

Lazzarini v City of New York
2020 NY Slip Op 32324(U)
July 16, 2020
Supreme Court, New York County
Docket Number: 157572/2016
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 52

Justice

-----X

PATRICIA LAZZARINI,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, TYLER HENDRICK, IAN RULE, JOHN
DOES 1-4 PERSONS EMPLOYED BY NEW YORK CITY
POLICE DEPARTMENT

Defendant.

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INDEX NO. 157572/2016
MOTION DATE N/A
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, defendants' motion to dismiss and motion for summary judgement are granted, and plaintiff's cross-motion for leave to file a late notice of claim is denied.¹

Notice of Claim

This action arises out of injuries allegedly sustained by plaintiff when arrested by the New York City Police Department on October 24, 2015. Plaintiff served a notice of claim on the City on April 14, 2016 and commenced the action on September 9, 2016. The notice of claim was untimely for all claims except for false arrest, false imprisonment and malicious prosecution

Preliminarily, it must be noted that plaintiff does not dispute the untimeliness of the notice of claim. Furthermore, it is not in dispute that leave of court was not sought to file a late notice of claim. Lastly, the statute of limitations has since expired.

¹ The Court would like to thank Jason Petropoulos and Yichao Zhang for their assistance in this matter.

The timely filing of a notice of claim on the City in any case founded upon a tort is a condition precedent to the commencement of that action. *See* N.Y. Gen. Mun. Law § 50-e. Moreover, once the statute of limitations has expired, courts lack discretion in entertaining applications for a late notice of claim. *Pierson v New York*, 56 NY2d 950 [1982].

Plaintiff failed to satisfy the ninety-day statutory deadline to file a timely notice of claim for all causes of action except false arrest, false imprisonment and malicious prosecution. These untimely causes of action include: (1) assault and battery, (2) intentional infliction of emotional distress, (3) negligent hiring, training, retention and supervision, and (4) negligence. The ninety-day timeline began on October 24, 2015, when plaintiff was arrested, and expired on January 22, 2016. Plaintiff filed the untimely notice of claim on April 14, 2016.

Plaintiff has failed to comply with General Municipal Law Section 50-e and the one-year-and-ninety-day statute of limitations has since expired. Thus, this court does not have discretion to allow plaintiff's late filing for the untimely causes of action.

Plaintiff's notice of claim was timely, however, for the false arrest, false imprisonment, and malicious prosecution causes of action. As such, defendants move for summary judgment regarding these causes of action.

False Arrest, False Imprisonment and Malicious Prosecution

On a motion for summary judgment, the proponent "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *Alvarez v Prospect Hospital*, 68 NY2d 320 [1980]. Once the proponent has made this showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material

issues of fact which require a trial of the action. See *Zuckerman v City of New York*, 49 NY2d 557 [1980]. A mere shadowy semblance of an issue of fact or bold, conclusory allegations will not suffice to defeat a motion for summary judgment. *Mallad Construction Corp. v County Federal Savings & Loan Assoc.*, 32 NY2d 285,290 [1973]; *Morowitz v Naughton*, 150 AD2d 536 [2d Dept 1989].

With respect to plaintiff's allegations of false arrest, false imprisonment and malicious prosecution, the Court finds that the arrest and subsequent prosecution of plaintiff was supported by probable cause as a matter of law. The statements made by a complaining victim, along with the police officers' observations, provided the police with probable cause to arrest and prosecute plaintiff for Assault in the Third Degree.

To establish both a claim for false arrest and false imprisonment, a plaintiff must show that: (1) the defendant intended to confine him/her; (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*, 37 NY2d 451, 456 [1975]; *Weyant v Okst*, 101 F.3d 845,852 [2d Cir. 1996]. In order to maintain a cause of action based on malicious prosecution, a plaintiff must prove the following four elements: (1) the initiation of a criminal proceeding against the plaintiff, (2) the termination of the criminal proceeding in favor of the plaintiff, (3) lack of probable cause, and (4) malice. *Broughton*, 37 NY2d at 45.

Proof of probable cause to arrest as a matter of law constitutes a complete defense to the claims of false arrest and unlawful imprisonment. *Marrero v City of New York*, 33 AD3d 556, 557 [1st Dept 2006]; *Grant v Barnes & Noble, Inc.*, 284 AD2d 238, 239 [1st Dept 2001]. Also, the existence of probable cause at the time of the prosecution is fatal to any claim for malicious prosecution. *Nadal v City of New York*, 105 AD3d 598, [1st Dept 2013]; *Brown v Sears Roebuck*

& Co., 297 AD2d 205, 211 [1st Dept 2002]. If a police officer has probable cause to arrest an individual, it follows that the ensuing prosecution is supported by probable cause. *Broughton*, 37 NY2d at 456; *Feinberg v Saks & Co.*, 83 AD2d 952 [2d Dept 1981].

Proof of probable cause is not the equivalent of proof of guilt beyond a reasonable doubt but merely that it was reasonable for a prudent person to believe that a crime had been committed. See *Agront v City of New York*, 294 AD2d 189, 190 [1st Dept 2002]; *Ricciuti v N.Y.C. Transit Auth.*, 124 F3d 123, 128 [2d Cir. 1997]. It is well established that “information provided by an identified citizen accusing another individual of a specific crime is legally sufficient to provide the police with probable cause to arrest.” *Medina v City of New York*, 102 AD3d 101 [1st Dept 2012]; *Shapiro v County of Nassau*, 202 AD2d 358 [1st Dept 1993]. Also, “hearsay information provided to the police by an identified citizen is presumed to be reliable.” *Medina*, 102 AD3d at 101; *Shapiro*, 202 AD2d at 368.

Additionally, probable cause to arrest may be present irrespective of the innocence of the person arrested, and regardless of an accused’s exculpatory statements or the subsequent outcome of the arrest charges in criminal court. *Drayton v City of N.Y.*, 292 AD2d 182, 183 [1st Dept 2002]; *Coleman v City of N.Y.*, 82 AD2d 200, 204 - 05 [1st Dept 1992]; *Shapiro*, 202 AD2d at 358 (finding probable cause to arrest plaintiff despite his acquittal at trial.)

Here, it is undisputed that plaintiff and E.N., the complaining witness, were in a physical altercation inside a deli. Plaintiff admitted to the officers that she struck E.N. in the head with a closed fist. E.N. stated to the officers that plaintiff struck her and Lieutenant Rule observed scratches on E.N.’s arms and a bruise on E.N.’s head. Lieutenant Rule directed Officer Hendrick to arrest plaintiff based upon the E.N.’s statements, Lieutenant Rule’s own observations, the statement from the employee of the deli that there had been a fight inside the deli, and plaintiff’s

own statement that she and E.N. had gotten into a fight. These statements and observations were sufficient to establish probable cause for the arrest of plaintiff and subsequent prosecution as a matter of law. Thus, the City has made its prima facie entitlement to summary judgment regarding the claims of false arrest, false imprisonment and malicious prosecution.

In opposition, plaintiff fails to raise genuine, material issues of fact requiring a trial in this regard. Plaintiff argues that the police maliciously withheld critical evidence by failing to indicate that plaintiff suffered from severe injuries, that plaintiff was acting in self-defense, that E.N. sustained no injuries, and police did not memorialize Joann Encarnacion's favorable witness statement. Further, plaintiff alleges that the police encouraged the prosecution of plaintiff by deviating from standard police procedures and failing to do a full and proper inquiry. However, these arguments fail to defeat probable cause to arrest or prosecute plaintiff for her own conduct and bear no relevance on the specific causes of action before the Court. In this case, probable cause to arrest was supported by a victim statement, visible injuries, plaintiff's admission of striking E.N., and a deli employee's statement that a fight had occurred.

To the extent plaintiff claims that the officers did not adequately investigate is irrelevant to the inquiry and is therefore insufficient to defeat defendants' prima facie showing. See *Agront*, 294 AD2d 189 [1st Dept 2002] ("The alleged conflicting evidence uncovered in the course of the police investigation is relevant to the issue of whether guilt beyond a reasonable doubt could have been proven at a criminal trial, not to the initial determination of the existence of probable cause.") Accordingly, it is hereby

ORDERED, that the defendants' motion to dismiss and for summary judgment is granted and the plaintiff's cross motion for leave to serve a late notice of claim is denied; and it is further

ORDERED, that the clerk shall enter judgment of dismissal of the instant matter.

7/16/2020

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: