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And The Defense Wins

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DRI member **Mercedes Colwin**, managing partner of the New York City office of **Gordon & Rees**, recently prevailed on a motion for summary judgment venued in the New York Supreme Court, Bronx County, on behalf of a company that owns and operates retail check cashing stores and provides corporate teller services for Fortune 500 companies and an armored truck fleet for on-site payroll distribution and armored car services.

Plaintiffs, a former employee and her husband, asserted five causes of action: malicious prosecution, false imprisonment, battery, assault and loss of consortium. Prior to the filing of the complaint, the plaintiff was employed by the client at one of its corporate locations and had access to and sold American Express Travelers Checks. After several unexplained/unauthorized absences, she was asked to resign. Shortly thereafter, the client was notified by American Express that over 100 travelers checks totaling approximately \$20,500.00 had been cashed at one of its locations without having first been sold to the public. As a result, an early three-week internal investigation was conducted and revealed that, given her access to the same, it was more than likely that the plaintiff misappropriated the subject travelers checks. Accordingly, the client contacted the Financial Crimes Unit of the New York City Police Department, which conducted its own investigation. Following the conclusion of the investigation, a criminal complaint was filed against the plaintiff/former employee. However, for reasons unknown to the client, the charges against the plaintiff/former employee were dismissed on “speedy trial” grounds.

At the conclusion of discovery, Gordon & Rees filed a motion for summary judgment on behalf of the client. In granting this motion, the court first denied the plaintiffs’ claim for malicious prosecution because the plaintiffs failed to provide sufficient evidence to support their claim. Next, the court denied the plaintiffs’ claim for false arrest, and accordingly denied the plaintiffs’ cross-motion for summary judgment of the same claim. The court ruled that the plaintiffs’ failed to proffer evidence that the client actively or aggressively pursued the investigation against the plaintiff/former employee after the police were contacted.

Further, the court denied the plaintiffs’ assault and battery claims because they failed to provide support for their claim that the client was vicariously liable for the police officers’ conduct. Finally, the court ruled that the husband failed to prove his claim for loss of consortium upon its review of an email exchange between the plaintiffs that was uncovered during the course of discovery. The email evidenced that prior to her arrest, the plaintiffs discussed ending their marriage; so the court determined that the loss of consortium claim lacked merit.