

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KENNETH LEVERINGSTON,
Plaintiff,

vs.

Case No. 06-1235-JTM

SEARS DEPARTMENT STORE, et. al,
Defendants.

MEMORANDUM AND ORDER

This matter is before the court on the motion to dismiss of defendant Sears Roebuck and Company. Plaintiff Kenneth Leveringston, appearing pro se, alleges that, while at a Sears store on June 7, 2005, he was falsely accused of shoplifting and assaulted by five security officers. The present action was originally filed some nine months after this incident, while Leveringston was incarcerated at Lansing Correctional Facility on unrelated charges.

Sears's motion is predicated on court records which indicate that no attempt at service of process was made for almost another five months, and that when there was an attempt to serve process, it was against a defendant named "Sears Dept. Store and Security Department," which is not a legal entity. Sears seeks dismissal because there was no effective service of process, because any such service was untimely under K.S.A. 60-203(a), and because no action was effectively commenced within one year and is hence time-barred under K.S.A. 60-514.

Leveringston has filed no response to Sears's motion.

For good cause shown and pursuant to D.Kan.R. 7.4, the court hereby grants defendant's Motion to Dismiss (Dkt. No. 6) and the present action against Sears is dismissed with prejudice as time-barred under the state statute of limitations. Further, since the court records fail to demonstrate any attempt to serve the additional unnamed individual defendants within the time required by law, plaintiff's claims against such defendants are also dismissed.

IT IS SO ORDERED this 25th day of October, 2006.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE