

**Clark v Badillo**

2018 NY Slip Op 32470(U)

September 22, 2018

Supreme Court, New York County

Docket Number: 150522/2016

Judge: Verna Saunders

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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. VERNA L. SAUNDERS, J.S.C. PART

Justice

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INDEX NO. 150522/2016
MOTION SEQ. NO. 002

JAMMAL CLARK,

Plaintiff,

- v -

POLICE OFFICER MONSERRATE
BADILLO #5090, POLICE SERGEANT
MARTIN MCBRIDE #3081, POLICE
OFFICER MICHAEL LECLAIR #5045,
POLICE OFFICER BILLY ACOSTA #31
and POLICE OFFICER JACK PALIMENI
#642,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for

DISMISS

Plaintiff, Jammal Clark, commenced this action asserting a claim of excessive force against the captioned defendants. Plaintiff claimed that on the morning of April 17, 2014, he was sleeping in his bedroom at his mother's apartment in the Washington Heights section of Manhattan when half dozen or so plain clothed officers came in and grabbed him by the arm, ripped him out of bed, and threw him on the ground like a "ragdoll." Plaintiff contends, among other things, that several of the officers, including defendant officers Badillo, Leclair, Acosta, and Palimeni, began punching him in the ribs and back, grabbing and twisting his arms and legs, and choking him.

The City of New York ("City") on behalf of defendants now seeks to dismiss plaintiff's complaint in its entirety pursuant to CPLR 3211(a)(7) on the ground that plaintiff failed to sufficiently plead its federal excessive force claim. The City asserts that the complaint does not specifically state which officers were responsible for which conduct, but instead improperly relies on vague terms and collective actions to describe the acts and individuals in question, e.g. "one of the officers," "defendant officers," "an officer," and "defendants" to describe the alleged perpetrators.

After a review of the papers, the Court finds the complaint has sufficiently alleged a cause of action for excessive force. "In order to succeed on a claim for damages under 42 U.S.C. § 1983 for violation of his constitutional rights, the plaintiff must show by a preponderance of the evidence that the defendant was personally involved in the constitutional violation." (Fischl v Armitage, 128 F3d 50 [2d Cir 1997].) A defendant's personal involvement can be inferred from evidence showing the defendant was in the vicinity of the alleged incident and took no action to

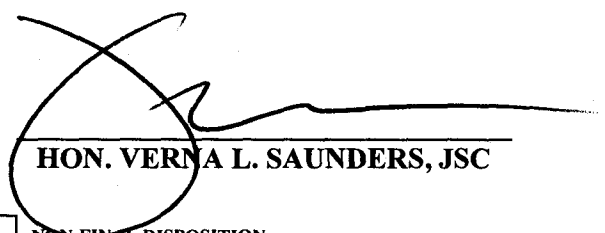
stop it. (*Miller v. Smith*, 220 F3d 491 [7th Cir 2000]; *Jeffreys v Rossi*, 275 F Supp 2d 463, [SD NY2003].)

Here, all the named defendants were alleged to be in the immediate vicinity of the area where the alleged force took place. A fact which is beyond dispute. Moreover, plaintiff avers that all the named defendants, with the exception of Sergeant Martin McBride, contributed in the acts of force by punching him or twisting his arm. The fact that the complaint does not allocate each alleged wrongdoing to a specific defendant is not sufficient in this case to warrant dismissal. It is not reasonable to assume that in the nature of the assaultive conduct alleged here that a plaintiff is able to establish specificity as to action of each individual in the group when all are present, participating, and here in plain clothes. To hold otherwise would create a pleading burden beyond that which the statute and case law require. As such, the City's motion to dismiss is denied. According it is hereby,

ORDERED that the City of New York's motion for summary judgment is denied; and it is further

ORDERED that the parties are directed to appear for an early settlement conference on November 13, 2018 at 2:00 PM, Part DCM, Room 103, 80 Centre Street, New York, N.Y.

September 22, 2018



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED				GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE