

1996 WL 571871

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United States District Court, S.D. New York.

Stacy KAUFMAN, Plaintiff,

v.

U.S.C. Carlos RIVERA, Jr. (Shield No. 3075); C.O.
Sgt. Gloria Torres, U.C.O. John Does, and U.C.O.
Jane Poes, Defendants.

No. 95 Civ. 5667 (JFK). | Oct. 7, 1996.

Attorneys and Law Firms

Moore & Williams, New York, NY Of Counsel: Jonathan
C. Moore, Daniel R. Williams, For Plaintiff.

Dennis C. Vacco, Attorney General of the State of New
York, New York, New York Of Counsel: Mindy A. Levy,
For Defendants.

Opinion

OPINION AND ORDER

KEENAN, District Judge.

*1 Before the Court is Defendants' motion to dismiss the Complaint against them pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiff opposes the motion. For the reasons stated below, the Court denies Defendants' motion to dismiss.

Background

Plaintiff Stacy Kaufman brings this action alleging violations by the Defendants of her rights guaranteed by 42 U.S.C. § 1983, and of rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and for rights secured under the laws and Constitution of the State of New York.

The Complaint specifically alleges as follows. Plaintiff Stacy Kaufman is an attorney who, on August 1, 1994, appeared before Judge Delores Thomas in Part 18F of the Housing Part of the Bronx County Civil Court. Plaintiff represented a landlord in a landlord-tenant dispute, and her court appearance was in response to an Order To Show Cause served upon her client in connection with the dispute. At 9:25 a.m., Plaintiff arrived at the courthouse

and a female court officer, Defendant Jane Poe # 1, instructed Plaintiff to enter through the public entrance, which necessitated passing through metal detectors, because she did not possess an attorney identification card issued by the Office of Court Administration. Plaintiff complied with the request and was permitted to enter. Plaintiff then appeared before Judge Thomas in the matter of *Hass v. Cummings*, Index No. LT 84954/94. Following her appearance in response to the Order to Show Cause, Plaintiff waited outside the courtroom for a decision. Shortly thereafter, Plaintiff reentered the courtroom and asked a court officer when the decision would be rendered. When Plaintiff was informed that no decision would be issued for three to four weeks, Plaintiff sought to reopen the matter before Judge Thomas in order to get an immediate decision "under the circumstances." Compl. ¶ 15. While Plaintiff attempted to convince Judge Thomas of the need for an immediate decision, she was physically removed from the courtroom by a female uniformed court officer, Defendant Jane Poe # 2, and "dragged ... through the public corridors, in full view of the public," and taken to an anteroom to the court officer's Captain's office where she was handcuffed with her hands behind her back and placed on a chair. Compl. ¶ 16. After being held in this position for about two hours, Plaintiff was released and threatened with arrest by Defendant Torres if she returned to Part 18F. Plaintiff returned to Part 18F to renew her request for an immediate decision and, while she addressed the Court, Defendant Rivera handcuffed her and removed her from the courtroom. She was returned to the anteroom of the court officer's Captain's office where she remained handcuffed, and held there for about half an hour. Plaintiff was then taken in handcuffs to be fingerprinted and led again to the anteroom. About an hour later, Plaintiff was taken to a "semi-private" bathroom where Defendant Torres and Defendant Jane Poe # 2 ordered her to remove her clothes for a search, and Defendant Torres then conducted a visual and physical search of Plaintiff's body. Compl. ¶ 18. Plaintiff was then taken to the Criminal Court building where her arrest photograph was taken and a desk appearance ticket was issued to her. While Plaintiff was charged with disorderly conduct and obstructing governmental administration, the charges were eventually dismissed.

*2 Defendants move to dismiss on the grounds that Plaintiff is suing them in their official capacity, in which capacity they are immune from suit under the Eleventh Amendment. Alternatively, Defendants assert that the doctrine of qualified immunity shields them from liability.

Discussion

A motion to dismiss for failure to state a claim should be

granted only if it appears beyond doubt that the plaintiff can prove no set of facts in support of a claim that would entitle the plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S.Ct. 99, 102 (1957). The factual allegations set forth in the complaint must be accepted as true and the Court must view those allegations in the light most favorable to the pleader. *Papasan v. Allain*, 478 U.S. 265, 283, 106 S.Ct. 2932, 2943 (1986). This liberal pleading standard “is applied with even greater force where the plaintiff alleges civil rights violations.” *Bernheim v. Litt*, 79 F.3d 318, 321 (2d Cir.1996) (internal quotations omitted).

A. Eleventh Amendment Immunity

The Eleventh Amendment bars suits in federal courts by a citizen of a state against that state, absent the state’s consent to such a suit or express statutory waiver of immunity. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S.Ct. 900, 908 (1984). This Eleventh Amendment bar extends to damage actions against state officials who are sued in their official capacities if the state is the real party in interest. *Farid v. Smith*, 850 F.2d 917, 921 (2d Cir.1988). However, the Eleventh Amendment does not protect a state official from personal liability if he is sued in his individual capacity. *Kentucky v. Graham*, 473 U.S. 159, 165–67, 105 S.Ct. 3099, 3105–06 (1985).

Defendants contend that Plaintiff is suing all of the Defendants for acts taken in their official capacity because “[n]owhere in the caption or in the body of the complaint are defendants named in their individual capacities.” Defs.Mem. in Supp. of Mot. to Dis., at 3–4. Therefore, Defendants argue, the Eleventh Amendment bars Plaintiffs’ claims for money damages against the Defendants. The Court disagrees with Defendants’ characterization of the Complaint.

The Complaint refers to the Defendants as “*individual defendants*” who were “acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the State of New York” when the alleged constitutional deprivations took place. Compl. ¶ 11 (emphasis added). Plaintiff does not allege that the suit is against the Defendants in their official capacity and the assertion that the Defendants were “acting under color of state law” does not convert this action into one against the Defendants in their official capacity. See *Farid v. Smith*, 850 F.2d 917, 921–23 (2d Cir.1988). A section 1983 action requires such an allegation. 42 U.S.C. § 1983. Additionally, Defendants’ implication that this is an official capacity action because Plaintiff also has a lawsuit pending in the New York State Court of Claims based upon the same facts as this case, Defs.Mem. in Supp. of Mot. to Dismiss, at 4 n. 1, is self-defeating. The fact that Plaintiff has a similar suit

against New York State in the Court of Claims, coupled with Plaintiff’s allegations against the “individual defendants”, bolsters the Court’s finding that this lawsuit is against the Defendants in their personal capacity.

*3 Viewing the Complaint in the light most favorable to the pleader, the Court finds that the language in ¶ 11 of the Complaint suffices to indicate that Defendants are sued in their individual, as opposed to official, capacities. Thus, the Eleventh Amendment does not bar Plaintiff’s claims for damages against these Defendants as individuals.

B. Qualified Immunity

The doctrine of qualified immunity protects government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982). The right must be clearly established: “The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039 (1987).

Defendants assert that the Plaintiff’s allegations do not give rise to the conclusion that a reasonable person in Defendants’ position would have known that his conduct under the circumstances violated any clearly established constitutional or statutory rights. The Court disagrees.

To seize and detain an individual, strip search her, and then formally arrest her without any legal justification on minor charges,¹ as alleged by Plaintiff, constitutes a violation of a clearly established constitutional right. The law in the Second Circuit is very clear: “[T]he Fourth Amendment precludes [state] officials from performing strip/body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based upon the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest.” See *Weber v. Dell*, 804 F.2d 796, 802 (2d Cir.1986), cert. denied, 483 U.S. 1020, 107 S.Ct. 3263 (1987); see also *Walsh v. Franco*, 849 F.2d 66, 68–69 (2d Cir.1988); *Wachtler v. County of Herkimer*, 35 F.3d 77, 81 (2d Cir. Sept. 9, 1994). Nothing indicates that such a reasonable suspicion existed for a strip search in this case. Plaintiff has adequately pleaded the violation of a clearly established right.

Further, the Court finds that Plaintiff’s allegations give rise to the conclusion that a reasonable person in the Defendants’ position would have known that their conduct under the circumstances violated a clearly

established constitutional right. The alleged incident occurred on August 1, 1994. On two occasions, years before this alleged incident, the Second Circuit explicitly stated that the conduct alleged in this case is a violation of a constitutional right. These officials operated in an area in which the law was clearly established. Accordingly, these Defendants will be charged with a knowledge of this law which governed their conduct. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818–819, 102 S.Ct. 2727, 2738 (1982) (“If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.”)

*4 The Court notes that while Plaintiff alleges that the individual Defendants had different roles in the August 1, 1994 incident, nowhere in Defendants’ papers does any individual Defendant seek individualized treatment by the Court for his specific conduct on the question of qualified immunity. Defendants, as a group, have made a very

general claim for qualified immunity. Because facts were not isolated or law cited to support legal conclusions on those facts with regard to a particular Defendant, the Court treats them as a group for purposes of this motion.

Conclusion

For the reasons stated above, the Court denies Defendants’ motion to dismiss. Because this Court finds that Plaintiff’s federal civil rights claims have been properly alleged, this Court retains jurisdiction over Plaintiff’s pendent state law claims.

SO ORDERED.

Footnotes

- ¹ Plaintiff alleges to have been charged with disorderly conduct and obstructing governmental administration. Compl. ¶ 21. New York Penal Law classifies disorderly conduct as a “violation.” N.Y.Penal Law § 240.20 (McKinney 1989). Obstructing governmental administration in the second degree is a misdemeanor and in the first degree is a felony. N.Y.Penal Law §§ 195.05, 195.07 (McKinney 1989). Because there is no allegation that Plaintiff caused serious physical injury to another person, the Court views the Complaint in the light most favorable to Plaintiff and will assume that the Plaintiff was charged with the misdemeanor of obstructing governmental administration in the second degree.