

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Caitlyn Langham,

Plaintiff,

vs.

Wal-Mart Stores, Inc.,

Defendant.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-1280

**ORDER GRANTING DEFENDANT
WALMART'S MOTION FOR
SUMMARY JUDGMENT**

**OCT 16 2017
SC Court of Appeals**

This matter came before the Court on June 21, 2017, upon Defendant Wal-Mart Stores, Inc.'s (hereinafter, "Walmart") Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to Plaintiff's remaining causes of action for assault and battery, asserted under the theory of *respondeat superior*, and malicious prosecution. Randi Lynn Roberts appeared on behalf of Walmart and Donald L. Smith appeared on behalf of Plaintiff. Having duly considered the written submissions and oral arguments presented by the parties, this Court grants Defendant Walmart's Motion for the reasons set forth in this Order.

NATURE OF THE CASE

Plaintiff filed her Complaint instituting the present action on April 8, 2016, in which she named Walmart, Officer Russell Porter, and City of Spartanburg, Police Department as Defendants (collectively, "Defendants"), and alleged a cause of action for malicious prosecution against all Defendants. Additionally, Plaintiff asserted that Walmart and City of Spartanburg, Police Department were vicariously liable under the doctrine of *respondeat superior* for the alleged acts and omissions of Defendant Porter, against whom Plaintiff alleged causes of action for violations of 42 U.S.C. § 1983, false imprisonment, defamation, and assault and battery. On November 15, 2016, upon motion of Walmart and following a hearing with the parties, the Court

dismissed Plaintiff's claims of false imprisonment and defamation as to Walmart, ruling that Plaintiff failed to file the aforementioned claims within the applicable statute of limitation. Additionally, the Court ruled that as Walmart is a private corporate entity, Plaintiff's claims under 42 U.S.C. § 1983 must be dismissed to the extent Plaintiff asserted those against Walmart. Thereafter, the Court denied Plaintiff's Motion for Reconsideration of its ruling as to Walmart, and Plaintiff proceeded upon the only remaining claims of assault and battery, through the theory of *respondeat superior*, and malicious prosecution.

On March 23, 2017, upon motion of Defendants Porter and City of Spartanburg, Police Department and following a hearing with the parties, the Court granted summary judgment in their favor as to all of Plaintiff's causes of action, ruling that her claims for false imprisonment, defamation, and assault and battery were barred by the applicable statutes of limitation and that her causes of action for unreasonable search and seizure under the Fourth Amendment, false imprisonment, and malicious prosecution were barred by the existence of probable cause as a matter of law. Accordingly, Defendants Porter and City of Spartanburg, Police Department were dismissed from the present action.

Walmart then filed the instant Motion for Summary Judgment as to Plaintiff's remaining causes of action against it: assault and battery, through the theory of *respondeat superior*, and malicious prosecution.

STANDARD OF REVIEW

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.” *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Notwithstanding, because it is a drastic remedy, “summary judgment should be

cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Helena Chemical Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004). “Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003).

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) (emphasis added). Importantly, in cases applying the preponderance of the evidence burden of proof, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “[S]ummary judgment is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute.” *CEL Prods., LLC v. Rozelle*, 357 S.C. 125, 129, 591 S.E.2d 643, 645 (Ct. App. 2004). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). In the present case, even accepting Plaintiff’s allegations as true, she fails to establish any genuine issue of material fact as to the requisite elements of her claims for assault and battery, through the theory of *respondeat superior*, and malicious prosecution. Therefore, Plaintiff’s remaining claims must fail and Walmart is entitled to summary judgment.

LAW/ANALYSIS

Plaintiff cannot maintain a claim of assault and battery, through the theory of *respondeat superior*, as the Court ruled in its Order dated March 23, 2017, that probable cause existed as a

matter of law for Defendant Porter to detain, arrest, and try Plaintiff. As a lawful arrest based upon probable cause cannot serve as the basis for a civil claim of assault and battery, the Court finds that Plaintiff cannot present any genuine issue of material fact as to this claim and summary judgment is warranted. *See Roberts v. City of Forest Acres*, 902 F. Supp. 662, 671 (D.S.C. 1995) (finding that a person uses reasonable force in effectuating a lawful arrest is not liable for assault or battery).

To maintain an action for malicious prosecution, “a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006) (quoting *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965)). “An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause.” *Id.* (citing *Parrott*, 246 S.C. at 322, 143 S.E.2d at 609). As Plaintiff fails to present any genuine issue of material fact as to the requisite element of lack of probable cause, Plaintiff’s claim fails as a matter of law and Walmart is entitled to summary judgment.

CONCLUSION

Having duly considered the arguments and materials presented by the parties, the Court dismisses Plaintiff’s remaining claims for assault and battery, through the theory of *respondeat superior*, and malicious prosecution as Plaintiff fails to establish that any genuine issue of material fact exists as to these claims.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED that Walmart's Motion is GRANTED and Plaintiff's Complaint is DISMISSED.

_____, 2017
Spartanburg, South Carolina

The Honorable R. Keith Kelly



Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al
Case Number: 2016CP4201280
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4201280

ELECTRONICALLY FILED - 2017 Oct 03 2:49 PM - SPARTANBURG - COMMON PLEAS - CASE #2016CP4201280

Caitlyn Langham		Walmart Stores Inc	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit)
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

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Randi Lynn Roberts 3700 Forest Drive, Suite 400 Columbia,
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The Motion to Reconsider is dismissed pursuant to Plaintiff's appeal. Under

SCACR 205, the Circuit Court loses jurisdiction upon the filing of the appeal, so the Plaintiff's Motion is deemed withdrawn.

SIGNATURE PAGE TO FOLLOW

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Spartanburg Common Pleas

Case Caption: Caitlyn Langham VS Russell Porter , defendant, et al
Case Number: 2016CP4201280
Type: Order/Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-10-03 11:36:23 page 3 of 3