

Zaremby v Takashimaya N.Y., LLC

2010 NY Slip Op 33938(U)

August 13, 2010

Sup Ct, New York County

Docket Number: 105777/08

Judge: Louis B. York

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK **PART 2**
Justice

-----X

NORMA ZAREMBY,
Plaintiff,
-against-

Index No. 105777/08
Motion Date 8/11/10
Motion Seq. No. 005
Motion Cal. No.

**TAKASHIMAYA NEW YORK, LLC, and ALLIED
BARTON SECURITY SERVICES, LLC,**
Defendants,

-----X

TAKASHIMAYA NEW YORK, LLC,
Third-Party Plaintiff,
-against-

Index No. 590056/09

**ALLIEDBARTON SECURITY SERVICES, LLC,
BARTON SECURITY SERVICES, LLC,**
Third-Party Defendants.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

The following papers, numbered 1 to _____ were read on the _____ motion for Summary Jgmt.

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: [] Yes [X] No

**NYS SUPREME COURT
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PAPERS

Motion Sequences Nos. 04 and 05 are consolidated for deposition. In Motion Sequence No. 05, third-party defendant AlliedBarton Security Services, LLC (“Security Company”), moves for summary judgment dismissing the complaint and all claims asserted against it.

A sales person at defendant and third-party plaintiff Takashimaya New York, LLC (“Takashimaya”) thought that she saw plaintiff lift some merchandise and put it in her shopping bag. Plaintiff had been noticed on a previous date of acting suspiciously but was not confronted about it because the security manager felt there was insufficient evidence to do so. On this occasion, the sales person alerted the security guard on the floor of her suspicions. He notified the security manager, and both of them then observed her actions.

Believing there was a sufficient basis to question her actions, they met her in the vestibule of the store where there was more privacy than at the counter where people who were standing around would be more privy to their conversation. The plaintiff’s bag was searched and the items found therein were backed up by receipts. The employees apologized to defendant. She was not physically restrained or otherwise touched. The stop lasted slightly in excess of three minutes.

Plaintiff’s amended complaint against the security company alleges cause of action based on an unlawful confinement, defamation, and negligent hiring or supervision and training of its employees.

The portion of the amended complaint against defendant Takashimaya seeks damages for unlawful detention and defamation.

Both defendants rely on GBL 218 which, *inter alia*, in an action for false arrest, false imprisonment, unlawful detention and defamation, is a defense to the action if such detention

was conducted in a reasonable manner, for a reasonable time on reasonable grounds to believe “[a person] was committing or attempting to commit larceny ...”

This Court holds that on the basis of this statute alone, both defendants have an adequate defense to this action. The detention was conducted in a reasonable manner as it was conducted in an area where there were fewer witnesses, who in their coming into or leaving the store were less likely to pay attention to the instant situation, whereas those shoppers in the shopping area would be more prone to hang around to pay attention to what was going on. Moreover, no physical force was used on plaintiff who voluntarily allowed the search of her bag. The search and brief detention took about three minutes as revealed by the time-stamped photographs which is, as a matter of law, a reasonable time. There were reasonable grounds for conducting this brief search as the plaintiff had been observed on a previous occasion acting suspiciously, and only after a period of observation when the plaintiff was observed putting some merchandise into her bag did the store employees and the security guard accost her. These factors establish reasonable grounds.


Very briefly there were other grounds for dismissal. The plaintiff never set forth the specific language that constituted the defamation as required by the CPLR. As for the cause of action for negligent hiring, training and supervision, the failure of the plaintiff to show that the security guard did anything illegal or inappropriate vitiates this claim.

Accordingly, it is

ORDERED and **ADJUDGED** that this action is dismissed with costs and disbursements awarded to both defendants against the plaintiff.

Dated: 8/3/10

Enter:



Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

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