

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick Moynihan
3 United States Courthouse, 500 Pearl Street, in the City of
4 New York, on the 22nd day of March, two thousand ten.

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6 PRESENT: ROBERT D. SACK,
7 RICHARD C. WESLEY,
8 *Circuit Judges,*
9 RICHARD K. EATON,*
10 *Judge.*

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13 BRAHAM PRASAD, MUMBAI, INC.,
14
15 *Plaintiffs-Appellants,*

16
17 -v.-

09-2868-cv

18
19 CITY OF NEW YORK, MICHAEL WEINBERGER,
20
21 *Defendants-Appellees,*
22
23 THOMAS LAUTERBORN, DENNIS DEQUARTRO,
24 BERNADETTE ENCHAUTEQUI, BETH GALTON,
25 FRED PHELPS, RON HOLMES, JOHN DOES I - V,
26
27 *Defendants.***
28

* The Honorable Richard K. Eaton, of the United States Court of International Trade, sitting by designation.

** The Clerk of the Court is respectfully directed to amend the official caption as set forth above.

1 FOR APPELLANTS:

AMBROSE W. WOTORSON,
Brooklyn, New York.

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4 FOR APPELLEE CITY OF NEW YORK:

RONALD E. STERNBERG, Of
Counsel (Leonard Koerner,
Diana M. Murray, Of Counsel
on the brief) for Michael
A. Cardozo, Corporation
Counsel of the City of New
York, New York, New York.

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12 FOR APPELLEE WEINBERGER:

TRACY MELINDA PETERSON,
Braverman & Associates, New
York, New York.

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16 Appeal from a judgment of the United States District
17 Court for the Southern District of New York (Crotty, J.).

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19 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
20 **AND DECREED** that the judgment of the United States District
21 Court for the Southern District of New York be **AFFIRMED**.

22 Appellants appeal from the April 24, 2009 memorandum
23 and order and the June 2, 2009 judgment of the United States
24 District Court for the Southern District of New York
25 (Crotty, J.), granting appellees' motion to dismiss the
26 amended complaint in its entirety and denying leave to
27 further amend the complaint. We assume the parties'
28 familiarity with the underlying facts, the procedural
29 history, and the issues presented for review.

30 Mumbai, Inc. was a venue located in Manhattan and owned
31 by Braham Prasad. As described by appellants, Mumbai

1 "operated as a cultural arts center" and served as a
2 "popular nightclub." According to appellants, Mumbai
3 "catered to minorities." The nightclub closed following the
4 revocation of its liquor license by the New York State
5 Liquor Authority. Appellee Michael Weinberger is a private
6 person who lived in the vicinity of Mumbai. Appellants
7 brought suit against the City of New York, individually
8 named members of the New York City Police Department,¹
9 Weinberger, and several other individually named private
10 persons² who lived in the neighborhood where Mumbai was
11 located.

12 Appellants allege that the revocation of their liquor
13 license, among other actions taken against them, was the

¹ The officers of the New York City Police Department who are named in their individual capacities were never served with process in this action. Appellants do not dispute this point. Accordingly, the claims against these defendants were subject to dismissal. Fed. R. Civ. P. 4(m). In any event, we agree with the district court that appellants' claims against the individual officers lack merit for the same reasons that the claims against the City of New York fail.

² Similarly, the individual neighbor defendants were never served with process in this action and appellants do not assert otherwise. Therefore, the claims against these defendants were also subject to dismissal pursuant to Federal Rule of Civil Procedure 4(m). In addition, we agree with the district court that the claims against these private neighbor defendants fail for the same reasons that they fail against appellee Weinberger.

1 result of a scheme involving appellees to drive them out of
2 business, which was motivated by discrimination and animus.
3 Appellants seek damages and injunctive relief pursuant to
4 the First, Fourth and Fourteenth Amendments and under 42
5 U.S.C. §§ 1981, 1983, and 1985.

6 Before this Court, appellants maintain that the
7 district court abused its discretion in denying them leave
8 to further amend their complaint. We review the "denial of
9 a motion for leave to amend for an abuse of discretion."

10 *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282
11 F.3d 83, 87 (2d Cir. 2002). Here, appellants were afforded
12 the opportunity to amend their complaint once. Fed. R. Civ.
13 P. 15(a)(1). We have held that "[i]t would be a mistake . .
14 . to construe" this Circuit's precedent "as establishing a
15 broad rule to the effect that, in the case of a counseled
16 plaintiff, abuse of discretion will be found and the case
17 remanded whenever a district court fails to provide for
18 repleading." *Porat v. Lincoln Towers Cmty. Ass'n*, 464 F.3d
19 274, 276 (2d Cir. 2006) (per curiam). Appellants did not
20 demonstrate that any amendment would cure the defects in
21 their pleading and we find no abuse of discretion in the
22 district court's decision. See *In re Tamoxifen Citrate*

1 *Antitrust Litig.*, 466 F.3d 187, 220 (2d Cir. 2006).

2 We review *de novo* the district court's dismissal of
3 appellants' complaint pursuant to Federal Rule of Civil
4 Procedure 12(b)(6). *E.g.*, *Allaire Corp. v. Okumus*, 433 F.3d
5 248, 249 (2d Cir. 2006). To survive a motion to dismiss, a
6 complaint must "state a claim to relief that is plausible on
7 its face." *Ashcroft v. Iqbal*, — U.S. —, 129 S. Ct. 1937,
8 1949 (2009) (internal quotation marks omitted). "Threadbare
9 recitals of the elements of a cause of action, supported by
10 mere conclusory statements, do not suffice." *Id.*

11 For substantially the reasons stated by the district
12 court, appellants' claims were properly dismissed.
13 Appellants failed to make out a cause of action for
14 malicious prosecution. *See Washington v. County of*
15 *Rockland*, 373 F.3d 310, 316 (2d Cir. 2004). Appellants'
16 claim that they were subjected to malicious abuse of process
17 must also fail. "[S]ection 1983 liability . . . may not be
18 predicated on a claim of malicious abuse of . . . civil
19 process." *Green v. Mattingly*, 585 F.3d 97, 104 (2d Cir.
20 2009) (internal quotation marks omitted). With respect to
21 appellee Weinberger, his conduct cannot be said to be
22 "fairly attributable to the state." *Tancredi v. Met. Life*

1 *Ins. Co.*, 316 F.3d 308, 312 (2d Cir. 2003).

2 Appellants' claim that their rights under the Equal
3 Protection Clause of the Fourteenth Amendment were violated
4 was properly dismissed. Appellants' "conclusory
5 allegation[s] of discrimination . . . without evidentiary
6 support" cannot survive a motion to dismiss. *Rivera-Powell*
7 *v. N.Y. City Bd. of Elections*, 470 F.3d 458, 470 (2d Cir.
8 2006) (internal quotation marks omitted). Similarly,
9 appellants' allegation of a conspiracy was properly
10 dismissed as "unsupported, speculative, and conclusory."
11 *Boddie v. Schnieder*, 105 F.3d 857, 862 (2d Cir. 1997)
12 (internal quotation marks omitted).

13 We have considered all of appellants' remaining
14 arguments and find them to be without merit. Therefore, for
15 the foregoing reasons, the judgment of the district court is
16 hereby **AFFIRMED**.

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18 FOR THE COURT:
19 Catherine O'Hagan Wolfe, Clerk
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