

JUDGE PATTERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

97 CIV. 8208

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DEBRA CIRAOLO,

Plaintiff,

COMPLAINT

-against-

97 Civ. _____
(Jury Trial Demanded)

THE CITY OF NEW YORK, POLICE
DEPARTMENT OF THE CITY OF NEW
YORK, DETECTIVE CHRISTIN MORGILLO,
Shield No. 2233, JANE DOES 1-2,
Shield Nos. Unknown, and JULIE FONTANELLA,

Defendants.
-----X

Plaintiff, Debra Ciralo, by her attorney, Stephen H. Weiner, Esq., for her complaint, alleges

as follows:

INTRODUCTION

1. Plaintiff, Debra Ciralo, brings this action, pursuant to 42 U.S.C. § 1983, to redress the deprivation of her constitutional rights, and for violation of the common law of the State of New York. Specifically, on January 21, 1997, members of defendant Police Department of the City of New York violated Ms. Ciralo's constitutional rights protected by the Fourth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 12 of the New York State Constitution, when they arrested her without probable cause, used excessive force during the effectuation of her arrest and when, subsequent to her arrest, they subjected her to an utterly unjustified strip and body cavity search. She also brings claims for false arrest, malicious prosecution, and intentional infliction of emotion distress against Julie Fontanella.

FILED
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2. Defendant Police Department of the City of New York, had in effect at all times relevant herein, policies regarding searches to be conducted of persons arrested by its members. In conducting the unconstitutional strip and body cavity search of Ms. Ciraolo, the individual defendants were acting pursuant to official policy.

JURISDICTION AND VENUE

3. Pursuant to 28 U.S.C. §§ 1331 and 1343, jurisdiction is proper as Ms. Ciraolo's claims arise under federal law. Pursuant to 28 U.S.C. § 1367, jurisdiction is proper as to the claims of Ms. Ciraolo arising under the Constitution and common law of the State of New York.

4. Pursuant to 28 U.S.C. § 1391(b), venue is proper as the acts complained of occurred in the State of New York, borough of Manhattan.

PARTIES

5. Plaintiff Debra Ciraolo is a citizen of the United States of America. She resides in the State of New York, County of New York at 220 West 13th Street, Apartment 3D. She is a sign language interpreter and consultant. Since 1991, she has run her own business.

6. Defendant Detective Christin Morgillo, shield number 2233, is a member of defendant Police Department of the City of New York. Upon information and belief, at all times relevant herein, she was assigned to the 6th precinct.

7. Defendant Morgillo is sued herein in both her individual and official capacities. At all times relevant herein, defendant Morgillo was acting within the scope of her employment.

8. Upon information and belief, defendant, Jane Does 1 and 2, shield numbers unknown, are each a member of defendant Police Department of the City of New York.

9. Defendant Does are sued herein in both their individual and official capacities. At all times relevant herein, defendant Does were acting within the scope of their employment.

10. Defendant City of New York, is a municipal corporation organized pursuant to the laws of the State and City of New York. It has all the powers vested in it by the laws of the State of New York, City of New York, and the Charter of the City of New York. Upon information and belief, at all times relevant herein it was the employer of defendants Morgillo, and Jane Does 1 and 2.

11. Defendant Police Department of the City of New York ("NYPD"), is a duly organized agency of defendant City of New York. It has all the powers vested in it by the Charter of the City of New York. Upon information and belief, at all times relevant herein it was the employer of defendants Morgillo, and Jane Does 1 and 2.

12. Defendant Julie Fontanella is a cousin of plaintiff Debra Ciralo. Ms. Fontanella resides in the State of New York, County of New York at 220 West 13th Street, Apartment 3B.

13. On March 7, 1997, Ms. Ciralo filed a Notice of Claim with the Office of the Comptroller of the City of New York. Said filing occurred within 90 days of the incidents giving rise to Ms. Ciralo's claims.

14. On July 1, 1997, Ms. Ciralo presented herself for examination pursuant to General Municipal Law § 50-h.

15. At least thirty days have elapsed since Ms. Ciralo filed her notice of claim pursuant to General Municipal Law § 50-e. To date, adjustment or payment thereof has been neglected or refused.

16. This action is commenced within one year of the incidents giving rise to Ms. Ciralo's claims.

FACTS

17. For the last seventeen years, plaintiff Debra Ciralo has resided at 220 West 13th Street, Apartment 3D.

18. In the fall of 1994, plaintiff learned that her cousin, defendant Julie Fontanella, had misappropriated personal property that had belonged to plaintiff's family. Plaintiff advised Ms. Fontanella, in a telephone conversation, that she had learned of this misappropriation, and that plaintiff did not desire to see Ms. Fontanella again.

19. A year-and-a-half later, on or about March 27, 1996, defendant Fontanella moved into 220 West 13th Street, Apartment 3B, on the same floor as Ms. Ciralo's apartment. Ms. Fontanella appeared at Ms. Ciralo's front door, informed her that she had just moved in, and stated that "I'm going to get you."

20. On March 28, 1996, Ms. Ciralo went to the 6th Precinct, which is located at 233 West 10th Street, New York, New York, and filled out a domestic incident report concerning Ms. Fontanella's threat. The report described the conduct as "aggravated harassment." Ms. Ciralo indicated that she did not want her cousin arrested. She was referred to Family Court of the State of New York, County of New York, for a possible order of protection, by Esther Ward, who, upon information and belief was then a Police Detective in charge of domestic cases at the 6th Precinct. Ms. Ciralo also consulted with Police Detective Paul Suarez, who was then assigned to the 6th Precinct, about bringing her complaint in Family Court.

21. On April 19, 1996, plaintiff filed a petition with the Family Court alleging that defendant Fontanella had harassed plaintiff by moving next door and threatening "to get" her. On that same date, Family Court Judge Ruth Jane Zuckerman issued a Temporary Order of Protection on behalf of petitioner Ms. Ciralo against respondent Ms. Fontanella, which specified that Ms. Fontanella "is excluded from apartment 3D at 220 West 13th Street."

22. On April 30, 1996, Ms. Ciralo went to the 6th Precinct and filled out another domestic incident report because a man standing by defendant Fontanella's doorway, whom Ms. Ciralo believed to be a friend of Ms. Fontanella, had glared at her in a threatening manner.

23. On May 17, 1996, Ms. Ciralo and Ms. Fontanella appeared in Family Court concerning Ms. Ciralo's Petition. The Order of Protection was extended until June 21, 1996. Defendant Fontanella also advised Police Detective Paul Suarez, that she would move out of 220 West 13th Street at the termination of Ms. Fontanella's lease, in March 1997. Detective Suarez advised Ms. Ciralo of Ms. Fontanella's statement to him.

24. On or about May 18, 1996, Ms. Fontanella also advised Ms. Ciralo that Ms. Fontanella would move out of their apartment building, 220 West 13th Street.

25. On June 21, 1996, Ms. Ciralo agreed to withdraw her Petition in return for Ms. Fontanella's verbal agreement that Ms. Fontanella would move out of their apartment building, 220 West 13th Street, by the end of March 1997. Ms. Fontanella stated her agreement to move in the presence of Judge Zuckerman's assistant. Ms. Ciralo also prepared a document memorializing this agreement.

26. Detective Suarez asked for and was provided with a copy of the agreement between Ms. Ciralo and Ms. Fontanella. On information and belief, he filed the document at the 6th Precinct.

27. In January 1997, Ms. Ciraolo asked Ms. Fontanella whether she would comply with her agreement to move out of their building. Ms. Fontanella became very agitated and told Ms. Ciraolo that "You are crazy." Ms. Ciraolo also placed a copy of the document memorializing the agreement in an envelope and slipped it under Ms. Fontanella's apartment door.

28. Thereafter, during the week of January 10, 1997, Ms. Ciraolo called the 6th Precinct to advise that she had court papers to be served on Ms. Fontanella. The papers were for mediation at a hearing to be conducted on January 27, 1997.

29. Subsequently, on or about Friday, January 17, 1997, Ms. Ciraolo received a message on her residential answering machine from defendant Detective Christin Morgillo asking Ms. Ciraolo to call her.

30. Ms. Ciraolo returned the call the same day. Detective Morgillo stated that "There are some things I need to speak to you about. I think you need to come down [to the 6th Precinct]." She further indicated that the matter involved Ms. Fontanella and asked if Ms. Ciraolo had put something under her cousin's door. Ms. Ciraolo responded that the matter was known to the Precinct and known to Family Court, and that it would not be convenient for her to come to the precinct before the following Monday, Tuesday, or Wednesday, January 20, 21 or 22nd. Detective Morgillo said that she would get back in touch with Ms. Ciraolo.

31. On Tuesday, January 21, 1997, in the late afternoon, defendant Morgillo and another police officer appeared at Ms. Ciraolo's apartment door. Defendant Morgillo told Ms. Ciraolo to accompany them to the 6th Precinct. When Ms. Ciraolo refused to go, defendant Morgillo stated that "If you don't come, I am going to come back with a warrant. I am going to have a police car outside. I am going to have your neighbors see you taken out of the building." Defendant Morgillo tried to

place her foot in plaintiff's door and appeared to be trying to enter, while plaintiff pressed the door shut. Defendant Morgillo further stated that "I am going to put you in jail with prostitutes and drug addicts. I am going to ruin your career. I am going to be back and handcuff you and take you out of the building in front of your neighbors. I will have a police car outside waiting for you." Ms. Morgillo and the other officer then left.

32. Ms. Ciralo, who was shaken by this incident, telephoned a friend whom she was to meet for dinner, Katherine Behrens. Ms. Behrens came to her apartment at about 6:00 p.m.. At Ms. Ciralo's suggestion, they drove to the 6th Precinct and arrived there at about 6:20 p.m.

33. Ms. Ciralo told a police officer at the precinct that Detective Morgillo had threatened to get an arrest warrant against her, and asked to see Detective Morgillo. Detective Morgillo came downstairs and asked if Ms. Behrens was Ms. Ciralo's attorney. When she responded negatively, Detective Morgillo stated that "She doesn't need any mouthpiece. She ain't going nowhere tonight."

34. At about 6:45 p.m. Ms. Ciralo accompanied Detective Morgillo upstairs. Detective Morgillo directed her to empty her pockets and to take off her coat. After Ms. Ciralo complied, Detective Morgillo frisked her, and said that she was under arrest. Ms. Ciralo asked what she had been arrested for. However, detective Morgillo did not respond. Rather, she asked Ms. Ciralo for personal information including her name, address, and social security number. Ms. Ciralo provided this information. Then Detective Morgillo asked for her height and weight. Ms. Ciralo refused to answer. Detective Morgillo became very hostile and grabbed Ms. Ciralo roughly by her right arm, and pulled her from her seat. She said that "You want to be difficult. I'll make it difficult." Detective Morgillo locked Ms. Ciralo in a holding cell in the precinct. Ms. Ciralo remained locked in the cell for three hours, from about 7:00 p.m. to about 10:00 p.m.

35. After 10 p.m., Ms. Ciraolo was taken from the cell and photographed. Detective Morgillo handcuffed Ms. Ciraolo and brought her downstairs, where the handcuffs were removed and she was fingerprinted. Then Detective Morgillo handcuffed Ms. Ciraolo again.

36. Then, with handcuffs on her, she was placed in a van and brought to 100 Centre Street. There she was placed on a line with other women in handcuffs. The handcuffs were removed, and she was taken to see a doctor, who questioned her about her medical background.

37. Then Ms. Ciraolo was taken to a cell in which two female employees of the Police Department, Jane Does 1 and 2, asked her if she was carrying drugs or weapons. When Ms. Ciraolo responded in the negative, they threatened that "If we find anything you are gonna be in trouble."

38. Jane Does 1 and 2 ordered Ms. Ciraolo to strip off all of her clothes, which she did under duress. They inspected her clothing.

39. Jane Does 1 and 2 then ordered Ms. Ciraolo, who was naked, to squat and cough, which she did. They thereby subjected her to a body cavity search.

40. Ms. Ciraolo was permitted to put her clothing back on. She was taken to another cell with a group of women with whom she remained for the rest of the night, and until she was released at about 3:30 p.m. on January 22, 1997.

41. At no time between her arrest, and her release the next day, did any of the defendants inform Ms. Ciraolo of her Miranda rights or of what she had been arrested for.

42. Ms. Ciraolo learned from her attorney Richard Rosencranz that her cousin, defendant Fontanella had filed a complaint against her for harassment, and that was the basis for her arrest.

43. The Court ordered Ms. Ciraolo to return and appear in Criminal Court in thirty days.

44. At the end of the thirty days, in February 1997, Ms. Ciruolo and her counsel appeared in Criminal Court. The Assistant District Attorney requested another thirty day adjournment because he allegedly had not finished investigating the matter. The Court granted the adjournment.

45. On two separate occasions between January 21, 1997, and March 19, 1997, Police Officers came to Ms. Ciruolo's apartment, and alleged that they had received anonymous complaints about noise coming from her apartment. On both occasions the Police Officers left after having spoken to Ms. Ciruolo, who indicated that she was alone and that there had been no such noise. In fact, there had been no disturbance or noise which warranted the Police Officers coming to her apartment. Upon information and belief, defendant Julie Fontanella made false complaints to the Police Department that caused the Police Officers to go to Ms. Ciruolo's apartment.

46. On March 19, 1997, Ms. Ciruolo and her counsel made their third appearance in Criminal Court. The Court dismissed the complaint against Ms. Ciruolo.

FIRST CLAIM FOR RELIEF

(Defendant Morgillo and Municipal Defendants and Defendant Fontanella --False Arrest)

47. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 46, as if fully set forth herein.

48. On January 21, 1997, at the instigation of Julie Fontanella, Detective Christin Morgillo, arrested Ms. Ciruolo and placed her in handcuffs.

49. Defendants Fontanella and Morgillo did not have probable cause to believe that Ms. Ciruolo committed a crime. Ms. Ciruolo did not engage in any conduct that warranted her arrest or detention.

50. As a result of the conduct of defendants, Ms. Ciraolo was detained, and at all times knew she was detained. Moreover, Ms. Ciraolo did not consent to her detention.

51. Because defendants arrested Ms. Ciraolo without probable cause, their arrest of Ms. Ciraolo was unreasonable within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

52. As a result of her arrest, Ms. Ciraolo suffered, and continues to suffer, psychological harm and loss of earnings.

SECOND CLAIM FOR RELIEF

(Defendant Morgillo--Excessive Force)

53. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 52 as if fully set forth herein.

54. On January 21, 1997, defendant Morgillo arrested Ms. Ciraolo and placed her in handcuffs. In effectuating her arrest, defendant Morgillo used more force than was necessary to place the handcuffs on Ms. Ciraolo, and bruised her arm.

55. As Ms. Ciraolo's behavior provided no justification for his conduct, the conduct of defendant Morgillo was unreasonable within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

56. As a result of defendant Morgillo's conduct, Ms. Ciraolo suffered physical injury to her arm, as well as psychological injury.

THIRD CLAIM FOR RELIEF

(Defendant Jane Does 1 and 2--Unlawful Search and Seizure)

57. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 56 as if fully set forth herein.

58. On January 21, 1997 defendants Jane Roes 1 and 2 conducted a body cavity search of Ms. Ciralo. In conducting the strip search of Ms. Ciralo defendants knew, or should have known, that said search was unlawful.

59. Defendants Jane Roes knew, or should have known, that no circumstance existed to conduct a body cavity search of Ms. Ciralo. Ms. Ciralo was arrested solely for harassment. She did not engage in any threatening behavior. She posed no risk to herself, any member of the NYPD, or any other person in police custody.

60. Prior to conducting the strip search and body cavity search of Ms. Ciralo, defendants did not conduct any other less intrusive search in order to determine whether Ms. Ciralo was armed or in the possession of contraband.

61. As no reason existed to conduct the thoroughly intrusive invasion of Ms. Ciralo's person, the conduct of defendants was unreasonable within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

FOURTH CLAIM FOR RELIEF

(Municipal Defendants--Unlawful Search and Seizure)

62. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 61 as if fully set forth herein.

63. Defendant NYPD has adopted policies concerning searches to be performed of persons taken into police custody.

64. One such policy authorizes strip searches and body cavity searches of persons taken into police custody as a result of an arrest.

65. In causing the strip search and body cavity search of Ms. Ciraolo, defendants acted pursuant to established policy of the Municipal Defendants.

66. The established policy of the Municipal Defendants caused the violation of Ms. Ciraolo's constitutional rights protected by the Fourth and Fourteenth Amendments to the United States Constitution.

67. As a result of the strip search and body cavity search defendant Morgillo caused to be performed pursuant to the established policy of the Municipal Defendants, Ms. Ciraolo suffered, and continues to suffer, psychological harm and loss of earnings .

FIFTH CLAIM FOR RELIEF

(Defendants Morgillo and Municipal Defendants--Battery)

68. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 67 as if fully set forth herein.

69. On January 21, 1997, defendant Morgillo arrested Ms. Ciraolo and placed her in handcuffs. In effectuating her arrest, defendant Morgillo used more force than was necessary to place the handcuffs on Ms. Ciraolo and thereby injured her arm.

70. While placing Ms. Ciraolo under arrest, defendant Morgillo was acting within the scope of her employment.

71. Ms. Ciraolo did not consent or otherwise authorize defendant Morgillo in handcuffing her in the manner in which he did.

72. As a result of defendant Morgillo's conduct, Ms. Ciralo suffered physical injury to her arm, as well as psychological harm.

73. As the employer of defendant Morgillo, the Municipal Defendants are responsible for the injuries Ms. Ciralo has suffered, and continues to suffer, as a result of her conduct pursuant to the doctrine of respondeat superior.

SIXTH CLAIM FOR RELIEF

(Defendant Fontanella- Malicious Prosecution)

74. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 73 as if fully set forth herein.

75. No probable cause existed for defendant Fontanella's commencement of a criminal proceeding against plaintiff.

76. The proceeding terminated in plaintiff's favor.

77. Upon information and belief, defendant Fontanella acted with actual malice towards Ms. Ciralo.

SEVENTH CLAIM FOR RELIEF

(Defendant Fontanella- Intentional Infliction of Emotional Distress)

78. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 77 as if fully set forth herein.

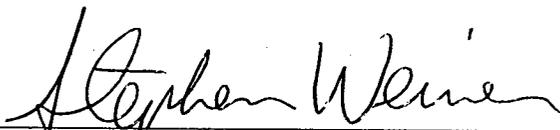
79. Defendant Fontanella intentionally subjected plaintiff to a campaign of harassment including on March 27, 1996, threatening Ms. Fontanella, in January 1997 causing Ms. Fontanella's false arrest, and, upon information and belief, making false complaints to the Police Department on two occasions which caused Police Officers to go to Ms. Ciralo's apartment.

80. The foregoing has caused plaintiff to suffer emotional distress and loss of income.

WHEREFORE, Ms. Ciralo prays for the following relief:

- (a) compensatory damages in an amount to be determined at trial;
- (b) punitive damages in an amount to be determined at trial;
- (c) reasonable attorneys' fees;
- (d) costs and expenses;
- (e) interest;
- (f) special damages in an amount to be determined at trial; and
- (g) such other and further relief as is just and proper.

Dated: October 16, 1997
New York, New York

By: 
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