

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHNNY MERIZALDE, RAYMOND PASTRANA
and XTREME AUTOMOTIVE INC.,

Plaintiffs,

-against-

COMPLAINT
(Jury Trial Demanded)

CITY OF NEW YORK, SERGEANT EDILIO CRUZ,
Shield No. 3657, Tax Registry No. Known, POLICE
OFFICER MICHAEL FORTUNATO, Shield No. 27771,
Tax Registry No. Known, and POLICE OFFICERS JOHN
DOES 1-3, members of the City of New York Police
Department,

21 Civ.

Defendants.

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Plaintiffs Johnny Merizalde, Raymond Pastrana and Xtreme Automotive Inc., by their
attorney, Scott A. Korenbaum, Esq., for their Complaint, allege as follows:

Preliminary Statement

1. Plaintiffs Johnny Merizalde, Raymond Pastrana and Xtreme Automotive Inc. bring this action, pursuant to 42 U.S.C. § 1983, to redress the deprivation of their federal constitutional rights. On May 28, 2019, defendant Edilio Cruz, a member of the City of New York Police Department (the “Department”), caused Mr. Merizalde to be arrested without any justification. On January 8, 2020, at approximately 5:00 p.m., defendants Cruz and Michael Fortunato, also a member of the Department, arrested Mr. Merizalde and Mr. Pastrana without any justification. Thereafter, they unlawfully seized and impounded the tow truck they were driving, in which by Xtreme Automotive Inc. had a lawful possessory interest, and held it for approximately 28 days.

JURISDICTION AND VENUE

2. Pursuant to 28 U.S.C. §§ 1331 and 1343, jurisdiction is proper as plaintiff's claims arise under federal law. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over plaintiffs' state law claims.

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

PARTIES

4. Merizalde is a resident of the State of New York, County of Brooklyn.

5. Pastrana is a resident of the State of New York, County of Brooklyn.

6. Xtreme is a New York State corporation. Its principle place of business is located in Queens County.

7. Defendant Sergeant Edilio Cruz, Shield No. 3657, was, at all times relevant herein, a member of the Department. Upon information and belief, he is still a member of the Department. At all times relevant herein, Cruz was acting within the scope of his employment and under color of law.

8. Defendant Police Officer Michael Fortunato, Shield No. 27771, was, at all times relevant herein, a member of the Department. Upon information and belief, he is still a member of the Department. At all times relevant herein, Fortunato was acting within the scope of his employment and under color of law.

9. Defendant Police Officers John Does 1-3 were, at all times relevant herein, members of the Department. Upon information and belief, they are still members of the Department. At all times relevant herein, they were acting within the scope of their employment and under color of law.

10. Defendant City of New York is a municipal corporation organized pursuant to the laws of the State of New York. It has all the powers vested in it by the laws of the State of New York, the City of New York and the Charter of the City of New York. At all times relevant herein, it was the employer of the individually named defendants.

ADMINISTRATIVE PREREQUISITES

11. On March 25, 2020, Merizalde and Pastrana filed timely Notices of Claim with defendant City relating to their January 8, 2020 arrest, in accordance with the General Municipal Law.

12. On December 9, 2020, Merizalde and Pastrana appeared for a hearing, pursuant to General Municipal Law § 50-h.

13. On April 4, 2020, Xtreme filed a timely Notice of Claim with defendant City in accordance with the General Municipal Law.

14. On February 23, 2021, Xtreme appeared for a hearing, pursuant to General Municipal Law § 50-h.

15. At least thirty days have elapsed since Merizalde, Pastrana and Xtreme filed their Notices of Claim and adjustment or payment thereof has been neglected or refused. This action is commenced within one year and 90 days from the date of the occurrences alleged herein, as required under Section 50-I of the General Municipal Law.

FACTS

16. Xtreme is a company that, among other things, tows and impounds vehicles that are unlawfully parked at its customers' locations. Merizalde and Pastrana, at all relevant times, worked for Xtreme.

17. Mandee, at all times relevant herein, was a customer of Xtreme.

Merizalde's May 28, 2019 Arrest.

18. During the later morning, early afternoon of May 28, 2019, Merizalde and Pastrana were at the Mande store located at 93-10 Rockaway Boulevard in Queens to tow a car that was illegally parked in the Mande lot.

19. Merizalde and Pastrana had all the appropriate paperwork when they began to tow the illegally parked car. Such paperwork included, among other things, the authorization from store management.

20. As Merizalde and Pastrana began to remove the car from the parking lot, Cruz and another member of the Department approached them with the car lights on. Cruz immediately began yelling at Merizalde, and told him (Merizalde) that he was being detained.

21. Merizalde was confused by Cruz's rantings, as he knew he had done nothing wrong. Merizalde told Pastrana to call his boss at Xtreme and get the manager. Pastrana did so.

22. The manager, Lorena Diaz-Gerrios [sic?], came outside and attempted to explain to Cruz that she was the manager and had authorized the tow. Cruz told her to "shut the fuck up."

23. Cruz then ordered Merizalde arrested. He did not order Pastrana's arrest.

24. Merizalde was taken to the 106th precinct following his arrest. Xtreme's truck was impounded following Merizalde's arrest.

25. Merizalde spent a few hours at the 106th precinct. Thereafter, he was taken to Queens Central Booking. He was released after spending more than 24 hours in police custody.

26. Cruz charged Merizalde with, among other things, Unauthorized Use of a Vehicle (Penal L. § 165.06), an E Felony. Merizalde was released on his own recognizance at arraignment. He ultimately accepted an adjournment in contemplation of dismissal.

The January 8, 2020 Arrests of Merizalde and Pastrana.

27. Shortly before 5:00 p.m., on January 8, 2020, Mande's manager, Visell Ramirez Cuevas, called Xtreme to request that three cars be towed because they were illegally parked in its lot located at 93-10 Rockaway Boulevard in Queens. Xtreme dispatched Merizalde and Pastrana to tow the cars.

28. By the time Merizalde and Pastrana were both at Mande, there remained only one car to tow. Pastrana went inside to obtain the authorization from Ms. Ramirez Cuevas.

29. While Pastrana was inside the store, Merizalde started the process to tow the car when Cruz, Fortunato and the Doe defendants arrived. Cruz started to challenge Merizalde's authority to tow the car. Merizalde's efforts to explain, including his accurate claim that Pastrana had the authorization, fell on deaf ears.

30. After some back and forth Cruz ordered the arrests of Merizalde and Pastran even though Pastrana was present with the authorization, which Cruz knew. They were subsequently handcuffed.

31. But if Cruz needed any additional proof of their innocence, the owner of the car to be towed returned from a different store to retrieve his car before Merizalde and Pastrana were placed in the police car. When Merizalde said "you see" to Cruz, Cruz responded by saying "don't worry, you are gonna get out tonight. We just want the truck."

32. Defendant Fortunato transported Merizalde to the 106th precinct. Cruz transported Pastrana to the 106th precinct.

33. While at the precinct, Fortunato approached Merizalde and Pastrana while they were in a holding cell. Fortunato asked Merizalde what happened to his prior arrest. Merizalde said it got dismissed (as noted, he had taken an ACD). Fortunato responded that this arrest will

also get thrown out. “We just want the truck.”

34. Merizalde and Pastrana spent approximately nine (9) hours in custody before being released with Desk Appearance Tickets. They were charged with, among other things, Unauthorized Use of a Vehicle (Penal L. § 165.06), an E Felony. By letters dated January 25, 2020, and January 29, 2020, the Queens County DA’s Office informed Pastrana and Merizalde, respectively, that the Office had dismissed their cases prior to arraignment.

The Seizure of Xtreme’s Truck.

35. As noted, Cruz and the defendants seized and impounded Xtreme’s truck following the January 8, 2020 arrest of Merizalde and Pastrana.

36. The seizure of the truck was based upon the alleged existence of probable cause to arrest Merizalde and Pastrana.

37. Following the arrests of Merizalde and Pastrana, the Property Clerk of the Department impounded the truck.

38. Following the arrests of Merizalde and Pastrana, the Property Clerk of the Department impounded the truck for the purpose of the institution of forfeiture proceedings.

39. The impoundment of the truck based upon the alleged existence of probable cause and to be held for forfeiture proceedings was done pursuant to existent City policy.

40. Following the seizure of the truck, Xtreme made numerous attempts to repossess it without success.

41. It was not until February 5, 2020, that the Property Clerk of the Department agreed to release the truck.

42. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs request a trial by jury.

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 1983--False Arrest)

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 42, as if fully set forth herein.

44. On May 28, 2019, Cruz caused Merizalde to be arrested.

45. Cruz did not have probable cause to believe that Merizalde had committed any crime. Put simply, Merizalde did not engage in any conduct that warranted his arrest and detention.

46. As a result of Cruz's conduct, Merizalde was detained, and at all times he knew he was detained. Moreover, Merizalde did not consent to his confinement.

47. Because Cruz did not have probable cause to believe that Merizalde had committed a crime, his arrest was unreasonable within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

48. As a result of his arrest by Cruz, Merizalde suffered psychological injuries, and continues to suffer psychological harm.

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1983--False Arrest)

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 48, as if fully set forth herein.

50. On January 8, 2020, the individual defendants arrested Merizalde and Pastrana.

51. The individual defendants did not have probable cause to believe that Merizalde or Pastrana had committed any crime. Put simply, Merizalde and Pastrana did not engage in any conduct that warranted their arrests and detentions.

52. As a result of the individual defendants' conduct, Merizalde and Pastrana were

detained, and at all times they knew they were detained. Moreover, Merizalde and Pastrana did not consent to their confinement.

53. Because the individual defendants did not have probable cause to believe that Merizalde and Pastrana had committed a crime, their arrests were unreasonable within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

54. As a result of their arrests by the individual defendants, Merizalde and Pastrana suffered psychological injuries, and continues to suffer psychological harm.

THIRD CLAIM FOR RELIEF
(State Law–False Arrest)

55. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 54, as if fully set forth herein.

56. On January 8, 2020, one or more of the individual defendants arrested Merizalde and Pastrana.

57. These defendants did not have probable cause to believe that Merizalde and Pastrana had committed any crime. Put simply, Merizalde and Pastrana did not engage in any conduct that warranted their arrests and detentions.

58. As a result of the individual defendants' conduct, Merizalde and Pastrana were detained, and at all times they knew they were detained. Moreover, Merizalde and Pastrana did not consent to their confinement.

59. Because the individual defendants did not have probable cause to believe that Merizalde and Pastrana had committed a crime, no legal justification existed for their arrests.

60. The individual defendants were agents of defendant City and were at all relevant times acting within the scope of their employment.

61. As a result of their arrests by the individual defendants, Merizalde and Pastrana suffered psychological injuries, and continue to suffer psychological harm.

62. As the employer of the individual defendants, defendant City is responsible for Merizalde's and Pastrana's injuries under the doctrine of *respondeat superior*.

FOURTH CLAIM FOR RELIEF
(State Law--Battery)

63. Plaintiffs Merizalde and Pastrana repeats and realleges the allegations contained in paragraphs 1 through 62, as if fully set forth herein.

64. On January 8, 2020, one or more of the individual defendants intentionally and without legal justification touched Merizalde and Pastrana in a harmful and offensive manner.

65. The individual defendants did not have probable cause to believe that Merizalde or Pastrana had committed any crime. Put simply, Merizalde and Pastrana did not engage in any conduct that warranted their arrests and detentions.

66. Merizalde and Pastrana did not consent or authorize defendants to touch her this way.

67. As a result of the individual defendants' conduct, Merizalde and Pastrana physical and psychological injury, and continue to suffer psychological injury. Moreover, as a result of their arrests, Merizalde and Pastrana suffered non-permanent physical injury.

68. As the employer of the individual defendants, defendant City is responsible for the injuries Merizalde and Pastrana suffered, and continue to suffer, as a result of the conduct of the individual defendants pursuant to the doctrine of *respondeat superior*.

FIFTH CLAIM FOR RELIEF
(42 U.S.C. § 1983--Unreasonable Seizure)

69. Plaintiff Xtreme repeats and realleges the allegations contained in paragraphs 1

through 68, as if fully set forth herein.

70. On January 8, 2020, the defendants seized Xtreme's truck following the arrest of Merizalde and Pastrana.

71. Xtreme possessed a property interest in its truck.

72. As the behavior of Merizalde and Pastrana provided no justification for the seizure of Xtreme's property, the defendants' actions were unreasonable within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

73. Additionally, the seizure and impoundment of the truck for the purpose of instituting forfeiture proceedings was done pursuant to established state procedures. As such, the defendants deprived Xtreme of its property without due process of law.

74. As a result of the defendants' conduct, Xtreme has suffered economic loss.

SIXTH CLAIM FOR RELIEF
(New York Law – Conversion and Trespass)

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

76. On January 8, 2020, the defendants seized Xtreme's property following the arrest of Merizalde and Pastrana.

77. Xtreme possessed a property interest in its truck.

78. The City held Xtreme's property without justification for almost four weeks.

79. In holding Xtreme's property without justification for almost four weeks, the City exercised dominion and control over it in derogation of Xtreme's rights.

80. Xtreme did not consent or authorize the City to maintain dominion and control over its property. To the contrary, it repeatedly attempted to reclaim it without success while

Merizalde's and Pastrana's charges remained pending.

81. As a result of the City's conduct, Xtreme suffered financial loss.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray 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; and
- (e) such other and further relief as is just and proper.

Dated: New York, New York
April 5, 2021

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