

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ANALIA ACOSTA,

Plaintiff(s),

-against-

VILLAGE OF MAMARONECK, TOWN OF
MAMARONECK and JOHN DOES 1-6,

Defendant(s).

Index No.: 55931/2022

Basis of venue: Plaintiff's
residence

AMENDED SUMMONS IN A CIVIL ACTION

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff/Plaintiff's Attorney(s) within twenty (20) days after service of this summons, exclusive of the day of service, where service is made upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, New York
February 7, 2022

Yours etc.,

LAW OFFICE OF MICHAEL H. JOSEPH, P.L.L.C.

BY:

John V. Tait, Esq.
203 East Post Road
White Plains, New York 10601
Tel: (914) 574 8330
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ANALIA ACOSTA,

Index No.: 55931/2022

Plaintiff(s),

AMENDED COMPLAINT

-against-

VILLAGE OF MAMARONECK, TOWN OF
MAMARONECK and JOHN DOES 1-6,

Defendant(s).

JURY TRIAL DEMANDED

Plaintiff, by and through her undersigned attorneys, Law Office of Michael H. Joseph, PLLC, as and for her complaint against defendants states:

1. At all relevant times herein, plaintiff Analia Acosta, (hereinafter "Plaintiff"), was and is a resident of the State of New York, County of Westchester.

2. At all relevant times herein, upon information and belief, defendant John Does 1-6 are and were residents of the State of New York, County of Westchester.

3. At all relevant times herein, defendant Town of Mamaroneck was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

4. At all relevant times herein, defendant Village of Mamaroneck was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

5. On or about October 16, 2021, at about 9:00 p.m. and at all relevant times herein, John Does 1-6 were duly sworn police officer employed by the Town of Mamaroneck.

6. On or about October 16, 2021, at about 9:00 p.m. and at all relevant times herein, John Does 1-6 were duly sworn police officer employed by the Village of Mamaroneck.

7. On or about October 16, 2021, at about 9:00 p.m., and at all relevant times herein, John Does 1-6 were acting under the color of law.

COUNT I: ASSAULT

8. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if the same were more fully set forth herein at length.

9. On or about October 16, 2021, at about 9:00 p.m., plaintiff was lawfully inside her apartment at 501 North Berry Ave, Apt. 3H, Mamaroneck, NY with her 8-month-old child.

8. At the aforesaid time, date, and place, John Does 1-6 violently broke down her door and entered the apartment without a warrant and with firearms and Taser electronic control devices unholstered and aimed at plaintiff.

9. At the aforesaid time, date, and place, John Does 1-6 entered plaintiff's apartment without justification or privilege to do so.

10. At the aforesaid, date, time, and place, John Does 1-6 thorough their words, actions, and conduct, threatened Plaintiff and subjected her to physical force all without warning, provocation, justification, or privilege to do so.

11. At all times relevant herein, Plaintiff did not consent to Defendant(s) having physical contact with her, entering her apartment, or committing the aforesaid acts.

12. By and through the foregoing, Plaintiff was assaulted and harassed by the defendants.

13. The aforementioned actions of defendants caused Plaintiff to sustain damages, including but not limited to a violation of her Civil Rights, damage to her property, and has suffered in the past and continues to suffer great pain and mental anguish.

14. The aforementioned actions of defendants violated plaintiff's rights under 43 U.S.C. § 1983.

15. The Village of Mamaroneck and Town of Mamaroneck are vicariously liable for the acts of John Does 1-6.

16. Each John Doe at all times relevant herein, aided and abetted the violation of plaintiff's civil rights by failing to intervene on Plaintiff's behalf, and by failing to stop the other John Does from taking said actions.

17. At all times relevant herein, the defendants acted jointly and in concert with each other in violation of State law and 42 U.S.C. § 1985.

18. At all times relevant herein, each defendant had the duty and the opportunity to protect the plaintiff from the unlawful actions of the other defendant, but failed to do so thereby proximately causing plaintiff's injuries.

19. The foregoing force which subjected Plaintiff to remain her apartment constituted a seizure of the Plaintiff.

20. Solely by reason of the foregoing, excessive and unreasonable force, and the unlawful seizure, by John Does 1-6, Plaintiff was caused to be deprived of her rights, liberties, and privileges under the Fourth and Fourteenth Amendments to the United States Constitution, and further deprived her of her rights, liberties and privileges, and the laws of the State of New York, and Plaintiff has been caused to sustain personal injuries more fully set forth herein.

21. Defendants' actions were objectively unreasonable and shocked the conscience.

22. At all times relevant herein, Defendants lacked probable cause to believe that plaintiff posed a threat of serious physical harm to them or others.

23. Defendants are liable for compensatory, exemplary, and punitive damages pursuant to 42 U.S.C. § 1983.

COUNT II: MALICIOUS PROSECUTION/ABUSE OF PROCESS

24. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if the same were more fully set forth herein at length.

25. On or about October 16, 2021, at about 9:00 p.m., John Does 1-6 unlawfully entered plaintiff's apartment at 501 North Berry Ave, Apt. 3H, Mamaroneck, NY.

26. At the aforesaid time, date, and place, John Does 1-6 unlawfully sized a bag of tobacco from plaintiff's apartment and brought it into the bedroom of plaintiff's 8-month-old child.

27. At the aforesaid time, date, and place, John Does 1-6 set up and arranged the bag of tobacco near the crib of plaintiff's child and took photographs of the staged scene in an effort to fraudulently charge plaintiff with child endangerment or other crimes.

28. At the aforesaid, date, time, and place, John Does 1-6 fabricated evidence against plaintiff.

29. At all times relevant herein, defendants reported plaintiff to Child Protective Services and falsely claimed that she had endangered her child.

30. Upon information and belief, defendants provided Child Protective Services with the staged photographs of the tobacco that John Does 1-6 had planted in the bedroom of plaintiff's 8-month-old child.

31. Upon information and belief, defendants misrepresented the contents of the bag of tobacco and withheld the true contents of the bag from Child Protective Services. As a result of defendants' fraudulent actions, plaintiff was subject to an investigation by Child Protective Services, which was dismissed and closed as indicated.

32. By and through the foregoing, Plaintiff was the victim of a malicious prosecution and abuse of process by defendants.

33. The aforementioned actions of defendants caused Plaintiff to sustain damages, including but not limited to a violation of her Civil Rights, damage to her property, and has suffered in the past and continues to suffer great pain and mental anguish.

34. The Village of Mamaroneck and Town of Mamaroneck are vicariously liable for the acts of John Does 1-6.

35. Each John Doe at all times relevant herein, aided and abetted the violation of plaintiff's civil rights by failing to intervene on Plaintiff's behalf, and by failing to stop the other John Does from taking said actions.

36. At all times relevant herein, the defendants acted jointly and in concert with each other in violation of State law and 42 U.S.C. § 1985.

37. At all times relevant herein, each defendant had the duty and the opportunity to protect the plaintiff from the unlawful actions of the other defendant, but failed to do so thereby proximately causing plaintiff's injuries.

38. Solely by reason of the foregoing, excessive and unreasonable force and the unlawful seizure, by John Does 1-6, Plaintiff was caused to be deprived of her rights, liberties and privileges under the Fourth and Fourteenth Amendments to the United States Constitution,

and further deprived her of her rights, liberties and privileges, and the laws of the State of New York, and Plaintiff has been caused to sustain personal injuries more fully set forth herein.

39. Defendants' actions were objectively unreasonable and shocked the conscience.

40. Defendants are liable for compensatory, exemplary, and punitive damages pursuant to 42 U.S.C. § 1983.

COUNT III: ATTORNEYS FEES AND COSTS UNDER 42 U.S.C. § 1988

41 Plaintiff repeats and realleges each and every allegation contained above with the same force and effect as if fully set forth herein at length.

42. The foregoing events constitute violations of plaintiff's statutory and constitutional rights, thereby entitling him to attorneys' fees, costs, and disbursements as permitted by 28 U.S.C. § 1988.

WHEREFORE, Plaintiff demands that judgment be entered for Plaintiff against Defendants in an amount to be determined by the trier of fact for compensatory and punitive damages, plus attorney's fees.

Dated: White Plains, N.Y.
February 11, 2022

Yours etc.,

LAW OFFICE OF MICHAEL H. JOSEPH, P.L.L.C.

BY:


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