

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X
LAWRENCE NADEAU, :
Plaintiff, :
 :
v. :
 : Civil Action No. 3:03CV834 (AWT)
 :
 :
DONALD ANTHONY :
Defendant. :
-----X

RULING ON MOTION TO DISMISS

The defendant has moved to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the plaintiff’s substantive due process claim. For the reasons set forth below, the motion to dismiss is being granted.

I. Factual Background

The complaint includes the following allegations set forth below, and the court accepts these factual allegations as true for purposes of testing the sufficiency of the complaint.

Plaintiff Lawrence Nadeau owns and manages several rental properties in Meriden, Connecticut. Defendant Donald Anthony is an electrical inspector for the City of Meriden, and he inspected one the plaintiff’s properties. On or about February 2, 2001, the plaintiff received a summons informing him that he was in violation of the State Building Code, Conn. Gen. Stat. § 29-252, which requires that landlords ensure their “buildings and structures are designed and constructed in such a manner as to conserve energy and, wherever practicable, facilitate the use of renewable energy resources.” Id. Specifically, the defendant was charged with having defective wiring in one of his rental properties. The offense is punishable by imprisonment and a fine.

The plaintiff was arrested and the case was subsequently dismissed. Shortly thereafter, the plaintiff brought this action alleging that the defendant intentionally and maliciously prepared a false and misleading affidavit for the purpose of subjecting the plaintiff to the resulting prosecution. The plaintiff alleges in Paragraph 17 of the Complaint, that :

“[T]he defendant, Donald Anthony, deprived the plaintiff, Lawrence Nadeau, of his right to freedom from unreasonable search and seizure, freedom from arrest without probable cause, freedom from malicious prosecution, and due process of law. These rights are secured to the plaintiff by the Fourth and Fourteenth Amendments to the United States Constitution and by Title 42 U.S.C. §1983 and §1988.”

II. Legal Standard

When ruling on a motion to dismiss, a court will “assess the legal feasibility of a complaint.” Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980). Dismissal is not justified “unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

In making its determination, the court accepts as true all well-pled allegations, with “inferences drawn from those facts in the light most favorable to the [non-moving party].” Bolick v. Alea Group Holdings, Ltd. et al., 278 F. Supp. 2d 278, 280 (D.Conn. Aug. 5, 2003). Nevertheless, “bald assertions and conclusions will not” be accepted in the place of well-pled factual allegations. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996).

III. Discussion

_____The defendant has moved to dismiss the plaintiff’s substantive due process claim. The defendant contends that claims for violation of the rights to be free from unreasonable search and seizure, arrest without probable cause and malicious prosecution, must be asserted as claims for violation of Fourth Amendment rights, not as claims for violation of the Fourteenth Amendment

right to substantive due process. The court agrees.

_____ While the Fourth Amendment protects individuals from unreasonable searches and seizures, the Fourteenth Amendment's protections are broader, protecting individuals from deprivations of life, liberty and property without due process of law. The United States Supreme Court held in Albright v. Oliver, 510 U.S. 266 (1994)(plurality opinion), that where a plaintiff has alleged sufficient facts to support a cause of action under the Fourth Amendment, a cause of action may not be pursued under the Fourteenth Amendment. The Court stated:

_____ “Hurtado [v. California, 110 U.S. 516 (1884)(alteration in original)(citations omitted)] held that the Due Process Clause did not make applicable to the states the Fifth Amendment's requirement that all prosecutions for an infamous crime be instituted by the indictment of a grand jury. In the more than 100 years which have elapsed since Hurtado was decided, the Court has concluded that a number of the procedural protections contained in the Bill of Rights were made applicable to the states by the Fourteenth Amendment ... This course of decision has substituted, in these areas of criminal procedure, the specific guarantees of the various provisions of the Bill of Rights embodied in the first 10 Amendments to the Constitution for the more generalized language contained in the earlier cases construing the Fourteenth Amendment. It was through these provisions of the Bill of Rights that the Framers sought to restrict the exercise of arbitrary authority by the Government in particular situations. Where a particular Amendment ‘provides an explicit textual source of constitutional protection’ against a particular sort of government behavior, ‘that Amendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.’”

Albright, 510 U.S. at 272-73, quoting Graham v. Connor, 490 U.S. 386, 395 (1989)(emphasis added)(internal quotations omitted).

_____ Here, the plaintiff has brought claims for violation of his rights to freedom from unreasonable search and seizure, freedom from arrest without probable cause, freedom from malicious prosecution and due process of law. The Fourth Amendment provides “an explicit textual source of constitutional protection against” unreasonable searches and seizures, arrest without probable cause and malicious prosecution. Albright, 510 U.S. at 273 (internal quotations omitted).

See e.g., Florida v. White, 526 U.S. 559, 563 (1999), quoting U.S. Const., Amdt. 4 (“The Fourth Amendment [] ‘guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]’”); Albright, 510 U.S. at 281 (Kennedy, J., concurring)(“I agree with the plurality that an allegation of arrest without probable cause must be analyzed under the Fourth Amendment without reference to more general considerations of due process[.]”); Id. at 271, (Rehnquist, C.J. announcing judgment of the Court)(“We hold that it is the Fourth Amendment, and not substantive due process, under which petitioner Albright's claim[] [of malicious prosecution] must be judged.”); Singer v. Fulton County Sheriff, 63 F.3d 110, 114 (2d Cir. 1995)(“We agree that, under Albright, the Fourteenth Amendment right to substantive due process will not support a federal claim for malicious prosecution.”). Thus, the Fourth Amendment, “not the more generalized notion of substantive due process must be the guide for analyzing [the plaintiff’s claims].” Graham, 490 U.S. at 395. The plaintiff may not pursue a cause of action under the Fourteenth Amendment for violation of his right to substantive due process when a cause of action for his claim exists under the Fourth Amendment.

IV. Conclusion

For the reasons set forth above, the defendant’s Motion to Dismiss (Doc. # 8) is hereby GRANTED. The plaintiff’s substantive due process claim is dismissed.

It is so ordered.

Dated this 2nd day of December 2003 at Hartford, Connecticut.

Alvin W. Thompson
United States District Judge