

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOHN D. ZUCCARINO,

Plaintiff,

COMPLAINT

-against-

**TOWN OF HECTOR NEW YORK and
WILLIAM E. YESSMAN personally
and in his capacity as a Schuyler County
Sheriff's Deputy.**

Index No. 5:19-CV-0542 (TJM/ATB)

Defendants.

JURISDICTION AND VENUE

1. This court has jurisdiction under 28 U.S. Code §§ 1331 and 1343(a)(3), pursuant a 42 U. S. Code §1983 civil action.
2. Venue is proper pursuant to 28 U. S. C. §1391.

PARTIES

3. John D. Zuccarino, hereinafter "Plaintiff," can at all times relevant hereto be recognized as the owner and operator of Silver Springs Winery located at 4408 NY-414, Burdett, NY 14818.
4. The Town of Hector is a township in the State of New York with its office located at 5097 NY 227 in Burdett, NY 14818.
5. William E. Yessman, hereinafter "Officer Yessman," is a Sheriff's Deputy at the Schuyler County Sheriff's Department with offices located at 106 10th Street in Watkins Glen, NY 14891.

FIRST CAUSE OF ACTION FOR MALICIOUS PROSECUTION

6. On September 25, 2018, Joshua S. Mikkelsen, a Hector Town Water Department employee, pulled to the side of State Route 414 in front of Silver Springs Winery, to make a call on his cell phone at around 10:20 a.m.
7. Mr. Mikkelsen decided to park in a location that blocked access to Plaintiff's business and partially blocked the road, causing a hazard. Further, Mr. Mikkelsen never engaged the hazard lights of his vehicle.
8. Plaintiff was concerned for the safety and welfare of his customers, as well as other drivers using the highway. There was no legitimate reason for Mr. Mikkelsen to park in such a way as to block Plaintiff's business and create this hazardous condition. This was a violation of New York State Vehicle and Traffic Law, Title 32, section 1202.
9. Plaintiff had serious concerns regarding the way in which Mr. Mikkelsen's vehicle was situated, as someone had been killed in an accident just down the road in the past.
10. After noticing Mr. Mikkelsen's vehicle in such an unsafe position, for approximately three minutes, Plaintiff approached Mr. Mikkelsen's vehicle.
11. As Plaintiff was approaching the vehicle, Mr. Mikkelsen signaled for Plaintiff to open the passenger door so that they could communicate.
12. Plaintiff requested that Mr. Mikkelsen move his vehicle so that he was not blocking the entrance to the business or the road.

13. Plaintiff offered for Mr. Mikkelsen to pull into the parking lot in front of his business to make his calls so that he was not obstructing traffic or his business entrance.
14. Mr. Mikkelsen refused this offer, then proceeded to yell at Plaintiff in an aggressive, hostile, and disorderly manner, stating that he was not going to move. Plaintiff pleaded with Mr. Mikkelsen for three minutes to move off of his property.
15. Finally, Mr. Mikkelsen stated that he was going to contact the sheriff and proceeded to back onto Route 414 with his passenger door still open.
16. Upon information and belief Mr. Mikkelsen contacted Officer Yessman; advised him that he had spoken with his supervisor, and requested that charges be filed against Plaintiff.
17. Approximately thirty minutes after Mr. Mikkelsen left Plaintiff's property, around 11:00am., Officer Yessman appeared at Plaintiff's property/place of business and issued him an Appearance Ticket (#23156) for Disorderly Conduct.
18. Upon arriving at Silver Springs Winery, Officer Yessman was openly hostile towards Plaintiff and appeared to be determined to arrest him.
19. When Officer Yessman arrived he angrily told Plaintiff that he recognized him as the person who had filed a complaint against him in the past and immediately started writing a ticket for disorderly conduct with no probable cause for the issuance of the ticket.

20. While issuing Plaintiff the ticket, Officer Yessman acted in an overly aggressive and abusive manner with no justification, bringing with him a canine that was incessantly and aggressively barking and growling.
21. The combination of Officer Yessman's unjustified, wrongful and unprofessionally aggressive behavior, and the incessant barking of the canine interfered with Plaintiff's right to peace, and caused great fear, alarm, and distress to Plaintiff, and his patrons.
22. Officer Yessman failed to conduct a proper investigation of the facts to determine whether any crimes had actually been committed.
23. Plaintiff informed Officer Yessman that he had a recording on his security cameras of what had occurred, but he refused to look at the tapes. Further, Officer Yessman failed to take a statement from Plaintiff regarding his position and recount of what had happened.
24. Officer Yessman also failed to interview any of the customers or employees that were present who may have observed the incident.
25. Plaintiff informed Officer Yessman that he wanted to press charges against Mr. Mikkelsen for filing a false police report but Officer Yessman refused to write a report.
26. A few days after this incident Plaintiff went to the Sheriff's Department to file a complaint against Mr. Mikkelsen for disorderly conduct, but was told that he was unable to file his complaint, thereby restricting his civil rights.

27. Additionally, Officer Yessman told Plaintiff that he was going to have to address the disorderly conduct ticket in court.
28. Officer Yessman commenced a criminal proceeding against the Plaintiff by issuing him a citation for disorderly conduct.
29. The proceeding was terminated in favor of the accused after the District Attorney declined to prosecute the matter.
30. Officer Yessman lacked probable cause to initiate the criminal proceeding.
31. Officer Yessman demonstrated actual malice in his actions towards the Plaintiff.
32. The outward malice that Officer Yessman expressed towards Plaintiff stemmed from an incident that occurred in August 2013 that resulted in Plaintiff filing a complaint with the Sheriff's Department against Officer Yessman.
33. In 2013, Plaintiff generously loaned an employee of his, Kelsey Connelly, \$420.00. Ms. Connelly promised to pay back the loan as soon as possible, with the money she earned working for Plaintiff. Plaintiff did not charge any interest on the loan.
34. Without paying off any of the loan Ms. Connelly quit her job with Plaintiff and told him not to contact her anymore.
35. Soon after, Officer Yessman, who was friends with Ms. Connelly, arrived at Plaintiff's business while on duty and in uniform. Officer Yessman began tapping his gun in a threatening manner and told Plaintiff to stay away from Ms. Connelly. During the course of the conversation Officer Yessman called Plaintiff a "greasy

Diego wop,” a derogatory slur against Italians.

36. As stated previously, Plaintiff filed a complaint with the Sheriff's Department as a result of this incident. No action was taken by the Sheriff's Department as a result of this incident.
37. On December 11, 2018, Plaintiff filed a motion to dismiss the disorderly conduct charge unjustifiably filed against him by Officer Yessman, which Chief Assistant District Attorney, Mathew Hayden, who was prosecuting this case, consented to. This case was ultimately dismissed by Judge Daniel Fitzsimmons by reason of a lack of probable cause for Officer Yessman to issue the ticket and for the county to prosecute this matter.
38. As a result of foregoing acts, omissions and violations of law by Officer Yessman, Plaintiff has suffered severe emotional distress, mental anguish, depression, anxiety, multiple nervous breakdowns, loss of reputation, and damage to his business' reputation.
39. Plaintiff lives in constant fear of Officer Yessman as a result of their past altercations and the unlawful action taken against him.
40. As a result of the trauma Plaintiff has faced due to this incident his primary care physician referred him to a psychologist. Plaintiff has talked to his psychologist on multiple occasions in response to nervous breakdowns he has had due as a direct result of this incident.
41. Further, Plaintiff has been prescribed anti-anxiety medication, diazepam, as a

direct result of this incident and takes this every single day to control his anxiety attacks. Plaintiff takes further doses as needed in the middle of the night to stop his panic attacks.

42. Plaintiff is incredibly worried that if he is fortunate enough to come off of this medication one day, he will have developed a dependence by that point.

43. Plaintiff has incredible difficulty sleeping. Plaintiff often experiences spasms in his neck and back which have resulted in the need for deep tissue massages to alleviate his convulsing muscles.

44. Throughout Plaintiff's suffering from adverse physical and mental health issues, Plaintiff's business has suffered from his trauma as well. Roughly \$160,000 worth of Silver Spring's Wine was effectively ruined due to Plaintiff's physical and mental state.

45. As a result, Plaintiff is unable to market his business as he cannot advertise or enter that season's wine into competitions due to the fact that it is effectively ruined. This greatly impacts Plaintiff's ability to sell his product and grow his business for the future.

46. Plaintiff's ability to effectively design T-shirts to be sold at his business has been ruined as a result of the mental trauma he has suffered as a result of this incident.

47. Further, this incident has resulted in the potential sale and liquidation of Silver Springs Winery, as Plaintiff is unable to effectively run his business due to the mental trauma he has suffered.

**SECOND CAUSE OF ACTION FOR DEPRIVATION OF
CONSTITUTIONAL RIGHTS**

48. Plaintiff restates and re-alleges the allegations set forth in Paragraphs 1 through 42 above as if fully restated herein.
49. Officer Yessman violated the Plaintiff's freedom of speech, as protected by the First Amendment.
50. Officer Yessman took adverse action against the Plaintiff by issuing him a citation for exercising his right to free speech.
51. Plaintiff was given the ticket for disorderly conduct as a result of the altercation he had with Mr. Mikkelsen.
52. During this altercation both Plaintiff and Mr. Mikkelsen used expletives while they were arguing with one another. It should be noted that Mr. Mikkelsen was the first one to use an expletive during their interaction. At no point was Plaintiff yelling or making excessive noise during this altercation.
53. Further, Plaintiff was on his own real property for the entirety of this altercation and simply wanted Mr. Mikkelsen to leave his property.
54. There was causal connection between Officer Yessman's adverse actions and the Plaintiff's protected speech.
55. By being issued a ticket for the actions described above, on his own property, Plaintiff's right to free speech was violated.
56. Additionally, while Officer Yessman was writing the disorderly conduct ticket he informed Plaintiff that if he committed the same acts in the future, he would get

into more trouble, thereby eliminating his right to similar speech in the future.

WHEREFORE, Plaintiff respectfully requests the following relief:

1. Compensatory damages for the deprivation of Plaintiff's rights, malicious prosecution, the damage caused to Plaintiff's reputation, the embarrassment, and resulting depression that Plaintiff suffered as a direct result Defendant's violation of 42 U.S.C. § 1983; and
2. Reasonable attorney's fees and costs of this action; and
3. Together with any further relief as to this court seems just and proper.

Dated: May 6, 2019
Ithaca, New York

Respectfully Submitted,



Luciano L. Lama, Esq.
Federal Bar No.: 507049
Attorney for Plaintiff
THE LAMA LAW FIRM, LLP
2343 N. Triphammer Rd.
Ithaca, NY 14850
(607) 275-3425
nino@lamalaw.com