

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**OCT 01 2007**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

JOHN SALAZAR; et al.,

Plaintiffs - Appellants,

v.

CITY OF BURBANK; et al.,

Defendants - Appellees,

and

WALTER CHANG, an individual; et al.,

Defendants.

No. 06-55046

D.C. No. CV-04-10015-FMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Florence Marie Cooper, District Judge, Presiding

Argued and Submitted August 10, 2007  
Pasadena, California

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: BERZON and IKUTA, Circuit Judges, and SINGLETON, \*\* Senior District Judge.

We review the district court’s grant of summary judgment de novo. See Qwest Commc’ns Inc. v. Berkeley, 433 F.3d 1253, 1256 (9th Cir. 2006).

Summary judgment is appropriate only if, viewing the evidence in the light most favorable to the non-moving party, “there is no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c); see also Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 921–22 (9th Cir. 2004).

The Fourth Amendment protects people from unreasonable searches and seizures of “their persons, houses, papers, and effects.” U.S. CONST. amend. IV. “A ‘seizure’ of property . . . occurs when ‘there is some meaningful interference with an individual’s possessory interests in that property.’” Soldal v. Cook County, 506 U.S. 56, 61 (1992) (quoting United States v. Jacobsen, 466 U.S. 109, 113 (1984)).

The district court recited this test but failed to apply it. The district court ruled that Plaintiffs were not dispossessed of any property, but failed to address the

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\*\* The Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

mixed factual and legal issue whether Plaintiffs even had a possessory interest in the business premises. Moreover, the parties disagreed whether the police officers ordered Plaintiffs to leave the premises. Viewing the facts in the light most favorable to Plaintiffs, a reasonable finder of fact could determine that the police officers' order to the Plaintiffs to vacate the premises constituted meaningful interference with a possessory interest. See Soldal, 506 U.S. at 61–69. Therefore, the district court erred in ruling there were no disputed issues of material fact as to whether the police officers seized Plaintiffs' property.

The district court noted that it had found no precedent holding that the specific police action at issue here constituted a seizure of property within the meaning of the Fourth Amendment. However, the lack of precedent does not relieve a court of its responsibility to apply Constitutional principles to the legal and factual dispute before it. At “this point neither the district court nor the parties have devoted sufficient attention to the elucidation and resolution of these issues to permit us to deem a grant of summary judgment appropriate.” United States ex rel. Plumbers and Steamfitters Local Union No. 38 v. C.W. Roen Constr. Co., 183 F.3d 1088, 1095 (9th Cir. 1999).

Under Saucier v. Katz, 533 U.S. 194, 201 (2001), the district court must address the question whether the officers' conduct violated Plaintiffs'

constitutional rights before considering whether any such constitutional rights were clearly established. This includes determining not only whether a seizure occurred but whether the seizure was unreasonable. See Soldal, 506 U.S. at 61–62.

Therefore, the district court's grant of summary judgment must be reversed.

**REVERSED and REMANDED.**