

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES McMAHON,

Plaintiff,

COMPLAINT

vs.

SALVATORE RUSSO, CITY OF PORT JERVIS,
SGT. HOCKENBERRY AND POLICE OFFICER
CURRERI,

Defendants.

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JAMES McMAHON, by and through his counsel, Michael H. Sussman,
Esq., hereby states and complains as follows:

1. Plaintiff, James McMahan, is a male of legal age who resides in the
Town of Deer Park, County of Orange, State of New York, within this judicial
district.

2. Defendant, Salvatore Russo, is a male of legal age who resides in the Town of Deer Park, County of Orange, State of New York, within this judicial district.

3. Defendant, City of Port Jervis, is a municipality organized pursuant to the laws of the State of New York. It may sue and be sued.

It maintains, funds and operates a municipal police department.

4. Defendants Sgt. Hockenberry and Police Officer Curreri are employees of the police department of the City of Port Jervis and are sued in their individual capacities for their reckless conduct, as set forth herein.

5. As defendant Russo presented knowingly false information to the defendant City's police department and the Orange County District Attorney's Office in a successful effort to initiate criminal proceedings against plaintiff and so maliciously prosecuted plaintiff and as the defendant's police department, acting through defendants Hockenberry and Curreri, initiated plaintiff's false arrest after the lodging of this complaint by Russo without conducting any investigation and while in possession of evidence which exonerated plaintiff, this Court has

jurisdiction over this matter pursuant to 28 U.S.C. secs. 1331, 1343(3) & (4) & 42 U.S.C. sec. 1988.

6. On September 1, 2010, plaintiff was a member of a public access television station in Port Jervis, New York.

7. On September 1, 2010, as part of a scheme to get rid of plaintiff and others with whom he was sympathetic and gain control over the affairs of the radio station, including its programming, defendant Russo falsely accused plaintiff of attempting to assault him at a regularly scheduled monthly meeting of the station's members.

8. Defendant Russo lodged this charge knowing that it was materially false and without any basis in fact.

9. Simply stated, plaintiff neither touched the defendant nor attempted to do so on the date in question or any other date.

10. Despite the presence at the relevant time and place of the alleged incident of a Port Jervis police officer [Robert B. Card] who noted in official departmental records [PJ Event # 007377-10] that plaintiff had not committed any

criminal offense and had not made contact with defendant, acting through its police department, the City of Port Jervis arrested plaintiff and charged him with Harassment 2d, a violation, solely upon the basis of defendant Russo's false supporting deposition.

11. Ultimately, in December 2010, after several public court appearances, including one during which the charges against him were read aloud, plaintiff was exonerated of the charges and they were dismissed.

12. Said exoneration was in the form of an unconditional dismissal at the motion of the People after plaintiff's counsel noted that the contemporaneous police report exonerated him.

13. The actions of defendant Russo were malicious, intended to sully plaintiff's reputation and provide a basis for removing him from the membership of the public access television station.

14. In fact, hiding behind these false charges, defendant Russo ousted plaintiff from the membership and denied him access to the public television station.

15 The action by defendant Hockenberry and Curreri - charging plaintiff criminally - were reckless and ignored the filed report by Police Officer Card which was part of the police department's official records and exonerated plaintiff of any wrongdoing.

16. In so acting, defendants Hockenberry and Curreri implemented the practice and custom of the Port Jervis Police Department - to accept frivolous complaints without investigation - and to initiate criminal actions thereupon.

17. Such policy represented official municipal policy as of September 1, 2010.

18. Defendants' conduct, as set forth above, caused plaintiff emotional distress, anxiety, humiliation and embarrassment.

19. By falsely accusing McMahan of engaging in criminal conduct, defendant Russo violated plaintiff's right to due process of law and his right to be free of malicious prosecution in violation of the equal protection clause of the Fourteenth Amendment as made actionable by 42 U.S.C. sec. 1983.

20. By falsely arresting McMahan in a reckless manner, defendant

City of Port Jervis, acting through its agents, defendants Hockenberry and Curreti, violated plaintiff's right to be free of unlawful arrest as guaranteed by the due process clause of the Fourteenth Amendment, as made actionable by 42 U.S.C. sec. 1983.

WHEREFORE, plaintiff hereby prays that this Honorable Court:

- a) accept jurisdiction over this cause;
- b) empanel a jury to hear and decide this cause;
- c) award to plaintiff and against defendants in sums to be determined by the petit jury compensatory damages;
- d) award punitive damages against defendant Russo in a sum to be set by the petit jury;
- e) award pre and post-judgment interest on each such award;
- f) award plaintiff the reasonable attorneys fees and costs deriving from this action,
and
- g) enter any order which the interests of law and equity require.

Respectfully submitted,

MICHAEL H. SUSSMAN [3497]

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DATED: FEBRUARY 7, 2010