UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIZABETH A MARCZESKI, Plaintiff, v. BOB KAMBA, SHERRI BRANDON, et al., Defendants.	:	NO. 3:99CV02479(AWT)

RULING ON MOTION TO DISMISS

Defendant Sherri Brandon ("Brandon") has moved pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint in its entirety as to her. For the reasons set forth herein, the motion to dismiss is being granted.

I. Standard of Review

Dismissal of a complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted is not warranted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the court in ruling on a Rule 12(b)(6) motion "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution Corp. v. Merrill Lynch

Commodities Inc., 748 F.2d 774, 779 (2d Cir. 1984) (internal quotations omitted). The court is required to accept as true all factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. Hernandez v. Coughlin, 18 F.3d 133, 136 (2d Cir. 1994).

The court also notes that "[t]his standard is applied with even greater force where . . . the complaint is submitted pro se." Hernandez, 18 F.3d at 136. When considering the sufficiency of the allegations in a pro se complaint, the court applies "less stringent standards than [those applied to] formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972); see also Branham v. Meachum, 77 F.3d 626, 628-29 (2d Cir. 1996). Furthermore, the court should interpret the plaintiff's complaint "to raise the strongest arguments [it] suggest[s]." Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994).

II. Discussion

Plaintiff Elizabeth A. Marczeski ("Marczeski") brought this case against Brandon and twenty other defendants, seeking damages for harm she allegedly suffered as a result of a series of events occurring in 1998 and 1999, which included the plaintiff's arrest, incarceration, and hospitalization in a state mental health facility. The named defendants are alleged to have participated in these events to varying degrees, with

the allegations against defendant Brandon being perhaps the most limited in scope. Brandon is mentioned only twice in the complaint, and only one allegation is made against her. Paragraph 8 of the complaint, which contains this lone allegation, reads as follows: "Law/Butler/Bowan/Brandon (defendants) making a false statement to the State's Attorneys Office in New London, Capt Dittman, Chief Gavitt, and the New London Police Dept."[sic][1]

Brandon argues that this allegation amounts to a claim of malicious prosecution. The court agrees. Construing the complaint in the light most favorable to the plaintiff, as the law requires, her allegations nevertheless are insufficient to state a claim.

To establish a cause of action for malicious prosecution under Connecticut law, "it is necessary to prove want of probable cause, malice and a termination of suit in the plaintiff's favor." DeLaurentis v. City of New Haven, 220 Conn. 225, 248, 597 A.2d 807, 819 (Conn. 1991)(internal quotation marks omitted). In deference to the plaintiff's pro se status, the complaint could be construed to allege a lack of probable cause and malice. However, the plaintiff can not satisfy the third element: favorable termination of the suit. In order to

[1] The other mention of Brandon is in paragraph 9, which accuses other defendants of refusing to allow Marczeski to file a "cross-complaint" against Brandon and others.

prevail on a claim of malicious prosecution, the plaintiff must have prevailed in the suit she alleges was improperly brought. See, e.g., Vandersluis v. Weil, 176 Conn. 353, 356, 407 A.2d 982, 985 (Conn. 1978); Clewley v. Brown, Thomson, Inc., 120 Conn. 440, 442, 181 A. 531, 533 (Conn. 1935)("The reason why conviction is a defense in an action for malicious prosecution is stated to be because it is justly considered as conclusive evidence of probable cause."). In this case, Marczeski admits that she was convicted (as a result of her guilty plea) of misdemeanor harassment. See Complaint, p. 25. Thus, the complaint fails to state a claim for malicious prosecution.

III. Conclusion

The plaintiff's complaint fails to state a claim against Brandon upon which relief may be granted. Accordingly, defendant Brandon's Motion to Dismiss [Doc. # 98] is hereby GRANTED. The Clerk shall dismiss this case as to defendant Sherri Brandon.

It is so ordered.

Dated this 23rd day of February, 2001, at Hartford, Connecticut.

Alvin W. Thompson
United States District Judge