal civil rights violation is stated in the complaint.

In opposition, plaintiff relies on his 50-h hearing testimony, in which he asserted that he did not know the contents of the boxes, and that he was merely assisting a friend. Plaintiff argues that probable cause was lacking as the police officers had no basis to open the sealed containers.

In considering the sufficiency of a pleading subject to a motion to dismiss for failure to state a cause of action under CPLR 3211 (a)(7), the court's role to determine whether, accepting as true the factual averments of the complaint, plaintiff can succeed upon any reasonable view of the facts stated. (*Campaign for Fiscal Equity v. State of New York*, 86 N.Y.2d 307, 318, 655 N.E.2d 661, 631 N.Y.S.2d 565 [1995]). On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), all allegations in the complaint are deemed to be true; all reasonable inferences which can be drawn from the complaint and the allegations therein stated shall be resolved in favor of the plaintiff. (*Sokoloff v Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414, 754 N.E.2d 184, 729 N.Y.S.2d 425 [2001]; *Cron v Hargro Fabrics*, 91 N.Y.2d 362, 366, 694 N.E.2d 56, 670 N.Y.S.2d 973 [1998]). The court's role when analyzing the complaint in the context of a motion to dismiss, is to determine whether the facts as alleged fit within any cognizable legal theory. (*Sokoloff v Harriman Estates Development Corp.*, 96 N.Y.2d 409, 414, 754 N.E.2d 184, 729 N.Y.S.2d 425 [2001]). In fact, the law mandates that the court's inquiry be not limited solely to deciding whether plaintiff has pled the cause of action intended, but instead, the court must determine whether the plaintiff has pled any cognizable cause of action. (*Leon v Martinez*, 84 N.Y.2d 83, 88, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994] ["(T)he criterion is whether the proponent of the pleading has a cause of action, not whether

he has stated one."]).

As stated in *Paulos v. City of New York* (122 A.D.3d 815, 2014 N.Y. App. Div. LEXIS 7979, [2d Dept. 2014]):

> "The existence of probable cause constitutes a complete defense to causes of action alleging false arrest, false imprisonment, and malicious prosecution (see Gisondi v Town of Harrison, 72 NY2d 280, 283, 284, 528 NE2d 157, 532 NYS2d 234 [1988]; Holland v City of Poughkeepsie, 90 AD3d 841, 845, 935 NYS2d 583 [2011]; Reape v City of New York, 66 AD3d 755, 756, 886 NYS2d 357 [2009]), including causes of action asserted pursuant to 42 USC § 1983 to recover damages for the deprivation of Fourth Amendment rights under color of state law that are the federal-law equivalents of state common-law false arrest and malicious prosecution causes of action (see Betts v Shearman, 751 F3d 78, 82 [2014]; see also Jenkins v City of New York, 478 F3d 76, 84 [2007] [false arrest]; Jocks v Tavernier, 316 F3d 128, 136 [2003] [malicious prosecution]; Janetka v Dabe, 892 F2d 187, 189 [1989] [malicious prosecution])." (Emphasis added.)

Where the facts leading up to an arrest are undisputed, the existence of probable cause is an issue of law for the court to decide. (*Parkin v Cornell University, Inc.*, 78 N.Y.2d 523, 529, 583 N.E.2d 939, 577 N.Y.S.2d 227 [1991]; *Wyllie v District Atty. of County of Kings*, 2 A.D.3d 714, 718, 770 N.Y.S.2d 110 [2d Dept. 2003]; *Brown v City of New York*, 92 A.D.2d 15, 17, 459 N.Y.S.2d 589 [1st Dept. 1983]).

In the present case, the plaintiff asserts that the search of the boxes was unlawful, and does not deny that he was unloading the boxes, or that they contained "illegal" cigarettes. Reliance on the argument that the search was unlawful, however, has been rejected in civil cases. Instead it has been held that, "[t]he exclusionary rule does not, however, preclude the admission of such evidence in civil proceedings, and thus, evidence suppressed in an underlying criminal matter may be admitted in a civil case, provide probable cause for an arrest, and thereby mandate dismissal of a claim for which probable cause is a complete defense." (*Lee v. City of New York*, 2011 N.Y. Misc. LEXIS 2681, 2011 NY Slip Op 31479(U) [Sup. Ct., N.Y. Co. 2011]). Moreover, even if the alleged

illegality of the search of the boxes would negate the existence of probable cause, a person seeking suppression of evidence obtained as the result of an alleged illegal search must prove standing to challenge the search. (*People v Ramirez-Portoreal*, 88 NY2d 99, 108, 666 NE2d 207, 643 NYS2d 502 [1996]). As the allegations of the complaint establish that the plaintiff had no interest in either the truck or the boxes, he had no standing to contest the search of the boxes and the discovery of the cigarettes, and thus the search of the contraband cigarettes was not unlawful. Plaintiff's claim that probable cause was lacking because the police had no basis to open the boxes must therefore be rejected.

Because probable cause existed for the alleged conduct, the plaintiff cannot assert a claim under common law or federal law. Accordingly, it is hereby

ORDERED that the complaint is dismissed; and it is further

ORDERED defendants' counsel shall serve a copy of this order with notice of entry upon counsel for plaintiff.

Dated: September 3, 2015

SHARON A. M. AARONS, J.S.C.