

Yarwood v County of Suffolk
2018 NY Slip Op 34424(U)
September 19, 2018
Supreme Court, Suffolk County
Docket Number: Index No. 611326/2015
Judge: Paul J. Baisley, Jr.
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Short Form Order

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

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LINDA YARWOOD, Individually, as Administrator
of the Estate of Scott John Yarwood, deceased,

Plaintiff,

- against-

THE COUNTY OF SUFFOLK, VINCENT F. DEMARCO, Sheriff, in his individual and official capacity, JOSEPH T. CARACAPPA, Undersheriff, in his individual and official capacity, JOHN P. MEYERRICKS, Undersheriff, in his individual and official capacity, CHARLES EWALD, Warden, in his individual and official capacity, and their agents, servants and employees, THE SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES, JAMES L. TOMARKEN, Commissioner, in his individual and official capacity, MEDICAL STAFFING NETWORK HEALTHCARE, LLC, CROSS COUNTRY STAFFING, INC., NURSE FLOYD GLUBIAK, in their individual and official capacity, THE EXECU/SEARCH GROUP, INC., NURSE NADINE TEICH, in their individual and official capacity, Suffolk County Police Department SGT. JOSEPH ZURL, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF VULTAGGIO, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF LIERE, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF BROWN, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF BIVONA, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF KEVIN LOMBARDI, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF JAMES WYNNE, in their individual and official capacity, CORRECTIONS OFFICER

Index No.: 611326/2015

MOTION DATE: 5/10/18

MOTION SEQ. NO.: 006 - MotD
007 - MotD

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AND/OR DEPUTY SHERIFF JOHN GILLIAM, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF JAMESON BRETZ, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF DOMINICK VERNI, in their official capacity, CORRECTIONS OFFICER SERGEANT AND/OR DEPUTY SHERIFF CHRISTOPHER DEAN, in their individual and official capacity, CORRECTIONS OFFICER SERGEANT AND/OR DEPUTY SHERIFF JOHN URBANCIK, in their individual and official capacity, CORRECTIONS OFFICER SERGEANT AND/OR DEPUTY SHERIFF DANIEL RUNG, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF SHAWN SPRINGSTEEN, in their individual and official capacity, CORRECTIONS OFFICER AND/OR DEPUTY SHERIFF MIKE NEWMAN, in their individual and official capacity, NURSE DAYNA MILLER, in their individual and official capacity, NURSE HELEN BALCHUK, in their individual and official capacity, and their agents, servants and employees, EDWARD WEBBER, Commissioner, Suffolk County Police Department, in his individual and official capacity, JAMES C. BURKE, Chief of Department, Suffolk County Police Department, in his individual and official capacity, P.O. WALTER HETZEL, in his individual and official capacity, SGT. THOMAS PAOCELLI, in his individual and official capacity, P.O. STACEY CUNNEN, in his individual and official capacity, SGT. RYAN SEFTON, in his individual and official capacity, P.O. JOSEPH SCARIOLO, in his individual and official capacity, P.O. JOSHUA PARSONS, in his individual and official capacity, SGT. JOHN OAKLEY, in his individual and official capacity, P.O. DIEGO CAMPOLI, in his individual and official capacity, P.O. JOE GUIDO, in his individual and official capacity, SGT. MADELINE C. CUNNINGHAM, in his individual and official capacity, and their agents, servants and employees, and JOHN and/or JANE DOES 1-10, in their individual and official capacities,

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Defendants.

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Yarwood, etc. v County of Suffolk

Index No. 611326/2015

Upon the following papers numbered 1 to 32 read on this motion and cross motion for summary judgment Notice of Motion and supporting papers 1-8 Notice of Cross-Motion and supporting papers 9-17 Affirmation/affidavit in opposition and supporting papers 18-28 Affirmation/affidavit in reply and supporting papers 29-30; 31-32 Other ; (~~and after hearing counsel in support of and opposed to the motion~~) it is,

ORDERED that the motion (motion sequence no. 006) of defendant Nadine Teich and the purported cross motion (motion sequence no. 007) of defendant Execu/Search Group, Inc., both for summary judgment, are granted under the circumstances presented herein; and it is further

ORDERED that so much of defendant Teich's motion as seeks an award of attorney's fees is denied pursuant to CPLR §8303-a.

The matter at bar is one for wrongful death, gross negligence, negligence, and civil rights violations pursuant to 42 USC §1983. Plaintiff's decedent, John Yarwood, was arrested by the Suffolk County Police Department on November 28, 2014 and was incarcerated in the Suffolk County Correctional Facility located in Riverhead, New York. On November 29, 2014 he hung himself in his cell and subsequently died on December 3, 2014. Defendant Execu/Search Group, Inc. ("Execu/Search") had contracted with defendant County of Suffolk to provide temporary medical personnel for the County's correctional facility located in Riverhead. Defendant Nadine Teich ("Teich"), a nurse employed by Execu/Search, was assigned to work at the facility. In support of her motion she has proffered her own affidavit wherein she states that on November 29, 2014, while working at another location at the facility, she responded to a call for medical assistance in the lock-up. When she arrived at the decedent's cell together with other personnel, correction officers had already responded, had lifted the decedent up to relieve the pressure on his neck and had cut away the laundry bag that he had used to hang himself. Cardiopulmonary resuscitation ("CPR") had already begun to be administered and when medical personnel, including Teich, arrived, successful efforts were made to restore the decedent's respirations and heart rate and maintain them until Emergency Medical Services arrived. The Flanders Northampton Ambulance Corps arrived at 12:29, six minutes after Teich had responded with others, and the decedent was taken to Stony Brook Hospital where he died on December 3, 2014.

The plaintiff by way of her complaint has alleged that defendant Teich, together with the other defendants, improperly screened the decedent, ignoring his medical record of prior mental health problems prior to his incarceration; that defendants delayed in discovering the decedent hanging in his cell; that defendants' actions constituted gross negligence; and that defendants each violated the decedent's civil rights pursuant to 42 US Code §1983. The sole basis of liability alleged against defendant Execu/Search is that it is vicariously liable under the doctrine of *respondeat superior* by placing defendant Teich at the corrections facility.

A party moving for summary judgment must make a *prima facie* showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York University Medical Center*, 64 N.Y. 2d 851,853, 487 N.Y.S.2d 316 [1985]); *Zuckerman v. City of New York*, 49 N.Y. 2d 557, 562 [1980]). Summary judgment

Yarwood, etc. v County of Suffolk

Index No. 611326/2015

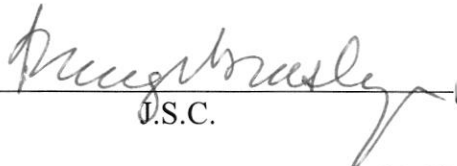
is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944 [3rd Dept. 1983]), but once a *prima facie* showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 [1986]).

In opposition to the instant motion and cross motion, plaintiff has proffered only her attorney's affirmation, wherein counsel argues that the motion should be denied as being premature because little or no discovery has been provided. No other evidence has been submitted by the plaintiff to raise a triable issue of fact to rebut defendant Teich's affidavit and *prima facie* showing. It is well settled that a self-serving claim that discovery would lead to relevant evidence, by itself, is insufficient to withstand a motion for summary judgment (*Jeffries v. New York City Housing Authority*, 8 A.D.3d 178, 780 N.Y.S.2d 1 [1st Dept 2004]). Accordingly, defendant Teich's motion for summary judgment is granted. As to defendant Exec/Search's cross motion, upon dismissal of the action against defendant Teich, plaintiff's claim pursuant to *respondeat superior* must also be dismissed (*Pistilli Construction & Development Corporation v. Epstein, Rayhill & Frankini*, 84 A.D.3d 913, 921 N.Y.S.2d 887 [2nd Dept 2011]). Accordingly, the cross motion of defendant Exec/Search for summary judgment is also granted.

As to that branch of defendant Teich's motion for an order granting her attorney's fees pursuant to CPLR §8303-a, there has not been a sufficient showing of frivolous conduct or bad faith on the part of the plaintiff to warrant such relief (*see, i.e., Broich v. Nabisco, Inc.*, 2 A.D.3d 474, 768 N.Y.S.2d 489 [2nd Dept 2003]) and the motion is accordingly denied.

This shall constitute the decision and order of the court.

Dated: September 19, 2018



J.S.C.

HON. PAUL J. BAISLEY, JR.