

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSA McNEIL : CIVIL ACTION
v. :
DALE SCHOENEGER, et al. : NO. 00-1150

MEMORANDUM AND ORDER

BECHTLE, J. January 30, 2001

Presently before the court are defendant Dale Schoeneberger's motion for summary judgment; defendants Michael J. Pezoldt's and Little Apple Market's ("Little Apple") motion for summary judgment; third-party defendants Timothy C. Yanders' and Eye in the Sky's ("Third-Party Defendants") motion for summary judgment; plaintiff Rosa McNeil's ("Plaintiff") oppositions thereto; and Third-Party Defendants' Reply. For the reasons stated below, the motions will be granted as follows.

I. BACKGROUND

This suit arises out of Plaintiff's arrest on February 8, 2000. Certain facts are not in dispute. Little Apple is a supermarket located in Allentown, Pennsylvania. (Br. of Defs., Michael J. Pezoldt and Little Apple Market's Mot. for Summ. J. ("Pezoldt Mot. for Summ. J.") at 1.) Pezoldt is employed by Little Apple as a loss prevention expert, i.e., a security guard. Id. In that capacity, he observes the store floor through a video monitoring system and apprehends individuals believed to be shoplifting merchandise. Id. Although it is unclear from the papers, it appears that Pezoldt is also employed by Eye in the Sky, a security consulting business operated by Timothy Yanders.

Id. at 4. Yanders is not an employee of Little Apple. Id.

On the morning of December 5, 1999, Pezoldt was working at Little Apple when he observed an African-American woman opening a box of Tylenol and concealing its contents in her coat. Id. at 2. Pezoldt confronted the woman, identified himself, and requested that the woman accompany him to his office. Id. While accompanying Pezoldt to the security office, the woman removed the Tylenol from her pocket, handed it to Pezoldt, and asked if she could pay for it then. Id. Pezoldt responded in the negative and requested identification, at which point the woman produced a Pennsylvania driver's license bearing the name Rosa McNeil, the name of the Plaintiff in the instant action. Id. Because the license expired over seven years ago and Pezoldt had some doubts as to the woman's identity, he contacted the Allentown Police Department to verify her identity. Id. In response, Officer Kevin Kennedy arrived on the scene, conducted a background check, and verified that the license had not been altered. Id. at 3; Pl.'s Br. in Opp'n to Defs.' Mot. for Summ. J. ("Pl.'s Opp'n to Pezoldt Mot. for Summ. J.") at 3. Officer Kennedy believed that the woman was Rosa McNeil. (Pezoldt Mot. for Summ. J. Ex. L.) In fact, the woman was not Rosa McNeil, but had presented a driver's license that was stolen from Rosa McNeil years earlier. (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 3.)

Pezoldt informed the woman that if she paid civil restitution within thirty days, no criminal charges would be filed. Pezoldt Mot. for Summ. J. at 3; see 42 Pa. Cons. Stat.

Ann. § 8308 (providing civil penalty for retail theft). Because payment was not received within thirty days, Pezoldt filed a criminal complaint for retail theft against Rosa McNeil on January 6, 2000. (Pezoldt Mot. for Summ. J. at 3.)

Plaintiff, the real Rosa McNeil, was notified by her daughter of the charges. (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 5.) About one week after the charges had been filed, she went to Little Apple to speak with Pezoldt, who confirmed that Plaintiff was not the woman that he apprehended on December 5. Id. at 6; Pezoldt Mot. for Summ. J. at 4. Pezoldt advised Plaintiff that he would contact District Justice Gatti's office, which issued the warrant, and explain the circumstances. (Pezoldt Mot. for Summ. J. at 5; Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 7.)

Pezoldt asserts that he called Yanders and explained that the woman who had showed up with a copy of the criminal complaint was not the one that he apprehended. (Pezoldt Mot. for Summ. J. at 4.) According to Pezoldt, Yanders told him that Plaintiff still had to go to court because at the time, they did not know "who [was] the real Rosa McNeil." Id. Ex. X. Pezoldt also asserts that he contacted Magistrate Gatti's office the following day and explained the circumstances, but that he was told that "the courts had to handle it because we didn't know who was the real person at the time." Id. Ex. AA. Pezoldt states that he then called Plaintiff's residence and left a message for her to call him, but that his call was never returned. Id. Ex. BB.

Pezoldt was never notified of a court date. Id. Ex. CC.

Yanders, however, testified that Pezoldt never informed him that the woman who appeared with the complaint was not the woman he apprehended. (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 10-11 & Ex. 4 at 32-35 & 37.) Yanders denies having advised Pezoldt not to drop the charges. Id. at 10 & Ex. 4 at 32-34. Also, Plaintiff denies that Pezoldt left a message on her answering machine. Id. at 11-12 & Ex. 2 at 76.

Subsequently, District Justice Gatti's office issued a notice to Plaintiff to appear in court on February 7, 2000 for the purpose of picking up fingerprint cards.¹ (Pezoldt Mot. for Summ. J. at 5 & Ex. DD.) Plaintiff acknowledges receiving that notice before February 7. Id. at 5 & Ex. EE. Apparently, Plaintiff believed that she need not appear for that court date because she had not stolen from Little Apple. See id. Ex. II (reflecting Plaintiff's testimony). Plaintiff did not appear in court as ordered.

On February 8, 2000, District Justice Gatti issued a warrant for Plaintiff's arrest because she failed to appear. Id. at 7. That day, Schoeneberger, a Pennsylvania state constable, received the warrant and fingerprint card and appeared at Plaintiff's residence. Id.; Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 12. Plaintiff initially refused to accompany Schoeneberger to the

¹ Pennsylvania law requires fingerprinting before a charge of retail theft can be adjudicated. 18 Pa. Cons. Stat. Ann. § 3929.

police station. (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 13; Pezoldt Mot. for Summ. J. at 7.) Due to Plaintiff's protests, Schoeneberger called Little Apple. (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 13; Pezoldt Mot. for Summ. J. at 7.)

Schoeneberger testified that he spoke with a female employee from Little Apple who said that she was familiar with the case and, as far as she knew, the charges were not dropped. (Pezoldt Mot. for Summ. J. at 7 & Ex. SS.) Plaintiff, however, testified that although she did not know who Schoeneberger spoke to, she assumed that it was Pezoldt because "he [Schoeneberger] said he [the person on the phone] told him I wasn't the one." (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. Ex. 2 at 88.) Plaintiff could not hear the voice of the person to whom Schoeneberger was speaking. Id. Ex. 2 at 92-93.

Schoeneberger then contacted District Justice Gatti's office, and was advised that there was nothing in the file indicating that the charges were withdrawn or dropped. (Pezoldt Mot. for Summ. J. at 8, Exs. UU & VV.) Schoeneberger testified that he was advised by District Justice Gatti's office to proceed with the warrant and fingerprint order. (Br. of Def. Dale Schoeneberger in Supp. of his Mot. for Summ. J. ("Schoeneberger Mot. for Summ. J.") Ex. E at 25.) Plaintiff eventually agreed to accompany Schoeneberger to the Allentown Police Department. (Pezoldt Mot. for Summ. J. Ex. AAA.) Although she initially refused to cooperate, eventually Plaintiff was fingerprinted and then driven home. Id. Exs. AAA & BBB.

After being driven home, Plaintiff and her daughter again went to Little Apple and spoke to its owner, Thomas Gottschall. Id. Exs. DDD & EEE. On February 9, Gottschall withdrew the charges. Id. Ex. GGG & HHH; Pls.' App. in Opp'n to Summ. J., Schoeneberger Dep. Ex. 4.

Plaintiff brought suit against Schoeneberger, Pezoldt and Little Apple under the federal Civil Rights Act and Pennsylvania common law. Her Complaint alleges that: (1) Schoeneberger arrested Plaintiff without probable cause; (2) Schoeneberger and Pezoldt conspired to effect the unlawful arrest out of racial animus toward Plaintiff, an African-American; and (3) Pezoldt falsely imprisoned Plaintiff. (Compl. Counts I-III.) Plaintiff asserts that Little Apple is liable for the actions of Pezoldt under principles of respondeat superior. Pezoldt and Little Apple filed a third-party complaint against Yanders and Eye in the Sky, alleging that Yanders and Eye in the Sky were liable for all or part of Plaintiff's claims because they directed Pezoldt to continue Plaintiff's prosecution. (Third-Party Compl. ¶2.)

II. LEGAL STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the

outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party."² Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).

III. DISCUSSION

Defendants assert that they are entitled to judgment as a matter of law on all of Plaintiff's claims. Plaintiff asserts that there are genuine issues of material fact precluding summary judgment as to any of the Defendants or Third-Party Defendants.

² "The non-moving party must raise 'more than a mere scintilla of evidence in its favor' in order to overcome a summary judgment motion and it cannot rely on unsupported assertions, conclusory allegations, or mere suspicions or beliefs in attempting to survive such a motion." Willmore v. American Atelier, Inc., 72 F. Supp. 2d 526, 527 (E.D. Pa. 1999) (citations omitted). As the Court stated in Celotex Corporation v. Catrett, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. 317, 322 (1986). Where no such showing is made, "[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

A. Plaintiff's Federal Claims

Count I of Plaintiff's Complaint alleges that Schoeneberger illegally arrested Plaintiff in violation of 42 U.S.C. § 1983. (Compl. Count I.) Count II alleges that Schoeneberger and Pezoldt conspired to violate Plaintiff's civil rights in violation of 42 U.S.C. § 1985. Id. Count II.

1. Count I: False Imprisonment Against Schoeneberger

The Civil Rights Act provides civil redress for plaintiffs injured by persons or entities acting under color of state law in violation of the Constitution or laws of the United States. 42 U.S.C. § 1983. To prevail on a § 1983 claim, a plaintiff must prove that: (1) the defendants acted under color of state law; (2) depriving the plaintiff of a right secured by federal law; and (3) damages. Samerik v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998); Kelly v. Borough of Sayreville, 107 F.3d 1073, 1077 (3d Cir. 1997); Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995).

Under the Fourth Amendment, a police officer may not arrest and incarcerate a person except upon probable cause. Luthe v. City of Cape May, 49 F. Supp. 2d. 380, 388 (D.N.J. 1999). "The proper inquiry in a [§] 1983 claim based on false arrest . . . is not whether the person arrested in fact committed the offense, but whether the arresting officers had probable cause to believe the person arrested had committed the offense." Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988); Kis v. County of Schuylkill, 866 F. Supp. 1462, 1469 (E.D. Pa. 1994). The

outcome of the prosecution of the state court charges is irrelevant. Id. (citing Roa v. City of Bethlehem, 782 F. Supp. 1008, 1015 (E.D. Pa. 1991)).

It is well settled that probable cause to arrest generally exists when a police officer makes an arrest pursuant to a facially valid warrant and that an officer making an arrest on the basis of such a warrant is under no duty to independently investigate a claim of innocence, whether the claim is based on mistaken identity or otherwise. Id. (citations omitted). Law enforcement officers who arrest on the basis of such a warrant are immune from suits alleging a constitutional violation. Id. (citing Baker v. McCollan, 443 U.S. 137, 144-45 (1979) and Graham v. Connor, 490 U.S. 386, 389 (1989)).³

Schoeneberger is entitled to summary judgment. It is undisputed that the warrant upon which Schoeneberger acted was facially valid and that the charges against Plaintiff were still open and current when Schoeneberger appeared at her residence. Schoeneberger verified that Plaintiff was in fact Rosa McNeil, the subject of the warrant.

Plaintiff asserts, however, that any probable cause to arrest evaporated when Schoeneberger phoned Little Apple. Plaintiff alleges that Schoeneberger spoke to Pezoldt, who told

³ The issue of whether there was probable cause to arrest should usually be determined by the jury, but where there is no genuine issue of material fact and credibility conflicts are absent, summary judgment may be appropriate. Sharrar v. Felsing, 128 F.3d 810, 818 (3d Cir. 1997).

him that Plaintiff was not the woman he had apprehended for theft. However, even if these allegations are taken as true, Schoeneberger testified that he contacted District Justice Gatti's office, which advised him that the warrant should still be processed. Plaintiff has offered no evidence to contradict this testimony. Furthermore, the arrest warrant was issued for failure to respond to the hearing notice for fingerprint cards. (Pl.'s App. in Opp'n to Summ. J., Schoeneberger Dep. Ex. 4.) Even given the fact that Plaintiff did not commit the underlying crime of retail theft, it is undisputed that she failed to appear for a court ordered hearing. The direction from the District Justice's office, coupled with Schoeneberger's verification that Plaintiff was the person named in the facially valid warrant, are clearly sufficient to establish probable cause. Thus, the court concludes that no reasonable jury could find that Schoeneberger acted without probable cause when he arrested Plaintiff. See Sharrar, 128 F.3d at 818 (stating that "[t]he question is for the jury only if there is sufficient evidence whereby a jury could reasonably find that the police officers did not have probable cause to arrest"). Accordingly, summary judgment will be entered in favor of Schoeneberger on Count I of Plaintiff's Complaint.⁴

⁴ Even if probable cause was lacking, Schoeneberger has established the defense of qualified immunity. Governmental officials performing discretionary functions are generally shielded from liability for civil damages where their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Sherwood v. Mulvihill, 113 F.3d 396, 398-99 (3d Cir. 1997). Officers who reasonably but

2. Count II: Conspiracy Against Schoeneberger, Pezoldt and Little Apple

In 42 U.S.C. § 1985(3), Congress created a cause of action against official or private persons who conspire to deny a plaintiff of equal protection of the law.⁵ In order to prevail under § 1985(3), a plaintiff must demonstrate: (1) a conspiracy; (2) motivated by a racial or class based discriminatory animus, designed to deprive, either directly or indirectly, any person or class of persons of equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997), vacated in part on other grounds by 232 F.3d 360 (3d Cir. 2000), (citations omitted); King v. Township of East Lampeter, 17 F. Supp. 2d 394, 423 (E.D. Pa. 1998); Isajewics v.

mistakenly conclude that their conduct comports with the Fourth Amendment's requirements are entitled to immunity. Sharrar, 128 F.3d at 826 (quoting Hunter v. Bryant, 502 U.S. 224, 227 (1991)). For the reasons just discussed, Schoeneberger could reasonably have concluded, based on the warrant and his discussions with Little Apple and District Justice Gatti's office, that probable cause existed to arrest Plaintiff.

⁵ The statute provides as follows:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3).

Buck County Dep't of Communications, 851 F. Supp. 161, 163 n.2 (E.D. Pa. 1994).

In order to show a conspiracy, Plaintiff must establish an agreement or meeting of the minds among the alleged conspirators. Isajewics, 851 F. Supp. at 164 (citing Caldeira v. County of Kauai, 866 F.2d 1175 (9th Cir. 1989)). "It is not enough that the end result of the parties' independent conduct caused plaintiff harm or even that the alleged perpetrators of the harm acted in conscious parallelism." Spencer v. Steinman, 968 F. Supp. 1011, 1020 (E.D. Pa. 1997). Nor is it enough that the alleged conspirators "'had a common goal or acted in concert unless there is a showing that they directed themselves toward an unconstitutional action by virtue of a mutual understanding or agreement.'" Fullman v. Philadelphia Int'l Airport, 49 F. Supp. 2d 434, 444 (E.D. Pa. 1999) (quoting Chicarelli v. Plymouth Garden Apartments, 551 F. Supp. 532, 539 (E.D. Pa. 1982)).

Plaintiff contends that when Schoeneberger called Little Apple, he must have talked to a man and that man must have been Pezoldt because, just after the call, Schoeneberger told Plaintiff that "[h]e just said, he knows I'm not the one, but he had to take me." (Pl.'s Opp'n to Pezoldt Mot. for Summ. J. at 26.) According to Plaintiff, Pezoldt told Schoeneberger that Plaintiff had not committed the retail theft. Id. Plaintiff asserts that at that point, probable cause to arrest Plaintiff evaporated. Id. Thus, Plaintiff argues that "[t]he only reason for this arrest must be the conspiracy between Defendants Pezoldt

and Schoeneberger that was hatched denying [sic] their phone conversation." Id.

Plaintiff has simply failed to produce any evidence of a meeting of the minds between Schoeneberger and Pezoldt, or that the alleged conspiracy was motivated by any racial animus. First, both Schoeneberger and Pezoldt testified that they have never met or spoken to each other, and thus could not have agreed to anything. (Pezoldt Mot. for Summ. J. Exs. III, JJJ, KKK & LLL.) Plaintiff testified that she could not hear the conversation that Schoeneberger had with the person from Little Apple and could not hear that person's voice in order to determine if it was a man or woman. Id. Ex. MMM. Pezoldt also testified that he was not working at Little Apple on February 8, the day that Plaintiff was arrested. Id. Ex. LLL. Plaintiff has offered no evidence to contradict this testimony.

Second, Plaintiff herself testified that she had no information or evidence to suggest that Schoeneberger and Pezoldt agreed to have her arrested, either because she was an African-American or otherwise. (Pezoldt Mot. for Summ. J. Ex. 000.) Moreover, she acknowledges that had she appeared for fingerprinting on February 7, 2000, Schoeneberger would not have appeared at her house the next day. Id. Because no reasonable jury presented with this evidence could find that a conspiracy motivated by racial animus existed between these defendants, summary judgment will be entered in favor of all defendants on

Count II of Plaintiff's Complaint.⁶

B. Count III: False Imprisonment Against Pezoldt and Little Apple

Count III of Plaintiff's complaint asserts a cause of action under Pennsylvania common law for false imprisonment. The court may exercise jurisdiction over this claim pursuant to 28 U.S.C. § 1367(a), which provides for supplemental jurisdiction over state law causes of action that are so related to Plaintiff's federal causes of action that they form part of the same case or controversy. However, because the court will enter summary judgment on Plaintiff's federal claims, it declines to exercise jurisdiction over this state law claim. See 28 U.S.C. § 1367(c)(3) (providing that court may decline jurisdiction where it has dismissed all claims over which it had original jurisdiction). Accordingly, the court will dismiss Count III of Plaintiff's Complaint without prejudice, allowing Plaintiff to transfer the matter to the appropriate state court. See 42 Pa. Cons. Stat. Ann. § 5103 (permitting transfer to state court where federal court has dismissed matter for lack of jurisdiction); Electronic Lab Supply Co. v. Cullen, 782 F. Supp. 1016, 1021 (E.D. Pa. 1991) (noting that state claims should be dismissed if federal claims are resolved before trial and permitting

⁶ To the extent that Plaintiff's Complaint can be read to allege a conspiracy between Pezoldt and Little Apple or Schoeneberger and Little Apple, summary judgment is also appropriate. "A corporation and its agents acting on its behalf or employees in the performance of their corporate functions cannot conspire." Jones v. Arbor, Inc., 820 F. Supp. 205, 208 (E.D. Pa. 1993) (citation omitted).

plaintiffs to utilize § 5103).

C. Third-Party Defendants

The Third-Party Complaint of Pezoldt and Little Apple alleges that Yanders and Eye in the Sky are liable to Pezoldt and Little Apple for any recovery against them by Plaintiff. No cross-claims or additional claims have been filed against these third-party defendants. Thus, Plaintiff cannot recover directly against Yanders and Eye in the Sky. In re One Meridian Plaza Fire Litig., 820 F. Supp. 1492, 1496 (E.D. Pa. 1993)(stating that “[a] third-party complaint may not set forth a claim that the third party defendant is directly liable to the original plaintiff; it is limited to claims of secondary or derivative liability”). Their potential liability is solely to Pezoldt or Little Apple. Because summary judgment will be entered in favor of Pezoldt and Little Apple on Count II of Plaintiff’s Complaint, Yanders and Eye in the Sky are also entitled to summary judgment on any claims by Pezoldt and Little Apple related to Count II of Plaintiff’s Complaint.⁷ To the extent that the Third-Party Complaint seeks to hold Yanders and Eye in the Sky liable for any recovery against Pezoldt and Little Apple on Plaintiff’s state law claim of false imprisonment, it will also be dismissed without prejudice, allowing Pezoldt and Little Apple to transfer

⁷ Plaintiff agrees with Yanders and Eye in the Sky that “there is no third-party action on Plaintiff’s conspiracy claim” because there is no evidence connecting them to the alleged conspiracy. (Pl.’s Br. in Opp’n to Defs. Yanders’ and Eye in the Sky’s Mot. for Summ. J. at unnumbered p. 13.)

the matter to the appropriate state court.

IV. CONCLUSION

For the reasons set forth above, summary judgment will be entered in favor of Defendants on Counts I and II of Plaintiff's Complaint and in favor of Third-Party Defendants on any claims against them by defendants Little Apple and Pezoldt arising out of Count II of Plaintiff's Complaint. Count III of Plaintiff's Complaint will be dismissed without prejudice, and the Third-Party Complaint, to the extent that it asserts causes of action related to Count III of Plaintiff's Complaint, will also be dismissed without prejudice.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSA McNEIL : CIVIL ACTION
 :
 v. :
 :
 DALE SCHOENEGER, et al. : NO. 00-1150

ORDER

AND NOW, TO WIT, this 30th day of January, 2001, upon consideration of defendant Dale Schoeneberger's motion for summary judgment; defendants Michael J. Pezoldt's and Little Apple Market's ("Little Apple") motion for summary judgment; third-party defendants Timothy C. Yanders' and Eye in the Sky's motion for summary judgment; plaintiff Rosa McNeil's ("Plaintiff") oppositions thereto; and Third-Party Defendants' Reply, IT IS ORDERED that the motions are GRANTED as follows.

Summary judgment is entered:

1. in favor of defendant Schoeneberger on Count I of Plaintiff's Complaint;
2. in favor of defendants Pezoldt and Little Apple Market on Count II of Plaintiff's Complaint; and
3. in favor of third-party defendants Yanders and Eye in the Sky to the extent that any claim in the Third-Party Complaint arises out of Count II of Plaintiff's Complaint.

IT IS FURTHER ORDERED that Count III of Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE to transfer the matter to the appropriate Pennsylvania court pursuant to 42 Pa. Cons. Stat. Ann. § 5103.

IT IS FURTHER ORDERED that, to the extent that the Third-

Party Complaint seeks to hold Yanders and Eye in the Sky liable for any recovery against Pezoldt and Little Apple on Plaintiff's state law claim of false imprisonment, it is DISMISSED WITHOUT PREJUDICE to transfer the matter to the appropriate Pennsylvania court pursuant to 42 Pa. Cons. Stat. Ann. § 5103.

LOUIS C. BECHTLE, J.