



Posr v. Pascale

2017 | Cited 0 times | E.D. New York | April 12, 2017

Con Ed Revenue Specialist

pro

“ ”) cases, involving Con Edison’s

grants defendants’ motions for summary judgment and denies plaintiffs’ motions for summary

The following facts are taken from defendants’ Local Rule

defendants’ Statements, defendants’

deed to that property is in the name of plaintiff’s wife, Sona Gounden. From approximately

wife separated, and he moved to his parents’ home in South Ozone Park, the “Power Company”

[Con Edison’s] the premises of the Customer and to all of [Con Edison’s] property thereon at all and counting the connected load of the Customer’s installation, installing,

plaintiff’s wife had failed to pay he

truck’s way of egress, thus

Gounden’s that the Con Edison truck and the employees were trespassing on Gounden’s property.

Deputy Inspector Pascale’s request for the keys. Thereafte Posr’s arrest.

Gounden’s criminal case October 17, 2013, Posr’s criminal cas

“[S]ummary j ” “

arty.” judgment, a district court “may rely on any material that would be admissible at a trial.”

d Adventures Tour & Travel Publ’ 2011) (“[T]he non ” (



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“A party opposing summary judgment does not show the existence of a genuine issue of fact to be tried merely by making assertions that are conclusory or based on speculation.”

“genuine” if no reasonable factfinder “could return a

” must present more than a “scintilla of evidence,”

“some metaphysical doubt as to the material facts,” “mere assertions that affidavits supporting the motion are not credible.”

Plaintiffs’ 42 U.S.C.

Plaintiffs’ complaints against the City and Pascale are almost identical, as briefing in support of their summary judgment motions and opposing the City defendants’

“A § arrest . . . is substantially the same as a claim for false arrest under New York law.” “[A]n action for false arrest requires that the plaintiff show that ‘(1) privileged.’”

. “[P]robable

that the person to be arrested has committed or is committing a crime.” “Information about criminal activity provided

and corroborated;” however, “a report of a crime alone will not neces ”

404098, at *6 (S.D.N.Y. Oct. 5, 1993) (“[W]hen a putative victim precisely identifies the alleged s independent evidence to support at least some of the victim’s

committed by the alleged perpetrator.”).

Gounden’s and Posr’s protestations that the Con Edison employees were the trespassers did not

, including plaintiffs’ refusals to comply with police orders

refused to move the minivan, causing first Gounden’s arr ’s arrest defendants’ motions for summary judgment as to these claims are granted and plaintiffs’ motions

“T

proceeding in plaintiff’s favor; (3) lack of proba ble cause for commencing the proceeding; and a motivation for defendant’s actions.”



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defendants' motions for summary plaintiffs' motions are

Plaintiffs' complaints both allege federal and state constitutional violations premised on

to allow for a "class of one" claim, where a plaintiff "alleges that

difference in treatment." who asserts such a claim "must allege (1) that he or she was treated differently from other similarly situated individuals, and (2) that the 'treatment was based on impermissible

rights, or malicious or bad faith intent to injure a person.'"

Plaintiffs' 42 U.S.C.

(as did defendants in their briefing) plaintiffs' broad

,

plaintiff

motivated by "some racial, or perhaps otherwise class behind the conspirators' action." "Even where a plaintiff is proceeding pro se "

settled that "in order to maintain an action under

”

Plaintiffs' briefing in

–

any evidence that there was a "meeting of the minds" – nstead, plaintiffs harken back to Gounden's

I reject plaintiffs' attempts to misd

"conspiratorial" actions by

Plaintiffs' conspiracy claims are therefore dismissed Plaintiffs' State

matter jurisdiction on the court and both claims "d erive from a common nucleus of operative " "discretion" for the district court. claim after dismissing a federal claim "ma y be an abuse of the



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district court' ”

fairness, as the Second Circuit has recognized, suggest that, “where the dismissal of the federal claim occurs ‘late in the action,

rejection of supplemental jurisdiction may not be fair.’”

“consider and weigh in each

and comity in order to decide whether to exercise jurisdiction” over

“

ored retention of jurisdiction” because “ ” 902 F.2d at 1055. Moreover, the case applied “settled” , “[did] not involve novel legal issues,” and the district court “was familiar with the state law issues from the summary judgment motions.”

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, this Court’s exercise of sup

Gounden’s 816 N.Y.S. 478, 480 (2d Dep’

Curwin v. Verizon Commc’ 827 N.Y.S.2d 256, 257 (2d Dep’t 2006) (“The essence ass is the invasion of a person’ ” The nature of a defendant’

authorized. “[A] innocently or by mistake, is a trespasser.” Dep’ otation marks omitted). On the other hand, “an nt over the land in question.”

peninsula wherein Gounden’s properties lie to carry out maintenance, monitoring, and other

It is well settled that “[t]he extent and nature of an easement must be determined by the the intent of the parties.” Dep’t 2008) (internal quotation marks omitted).

Hamilton Beach Estates, which includes Gounden’s prop Con Edison has a right of easement to “e nter[] upon the said premises” for purposes of “constructing, maintaining and operating, through, along, on, under and over the tract, its ducts,

”

narrow the easement in the way Gounden argues would mean that if Gounden’s power had gone



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because the beneficial service is to Gounden's lot. That would make no sense.

easement extends Con Edison's right of entry to "supplying the same [electricity] to the premises

time may desire." This Con Edison's truck, the employees

While New York courts have recognized that "

" he can only "so long as the easement holder's right of passage is not impaired." p't 2014) (internal quotation marks omitted); 17, 10 N.Y.S.3d 648, 650 (3rd Dep't 2015).

Pollina's presence at the Servient Estates , Gounden's claim against Pollina for trespass fails. Pollina's motion for summary judgment is granted, and Gounden's

Plaintiffs'

Plaintiffs' lend itself to the simple dismissal of plaintiffs' claims for the same reasons as above

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he majority of plaintiffs' barred because of both plaintiffs' failure to either file a timely notice of claim as to certain of the

e(1)(a). Further, a plaintiff must file an action "within one year and days after the happening of the event upon which the claim is based." N.Y. Gen. Mun. L. §

for Gounden's malicious prosecution

Court's exercise of supplemental jurisdiction

1999) (federal courts in New York are required to apply New York's notice , 487 U.S. 131, 151 (1988) ("[F

provision.")). Because, "a notice of claim is a mandatory precondition to bringing a tort claim s officers, agents, or employees," and plaintiffs failed to O'Leary v. City of

egoing, plaintiffs' state false arrest and r's state malicious prosecution claim are dismissed for plaintiffs' failures to i.e., Gounden's mal

prosecution claim and both plaintiffs' selective enforcement claims, are dismissed because they laintiff Gounden's motion for summary judgment [85] is denied, and defendants' plaintiff Posr's] is



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denied, and defendants' motion for summary judgment

in forma pauperis

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