

Hajrudin-Lulanaj v City of New York

2016 NY Slip Op 30322(U)

February 23, 2016

Supreme Court, New York County

Docket Number: 158110/2013

Judge: Margaret A. Chan

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52**

DINO HAJRUDIN-LULANAJ
Plaintiff,

- v -

**THE CITY OF NEW YORK, THE NEW
YORK CITY POLICE DEPARTMENT,
and POLICE OFFICER GREGORY
RITTENHOUSE,**

Defendants.

**INDEX NO. 158110/2013
DECISION and ORDER**

Margaret A. Chan, J.:

Plaintiff's action against defendants the City of New York, the New York City Police Department, and Police Officer Gregory Rittenhouse (together "the City") stems from his arrest on November 12, 2012. The City moved to dismiss the action pursuant to CPLR 3211, and for summary judgment pursuant to CPLR 3212. Plaintiff opposed the motion, to which the City replied. The decision and order is as follows:

The underlying incident stemmed from a parking dispute between plaintiff, who was driving a commercial vehicle, and the driver of a taxi cab. Police Officer Gregory Rittenhouse responded to the scene pursuant to a 911 call. When he arrived, the taxi cab had already left. PO Rittenhouse found plaintiff agitated, loud, and acted with "active aggression" towards him (City Mot, exh E at 25-26 and 32). Plaintiff was "moving [his arms] in a flailing motion so that people were starting to take notice because of his loud voiced [sic] and flailing motion" (*id.* at 32). After attempting to calm him down, PO Rittenhouse asked plaintiff for his identification.

Plaintiff presented an enhanced commercial driver's license, which had a different texture and thickness than a standard driver's license (City Mot, exh B at 16-18). Based on his training and experience, PO Rittenhouse believed the license was fake and escorted plaintiff to the 17th Police Precinct where plaintiff was arrested for Criminal Possession of a Forged Instrument in the Third Degree and Disorderly Conduct (City's Mot, exh A; exh B at 14-22; exh E at 28-30). Plaintiff was released the next day, November 13, 2012, and the charges against him were dismissed on May 17, 2013 (Pltf's Opp, exh A). Plaintiff filed a complaint against the City alleging false arrest, malicious prosecution, libel, slander, negligent and intentional infliction of emotional distress, negligent hiring and retention, violations of plaintiff's civil rights and punitive damages.

The City sought dismissal of the complaint on various grounds. Plaintiff did not contest the City's arguments as to the negligent hiring and retention, negligent and intentional infliction of emotional distress, general negligence, violations of plaintiff's civil rights, and punitive damages claims. As such, plaintiff is deemed to have conceded the City's assertions on those claims. What remains are plaintiff's claims for false arrest, malicious prosecution, libel and slander. Neither party addressed plaintiff's claims for libel and slander, but those claims were made totally without any supporting facts or allegations (City Mot, exh C, ¶ 14). Therefore, they are dismissed sua sponte for failure to state a claim (see CPLR 3211(a)(7); *Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]). The crux of the plaintiff's action, and what was debated in the motion and opposition, are plaintiff's false arrest and malicious prosecution claims. As to those claims the City sought summary judgment by claiming that it had probable cause to arrest plaintiff, thus, barring its liability in this civil action.

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1980]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). "Probable cause existing at the time of arrest will validate the arrest and relieve the defendant of liability." (*Broughton v State*, 37 NY2d 451, 458 [1975]; see *Gisondi v Town of Harrison*, 72 NY2d 280, 283 [1988]). When a warrantless arrest is made there is a presumption that it was unlawful and the burden of proving the arrest was based on probable cause falls on law enforcement (see *Medina v City of New York*, 102 AD3d 101, 103 [1st Dept 2012]). "Probable cause requires information sufficient to support a reasonable belief that an offense has been or is being committed" (*People v Hicks*, 68 NY2d 234, 238 [1986] citing CPL 140.10; *People v Bigelow*, 66 NY2d 417, 423 [1985]). "A synoptic evaluation is essential because '[v]iewed singly, [the reasons] may not be persuasive, yet when viewed together the puzzle may fit and probable cause found'" (*People v Shulman*, 6 NY3d 1, 26 [2005] quoting *People v Bigelow*, 66 NY2d at 423; see *Torres v Jones*, 2016 NY Slip Op 01254 [Ct App Feb. 23, 2016]).

PO Rittenhouse testified that he relied upon his "counter-terrorism" training on forged documents when he questioned the authenticity of plaintiff's license (City Mot, exh E at 12-15). The license raised his suspicion because it contained no hologram, was not grainy to the touch, could be photocopied, and cracked when folded (*id.* at 15, 17, 28-29). Based on his suspicion of the license, he brought plaintiff to the precinct "to be identified" (*id.*). He also wanted "[v]erification by a supervisor as well as information from [his] fellow officers to confirm [his] probable cause (*id.* at 46).

PO Rittenhouse testified that Sergeant Meehan agreed that the license did not pass the "security required checks to pass as a State-issued license" (*id.* at 33).

Sergeant Meehan then searched a Department of Motor Vehicles (DMV) database to ascertain whether the information contained in plaintiff's license was accurate - it was (*id.* at 38). Despite that confirmation, plaintiff was then arrested for possession of a forged instrument and disorderly conduct (City Mot, exh E at 31). The City did not submit any evidence from Sergeant Meehan or anything else regarding the protocol for evaluating a forged document.

After plaintiff's arrest, PO Rittenhouse consulted with an officer from the Police Department's Intelligence Bureau, PO Paul Grub, who confirmed that the license did not meet the above-mentioned security checks indicating that it was fake (City Mot, exh E at 34-39). PO Rittenhouse also testified that an unnamed officer in the precinct compared his personal enhanced commercial driver's license to plaintiff's license and it contained those security features, but plaintiff's license did not (*id.* at 39-41). However, as conceded by the City, PO Grub's involvement here is irrelevant because his input came after plaintiff's arrest (City Reply, ¶ 13). No evidence was proffered regarding the unnamed officer.

Overall, the City failed to meet its burden on summary judgment for plaintiff's claims of false arrest and malicious prosecution. The City did not adequately support its conclusion that PO Rittenhouse had a reasonable belief that the offense of possession of a forged instrument was being committed by plaintiff when he was arrested. There are unsettled questions on the NYPD's protocol for evaluating a forged document particularly when the information from the DMV database contrasted the officers' uncertain assessment of the license. Therefore, the portion of the City's motion for summary judgment on plaintiff's claims for false arrest and malicious prosecution is denied.

It is noted that the City did not address the probable cause for plaintiff's arrest on the charge of disorderly conduct (*see* Penal Law § 240.20[1],[2]; *Norasteh v State*, 44 AD3d 576 [1st Dept 2007]; *Rivera v City of New York*, 40 AD3d 334 [1st Dept 2007]). Thus, it is not for this court to address this potential defense when it was not raised by the movant (*see Baseball Off. of Com'r v Marsh & McLennan, Inc.*, 295 AD2d 73, 82 [1st Dept 2002]; *Frank v City of New York*, 211 AD2d 478, 479 [1st Dept 1995]).

Accordingly, it is hereby

ORDERED, the branch of defendants' motion seeking to dismiss plaintiff's causes of action for negligent hiring and retention, negligent and intentional infliction of emotional distress, general negligence, violations of plaintiff's civil rights, and punitive damages is granted and those claims are dismissed, it is further

ORDERED, plaintiff's claims for libel and slander are dismissed, and it is further

ORDERED, the branch of defendants' motion seeking summary judgment for plaintiff's claims of false arrest and malicious prosecution is denied.

This constitutes the decision and order of the court.

Dated: February 23, 2016



Margaret A. Chan, *J.S.C.*