

Lucas v City of New York
2015 NY Slip Op 32469(U)
December 11, 2015
Supreme Court, Bronx County
Docket Number: 305210-13
Judge: Fernando Tapia
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: Part 13**

JAMES LUCAS

Plaintiff,

v.

Index No. 305210-13

**THE CITY OF NEW YORK and NEW YORK CITY
POLICE DEPARTMENT**

Defendants.

DECISION

This is, inter alia, a false arrest action in which Plaintiff, Mr. James Lucas, was arrested on February 8, 2013, approximately 6 a.m.¹

Movants-Defendants filed their Motion for Summary Judgment to Dismiss under CPLR 3211(a)(7) and (8), along with 3212, stating that they had probable cause, that Plaintiff failed to properly plead a valid *Monell* claim under 42 USC § 1983, and that Plaintiff's excessive force claim was unfounded.

After careful review of the motion papers, this Court **DENIES** Defendants' motion because there are conflicting, specific factual references which raise material issues of fact, thus denying Defendants entitlement to summary judgment. More specifically, triable issues exist regarding whether Defendants had probable cause, based on credibility issues.

¹ Plaintiff claims the following: false arrest, false imprisonment, malicious prosecution, and civil rights violation. He was charged under Penal Law 220.03 ["Criminal possession of a controlled substance in the seventh degree] and P.L. 221.05 ["Unlawful possession of marijuana"]. See Blank Aff. at Exh. I. Plaintiff's criminal case was dismissed for lack of evidence. See Lucas Tr. at p. 53, lines 6-12.

Regarding Defendants' motion to dismiss Plaintiff's Complaint, it is the court's role is to determine whether a complaint states a cause of action. *Frank v. DaimlerChrysler Corp.*, 292 AD2d 118, 121 (App Div, 1st Dept 2002). The standard on a motion to dismiss a pleading for failure to state a cause of action is whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained. *Stendig, Inc. v. Thom Rock Realty Co.*, 163 AD2d 46, 48 (App Div, 1st Dept 1990). The pleadings must be liberally construed. See CPLR 3026; *Leon v. Martinez*, 84 NY2d 83, 87-88 (App Ct 1994). Lastly, the court must accept the facts in the complaint as true, give plaintiffs the benefit of every possible favorable inference, and determine only whether the facts fit into any cognizable theory. *Nonnon v. City of NY*, 9 NY3d 825, 827 (App Ct 2007); *Leon*, 84 NY2d at 87-88.

Regarding summary judgment, the purpose of the motion court is issue-finding, and not issue-determination. *Pirrelli v. Long Island Rail Road*, 226 AD2d 166 (App Div 1st Dept 1996). In addition, a party can prove prima facie entitlement to summary judgment through an attorney affirmation based upon documentary evidence. *Prudential Securities Inc. v. Rovello*, 262 AD2d 172 (App Div, 1st Dept 1999). In turn, the opposing motion must lay bare proof to show that genuine issues of fact exist and that the issue must be shown to be real, because a frivolous issue will preclude summary relief. *Kornfeld v. NRX Technologies, Inc.*, 93 AD2d 772, 773 (App Div, 1st Dept 1983).

A police officer may arrest someone for a crime when she has reasonable cause to believe that such person has committed an offense, whether in his/her presence. See Criminal Procedure

Law § 140.10(1)(a) ["Arrest without a warrant"]. The "reasonable cause" standard is equivalent to the federal "probable cause" one.² *People v. Johnson*, 66 NY2d 398, 402, n.2 (App Ct 1985).

The existence of probable cause is a complete defense to a plaintiff's claims of false arrest, false imprisonment, and malicious prosecution. *Garcia v. City of New York*, 115 AD3d 447-48 (App Div, 1st Dept 2014); *Drayton v. City of New York*, 292 AD2d 182, 183 (App Div, 1st Dept 2001). Lack of probable cause, therefore, is the failure of the arresting officer to make further inquiry when a reasonable person would have done so. *Ramos v. City of New York*, 285 AD2d 284, 297-98 (App Div, 1st Dept 2001); *Sital v. City of New York*, 60 AD3d 465, 466 (App Div, 1st Dept 2009).

Here, Plaintiff rebutted the probable cause presumption by way of his attestations during his 50-h hearing. He attested that the incident occurred approximately 6 a.m. and that the six plainclothes officers stormed into Apartment 4. See Lucas Tr. at p. 20, lines 6-24. Two of the officers jumped on him, and threw him onto the floor. Id. at p. 23, lines 5-15. He further attested that one of the officers put a fire extinguisher to his face, mocking him. Id. at p. 25, lines 10-20. Such occurrences show that material issues of fact exist and as such, Defendants' motion must be denied in its entirety.

This Court agrees with Plaintiff that the factual circumstances that gave way to reasonable cause are in dispute. On the one hand, Plaintiff attested in his EBT that the pills found in his house were blood pressure medication. See Lucas EBT at p. 18, lines 5-12. On the other hand, NYPD attested that it was hydrocodone bitartrate. See Marquez EBT at p. 58, lines 9-24. Although Defendants argued that there was reasonable basis and probable cause for the arrest, see Blank Aff. at ¶ 48, Defendants' claim that the police had probable cause to arrest Plaintiff as

² "Probable cause" is defined as facts and circumstances that would lead a reasonably prudent person in like circumstances to believe the plaintiff to be guilty. *Colon v. City of New York*, 60 NY2d 78, 82 (App Ct 1983).

a matter of law is meritless, based on Plaintiff's attestations. A fact-finder must therefore decide as to which party prevails.

To get recovery for malicious prosecution, a plaintiff must show that a criminal proceeding was commenced, that it was terminated in favor of the accused, that it lacked probable cause, and that the proceeding was brought out of actual malice. *Broughton v. State of New York*, 37 NY2d 451, 457 (App Ct 1975); *Maxwell v. City of New York*, 156 AD2d 28, 33 (App Div, 1st Dept 1990); *Martinez v. City of Schenectady*, 97 NY2d 78 (App Ct 2001).

Furthermore, in order to show that there was malice, the plaintiff does not have to show the defendant's intent to do personal harm, but rather show a reckless or grossly negligent disregard for his/her rights. *Ramos v. City of New York*, AD2d 284, 300 (App Div, 1st Dept 2001). The burden of proof of probable cause in a malicious prosecution matter falls on the plaintiff [unlike in a false imprisonment action, where the burden is on the defendant]. *Broughton*, 37 NY2d at 457; *Present v. Avon Products, Inc.*, 253 AD2d 183, 188 (App Div, 1st Dept 1999).

Here, issues exist regarding the extent of malicious prosecution that Plaintiff suffered. Plaintiff attested at his 50-h hearing that NYPD did not immediately disclose as to why they stormed into his apartment. See Lucas Tr. at p. 41, lines 10-20. Even while he was already being ushered to Central Booking, NYPD did not give any information. This amounts to reckless disregard for Plaintiff's rights.

Under 42 USC § 1983 ["civil action for deprivation of rights"], every person who, under color of any statute, ordinance, regulation, custom, or usage subjects, or causes to be subjected, any U.S. Citizen to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the injured party.

The issue of Defendants' immunity is a triable fact.³ To prevail under § 1983, the plaintiff must show that any custom or policy of the City of New York caused the claimed violation of the plaintiff's constitutional rights. *Delgado v. City of New York*, 86 AD3d 502, 511 (App Div, 1st Dept 2011).

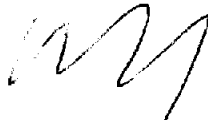
Here, Plaintiff has a viable § 1983 claim, as this Court agrees with Plaintiff's attorney that the totality of the circumstances gravely undermines a finding of probable cause to arrest Plaintiff. See Perez Aff. at ¶ 24. A question of fact exists as to whether NYPD exceeded the scope of the search warrant. Defendants' motion to dismiss is therefore denied because material issues regarding the extent of the City of New York's § 1983 violation exist.

In sum, Defendants failed to prove its prima facie case that it is entitled to summary judgment and dismissal as a matter of law. There are credibility issues of Defendants, as well as factual issues that conflict, when comparing Plaintiff's attestations to Defendants'.

In sum, this Court **DENIES** Defendants' Motion for Dismissal and for Summary Judgment in its entirety. The parties are **DIRECTED** to appear before the Honorable Mitchell J. Danziger in Room 707 on **Monday, December 14, 2015**, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

Dated: December 11, 2015
Bronx, NY



Hon. Fernando Tapia, J.S.C.