Pirro v Board of Trustees of the Vil. of Groton
2020 NY Slip Op 34869(U)
October 1, 2020
Supreme Court, Tompkins County
Docket Number: Index No. EF2018-0344
Judge: Joseph A. McBride
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 31st day of July 2020.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

NORFE J. PIRRO and HERITAGE HOMESTEAD PROPERTIES, LLC,

Plaintiffs,

-vs-

BOARD OF TRUSTEES OF THE VILLAGE OF GROTON, CHARLES V. RANKIN, CHRIS NEVILLE, TIM WILLIAMS, VILLAGE OF GROTON, JOHN DOES,

Defendants.

DECISION AND ORDER

Index No. EF2018-0344

APPEARANCES:

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JOSEPH A. MCBRIDE, J.S.C.

On this motion, Defendants, Board of Trustees of the Village of Groton, Charles V. Rankin, Chris Neville, Tim Williams, Village of Groton, John Does, (collectively "Defendants") seeks summary judgment pursuant to CPLR §3212 and ultimate dismissal of the matter against Plaintiffs, Norfe J. Pirro and Heritage Homestead Properties, LLC (collectively "Plaintiffs"). Plaintiffs filed opposition. The motion was heard with oral argument via Skype for Business on July 31, 2020. Court received and reviewed said moving papers and decided; as discussed below.

BACKGROUND FACTS

Plaintiffs are property owners in the Village of Groton ("Village"). Mr. Pirro is one member of the LLC that owns 184 Main Street and 166 Main Street in the Village. In 2014, Village passed Local Law #4, a regulatory statute, which has since been deemed unconstitutional as a result of a separate court action. Local Law #4 is essentially a point system nuisance law in which landlords would receive "points" when criminal and/or nuisance behavior was reported that required police presence. A property accumulating 12 points within six months or 18 points within one year, is deemed a public nuisance. The owner is then given an opportunity for abatement, or in the alternative the Board may authorize a civil action for relief. Village claims their legislative intent was to protect the public health and safety, and reduce noise, crime, and disorder. Throughout 2014, Plaintiffs were cited with numerous points in violation of Local Law #4 for the conduct of the tenants, including, drug use, public intoxication, "catcalling," making obscene comments, and other various police contact. Plaintiffs were given an opportunity for abatement, and then a civil proceeding was initiated against them. It was under this previous action that the Third Department reviewed Local Law #4 and held that the "Nuisance Law facially prohibits a real and substantial amount of expression guarded by the First Amendment" because the Law as written was not "narrowly tailored to serve [the] significant governmental interest." Board of Trustees v. Pirro, 152 Ad3d 149,160-61 (3rd Dept 2017) (*internal citations omitted*). As a result, the Third Department deemed Local Law #4 as drafted was "overbroad

and facially invalid" and Mr. Pirro's motion for summary judgment was granted and Village's previous civil proceeding was dismissed. Id. at 161.

Consequently, based on the Third Department's ruling, Plaintiffs filed this current matter on June 15, 2018, alleging four causes of action: 1) malicious prosecution, 2) violations of civil rights, 3) negligent supervision, and 4) violations of the Fair Housing Act. Plaintiffs allege that Defendants "commend a civil enforcement action… motivated by a desire to rid the village of the plaintiffs or plaintiffs' tenants, or to cause permanent economic harm to the plaintiffs." Defendants now move this Court seeking summary judgment to dismiss the action as a matter of law. Defendants argue that Plaintiffs cannot support each of their causes of actions. Specifically, there is no malice within the meaning of malicious prosecution as this was a regulatory statute meant to protect the public at large. Further, that Plaintiffs are not a protected class, there was no duty to protect the Plaintiff that outweighed the duty to protect the public. Plaintiffs oppose summary judgment arguing there are plenty questions of fact, including whether the Defendants enforced the Local Law maliciously against Mr. Pirro, and whether Defendants complied with their own requirement to allow Plaintiffs abatement of the problem. The Court discusses these arguments below.

LEGAL DISCUSSION AND ANALYSIS

Pursuant CPLR §3212(b), the motion for summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of either party. When seeking summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. Amedure v. Standard Furniture Co., 125 AD2d 170 (3rd Dept. 1987); citing Winegrad v. N.Y. Univ. Med. Ctr., 64 N.Y.2d 851, 853 (Ct. of App. 1985). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (Ct. of App. 1986); Winegrad, 64 N.Y.2d 851, 853. "When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination (see, Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [Ct. of App. 1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable

issue of fact." Boston v. Dunham, *274* AD2d 708, 709 (3rd Dept. 2000); see, Boyce v. Vazquez, 249 AD2d 724, 726 (3rd Dept. 1998). The motion "should be denied if any significant doubt exists as to whether a material factual issue is present or even if it is arguable that such an issue exists." Haner v. DeVito, 152 AD2d 896, 896 (3rd Dept. 1989); Asabor v. Archdiocese of N.Y., 102 AD3d 524 (1st Dept. 2013). It "is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact." Vega v. Restani Constr. Corp., 18 NY3d 499, 505 (Ct. of App. 2012) (citation omitted).

MALICIOUS PROSECUTION

"The elements of the tort of malicious prosecution are: (1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice. Broughton v. State, 37 N.Y.2d 451, 457 (Ct. of App. 1975). Moreover, malicious prosecution can be civil in nature, however the elements must maintain that the defendant initiated the action against the plaintiff "with malice and without probable cause to believe it could succeed." Purdue Frederick Co., v. Steadfast Ins. Co., 40 AD3d 285, 286 (1st Dept. 2007).

Here, the Court finds that as a matter of law, Plaintiffs cannot succeed on the first cause of action. There remain no questions of fact that Defendants initiated the prior civil proceeding with malice or absent probably cause that they could succeed. At the time the civil action was brought, Local Law #4 was an active law. According to Local Law, Defendants were following it as enacted, with the probable cause that they were going to be successful on the merits. According to the deposition of Timothy Williams, other property owners received points pursuant Local Law #4. Plaintiffs were not singled out. Further, as the Third Department acknowledged, they were "not unsympathetic to the Board's arguments that the Nuisance Law was to protect residents from crime rather than to punish them for reporting it." See Board of Trustees, 152 Ad3d at 160. Therefore, the first cause of action for malicious prosecution must be dismissed as a matter of law.

CIVIL RIGHT VIOLAITONS

As an initial matter, it is clear that Plaintiffs are not a protected class under the Equal Protection Clause of the Fourteenth Amendment. Therefore, to plead a "class of one" action, the

plaintiff must allege that he or she has been "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Willowbrook v. Olech, 528 US 562, 564 (2000).

Here, Plaintiffs fail to do that. The record is void of any allegations that Plaintiffs were treated differently than others similarly situated. Therefore, any alleged violation of the equal protection clause must be dismissed.

Plaintiffs further allege Defendants violated the Due Process Clause by failing to follow their own legislation. Local Law #4 provided that the property owner must provide a written abatement plan that could be completed within 30 days. The issue revolves around whether Village allowed Plaintiffs the opportunity to follow their abatement plan. However, Plaintiffs submit the abatement plan was accepted without objection and then further submits he could not complete within 30 days, in violation of the legislation. Here, contained within Plaintiffs' moving papers and exhibits, Plaintiffs provide the Court with the information that there was no violation of due process and therefore any alleged violation of the due process clause must be dismissed.

Additionally, in their second cause of action, Plaintiffs alleges that Defendants violated the tenants' right of redress of grievances. However, Plaintiffs fail to provide any evidence in admissible form that there was a violation of any First Amendment rights. First, as a general rule, "a litigant may only assert his own constitutional rights and immunities" absent an "intimate association claim." Hurley v. Town of Southampton, 2018 US Dist. Lexis 137089, 19 (USDC Eastern Dist. 2018). However, "the Constitution does not recognize a generalized right of social association [as] the right of intimate association generally will not apply, for example to business relationships." Id. at 20-21. "Since Plaintiff has not alleged a familial or otherwise close emotional relationship with his tenants," the violations for rights under the First Amendment must be dismissed. See Id at 21.

NEGLIGENT SUPERVISION

Plaintiffs allege that "certain defendants… negligently supervised persons charged with enforcing or prosecuting the Local Law." As an initial matter, a claim for negligent investigation or prosecution is not actionable in New York. See Brown v. State of New York, 45 A.D.3d 15, 26 (3rd Dept. 2007). The Plaintiffs' allegations are more akin to vicarious liability for the mayor's office or police agency's negligent supervision of the "persons charged with enforcing

the Local Law." Such a claim "requires proof that defendant, as employer, knew or should have known of the employee's propensity for the conduct which caused the injury." Id at 26.

Here, the record is void of any argument, allegation, question of fact, or authority that this allegation is legitimately before the Court. Even if the Court gives Plaintiffs the benefit of the allegation that the allocation of points was mishandled, Plaintiffs offer no evidence that the mayor's office or police chief "knew or should have known" that the persons enforcing the law would misappropriate the points. Notwithstanding that Local Law #4 was found unconstitutional, the Court is unpersuaded that there was any malice or intentional misapplication of nuisance points. Therefore, the third cause of action must be dismissed.

FAIR HOUSING ACT

In their fourth cause of action, Plaintiffs allege violations of the Fair Housing Act. Specifically, that "defendants engaged in discriminatory housing practices" causing tenants to be diverted away from Village based on color, disability, familial status, national origin, race, religion, or sex. According to the Fair Housing Act, an "aggrieved person" has the right to commence an action. See USC 3602. Further, it is unlawful for anyone "relating to the business of selling or renting" to discriminate against the enumerated protected tenants. See 42 USC 3605.

Here, Plaintiffs are not an "aggrieved person" within the meaning of the Fair Housing Act, nor to the allege that Defendants are "relating to the business of selling or renting" to trigger unlawful conduct. Further, Plaintiffs merely submit an advisory HUD manual as proof of violation. The Court finds that Plaintiffs fail to provide evidence in admissible form that raises material questions of fact. Therefore, the fourth cause of action must be dismissed.

CONCLUSION

Based on foregoing discussion, viewing the evidence in favor of the non-moving party, the Court finds Plaintiffs have failed to provide any evidence in admissible form to establish questions of fact for any of the alleged causes of action to defeat the present motion. Therefore, Defendants' motion for summary judgment must be GRANTED and the matter is DISMISSED with PREJUDICE.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this **DECISION AND ORDER** by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 10/1, 2020
Norwich, New York

HON. JOSEPH A. MCBRIDE
Supreme Court Justice

Entered 10/01/2020