

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DERRICK L. BARKLEY : CIVIL ACTION

vs. :

FMP/LAKESIDE ASSOCIATES : NO. 98-5991

t/a MELROSE STATION

APARTMENTS; and :

R.I. HAYDINGER

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 14th day of May, 1999, upon consideration of the Motion to Dismiss of Defendants FMP/Lakeside Associates t/a Melrose Station Apartments and R.I. Haydinger (Doc. No. 4, filed Dec. 2, 1998), plaintiff's "Legal Brief" (received Dec. 8, 1998), ⁽¹⁾ plaintiff's Response to Defendant's Motion to Dismiss (Doc. No. 5, filed Dec. 21, 1998), and plaintiff's letter to the Court dated February 15, 1999 (Doc. No. 6, filed Feb. 23, 1999), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that the Motion to Dismiss of Defendants FMP/Lakeside Associates t/a Melrose Station Apartments and R.I. Haydinger is **GRANTED**.

MEMORANDUM This case is before the Court on the Motion of the defendants, FMP/Lakeside Associates t/a Melrose Station Apartments, and R.I. Haydinger, to Dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(6). The motion is granted for the following reasons.

I. BACKGROUND

This lawsuit arises out of a landlord-tenant dispute between plaintiff Derrick L. Barkley and his former landlord, FMP/Lakeside Associates t/a Melrose Station Apartments ("FMP") and its Managing Partner, R.I. Haydinger (the "defendants").

When deciding a Motion to Dismiss under Rule 12 of the Federal Rules of Civil Procedure, "factual allegations of the complaint are to be accepted as true," and all reasonable inferences from the complaint and any attachments are to be drawn in plaintiff's favor. See, e.g., Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993); D.P. Enterprises, Inc. v. Buck County Community College, 725 F.2d 943, 944 (3d Cir. 1984). The following facts, therefore, are taken from plaintiff's one-page, pro se Complaint and from supporting documents ⁽²⁾ provided to the Court, and are accepted as true for the purposes of this Memorandum.

In September of 1993, plaintiff signed a lease for apartment 7D in an apartment building located at 902 Valley Road, Melrose Park, Pennsylvania. At all times relevant to this action the property was owned and operated by defendants. Plaintiff resided in this apartment through late September of 1998.

Plaintiff had, by his own account, a long and troubled relationship with his landlord, involving numerous disputes over rent payments, arrears, and landlord-tenant complaints filed in local courts. At some point in 1994, defendants hired two uniformed Cheltenham Township Police officers to "make sure" that certain tenants, including the plaintiff, were going to pay their rent. As plaintiff held the door open for them, the officers entered plaintiff's apartment, identified themselves and stated that they were acting "in interest of" the owners. The officers stated that they had been asked by the owners to ensure that plaintiff was paying his rent. A discussion followed in which the policemen took "copious notes" and during which plaintiff showed the officers a checkbook which demonstrated that he had paid his rent on time. This was the only such visit to occur during plaintiff's tenancy.

Plaintiff alleges, and defendants have not contested, that at the time of the incident involving the officers in 1994 there were no outstanding court orders against plaintiff, nor were there any pending actions against plaintiff for nonpayment of rent or any other reason. No provision in the lease authorized the use of police officers by defendants for collection of rent or other purposes.

From 1994 through 1998 the landlord-tenant relationship between the parties was marked by disputes over rent issues, resulting in defendants filing a number of landlord-tenant complaints against plaintiff for non-payment or late payment of rent. In 1997 and 1998, several judgments were entered against plaintiff in Montgomery County for such non-payment of rent.

After the incident involving the police in 1994, plaintiff complained to defendants in writing about the use of police to encourage rental payments, complaints which plaintiff says were ignored. In July of 1998, defendants notified plaintiff that his lease would not be renewed and that he was required to vacate the apartment on or before September 30. Plaintiff vacated the apartment on or about this date.

On November 15, 1998, plaintiff filed his Complaint pro se in this Court, alleging that the incident involving the police officers in 1994 had violated his civil rights and caused him to suffer "unprecedented emotional distress, humiliation, loss of consortium, sleeplessness, paranoia, and pain & suffering."

II. DISCUSSION

The defendants move to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(6), that is, for lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12. Defendants argue, *inter alia*, that plaintiff's Complaint is barred by the applicable statute of limitations for claims made under federal civil rights statutes. They assert that, on its face, the Complaint only identifies arguably actionable conduct by the police officers in 1994, and that plaintiff failed to file his Complaint within the either one or two-year statutes of limitations which have been held to apply to alleged violations of the federal civil rights statutes. If plaintiff's claims are barred by the statute of limitations, the Complaint must be dismissed under Rule 12(b)(6). See, e.g., Leone v. Aetna Casualty & Surety Co., 599 F.2d 556, 567 (3d Cir. 1979); Fed. R. Civ. P. 12(b)(6).

When reviewing a motion to dismiss under Rule 12(b)(6) on statute of limitations grounds, the Court exercises plenary review to determine "whether 'the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations.'" Cito v. Bridgewater Township Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989) (citations and emphasis omitted). Under Fed. R. Civ. P. 8(c), the statute of limitations constitutes an affirmative defense to an action. Generally, a statute of limitations defense cannot be asserted in the context of a Rule 12(b)(6) motion to dismiss; however, "an exception is made where the complaint facially shows noncompliance with the limitations period and the affirmative defense clearly appears on the face of the pleading." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 1 (3d Cir. 1994). It is likewise a settled rule that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The Court concludes in this case that the Complaint establishes the statute of limitations defense on its face and that plaintiff can prove no set of facts which would entitle him to relief.

A. Statute of Limitations

Defendants assert that plaintiff's claims are barred under the statute of limitations applicable to federal civil rights claims. While plaintiff has not alleged a violation of a specific civil rights statute, *pro se* complaints are to be construed liberally and complainants are not held to the precision of a code pleader. See Haines v. Kerner, 404 U.S. 519 (1972). Especially where a plaintiff pleads *pro se* in a suit for the protection of his civil rights, the court should endeavor to construe his pleadings without regard for technicalities. See, e.g., Kelly v. Butler County Board of Com'rs., 399 F.2d 133, 134-135 (3d Cir. 1968). At the same time, such complaints must contain more than 'vague and conclusory allegations' in support of their claims. Rotolo v. Borough of Charleroi, 532 F.2d 920, 923 (3d Cir. 1976).

Liberally construing plaintiff's Complaint, the Court will treat the Complaint as alleging a civil rights claim under the Fourteenth Amendment as it incorporates the Fourth Amendment right against unreasonable searches and seizures. The Court notes that there does not appear to be any other basis of federal jurisdiction.

In order to recover under the federal Civil Rights Act, 42 U.S.C. 1983, a plaintiff must plead and prove two essential elements. First there must be a deprivation of plaintiff's "rights, privileges, or immunities secured by the Constitution and laws" of the United States. Baker v. McCollan, 443 U.S. 137, 140 (1979). Second, plaintiff must prove that defendants deprived him of these rights under color of state law. See Monroe v. Pape, 365 U.S. 167, 171-88 (1961).

Construing plaintiff's Complaint liberally, the Court concludes that plaintiff alleges a deprivation of his constitutional rights which satisfies the first prong of a civil rights claim. With respect to the second prong, plaintiff alleges that two Cheltenham Township Police Officers entered his apartment, identified themselves as police officers, "and stated that they were acting in the interest of the owners of Melrose Station Apartment, FMP/Lakeside Associates." Complaint, 1. The law is clear that a private party, not an agent of the state, who willfully participates in a conspiracy with state officials to deprive a person of a constitutional right acts under color of state law for purposes of 1983. See Abbott v. Latshaw, 164 F.3d 141, 147-48 (3d Cir. 1998). Applying that rule of law to this case, plaintiff's Complaint will be construed as alleging that defendants deprived him of his constitutional rights under color of state law.

There is no federal statute of limitations for claims under 1983. However, the Supreme Court has directed federal courts to "borrow" the state's statute of limitations for the most analogous cause of action. See Wilson v. Garcia, 471 U.S. 261, 266-67 (1985). In analyzing 1983 claims, the Supreme Court determined that they are most analogous to common law tort actions because a 1983 claim involves a deprivation of life, liberty or property. Accordingly, Wilson held that 1983 claims are subject to the state statute of limitations for personal injury actions. Id. at 280; Springfield Township School District v. Knoll, 471 U.S. 288, 289 (1985) (per curiam).

Pennsylvania has a two year statute of limitations for personal injury actions. 42 Pa. Cons. Stat. 5524. (3) That is the statute of limitations applicable to this case. See, e.g., Fitzgerald v. Larson, 769 F.2d 160, 162 (3d Cir. 1985); Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir. 1985).

The act which forms the basis of plaintiff's claims, the incident involving the Cheltenham County Police officers in 1994, occurred more than four years before plaintiff filed his Complaint. While state law controls the period of limitations, federal law determines when a cause of action accrues and the statute begins to run. See Antonioli v. Lehigh Coal And Navigation Company, 451 F.2d 1171, 1175 (3d Cir. 1971). Under federal law, a cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury that is the basis of the action. See Sandutch v. Muroski, 684 F.2d 252, 254 (3d Cir. 1982).

Plaintiff was present during the incident involving the police, and so knew of the alleged injury as it occurred in 1994. Because the exact date of the police officers' visit in 1994 is not set forth in the Complaint, the latest the statute of limitations could conceivably have started running was December 31, 1994. Thus, the limitations period for filing a 1983 action expired at the latest on December 31, 1996. Since plaintiff failed to file this case until November 13, 1998, his claims are barred by the applicable statute of limitations, and plaintiff has therefore failed to state a claim upon which relief can be granted by this Court. Fed. R. Civ. P. 12(b)(6).

Plaintiff argues in his Response to Defendant's Motion to Dismiss that the statute of limitations is

not applicable because he "could not commence any formal legal action due to jeopardizing his living arrangements with Defendant." Liberally construed, this amounts to a claim that the police visit was part of a continuing pattern of harassment or intimidation by defendant which would make it appropriate to "measure . . . the running time of the required time period from the last occurrence of the discrimination and not from the first occurrence." Bronze Shields, Inc. v. New Jersey Dept. of Civ. Serv., 667 F.2d 1074, 1081 (3d Cir. 1981). To establish that a claim falls within this "continuing violations" theory, the plaintiff must do two things: first, he must demonstrate that at least one act occurred within the filing period. "The crucial question is whether any present violation exists." United Airlines, Inc. v. Evans, 431 U.S. 553, 558 (1977). Next, the plaintiff must establish that the harassment is "more than the occurrence of isolated or sporadic acts of intentional discrimination." Jewett v. International Tel. and Tel. Corp., 653 F.2d 89, 91 (3d Cir. 1981). Unfortunately, plaintiff has not offered any evidence of more recent harassment or any other harassment or intimidation. While ample evidence appears in plaintiff's submissions that he and his landlord had a fractious and often confrontational relationship, he has simply failed to allege any other incident which is comparable to the 1994 incident involving police officers which forms the basis of his Complaint. Absent such evidence, no continuing violation exists which would extend the applicable statute of limitations.

Plaintiff's Response might also be construed as a more general request for this Court to exercise its power of "equitable tolling" to toll the statute of limitations for plaintiff's claims. The Third Circuit has held that the restrictions on equitable tolling must be "scrupulously observed." Sch. Dist. of City of Allentown v. Marshall, 657 F.2d 16, 19 (3d Cir. 1981). Equitable tolling "is not an open-ended invitation to the courts to disregard limitations periods simply because they bar what may be an otherwise meritorious cause." Id. at 20. Although a court might feel that justice would be served by tolling the filing period, "experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." Id. (citing Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980)).

Equitable tolling is appropriate primarily where: (1) the defendant has actively misled the plaintiff respecting the cause of action; (2) the plaintiff has in some extraordinary way been prevented from asserting his rights; or (3) the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum. Smith v. American President Lines, Ltd., 571 F.2d 102, 109 (2d Cir. 1978); Kocian v. Getty Refining & Marketing Co., 707 F.2d 748, 753 (3d Cir. 1983). Plaintiff has offered no evidence, and the Court can see no reason, which would support a grant of equitable tolling in this case.

Plaintiff also directs the Court's attention to The Federalist No. 78, in which Alexander Hamilton pointed to the supremacy of the Constitution over the statutes of the United States. Plaintiff exhorts the Court not to put statutory regulations over the interests of the Constitution. While statutes of limitations, along with many other procedural protections afforded litigants in both federal and state courts, might appear arbitrary to some litigants, the purpose of any statute of limitations is to expedite litigation and thus discourage delay and the presentation of stale claims which may greatly prejudice the defense of such claims. See Ulakovic v. Metropolitan Life Ins. Co., 16 A.2d 41 (Pa. 1940). Thus the defense of the statute of limitations is not technical, but "substantial and meritorious . . . Such statutes are vital to the welfare of society and are favored in the law." Schmucker v. Naugle, 231 A.2d 121, 123 (Pa. 1967). Legislatures must balance

interests of fairness and accuracy against the goal of providing litigants with an open and accessible court system, and courts such as this one are rightly bound by their dictates. Where, as here, a plaintiff fails to bring his claims within a statutorily approved time period, those claims must be dismissed.

III. CONCLUSION

For the foregoing reasons, the Court declines to address the other issues raised in defendants' Motion to Dismiss as moot, and will grant the defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6).

BY THE COURT:

JAN E. DUBOIS

- 1. The original of the "Legal Brief" and its attachments shall be docketed.**
- 2. There are only a few facts alleged in plaintiff's Complaint. Plaintiff's "Legal Brief" (received December 8, 1998) provides supplemental information and clarifies plaintiff's allegations at certain points. Given plaintiff's pro se status, the Court will include this additional information in its recitation of the factual allegations in this case. However, in ruling on the merits of defendants' Motion to Dismiss, the Court will limit itself to those facts set forth in the Complaint. Fed. R. Civ. P. 12(b).**
- 3. 42 Pa. Cons. Stat. 5524 provides in relevant part:**

The following actions and proceedings must be commenced within two years: ...

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

42 Pa. Cons. Stat. 5524 (West 1998).