

<b>Ugweches v City of New York</b>
2018 NY Slip Op 33155(U)
December 3, 2018
Supreme Court, New York County
Docket Number: 153264/2016
Judge: Verna Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS PART IAS MOTION 5

Justice

INDEX NO. 153264/2016
MOTION SEQ. NO. 002

AUSTEN UGWECHES,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK POLICE
DEPARTMENT, P.O. KAREN MURPHY,
CHE' AGUELLO, BRIAN JOHNSON,
GROSS, DAVID GROHT, JOEL POLANCO,
ST. CLAIRE, JOHN AND JANE DOES 1-3,

Defendants.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for

DISMISSAL

Plaintiff commenced this action seeking to recover monetary damages after an alleged false arrest and malicious prosecution. Plaintiff alleged that on April 2, 2005, he was sitting in his vehicle waiting for a parking spot when Police Officer Karen Murphy began to write him a ticket. Plaintiff exited the vehicle to inquire why he was being ticketed after which Officer Murphy called for backup and falsely accused plaintiff of striking her with his vehicle. Plaintiff was arrested and later tried and convicted of assault. His conviction was subsequently vacated on January 20, 2015.

Defendants, (collectively "City"), move the Court for dismissal seeking an order: (1) pursuant to CPLR 3211(a)(8) dismissing the complaint in its entirety as against the individually named Police Officers Murphy, Johnson, Gross, Groht, Polanco, and St. Clair for lack of personal jurisdiction; (2) pursuant to CPLR 3211 (a) (5) dismissing as untimely various causes of action; and (3) pursuant to CPLR 3211 (a) (7-8) dismissing plaintiff's claims against the New York City Police Department ("NYPD") as it is a non-suable entity.

Plaintiff opposes the motion and cross-moves to amend the complaint to further particularize its causes of action; add a cause of action for malicious prosecution and excessive force; for an order deeming the proposed amended complaint served upon the City; and for an order compelling the City to accept service on behalf of the named officers.

In reply, the City argues that plaintiff has not requested, nor should be granted an extension of time for service. It further argues that while CPLR 306-b permits the court to extend the time for service, the plaintiff must show good cause or demonstrate that the extension is in the interest of justice which here it has failed to do.

As an initial matter, the parties agree the New York Police Department (NYPD) is a non-suable entity. As such, the complaint is dismissed as against it.

After further review of the papers submitted, the Court grants the branch of the City's motion to dismiss the complaint as against the individually named officers. When considering dismissal of a complaint for lack of personal jurisdiction pursuant to CPLR 3211(a)(8), the court must determine whether service was timely and proper. CPLR 306-b requires service of the summons and complaint to be made within 120 days after the commencement of the action. Here, while plaintiff asserts that he timely served the City, he concedes that he did not personally serve the individually named officers. Inasmuch as these officers were never served, the Court lacks personal jurisdiction over them.

Presently, plaintiff requests that if the named officers are still employed by the City, that the City be compelled to accept service on their behalf or plaintiff provide their last known addresses where service can be effectuated. While plaintiff argues that in the stead, he served a copy of the summons and complaint upon NYPD headquarters located at One Police Plaza, New York, NY, plaintiff's service of the summons and complaint upon the police headquarters is improper as it relates to the individually-named officers as neither the City at 100 Church Street, New York, NY or NYPD headquarters at One Police Plaza is the officers' place of business. (See *Jiminez v City of New York*, 5 AD3d 182 [1st Dept 2004]; *Williams v City of New York*, 2010 NY Slip Op 30022(U) [Sup Ct, NY County 2010].) Furthermore, the cross-motion fails to request an extension of time to serve and provides no reasonable excuse for having failed to do so. As such the complaint is dismissed as against Police Officers Murphy, Johnson, Gross, Groht, Polanco, and St. Clair for lack of personal jurisdiction.

The City also maintains that the following causes of action should be dismissed as time-barred: (a) state and federal false arrest/imprisonment; (b) civil rights conspiracy under 42 USC 1985; (c) negligent supervision; (d) negligent screening, hiring, and retention; (e) negligence; (f) assault; (g) battery; (h) intentional infliction of emotional distress; and (i) negligent infliction of emotional distress; (j) racial discrimination under 42 USC 1981; and (k) federal excessive force. The City contends that state law causes of action for personal injuries brought against municipal employees are subject to a statutory limitation of 1 year and 90 days from the time the cause of action accrued and that the plaintiff's federal causes of action are subject to a three-year statute of limitation.

In opposition, plaintiff argues that the City erroneously believes that the statute of limitation began to run on the date of plaintiff's arrest. Relying on two federal cases, *Woods v Candela*, 47 F3d 545 [2d Cir. 1995] and *Heck v Humphrey*, 512 US 477 [1994]), plaintiff argues that in cases where a plaintiff is convicted, and the conviction is later vacated, the statute of limitations begins to run on the date the conviction and the charges are dismissed.

While plaintiff is correct in that *Heck* ruled that the statute of limitations for a cause of action alleging malicious prosecution begins to run upon the dismissal of the criminal suit, the accrual date for a claim of malicious prosecution is distinct from other causes of action and does not serve to preserve the instant state law claims. (See *Wallace v Kato*, 549 US 384 [2007]; see also *Williams v City of New York*, 62 NYS3d 401 [2d Dept 2017] (stating that "unlike the state

common-law causes of action alleging false arrest and false imprisonment, the state common-law cause of action alleging malicious prosecution was not time-barred because the statute of limitations for that cause of action did not begin to run until the favorable termination of the underlying criminal proceeding.”) Plaintiff’s claims under New York law for false arrest and false imprisonment accrue on the date he was released from custody. (*See Palmer v City of New York*, 226 AD2d 149 [1st Dept. 1996]; *Roche v Vil. of Tarrytown*, 309 AD2d 842 [2d Dept. 2003]. In this instance, plaintiff was arrested on April 22, 2005 and was released the next day on his own recognizance. As such, his claim for false arrest and false imprisonment accrued on April 23, 2005.

As to the other state law claims, a cause of action against the City accrues upon “the happening of the event upon which the claim is based.” (*Murray v City of New York*, 725 NYS2d 73 [2d Dept 2001]; *Grullon v City of New York*, 222 AD2d 257 [1st Dept. 1995].) Here, plaintiff’s causes of action for personal injuries brought against the City are subject to a one year and 90 days statute of limitations (CPLR 217-a), and those claims brought under federal law are subject to a three-year statute of limitations. (*see Cornwell v Robinson*, 23 F3d 694 [2d Cir 1994].) As such, the statute of limitations for plaintiff’s state law causes of action expired on July 21, 2006, one year and 90 days after the alleged arrest and assault on April 22, 2005 and the statute of limitations for plaintiff’s federal claims expired on April 22, 2008.

Plaintiff’s federal law claims accrued once plaintiff knew or had reason to know of “the injury which is the basis of his action.” (*Cornwell, supra.*) Here, plaintiff had reason to know of his injuries, aside from the malicious prosecution claim as discussed above, upon the execution of the alleged false arrest and other conduct. Thus, state and federal false arrest/imprisonment; civil rights conspiracy under 42 USC 1985; negligent supervision; negligent screening, hiring, and retention; negligence; assault; battery; intentional infliction of emotional distress; negligent infliction of emotional distress; racial discrimination under 42 U.S.C. § 1981; and federal claims of excessive force are time-barred as this action was commenced on April 18, 2016, several years after the limitations period had expired.

Lastly, plaintiff seeks leave from the Court to amend its complaint to further particularize its causes of action and add a claim under 42 USC §1983 for malicious prosecution and excessive force. As plaintiff’s proposed amended or supplemental pleading fails to comply with CPLR 3025 inasmuch as it fails to clearly show the changes or additions to be made, and further is time barred as indicated above, plaintiff’s request to amend the complaint is denied. Accordingly, it is hereby

ORDERED that the branch of the City’s motion to dismiss the complaint as asserted against the NYPD is granted, without opposition; and it is further

ORDERED that the City’s motion to dismiss the following causes of action is granted: a) state and federal false arrest/imprisonment; (b) civil rights conspiracy under 42 USC 1985; (c) negligent supervision; (d) negligent screening, hiring, and retention; (e) negligence; (f) assault; (g) battery; (h) intentional infliction of emotional distress; and (i) negligent infliction of emotional distress; (j) racial discrimination under 42 U.S.C. § 1981; and (k) federal claims of excessive force; and it is further

ORDERED that the branch of the City's motion to dismiss the complaint as asserted against Police Officers Murphy, Johnson, Gross, Groht, Polanco, and St. Clair is granted; and it is further

ORDERED that this action is severed and continued under this index number with respect to the remaining defendants; it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the Trial Support Office, who are directed to mark the Court's records to reflect the change in the caption herein; it is further

ORDERED that plaintiff's cross-motion is denied in its entirety; it is further

ORDERED that all parties are to appear for the previously scheduled preliminary conference on December 18, 2018 at 2:00 p.m., Room 103, 80 Centre Street, New York, NY.

ORDERED that any requested relief not expressly addressed herein has been considered and is hereby denied.

December 3, 2018

  
HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: