

State of New York

Court of Appeals

*Decided and Entered on the
twenty-second day of March, 2022*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2021-940

Charles Rochester,
Appellant,

v.

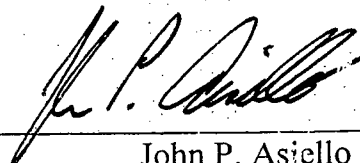
City of New York, et al.,
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



John P. Asiello
Clerk of the Court

eg Appendix-A

State of New York

Court of Appeals

*Decided and Entered on the
twenty-first day of July, 2022*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2022-343

Charles Rochester,
Appellant,

v.

City of New York, et al.,
Respondents.

Appellant having moved for reargument of motion for leave to appeal &c. to the
Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for reargument is denied; and it is further

ORDERED, that the motion for poor person is dismissed as academic.



Lisa LeCours
Clerk of the Court

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CLERK OF N.Y. LAW DEPT.
OFFICE OF CONF. COUNS.
COMMUNICATIONS UNIT

eg Appendix B

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Rolando T. Acosta,
Dianne T. Renwick
Troy K. Webber
Jeffrey K. Oing
Lizbeth González,

Presiding Justice,

Justices.

Charles Rochester,
Plaintiff-Appellant,

Motion No. 3513
Index No. 251498/16
Case No. 2020-04280

-against-

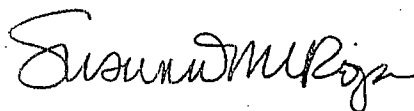
The City of New York, et al.,
Defendants-Respondents.

Plaintiff-appellant, pro se, having moved for leave to prosecute, as a poor person, the appeal taken from an order of the Supreme Court, Bronx County, entered on or about May 27, 2020, and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to said motion, and due deliberation having been had thereon,

It is ordered that said motion is denied.

ENTERED: December 08, 2020



Susanna Molina Rojas
Clerk of the Court

CLERK OF THE COURT
OFFICE OF COMMUNICATIONS
JAN 10 2021

e.g. Appendix-C

Supreme Court of the State of New York
Appellate Division, First Judicial Department

PRESENT: Hon. Rolando T. Acosta,
Dianne T. Renwick
Troy K. Webber
Jeffrey K. Oing
Lizbeth González,

Presiding Justice,

Justices.

Charles Rochester,
Plaintiff-Appellant,

Motion No. 2021-00323
Index No. 251498/16
Case No. 2020-04280

-against-

The City of New York, et al.,
Defendants-Respondents.

An order of this Court having been entered on December 8, 2020 (M-2020-03513) denying plaintiff-appellant's motion for leave to prosecute, as a poor person, the appeal taken to this Court from an order of the Supreme Court, Bronx County, entered on or about May 27, 2020,

And plaintiff-appellant, pro se, having moved to reargue the aforesaid order of this Court, and for an extension of time in which to perfect the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of extending the time in which to perfect the appeal to the September 2021 Term of this Court, with a filing deadline of July 12, 2021, and is otherwise denied.

ENTERED: March 09, 2021



Susanna Molina Rojas
Clerk of the Court

e.g. Appendix C-a

Supreme Court of the State of New York
Appellate Division, First Judicial Department

**PRESENT: Hon. Anil C. Singh,
Lizbeth González
Tanya R. Kennedy
Saliann Scarpulla
Martin Shulman,**

Justice Presiding,

Justices.

**Charles Rochester,
Plaintiff-Appellant,**

**Motion No. 2021-02860
Index No. 251498/16
Case No. 2020-04280**

-against-

**The City of New York, et al.,
Defendants-Respondents.**

Orders of this Court having been entered on December 8, 2020, denying plaintiff-appellant's motion for leave to prosecute, as a poor person, the appeal taken to this Court from an order of the Supreme Court, Bronx County, entered on or about May 27, 2020 (M-2020-03513), and March 9, 2021, granting plaintiff's motion to reargue said order, and for an extension of time to perfect the appeal, to the extent of extending the time to perfect to the September 2021 Term of this Court (M-2021-00323),

And plaintiff-appellant having again moved for leave to prosecute, as a poor person, the aforesaid appeal and for an extension of time in which to perfect same, deemed to include a request to vacate the dismissal of the appeal (see 22 NYCRR 1250.10[c]),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: September 28, 2021



Susanna Molina Rojas
Clerk of the Court

e.g. Appendix C-b

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 27

ROCHESTER

-against-

CITY OF NEW YORK

Index No.

251498/16

Hon.

RODRIGUEZ

Justice Supreme Court

The following papers numbered 1 to _____ were read on this motion (Seq. No. 12)
for WISC noticed on _____

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is:

As further set forth in DECISION and ORDER annexed hereto:

(1) Plaintiff's motion seeking, *inter alia*, reargument of a prior order of this court dated November 4, 2019 is **denied** in its entirety; and

(2) Cross-motion by Defendant City of New York seeking dismissal of the complaint is **granted** in its entirety, and therefore it is ORDERED that the complaint is dismissed.

Motion is Respectfully Referred to Justice:
Dated: _____

Dated:

5/7/2020

Hon.

Hon. Julia I. Rodriguez

JULIA RODRIGUEZ

J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
- ☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

eg. Appendix E

66
Last Decision in Bronx NY S.Ct

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----X Index No. 251498/2016

Charles Rochester,

Plaintiff,

-against-

DECISION & ORDER

The City of New York et al.,

Defendants.

Present:

Hon. Julia Rodriguez

-----X Supreme Court Justice

Recitation, as required by CPLR 2219(a), of the papers considered in review of plaintiff's motion to reargue and for sanctions.

Papers Submitted

Numbered

Notice of Motion & Affidavit in Support

1

Affirmation in Opposition & Exhibits

2

Reply Affidavit & Exhibits

3

In his complaint, the pro se plaintiff alleges causes of action for false arrest, false imprisonment, assault and battery, malicious prosecution, negligent hiring, training and retention, violations of 42 U.S.C. 1983 and punitive damages in connection with his arrest by the New York City Police Department in Bronx, New York on November 25, 2015. All charges against plaintiff were ultimately dismissed.

By Short Form Order dated November 14, 2019, the Hon. Mitchell J. Danziger granted defendant's motion to dismiss all claims against the individual police officers as it was undisputed that said officers were never served with the summons and complaint, the statute of limitations had expired with respect to plaintiff's state law claims and plaintiff failed to establish that the "relation-back doctrine" applied. Plaintiff's state law claims against defendants The City of New York, New York City Police Department, Bronx 44th

- 1 -

C.G. APPX E

6c
Precinct and NBBX/NARCBBX Unit were also dismissed.

Plaintiff now moves for "Reconsideration To Re-instate [His] Federal Claim[s]" and for sanctions. While not denominated as such, the Court considers plaintiff's motion to be a motion to reargue, pursuant to CPLR 2221, the November 14, 2019 decision by the Hon. Mitchell J. Danziger to the extent that plaintiff's federal law claims against the individual officers were dismissed.

Defendant City of New York cross-moves for an order dismissing plaintiff's federal claims against defendants The City of New York, New York City Police Department, Bronx 44th Precinct and NBBX/NARCBBX Unit for failure to state a cause of action.

I. Plaintiff's Motion to Re-Argue

The essence of plaintiff's argument is that defendants failed to provide requested discovery, including the officer's addresses, and therefore, the federal claims against said officers should be re-instated and defendants should be sanctioned for failing to respond to plaintiff's discovery demands. Notably, plaintiff made the same arguments in opposition to defendants' prior motion to dismiss which was resolved in the November 14, 2019 decision.

* * * * *

A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion. CPLR 2221(d). Here, plaintiff does not indicate what, if any, matters of fact or law the court overlooked or misapprehended in determining the prior motion. Instead, plaintiff proffers arguments previously considered and rejected by the court. Accordingly, plaintiff's motion is denied in its entirety.

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II. City of New York's Cross-Motion to Dismiss

In support of its cross-motion to dismiss, the City of New York ("the City") contends that plaintiff's federal claims under 42 U.S.C. 1983 are not stated with sufficient specificity whether analyzed under federal or state pleading standards.

* * * * *

In considering a motion to dismiss brought pursuant to CPLR 3211(a)(7), the court presumes the facts pleaded to be true and accord them every favorable inference. *Leon v. Martinez*, 84 N.Y.2d 83, 614 N.Y.S.2d 972 (1994). However, allegations consisting of bare legal conclusions are not entitled to any such consideration. *Maas v. Cornell*, 94 N.Y.2d 87, 91, 699 N.Y.S.2d 716 (1999).

To survive a motion to dismiss under Fed. R. Civ. P. 12 (b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," however, bare recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

In order to state a claim under 42 U.S.C. 1983 against a municipality, a litigant must allege that the municipality implemented and adopted a "policy statement, ordinance, regulation, or decision or established or acquiesced in a custom that caused unconstitutional activity." *Monell* The 690-691, 98 S.Ct. 2018 (1978). Here, plaintiff alleges that the City, not specifying who in the City, has a policy/practice so widespread as to have the force of law, in which officers conducting buy and bust operations arrest, without probable cause, individuals in close proximity to the location of the incident or where drugs are found but not on an arrestee's person. Instead of specific facts, the complaint contains conclusory allegations concerning plaintiff's arrest history.

6c
Notably, the complaint does not include any allegations of other individuals who have experienced this policy/practice.

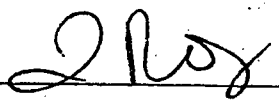
Based upon the foregoing, the court finds that the complaint fails to state a cause of action against defendants The City of New York, New York City Police Department, Bronx 44th Precinct, and NBBX/NARCBX Unit.

Accordingly, the cross-motion brought by Defendant The City of New York is **granted in its entirety**, and it is ORDERED that the complaint in this action is dismissed.

The Clerk is directed to enter judgment.

Dated: Bronx, New York

May 7, 2020



Hon. Julia I. Rodriguez, J.S.C.

**Additional material
from this filing is
available in the
Clerk's Office.**