

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----x
RENISSA BRANTLEY, :
 :
 Plaintiff, :
 :
 v. : Civil No.3:02CV00549(AWT)
 SUSAN COLASANTO, ROBERT :
 MILLER, CJ SMITH REALTY, :
 JAMES BENSON, GUSSIE BENSON, :
 CITY OF NEW HAVEN, DEPARTMENT :
 OF PUBLIC WORKS, :
 :
 Defendants. :
-----x

MEMORANDUM OF DECISION

The plaintiff, Renissa Brantley ("Brantley") claims that she was illegally removed from her residence by the defendants. Defendant Robert Miller ("Miller") is a State Marshal who served Brantley with a "Summary Process Execution for Possession (Eviction)" issued by the Housing Session of the Superior Court in the Judicial District of New Haven. Brantley claims that Miller assisted the other named defendants by evicting her from her residence. Miller has moved for summary judgment. For the reasons that follow, defendant Miller's motion for summary judgment is being granted as to the plaintiff's claims against Robert Miller in both his official and individual capacities.

A motion for summary judgment may not be granted unless

the court determines that there is no genuine issue of material fact to be tried and that the facts as to which there is no such issue warrant judgment for the moving party as a matter of law. Fed. R. Civ. P. 56(c). See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Gallo v. Prudential Residential Servs., 22 F.3d 1219, 1223 (2d Cir. 1994). When ruling on a motion for summary judgment, the court may not try issues of fact, but must leave those issues to the jury. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Donahue v. Windsor Locks Board of Fire Commissioners, 834 F.2d 54, 58 (2d Cir. 1987). Thus, the trial court's task is "carefully limited to discerning whether there are any genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined . . . to issue-finding; it does not extend to issue-resolution." Gallo, 22 F.3d at 1224.

Here, the following factual contentions of defendant Miller are not disputed:

1. Sometime prior to March 5, 2002, defendant State Marshal Robert Miller received a summary process execution for a possession (eviction) from the Judicial District of New Haven at New Haven, Housing Session, from Sheldon B. Hosen, Esquire in behalf of the plaintiff, C.J. Smith Realty, with respect to the eviction of the plaintiff in this action, Renissa Brantley.

2. The summary process execution for possession (eviction), was signed by the Superior Court Clerk, Suzanne Colasanti on 2/19/2002....

3. On March 5, 2002, defendant State Marshal Robert Miller levied upon the execution for possession at 526 Winthrop Avenue (First Floor), New Haven, Connecticut, as indicated on the summary process execution for possession (eviction).

4. The summary process execution for possession (eviction) was issued by the Housing Session of the Superior Court in the Judicial District of New Haven, and was valid on its face and was issued by a competent authority, *to wit*, the Housing Session of the Superior Court.

Def's. Local Rule 9(c)(1) Statement [Doc. #36].

The plaintiff's 42 U.S.C. § 1983 claim against Miller in his official capacity is barred because "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989).

With respect to the plaintiff's claim against Miller in his individual capacity, Connecticut law provides that:

Each state marshal shall receive each process directed to such marshal when tendered, execute it promptly and make true return thereof; and shall, without any fee, give receipts when demanded for all civil process delivered to such marshal to be served, specifying the name of the parties, the date of the writ, the time of delivery and the sum or thing in demand. If any state marshal does not duly and promptly execute and return any such process or makes a false or illegal return thereof, such

marshal shall be liable to pay double the amount of all damages to the party aggrieved.

Conn. Gen. Stat. Ann. §6-32 (West Supp. 2002). When a writ appears to be valid on its face, and issued by competent authority, a marshal has a duty to serve it and will be protected in making any such service. Watson v. Watson, 9 Conn. 140 (1832) ("It is the duty of an officer, in which he will be protected, to obey, without investigating the cause of action, every precept put into his hands for service, which appears, on its face, to have issued from competent authority and with legal regularity."); Neth v. Crofut, 30 Conn. 580, 581 (1862) ("It is well settled that an officer is not bound to look outside of the precept which is put into his hands for service.... [I]f it appears to have issued from competent authority, and with legal regularity, it is his duty to serve it, and he will be protected in making the service which it requires."); McGann v. Allen, et al., 105 Conn. 177, 134 A. 810, 814 (1926) ("A process valid on its face protects the officer who serves it.").

Here, it is undisputed that defendant Miller, acting as a State Marshal, served process that was valid on its face. Thus, Miller is entitled to judgment as a matter of law on this claim.

For the reasons set forth above, defendant Robert Miller's motion for summary judgment [Doc. #34] is hereby GRANTED. Judgment shall enter in favor of Robert Miller as to all claims against him.

It is so ordered.

Dated this 14th day of January 2003, at Hartford, Connecticut.

Judge

Alvin W. Thompson
United States District