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HAMLIN & BUTTRAM, LLP
Santa Clarita, California

MEMORANDUM

To: Mary Hamline
From: Applicant
Date: July 29, 2008
Re: **Chris Pearson v. Savings Galore**

I.

INTRODUCTION

Thank you for allowing me to assist you in this matter. Our client, Mr. Pearson was held for over an hour by Savings Galore supermarket with his buddy. He and his friend were suspected of shoplifting. When the parties were held by the Savings Galore investigator, Mr. Pearson's friend ran off. Mr. Pearson has not committed any crimes. Enclosed please find a memorandum which addresses the following issues: (1) the elements needed to be proven for Pearson to succeed on a false imprisonment claim; (2) The likelihood that Pearson may prevail on the merits of the claim; (3) The injuries incurred by Pearson and likelihood Pearson may be awarded punitive damages; (4) The defenses the store may raise and likelihood that the store will prevail on each of them.

II.

Pearson may prevail for a claim for false imprisonment if he can prove the following all the elements required for the tort.

The issue is what elements are needed for Pearson to claim False Imprisonment to be asserted by Pearson against Savings Galore. If Pearson can prove each and every element listed below he may prevail on a claim for false imprisonment.

First, In Rafton, the court states that the common law tort of false imprisonment is defined as an unlawful restraint of an individual's personal liberty or freedom of locomotion. The imprisonment can include any unlawful exercise or show of force by which a person is compelled to remain where he does not wish or remain or to go.

Second, the court states that in order for false imprisonment to be present, there must be actual or legal intent to restrain one another. Unlawful restraint may be affected by words alone, by acts alone, or both; actual force is unnecessary to an action in false imprisonment.

The court states that the restatement of torts specifies ways in which an actor may bring about the confinement required by as an element of false imprisonment including: (1) actual or apparent physical barriers; (2) overpowering by physical force; (3) threats of physical barriers; (4) other duress; (5) asserted legal authority. Rest. 2nd Torts Section 38-41 (1965). The confinement must be against the plaintiff's will and if a person voluntarily consents to the confinement, there can be no false imprisonment. Moral pressure, as where the plaintiff remains with the defendant to clear himself of suspicion of theft, is not enough.

Therefore, if Pearson can prove the required elements needed to prove

False Imprisonment he mail prevail.

III.

A. Pearson can satisfy the first requirement by showing that Savings Galore's employee demonstrated a restraint on him when they held him in a locked room.

The first issue is whether Mr. Pearson was actually restrained in the office room when the security officer locked the door while investigating the crime.

First, In Rafton, the court states that the common law tort of false imprisonment is defined as an unlawful restraint of an individual's personal liberty or freedom of locomotion. The imprisonment can include any unlawful exercise or show of force by which a person is compelled to remain where he does not wish or remain or to go.

Here, Mr. Pearson and his friend Jeff went shopping at Savings Galore, his friend Jeff was suspected of stealing cashews from the market. He was questioned if he had paid for them. As Mr. Pearson was in the parking lot, he was stopped and Jeff ran off. Mr. Pearson was taken to an office and placed him in a locked room with two large men nearby. Mr. Pearson did not try and get out. The questioning continued.

The first element may be satisfied because Mr. Pearson was placed in a locked room. While Mr. Pearson could have checked to see if the door was locked, he was under no duty. An ordinary reasonable person would have stayed knowing there were two large men and he was suspected of stealing.

Therefore, this first requirement is met.

B. Person can satisfy the second requirement which specifies an intentional confinement when the security officer placed Mr. Pearson in the room and locked the door and placing two large men in front of it.

The next issue is whether Pearson can prove that the security guard intentionally confined him into the office.

There must be actual or legal intent to restrain one another. Unlawful restraint may be affected by words alone, by acts alone, or both; actual force is unnecessary to an action in false imprisonment. The confinement can also be met if there is (1) actual or apparent physical barriers; (2) overpowering by physical force; (3) threats of physical barriers; (4) other duress; (5) asserted legal authority. Rest. 2nd Torts Section 38-41 (1965). The confinement must be against the plaintiff's will and if a person voluntarily consents to the confinement, there can be no false imprisonment. Moral pressure, as where the plaintiff remains with the defendant to clear himself of suspicion of theft, is not enough.

In *Alice James* the court stated that an actor is subject to liability for false imprisonment for the wrongful confinement of another if he "acts intending to confine the other or a third person within boundaries fixed by the actor..his act directly or indirectly result in such confinement of the other, and the other is conscious of the confinement or is harmed by it. If a confinement of one party imposes confinement on another party, "the actor is subject to liability to such other as fully as though it were intended so to affect him."

Here, the investigator suspected that Mr. Pearson had stolen cashews from the supermarket. She pulled him into the backroom. She questioned him to get information on his friend. She also placed two large men nearby. In addition, the room had no windows.

Based on the investigator's actions she demonstrated an intentional confinement because she used actual and apparent physical barriers. She placed Mr. Pearson in a room he suspected was locked. In addition, she said she was going to take him in. Because her actions demonstrated a show of force, this requirement is met.

Therefore, Mr. Pearson may assert a claim for False Imprisonment.

IV.

A. Pearson may have suffered injuries where he suffered emotional distress consisting of post traumatic stress disorder and is seeking assistance by a psychiatrist.

The issue here is whether Pearson can prove that he suffered damages as required for a claim for false imprisonment where he simply sought help through a psychiatrist following the event.

A court may award punitive damages to a plaintiff claiming false imprisonment. However, a plaintiff must show that he suffered damages. In Alice James, the court analyzed damages under a negligent infliction of emotional distress and stated that a plaintiff may not recover unless the shock or mental anguish is accompanied by or manifested as a physical injury. However, in a negligence claim, a false imprisonment claim does not require proof of physical injury to go forward.

Similar to the Alice James case, where the plaintiff claimed her damages for a claim involving negligent infliction of emotional distress and false

imprisonment where the plaintiff's damages suffered were nightmares, and sleep disturbance for about two months which subsided without medical treatment. In that case, the plaintiff was entitled to compensation for loss of time, for physical discomfort or inconvenience, and for any resulting physical illness or injury to his health. Since the injury was in a large part a mental one, he was entitled to damages for mental suffering, humiliation and the like. The damages that flow foreseeably from a false confinement of a caretaker flow equally and foreseeably to an accompanying small child.

Here, Mr. Pearson had saw a psychiatrist a few times prior to the event. Following the event, Mr. Pearson suffered lower energy, low motivation, a sleep disorder, loss of concentration, tearfulness, and loss of general interest in previously pleasurable activities. The psychiatrist believes they are all caused by posttraumatic stress disorder caused from the event.

Because Mr. Peterson's disorder is one of a severe nature similar to that in Alice James, the court may award punitive damages because they were severe enough to force Mr. Pearson to still suffer from the event. In addition, the injuries flow from the event.

However, it may be argued that they are not foreseeable since he was only held in a room and questioned.

However, because the distress was so severe as to cause continuous problems, he may be awarded punitive damages.

B. Pearson may also be entitled to punitive damages if he can prove that Savings Galore employee's actions involved malice or oppression when they kept him in the room without his consent.

The issue here is whether Mr. Pearson's damages can qualify as punitive

damages awarded to him against Savings Galore.

In Peterson, the court stated that under columbia law, punitive damages are recoverable for false imprisonment when the plaintiff proves, by clear and convincing evidence, that the defendant has been guilty of oppression, fraud or malice. Malice is defined as conduct which is intended by the defendant to cause injury to the plaintiff or dispicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights and safety of others. Opression is despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. Fraud means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights causing injury.

In Peterson, a family was held by a security officer after suspected of stealing hockey equipment, the court stated that the only mental state required to be shown to prove false imprisonment is the intent to confine, or to create a similar intrusion. The intent element of false imprisonment does not entail an intent or motive to cause harm. The court found that even if some force had been used to detain plaintiff it would not mean there was sufficient evidence of oppression, fraud, or malice to warrant a trial on the punitive damages issue.

In Beau, the court only awarded nominal damages for being falsely imprisoned because no actual damages were sustained and there was was no evidence of oppression, fraud or malice. The mere use of force does not constitute evidence of oppression where only a reasonable and necessary amount of force was used in the detention.

Unlike Peterson, where the court found that there was no fraud, only a hint of malice, and and that the shopkeeper immunity statute not only allows liability from false imprisonment claims but also for punitive damages.

Mr. Pearson must prove that the security officer's actions demonstrated either malice or oppression. Here, Mr. Pearson may claim that the security officers intended to harm Mr. Pearson in order to catch his friend. In addition, their actions were oppressive because they were cruel and unjust.

Similar to Peterson, the court may find that the security officer's actions were not oppressive or malicious. Rather, they were merely investigating a crime and questioning a suspect. They placed him in a room for a short period of time and only left him on and off. In addition, the door may even have been unlocked.

Because their actions do not rise to the level needed for punitive damages, punitive damages may not be awarded. Rather, nominal damages may be awarded like in the case of Beau, even if there was reasonable force used by the security officers.

V.

A. The Defendant, Savings Galore may claim several defenses which may apply to the situation and avoid liability if they can satisfy all the requirements needed.

1. The defendant, Savings Galore may avoid liability through the defense of the shopkeeper's privilege if the employee acted reasonably when they confined Mr. _____ Pearson using reasonable force and for a reasonable period of time.

The issue here is whether Savings Galore can avoid liability by claiming the defense of the shopkeeper's privilege.

In *Alice James*, the court stated that "A merchant may detain a suspected

shoplifter without incurring liability if the storekeeper has reasonable cause to believe that the person shoplifted and if the detention is performed in a reasonable manner and for a reasonable length of time. Columbia Penal Code Section 13-1 C and D

The court further stated that reasonable cause for the shopkeeper to detain a suspected shoplifter is not dependant on guilt or innocence of the person detained, or whether a crime was actually committed. If the facts and reasonable inferences therefrom are not subject to material dispute, reasonable cause is a question of law to be determined by the court. However, if no fact-finder could reasonably conclude otherwise, the court could allow a directed verdict on the issue of reasonable cause. Under Section 13-1, a person is liable for shoplifting if they knowingly obtain goods of another with the intent to deprive that person of such goods by removing the goods without paying the purchase.

Similarly found the case of Alice James, where the court found that while a security officer may have ordinarily reasonable cause to detain a parent suspected of shoplifting, it was not reasonable to detain the child. In addition the court stated that a merchant does not have immunity to detain a companion of a suspected shoplifter unless the store has reasonable cause to believe the companion was involved in the illegal activity. The court explained that there was several alternatives available by either separating the individuals, the defendant may assert this defense.

Here, the security officer suspected that Mr. Pearson and his friend Jeff had stolen goods from the market. She grabbed both in the parking lot and asked them to come to the office to call the police. However, Jeff ran off and Mr. Pearson was kept there. Mr. Pearson was questioned by the officer. She asked for ID. In addition, Mr. Pearson may even appear as a young punk or a suspected criminal. They told him that if he told them about his friend they would let him go. Finally after he signed a waiver they let him go.

The actions used by the officer seemed to be reasonable under the circumstances. The shopkeeper's privilege is applicable if the use of force is reasonable and the detention is for a reasonable period of time. Because they only kept him for a short time trying to get information out of him and eventually let him go, they seemed to use reasonable force.

Therefore, the defense may apply and the defendant may not be held liable for this actions for a claim for false imprisonment.

2. The defendant, Savings Galore may also assert that they should not be liable for their employee's actions when Pearson voluntarily signed a release waiver releasing the defendant from filing future suit against them.

The issue here is whether Savings Galore can avoid liability due to Pearson's signature on the written release.

In Gaspard, the court stated that a release surrenders legal rights or obligations between the parties to an agreement. The court further noted that a release is a complete bar to any later action based on matters covered by the release.

The court explained that a signed release contains a strong presumption of enforceability. To presume otherwise would throw into doubt the validity of every settlement and create strong discentives for parties to settle. The burden is shifted to the opposing party to directly attack the release or establish a fact in issue in avoidance of it.

Here, prior to releasing Mr. Pearson the security officers asked Mr.

Pearson to sign a waiver. The waiver included in large terms waiver of rights, and specified the actions suspected by the security. It was in large ink and specifically stated it was legally binding. Mr. Pearson can prevail against his waiver if he can prove that the waiver had ambiguous terms or that he signed the document under duress.

(a). Pearson may attack the validity of the release signed by him if he can show that the terms of the release were ambiguous where the terms included in the _____ release were not easily understood by Pearson.

Similar to the Gaspard case, the plaintiff signed a release to receive \$4,500 and keep her health insurance for another month by avoiding future claims against her employer when she suspected she was getting fired, the plaintiff attacked the release signed by her on the grounds of ambiguous terms and duress.

In Gaspard, the court found that that the terms including avoiding future suits against her employer were unambiguous. While, the defense of duress had merit.

Here, Mr. Pearson may also not prevail on a claim under the defense of ambiguity because the terms were also very clear. The waiver clearly spelled out the waiver of his rights, the future actions will be avoided, and that he was being released from custody in exchange for his signature. Because the language was clear, this defense may not apply.

(b). Pearson may further attack the validity of the signed release if he can demonstrate that he signed the document under duress by the employee where they _____ would not let him

leave the room unless he signed the document.

In Gaspard, the court stated that in early common law, duress by threats was available to void a contract where the threat involved imprisonment, mayhem, or loss of life or limb. Modernly, the court looks to the party's manifestation of assent and determines if it is induced by an improper threat by the other party which leaves the victim no reasonable alternative, then the contract is voidable by the victim.

The court further noted that in order to claim duress, used to avoid enforcement of an agreement, the following elements must be proven: (1) the promise must be made in response to a threat; (2) the threat need not be severe enough to reasonably convince the will of the promisor to make the promise; (3) and the threat must be improper rather than just hard bargaining.

Similar in Peterson, the court found that a signed promise by a plaintiff under duress, was voidable.

Here, Mr. Pearson's best defense is to claim duress. The security repeatedly told Mr. Pearson that if he signed the waiver they would let him go. Mr. Pearson would have done anything for them to let him go.

There was duress because Mr. Pearson signed the document in order for them to let him go. If not for the signing of the waiver to let him go, he would not have signed it.

Therefore, the defense may apply.

i. Pearson must prove that the threat was

improper where the investigator held him in the room without free will to leave.

In Gaspard, the court states that it is difficult to determine what type of threat is sufficient to invoke duress.

A threat is improper if: (a) what is threatened is a crime or a tort, or the threat itself would be a crime or a tort if it resulted in obtaining property; (b) what is threatened is criminal prosecution; (c) what is threatened is the use of civil process and the threat is made in bad faith or; (d) the threat is a breach of the duty of good faith and fair dealing under a contract with a recipient

A threat is improper if the resulting exchange is not on fair terms and: (a) the threatened act would harm the recipient and would not significantly benefit the party making the threat; (b) the effectiveness of the threat in inducing the manifestation of assent is significantly increased by prior unfair dealing by the party making the threat; (c) what is threatened is otherwise a use of power of illegitimate ends.

Unlike in Gaspard, where the court found that plaintiff claimed duress because she had no money and needed to enter into the agreement, the court found that economic duress may not be claimed when the party against whom it is claimed was not responsible for claimant's financial distress.

Here, Mr. Pearson may claim that there was a sufficient threat because the security officer threatened to call the police and tell the authorities. Mr. Pearson may claim that there was a sufficient threat because he felt free to leave. He felt that the security officers were forcing him to sign the waiver rather than asking him.

However, the security officers may claim that the decision was purely

optional. While the security officers continually asked Mr. Pearson to sign the document, they did not force him to. While there was a substantial benefit to him and to them being that they could not be sued for their actions, they will claim it was still optional.

Therefore, there was no threat.

VI.

CONCLUSION

Therefore, Mr. Pearson may not have a claim for false imprisonment because the defense of shopkeeper's privilege may apply avoiding liability. The defense of shopkeeper is a complete bar to recovery by a plaintiff and because the force used by the security seems to be reasonable under the circumstances, it should apply.

END OF EXAM