

Welch v City of New York
2021 NY Slip Op 32514(U)
November 30, 2021
Supreme Court, New York County
Docket Number: Index No. 153648/2021
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 52M

Justice

-----X

EVERTON WELCH, JIMMY ALAMO, SHADY BOLTON

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 153648/2021
MOTION DATE N/A
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 13, 14, 15

were read on this motion to/for DISMISSAL.

This action arises out of allegations of alleged biased-based profiling, false arrest/imprisonment, and violations of the Administrative Code and the New York State Constitution. Defendant, the City of New York (the "City"), moves to dismiss the complaint pre-answer. Plaintiffs oppose.

It is well settled that on a motion to dismiss pursuant to CPLR §3211, the Court is generally obligated to "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87 [1994]).

Preliminarily, the motion to dismiss as it relates to all claims by plaintiff Alamo is granted. Plaintiff Alamo entered into an agreement with the City subsequent to his arrest in this case to settle all claims against the City for \$5,000. While that payment was made subsequent to the date of the agreement, at the very least, it took effect when the sum was paid and was retroactive to the arrest in this case. As there is no indication that such agreement was

unconscionable, on its face it was valid and covers the instant arrest. As such, this Court gives it the effect that it warrants and dismisses the matter as to plaintiff Alamo.

The motion to dismiss as it relates to the negligence supervision and training is granted. The City of New York is the only defendant in this matter, and the basis of plaintiffs' claims against the City is that the New York City Police Department and its officers were acting as the agents of the City, thus all claims are grounded on a theory of respondeat superior (*see Karoon v N.Y. City Transit Auth.*, 241 AD2d 323 [1st Dept 1997]; *Sugarman v Equinox Holding, Inc.*, 73 AD3d 654 [1st Dept 2010]). Accordingly, the first cause of action is dismissed.

The motion to dismiss as it relates to the second cause of action for false arrest and false imprisonment is granted. The theory of the plaintiff in this case that Criminal Procedure Law § 150.20 prohibits the plaintiffs from being given desk appearance tickets is misplaced. At the time of the arrests of plaintiffs, § 221.05 was a violation. While it was mandated that such a violation of the law mandated an "appearance ticket" pursuant to CPL § 150.20, there is simply no indication that appearance ticket was required to be given at the scene of the occurrence, nor that there was a time limit to the arrest of the plaintiff. As such, there was no legal impediment to the police officers giving the appearance ticket to the defendants at the scene of the alleged violation.

The motion as it relates to violation of the New York City Administrative Code is denied as to plaintiffs Welch and Bolton. The plaintiffs have alleged that "roughly 10,000 people in 2020 alone were either arrested or given a criminal court summons for marijuana, and 94% of them were people of color." It is undisputed that the 2 remaining plaintiffs are persons of color. Reading the Administrative Code sections broadly, and as the intent of the legislation directs, the City has not met its burden of dismissal. Read together, the allegations in the complaint, if true,

could be considered to be “intentional bias-based profiling” as set forth in section 14-151(c)(1) of the New York City Administrative Code. The arrest of the 2 individuals was for marijuana that was not alleged to have been in public view. The City alleges that there is a race neutral reason for searching plaintiff Welch in the complaint. The plaintiffs’ complaint states that the officers arrested plaintiff because they were “likely angry” because they were being filmed. That appears to be pure conjecture, as there is no indication that the officers gave any outward indication that was their motive. The allegation of plaintiff Bolton is more artfully drafted. Plaintiff Bolton was allegedly arrested after a for-hire vehicle he was a passenger in was stopped for a traffic infraction. Plaintiff was informed that he was not wearing a seatbelt and then the backseat he was sitting in was searched and marijuana was ultimately discovered.

The motion as it relates to the New York State Constitution is denied.¹ Plaintiff makes the point that the standard of proof for the New York City anti-bias provisions and the New York State Constitution provisions are different, and that there is no monetary penalty available under the Administrative Code provisions. As such, there is no repetition to this provision and other provisions alleged nor common law remedy shown to be available to the plaintiffs. Thus, the motion to dismiss as to these provisions is denied.

Lastly, the motion to dismiss the request for future injunctive relief is denied. The plaintiffs point out that marijuana remains illegal in parts of New York City, such as in parks, within New York City Housing Authority developments, among other places. As such, should discrimination ultimately be found in the enforcement of the past marijuana laws, such discrimination could be found capable of repetition in the enforcement of marijuana provisions in these locations in the City. Accordingly, it is hereby

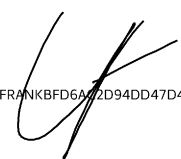
¹ The Court notes that sections 1, 8 and 9 are alleged to have been violated but they are inapplicable to this case.

ORDERED that the first and second causes of action are dismissed; and it is further
ORDERED that plaintiff Jimmy Alamo’s complaint is dismissed in its entirety; and it is
further

ORDERED that the caption be amended to reflect the dismissal and that all future papers
filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice
of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General
Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to
reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General
Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on
Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-
Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).


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LYLE E. FRANK, J.S.C.

11/30/2021
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE