

Lalicata v Lalicata

2017 NY Slip Op 31328(U)

June 16, 2017

Supreme Court, New York County

Docket Number: 650582/2013

Judge: Kelly A. O'Neill Levy

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KELLY A. O'NEILL LEVY
Justice

PART 19

-----X

CANDICE LALICATA,
Plaintiff,

INDEX NO. 650582/2013

MOTION DATE _____

- v -

MOTION SEQ. NO. 013

STEVEN LALICATA, DIANA FERNANDEZ, JAMES HART,
BRIAN MARTINEZ
Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number
were read on this application to/for _____

Upon the foregoing documents, it is

Plaintiff Candice Lalicata moves for an order pursuant to CPLR § 3025(b) to file a second amended complaint to add a cause of action for the second false arrest of Plaintiff by co-defendant Diana Fernandez (hereinafter, "Defendant"), to add Defendant to the fraud causes of action, and to make typographical corrections. Defendant opposes the application.

Defendant contends that the cause of action for the second false arrest must fail because the action is barred by the statute of limitations. Defendant argues that since Plaintiff was arraigned on March 24, 2014 and the statute of limitations period is one year from the date of arraignment, the action is time-barred. Moreover, Defendant did not place Plaintiff under arrest

but the New York City Police Department and Office of the District Attorney, New York County determined that there was sufficient evidence and probable cause to arrest Plaintiff.

Defendant also contends that Plaintiff fails to plead any elements to make out a cause of action against Defendant for fraud or aiding and abetting of the alleged fraud. Furthermore, Defendant argues that the proposed cause of action fails to set forth any facts that could give rise to a cause of action sounding in fraud.

Additionally, Defendant argues that the proposed amended complaint seeks to expand the period of the causes of action by dating the period for fraud, conversion, unjust enrichment and false arrest to September 2011 from February 2012.

In reply, Plaintiff contends that the second false arrest cause of action is proper because Defendant's conduct in providing false information to law enforcement causing Plaintiff to be falsely arrested again is part of a series of actions detailed in the prior complaint and thus the cause of action is not time-barred. In addition, Plaintiff argues that this cause of action could be recast as malicious prosecution. *See Bumbury v. City of N.Y.*, 62 A.D.3d 621, 621 (1st Dep't 2009) ("cause of action for malicious prosecution accrues when the criminal proceeding terminates favorably to the plaintiff")

Plaintiff also contends that the fraud in this matter is plead as conspiracy, and the second amended complaint has sufficiently described the circumstances of fraud conspiracy and Defendant's participation therein. *See Pludeman v. Northern Leasing Sys., Inc.*, 10 N.Y.3d 486, 493 (2008) (explaining that for purposes of pleading a fraud claim with particularity, "in certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud"). Plaintiff further argues that the circumstances surrounding the fraud give

rise to a reasonable inference of Defendant's actual knowledge and that Defendant's substantial assistance is sufficiently detailed.

Finally, Plaintiff argues that it does not seek to expand the period of the causes of action, but merely wishes to amend the preliminary statement section in order to comport it with the factual allegations stated in the initial complaint, which alleges that the fraudulent transfers began on September 21, 2011.

"Leave to amend pleadings under CPLR 3025(b) should be freely given, and denied only if there is 'prejudice or surprise resulting directly from the delay' (*McCaskey, Davies & Assoc. v. New York Health & Hosps. Corp.*, 59 N.Y.2d 755, 757, [1983]), or if the proposed amendment 'is palpably improper or insufficient as a matter of law' (*Shepherd v. New York City Tr. Auth.*, 129 A.D.2d 574, 574 [1987]). A party opposing leave to amend 'must overcome a heavy presumption of validity in favor of [permitting amendment]' (*Otis El. Co. v. 1166 Ave. of Ams. Condominium*, 166 A.D.2d 307 [1990])." *McGhee v. Odell*, 96 A.D.3d 449, 450 (1st Dep't 2012); *see also Goodwin v. Empire City Subway Co., Ltd.*, 124 A.D.3d 559, 640 (1st Dep't 2015); *Tri-Tec Design, Inc. v. Zatek Corp.*, 123 A.D.3d 420, 420-21 (1st Dep't 2014).

As the proposed amendments are not palpably improper or insufficient and Defendant has not demonstrated that she would be prejudiced by the amendments, Plaintiff's motion is granted with respect to the fraud causes of action and amendments to the preliminary statement section. Plaintiff's motion is denied with respect to the second false arrest cause of action due to the expiration of the statute of limitations. *See Williams v. CVS Pharmacy, Inc.*, 126 A.D.3d 890, 891 (2d Dep't 2015) ("Causes of action based on false arrest ... accrue upon the subject's release [] from confinement and are governed by a one-year statute of limitations") (quoting *Bellissimo v. Mitchell*, 122 A.D.3d 560, 561 [2d Dep't 2014]) (internal quotation marks omitted); *cf. Cruz v.*

City of N.Y., 148 A.D.3d 617 (1st Dep't 2017) ("three-year limitations period on a section 1983 claim based on false arrest begins to run when the alleged false imprisonment ends—that is, when the arrestee becomes subject to the legal process such as being bound over by a magistrate or arraigned on charges") (internal quotation marks omitted).

Counsel shall appear for a status conference on August 9, 2017 at 9:30 a.m. in Part 19.

This constitutes the decision and order of the court.

6/16/2017

DATE

Kelly O'Neill Levy

KELLY A. O'NEILL LEVY, J.S.C.

**HON. KELLY O'NEILL LEVY
J.S.C.**

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

DO NOT POST

FIDUCIARY APPOINTMENT

REFERENCE