

JOHN DERAFFELE,
Plaintiff,
v.

No. 18 – 73

CITY OF WILLIAMSPORT AND THOMAS
EVANSKY, CODE INSPECTOR,
Defendants

OPINION AND ORDER

Before the Court is Defendants’ preliminary objections filed on April 13, 2018. Argument was held on July 10, 2018. Defendants contend that the Plaintiff’s complaint should be dismissed for failing to state a cause of action and/or for stating claims that are barred by immunity and/or res judicata. This Court agrees.

The factual background follows. In his complaint, Plaintiff avers that the City of Williamsport and its Code Inspector, Thomas Evansky, maliciously issued a ticket to him on September 18, 2015 in violation of his civil rights in order to seek revenge on him for having the Williamsport Rental Ordinance Code rescinded. Inspector Evansky issued the ticket for “failure to vacate property due to conditions” in violation of Section 108.5 of the 2015 International Property Maintenance Code (IPMC). In essence, Plaintiff asserts that the City deceptively and maliciously relied on the 2015 IPMC when issuing and prosecuting the ticket, knowing it was never adopted. Furthermore, Plaintiff asserts the City made a knowingly absurd contention that the 2015 IPMC was adopted when the City adopted the 2003 IPMC. Plaintiff made these arguments before the Magisterial Court and the Court of Common Pleas but was nonetheless convicted.¹ The Commonwealth Court reversed on appeal. Taking guidance from the Trial Court’s 1925a statement which reconsidered the issue, the Commonwealth Court concluded that a legislative body could not adopt future editions to a code when it adopts a current version of a code. City of Williamsport Bureau of Codes v. DeRaffele, 170 A.3d 1270, 1274 (Pa.Cmwlt. 2017). Thus, the Commonwealth Court overturned the conviction and Mr. DeRaffele was found not guilty.

¹ The City contended that it adopted the Code by implication when it adopted the 2003 Code which encompassed subsequent editions of the Code. Both lower courts found this persuasive. Mr. DeRaffele claims that the City’s position was absurd. However, the issue of whether the City could adopt all subsequent changes to the IPMC when it adopted the 2003 version was complex. In overturning the conviction, the Commonwealth Court issued a reported opinion that construed the Third Class City Code aided by a recent opinion of first impression of the Pennsylvania Supreme Court on June 20, 2017 in Protz v. Workers’ Compensation Appeal Board, 161 A.3d 827 (Pa. 2017). Protz recognized the constitutional problem with such an approach under the non-delegation doctrine. City of Williamsport Bureau of Codes v. DeRaffele, 170 A.3d 1270, 1274 (Pa.Cmwlt. 2017).

A discussion as to the merits of the threshold preliminary objections follows. The Court agrees that Plaintiff cannot state a claim for malicious prosecution in violation of his civil rights as a matter of law. A claim for malicious prosecution requires plaintiff to show that “the defendants instituted proceedings without probable cause, with malice, and that the proceedings were terminated in favor of the plaintiff.” Cosmas v. Bloomingdales Bros., Inc., 442 Pa.Super. 476, 481, 660 A.2d 83, 85 (Pa. Super. 1995)(citations & quotation source omitted). “The plaintiff has the burden of proving lack of probable cause.” Cosmas, supra, 660 A.2d at 86 (citations omitted).

“Probable cause is defined as ‘[] a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that the party is guilty of the offense.’ ” Cosmas, supra, 660 A.2d at 86, quoting, Wright v. Schreffler, 421 Pa.Super. 428, 430, 618 A.2d 412, 414 (1992) (quoting Cibrone v. Stover, 351 Pa.Super. 250, 254, 505 A.2d 625, 627 (1986)

The question of probable cause is a matter of law. Cosmas, supra. Under Pennsylvania Law, as in many other states, a conviction in the underlying criminal conviction constitutes conclusive evidence as a matter of law that there was probable cause to prosecute the claim. Cosmas, supra, 660 A.2d at 86; see also, McGriff v. Vidovich, 699 A.2d 797, 800 (Pa.Cmwlth. 1997) This is true even if the conviction is later overturned. Cosmas, supra, 660 A.2d at 86, *referencing* RESTATEMENT OF TORTS, 2d § 667(1) (1976).

In the present case, Plaintiff, Mr. DeRaffele, has failed to state a claim for malicious prosecution because he cannot establish as a matter of law that the City or Inspector Evansky lacked probable cause to issue the ticket. Mr. DeRaffele was convicted before the Magisterial Court and before the Court of Common Pleas. Those convictions constitute conclusive evidence as a matter of law that the City and Inspector Evansky had probable cause to issue and prosecute the ticket. Since Mr. Deraffele cannot establish one of the elements required for malicious prosecution as a matter of law, this Court must dismiss the claim with prejudice.

In addition, any civil rights and due process claims based upon the ticket issued on September 18, 2015 by Williamsport are barred by res judicata due the dismissal of the claims based upon the same ticket in federal court. Res judicata bars “claims that were actually litigated as well as those matters that should have been litigated.” J.S. v. Bethlehem Area Sch. Dist., 794 A.2d 936, 939 (Pa.Cmwlth. 2002)(citation omitted). Here, Mr. DeRafelle concedes that the

matter arises from the same ticket that was the subject of his civil rights claims in federal court. As such, the Complaint must be dismissed with prejudice.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 10th day of **August , 2018**, after argument held July 10, 2018 on the preliminary objections filed by Defendant on April 13, 2018, it is ORDERED and DIRECTED that the objections are SUSTAINED. The Complaint is dismissed with prejudice. The Prothonotary shall mark this case closed on the docket. All other preliminary objections are rendered moot.

BY THE COURT,

Dudley N. Anderson, Senior Judge,
Specially Presiding

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Prothonotary (SF) – please close case & enter z code if applicable.