

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Shivers v. City Smiles Dental

2023 NY Slip Op 01768 · No. Index No. 24351/18E; Appeal No. 17584; Case No. 2022-00501 · Decided April 4, 2023

SUMMARY

The Appellate Division, First Department, modified an order concerning claims arising from an alleged detention at a dental office. It held that factual issues remained regarding liability under 42 U.S.C. § 1983 and the illegal-detention claims, including probable cause and whether Riverbay's peace officers acted under color of state law. The court dismissed the parties' common-law indemnity cross claims and Riverbay's contractual indemnity cross claims against City Smiles.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Oing, J.; Kennedy, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	April 4, 2023
DOCKET	Index No. 24351/18E; Appeal No. 17584; Case No. 2022-00501
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, Bronx County, denying defendants' motions for summary judgment on the plaintiff's 42 U.S.C. § 1983 and illegal-detention claims and on various indemnity cross claims.
STANDARD OF REVIEW	Summary judgment is improper where the record presents conflicting evidence and issues of fact from which reasonable people could draw different inferences. On appeal, the court reviewed the order for errors of law and fact.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	City Smiles Dental, Sandra Tenzer, DDS, doing business as City Smiles Dental, Riverbay Corporation, Co-Op City Department of Public Safety v. Dolores Shivers et al., Riverbay Corporation et al.

TOPICS

summary judgment

section 1983

false imprisonment

indemnity

civil procedure

PRACTICE AREAS

civil procedure

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torts

QUESTIONS PRESENTED

1. Whether Riverbay was entitled to summary judgment dismissing Shivers's 42 U.S.C. § 1983 claim on the ground that its peace officers were not acting under color of state law.
2. Whether defendants were entitled to summary judgment dismissing the illegal-detention claims despite conflicting evidence concerning the detention and probable cause.
3. Whether Riverbay's and City Smiles' common-law indemnity cross claims were viable.
4. Whether Riverbay's contractual indemnity cross claims against City Smiles should be dismissed where Riverbay submitted no evidence establishing an applicable contract.

HOLDINGS

1. Riverbay was not entitled to summary judgment because it failed to establish that its two armed peace officers were not acting under color of state law, and factual issues remained as to whether Shivers was deprived of a constitutional right by being detained without probable cause.
2. Summary judgment dismissing the illegal-detention claims was properly denied because issues of fact existed as to whether defendants unjustifiably detained Shivers and whether they had probable cause to do so.
3. Riverbay's contractual indemnity cross claims against City Smiles should have been dismissed because Riverbay submitted no evidence establishing that a contract between the parties existed.
4. Both parties' common-law indemnity cross claims should have been dismissed because neither party was subject to statutory or other vicarious liability not premised on its own negligence.

KEY QUOTATIONS

*“A claim for common-law indemnification is actionable only where a party has been found to be vicariously liable, without proof of any negligence on its own part” ([*2])*

FACTUAL BACKGROUND

Shivers alleged that defendants detained her without probable cause in City Smiles Dental's office. Two armed Riverbay peace officers responded to the scene, and Shivers alleged that their conduct violated her constitutional rights. The record contained conflicting evidence concerning the circumstances of the detention and whether defendants had probable cause. Riverbay also asserted contractual and common-law indemnity cross claims against City Smiles, but submitted no evidence establishing the existence of a contract.

PROCEDURAL HISTORY

Supreme Court denied Riverbay's motion for summary judgment dismissing the § 1983 claim, illegal-detention claims, and common-law indemnity cross claim. It also denied City Smiles' motion for summary judgment dismissing the illegal-detention claim and common-law and contractual indemnity cross claims. The Appellate Division modified the order to dismiss both parties' common-law indemnity cross claims and Riverbay's contractual indemnity cross claims against City Smiles, and otherwise affirmed.

DISPOSITION

affirmed

CASES CITED

- Alvarez v. Prospect Hosp., 68 NY2d 320 (1986)
- Veras v. Truth Verification Corp., 87 AD2d 381, 384-385 (1st Dept 1982)
- Clark v. Nannery, 292 NY 105, 108 (1944)
- Dovin Constr., Inc. v. C. Raimondo & Sons Constr. Co., Inc., 29 AD3d 364, 365 (1st Dept 2006)
- McCarthy v. Turner Constr., Inc., 17 NY3d 369 (2011)

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