

Neuman v Century 21 Dept. Stores, LLC

2007 NY Slip Op 33234(U)

October 3, 2007

Supreme Court, New York County

Docket Number: 0106849/2005

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

MENAHMEN NEUMAN,

Plaintiff,

Index No.: 106849/05

Motion Date: 06/26/07

- v -

Motion Seq. No.: 02

CENTURY 21 DEPARTMENT STORES, LLC,
Defendant.

Motion Cal. No.: 66

The following papers, numbered 1 to 3 were read on this motion to certify a class action.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED

1

2

3

FILED

OCT 10 2007

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers,

The court shall grant defendant's motion for summary judgment dismissing the complaint and shall deny as moot plaintiff's cross-motion in limine.

As the court stated in its prior Order in this action, plaintiff's complaint alleges that on January 6, 2005, while he and his wife were shopping at defendant's store in Lower Manhattan, he placed other merchandise inside a suitcase that he was also intending to purchase. Plaintiff claims that after paying for most of the items in the suitcase at the cash register, he was stopped while exiting the store after the

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

merchandise alarm sounded and it was discovered that he had failed to pay for seven pairs of socks, inadvertently left in a front zippered compartment of the suitcase. Plaintiff claims that upon being detained by the defendant's employees he reiterated that he was willing to pay for the discovered socks but was caused to sign a "Century-21 Department Stores Statement" that stated that he took the socks without paying for them. Plaintiff claims that the statement was deceptive and looked like a "bill" for the socks and that he signed the statement without being aware of what he had signed. Plaintiff was then arrested but the charges were subsequently dismissed. Defendant subsequently sought reimbursement from plaintiff under General Obligations Law (GOL) §11-105. Plaintiff now brings this action alleging claims for false arrest, negligence, and fraud.

Viewing the evidence in the light most favorable to the plaintiff, defendants have carried their burden of setting forth a prima facie defense under GBL 218. See Tota v Alexander's, 63 Misc2d 908, 910 (Sup Ct, Bronx County, 1968) ("the defendant has, under section 218 of the General Business Law, the burden of establishing that he had reasonable grounds or probable cause for believing that the person detained or arrested was committing or attempting to commit larceny on the store premises"). Defendant's ninth affirmative defense that it had reasonable and probable cause to believe that the plaintiff was leaving the

store with unpaid goods was sufficient to plead the statutory defense. See Best v Genung's Inc., 46 AD2d 550, 552 (3d Dept 1975) ("As an affirmative defense, defendant asserted that it had reasonable grounds to believe plaintiff was attempting to commit larceny and that she was detained in a reasonable manner and for a reasonable time to permit investigation").

The triggering of a sensor device without more provides a merchant with reasonable grounds to investigate. See Johnson v Lord & Taylor, a div. of May Dept. Stores Co., 25 AD3d 435 (1st Dept 2006) (the sounding of a merchandise sensor provides reasonable grounds for stopping and investigating patron under GBL 218). While reasonableness of the detention may often be a question of fact, the plaintiff fails to present any facts here requiring trial. As recently stated by the First Department

Summary judgment dismissing the malicious prosecution and false imprisonment claims should have been granted since plaintiff failed to raise triable issues as to whether the manner and length of his detention by defendant retail merchant, on suspicion of theft of merchandise, were unreasonable (see General Business Law § 218). Quite apart from the protections afforded defendants under General Business Law § 218, their actions in summoning the police, initiating a criminal complaint and cooperating with the District Attorney's Office did not, as a matter of law, constitute malicious prosecution.

Conteh v Sears, Roebuck and Co., 38 AD3d 314, 315 (1st Dept 2007).

Contrary to plaintiff's argument, the Court of Appeals decision in Jacques v Sears, Roebuck & Co., Inc. (30 NY2d 466

[1972]) is dispositive here. As the Court relevant stated in that case,

In this case, as emphasized by the Appellate Division, there was overwhelming evidence supporting the finding of reasonable detention, from the initial arrest to the arrival of the police. Plaintiff admitted immediately upon being stopped or arrested in the parking lot that he had taken Sears' goods and carried them out of the store in his pocket without paying for them. He repeated the admission in his own handwriting when he filled out the written questionnaire in the security office. At no time did he offer any exculpatory explanation. Then, two days later he confessed guilt before a Judge of the police court.

It makes no difference that, subjectively, plaintiff may not have had the requisite intent to commit a crime.

Id. at 474. Similarly here, even considering plaintiff's argument that the cashier made a mistake in not charging him for the items, there is no factual issue that the circumstances, even as set forth by the plaintiff, establish the reasonableness of the detention. Nor is there any allegation that the detention, estimated at 35 minutes, was otherwise unreasonable.

Plaintiff's motion in limine is mooted by the fact that even upon the exclusion of the evidence sought to be barred, defendant's freedom from liability is established as a matter of law. Finally, plaintiff's other tortious claims are without merit or foundation in law.

Accordingly, it is

ORDERED and ADJUDGED that the motion of the defendant for summary judgment dismissing the complaint is GRANTED and the

Clerk is directed to enter judgment DISMISSING the complaint; and
it is further

ORDERED that the plaintiff's cross-motion is DISMISSED AS
MOOT.

This is the decision and order of the court.

Dated: October 3, 2007

ENTER:

Debra A. James
J.S.C.
DEBRA A. JAMES
J.S.C.

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OCT 10 2007
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