

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Javarreo Kelley-Lomax,

Plaintiff,

v.

City of Chicago, Robert Garduno,
Anthony Spicuzza, Joel Ortiz,
George Davros and William Doolin,

Defendants.

Case No.: 20-cv-04595

Judge Gary S. Feinerman

Magistrate Judge Gabriel A. Fuentes

CITY OF CHICAGO’S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Defendant, the City of Chicago (“City”), by its undersigned counsel, for its Answer to Plaintiff, Javarreo Kelley-Lomax’s (“Kelley-Lomax”) Complaint states as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 and § 1367.

ANSWER: The City admits that Kelley-Lomax purports to bring a claim under 42 U.S.C. § 1983 and that such a claim falls within the purview of this Court’s jurisdiction under 28 U.S.C. § 1343. The City admits that Kelley-Lomax purports to assert a supplemental state law claim against the City and such a claim falls within the purview of this Court’s jurisdiction under 28 U.S.C. § 1367; however, the City denies that Kelley-Lomax has a cognizable state law claim against the City.

2. Plaintiff Javarreo Kelley-Lomax is a resident of the Northern District of Illinois.

ANSWER: The City lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 2, and therefore, these allegations are deemed denied.

3. Defendants Robert Garduno, Anthony Spicuzza, Joel Ortiz, George Davros, and William Doolin (“officer defendants”) were, at all relevant times, acting under color of their offices as Chicago police officers; each is sued in his individual capacity only.

ANSWER: The City admits that Defendants Robert Garduno, Anthony Spicuzza, Joel Ortiz, George Davros, and William Doolin (“Officer Defendants”) worked for the Chicago Police Department and were acting under color of their offices as Chicago Police Officers at all times relevant herein. Answering further, the City admits that Kelley-Lomax purports to sue each of the Officer Defendants in their individual capacities, but denies that the Officer Defendants engaged in the wrongful conduct complained of in the Complaint.

4. Defendant City of Chicago is an Illinois municipal corporation. Plaintiff asserts only state law claims against the City.

ANSWER: The City admits that it is an Illinois municipal corporation, and that Kelley-Lomax purports to assert only a state law claim against it, but denies engaging in the wrongful conduct complained of in the Complaint.

5. On February 18, 2019, the officer defendants arrested plaintiff at a gas station on the South Side of Chicago.

ANSWER: The City admits that Officers Robert Garduno and Anthony Spicuzza arrested Kelley-Lomax on the South Side of Chicago on February 19, 2019, but lacks sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 5, and therefore, these allegations are deemed denied.

6. At the time of plaintiff’s arrest:

- a. None of the officer defendants had a warrant authorizing the arrest of plaintiff;
- b. None of the officer defendants believed that a warrant had been issued authorizing the arrest of plaintiff;
- c. None of the officer defendants had observed plaintiff commit any offense; and

- d. None of the officer defendants had received information from any source that plaintiff had committed an offense or was otherwise subject to arrest.

ANSWER: The City admits that the Officer Defendants did not have a warrant authorizing the arrest of Kelley-Lomax, but lacks sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 6, and therefore, these allegations are deemed denied.

7. As a result of the officer defendants' conduct, plaintiff was wrongfully detained and prosecuted.

ANSWER: The City denies the allegations contained in Paragraph 7.

8. After arresting plaintiff:

- a. One or more of the officer defendants prepared official police reports falsely asserting that, when arrested, plaintiff had been in unlawful possession of a firearm;
- b. One or more of the officer defendants attested to the false official police reports, and each of the other individual officer defendants failed to intervene to prevent the violation of plaintiff's rights; and
- c. One or more of the officer defendants communicated the false charge to prosecutors, and each of the other individual officer defendants failed to intervene to prevent the violation of plaintiff's rights.

ANSWER: The City denies the allegations contained in Paragraph 8.

9. As a result of the above described wrongful acts, plaintiff was deprived of his liberty while a pre-trial detainee until he was exonerated at trial on August 6, 2019.

ANSWER: The City denies the allegations contained in Paragraph 9.

10. After hearing the state's evidence at trial on August 6, 2019, the court directed a finding of not guilty in favor of plaintiff.

ANSWER: The City admits the allegations contained in Paragraph 10.

11. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

ANSWER: The allegations in Paragraph 11 are legal conclusions to which no response is necessary. To the extent a response is required, the City denies the allegations contained in Paragraph 11.

12. As a supplemental state law claim against defendant City of Chicago only: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

ANSWER: The City denies the allegations contained in Paragraph 12.

13. Plaintiff hereby demands trial by jury.

ANSWER: The City demands a trial by jury.

WHEREFORE, Defendant, the City of Chicago, requests that this Court enter judgment in its favor and for such other and further relief as this Court deems appropriate.

AFFIRMATIVE AND OTHER DEFENSES

1. To the extent the Officer Defendants are not liable for the claims asserted in the Complaint, the City cannot be liable. 745 ILCS 10/2-109. Specifically, the Officer Defendants are not liable because:

- a) the Officer Defendants are entitled to qualified immunity, as government officials who perform discretionary functions, and a reasonable police officer objectively viewing the facts and circumstances that confronted the Officer Defendants would have believed their actions to be lawful, in light of clearly established law and the information possessed by the Officer Defendants;
- b) the Officer Defendants were public employees, who were engaged in the execution and enforcement of the law, and none of their acts or alleged omissions in the execution and enforcement of any law constituted willful and wanton conduct, 745 ILCS 10/2-202;
- c) the Officer Defendants are public employees that were acting within the scope of their employment, and are not liable for any injury caused by the act or omission of another person, 745 ILCS 10/2-204;
- d) the Officer Defendants are public employees and are not liable for injury caused by their instituting or prosecuting any judicial or administrative

proceeding within the scope of their employment, unless they act maliciously and without probable cause, 745 ILCS 10/2-208; and

- e) the Officer Defendants had probable cause to arrest Kelley-Lomax, which is a complete defense to malicious prosecution under both Illinois and federal law. *See Kies v. City of Aurora*, 156 F. Supp. 2d 970, 981 (N.D. Ill. 2001).

2. Under Illinois law, the City cannot be required to indemnify an employee for punitive damages, nor may it pay a judgment for punitive damages. 745 ILCS 10/2-102.

3. As to Kelley-Lomax's state law claim, Defendants are not liable to pay attorneys' fees as "the law in Illinois clearly is that absent a statute or contractual agreement attorney fees and the ordinary expenses and burdens of litigation are not allowable to the successful party." *See Kerns v. Engelke*, 76 Ill. 2d 154, 166 (1979) (citations omitted).

Dated: November 3, 2020

Respectfully submitted,

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