

Andrade v Hilton Worldwide Holdings, Inc.

2019 NY Slip Op 35227(U)

August 14, 2019

Supreme Court, New York County

Docket Number: Index No. 159622/2017

Judge: Verna L. Saunders

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS PART IAS MOTION 5

Justice

INDEX NO. 159622/2017

PEGGY ANDRADE, Plaintiff,

MOTION SEQ. NO. 002

- against-

HILTON WORLDWIDE HOLDINGS, INC., HILTON, INC., NEW YORK HILTON MIDTOWN, NEW YORK HILTON & TOWERS HOTEL (HILTON DEFENDANTS), ALEX MRHA, individually and as Employee of HILTON DEFENDANTS, UNIDENTIFIED HILTON DEFENDANT(S) EMPLOYEES, NEW YORK CITY (NYC), NEW YORK CITY POLICE DEPARTMENT (NYPD) POLICE OFFICER DENZEL JACOBS, SHIELD 20575, individually and in his/her official capacity, UNIDENTIFIED OFFICERS OF THE NEW YORK CITY POLICE DEPARTMENT, individually and in his/her official capacity, Defendants.

AMENDED DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68 were read on this motion to/for

DISMISS

Plaintiff commenced this action to recover damages arising from her arrest at the Hilton Hotel located at Sixth Avenue and 53rd Street, New York, N.Y. on October 28, 2016. Plaintiff alleges numerous causes of action, including battery; assault; false arrest/false imprisonment; malicious prosecution; conspiracy; respondent superior; and negligent training and supervision.

Defendants, Hilton Worldwide Holdings, Inc., Hilton, Inc., New York Hilton & Towers Hotel, (Hilton Defendants), New York Hilton Midtown, and Unidentified Hilton Defendant(s) Employees, hereinafter collectively, "Hilton," now moves the court for an order seeking dismissal of plaintiff's complaint as against it pursuant to CPLR § 3211(a)(7) on the grounds that plaintiff failed to state a cause of action.

Specifically, Hilton argues that plaintiff's false imprisonment claim should be dismissed as against Hilton because plaintiff's confinement was the result of a criminal arrest made by the New York City Police Department. Further, Hilton argues that plaintiff's malicious prosecution claim should be dismissed as against it because Hilton called the police based on the statements made by both the plaintiff and defendant, Alex Mrha, and reported information to the police but did not take any further active part in the criminal proceeding.

Hilton further contends that based on the statements of plaintiff and Alex Mrha, probable cause existed to call the police; that there was no evidence of malice on the part of Hilton; and that the criminal complaint was dismissed on procedural grounds. Hilton also contends that

plaintiff's claim of conspiracy should be dismissed because plaintiff failed to provide any facts to suggest that the defendants entered into unlawful agreement to cause plaintiff's arrest. Lastly, Hilton argues that plaintiff's causes of action for respondeat superior and negligent hiring and supervision should be dismissed because, contrary to the plaintiff's assertions, Mr. Mrha was never employed by Hilton. (See Affidavit of Katie Greenwell, annexed as *Exhibit I*.)

Plaintiff opposes the motion contending that as she was invited to Mr. Mrha's hotel room, Hilton security acted in bad faith when they contacted and provided the police with false information that plaintiff was trespassing. Plaintiff asserts that there was no cause for her arrest other than to protect defendant, Mr. Mrha, son of Hilton's Vice President, who assaulted her during her visit.

In reply, Hilton argues that the police were contacted based on the serious nature of plaintiff's allegations against Mr. Mrha and the fact that plaintiff was working as an escort at the time of the dispute. Hilton also points out that, in opposition papers, plaintiff states that she advised Hilton security that she wished to press charges against Mr. Mrha.

When considering a motion to dismiss for failure to state a cause of action, pursuant to CPLR § 3211(a)(7), the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory. (*Leon v Martinez*, 84 NY2d 83 [1994].) A court may freely consider affidavits submitted by a plaintiff to remedy any defects in the complaint, but the court should not consider whether the plaintiff has simply stated a cause of action, but rather whether the plaintiff actually has one. (*Amaro v Gani Realty Corp.*, 60 AD3d 491 [1st Dept 2009].) Normally, a court should not be concerned with the ultimate merits of the case (*Anguita v Koch*, 179 AD2d 454, 457 [1st Dept 1992]) however, these considerations do not apply to allegations consisting of bare legal conclusions, as well as, factual claims which are flatly contradicted by documentary evidence. (*Simkin v Blank*, 19 NY3d 46, 52 [2012]).

"[W]here an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of *respondeat superior*, no claim may proceed against the employer for negligent hiring or retention." (*Karoon v New York City Tr. Auth.*, 241 AD2d 323 [1st Dept, 1997] citing *Eifert v Bush*, 27 AD2d 950 [2d Dept 1967]). The Appellate Division in *Karoon* further held that the only exception to the above is where the individuals have acted with gross negligence and there is a claim for punitive damages. In the case at bar, the causes of action against Hilton for negligent training and supervision are hereby dismissed as notwithstanding that Hilton was not Mr. Mrha's employer, Hilton would be liable for any alleged acts of negligence by any of its employees who allegedly caused plaintiff to be arrested and prosecuted and thus, there is no basis for a claim based on negligent training and supervision.

As to a claim of false imprisonment, the complaint must allege that "(1) the defendant intended to confine [plaintiff]; (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]). It is not sufficient that the defendant's words or

actions caused a police officer to confine plaintiff; plaintiff must show that the defendant “directed an officer to take [him] into custody.” (See *Du Chateau v Metro-North Commuter R.R. Co.*, 253 AD2d 128 [1st Dept 1999] citing *Vernes v Phillips*, 266 NY 298 [1935].) There shall be no liability imposed where the defendant “merely made his statement, leaving it to the officer to act or not as he thought proper.” *Id.* Here, Hilton merely reported information to the police. When police arrived, both defendant Mrha, and plaintiff were given an opportunity to convey their respective accounts of the dispute. Based on the conflicting accounts, which included allegations of sexual assault, an altercation regarding payment for escort services rendered by plaintiff, and plaintiff’s subsequent refusal to leave Mr. Mrha’s hotel room after he refused payment, both the plaintiff and defendant, Mr. Mrha were arrested. Thus, plaintiff’s confinement was independent of Hilton as the police decided to arrest the parties.

Regarding plaintiff’s malicious prosecution claim, case law pertaining to liability for these claims is similar to that of false arrest/imprisonment, as claims of false arrest and malicious prosecution often go hand in hand. In order to prevail on a claim for malicious prosecution, plaintiff must prove (1) defendant’s initiation of a criminal proceeding against him; (2) termination of the proceeding in his favor; (3) lack of probable cause; and (4) malice. (See *Smith-Hunter v Harvey*, 95 NY2d 191 [2000].) Simply providing information to law enforcement authorities, who exercise their own independent judgment as to whether an arrest should be made and criminal charges filed, normally would not result in liability for malicious prosecution. (See *Du Chateau*, supra.) Instead, plaintiff must show that the defendant “played an active role in prosecution such as giving advice and encouragement or importuning the authorities to act.” (*Present v Avon Prods., Inc.*, 253 AD2d 183 [1st Dept 1999].) Here, the plaintiff fails to meet the elements of a malicious prosecution claim. The record does not support a finding that Hilton had any involvement with the criminal proceeding which ensued against plaintiff beyond calling the police and reporting the dispute. Plaintiff asserts that Hilton falsely conveyed there was a trespass which led to her arrest, but the police spoke with both parties and made an independent determination that arrest was warranted.

Lastly, the court agrees with Hilton’s position that there is no factual basis to support plaintiff’s claim of conspiracy. It is undisputed that plaintiff arrived at the Hilton in her role as an escort seeking a customer to engage in consensual sex for payment. After being invited to Mr. Mrha’s room, a dispute arose as to payment. As a result, Hilton security responded to the room and called the police to address the situation. The court finds plaintiff’s argument that the police arrested the plaintiff as a part of the defendants’ conspiracy to protect Mr. Mrha unavailing. As Hilton points out in its reply, the plaintiff informed Hilton security that she was intent on filing charges against Mr. Mrha, which would have required police involvement in any event. Plaintiff seems to now take issue with the fact that police involvement resulted in her arrest along with Mr. Mrha, instead of resulting in the sole arrest of Mr. Mrha which in and of itself does not support a finding that the defendants conspired to arrest the plaintiff. Accordingly, it is hereby

ORDERED that Hilton’s motion to dismiss the complaint is herein granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

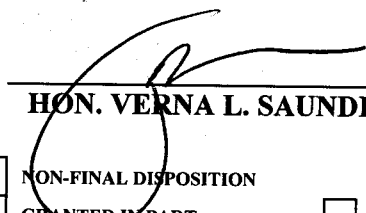
ORDERED that this action is severed and continued under this index number with respect to the remaining defendants; and it is further

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 County Clerk and the Clerk of the Trial Support Office, who are directed to mark the Court's records to the reflect the change in the caption herein; and it is further

ORDERED that the remaining parties are directed to appear for a compliance conference on October 22, 2019 at 2:00 P.M., Part DCM, Room 106, 80 Centre Street, New York, N.Y.

August 14, 2019


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE