

<b>Vaughan v City of New York</b>
2018 NY Slip Op 30882(U)
April 26, 2018
Supreme Court, Bronx County
Docket Number: 22340/15
Judge: Ben R. Barbato
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - PART IA 21**

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GARFIELD VAUGHAN,

Plaintiff,

**Index No. 22340/15**

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
POLICE DEPARTMENT, WILLIAM J. BRATTON,  
Commissioner of Police, As Successor in Interest to  
Raymond Kelly, Former Police Commissioner of the  
NEW YORK CITY POLICE DEPARTMENT, P.O.  
CORRINE MACLENNAN, individually and as Police  
Officer, and JOHN DOE"1" individually and as Police  
Supervisory Personnel,

**Present:  
Hon. Ben R. Barbato  
Justice, Supreme Court**

Defendants.

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Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion to dismiss and cross motion to amend:

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion, Affirmation and Exhibits Annexed</b>	<b>1</b>
<b>Notice of Cross Motion, Affirmation Exhibits Annexed</b>	<b>2</b>
<b>Affirmation in Opposition to Cross Motion</b>	<b>3</b>
<b>Reply Affirmation in Support of Cross Motion to Amend</b>	<b>4</b>

Motion and cross motion are consolidated for disposition and decided as follows.

That portion of defendant City's motion to dismiss plaintiff's state causes of action for false arrest, false imprisonment, assault and battery, negligent hiring and supervision, and violation of state constitutional rights, as well as his federal claims of false arrest and

imprisonment and those sounding in excessive force, as untimely, is granted without opposition. Plaintiff's claims against the New York City Police Department are also dismissed without opposition as the New York City Police Department is a non-suable entity.

That portion of plaintiff's cross motion seeking to amend the complaint to reflect the date of termination of the criminal proceeding against him as March 3, 2014 is denied. Plaintiff, in his initial summons and complaint, asserted that the charges against him were dismissed by an order entered January 31, 2014. Thus, plaintiff was required to serve his notice of claim within 90 days of the termination of his underlying criminal prosecution in order for his malicious prosecution claim to be timely, or, seek leave of court to file a late notice of claim within one year and 90 days of accrual of the claim. *See* General Municipal Law §§ 50-e, 50-i. Plaintiff served his notice of claim on May 5, 2014, which is four days beyond the 90 days required for his malicious prosecution claim to be timely, and he did not seek leave of court to file a late notice of claim within the one year and 90 day statute of limitations period. Plaintiff now argues that the criminal action was not finally terminated in plaintiff's favor until the time for the people to appeal the court order expired on March 3, 2014. However, plaintiff fails to cite any controlling authority with respect to the accrual of malicious prosecution claims to support this contention. Generally, "[a] cause of action for malicious prosecution accrues when the criminal proceeding terminates favorably to the plaintiff." *Bumbury v City of New York*, 62 AD3d 621 (1<sup>st</sup> Dept 2009) (citation omitted). Moreover, the court in *Bumbury* indicated that a claim for malicious prosecution accrued on the date when the indictment was dismissed. *See id.* Therefore, the court is constrained to dismiss plaintiff's state claim for malicious prosecution for failure to timely file his notice of claim.

That portion of plaintiff's cross motion seeking to amend his pleadings to add allegations of defendants' personal involvement and to substitute James P. O'Neill in place and in stead of William J. Bratton as Commissioner of the New York City Police Department is denied.

"[P]ersonal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under [42 USC] s[ection] 1983." *McKinnon v Patterson*, 568 F 2d 930, 934 (2d Cir 1977). However, plaintiff cannot establish personal involvement through a "John Doe" placeholder after the expiration of the statute of limitations. In addition, plaintiff failed to move for a default judgment against Police Officer Corinne MacLennan within one year after she failed to serve an answer, or offer any excuse for his failure to do so, thereby abandoning his claims against her. As to substituting the Commissioner of Police, "[t]o the extent the Police Commissioner is being sued in his official capacity, any claim against him is merely duplicative of the action against the City." *Escobar v City of New York*, 2007 WL 1827414, at \*3 (EDNY 2007) (dismissing any claims against the Police Commissioner in his official capacity as redundant and duplicative). Moreover, "[s]ince local governments can be sued directly in section 1983 cases, there is no need to bring official capacity suits against local government officials." *Walton v Safir*, 122 F Supp 2d 466, 477 (SDNY 2000) (defendant's motion to substitute the current police commissioner denied). Thus, as plaintiff fails to sufficiently allege personal involvement of a named officer in either his initial pleadings or in his proposed amendments, he fails to state a valid claim against an individual defendant. Therefore, plaintiff's § 1983 federal claim of malicious prosecution is dismissed as well as the claims against Police Officer MacLennan and Commissioner Bratton.

Further, plaintiff's proposed amendments are conclusory and devoid of specificity. With

respect to plaintiff's *Monell* claim, plaintiff has failed to properly identify any official practice or custom which resulted in the violation of his constitutional rights other than counsel's conclusory allegations. *See Monell v New York City Dept. of Social Servs.*, 436 US 658 (1978). Therefore, plaintiff's federal claims sounding in municipal liability or *Monell* are dismissed.

Accordingly, plaintiff's cross motion to amend is denied and the City's motion to dismiss is granted and the complaint is dismissed in its entirety.

This constitutes the decision and order of the court.

  
BEN R. BARBATO, J.S.C.

Dated: April 26, 2018