

UNITED STATES DISTRICT COURT

for the

District of New Jersey



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NOV 05 2019

BOROUGH of
FRANKLIN LAKES

Niurka Alvarez and Manuel Alvarez

Plaintiff(s)

v.

Borough of Franklin Lakes and
Franklin Lakes Police Department

Defendant(s)

Civil Action No. 2:19-cv-19703

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The Borough of Franklin Lakes
480 DeKorte Drive
Franklin Lakes, NJ 07417

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mario M. Blanch, Esq.
440-65th Street
West New York, NJ 07093

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/01/2019

William T. Walsh

Signature of Clerk or Deputy Clerk

Civil Action No. 2:19-cv-19703

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Mario M. Blanch, Esq.
Attorney at Law
440-65th Street
West New York, New Jersey 07093
Attorney for Plaintiff
Telephone: 201-869-9898
Facsimile: 201-869-9898
Email: mario@blanchlegal.com
Attorneys for Niurka Alvarez and Manuel Alvarez, Sr.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NIURKA ALVAREZ AND MANUEL ALVAREZ, SR.

Plaintiffs,

v.

BOROUGH OF FRANKLIN LAKES AND FRANKLIN
LAKES POLICE DEPARTMENT AND JOHN DOES 1-
99

Defendant.

v.

Civil Action

Docket No.

COMPLAINT

COMPLAINT

Plaintiffs, NIURKA ALVAREZ AND MANUEL ALVAREZ, SR. (hereinafter
"Plaintiffs"), by and through his attorney, Mario M. Blanch, Esq. set forth the following
by way of Complaint:

PARTIES

1. Plaintiffs are home owners in the Borough of Franklin Lakes, New Jersey and
specifically own 415 Cobblestone Court, Franklin Lakes, New Jersey (the "Property").

2. The Borough of Franklin Lakes is a Municipal Entity located in Bergen County, New Jersey which acts under the color of the law.
3. Franklin Lakes Police Department is the entity that operates the police department in the Borough of Franklin Lakes, New Jersey.
4. John Does 1-99 are fictitious defendants that have not yet been identified as of the filing of the Complaint.

JURISDICTION AND VENUE

5. The acts and/or omissions that are the subject of the complaint occurred in Bergen County, New Jersey.
6. Jurisdiction is proper as the Plaintiff is seeking relief under 42 U.S.C. 1983, which provides Federal Jurisdiction to the Federal District Courts over issues and controversies involving the United States Constitution and Federal Law.
7. Venue is proper under 28 U.S.C. 1391 in the Federal District Court of New Jersey because the claim arose therein and all actions described herein occurred in this venue.

BACKGROUND FACTS

8. On February 17, 2017, Officer David Blum acting on behalf of the Franklin Lakes Police Department and acting under the color of law, received a call that there were loose dogs on the Plaintiffs' property.
9. It was not discovered until the time period between April 2019 and August 2019 that Officer Blum had no legitimate purpose in being on the Property. Same was discovered because Officer Blum sued the Plaintiffs, and through the discovery process in the civil case, it was learned that Officer Blum had no legitimate purpose at the Property.

10. On February 17, 2019, a neighbor of the Plaintiffs called the police and advised the Franklin Lakes Police Department that "it was not an emergency" but that the "dogs were harassing a young girl."

11. The Franklin Lakes Police Department dispatched Blum to investigate the call.

12. Blum went to the home of the neighbor and was advised by the neighbor that there was no emergency and that the girl had been picked up by her parents. This was discovered in August 2019 after an investigator interviewed the neighbor.

13. Despite learning that there was no emergency, Blum drove to the Property to confront the Plaintiffs about their dogs.

14. At the Property Blum parked his car on the Property and proceeded to exit his vehicle.

15. Through the discovery process and the deposition of Blum, Blum claimed that he had entered the Property to speak to the homeowners.

16. After exiting his vehicle, and despite his contention that he wanted to speak to the homeowners, Blum proceeded to walk towards the back of the Property rather than the front door.

17. As Blum was walking to the back of the Property, Blum proceeded to shoot himself in the foot and then claimed personal injury damages against the Plaintiffs.

18. As Blum had no legitimate right to be on the Property, Blum's only purpose to enter the back of the Property was to conduct an illegal and warrantless search of the Property.

19. Blum claimed that he heard people in the back of the Property at his deposition, which was a false statement and a lie as the Plaintiffs were all in the house and there was

no one outside. Accordingly, Blum's sole purpose in entering the Property absent an emergency and absent a warrant was to conduct an illegal search at the premises.

20. Not only did Blum enter the Property with an improper purpose, he then proceeded to shoot himself and proceeded to sue the Plaintiffs for his injuries.

21. Prior to filing suit Blum had received considerable monies from Workers Compensation and the Borough of Franklin Lakes. Accordingly, any award by Blum was subject to a mandatory Workers Compensation Lien.

22. As the award by Blum was subject to a Workers Compensation Lien, Blum stood in the shoes of the Borough of Franklin Lakes as their collection agent and subrogee for purposes of the lien.

23. Upon information and belief, Blum was encouraged to pursue the Personal Injury action against the Plaintiffs in order to cover his own malfeasance, the malfeasance of the Defendants, and to wrongfully recoup the lien for the Borough of Franklin Lakes.

24. As a result of the lawsuit, Plaintiffs were compelled to expend over \$40,000.00 in legal fees. The suit was dismissed in September 2019.

25. Blum voluntarily dismissed the suit with prejudice on the day of trial, for no money, prior to jury selection.

COUNT I

SECTION 1983 CLAIM FOR VIOLATION OF PLAINTIFFS FOURTH AMENDMENT RIGHTS

26. Plaintiffs repeat and allege each and every allegation set forth above as if set forth at length herein.

27. At all times herein, Defendants acted under the “color of law.” Specifically, Defendants engaged in actions that were governmental in nature and acted in their capacity as governmental agents.

28. At all times herein, Defendants acted to violate the Fourth Amendment rights of the Plaintiffs by entering their Property without a warrant, without legal justification and without a legitimate purposes.

29. The Fourth Amendment prevents unreasonable searches and seizures of an individual’s property rights. Blum’s actions constitute a trespass under State Law. New Jersey’s statute of limitations for Trespass is six years. N.J.S.A. 2A:14-1.

30. On February 17, 2017, Defendants violated the Plaintiffs’ Fourth Amendment rights by sending agents to their Property to conduct searches of the Property without a warrant.

31. The actual extent and depth of the Constitutional Violation was not discovered until discovery in the personal injury case was provided which showed that Defendants had no right to enter the Property.

32. The actions of the Defendants in entering the Property wrongfully and shooting at the Property has caused and continues to cause the Plaintiffs severe emotional distress.

33. Defendants’ actions constitute violation of Section 1983 and are compensable injuries.

COUNT II
ABUSE OF PROCESS

33. Plaintiffs repeat and allege each and every allegation set forth above as if set forth at length herein.

34. The Defendants acting under the provocation of correcting their illegal activity and to recoup the Workers Compensation money spent, coordinated with Blum to have Blum file a personal injury action.

35. Blum had no legitimate claim for personal injury as it was revealed in the discovery process that Blum had no legitimate purpose at the Property.

36. Despite not having a legitimate claim for personal injury, Blum proceeded on behalf of the Borough of Franklin Lakes to prosecute his claims, which caused the Plaintiffs to expend tens of thousands of dollars in legal fees and costs.

37. Blum's actions which were taken on behalf of the Defendants were an abuse of process, which is compensable.

COUNT III
TRESPASS AGAINST DEFENDANTS

38. Plaintiffs repeat and allege each and every allegation set forth above as if set forth at length herein.

39. The actions of the Defendants constitutes Trespass to Property.

40. Due to the willful and wanton nature of the trespass, the Defendants are liable for punitive damages.

WHEREFORE, Plaintiffs demand judgment against the Defendants and ask the Court to grant the following relief:

- a. Compensatory Damages;
- b. Punitive Damages;
- c. Damages for Emotional Distress;
- d. Legal fees and costs;

e. Any other relief allowable under law and/or that the Court finds just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

MARIO M. BLANCH, ESQ.
Attorney for Defendants

By: /s/ Mario M. Blanch, Esq.
Mario M. Blanch, Esq.

Dated: 11/1/2019

LOCAL RULE 11.2 CERTIFICATION

Defendants certify that this matter is not subject to any other proceeding.

MARIO M. BLANCH, ESQ.
Attorney for Defendants

By: /s/ Mario M. Blanch, Esq.
Mario M. Blanch, Esq.

Dated: 11/1/2019