

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Juan Martinez and Guadalupe Martinez,
Plaintiffs,

v.

No. 1:16-CV-01116-SS

The City of Buda, Demerriel Young, and Wal-
Mart Stores Texas, LLC
Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs, Juan Martinez and Guadalupe Martinez, bring this action against the City of Buda, Texas for damages pursuant to 42 U.S.C. §1983 and § 1988, the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiffs also bring this complaint against Officer Demerriel Young, police officer of the City of Buda, in his individual capacity pursuant to 42 U.S.C. §1983 and §1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is based upon 28 U.S.C. §§1331 and 1343, and under 28 U.S.C. §1367(a). Plaintiffs also bring this action against Wal-Mart Stores Texas, LLC for negligence and false imprisonment.

The individual police officer defendant, under no threat to himself from an elderly man, viciously tackled and injured Juan Martinez, in violation of the Fourth and Fourteenth Amendments to the United States Constitution. These violations were committed as a result of the policies and customs of the City of Buda. Specifically, the municipal body had inadequate policies regarding hiring, retention, and training of excessive force as well as reasonable accommodations for disability that caused the incident in question.

Plaintiff herein complies with the pleading requirements of FRCP Rule 8(a)(2) and the requirements of *Ashcroft v. Iqbal*, 556 U.S. 129 S.Ct. 1937, 1949 (2009) that “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

I. PARTIES

1.1 Juan Martinez and Guadalupe Martinez are individuals residing in Hays County, Texas.

1.2 The City of Buda, Texas (“The City”) is a municipal corporation located within the boundaries of the Austin Division of the Western District of Texas. Defendant has been served and answered in this matter.

1.3 Defendant, Officer Demerriel Young (“Officer Young”), was at all times relevant to this cause of action a duly appointed and acting officer of the police department of the City of Buda, and working within the course and scope of his employment with the City. Defendant has been served and answered in this matter.

1.4 WAL-MART STORES TEXAS, LLC, (hereafter sometimes referred to as “WAL-MART” or “Defendant”) is a Delaware Limited Liability Company doing business in Texas and organized and existing under the laws of the state of Delaware, with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716-6209. Defendant has been served and answered in this matter.

II. JURISDICTION AND VENUE

2.1 42 U.S.C. §1983 and 42 U.S.C. §1988 provide jurisdiction over Plaintiffs’ constitutional claims for redress, which are conferred on this Court by 28 U.S.C. §1343(a)(3).

2.2 Federal question jurisdiction is conferred on this Court by 28 U.S.C. §1331, because this action arises under the Constitution and laws of the United States.

2.3 This Court also has pendent jurisdiction over all other claims asserted under the laws of the State of Texas, pursuant to 28 U.S.C. §1367(a).

2.4 Venue is proper in the Western District of Texas, Austin Division, as this is the district where the claim arose in accordance with 28 U.S.C. §1391(b).

III. DUTY AND LAW APPLICABLE

3.1 Plaintiff, Juan Martinez, was subjected to excessive force in violation of his rights guaranteed to him by the Fourth and Fourteenth Amendments of the United States Constitution.

3.2 Plaintiffs commence this action pursuant to 42 U.S.C. §1983, which provides in relevant part for redress for every person within the jurisdiction of the United States for the deprivation, under color of state law, of any rights, privileges, or immunities secured by the Constitution and laws of the United States.

3.3 Officer Demerriel Young, acting under the color of law is liable under 42 U.S.C. §1983.

IV. FACTUAL ALLEGATIONS

4.1 On or about October 3, 2014, Plaintiffs were shopping in Wal-Mart located at 690 Old San Antonio Rd, Buda, TX 78610. Mr. Martinez was 73 years old at the time. Mr. and Mrs. Martinez and his wife were going through the store in scooters, due to their inability to move easily. The scooters were provided by Wal-Mart.

4.2 The Plaintiffs were shopping for goods at Wal-Mart. While shopping, Mrs. Martinez placed goods they needed in the basket at the front of her scooter. She placed

in her cart a large package of toilet paper, clothes, and various other items. The items were all visible in the front of the basket.

4.3 Though Plaintiffs were initially shopping together, they eventually became separated. Mr. Martinez left the store to smoke. Mrs. Martinez went looking for Mr. Martinez in the scooter she was driving. Mrs. Martinez asked a Wal-Mart employee if she had seen her husband. The Wal-Mart employee pointed to the exit. As she looked for husband, Mrs. Martinez may have accidentally gone near the Wal-Mart exit doors. At the time she was near the entrance she had items in the front of her scooter for which she had not paid. The items were out in the open in the front of her basket. The items were not hidden or secreted under anything. Wal-Mart security employees then immediately approached her while she was in the scooter and looking for Mr. Martinez. Wal-Mart security approached her when she was just at the threshold of the store. Mrs. Martinez had not left the entrance of the store or entered the parking lot. Wal-Mart employees approached her prior to the time she could enter the parking lot. Wal-Mart security accused her of stealing several items. When approached by Wal-Mart security Mrs. Martinez did not attempt to flee or run. When approached by Wal-Mart security Mrs. Martinez did not attempt to fight back or resist. When approached by Wal-Mart security Mrs. Martinez did not attempt to hide or secret the items she mistakenly had in her basket. Mrs. Martinez was then was ordered to a security room in the Wal-Mart. Mrs Martinez complied with the request.

4.4 Mrs. Martinez was investigated in the security room. Mrs. Martinez called her husband and told her that she was apprehended by police. After security apprehended Mrs. Martinez, Juan Martinez went to the the room where his wife was being questioned.

4.5 The Wal-Mart security officers, Brionne Guyer and CJ Costa-Dennis, negligently escalated the situation by their actions, contributing to the heated exchange involving Officer Young.

4.6 The Wal-Mart security officers Brionne Guyer and CJ Costa-Dennis apprehended Mrs. Martinez in violation of store policy and custom for loss prevention. The general procedure for apprehension by loss prevention or security is to observe the individual attempt to secret merchandise and to act as a guilty person would such as to flee or leave the store to approach a car. Mrs. Martinez neither attempted to secret or conceal the merchandise. Mrs. Martinez did not attempt to flee the Wal-Mart but rather was merely at the threshold of the store looking for her husband at the time Wal-Mart security employees apprehended her.

4.7 A Wal-Mart employee called 911 to file a police report. Officer Young arrived at the Wal-Mart shortly after Wal-Mart called. A Wal-Mart employee approached Officer Young and told him what happened.

4.8 Officer Young was present in the Wal-Mart office where Mrs. Martinez was being questioned when Juan Martinez arrived to see his wife. When Officer Young approached the Wal-Mart office he could very easily see that Mr. Martinez was elderly and had a visible black brace around his back.

4.9 Officer Young approached Juan Martinez and asked him to leave the office. Mr. Martinez wanted to see his wife. Officer Young escalated the situation, and used force excessive to the need. Specifically, Officer Young tackled the elderly and disabled Mr. Martinez, failing to control the descent of Mr. Martinez and slammed him hard onto the floor. As a result, Mr. Martinez broke several ribs, and sustained various other injuries and

damages and continues to incur medical treatment and physical difficulty related to the injuries caused by Defendants.

V. THE CITY'S POLICIES, CUSTOMS AND PRACTICES

5.1 The City of Buda's policies, customs and practices lead to the incident in question.

5.2 On information and belief Officer Young had a history of uses of excessive force. Despite this fact, The City of Buda hired him and put him on the street as a police officer under color of state law.

5.3 Moreover despite the fact that the City of Buda was aware of Officer Young's prior uses of excessive force it failed to retrain Officer Young or provide adequate supervision to prevent the incident in question.

5.4 The City of Buda also failed to provide Officer Young training regarding ADA and reasonable accommodations necessary for disabled persons such as Mr. Martinez.

VI. CAUSES OF ACTION

City of Buda

6.1 The acts and failures of Defendants on the occasion in question were unreasonable and were the proximate and producing cause of the injuries and damages suffered by the Plaintiffs. The City of Buda, Texas is liable to Plaintiff under 42 U.S.C. §1983 for acting with deliberate indifference, in failing to provide to Officer Young with supervision and training regarding the reasonable use of force. Officer Young was not trained to use force based on objective facts available to him at the time of the incident.

6.2 The City of Buda failed to provide Officer Young training in compliance with the Americans with Disabilities Act (ADA). As a government unit The City of Buda was tasked with training all its officers on dealing with and responding to calls for police

service involving disabled persons. The Department of Justice created a training module for training of police officers in responding to calls involving disabled persons and how police officers are to provide reasonable accommodations to disabled persons. Mr. Martinez was visibly disabled. He had on a full support back brace. The City of Buda failed to train Officer Young in compliance with ADA for persons with visible injuries. The City of Buda breached its duty under the ADA to train Officer Young to deal with disabled persons leading to the injuries at issue.

6.3 At all times Defendant Young was acting within the Course and Scope of his employment as a police officer, employee, and agent of the City of Buda. It is foreseeable an officer would use force during an arrest and to make an arrest. Defendant Young was arresting Mr. Martinez for the benefit of his employer the City of Buda. This was not an act of personal animus or personal intent. Because Defendant Young was acting in the course and scope of employment at the time of the incident The City of Buda is vicariously liable under the theory of *respondeat superior* for Defendant Young's violation of Title II of the ADA.

Officer Young

6.4 Defendant Young used excessive force, including intentionally taking down the Plaintiff, which was a proximate cause of the Plaintiff's injuries, including the lasting effects Juan Martinez continues to suffer from the incident. Defendant Young's actions were excessive in light of all the facts at hand. Mr. Martinez was not being charged with a crime at the time of the altercation. The alleged crime involving Mrs. Martinez was merely misdemeanor theft. This was not a crime of violence but rather one of mistake. She did not threaten Defendant Young or any Wal-Mart staff. Such a crime does not rise to the level to warrant taking down a visibly disabled man. Mr. Martinez was not a threat

to Defendant Young or any other person in the area. Mr. Martinez was not a threat because he was elderly and wearing a back brace. There is no objective evidence to show that Mr. Martinez was a threat to anyone else. Mr. Martinez did not make any threatening actions towards Defendant Young or any other person. Mr. Martinez did not say anything threatening towards Defendant Young or any other person. Mr. Martinez was not actively fleeing the scene at the time of the incident. Mr. Martinez was using a motor scooter while traveling through the Wal-Mart in question. Wal-Mart employees told Defendant Young that Mr. Martinez was using a scooter in the store. Defendant Young knew or should have known of Mr. Martinez's disability and his limited mobility when considering whether Mr. Martinez was a threat to others and whether he was able to flee. Taking the disability into consideration Officer Young should have objectively known Mr. Martinez was neither an active threat nor actively fleeing. Based on all of the objective facts, Defendant Young's actions were excessive.

6.5 Defendant Young failed to act in compliance with the ADA at the time of the incident in question. Defendant Young knew or should have known that Mr. Martinez was disabled. Mr. Martinez was wearing a visible black back brace at the time of the incident. This should have signaled to Defendant Young that Mr. Martinez would be slower to act than the average person and that any use of force against Mr. Martinez would have had a greater impact on him than on the average person. Defendant Young's arrest and use of force was an activity of the state subject to Title II of the ADA. By taking down Mr. Martinez rather than de-escalating the situation, Defendant Young failed to provide reasonable accommodations in affecting the arrest in violation of Title II of the ADA.

Wal-Mart

6.6 Defendant Wal-Mart falsely imprisoned Guadalupe Martinez, and was negligent in the manner the company and its employees handled the incident in question. Specifically, Wal-Mart, by and through its employees and managers, engaged in negligent activities, resulting in the escalation of the situation which foreseeably led to the altercation. The custom regarding apprehending persons suspected of shoplifting is to observe the person attempt to secret or conceal the merchandise and to observe the person act as a guilty person would. Defendant apprehended Mrs. Martinez without observing Mrs. Martinez conceal the merchandise or act as a guilty person would. Mrs. Martinez asked a Wal-Mart employee where her husband was. The Wal-Mart employee pointed Mrs. Martinez to the exit. By apprehending her in a manner other than a reasonably prudent business would they created the incident and question and escalated the incident in question. They failed to exercise reasonable care to avoid a foreseeable risk of harm to Juan Martinez, and failed to take affirmative action to control or avoid increasing the danger from a condition that was at least partially created by the conduct of Wal-Mart's employees. Furthermore, Wal-Mart negligently hired, trained, and supervised their employees.

VII. DAMAGES

7.1 As a direct and proximate result of the Defendants' conduct Plaintiff Juan Martinez suffered the following damages:

- a. Medical expenses reasonably incurred for his care and treatment;
- b. Medical expenses to be reasonably incurred in the future for his care and treatment;
- c. Physical pain and suffering and mental anguish; AND
- d. Physical Impairment.

7.2 Juan Martinez seeks all damages to which he is entitled at law for personal, emotional, physical, and economic injuries sustained as a proximate result of the Defendants' acts and omissions, as well those personal, emotional, physical, and economic damages which he will continue to sustain in the future as a result of the occurrence in question. Plaintiff has suffered severe physical and mental pain and suffering. Plaintiff will, in all reasonable medical probability, incur reasonable and necessary medical and counseling expenses in the future as a direct result of the assault and deprivation of rights. These damages are in excess of the minimal jurisdictional limits of this Court.

7.3 As a direct and proximate result of the Defendants' conduct Plaintiff Guadalupe Martinez suffered the following damages:

- a. Past and future Mental anguish in seeing her husband attacked by the police;
- b. Loss of consortium in the past and future;
- c. And mental anguish in the past from being negligently apprehended by Wal-Mart.

7.4 These damages are in excess of the minimal jurisdictional limits of this Court.

VIII. ATTORNEY'S FEES

8.1 The Plaintiffs have been required to retain the services of attorneys to represent them in this complex and difficult proceeding and cause of action. The Plaintiffs have retained the undersigned attorneys to represent them, and pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, they are entitled to recover for their reasonable and necessary fees incurred for these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim at the trial level, the Court of Appeals level if the

case is appealed to that Court, and in the Supreme Court of the United States, if necessary.

IX. JURY DEMAND

9.1 Plaintiffs respectfully demand a trial by jury.

PRAYER

For these reasons, Plaintiffs ask for judgment against all Defendants for the following

- a. Trial by jury on all issues triable to a jury;
- b. Judgment against Defendants, jointly and severally, on behalf of the Plaintiff for actual damages pursuant to 42 U.S.C. §1983;
- c. Statutory and reasonable attorney fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, pre-judgment interest, post-judgment interest, and all of their costs herein expended;
- d. Judgment against the City of Buda, Texas on behalf of the Plaintiffs for actual damages, pursuant to Tex. Civ. Prac. & Rem. Code §101;
- e. Judgment against Wal-Mart for false imprisonment and negligence; and
- f. Any and all additional relief to which the Plaintiff may appear to be entitled.

Filed this 7th day of November, 2016.

Respectfully Submitted,

The Carlson Law Firm

Robert L. Ranco
11606 N. IH-35
Austin, TX 78753
Phone: 512 346-5688
Fax 512-7194362

By: /S/ Robert L. Ranco
Robert L. Ranco
SBOT No. 24029785
rranco@carlsonattorneys.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served in accordance with the Federal Rules of Civil Procedure to the offices of

Brett H. Payne
Walters, Balido & Crain, LLP
Great Hills Corporate Center
9020 N. Capital of Texas Hwy
Building II Suite 225
Austin, TX 78759

Joanna Salinas
Fletcher, Farley, Shipman, & Salinas LLP
1717 W. 6th Street
Suite 300
Austin, TX 78703
(512)476-5300
(512) 576-5771

Via CM/ECF on November 7th, 2016.

/s/ Robert L. Ranco
Robert L. Ranco