

JURY VERDICT

Cohen v. Picini, et al, 2018 Slip Op.51726(U)
Supreme Court, Nassau County
Index #608443/16
Hon. Justice Jeffrey S. Brown
Decision: dated 11/9/18 and entered 11/13/18
Defense Attorney: John J. Nicolini

SUMMARY JUDGMENT GRANTED TO DEFENDANT IN CASE INVOLVING MALICIOUS PROSECUTION/FALSE ARREST

FACTS

This action involved a claim brought by plaintiff following his arrest as a result of an alleged hit and run accident. On 4/23/14, our client, Eleni C. Manitaras, was a passenger in a vehicle operated by co-defendant, Kyriaki Katrakazos. Co-defendant, Camille D. Picini, was also a passenger in the vehicle. The three defendants were friends and classmates attending the New York Institute of Technology.

On 4/23/14 at approximately 4:30 p.m., their vehicle was rear-ended. Ms. Katrakazos identified a newer model SUV Mercedes which was blue/silver in color as being the offending vehicle and she was able to write down the license plate number.

The three defendants filed a complaint with Nassau County Police which then investigated and ultimately arrested plaintiff and charged him with leaving the scene of an accident. All three defendants signed police statements. Plaintiff contested the criminal charges and the case proceeded to a bench trial, at which time the plaintiff was acquitted.

LIABILITY/LEGAL ISSUES

Following the acquittal, plaintiff instituted this civil action against Picini, Katrakazos and Manitaras alleging the following: false arrest; malicious prosecution; intentional infliction of emotional harm; negligence; defamation (slander *per se*); and defamation (*per quod*). In a decision dated 4/19/17, Judge Brown dismissed the cause of action for false arrest, intentional infliction of emotion distress and defamation as being untimely under the statute of limitations. The judge also dismissed the negligence cause of action on the basis that a plaintiff seeking damages for an injury resulting from a wrongful arrest and detention may not recover under broad general principles of negligence but must proceed by way of the traditional remedies of false arrest and imprisonment. See Antonious v. Muhammed, 250 A.D.2d 559 (2d Dept. 1998).

Following Judge Brown's initial decision, the only cause of action remaining as and against the defendants was the claim for malicious prosecution. A summary judgment motion was filed on behalf of our client, Manitaras, as were similar motions filed on behalf of Picini and Katrakazos. In the motion filed on behalf of our client, we cited to well established case law that an action for malicious prosecution requires the following: (1) the initiation of a proceeding; (2) a determination favorably to plaintiff; (3) lack of probable cause; and (4) malice. See DuChateau v. Metro-North Commuter R.R. Co., 253 A.D.2d 128 (1st Dept. 1999).

It was argued that plaintiff had failed to make out a *prima facie* case as to the first element which required proof that defendant Manitaras had initiated the criminal proceeding. On this issue, various cases were cited to setting forth that in order for a civilian defendant to be considered to have initiated the criminal proceeding, it must be shown that the defendant played an active role in the prosecution, such as giving advice and encouragement or in oppportuning the authorities to act. See Baker v. City of New York, 44 A.D. 3d 977 (2nd Dept. 2007).

It was further argued that the courts have held that merely identifying an individual as the perpetrator of a crime, filing a complaint, requesting that the individual be arrested and offering testimony in the criminal trial, is insufficient to establish that a civil defendant initiated the criminal proceeding. See DuChateau v. Metro North Commuter RR Co., 253 A.D.2d 128 (1st Dept. 1999).

DECISION

Judge Brown issued a decision granting summary judgment as to each defendant dismissing plaintiff's remaining claim of malicious prosecution. The judge determined that the defendants met their *prima facie* entitlement to judgment as a matter of law establishing that, even if defendants were mistaken in identifying the plaintiff as the hit and run driver, there was no evidence that the defendants falsified evidence to the police.