

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

▷

Supreme Court, Appellate Division, First Department, New York.

Alfred J. **MANTI**, Andrew **Manti** and **Manti's** Transportation, Inc., Plaintiffs-Respondents-Appellants,

v.

NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants-Appellants-Respondents. Action No. 1.

NEW YORK CITY TRANSIT AUTHORITY, Plaintiff-Appellant-Respondent,

v.

Alfred J. **MANTI**, et al., Defendants-Respondents-Appellants. Action No. 2.

Alfred J. **MANTI**, Andrew **Manti** and **Manti's** Transportation, Inc., Plaintiffs-Appellants,

v.

NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants-Respondents. Action No. 1.

NEW YORK CITY TRANSIT AUTHORITY, Plaintiff,

v.

Alfred J. **MANTI**, et al., Defendants. Action No. 2. March 19, 1991.

Holders of permit to transport persons in vehicles between two counties commenced action for injunction and damages against city transit authority and its employees, alleging harassment, abuse of process, and deprivation of civil rights. Transit authority instituted second action, alleging that holders were operating illegal transportation services. Holders filed counterclaims in second action. The Supreme Court, New York County, Schackman, J., denied authority's motion to dismiss complaint in first action, denied authority's motion to dismiss counterclaims in second action, made partial and limited finding of liability against authority with respect to disobedience of temporary restraining order previously issued in first action, and denied holders' motion for attorney fees. Appeals were taken. The Supreme Court, Appellate Division,

Rosenberger, J., held that: (1) holders' harassment allegations sufficiently stated cause of action under federal civil rights statute; (2) holders sufficiently stated claim under federal civil rights statute for authority's failure to train its employees; (3) holders failed to establish pattern of harassment sufficient to justify imposition of automatic liability under federal civil rights statute, despite violation of temporary restraining order which resulted in orders adjudging authority in civil contempt; and (4) genuine issues of material fact, precluding summary judgment, existed as to whether individual employees of authority were entitled to qualified immunity from civil rights claims.

Affirmed as modified.

West Headnotes

[1] Civil Rights 78 ⚡1343

78 Civil Rights

78III Federal Remedies in General

78k1342 Liability of Municipalities and Other Governmental Bodies

78k1343 k. In General. Most Cited Cases

(Formerly 78k206(1))

Governmental units such as city transit authority are among those "persons" whose conduct is proscribed by federal civil rights statute. 42 U.S.C.A. § 1983.

[2] Civil Rights 78 ⚡1351(1)

78 Civil Rights

78III Federal Remedies in General

78k1342 Liability of Municipalities and Other Governmental Bodies

78k1351 Governmental Ordinance,

Policy, Practice, or Custom

78k1351(1) k. In General. Most Cited

Cases

(Formerly 78k206(3))

Municipal liability under federal civil rights statute is predicated upon deprivations derived from policy

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

or custom of municipality. 42 U.S.C.A. § 1983.

[3] Civil Rights 78 ↪1036

78 Civil Rights

78I Rights Protected and Discrimination Prohibited in General

78k1030 Acts or Conduct Causing Deprivation

78k1036 k. Threats, Intimidation, and Harassment. Most Cited Cases

(Formerly 78k109)

True pattern of harassment by government officials may make out federal civil rights claim for violation of due process of law, where municipal defendant's actions are illegal, or place discriminatory burden on constitutionally protected activity. 42 U.S.C.A. § 1983; U.S.C.A. Const.Amends. 5, 14.

[4] Civil Rights 78 ↪1072

78 Civil Rights

78I Rights Protected and Discrimination Prohibited in General

78k1072 k. Permits, Licenses, and Certifications. Most Cited Cases

(Formerly 78k108.1, 78k108)

Protected constitutional interest exists, for purpose of federal civil rights statute, where state recognizes right to operate vehicle by issuing operator's license. 42 U.S.C.A. § 1983.

[5] Civil Rights 78 ↪1395(1)

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1395 Particular Causes of Action

78k1395(1) k. In General. Most Cited Cases

(Formerly 78k235(1))

Holders of permit to transfer persons in vehicles between two counties demonstrated that they suffered constitutional injury cognizable under federal civil rights statute by alleging that city transit authority and its employees engaged in repeated

pattern of harassment in effort to drive them out of business. 42 U.S.C.A. § 1983.

[6] Civil Rights 78 ↪1395(1)

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1395 Particular Causes of Action

78k1395(1) k. In General. Most Cited Cases

(Formerly 78k235(1))

Harassment allegations by holders of permit to transport persons in vehicles between two counties sufficiently stated cause of action against city transit authority under federal civil rights statute, where complaint alleged that transit authority's "bus unit" harassed holders by issuing numerous and burdensome citations without any basis in fact, by seizing their property through stopping their vans and passengers for unreasonably long periods of time, by forcing holders to make numerous court appearances, by commencing frivolous litigation against them, and by placing holders under surveillance, which allegations supported their claim that authority's conduct was motivated by desire to take their property, license, good will and attendant business without due process of law. 42 U.S.C.A. § 1983; U.S.C.A. Const.Amends. 5, 14.

[7] Civil Rights 78 ↪1352(1)

78 Civil Rights

78III Federal Remedies in General

78k1342 Liability of Municipalities and Other Governmental Bodies

78k1352 Lack of Control, Training, or Supervision; Knowledge and Inaction

78k1352(1) k. In General. Most Cited Cases

(Formerly 78k206(4))

To be actionable under federal civil rights statute, municipality's failure to train its employees must result in deliberate indifference to constitutional rights of person, and must reflect deliberate or conscious choice by municipality. 42 U.S.C.A. § 1983.

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

[8] Civil Rights 78 ↪1395(1)

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1395 Particular Causes of Action

78k1395(1) k. In General. Most Cited

Cases

(Formerly 78k235(1))

Civil rights complaint filed by holders of permit to transport persons in vehicles between two counties sufficiently stated claim under federal civil rights statute for transit authority's failure to train its employees; testimony of high-ranking official of authority indicated that officers assigned to authority's "bus squad" received no training with regard to distinguishing legal and illegal vans. 42 U.S.C.A. § 1983.

[9] Civil Rights 78 ↪1351(6)

78 Civil Rights

78III Federal Remedies in General

78k1342 Liability of Municipalities and Other Governmental Bodies

78k1351 Governmental Ordinance, Policy, Practice, or Custom

78k1351(6) k. Other Particular Cases and Contexts. Most Cited Cases

(Formerly 78k206(3))

Holders of permit to transport persons in vehicles between two counties failed to establish pattern of harassment sufficient to justify imposition of automatic liability upon city transit authority under federal civil rights statute, even though authority's employees violated temporary restraining order, which prohibited authority from unlawfully issuing tickets and detaining holders' vans, by stopping one van in excess of ten minutes, and stopping another van due to lack of chauffeur's license when in fact holders had such license. 42 U.S.C.A. § 1983.

[10] Judgment 228 ↪181(6)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(5) Matters Affecting Right to Judgment

228k181(6) k. Existence of Defense.

Most Cited Cases

(Formerly 228k181(15.1), 228k181(15))

Judgment 228 ↪181(27)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(15) Particular Cases

228k181(27) k. Public Officers and Employees, Cases Involving. Most Cited Cases

(Formerly 228k181(15.1), 228k181(15))

Genuine issues of material fact, precluding summary judgment for city transit authority and its employees, existed as to whether authority and employees were entitled to qualified immunity from holders' civil rights claims, since holders' allegations that authority ticketed licensed vans, unduly delayed vans and passengers, and caused damage to holders' property could permit jury to determine that such actions were inconsistent with constitutional rights of holders. 42 U.S.C.A. § 1983.

[11] Malicious Prosecution 249 ↪37

249 Malicious Prosecution

249IV Termination of Prosecution

249k37 k. Scope and Effect of Determination. Most Cited Cases

Allegations that many charges lodged against plaintiffs were terminated in their favor, resulted in unknown dispositions, or were not duly prosecuted, were sufficient to establish favorable termination, for malicious prosecution purposes.

[12] Malicious Prosecution 249 ↪12

249 Malicious Prosecution

249I Nature and Commencement of Prosecution

249k12 k. Civil Proceedings Other Than Actions. Most Cited Cases

Proceedings before State Department of Transport-

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

ation with respect to permits allowing transportation of persons in vehicles between two counties contained sufficient attributes of judicial proceedings to satisfy requirements for instituting malicious prosecution claim.

[13] Antitrust and Trade Regulation 29T ↪76

29T Antitrust and Trade Regulation

29TII Unfair Competition

29TII(B) Actions and Proceedings

29Tk74 Pleading

29Tk76 k. Particular Cases. Most

Cited Cases

(Formerly 382k864 Trade Regulation)

Competitors' allegations that city transit authority interfered with their business operation in effort to prevent unwanted competition was sufficient to state cause of action for unfair competition.

[14] Process 313 ↪192

313 Process

313IV Abuse of Process

313IV(A) In General

313k192 k. Particular Cases. Most Cited

Cases

(Formerly 313k168)

Process 313 ↪204

313 Process

313IV Abuse of Process

313IV(B) Actions and Proceedings

313k204 k. Pleading. Most Cited Cases

(Formerly 313k168)

Competitors' allegations that city transit authority interfered with their business operation in effort to prevent unwanted competition was sufficient to state cause of action for abuse of process.

[15] Torts 379 ↪161

379 Torts

379II Prima Facie Tort

379k161 k. Particular Cases. Most Cited

Cases

(Formerly 379k26(1))

Competitors' allegations that city transit authority interfered with their business operation in effort to prevent unwanted competition was sufficient to state cause of action for prima facie tort.

[16] Municipal Corporations 268 ↪589

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k589 k. Nature and Scope of Power of Municipality. Most Cited Cases

Municipal Corporations 268 ↪723

268 Municipal Corporations

268XII Torts

268XII(A) Exercise of Governmental and Corporate Powers in General

268k723 k. Nature and Grounds of Liability. Most Cited Cases

If government uses its police power to protect its own commercial enterprises at cost of citizens' rights and property, government has abused and perverted its police power, and should be answerable in damages.

[17] Civil Rights 78 ↪1491

78 Civil Rights

78III Federal Remedies in General

78k1477 Attorney Fees

78k1491 k. Interim Awards. Most Cited Cases

(Formerly 78k305)

Municipal Corporations 268 ↪1040

268 Municipal Corporations

268XVI Actions

268k1040 k. Costs. Most Cited Cases

Trial court did not abuse its discretion in denying prejudgment, interim request for award of attorney fees to holders of permit to transport persons in vehicles between two counties in action com-

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

menced against city transit authority and its employees for harassment, abuse of process, and deprivation of civil rights.

**18 *375 Evan H. Krinick, of counsel (Rivkin, Radler, Bayh, Hart & *376 Kremer, attorneys, Uniondale), for New York City Transit Authority and its employees.

Milton S. Gould, of counsel (Jeffrey D. Buss with him on the brief; Curt Rogg-Meltzer and Shea & Gould, attorneys, New York City), for **Mantis** in Action Nos. 1 and 2.

Before SULLIVAN, J.P., and ROSS, ROSENBERGER and KASSAL, JJ.

ROSENBERGER, Justice.

Plaintiffs Alfred J. **Manti** *et al.* were issued a permit by the New York State Department of Transportation on December 8, 1981, authorizing them to transport individuals in vehicles capable of carrying up to fifteen passengers between the counties of Kings and New York. Plaintiffs were not permitted to solicit, pick up or discharge passengers at stops or on routes of existing bus lines or subways. Defendant New York City Transit Authority (NYCTA) objected to the issuance of the permit to plaintiffs and filed a petition for reconsideration. However, on November 5, 1982, the New York State Department of Transportation adhered to its decision granting plaintiffs a permit to operate a transportation service. No further appeal was taken by the NYCTA.

Plaintiffs commenced this action seeking an injunction and damages against the NYCTA and some of its employees (Action No. 1 herein) on November 11, 1982 alleging harassment, abuse of process, malicious prosecution and deprivation of civil rights based on the NYCTA's purported actions in attempting to interfere with and prevent the operation of plaintiffs' competing transportation service. Specifically, plaintiffs alleged that the NYCTA police officers harassed plaintiffs by unlawfully tick-

eting their vehicles and delaying their passengers. The NYCTA had increased its enforcement activity against surface transportation carriers by forming a "Bus Squad" within its Police Department Task Force Unit in August of 1982, which concerned itself with "gypsy" cabs and commuter vans which "poached" passengers by soliciting them at bus stops and accepting hails. Within a six month period, plaintiffs were issued 82 summonses of which approximately fifteen resulted in a disposition of guilt. Almost half were dismissed.

The Supreme Court (Greenfield, J.) granted plaintiffs' application for a preliminary injunction on February 10, 1983, prohibiting the NYCTA from unlawfully issuing tickets and detaining plaintiffs' vans. The NYCTA *377 thereafter instituted a lawsuit against plaintiffs in Kings County (Action No. 2), seeking a preliminary injunction precluding plaintiffs from operating their vans, on the ground that plaintiffs were operating an illegal transportation service. Plaintiffs' motion for summary judgment dismissing the complaint was granted by order entered June 7, 1984 (Jordan, J.). **19 The Appellate Division, Second Department, affirmed and the Court of Appeals denied leave to appeal.

Plaintiffs seek damages based on the NYCTA's purported malicious prosecution of that action, which the Supreme Court termed frivolous and without any basis in law or fact. Plaintiffs' counterclaims were severed from the Kings County action and were joined with the New York County lawsuit. After the NYCTA launched another ticketing campaign against plaintiffs' vans in August of 1983, plaintiffs moved for an order adjudging the NYCTA in contempt for violating the temporary restraining order issued by Judge Greenfield. After a referee concluded that the NYCTA was in civil contempt for twice violating the preliminary injunction, by improperly issuing one ticket and by unduly delaying an employee of plaintiffs, the Supreme Court (Smith, J.) confirmed the referee's report and fined the NYCTA \$250.

The NYCTA thereafter moved for summary judg-

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

ment dismissing the complaint in Action No. 1 and the counterclaims in Action No. 2. By order entered January 21, 1990, the Supreme Court (Schackman, J.) denied the NYCTA's motion for summary judgment "except to eliminate certain duplication and to limit some of the issues." While concluding that plaintiffs' civil rights causes of action were viable, and that disputed facts existed warranting the denial of summary judgment, the court nonetheless denied summary judgment "except to the extent this decision limits the issues in favor of the **Manti** plaintiffs by making a partial and limited finding of liability in connection with disobedience of the TRO" previously issued by Judge Greenfield. The court further denied the NYCTA's motion to dismiss the amended and supplemental counterclaims asserted by the **Manti** plaintiffs, except that summary judgment was granted with respect to the third and fourth counterclaims since they duplicated the sixth and seventh causes of action. In a previous order entered November 15, 1989, the Supreme Court denied plaintiffs' motion for an award of interim attorneys' fees and disbursements.

On appeal, the NYCTA contends that the Supreme Court *378 erred in denying its motion for summary judgment since the complaint failed to state a cause of action. Moreover, it maintains that the court's *sua sponte* grant of summary judgment to plaintiffs, finding the NYCTA liable in connection with its disobedience of the temporary restraining order (TRO), was improper since the violations of the preliminary injunction did not establish automatic liability under 42 U.S.C. § 1983. In addition to its appeal challenging the denial of its motion for attorneys' fees, plaintiffs' cross appeal of the January 21, 1990 order seeks further specification as to the Supreme Court's limited finding of liability. They seek an order transforming the Supreme Court's decision into a formal grant of partial summary judgment on their sixth cause of action.

Contrary to the NYCTA's contentions, the factual allegations contained in plaintiffs' complaint were sufficient to state a cause of action under 42 U.S.C.

§ 1983. However, we agree with defendants that by making a partial and limited finding that the NYCTA was liable under 42 U.S.C. § 1983, based on its violations of the temporary restraining order (TRO), the Supreme Court erred in *sua sponte* awarding partial summary judgment to plaintiffs. A full trial is necessary to determine whether defendant engaged in a persistent pattern of misconduct aimed at deterring competing transportation services.

[1] 42 U.S.C. § 1983 enables an aggrieved individual to seek a civil remedy against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution...." Governmental units such as the NYCTA are among those "persons" whose conduct is proscribed by statute. (*Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611; *Simpson v. New York City Transit Auth.*, 112 A.D.2d 89, 491 N.Y.S.2d 645, *aff'd*, 66 N.Y.2d 1010, 499 N.Y.S.2d 396, 489 N.E.2d 1298).

[2][3] **20 Liability is predicated upon deprivations derived from a policy or custom of the municipality (*Id.*). A true pattern of harassment by government officials may make out a § 1983 claim for violation of due process of law, where the municipal defendant's actions are illegal, or place a discriminatory burden on a constitutionally protected activity (*Chalfy v. Turoff*, 2nd Cir., 804 F.2d 20; *Batista v. Rodriguez*, 2nd Cir., 702 F.2d 393; *Espanola Way Corp. v. Meyerson*, 11th Cir., 690 F.2d 827, *cert. denied* 460 U.S. 1039, 103 S.Ct. 1431, 75 L.Ed.2d 791; *and see, Black Jack Distributors, Inc. v. Beame*, D.C.N.Y., 433 F.Supp. 1297). A complaint will survive dismissal "unless it appears beyond *379 doubt that the plaintiff can prove no set of facts in support of his (§ 1983) claim which would entitle him to relief" (*Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80, cited in *Batista v. Rodriguez, supra* at 397).

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

[4][5] A protected constitutional interest exists where the state recognizes the right to operate a vehicle by issuing an operator's license (*Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405; *Safeguard Mut. Ins. Co. v. Miller*, D.C.Pa., 477 F.Supp. 299). By alleging that the NYCTA and its employees engaged in a repeated pattern of harassment in an effort to drive them out of business, a business licensed by the New York State Department of Transportation, plaintiffs demonstrated that they suffered a constitutional injury cognizable under 42 U.S.C. § 1983 (*Espanola Way Corp. v. Meyerson*, *supra*; and see *Black Jack Distributors, Inc. v. Beame*, *supra*; cf. *Chalfy v. Turoff*, *supra*).

[6] The complaint alleged that defendant's Bus Unit harassed plaintiffs by issuing numerous and burdensome citations without any basis in fact, by seizing their property in stopping their vans and passengers for unreasonably long periods of time, by forcing plaintiffs to make numerous court appearances, by commencing frivolous litigation against them, and by placing plaintiffs under surveillance. The factual allegations support their claim that the NYCTA's conduct was motivated by a desire to take plaintiffs' property, their license, goodwill and attendant business, without due process of law. (*Espanola Way Corp. v. Meyerson*, *supra*; cf. *Vasquez v. City of Hamtramck*, 6th Cir., 757 F.2d 771). Accordingly, plaintiffs' harassment allegations have sufficiently stated a cause of action under 42 U.S.C. § 1983 and we need not reach the alternative theories advanced in support of their civil rights claims.

[7][8] The NYCTA also contends that plaintiffs' 42 U.S.C. § 1983 cause of action based upon the NYCTA's purported failure adequately to train or supervise the Bus Squad should be dismissed as a matter of law because they failed to establish a policy of the NYCTA which constituted "deliberate indifference" to their constitutional rights. In *City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412, the Supreme Court held that a municipality may, under certain circum-

stances, be held liable under § 1983 for constitutional violations resulting from its failure to train its employees. The failure to train, however, must result in deliberate indifference to the constitutional rights of an individual. Only where a failure to train reflects a deliberate or conscious choice by the municipality can the failure be properly thought of as an actionable city policy. Plaintiffs' complaint,*380 which, unlike the complaint in *Canton*, included an allegation of a failure to supervise as well as a failure to train, sufficiently complied with the standards enunciated in *Canton*. The testimony of a high-ranking official of the agency indicated that the officers assigned to the Bus Squad received no training with regard to distinguishing between legal and illegal vans.

[9] While the Supreme Court correctly determined that plaintiffs' complaint stated a cause of action and that factual issues existed precluding the award of summary judgment to defendant, it was error to grant partial summary judgment *sua sponte* to plaintiffs based on the prior orders adjudging the NYCTA in civil contempt for violating the TRO. The two violations,**21 for stopping a van in excess of ten minutes and for not having a chauffeur's license when in fact plaintiffs had such license, failed to establish a pattern of harassment sufficient to justify imposing automatic liability under 42 U.S.C. § 1983. The pattern of harassment claim, based on only two instances of misconduct, is insufficient to support the award of partial summary judgment, as plaintiffs conceded at oral argument before this court.

[10] Plaintiffs' allegations with regard to the conduct of the individual defendants in their performance of the Bus Squad operation were sufficient to withstand defendants' motion for summary judgment. While defendants claimed that they were entitled to qualified immunity from plaintiffs' civil rights claims, the allegations of ticketing of licensed vans, of undue delays of the vans and passengers, of causing damage to plaintiffs' property, etc., could permit a jury to determine that defend-

165 A.D.2d 373, 568 N.Y.S.2d 16

(Cite as: 165 A.D.2d 373, 568 N.Y.S.2d 16)

ants' actions were inconsistent with the constitutional rights of plaintiffs, thus precluding them from asserting a right to qualified immunity shielding them from liability (*Anderson v. Creighton*, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523; *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396).

[11][12] Summary judgment was also properly denied with respect to plaintiffs' malicious prosecution claims. While defendant maintains that plaintiffs failed to establish either "the commencement or continuation of a criminal proceeding by the defendant against the plaintiff" or "the termination of the proceeding in favor of the accused" (*Broughton v. State*, 37 N.Y.2d 451, 457, 373 N.Y.S.2d 87, 335 N.E.2d 310, cert. denied sub nom. *Schanbarger v. Kellogg*, 423 U.S. 929, 96 S.Ct. 277, 46 L.Ed.2d 257), plaintiffs' allegations that many of the charges lodged against them were terminated in their favor, *381 or resulted in unknown dispositions, or were not duly prosecuted, were sufficient to establish a favorable termination for malicious prosecution purposes (*see, Janetka v. Dabe*, 2nd Cir., 892 F.2d 187). Moreover, the administrative proceedings conducted in this matter contained sufficient attributes of judicial proceedings to satisfy the requirements for instituting a malicious prosecution claim (*Groat v. Town Bd. of Town of Glenville*, 73 A.D.2d 426, 426 N.Y.S.2d 339, app. dsmd., 50 N.Y.2d 928; *Glenn v. State of New York*, 144 Misc.2d 101, 543 N.Y.S.2d 632).

[13][14][15][16] Plaintiffs' allegations that defendant interfered with their business operation in an effort to prevent unwanted competition were also sufficient to state causes of action for unfair competition, abuse of process and *prima facie* tort. It is the purpose of government, in the exercise of its police power, to serve the needs and protect the lives, rights, safety and property of its citizens. If government uses that police power to protect its own commercial enterprises at the cost of citizens' rights and property, it has abused and perverted it, and should be answerable in damages.

[17] Finally, it was not an abuse of discretion to deny plaintiffs' request for attorneys' fees at this stage of the proceedings.

Accordingly, the order of the Supreme Court, New York County, (Walter M. Schackman, J.), entered January 31, 1990 which, *inter alia*, denied the NYCTA *et al.*'s motion to dismiss the complaint in Action No. 1 and counterclaims in Action No. 2 and made a "partial and limited finding of liability" against the NYCTA *et al.* in connection with disobedience of a temporary restraining order, should be modified, on the law and the facts, to vacate the provision making "a partial and limited finding of liability" against the NYCTA and directing the matter to trial, and otherwise affirmed, without costs. Order of the same court, entered November 15, 1989, which denied Alfred J. Manti *et al.*'s motion for an award of attorneys' fees and costs, should be affirmed, without costs.

Order of the Supreme Court, New York County (Walter M. Schackman, J.), entered January 31, 1990, modified, on the law and the facts, to vacate the provision making "a partial and limited finding of liability" against the NYCTA and directing the matter**22 to trial, and otherwise affirmed, without costs; and order of said court entered on November 15, 1989, affirmed, without costs.

All concur.

N.Y.A.D. 1 Dept., 1991.

Manti v. New York City Transit Authority
165 A.D.2d 373, 568 N.Y.S.2d 16

END OF DOCUMENT