

Hedian v City of New York

2020 NY Slip Op 30163(U)

January 17, 2020

Supreme Court, New York County

Docket Number: 154776/2014

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52

Justice

INDEX NO. 154776/2014

MOTION DATE 01/15/2020

MOTION SEQ. NO. 001

RUTH HEDIAN, JOANNE CABRERA, ELIZABETH SANTANA

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

In this action for, inter alia, alleged false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, and excessive force, defendant, The City of New York, moves pursuant to CPLR § 3211 and 3212, for (1) dismissal of plaintiffs' state claims for false arrest and false imprisonment claims as there was probable cause to arrest the plaintiffs; (2) dismissal of plaintiffs state law claims of malicious prosecution claims as plaintiffs' arrest were supported by probable cause; (3) granting the defendants' summary judgment on plaintiff's assault and battery and excessive force claims, as there was no excessive force used and any physical contact was privileged because there was a probable cause to arrest plaintiffs; and, (4) dismissing plaintiffs' 42 USC § 1983 claim against the City of New York, if any, for failure to state a cause of action. The City does not move to dismiss plaintiff's conversion claim.¹

¹ Plaintiff Hedian alleges that on both dates prior to the search warrants being executed, she provided her son money for bills totaling \$5,040. Hedian avers that this money was never returned.

Further, plaintiff has not opposed the portions of defendant's motion seeking dismissal of; (1) property damage claim; (2) intentional infliction of emotional distress and (3) the claims for negligent hiring, retention, training, and supervision. Further, Plaintiffs do not oppose the dismissal of any claims brought forth by plaintiff Ruth Hedian. Accordingly, those claims are dismissed.

Plaintiff opposes the instant motion averring that there are material issues of fact regarding probable cause and the issuance of the underlying search warrants; the plaintiffs' § 1983 claims are pled with sufficient specificity to satisfy CPLR 3013; and a triable issue of fact remains for the excessive force claim, therefore, the defendants are not entitled to summary judgment with respect to those claims.²

It is undisputed that on July 18, 2013, plaintiff, Joanne Cabrera, was arrested for alleged criminal possession of a controlled substance and criminally using drug paraphernalia in the apartment of plaintiff, Ruth Hedian. On August 16, 2013, plaintiffs Cabrera and Elizabeth Santana were arrested in the same apartment for alleged criminal possession of a controlled substance and criminally using drug paraphernalia. Plaintiff Hedian was not arrested on either date.

July 18, 2013 Search Warrant

The record establishes that on the morning of July 18, 2013 plaintiff Cabrera, and O.H. were arrested inside 1548 West 164th Street, Apt. 1G, New York, New York. Police entered the subject apartment pursuant to a search warrant issued on July 17, 2013, by the Honorable Justice Richard M. Weinberg. According to the search warrant, Judge Weinberg determined that there

² As there are no individually named defendants in this action and plaintiffs have failed to plead a custom or practice of the municipal defendant that violated their constitutional rights all of plaintiffs' federal causes of action pursuant to 42 USC § 1983 are dismissed. *See Rodriguez v City of NY*, 87 AD3d 867, 868 [1st Dept 2011].

were adequate grounds for authorizing the search of said premises, to seize, *inter alia*, "cocaine, vials, caps, glassine envelopes, [..], and other evidence of the possession and distribution of cocaine[...]."

Plaintiff Cabrera was in the room, O.H.'s room, in which drug paraphernalia was recovered and subsequently vouchered. Consequently, Cabrera was arrested and prosecuted for criminal possession of a controlled substance and criminally using drug paraphernalia in the second degree. Ultimately, Cabrera's criminal prosecution was terminated upon motion of the District Attorney's office.

August 16, 2013 Search Warrant

The record establishes that on the morning of August 16, 2013 plaintiff Cabrera, plaintiff Santana, W.H. and O.H. were arrested inside 1548 West 164th Street, Apt. 1G, New York, New York. Police entered the subject apartment pursuant to a search warrant issued on August 7, 2013, by the Honorable Justice Steven M. Statsinger. According to the search warrant, Judge Statsinger determined that there were adequate grounds for authorizing the search of said premises, to seize, *inter alia*, "cocaine, vials, caps, glassine envelopes, [..], and other evidence of the possession and distribution of cocaine[...]."

Again, drugs and drug paraphernalia were recovered from the premises. Specifically, the drugs and drug paraphernalia were recovered from a bedroom occupied by Cabrera. Santana was never formerly charged as a result of the District Attorney's declination to prosecute on the same date of the arrest. *See* Exhibit U of the City's motion. Cabrera's criminal prosecution was subsequently terminated on December 5, 2013.

False Arrest/Imprisonment

Defendants' motion to dismiss with respect to plaintiff Cabrera's state law claims for false arrest, and false imprisonment are granted as the arrest was supported by probable cause as a matter of law.

To succeed on a claim for false arrest and false imprisonment, a plaintiff must show that: (1) the defendant intended to confine him; (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 (*Broughton v State of New York*, 37 NY2d 451, 456 [1975]). The defendants can prevail if they prove that the arrest and imprisonment were effectuated with probable cause (*Id.*; *Rivera v City of New York*, 40 AD3d 334, 337 [1st Dept 2007]).

A detention during the execution of a facially valid search warrant is constitutionally permissible (*see Michigan v Summers*, 452 U.S. 692, 703, 101 S. Ct. 2587 [1981]; *Lee v City of New York*, 272 AD2d 586, 586 [2d Dept 2000]). An arrest or search conducted pursuant to a warrant is presumed reasonable because such warrants may issue only upon a showing of probable cause (*see Walczyk v. Rio*, 496 F3d 139, 144 [2d Cir. 2007]). A detention occurring in connection with a search warrant gives rise to a presumption of probable cause for the detention, which the plaintiffs must rebut (*see Broughton* 37 NY2d 451, 458 [1975]; *Lee* 272 AD2d 586, 587 [2d Dept 2000]).

An officer has probable cause to arrest when in possession of facts sufficient to warrant a prudent person to believe that the suspect had committed or was committing an offense (*Ricciuti v N.Y.C. Transit Auth.*, 124 F.3d 123, 128 [2d Cir. 1997]; *see also People v Oden*, 36 NY2d 382, 384 [1975]). When the facts resulting in an arrest are undisputed, the existence of probable cause is an issue of law for the court to decide (*Parkin v Cornell University, Inc.*, 78 NY2d 523, 528 [1991]).

The defendants argue they had probable cause to arrest plaintiff, because there was constructive possession of the items recovered during the search.

Constructive possession may be established when a suspect is present in an area where contraband is found in plain view (*United States v Heath*, 455 F.3d 52, 57 [2d Cir. 2006]; *United States v Holder*, 301 U.S. App. D.C. 57, 990 F.2d 1327, 1329 [D.C. Cir. 1993] (holding that keeping narcotics "openly on display" in a private residence was indicative that the residence's owner considered a visitor "sufficiently complicit to allow him a full view"); *Hollyfield v United States*, 407 F.2d 1326, 1326 [9th Cir. 1969] (holding that undercover agent's observation of cocaine and marijuana in plain view throughout an apartment containing six men provided probable cause to arrest all six occupants). Constructive possession requires a showing that the plaintiff exercised a knowing dominion and control over the property, by a sufficient level or control over the area in which the contraband was found (*People v Manini*, 79 NY2d 561, 573 [1992]; *People v Diaz*, 68 AD3d 642, 643 [1st Dept 2009]).

In opposition, plaintiff Cabrera argues that because she did not know of narcotics in the apartment there is a question of fact as to probable cause to arrest. The Court does not agree.

The Court finds that defendants have established the existence of probable cause to detain Cabrera and Santana during the execution of the search warrant. Further, defendants have established that probable cause existed for the subsequent prosecution of plaintiff Cabrera. Defendants, however, have failed to establish that there was probable cause for the arrest of Santana after the execution of the search warrant was complete.

Here, plaintiff Cabrera was in a bedroom at the time the police entered the apartment. No triable issue of fact exists as to whether the detention, arrest, or prosecution of a plaintiff is supported by probable cause, when police find plaintiff sleeping in the premises identified in a

valid search warrant, and controlled substances were recovered from the premises (*Mendoza v City of New York*, 90 AD3d 453 [1st Dept 2011]). Based on the foregoing, defendants had probable cause as to the search of the apartment and for plaintiff Cabrera's arrest. Cabrera's state law claims for false arrest and false imprisonment are dismissed.

Malicious Prosecution

Defendants' motion to dismiss with respect to plaintiff's state law claim for malicious prosecution are granted. Defendants establish the existence of probable cause for the arrest and subsequent prosecution, therefore barring a claim for malicious prosecution.

The elements of a cause of action for malicious prosecution are: (1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff; (2) the termination of proceedings in favor of the accused; (3) the absence of probable cause for the criminal proceeding; and, (4) actual malice (*Broughton* 37 NY2d 451, 457 [1975]). The existence of probable cause constitutes a complete defense to a claim of malicious prosecution. (*Lawson v City of New York*, 83 AD3d 609, 609 [1st Dept 2001]).

As detailed above, probable cause was present in this case. Further, actual malice by defendants was not shown. In establishing the element of actual malice, "a plaintiff need not demonstrate the defendant's intent to do him or her personal harm, but need only show a reckless or grossly negligent disregard for his or her rights" (*Ramos v City of New York*, 285 AD2d 284, 300 [2001]). Actual malice may be inferred from the facts and circumstances of the case, i.e., "something other than a desire on the part of the defendant to see the ends of justice served" (*Nardelli v Stamberg*, 44 NY2d 500 [1978]). The facts of this case demonstrate that defendants did not arrest plaintiff out of dishonesty or with improper motives. Therefore, Cabrera's state and federal law claims for malicious prosecution are dismissed.

Assault, Battery and Excessive Force Claims

Defendants' motion for summary judgment on the claims of excessive force, and assault and battery are granted as the arrest of plaintiff Cabrera was lawful, and the record is devoid of any evidence that excessive force was used³ (*see Marrero v City of New York*, 33 AD3d 556, 557-58 [1st Dept 2006]).

Because there was probable cause for the arrest, the touching and handcuffing of plaintiff Cabrera is not unlawful. There is no evidence presented that plaintiff resisted arrest or suffered physical injury due to the arrest. Therefore, plaintiff's claim for assault and battery is dismissed.

With respect to plaintiff Santana, the First Department has held that when there is an issue of fact as to probable cause for an arrest, summary dismissal of assault and battery claims are precluded. (*Burgos-Lugo v City of New York*, 146 AD3d 660, 662 [1st Dept 2017] internal citations omitted). Consequently, the City's motion is denied as to Santana's assault and battery claims.

The City has established its entitlement to judgment as a matter of law with respect to all claims made by Cabrera as a result of the execution of facially valid search warrants on both July 18, 2013 and August 16, 2013.

The Court has reviewed the plaintiffs' remaining contentions in opposition and find them unavailing.

Accordingly, it is hereby

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

³ The record is devoid of any evidence that any plaintiff was subjected to excessive force, thus those claims are dismissed as to plaintiff Santana as well.

ORDERED that the only remaining claims in this action are RUTH HEDIAN's claim for conversion and ELIZABETH SANTANA's state law claim for false arrest, and assault and battery.

This constitutes the decision and order of the Court.

1/17/2020

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

LYLE E. FRANK, J.S.C.

**HON. LYLE E. FRANK
J.S.C.**