

Vaca v City of New York
2016 NY Slip Op 30636(U)
March 10, 2016
Supreme Court, Bronx County
Docket Number: 24496/2013
Judge: Ben R. Barbato
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Present: Honorable Ben R. Barbato

JUANA VACA,

Plaintiff,

-against-

DECISION/ORDER

Index No.: 24496/2013

THE CITY OF NEW YORK, DET. DANIEL BACA,
TAX ID #934434 and SHIELD #02975, POLICE OFFICERS
JOHN/JANE DOE 1-10, true identities unknown, sued in
fictitious capacity individually and as police officers involved
in arrest #B1311280, and the BRONX COUNTY DISTRICT
ATTORNEY'S OFFICE,

Defendants.

The following papers numbered 1 to 9 read on this motion for summary judgment and cross-motion for leave to amend noticed on August 4, 2015 and October 29, 2015 and duly transferred on December 24, 2015.

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Exhibits	1, 2, 3
Notice of Cross-Motion, Affirmation & Exhibits	4, 5, 6
Memoranda of Law	7, 8
Affirmation in Opposition and in Reply	9

Upon the foregoing cited papers and after reassignment of this matter from Justice Mitchell J. Danziger on December 24, 2015, Defendants, The City of New York and Detective Daniel Baca, seek an Order pursuant to CPLR §3212 granting summary judgment dismissing Plaintiff's causes of action sounding in false arrest, detainment and imprisonment and malicious prosecution, and/or, pursuant to CPLR §3211(1)(a)(7), dismissing Plaintiff's cause of action for negligence and cause of action for intentional infliction of emotional distress. By cross-motion, Plaintiff Juana Vaca seeks to amend the Complaint, substituting Robert Johnson, District Attorney Bronx County, for The Bronx County District Attorney's Office.

This is an action to recover damages for civil rights violation and personal injuries allegedly sustained by the Plaintiff, Juana Vaca, when she was arrested on February 15, 2013 by

members of the New York City Police Department at 1405 Townsend Avenue, Apt. 22, County of Bronx, City and State of New York.

The Court notes that, in her Opposition papers, Plaintiff withdraws her causes of action against the City for negligence (hiring, retaining, supervising, promoting and training) and for intentional infliction of emotional distress since the Defendants admitted that the police officers were acting in the scope of their employment. Thus, Defendants' motion for an Order dismissing Plaintiff's cause of action for negligence and cause of action for intentional infliction of emotional distress is **granted**. Plaintiff then alleges that the merits of her remaining causes of action should not be summarily decided, but rather submitted to the trier of fact.

To state a claim for malicious prosecution, the Plaintiff must prove the initiation or continuation of an action against him; the termination of the proceeding in his favor; the absence of probable cause to commence the proceeding; and actual malice as a motivation for Defendant's actions. See *Colon v. City of New York*, 60 N.Y.2d 78 (1983). With regard to the Section 1983 action predicated on the tort of malicious prosecution, a Plaintiff must show sufficient restraint on liberty to implicate his Fourth Amendment rights, that the Defendant initiated or maintained the prosecution against the Plaintiff without probable cause, that the Defendant acted maliciously, and that the proceeding was terminated in the Plaintiff's favor. 42 U.S.C.A. §1983; U.S.C.A. Const. Amend. 4.

In this matter, Detective Daniel Baca based his arrest on his belief that Plaintiff committed Criminal Possession of a Controlled Substance in the Third Degree, under P.L. §220.16(1), Criminal Possession of a Controlled Substance in the Seventh Degree, under P.L. §220.03, Criminal Possession of Marihuana in the Fifth Degree, under P.L. §221.10(2) and Unlawful Possession of Marihuana, under P.L. §221.05, after: (i) Detective Baca received

information obtained from a confidential informant ("CI"), that he purchased marihuana from 1405 Townsend Avenue, Apt. 22 on three occasions; (ii) the CI conducted controlled buys and purchased marihuana three times from an individual located in the subject apartment, and (iii) during the arrest, while Detective Baca was executing a search warrant, Plaintiff was found in the apartment where twenty-eight bags of marihuana were found. Detective Baca also found a JC Penney bill with Plaintiff's name and the apartment's address on it. The involvement of all Defendants and all claims raised by the parties are determinative upon whether sufficient probable cause existed for Detective Baca to conduct a warrantless arrest of Plaintiff. On November 21, 2013, the charges against Plaintiff Juana Vaca, as a result of the subject arrest, were ultimately dismissed.

First, it should be noted that a warrantless arrest is presumed unlawful. *Veras v. Truth Verification Corp.*, 87 A.D.2d 381 (1st Dept. 1982). However, the existence of probable cause to arrest provides a complete defense to claims of false arrest, unlawful imprisonment and malicious prosecution. *Lawson v. City of New York*, 83 A.D.3d 609 (1st Dept. 2011); *Marrero v. City of New York*, 33 A.D.3d 556 (1st Dept. 2006). Therefore, sufficient probable cause must have existed that Plaintiff committed Criminal Possession of a Controlled Substance in the Third Degree, under P.L. §220.16(1), Criminal Possession of a Controlled Substance in the Seventh Degree, under P.L. §220.03, Criminal Possession of Marihuana in the Fifth Degree, under P.L. §221.10(2) and Unlawful Possession of Marihuana, under P.L. §221.05, at the time of the arrest, as these crimes were the basis of Detective Baca's probable cause to arrest Plaintiff.

The Court notes that "[t]he existence of [probable] cause does not require certitude that a crime was, or was being, committed by the person arrested," *People v. Cunningham*, 71 A.D.2d 559 (1st Dept. 1979), *aff'd*, 52 N.Y.2d 927 (1981), nor does its existence need to be strong

enough to warrant a conviction, *People v. Miner*, 42 N.Y.2d 937 (1977), “the issue of probable cause is a question of law to be decided by the court [only when] there is no real dispute as to the facts or the proper inferences to be drawn from such facts. Where there is conflicting evidence, from which reasonable persons might draw difference inferences, the question is for the jury”. *Parkin v. Cornell Univ.*, 78 N.Y.2d 523 (1991). Additionally, “[i]n determining whether a police officer had probable cause to effect an arrest, the emphasis should not be narrowly focused, but rather should consider all of the facts and circumstances together.” *Marrero*, 33 A.D.3d at 556.

To prevail on a summary judgment motion, the moving party must produce evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in its favor. *GTF Mktg., Inc. v. Colonial Aluminum Sales, Inc.*, 66 N.Y.2d 965 (1985). The burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial. CPLR §3212(b); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Singer v. Friedman*, 220 A.D.2d 574 (2nd Dept. 1995). Further, issue finding rather than issue determination is the function of the court on motions for summary judgment. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 305 (1957); *Clearwater Realty Co. v. Hernandez*, 256 A.D.2d 100 (1st Dept. 1998).

The role of the court is not to resolve issues of credibility. *Knepka v. Tallman*, 278 A.D.2d 811 (4th Dept. 2000). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 (1978). Accordingly, because “reasonable persons might draw different inferences” based on the facts known to Defendants, the issue of probable cause cannot be resolved as a matter of law. Based upon the exhibits and extensive deposition testimony

submitted, the Court finds that Defendants have failed to establish that no triable issues of fact exist as to whether there was probable cause for Plaintiff's arrest and subsequent prosecution.

With regard to Plaintiff's cross-motion, Plaintiff claims that the District Attorney, acting as policy maker, is liable and suable for §1983 violations. Under New York law, a District Attorney, in prosecuting crime, is performing a quasi-judicial function and as such is entitled to absolute immunity from civil claims arising out of the scope of that prosecution. See *Hirschfeld v. City of New York*, 253 A.D.2d 53 (1st Dept. 1999); *Moore v. Dormin*, 252 A.D.2d 421 (1st Dept. 1998). The absolute immunity arising from the prosecutor's exercise of his quasi-judicial discretion reflects a public interest in shielding public officials from retaliatory lawsuits so as to allow them to freely exercise their discretion within the scope of their duties. *Id.*

Therefore it is

ORDERED, that Defendants, The City of New York and Detective Daniel Baca's motion is **granted to the extent** that, Defendants' motion for an Order dismissing Plaintiff's causes of action for negligence and for intentional infliction of emotional distress is granted; and Defendants' motion for an Order pursuant to CPLR §3212 granting summary judgment dismissing Plaintiff's remaining causes of action is denied; and it is further

ORDERED, that Plaintiff Vaca's cross-motion to amend the Complaint, substituting Robert Johnson, District Attorney Bronx County, for The Bronx County District Attorney's Office, is **denied**.

This constitutes the Decision and Order of the Court.

Dated: March 10, 2016



Hon. Ben R. Barbato, A.J.S.C.