

**Mullings v City of New York**

2018 NY Slip Op 33363(U)

November 2, 2018

Supreme Court, Bronx County

Docket Number: 304544/2013

Judge: Ruben Franco

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX – IAS PART26

DAMIAN MULLINGS,

Plaintiff,

-against-

Index No. 304544/2013

THE CITY OF NEW YORK AND NEW YORK CITY  
 POLICE DEPARTMENT,

**MEMORANDUM  
 DECISION/ORDER**

Defendants.

HON. RUBEN FRANCO

This is an action alleging false arrest, false imprisonment, malicious prosecution, and libel and slander. Defendant City of New York (“the City”), moves for summary judgment pursuant to CPLR § 3212, and defendant New York City Police Department (“NYPD”) moves, pursuant to CPLR § 3211(a)(7) and (8), to dismiss the Complaint against it on the ground that it is not a suable entity.

Chapter 17, Section 396, of the New York City Charter provides that “[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not that of any agency except where otherwise provided by law.” The NYPD is an agency of the City of New York and is thus not a suable entity (see Lopez v. New York City Dept. of Education, 43 Misc.3d 1204 [Sup. Ct., Bronx County., 2014]; Davis v. City of New York, 2000 WL 1877045, n 1 [SDNY 2000]).

Accordingly, the motion to dismiss the Complaint against the NYPD is granted.

Plaintiff served a Notice of Claim on July 17, 2012, in which he alleges that on or about April 25, 2012, New York City police officers unlawfully stopped, arrested and detained him, and thereafter he was maliciously prosecuted. The Complaint alleges that the City had plaintiff

falsely arrested, falsely imprisoned and that he was maliciously prosecuted. The Complaint also alleges causes of action against the City for libel and slander.

Plaintiff's claim for malicious prosecution is predicated upon the charge of Criminal Possession of a Forged Instrument in the Third Degree, which was dismissed on December 5, 2013. Inasmuch as the Notice of Claim for malicious prosecution against the City was filed before the criminal charges were dismissed, it is not timely since this cause of action had not yet arisen and plaintiff does not claim that he filed an amended Notice of Claim after dismissal of the criminal charges (see Vitale v. Hagan, 71 N.Y.2d 955 [1988]).

Accordingly, plaintiff's claim against the City of New York for malicious prosecution is dismissed.

Plaintiff did not assert claims for libel or slander in his Notice of Claim against the City. This mandates dismissal of these causes of action (see Matter of La Barbera v. Town of Woodstock, 29 A.D.3d 1054 [3<sup>rd</sup> Dept. 2006]). Further, a Complaint must set forth the particular words constituting the alleged defamation, and it must allege the time, place, and manner of the false statements and specify to whom they were made (see CPLR § 3016[a]; Arvanitakis v. Lester, 145 A.D.3d 650, 651 [2<sup>nd</sup> Dept. 2016]; Dillon v. City of New York, 261 A.D.2d 34, 38 [1<sup>st</sup> Dept. 1999]). Plaintiff failed to set forth the particular words constituting the alleged defamation, the time, place, manner of the false statements, and to whom they were made, thus, the claims against The City sounding in libel and slander, are dismissed.

The facts, as culled from the pleadings, deposition testimony and exhibits, are as follows: Police Officer Pineiro and Sergeant Chad Rosenberg, were assigned to an anti-crime unit, patrolling in an unmarked vehicle when they observed plaintiff's vehicle, a 2002 Honda Civic,

stopped in front of a fire hydrant at in the Kingsbridge section of Bronx County. The vehicle's engine was running and plaintiff was seated in the driver's seat. Pineiro observed that the brake and hazard lights were off. He testified that, based on his training and experience, he believed that the State of Georgia used car dealer plate on the rear of the plaintiff's vehicle was forged. This was based on the following observation: The license plate was affixed to the rear license plate holder with a cardboard cut out. It had attached to it a piece of cardboard, with a date, held by electrical tape; there was no Georgia State seal; a piece of long plastic was cut and affixed onto the plate and he was unable to observe the year of the car, its make nor the vehicle identification number where it is supposed to be located on that particular used car dealer plate. Pineiro then ran a search for the number on the plate using the computer terminal inside of his police vehicle and found no record on file.

Pineiro and Rosenberg approached the plaintiff's vehicle and asked plaintiff to provide a driver's license, insurance and registration. Plaintiff was only able to provide a driver's license and an insurance card. Plaintiff testified that he purchased the vehicle from a used car dealer in New Jersey, who provided him with plates and a paper registration which matched the plates. At the time of his arrest, the registration had expired and he was in the process of obtaining a copy of the vehicle's title in order to register it, however, he had no documents then to substantiate his ownership of the vehicle other than an insurance card.

The elements of a cause of action for false arrest and imprisonment are: (1) the defendant intended to confine the plaintiff; (2) the plaintiff was conscious of the confinement; (3) the plaintiff did not consent to the confinement; and, (4) the confinement was not otherwise privileged (see Broughton v. State of New York, 37 NY2d 451 [1975]).

A warrantless arrest is presumptively invalid and raises a presumption of lack of probable cause (see Lawson v. City of New York, 83 A.D.3d 609 [1<sup>st</sup> Dept. 2011]). However, a claim for false arrest and imprisonment may be defeated by proving legal justification for the arrest, which “may be established by showing that the arrest was based on probable cause” (Broughton, *supra*, at 458; Martinez v. City of Schenectady, 97 N.Y.2d 78, 95 (2001); Rivera v. County of Nassau, 83 A.D.3d 1032 (2011)). Probable cause is a complete defense to claims of false arrest and imprisonment and malicious prosecution, under both state and federal standards (see Lawson v. City of New York, *supra*; Narvaez v. City of New York, 83 A.D.3d 516 [1<sup>st</sup> Dept. 2011]; Leftenant v. City of New York, 70 A.D.3d 596 [1<sup>st</sup> Dept. 2011]).

The first three elements of the false arrest claims of plaintiff, noted above, are not in dispute, as plaintiff was arrested without a warrant. Accordingly, his claim for false arrest hinges on whether there was legal justification (probable cause) for his arrest.

Probable cause is established by having sufficient information to support a reasonable belief that an offense had been committed, and does not require proof beyond a reasonable doubt (see Marrerro v. City of New York, 33 A.D.3d 556, 557 [1<sup>st</sup> Dept. 2006]).

New York Penal Law § 170.20 provides that “[a] person is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with the intent to defraud, deceive or injure another, he utters or possesses a forged instrument.” Based upon Pineiro’s observations, the police officers had probable cause to believe that plaintiff was in possession of a forged instrument (see Ikezi v. City of New York, [2017 EDNY Lexis 50742], license plate was an Indiana transporter license plate that appeared to be a sticker affixed to a

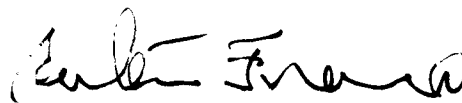
metal backing, citing People v. Stephens, 177 Misc.2d 819, 676 N.Y.S.2d 905, 906-907 [Crim. Ct., Kings County, 1998], finding probable cause for an arrest where the officers observed a New Jersey license plate that “lacked an expiration date and solid edges on the top and bottom and contained seals with uneven spacing and faded color”).

Accordingly, plaintiff’s claims for false arrest and false imprisonment are dismissed.

Plaintiff’s Complaint is dismissed in its entirety.

This constitutes the Decision and Order of the Court.

Dated: November 2, 2018

A handwritten signature in black ink, appearing to read "Ruben Franco", written over a horizontal line.

Ruben Franco, J.S.C.

**HON. RUBÉN FRANCO**