

Sanders v Aldi, Inc.

2019 NY Slip Op 34248(U)

February 8, 2019

Supreme Court, Erie County

Docket Number: Index No. 806791/2018

Judge: Donna M. Siwek

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

RAVON SANDERS,

Plaintiff,

v.

Index No. 806791/2018

ALDI, INC.,

Defendant,

Ravon Sanders, *pro se Plaintiff*
98 Anderson Place
Buffalo, New York 14222

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Buffalo, New York 14203
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SIWEK, J.,

MEMORANDUM DECISION

This Memorandum Decision addresses defendant Aldi, Inc.'s motion for summary judgment and for sanctions. Defendant's motion is opposed by plaintiff, Ravon Sanders.

After considering all of the papers, relevant case law, oral argument and New York General Business Law §218, Defense of Lawful Detention, the Court is compelled to grant defendant's motion for summary judgment without the imposition of costs, fees and sanctions.

For purposes of this decision, the court will assume, over the objection of the defendant, that the interaction between the plaintiff and the Aldi Store Manager, Philip Jackson, on January 24, 2018 constituted a "detention".

The Court finds that the defendant has met its burden of establishing as a matter of law its entitlement to dismissal of plaintiff's unlawful detention claim because of the protection provided under GBL §218. General Business Law §218 - Defense of Lawful Detention, provides in pertinent part that in any action for unlawful detention, retail merchants may question customers as to the ownership of any merchandise and that it shall be a defense to an action for unlawful detention if the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by the defendant so long as the defendant had reasonable grounds to believe that the person was guilty of committing or attempting to commit larceny on defendant's premises. The statute further goes on to describe that "reasonable grounds" will include, but will not be limited to, knowledge that a person has concealed possession of unpurchased merchandise and "reasonable time" shall mean the time necessary to permit the person detained to make a statement or refuse to make a statement.

General Business Law §218 gives a retail merchant a defense in an action for its detention of a suspected shoplifter, provided that it was reasonable to stop the shopper in the first place and that any such stop was reasonable in terms of its manner and duration. The State of New York has armed shopkeepers with a strong defense by codifying the shopkeeper's privilege in General Business Law §218, Defense of Lawful Detention. The purpose of this privilege is to protect merchants from unlawful detention suits where suspected shoplifters are detained based upon "reasonable grounds" and in a "reasonable manner" and for not more than a "reasonable time".

With respect to "reasonableness", General Business Law §218 provides clear guidelines that any detention must take place on or in the immediate vicinity of the premises, which in this case, it did. The privilege does not authorize the taking of subject's fingerprints unless

authorized, and that did not happen here. With respect to whether a merchant has reasonable grounds to suspect an individual of shoplifting, the law provides that “reasonable grounds” shall include but not be limited to knowledge that a person has concealed possession of unpurchased merchandise. These grounds do not depend on whether a crime has been committed, rather, reasonable grounds have been equated to probable cause to arrest.

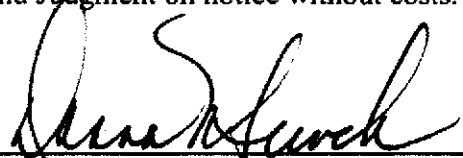
In this particular case, defendant has provided the affidavits of two Aldi sales associates, Deja Higgins, Exhibit “I” and John Powell, Exhibit “K”, who set forth in their affidavits a description of their impression of the plaintiff’s conduct and the reasons for their belief that plaintiff was in the process of concealing merchandise. In evaluating the reasonableness of the “detention”, defendant has set forth that Aldi’s store manager Philip Jackson responded quickly, and the entire length of the “detention” as pulled from the video surveillance shows an interaction between the manager and the plaintiff of less than four minutes. For the foregoing reasons, we believe defendant has met its burden of establishing that it is entitled to the defense of lawful detention under General Business Law §218, and that plaintiff’s claim should be dismissed as a matter of law.

We further find that plaintiff failed to raise a triable question of fact which would necessitate a trial in this matter. We agree with defendant that whether plaintiff actually committed shoplifting is of no consequence to Aldi’s defense under the circumstances of this case and GBL §218. Reasonable grounds does not depend upon the guilt or innocence of the accused. The merchant may act upon what appears to be true, even if it turns out to be false, provided he believed it to be true and the appearances are sufficient to justify that such belief is reasonable. See, *Jacques v. Sears, Roebuck, Co.*, 30 N.Y.2d 466; *Boose v. City of Rochester*, 71

A.D.2d 59. The court finds that the affidavits of the two Aldi associates and the affidavit of its manager establish that there was a reasonable basis to question Mr. Sanders. The manner and period of that questioning (less than four minutes) was reasonable in terms of its length.

While we agree that the lawsuit should be dismissed; we deny, however, defendant's request for the imposition of sanctions. The defendant strongly feels that the litigation filed by plaintiff was frivolous in nature and that the video surveillance is glaring evidence that the encounter between the Aldi manager and the plaintiff is not a "detention" but even assuming it is, it is cloaked in the protection of GBL §218. In support of their request for sanctions, defendant notes that plaintiff, as a *pro se*, filed five prior unsuccessful lawsuits against various entities for various causes of action. In this case, Mr. Sanders was offended by the action taken by Aldi when the manager stopped to question him on January 24, 2018. In our discretion, we decline to impose sanctions on a *pro se* litigant who misinterpreted the application of GBL §218 and the protection it affords merchants.

This is the Decision of the Court. Submit Order and Judgment on notice without costs.



Hon. Donna M. Siwek
Justice of the Supreme Court

Dated: February 8, 2019