

Case for First Civ Pro Class
Professor Henry Wang

LOPEZ v. CITY OF IRVINGTON

2008 WL 565776 (D.N.J. Feb. 28, 2008)

OPINION

GREENAWAY, JR., District Judge.

This matter comes before this Court on the motion of Defendants City of Irvington (the “City”), Irvington Police Department (the “PD”), Alfredo Aleman, and Christopher Burrell (collectively “Defendants”). Defendants move to sever the trial of Plaintiffs Jaime Lopez, Arnold Daniels, Willie McKenzie, and Hilbert Gresham (collectively “Plaintiffs”), pursuant to Federal Rule of Civil Procedure 21. For the reasons below, Defendants’ motion is denied.

I. BACKGROUND

On November 4, 2005, Plaintiffs filed a Complaint alleging, *inter alia*, that the City of Irvington and the Irvington Police Department “failed to properly supervise and monitor the K-9 Unit and in particular its officer, Alfredo Aleman.” Plaintiffs argue that as a result of such failure, the City and PD “allowed for a pattern and practice of conduct to exist whereby various suspected felons, while in custody and control of law enforcement officers,” were “mauled, maimed, and disfigured” by Bullet, a canine under Defendant Aleman’s control.

Specifically, Plaintiff Lopez claims that he was attacked by Defendant Aleman and Bullet. The parties agree that on or about May 2, 2004 Lopez was engaged in a burglary when Aleman apprehended and arrested him. At the time of the arrest, Aleman was Bullet’s canine handler. Lopez alleges, but Defendants dispute, that during the arrest Aleman kicked Lopez in the ribs, and held him down on the floor while Bullet “bit Lopez and tore flesh from his left arm.” Lopez also claims that Aleman ordered Bullet to “get” him. Finally, Lopez claims that after he was handcuffed and placed in the back seat of a squad car, “Aleman released Bullet into the back seat with the doors closed, and watched as the dog tore into Lopez’s body and left shoulder.”

Next, Plaintiff Daniels claims that he was attacked by Bullet on June 29, 2005. The parties agree that Daniels was arrested while “in the attic of an unoccupied house for crimes associated with entry into the unoccupied house.” Daniels alleges, but Defendants dispute, that he followed the directions of the police officers involved in the arrest. In addition, Daniels states that Defendant Aleman grabbed and threw him to the ground. At this time, Daniels claims, Bullet bit him. Daniels also alleges that Aleman picked Daniels up, threw him against a

wall, and held him down while instructing Bullet to “get” him. It was at Aleman’s command that Bullet “repeatedly bit Daniels’ legs.” Daniels claims that even after he was handcuffed, he continued to be bitten by Bullet.

Plaintiff McKenzie alleges that he was also attacked by Bullet. The parties agree that “on or about August 24, 2005, McKenzie was observed exiting from a stolen vehicle and was pursued, apprehended and arrested by police with the assistance of K-9 Police Dog, Bullet.” McKenzie claims, and Defendants dispute, that after he was handcuffed, “Defendant Aleman released Bullet to attack McKenzie by biting and tearing at him.”

The next day, August 25, 2005, Plaintiff Gresham alleges that Bullet attacked him. The parties agree that “on or about August 25, 2005, Plaintiff Gresham ran from police officers and was eventually caught, arrested by police with the assistance of K-9 Police Dog Bullet.” Gresham also argues, and Defendants dispute, that “after being handcuffed by police, Defendant Aleman released Bullet to attack Gresham. Gresham was bitten and ripped at by the dog.”

Defendants filed this motion to sever seeking separate trials for each Plaintiff. Defendants argue that Plaintiffs’ claims should be severed and heard in separate trials because the claims “do not arise out of the same transaction or occurrence,” and because “Defendants will be seriously prejudiced by the fact that each of the plaintiffs will not be subject to sequestration thus restricting efforts to prevent them from parroting each other’s testimony.”

II. STANDARD OF REVIEW

A district court has broad discretion in deciding whether to sever a party pursuant to Federal Rule of Civil Procedure 21. *Boyer v. Johnson Matthey, Inc.*, 2004 WL 835082 (E.D. Pa. Apr. 16, 2004). Rule 21 is the procedural mechanism that courts use to sever parties improperly joined under Federal Rule of Civil Procedure 20. In order to determine whether plaintiffs were misjoined, a court must decide whether they assert any right to relief “arising out of the same transaction, occurrence, or a series of transactions or occurrences, and any question of law or fact common to all plaintiffs will arise in the action.” FED. R. CIV. P. 20(a) (1). Both the same transaction and the common question elements must be satisfied before joinder can be permitted.

“Transaction” is a word of “flexible meaning,” and may refer to a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship. *See Boyer*, 2004 WL 835082, at *6. The second element, however, “does not require precise congruence of all factual and legal issues; indeed, joinder may be permissible if there is but one question of law or fact common to the parties.” *Morris v. Paul Revere Ins. Group*, 986 F. Supp. 872, 885 (D.N.J. 1997).

Once the court has resolved these threshold questions, it may consider additional factors in determining whether to grant a motion to sever. These factors

include:

(1) whether the issues sought to be tried separately are significantly different from one another; (2) whether the separable issues require the testimony of different witnesses and different documentary proof; (3) whether the party opposing the severance will be prejudiced if it is granted; and (4) whether the party requesting the severance will be prejudiced if it is not granted.

German v. Fed. Home Loan Mortgage, 896 F. Supp. 1385, 1400 (S.D.N.Y.1995).

III. DISCUSSION

First, Defendants argue that Plaintiffs are misjoined because the facts surrounding each apprehension and arrest do not arise out of the same transaction or occurrence. The plaintiffs were arrested on different days at different locations by different officers. Plaintiffs counter that their experiences arise from a similar series of transactions or occurrences, and that common questions of law and fact will arise at trial. This Court finds Plaintiffs' position more persuasive.

Plaintiffs claim that the City and PD "failed to properly supervise and monitor its K-9 Unit," and as a result, permitted a pattern or practice of excessive force among the police officers of the K-9 unit. Each plaintiff's example of excessive force is alleged to have resulted from this pattern or practice, including the handcuffing of suspects prior to the K-9 dogs being let loose to attack them. *See Boyer*, 2004 U.S. Dist. LEXIS 9802, at *6 ("Essentially, Plaintiffs allege that each specific discriminatory action described in the complaint stemmed from the same pattern or practice. . . . Thus, each discriminatory act should be considered part of the same transaction or occurrence."). This Court, therefore, finds that the allegations in the Complaint arise from the same transaction, occurrence, or series of transactions or occurrences.

Second, this Court finds a common question of law or fact. Although Plaintiffs allegedly suffered in different incidents, at the hands of different police officers, and at different times and locations, the allegation of a pattern or practice of excessive force is a common question of fact central to each claim. *See Boyer*, 2004 U.S. Dist. LEXIS 9802, at *8 ("Though Plaintiffs allegedly suffered different incidents of discrimination, some occurring on different work shifts, at the hands of different supervisors, and at different times, the purported existence of a discriminatory pattern or practice is a common question of fact that Plaintiffs' claims share.").

Moving to the additional factors, this Court finds that they weigh in favor of denying the motion as well. The first factor, regarding the issues sought to be tried separately, has been discussed above. Plaintiffs each allege that Defendants engaged in a pattern or practice of excessive force. Similarly, each Plaintiff alleges that the attacks by Bullet indicate that the City and PD failed to supervise the officers of the K-9 unit.

Next, several witnesses are common to each Plaintiffs' claim. For example,

Defendants Aleman and Burrell and Sergeant Burghardt are witnesses to the allegations underlying Plaintiffs Lopez's and Gresham's claims. Defendant Aleman and Sergeant Burghardt are also witnesses to Plaintiff Daniels' claims. Officer Love is a witness to Plaintiffs Lopez's and Daniels' claims; and Defendants Aleman and Burrell are witnesses to Plaintiff McKenzie's claims. Although there are other witnesses to each of the Plaintiffs' claims, there is significant overlap among them.

Finally, this Court finds that Plaintiffs will be prejudiced if the motion is granted, while Defendants will not be prejudiced if the motion is denied. Because Plaintiffs have alleged a pattern or practice of excessive force, they will need to provide the jury with sufficient evidence to meet their burden that a pattern or practice actually existed. This will be difficult, if not impossible, if separate trials commence. In addition, Defendants have offered no support for their allegation of prejudice.

IV. CONCLUSION

For the foregoing reasons, the motion of Defendants City of Irvington, Irvington Police Department, Alfredo Aleman, and Christopher Burrell, to sever Plaintiffs Jaime Lopez, Arnold Daniels, Willie McKenzie, and Hilbert Gresham, pursuant to FED. R. CIV. P. 21, is denied.