

No. 1-18-0956

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THERESA LAU,	)	Appeal from the Circuit Court
	)	of Cook County,
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14 L 11221
	)	
JACOB SEAR,	)	
	)	Honorable
Defendant-Appellee.	)	John P. Callahan,
	)	Judge Presiding.
	)	

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JUSTICE MIKVA delivered the judgment of the court.  
Justices Griffin and Walker concurred.

**ORDER**

¶ 1 *Held:* Where no evidence suggested that defendant commenced or continued criminal proceedings against plaintiff or caused plaintiff to be arrested, and the evidence instead demonstrated that it was an independent police investigation and plaintiff’s own conduct that led to plaintiff being arrested and prosecuted, summary judgment in favor of defendant on plaintiff’s malicious prosecution and false imprisonment claims was proper.

¶ 2 Plaintiff Theresa Lau appeals from the circuit court’s grant of summary judgment in favor of defendant Jacob Sear on her claims against him for malicious prosecution and false imprisonment. For the following reasons, we affirm.

¶ 3

## I. BACKGROUND

¶ 4 Ms. Lau worked as a caretaker for Mr. Sear from 2010 until he terminated her employment on July 3, 2012. Three days later, on July 6, 2012, Mr. Sear reported to the police that Ms. Lau had stolen approximately \$255,000 from him. Almost a year later, on May 1, 2013, Ms. Lau was arrested in connection with this incident and charged with theft and the financial exploitation of an elderly person. The charges were ultimately nol-prossed by the Lake County State's Attorney's Office.

¶ 5 On October 29, 2014, Ms. Lau sued Mr. Sear. In the operable second amended complaint for malicious prosecution and false imprisonment, Ms. Lau alleged that Mr. Sear falsely told police that she stole money from him, that the police would not have filed a criminal complaint against her if he had not made those false statements, and that Mr. Sear continued to press the police to prosecute during their investigation.

¶ 6

### A. Mr. Sear's Motion for Summary Judgment

¶ 7 Mr. Sear moved for summary judgment on September 11, 2017, arguing that no genuine issue of material fact existed as to the existence of proximate cause, that the criminal proceedings against Ms. Lau "were based on her own actions, which were the result of [a] separately developed investigation," and that there was not a "favorable termination of the litigation in [Ms. Lau's] favor." The evidence before the court on summary judgment included the following depositions and documents.

¶ 8

#### 1. Ms. Lau's Deposition

¶ 9 Ms. Lau testified in her deposition that she was hired in 2010 to help Mr. Sear during the weekdays with light housekeeping, driving him to appointments, writing out his checks because he was legally blind, helping him with the computer, and driving him to see his family and go

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shopping. Ms. Lau testified that mentally, Mr. Sear was “sharp as a tack” and was never diagnosed with dementia while she worked for him. In fact, according to Ms. Lau, just before the end of her employment, Mr. Sear’s doctor “said his memory was great, perfect.”

¶ 10 On June 8, 2012, Mr. Sear discovered a large sum of money was missing from one of his accounts, and Ms. Lau “could see physically that he was not well.” She called 9-1-1 and Mr. Sear was admitted to the hospital, where doctors informed Ms. Lau that he had a “heart-related anxiety issue.” Mr. Sear remained in the hospital until June 12, 2012. After he was released, Mr. Sear told Ms. Lau he wanted to pay off her mortgage as “a reward for saving his life” and “so that [her] kids could go to college and [she] wouldn’t have to have any worries.” Ms. Lau denied, in her deposition testimony, telling Mr. Sear that in exchange for this money, she would work for him for the rest of his life.

¶ 11 On June 22, 2012, Mr. Sear and Ms. Lau went to Chase bank, where Mr. Sear requested a cashier’s check in the amount of \$155,000 to be made out to Bank of America, the mortgagee on Ms. Lau’s mortgage. They then went to MB Financial bank, where Mr. Sear had a check made out to himself for approximately \$100,000. Mr. Sear then signed this check and gave it to Ms. Lau. Ms. Lau took steps to apply these two checks toward her mortgage. She mailed the \$155,000 check to Bank of America, and deposited the \$100,000 into her own account so she could get a cashier’s check made out to Bank of America.

¶ 12 Ms. Lau testified that Mr. Sear terminated her employment on July 3, 2012. Earlier that day, she had driven Mr. Sear to look at a building that he was thinking about moving to, and when they returned to the car, they put paperwork regarding the building in the glove compartment of her vehicle. When Ms. Lau was at home that night, at some point she realized that she had accidentally left her phone in the car, and when she went to get it, she learned that Mr.

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Sear had tried to call her “maybe 25, 30” times because he wanted to know where the paperwork was. Mr. Sear left multiple messages, eventually telling Ms. Lau that she was fired. Ms. Lau met with Mr. Sear’s two sons on July 4 or 5, 2012, to return the keys to his house and receive her final paycheck.

¶ 13 Several days later, on July 7, 2012, Ms. Lau was contacted for an interview by then-Detective Adam Hyde and provided a voluntary, handwritten statement that was substantially similar to her deposition testimony. She had no contact with anyone from the Sear family after July 2012. Ms. Lau stated that Detective Hyde told her “[a] couple times” to give the money back to Mr. Sear or she would go to jail. But when Charter One, where Ms. Lau had her personal accounts, informed Ms. Lau that her accounts had been unfrozen, she instead withdrew some of the money, transferred \$25,000 to her father to invest, and placed some of the money in her daughter’s name. Ms. Lau acknowledged she was aware that if she did not return the money she risked imprisonment, but still chose not to return it.

¶ 14 Ms. Lau was arrested on May 1, 2013, and held at the Lake County jail for four days, which Ms. Lau described as “[h]orrible,” and a “scary, scary place.” Ms. Lau claimed that she was physically assaulted while in jail.

¶ 15 2. Sergeant Hyde, Sergeant Anderson, and ASA Turk’s Depositions

¶ 16 Sergeant Adam Hyde testified in his deposition that Mr. Sear initially contacted him about Ms. Lau in June 2012 and he met with Mr. Sear in person on July 6, 2012, at which time Mr. Sear “reported that Ms. Lau had taken approximately \$250,000 in funds improperly from him.” Sergeant Hyde testified at his deposition that while Mr. Sear was explaining what had occurred, he appeared “uncertain.” And he wrote in his report that Mr. Sear “appeared confused.” Mr. Sear told Sergeant Hyde multiple stories about “what [Mr. Sear] believed

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happened to the checks.” At one point, Mr. Sear claimed that Ms. Lau had forged his signature on a check. In a police report, Sergeant Hyde indicated that Mr. Sear also told him that day that he had agreed to pay for Ms. Lau’s mortgage “in an agreement that she would continue working for him for the next few years.”

¶ 17 Sergeant Hyde explained that he did not take everything Mr. Sear said at face value. His investigation was focused on the circumstances leading to the checks being drafted for Ms. Lau. Ultimately, Sergeant Hyde concluded that Ms. Lau did not forge Mr. Sear’s signature on any checks.

¶ 18 On July 7, 2012, Sergeant Hyde telephoned Ms. Lau, who agreed to meet him in person and give a statement. Sergeant Hyde also spoke again with Mr. Sear, who relayed yet another version of what happened to the checks. In this version, Mr. Sear felt sorry for Ms. Lau so he agreed to pay her mortgage in full, they went to get the checks together, but then they began arguing in the car and Ms. Lau ran off with the checks. That same day Sergeant Hyde also spoke with Michael Sear, one of Mr. Sear’s sons, who told Sergeant Hyde that his father was suffering from dementia and the family had begun to seek oversight of the accounts.

¶ 19 Also on July 7, 2012, Sergeant Hyde contacted Officer Ulanowski, to whom Mr. Sear had reported a theft of Ravinia tickets on July 4, 2012. Officer Ulanowski told Sergeant Hyde that Mr. Sear “did in fact bring up the two checks valued over \$250,000”; Mr. Sear told Officer Ulanowski that he had signed over two checks to Ms. Lau to help pay off her mortgage and was concerned that she would have trouble cashing the checks.

¶ 20 Sergeant Hyde then met with Ms. Lau later on July 7, 2012, and she provided a statement. Sergeant Hyde testified that after meeting with Ms. Lau, he did intend to present the case to the state’s attorney for charges to be brought against her, explaining that “[a]ny case that

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is financial exploitation of an elder, identity theft or financial-type crimes, we screen all those cases—or review all those cases with the state’s attorney’s office.” But Sergeant Hyde did not arrest Ms. Lau at that time or speak with the state’s attorney. He testified that he also discussed with Ms. Lau the possibility of her returning the money to Mr. Sear: “I explained to her that [Mr. Sear] said he no longer authorized her to have those funds, and that he wanted those funds returned. During this and subsequent conversations, she agreed to do so.”

¶ 21 On July 20, 2012, Sergeant Hyde spoke with an attorney representing Ms. Lau, and said that the attorney agreed that Ms. Lau should return the funds. The same day, he also spoke with a fraud investigator from Charter One bank—Ms. Lau’s bank—because Mr. Sear had reported to the bank that the \$100,000 check Ms. Lau had cashed was fraudulently endorsed and forged. Sergeant Hyde testified that he told the investigator that Mr. Sear willingly gave the checks to Ms. Lau and they were not forged.

¶ 22 As of January 15, 2013, Sergeant Hyde testified that his intent was to close the investigation and move on, with no charges filed against Ms. Lau. His police report of that date indicates that he had left messages with the fraud investigator from the Bank of America since September. According to the report, the investigator was not “able to do any further investigation and the actual checks mailed by [Ms.] Lau ha[d] never been found, nor ha[d] her [mortgage] account been paid in full.” Sergeant Hyde also spoke with the Bank of America regional manager, who “confirmed the checks were never found and there is no other follow up to be conducted.”

¶ 23 Sergeant Hyde spoke with Ms. Lau on February 5, 2013, and Ms. Lau explained to Sergeant Hyde that there was a 90-day waiting period that was still pending before she could return the funds, that the funds would be available for transfer at the end of February, and that

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she would bring a check made out to Mr. Sear to Sergeant Hyde at that time. Sergeant Hyde explained: “From what I recall, from that point forward, the funds—the plan for the funds was to be turned back over to Mr. Sear. When that didn’t take place, I then tried to reach out to [Ms. Lau] multiple different times to start off with a conversation.” In a report, Sergeant Hyde stated that Ms. Lau “continue[d] to agree to return the funds, but then refuse[d] to return [his] calls.”

¶ 24 As of April 17, 2013, Sergeant Hyde had received no further word from Ms. Lau, and so he planned to present his investigation to the Lake County State’s Attorney’s Office. On April 19, 2013, Sergeant Hyde followed up with the fraud investigator from Charter One and learned that Ms. Lau had withdrawn approximately \$100,000 from her bank account between March 5 and 11, 2013, moved it into two different accounts, and written a check to her father which had been deposited. Sergeant Hyde stated:

“At this point in the investigation, she was clearly not returning the money as she had \*\*\* told me she would do. And by her actions of moving the money was clear indication of money laundering in a criminal nature. That’s what prompted the state’s attorney meeting and \*\*\* the further investigation from there.”

¶ 25 On April 25, 2013, Sergeant Hyde met with ASA Scott Turk, a member of the cyber/white collar crime division of the Lake County State’s Attorney’s Office. Three seizure warrants were prepared—one for Ms. Lau’s Charter One bank accounts, and two for accounts in the name of her father, Edward Bechtold. Based on the information received from those warrants, Sergeant Hyde determined that the funds in question had been disbursed or moved, and that the majority of the funds were depleted.

¶ 26 Finally, on May 1, 2013, Sergeant Hyde presented his full investigation on Ms. Lau to ASA Turk for review. ASA Turk approved three charges against Ms. Lau: one for financial

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exploitation of an elderly person and two for theft over \$100,000, all Class 1 felonies. In his deposition, ASA Turk explained that the reasons why specific charges were brought against Ms. Lau constituted confidential attorney work product. He did explain, however, that when recommending issuance of an arrest warrant, prosecutors generally consider whether there is enough evidence to establish both probable cause and “proof beyond a reasonable doubt,” whether the person is a threat to public safety, and whether an arrest would be in the interest of justice. A warrant for Ms. Lau’s arrest was issued and Sergeant Hyde arrested her that day, accompanied by Sergeant John-Erik Anderson. Sergeant Hyde testified that “her actions of not returning the money [wa]s what prompted this.”

¶ 27 The charges against Ms. Lau were nol-prossed by the state’s attorney’s office on May 15, 2014. ASA Turk testified that he met with Mr. Sear and his family, and Mr. Sear’s sons asked ASA Turk not to proceed with the prosecution because “they did not want to put their father through the difficulties of having to sit in a courtroom and testify.” ASA Turk confirmed with Mr. Sear that he did not want to proceed with the case. He did not have any further conversations with Mr. Sear or his family once the charges were dropped against Ms. Lau.

¶ 28 Sergeant Hyde and Sergeant Anderson both denied having received any constant or harassing phone calls from Mr. Sear or Mr. Sear’s family encouraging them to arrest or press charges against Ms. Lau. ASA Turk did not recall ever speaking to Mr. Sear or any member of Mr. Sear’s family on the phone.

¶ 29 **B. The Court’s Rulings**

¶ 30 On November 22, 2017, the circuit court granted Mr. Sear’s motion for summary judgment. On December 21, 2017, Ms. Lau filed a motion to reconsider the granting of summary judgment, in which she asked the court to also consider testimony from an individual named

Carolyn Miller. Ms. Lau attached Carolyn Miller’s affidavit, in which Ms. Miller said that she had coffee with Ms. Lau every morning between the day that Ms. Lau was fired by Mr. Sear and the day that the charges against Ms. Lau were dismissed, that “on several occasions” she heard phone conversations between Ms. Lau and the police, and on “each such call, [she] overheard the police asking [Ms. Lau] for the ‘Jacob Sear money’ and threatening her with arrest and jail if she did not turn it over.” Ms. Miller also stated that when Ms. Lau was arrested at her home, “one of the officers said that this would not have happened had [Ms. Lau had] returned the money she took from [Mr. Sear]. [Ms. Lau] then asked if all of this, referring to the handcuffing and arrest, was all a result of the complaint made by the crazy old man. The officer said ‘yes.’ ”

¶ 31 On April 9, 2018, the circuit court struck Ms. Miller’s affidavit as untimely and denied Ms. Lau’s motion for reconsideration. Mr. Sear had passed away on January 14, 2018, so the court also granted counsel’s motion to spread the death of Mr. Sear of record. This appeal followed.

¶ 32 II. JURISDICTION

¶ 33 Ms. Lau timely filed her notice of appeal on May 8, 2018. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 34 III. ANALYSIS

¶ 35 “Summary judgment is proper when ‘the pleadings, depositions, 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 a judgment as a matter of law.’ ” *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20 (quoting 735 ILCS 5/2-1005(c) (West 2012)). “The purpose of summary

judgment is not to try an issue of fact but to determine whether one exists. *Monson v. City of Danville*, 2018 IL 122486, ¶ 12. “A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts.” (Internal quotation marks omitted.) *Id.* “In ruling on a motion for summary judgment, we must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent.” *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 22. We review a grant of summary judgment *de novo*. *Id.*

¶ 36 On appeal, Ms. Lau argues that the circuit court erred in granting summary judgment in favor of Mr. Sear on both of her claims against him—malicious prosecution and false imprisonment. Although the considerations are similar, we consider each claim in turn.

¶ 37 A. Malicious Prosecution

¶ 38 Our supreme court has made it abundantly clear that suits for malicious prosecution are “not favored.” *Id.* ¶ 24. To state a cause of action for malicious prosecution, a plaintiff must show “(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff.” (Internal quotation marks omitted.) *Id.* ¶ 26. “The absence of any one of these elements bars a plaintiff from pursuing the claim.” *Id.*

¶ 39 “The first element of malicious prosecution requires a plaintiff to show that the defendant commenced or continued the original proceeding.” *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 11. Ms. Lau argues that there was evidence presented at summary judgment that could be relied on to show that Mr. Sear commenced the criminal proceedings against her

because his interactions with the police were “the direct and proximate cause” of the criminal charges being filed against her. In response, Mr. Sear argues that “there are no facts in this case establishing that Mr. Sear commenced, continued, or actively encouraged the criminal proceeding against Ms. Lau,” and that summary judgment in his favor was therefore appropriate.

¶ 40 Our supreme court in *Beaman* said that, when a criminal proceeding is at issue, “the relevant inquiry is whether the [defendant] proximately caused the commencement or continuance of [that] proceeding.” *Beaman*, 2019 IL 122654, ¶ 33. “A criminal proceeding is commenced when a complaint, an information, or an indictment is filed.” *Id.* (citing 725 ILCS 5/111-1 (West 2012)). “A private citizen commences a criminal proceeding when he or she ‘*knowingly* gives false information to a police officer, who then swears out a complaint.’ (Emphasis in original.)” *Szczesniak*, 2014 IL App (2d) 130636, ¶ 11 (quoting *Randall v. Lemke*, 311 Ill. App. 3d 848, 850 (2000)). As the supreme court recognized in *Beaman*, however, there is a “presumption of prosecutorial independence” that can only “be overcome by showing that the defendant improperly exerted pressure on the prosecution, knowingly provided misinformation to him or her, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct” that was “instrumental” in the initiation or continuation of the prosecution. *Beaman*, 2019 IL 122654, ¶ 44 (quoting 52 Am. Jur. 2d *Malicious Prosecution* § 88 (2012)).

¶ 41 For example, in *Szczesniak*, 2014 IL App (2d) 130636, ¶ 12, the defendant reported to a police officer that he had not received payment from the plaintiff, and the plaintiff claimed that the defendant’s statement was a lie and therefore the defendant had “commenced” the criminal proceedings against him. This court disagreed, finding that “even if [the defendant] had lied to the police, [this individual defendant and his defendant business] would still not be liable for commencing the proceeding” because that statement to the police “was superseded and rendered

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immaterial by the independent investigations of two different police officers who developed sufficient evidence to seek [the] plaintiff's arrest and prosecution." *Id.* ¶ 13.

¶ 42 The evidence here similarly shows that Ms. Lau's arrest and prosecution were the result of separate and independent information obtained by the police. Sergeant Hyde testified that after Mr. Sear made his initial report, Sergeant Hyde did not take everything Mr. Sear said at face value. Instead, Sergeant Hyde contacted Officer Ulanowski, Mr. Sear's son Michael, Ms. Lau, and the banks involved. Sergeant Hyde also testified that he independently determined that Ms. Lau did not forge the checks despite this being one of Mr. Sear's initial claims. Most significantly, Sergeant Hyde stated that at his initial meeting with Ms. Lau, and during many subsequent conversations, she agreed to return the money to Mr. Sear. It was only after she failed to do so and instead began moving the funds around in a way that was inconsistent with her representations to him, that Sergeant Hyde eventually presented his investigation to ASA Turk for possible further action.

¶ 43 Ms. Lau argues that *Szczesniak* is inapposite because the defendant there gave the alleged false information to one police officer, while another officer conducted the subsequent investigation. *Id.* ¶ 13. While this fact in *Szczesniak* did provide further support for the independence of the police investigation, the fact that Sergeant Hyde remained involved throughout this investigation does not alter the fact that Ms. Lau was arrested and charged because of his investigation and her own statements and conduct during that investigation.

¶ 44 It is clear from the record that after Mr. Sear made his initial report, the police performed their own months-long investigation, and only referred the case to the state's attorney's office for charges to be approved because Ms. Lau failed to return the funds to Mr. Sear, and in fact, moved the funds to different bank accounts. The testimony of the law enforcement officials

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involved in this case makes clear that their investigation and Ms. Lau's own actions superseded Mr. Sear's initial complaint and were the true reasons criminal proceedings were initiated. Ms. Lau has simply not overcome the presumption of prosecutorial independence in this case.

¶ 45 There is also no evidence that Mr. Sear "continued" the prosecution of Ms. Lau. A defendant continues a criminal proceeding "by actively encouraging the prosecution despite knowing that no probable cause exist[s]." *Szczesniak*, 2014 IL App (2d) 130636, ¶ 11. Sergeant Hyde, Sergeant Anderson, and ASA Turk all testified that they did not recall receiving consistent or pressuring phone calls from either Mr. Sear or Mr. Sear's family. There was no evidence that Mr. Sear contacted the police or the Lake County State's Attorney's Office between July 2012 and when the charges were dismissed in 2014. Summary judgment in Mr. Sear's favor with respect to Ms. Lau's claim of malicious prosecution was appropriate.

¶ 46 Ms. Lau argues that the seizure warrants and arrest warrant shows that the charges were brought because of Mr. Sear's complaint. According to the seizure warrants, the police intended to seize funds from certain bank accounts which were used by Ms. Lau "to commit or facilitate the commission of an offense, namely Money Laundering," and the facts given in support of the warrants include that Ms. Lau agreed to work for Mr. Sear for the remainder of his life in exchange for the money, her failure to return to work after receiving the checks, her agreement to repay the funds, and her failure to repay the money and instead moving the funds into different bank accounts—all allegations that are consistent with Mr. Sear's initial statements to the police. Similarly, the arrest warrant charges Ms. Lau with knowingly and deceptively "obtaining unauthorized control" of Mr. Sear's money, and obtaining Mr. Sear's money "by deceptive control," allegations which are also consistent with Mr. Sear's initial statements to the police. But this does not contradict the other evidence, all of which demonstrates that, after those

statements were made, the police exercised prosecutorial independence. Mr. Sear's complaint was simply not a proximate cause of charges being brought against Ms. Lau; it was the police investigation and Ms. Lau's own actions in not returning and then moving the money that led to Ms. Lau being prosecuted.

¶ 47 B. False Imprisonment

¶ 48 To sustain a claim of false imprisonment, a plaintiff must show that he or she was "restrained or arrested by the defendant, and that the defendant acted without having reasonable grounds to believe that an offense [warranting such restraint] was committed by the plaintiff." *Meerbrey v. Marshall Field & Co.*, 139 Ill. 2d 455, 464 (1990). A private defendant may be liable for false imprisonment if "he either (1) directed the officer to arrest the plaintiff; or (2) procured the arrest by giving information that was the sole basis for the arrest." *Randall v. Lemke*, 311 Ill. App. 3d 848, 851-52 (2000). So Ms. Lau must show that Mr. Sear caused her arrest in order to succeed on her false imprisonment claim.

¶ 49 This claim fails for the same reasons as the claim for malicious prosecution. The evidence presented shows that Mr. Sear's statements did not cause Ms. Lau to be arrested; rather, the police investigation and Ms. Lau's actions in promising to repay Mr. Sear's money, failing to do so, and instead moving the money to different accounts were the cause of her arrest. The circuit court properly granted Mr. Sear summary judgment on Ms. Lau's false imprisonment claim.

¶ 50 IV. CONCLUSION

¶ 51 Because the evidence shows that Ms. Lau was arrested and charged because she promised to return the money to Mr. Sear, and instead of doing so, moved the money into different accounts, summary judgment in favor of Mr. Sear was proper. We affirm the judgment of the

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circuit court.

¶ 52 Affirmed.