Man Wing Wong v Town of Brookhaven
2020 NY Slip Op 30278(U)
January 30, 2020
Supreme Court, Suffolk County
Docket Number: 12-37293
Judge: David T. Reilly
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SHORT FORM ORDER

INDEX No. 12-37293
CAL. No. 19-00732OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

PRESENT:

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 6-19-19
ADJ. DATE 7-17-19
Mot. Seq. # 003 - MG; CASEDISP

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MAN WING WONG,

Plaintiff,

- against -

THE TOWN OF BROOKHAVEN, MARK LESKO Individually and in his official capacity as Town Supervisor, BROOKHAVEN TOWN COUNCIL, STEVE FIORE-ROSENFELD Individually and in his official capacity as Councilman, JANE BONNER, Individually and in her official capacity as Councilwoman, KATHLEEN WALSH, Individually and in her official capacity as Councilwoman, CONSTANCE KEPERT, Individually and in her official capacity as Councilwoman, TIMOTHY MAZZEI, Individually and in his official capacity as Councilman, DANIEL PANICO, Individually and in his official capacity as Councilman, ROBERT F. QUINLAN, ESQ., Individually and in his official capacity as Town Attorney, JENNIFER LUTZER, Individually and in her official capacity as Assistant Town Attorney, ARTHUR GERHAUSER, Individually and in his official capacity as CHIEF BUILDING INSPECTOR, AMANDA PACCIONE, Individually and in her official capacity as a Town Investigator,

Defendants.

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THE COALITION OF LANDLORDS, HOMEOWNERS & MERCHANTS, INC.
Attorney for Plaintiff
28 East Main Street
Babylon, New York 11702

ANNETTE EADERESTO, ESQ.
BROOKHAVEN TOWN ATTORNEY
Attorney for Defendants
One Independence Hill
Farmingville, New York 11738

Upon the following papers numbered 1 to 79 read on this motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers 1-61 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers 62-73 ; Replying Affidavits and supporting papers 74-79 ; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by the defendants for summary judgment dismissing the complaint is granted.

Plaintiff commenced this action against defendants after an investigator from defendant Town of Brookhaven (the Town) entered upon plaintiff's property located at 1 Eden Drive, Stony Brook, in the Town of Brookhaven on March 4, 2011 and issued plaintiff two appearance tickets for Town Code violations. Plaintiff's complaint alleges causes of action for abuse of office, abuse of power, abuse of process, selective enforcement, malicious prosecution, trespass, libel, slander, defamation of character, intentional infliction of emotional distress, negligent supervision of personnel, conspiracy, equal protection and discrimination.

In the first cause of action in the complaint, sounding in abuse of office, it is alleged that plaintiff's rights to life, liberty and property under the Fourteenth Amendment of the Constitution of the United States were violated. In the second and third causes of action, sounding in abuse of power and abuse of process, it is alleged that defendants used their positions to retaliate against plaintiff based upon his race, and that such conduct is a pattern and practice by defendants.

In the fourth cause of action, it is alleged that defendants subjected plaintiff to selective enforcement because of his race. In the fifth cause of action, sounding in malicious prosecution, it is alleged that defendants commenced and prosecuted plaintiff without justification and with the intent to maliciously harm him.

In the sixth cause of action for trespass, it is alleged that the Town knowingly entered upon plaintiff's premises without valid consent, authorization or exigent circumstances. In the seventh cause of action, sounding in libel, slander and defamation of character, it is alleged that after the Town trespassed upon plaintiff's property, it issued appearance tickets to a third party for acts that were allegedly known to be violative of the Town Code.

In the eighth cause of action for intentional infliction of emotional distress, it is alleged that the defendants intended to inflict upon plaintiff mental and bodily distress, and that defendants' actions, namely, trespassing on plaintiff's property, searching and seizing property, filing false accusatory instruments, and bringing baseless charges against plaintiff, caused emotional distress. In the ninth cause of action for negligent supervision of personnel, it is alleged that the Town negligently failed to adequately train and supervise their officers, employees, and agents.

In the tenth cause of action, sounding in civil conspiracy, it is alleged plaintiff is being conspired against based upon his ethnicity, Chinese, with which defendants are attempting to use their positions and/or authority and conspiring with the Town of Brookhaven against of people of Chinese descent. In the eleventh cause of action, sounding in discrimination, it is alleged that plaintiff was unfairly

discriminated against by defendants based on his ethnicity and has been denied equal protection under the law.

Discovery has been completed and the note of issue filed. Defendants now move for summary judgment dismissing the complaint, arguing none of the causes of action are supported by any facts. Notably, defendants argue that the complaint is essentially is a conspiracy theory document alleging that plaintiff was discriminated against because he is Chinese, and that it has no basis in fact. Moreover, defendants contend that plaintiff has created a scenario which does not exist and there is no issue of material fact. In support of the motion, defendants submit, *inter alia*, copies of the pleadings, the transcript of plaintiff's General Municipal Law § 50-h hearing, the transcripts of the deposition of plaintiff, and the affidavits of Jennifer Lutzer and Amanda Paccione. Plaintiff, in opposition to the motion, submits, *inter alia*, the transcript of plaintiff's trial on July 11, 2013 before Honorable Janine Barbara-Dali, JDC and the transcript of the deposition of Amanda Paccione.

In her affidavit, Jennifer Lutzer states that she was the chief prosecutor for code violations for the Town from 2008 to 2015. She explains that she is aware of how the Town handles code violations, which is a complaint driven system. Lutzer states that when a complaint is received by the Town, it is investigated by one of the investigators in the Town's Law Department. She further explains that if there is a valid complaint, a ticket is issued, and if there is no valid complaint, no ticket is issued. Lutzer states that plaintiff was given two tickets by the Town's Law Department investigators. She states that one ticket was for a neighborhood preservation issue and the second ticket for an un-secure pool, which means it had no fence. Lutzer states that prior to plaintiff's initial court date, she neither met plaintiff nor knew his name. Lutzer further states that the Town, on a typical court date, handles between 150-200 complaints per day and code violations are handled in the same manner for all defendants. She states that initially, the tickets were dismissed by the District Court, however, the Appellate Term restored the ticket for an un-secure pool. Lutzer explains that the un-secure pool ticket was tried before Judge Barbara-Dali, who found that the pool did not need a fence around it due to an exception in the Town Code, which states that a fence is not required when the pool is covered by a suitable, strong, protective covering fastened or locked in place when not in use or unattended. She states that she did not bring the case to trial against plaintiff in bad faith. Lutzer states that plaintiff did not receive the two tickets because he was Chinese, and that the Town did not discriminate against him. She further explains that there is no evidence to suggest otherwise and that the Town does not have any records regarding the ethnicity of defendants it prosecutes for Town Code violations. Lutzer states that the allegations in plaintiff's complaint of discrimination have no basis in fact.

In her affidavit, Amanda Paccione states that she has worked for the Town for the past twelve years. She states that plaintiff is the owner of a house located at 1 Eden Drive, Stony Brook, New York. She states that the Town received a complaint from Kara Hahn, a Suffolk County Legislator, regarding an illegal rental property at plaintiff's house at 1 Eden Drive, Stony Brook, New York. Paccione states that based upon Legislator Hahn's complaint, an investigation was done and two tickets were issued to plaintiff. Paccione states that plaintiff was issued tickets because the complaint was investigated and two violations of the Town Code were found to exist on plaintiff's property. She explains that plaintiff did not receive the two tickets because he is Chinese. Paccione states plaintiff's claims that he received two tickets because he was Chinese and was discriminated against is not supported by law or fact.

With respect to the first cause of action alleging abuse of office, Paccione states that she acted in good faith issuing the tickets. She further states that there is no evidence to demonstrate a violation of plaintiff's constitutional rights. With respect to the second cause of action for abuse of power, she states that the Town does not keep records regarding the ethnicity of the person who is being issued a ticket. With respect to the third cause of action for abuse of process, Paccione states that plaintiff was issued tickets after a complaint was filed by Legislator Hahn and was handled in the same course as the eight to twelve thousand tickets issued by the Town each year. Therefore, she states there was nothing special regarding the prosecution of plaintiff's tickets. With respect to the fourth cause of action, Paccione states that when she originally went to plaintiff's house she did not know plaintiff was Chinese. She further explains her reasons for going to plaintiff's house were premised on the fact that a complaint had been filed regarding plaintiff's house. With respect to the fifth cause of action for malicious prosecution, Paccione states that there was probable cause and the case went to trial. She further states there was no intent to harass or annoy plaintiff and violate his rights. With respect to the sixth cause of action for trespass, Paacione states that she walked up plaintiff's driveway and took a picture of the backyard. She states that she did not enter his premises. She explains that she went to plaintiff's home on only one occasion when he was not home. With respect to the seventh cause of action for libel, slander and defamation of character, Paccione states there was probable cause to issue the tickets, and that the allegations that an unsecured pool ticket was written, published and disseminated to third parties to cause harm has no basis in fact. With respect to the eighth cause of action for intentional infliction of emotional distress and the ninth cause of action for negligent supervision, Paccione states that there is no basis for these actions. With respect to the tenth cause of action for conspiracy, she states that plaintiff alleges conspiracy based upon the fact that plaintiff is Chinese, however, he had not submitted any proof of racism displayed or performed by any of defendants. With regard to the eleventh cause of action for equal protection, Paccione states that there was no discrimination based upon the fact that plaintiff is Chinese, that nothing was taken from plaintiff, and that there was no search of his premises.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). However, upon the movant establishing a prima facie showing of entitlement to a summary judgment, the burden then shifts to the opponent to proffer evidence in admissible form sufficient to establish a material issue of fact raising a triable issue of law (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, *supra*). Evidence on a motion for summary judgment is viewed in a light most favorable to the party opposing the motion (*see* ***Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.***, 168 AD2d 610, 563 NYS2d 449 [2d Dept 1990]).

The first cause of action for abuse of office and second cause of action for abuse of power are dismissed, as they are merely duplicative of the causes of action alleging trespass and malicious prosecution (*see* ***Santoro v Town of Smithtown***, 40 AD3d 736, 835 NYS2d 658 [2d Dept 2007]; ***Leonard v Reinhardt***, 20 AD3d 510, 799 NYS2d 118 [2d Dept 2005]).

With regard to the third cause of action for abuse of process, three essential elements must be established by a plaintiff: (1) regularly issued process, either criminal or civil, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective (***Curiano v Suozzi***, 63 NY2d 113, 116, 480 NYS2d 466 [1984]; *see* ***Board of Educ. of Farmingdale Union Free School Dist. v Farmingdale Classroom Teachers Assn.***, 38 NY2d 397, 380 NYS2d 635 [1975]; ***Johnson v Kings County Dist. Attorney's Off.***, 308 AD2d 278, 763 NYS2d 635 [2d Dept 2003]). "The key to this tort is not impropriety in obtaining the process, but impropriety in using it" (***Simithis v 4 Keyes Leasing & Maintenance Co.***, 151 AD2d 339, 341, 542 NYS2d 595 [1st Dept 1989])

The conduct of defendants in performing an investigation on the subject premises based upon a written complaint filed by a Suffolk County legislator who received a complaint about the premises from a constituent does not support the claim that there was abuse of process. Moreover, there is no evidence that defendants acted with intent to do harm without excuse or justification or that the issuance of the tickets was done in a perverted manner to obtain a collateral objective. Paccione states, in her affidavit, that plaintiff was issued two tickets because she believed plaintiff had violated two sections of the Town Code. Lutzer states in her affidavit that the tickets were issued to plaintiff in the regular course of business as all tickets are issued to people who allegedly violate Town Code provisions. In opposition, plaintiff failed to raise a triable issue of fact. Thus, the application by defendants for summary judgment dismissing this cause of action is granted.

With regard to the fourth cause of action for selective enforcement, in order for this court to consider whether plaintiff has been selectively prosecuted, he must overcome the presumption that the decision to prosecute was made in good faith and without discrimination (*see* ***Matter of 303 W. 42nd St. Corp. v Klein***, 46 NY2d 686, 416 NYS2d 291 [1979]; ***Ardmar Realty Co. v Building Inspector Vil. of Tuckahoe***, 5 AD3d 517, 773 NYS2d 129 [2d Dept 2004]). This presumption is overcome when prima facie evidence is submitted by plaintiff which displays a strong likelihood of success on the merits and a strong showing of intentional discriminatory enforcement (*see* ***Matter of DiMaggio v Brown***, 19 NY2d 283, 279 NYS2d 161 [1967]). Moreover, plaintiff must demonstrate that the law was not applied evenhandedly to others similarly situated and that selective enforcement of the law was invidious and intentionally predicated on impermissible and unacceptable standards (*see* ***Matter of 303 W. 42nd St. Corp v Klein***, *supra*). Furthermore, a mere showing of selective enforcement or non-enforcement against others that have been similarly situated will not suffice (*see* ***Matter of DiMaggio v Brown***, *supra* at 291). In order to prevail, plaintiff must make a showing by extrinsic evidence of clear and intentional discrimination (*see* ***Matter of Feigman v Klepak***, 62 AD2d 816, 406 NYS2d 304 [1st Dept 1978]). Here, Lutzer states in her affidavit that the Town does not have any records regarding the ethnicity of the defendants, and Paccione states in her affidavit that the enforcement of the Town Code is a "complaint driven system." Paccione states that the Town received two complaints regarding the subject premises, which is why an investigation was conducted. Furthermore, Paccione states that when she first went to the premises to conduct the investigation, she did not know that plaintiff was Chinese. In opposition, plaintiff has failed to submit any evidence to support a claim of selective enforcement (*see* ***Skouras v Victoria Hall Condominium***, 73 AD3d 902, 902 NYS2d 111 [2d Dept 2010]). Accordingly, this cause of action is dismissed.

With regard to the fifth cause of action seeking damages for malicious prosecution, the plaintiff has the heavy burden of establishing (1) the commencement or continuation of a criminal proceeding against the plaintiff, (2) the termination of that proceeding in the plaintiff's favor, (3) the absence of probable cause for the criminal proceeding, and (4) actual malice (*see* ***Martinez v City of Schenectady***, 97 NY2d 78, 735 NYS2d 868 [2001]; ***Smith-Hunter v Harvey***, 95 NY2d 191, 712 NYS2d 438 [2000]). Probable cause to believe that a person committed a crime is a complete defense to a claim of malicious prosecution (*see* ***Fortunato v City of New York***, 63 AD3d 880, 882 NYS2d 195 [2d Dept 2009]; ***Iorio v City of New York***, 19 AD3d 452, 798 NYS2d 437 [2d Dept 2005]). "For purposes of the tort of malicious prosecution, probable cause has been defined as 'the knowledge of facts, actual or apparent, strong enough to justify a reasonable [person] in the belief that he [or she] has lawful grounds for prosecuting the defendants in the matter complained of' [citation omitted] or whether 'a discreet and prudent person would be led to the belief that a crime has been committed by the person charged'" (***Loeb v Teitelbaum***, 77 AD2d 92, 102-103, 432 NYS2d 487 [2d Dept 1980]). Here, the actions against plaintiff were dismissed on the grounds of facial insufficiency and jurisdictional defect, and were not terminated in his favor on the merits (*see* ***Avgush v Town of Yorktown***, 35 AD3d 331, 824 NYS2d 735 [2d Dept 2006]; ***Cahill v County of Nassau***, 17 AD3d 497, 793 NYS2d 190 [2d Dept 2005]). In addition, plaintiff has failed to provide evidence of actual malice sufficient to create a material issue or fact. Accordingly, the fifth cause of action is dismissed.

With respect to the sixth cause of action for trespass, plaintiff must demonstrate that defendants engaged in the intentional entry onto his land without justification or permission (*see* ***Chaikin v Karpias***, 162 AD3d 842, 80 NYS3d 108 [2d Dept 2018]; ***Reyes v Carroll***, 137 AD3d 886, 27 NYS3d 80 [2d Dept 2016]). Here, defendants demonstrated that they entered onto plaintiff's property based upon a written complaint filed by a Suffolk County legislator who received a complaint about plaintiff's premises from a constituent. Thus, defendants have shown that they had justification to enter unto plaintiff's land, and as a result plaintiff's sixth cause of action for trespass is dismissed (*see* ***Boring v Town of Babylon***, 147 AD3d 892, 47 NYS3d 419 [2d Dept 2017]).

With respect to the seventh cause of action for libel, slander and defamation of character, CPLR 3016 (a) provides that "[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally." In addition to setting forth the particular words allegedly constituting defamation, the complaint "must also allege the time when, place where, and manner in which the false statement was made, and specify to whom it was made" (***Epifani v Johnson***, 65 AD3d 224, 233, 882 NYS2d 234, 242 [2d Dept 2009]). "Statements made by parties, attorneys, and witnesses in the course of a judicial or quasi-judicial proceeding are absolutely privileged, notwithstanding the motive with which they are made, so long as they are material and pertinent to the issue to be resolved in the proceeding" (***Bisogno v Borsa***, 101 AD3d 780, 896, 954 NYS2d 896 [2d Dept 2012]; ***Kilkenny v Law Off. of Cushner & Garvey, LLP***, 76 AD3d 512, 513, 905 N.Y.S.2d 661 [2d Dept 2010]). An offending statement pertinent to the proceeding in which it was made is absolutely privileged, regardless of any malice, bad faith, recklessness, or lack of due care with which it was spoken or written, and regardless of its truth or falsity (*see* ***Sklover v Sack***, 102 AD3d 855, 958 NYS2d 474 [2d Dept 2013]; ***Sexter & Warmflash, P.C. v Margrabe***, 38 AD3d 163, 828 NYS2d 315 [1st Dept 2007]).

Defendants made a prima facie case of entitlement to summary judgment dismissing the complaint based on lack of specificity in the pleadings (*see* CPLR 3016 [a]; ***Arvanitakis v Lester***, 145 AD3d 650, 44 NYS3d 71 [2d Dept 2016]; ***Bell v Alden Owners, Inc.***, 299 AD2d 207, 750 NYS2d 27 [1st Dept 2002], *lv denied* 100 NY2d 506, 763 NYS2d 812 [2003]). Notably, the complaint fails to allege what false statement was spoken or written by defendants other than the words "unsecure pool" and this phrase by itself does not rise to level of "reasonably susceptible of a defamatory meaning" (*see* ***Aronson v Wiersma***, 65 NY2d 592, 493 NYS2d 1006 [1985]; ***Dillon v City of New York***, 261 AD2d 34, 704 NYS2d 1 [1st Dept 1999]). Moreover, the complaint fails to identify and specify who the third party was that heard or read the alleged false statement (*see* ***Epifani v Johnson***, *supra*). Finally, the alleged defamatory statements in the complaint are absolutely privileged (*see* ***Rabiea v Stein***, 69 AD3d 700, 893 NYS2d 224 [2d Dept 2010]; ***Lacher v Engel***, 33 AD3d 10, 817 NYS2d 37 [1st Dept 2006]). Thus, the seventh cause of action for libel, slander and defamation of character is dismissed.

With respect to the eighth cause of action for intentional infliction of emotional distress, as public policy bars such a claim against a governmental entity, this cause of action is dismissed (*see* ***Wyllie v District Attorney of County of Kings***, 2 AD3d 714, 770 NYS2d 110 [2d Dept 2003]; ***Lauer v City of New York***, 240 AD2d 543, 659 NYS2d 57 [2d Dept 1997]). Moreover, plaintiff's allegations are insufficient to demonstrate that any of the defendants' conduct was calculated to cause them distress or "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, as to be regarded as atrocious, and utterly intolerable in a civilized community" (***Murphy v American Home Prods. Corp.***, 58 NY2d 298, 303, 461 NYS2d 232 [1983] [internal citation omitted]; *see* ***Howell v New York Post***, 81 NY2d 115, 122, 596 NYS2d 320 [1993]).

The ninth cause of action alleging negligent supervision of personnel is dismissed. It is well settled that when the action of a government official involves the conscious exercise of discretion of a judicial or quasi-judicial nature, such office is entitled to absolute immunity. This entitlement is based on "sound reasons of public policy" in allowing government officials to execute their duties free from fear of vindictive or retaliatory damage suits (*see* ***Haddock v City of New York***, 75 NY2d 478, 554 NYS2d 439 [1990]; ***Tango v Tulevech***, 61 NY2d 34, 471 NYS2d 73 [1983]; ***Kelleher v Town of Southampton***, 306 AD2d 247, 760 NYS2d 235 [2d Dept 2003]). When official action involves the exercise of discretion, the officer is not liable for the injurious consequences of that action even if resulting from negligence or malice (*see* ***Tango v Tulevech***, *supra*). Here, defendants are entitled to governmental immunity in the exercise of their discretion in investigating the alleged Town Code violations at the subject premises (*see* ***Valdez v City of New York***, 18 NY3d 69, 936 NYS2d 587 [2011]; ***Santoro v Town of Smithtown***, *supra*).

With regard to the tenth cause of action for conspiracy, there is no independent tort of civil conspiracy under state law (*see* ***Suburban League for Cerebral Palsy v Richmond Hill Hall Corp.***, 158 AD2d 453, 550 NYS2d 910 [2d Dept 1990]; ***Gould v Community Health Plan of Suffolk***, 99 AD2d 479, 470 NYS2d 415 [2d Dept 1984]). Plaintiff's civil conspiracy claims under 42 USC § 1985 and § 1983, to the extent the complaint can be construed to assert such claims, contain general allegations which are conclusory and vague, and thus are insufficient (*see* ***Diederich v Nyack Hosp.***, 49 AD3d 491, 854 NYS2d 411 [2d Dept 2008]; ***Scarfone v Village of Ossining***, 23 AD3d 540, 806 NYS2d 604 [2d Dept 2005]). It is well-settled that a conspiracy under § 1985 (3) must be motivated by "some racial or

perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action" (***Thomas v Roach***, 165 F3d 137, 146 [2d Cir 1999]). There is no evidence on the record that plaintiff was issued the two tickets because he was of Chinese descent. Thus, this cause of action is dismissed.

Finally, as to the eleventh cause of action sounding in a violation of equal protection of the law and discrimination based upon ethnicity, 42 USC § 1983 "protects against municipal actions that violate a property owner's rights to due process, equal protection of the laws and just compensation for the taking of property under the Fifth and Fourteenth Amendments to the United States Constitution" (***Bower Assocs. v Town of Pleasant Val.***, 2 NY3d 617, 626, 781 NYS2d 240 [2004], *citing* ***Town of Orangetown v Magee***, 88 NY2d 41, 49, 643 NYS2d 21 [1996]). To state a claim under the Equal Protection Clause, a plaintiff must allege that (1) compared with others similarly situated, the plaintiff was selectively treated adversely; and (2) such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith or intent to injure a person (*see* ***Miner v Clinton County***, 541 F3d 464 [2d Cir 2008]; *Bizzarro v Miranda*, 394 F3d 82 [2d Cir 2005]; *see also* ***Seymour's Boatyard, Inc. v Town of Huntington***, 2009 WL 1514610 [ED NY 2009]). Alternatively, instead of alleging that the selective treatment was based on an impermissible consideration, a plaintiff may establish that there was no rational basis for the selective treatment (*see* ***Village of Willowbrook v Olech***, 528 US 562, 120 S Ct 1073 [2000]; *see also* ***Seymour's Boatyard, Inc. v Town of Huntington***, *supra*).

Due process has both a procedural and substantive component. In a procedural due process claim, the deprivation by a municipality of a constitutionally protected interest in property is not in itself unconstitutional; rather what is unconstitutional is the deprivation of such interest without due process of law (*see* ***Zinermon v Burch***, 494 US 113, 110 S Ct 975 [1990]). Procedural due process requirements are generally satisfied where the denial of a plaintiff's request is preceded by notice and a hearing and followed by a written explanation (***Natale v Town of Ridgefield***, 170 F3d 258 [2d Cir 1999]). Substantive due process rights are violated only by conduct so outrageously arbitrary as to constitute a gross abuse of governmental authority (***Natale v Town of Ridgefield***, *supra*; *see* ***Bower Assoc. v Town of Pleasant Val.***, *supra*).

Here, it is clear that the actions taken by defendants were under color of state law. Plaintiff has failed to allege facts demonstrating that defendants' actions were wholly without legal justification or that there was an impermissible motive not related to legitimate governmental objectives (***Bower Assoc. v Town of Pleasant Val.***, *supra*; ***Sonne v Board of Trustees of Vil. of Suffern***, 67 AD3d 192, 887 NYS2d 145 [2d Dept 2009]). Thus, the eleventh cause of action is dismissed.

Accordingly, the motion by defendants for summary judgment is granted and the complaint is dismissed.

Dated: January 30, 2020

J.S.C.

X FINAL DISPOSITION ____ NON-FINAL DISPOSITION