

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. _____

DOCKET NUMBER: 2201CR002384

BMC TRIAL COURT 5

COMMONWEALTH vs. Nicholas J. Fiorillo

DEFENDANTS' EMERGENCY MOTION FOR DISMISSAL WITH PREJUDICE

COMES NOW, Nicholas Fiorillo ("Defendant") and respectfully submits this Motion For Dismissal of all complaints and claims in the above-captioned matter, with Prejudice, and state as follows:

This entire action is founded in malice, with some very corrupt members of the BPD - DIV 1 trampling over the Constitutional, civil rights to due process of citizen Nicholas Fiorillo, committing repeated violations under 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments - threat to loss of liberty. This motion is filed on an emergency basis, due to the recent escalation of such threats within the past forty-eight hours.

On or about June 6, 2022, Officer Powers, Detective Dugal and others unknown at the present time, committed a malicious prosecution of Plaintiff Nicholas Fiorillo, by maliciously causing a judicial process to commence through contrived criminal charges against him, without evidence or probable cause, and with malice. This constitutes clear malicious prosecution, under 42 U.S.C. § 1983.

Officer Powers and Detective Dugal, conspired with attorney Defendant Kevin Peters to reach an understanding as to how the BPD would deprive plaintiff Nicholas Fiorillo of his constitutional rights. Defendants Powers, Dugal and Peters were all willful participants in this joint activity between the Police as agents of the State and this private citizen attorney. This constitutes a clear conspiracy, under 42 U.S.C. § 1983.

Shortly before the scheduled June 6th deposition of Mrs. Fiorillo, Mr. Fiorillo received a demand letter for tens of millions of dollars, and said that if he entered into an agreement to pay this money which was neither due or owing to any of the parties involved, his wife would not have to attend the deposition because it would be canceled. These unlawful actions constitute both blackmail and extortion.

As further set forth in the document appended hereto as Exhibit A, the Plaintiff in this action, attorney Kevin Peters, when questioned under oath at a hearing before a Magistrate, understood the consequences of perjury and admitted that he was not assaulted by Nicholas Fiorillo, and that he, in fact, was the aggressor. Mr. Peters told Detectives that he regretted that this incident had even happened, did not want any charges brought against Fiorillo, and that he wished that the entire matter would “just go away.”

There should have been no charges brought against Nicholas Fiorillo, either stemming from the June 6, 2022 deposition of his wife at Mr. Peter’s office or thereafter, as Fiorillo has committed no wrongdoings. The fact that the abuse of process was permitted by police officers and detectives, and the malicious prosecution of Nicholas Fiorillo allowed to proceed, is an egregious outrage which merits instant correction by way of dismissal.

ARGUMENT

Chapter 258E §1 defines Malicious as “characterized by cruelty, hostility or revenge.” All of the acts conspired between the BPD DIV 1 and attorney Kevin Peters were intentional acts, motivated by Peter’s ill-will towards Fiorillo and his desire to pressure him into executing a multimillion dollar “settlement agreement” he knew that his clients and those of he fellow Enterprise attorneys, were not entitled to. While the requirement here is different from the “malice” required for criminal harassment, c. 265 § 43A, Nicholas Fiorillo shows that the conduct of these police officers, court clerks and lower court judges, not only meets but exceeds all requirements. See Commonwealth v. O’Neil, 67 Mass. App. Ct. 284, 293 (2006).

Nicholas Fiorillo has irrefutable claims for unreasonable seizure, pursuant to legal process under the Fourth Amendment. This constitutional claim is analogous to tort claims for malicious prosecution, in that the gravamen of both is initiation of criminal charges, without probable cause. Fiorillo maintains a Section 1983 malicious prosecution claim under the Fourth Amendment, to the extent that the officers' actions caused Fiorillo to be seized, i.e. charged with a crime without probable cause. Accordingly, there is significant legal exposure for officers and prosecutors who are found not to have acted in good faith. (See, e.g., Usher v. City of Los Angeles, 828 F.2d 556 (9th Cir. 1987) [holding a malicious prosecution claim could be stated where criminal charges were dismissed for lack of evidence]; and Roberts v. City of Fairbanks, 947 F.3d 1191 (9th Cir. 2020).

Whenever a law enforcement officer writes a criminal complaint or charging document, the officer must sign the document under oath, attesting to the truthfulness of the contents of that complaint, since state and local laws direct what information a complaint or charging document must contain. If the complaint does not comply with state or local law because of a significant error or omission, if the officer retires or leaves his job before the error is able to be correction, which, upon information and belief may be the case with one or both of the BPD officers involved, or is unavailable for some other reason, the prosecutor may have to dismiss the complaint. This is precisely what should have happened here

Nicholas Fiorillo is aware that in rare circumstances, if a victim of malicious prosecution requests that charges be dismissed, a prosecutor may agree to do so, although normally, they would not have the power to control whether a criminal case moves forward. However, a prosecutor has the discretion to consider what constitutes justice in a case and the prosecutor is required to do what is just in criminal cases. Where the prosecutor and/or District Attorney does not do what is required and just, and redress, recourse and remedy cannot be had in a lower Court like the BMC, the matter must, in the name of justice, be reviewed for summary dismissal at Federal level, to put an immediate end to all unjust proceedings against Nicholas Fiorillo.

WHEREFORE, Defendant Nicholas Fiorillo prays that this honorable Court enter a judgment of Dismissal With Prejudice, of all matters against him in this instant action at the Boston Municipal Court.

Dated: December 23, 2022

Respectfully submitted,

/s/ Nicholas Fiorillo
Nicholas Fiorillo