

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

RAYMOND McCULLUM : CIVIL ACTION
v. :
CITY OF PHILADELPHIA, et al. : NO. 98-5858

MEMORANDUM AND ORDER

BECHTLE, J. JULY , 1999

Presently before the court is defendant Aramark Services, Inc.'s ("Aramark") Motion for Judgment on the Pleadings and plaintiff Raymond McCullum's ("Plaintiff") response thereto. For the reasons set forth below, the court will deny the motion.

I. BACKGROUND

On November 5, 1998, Plaintiff commenced the instant action by filing a Complaint in which he alleges, among other things, that he was assaulted by defendant Keith Smith ("Smith"), an employee of Aramark, thereby depriving him of his constitutional rights in violation of 42 U.S.C. § 1983. At the time of the incident, Plaintiff was an inmate at the Curran-Fromhold Correctional Facility ("CFCF"). Pursuant to a contract with the City of Philadelphia ("City"), Aramark provided food services at CFCF. (Aramark's Mot. Ex. B., Service Agreement.) Aramark was to "abide by any written security policies, procedures, rules and regulations of the Philadelphia Prison System, which [were] made known in advance to [it]." (Aramark's Mot. Ex. B, Service Agreement ¶ 2.7.) In addition, the City agreed to supply Aramark "with inmate workers in such numbers and at such times as

requested by [Aramark]." (Aramark's Mot. Ex. B., Service Agreement ¶ 3.9(c).)

The facts, according to Plaintiff's allegations in the Complaint, are as follows. On or about December 12, 1996, Plaintiff was assigned to kitchen duties at CFCF, under the supervision of Smith. (Compl. ¶ 10.) At approximately 7:00 p.m., Plaintiff commented to a group of judges touring the kitchen facility that the food provided at the facility was not enough. (Compl. ¶ 11.) Immediately after this incident, Smith sent Plaintiff on his dinner break. (Compl. ¶ 12.) When Plaintiff returned to work, Smith assigned him to a cold packing area in the kitchen facility. (Compl. ¶ 13.) Smith then unscrewed a handle from a scrub brush, brandished it in front of Plaintiff and proceeded to hit Plaintiff with the handle in the stomach. (Compl. ¶¶ 14-15.) After hitting Plaintiff, Smith told him to get up. (Compl. ¶ 16.) Then Smith grabbed Plaintiff by the shirt, lifted him and dropped him. (Compl. ¶ 16.) Plaintiff was taken by other inmates to the front office of the corrections officers and Smith followed. (Compl. ¶ 17.) While in the office, Smith explained that Plaintiff had been "tapped" with a stick. (Compl. ¶ 18.)

On February 23, 1999, Aramark answered the Complaint. Aramark's Answer alleges that Plaintiff's Complaint is barred with respect to Aramark because there was no state action as required by 42 U.S.C. § 1983 and because respondeat superior liability is not cognizable under 42 U.S.C. § 1983. (Ans. ¶ 1,

First & Second Affirmative Defenses.) Aramark's instant motion for judgment on the pleadings raises these same two issues.

II. LEGAL STANDARD

Under the Federal Rules of Civil Procedure, “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is subject to the same standard as a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). DeBraun v. Meissner, 958 F. Supp. 227, 229 (E.D. Pa. 1997); Constitution Bank v. DiMarco, 815 F. Supp. 154, 157 (E.D. Pa. 1993). “Therefore, viewing all the facts in a light most favorable to the non-moving party and accepting as true the allegations in that party's pleadings and as false all controverted assertions of the movant, the court may only grant the motion if it is beyond doubt that the non-movant can plead no facts that would support his claim for relief.” Constitution Bank, 815 F. Supp. at 157 (citations omitted).

III. DISCUSSION

The court will deny Aramark's motion. First, the court will address Aramark's state actor argument. Second, The court will address Aramark's respondeat superior argument.

A. State Action

To state a claim under § 1983, "a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). A court may use several approaches in determining whether state action is present. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 939 (1982) (listing approaches to state action analysis, including public function, state compulsion, nexus and joint action tests). Under the public function test, a private party acts under color of state law when it performs a function or power "traditionally exclusively reserved to the State." Flagg Bros. v. Brooks, 436 U.S. 149, 157 (1978); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974). Plaintiff asserts that Aramark is a state actor because it performed the public function of providing food and food-related services at CFCF.¹

In West, the Supreme Court held that a physician, employed by the State of North Carolina pursuant to a contractual agreement to provide medical services to state prison inmates, acted under color of state law for purposes of § 1983 when performing his duties in treating the plaintiff inmate's injury.

¹ Aramark attempts to categorize Plaintiff's state action argument under the symbiotic relationship test, set forth in Burton v. Wilmington Parking Auth., 365 U.S. 715, 725 (1951). However, the court finds that the question of Aramark's status as a state actor is more fittingly analyzed under the public function test.

West, 487 U.S. at 54. The Court reasoned that the State's constitutional obligation under the Eighth Amendment to provide adequate medical care to those whom it has incarcerated comes from the fact that "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.'" Id. (quoting Estelle v. Gamble, 429 U.S. 97 (1976)). The court emphasized its holding that such a physician could fairly be said to be a state actor by reasoning that "[i]t is only those physicians authorized by the State to whom the inmate may turn." Id. at 55. Consequently, the court held that "[c]ontracting out prison medical care does not relieve the State of its constitutional duty to provide medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their Eighth Amendment rights." Id. at 56.

In the context of privately run prisons, courts have applied the public function test and found that private contractors who run prisons have acted under color of state law for purposes of § 1983. See Street v. Corrections Corp. of Am., 102 F.3d 810, 814 (6th Cir. 1996) (holding that private company performing function of incarcerating inmates was acting under color of state law); Kesler v. King, 29 F. Supp. 2d 356, 370-71 (S.D. Tex. 1998) (same); Giron v. Corrections Corp. of Am., 14 F. Supp. 2d 1245, 1247-51 (D.N.M. 1998) (holding that corrections officer who was employed by private company that operated prison and who raped inmate, was state actor under § 1983); Blumel v. Mylander, 919 F.

Supp. 423, 426-27 (M.D. Fla. 1996) (holding private contractor that contracted with Florida county to run jail was state actor for purposes of § 1983); Plain v. Flicker, 645 F. Supp. 898, 907 (D.N.J 1986) (stating that "if a state contracted with a private corporation to run its prisons it would no doubt subject the private prison authorities to § 1983 suits under the public function doctrine"); see also LeMoine v. New Horizons Ranch and Center, 990 F. Supp. 498, 502-03 (N.D. Tex. 1998) (holding that private company that contracted with state to assume state's responsibility for care of troubled juveniles was state actor for purposes of § 1983 under public function analysis).²

In light of the above-mentioned relevant case law, the court finds that Plaintiff has sufficiently alleged facts which show Aramark was acting under color of state law for purposes of § 1983. "The function of incarcerating people, whether done

² In Richardson v. McKnight, 521 U.S. 399 (1997), the Supreme Court held that employees of a private prison management firm are not entitled to qualified immunity from suit by prisoners charging a violation of § 1983. Id. at 401. However, the Court declined to address whether the defendants were liable under § 1983 even though they were employed by a private firm. Id. at 413 (stating that "it is for the District Court to determine whether, under this Court's decision in Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), defendants actually acted 'under color of state law'"). Since Richardson, several courts have held that private companies who provide services in prison facilities are state actors for purposes of § 1983. Kesler, 29 F. Supp. at 370-71; Giron, 14 F. Supp. 2d at 1247-51; Nelson v. Prison Health Servs., 991 F. Supp. 1452, 1463 (M.D. Fla. 1997). The instant motion before the court raises only a question of whether Aramark was acting under color of state law for purposes of § 1983 and not whether it is entitled to qualified immunity. Thus, Richardson is irrelevant to the court's state action analysis.

publicly or privately, is the exclusive prerogative of the state." Giron, 14 F. Supp. at 1249. Providing food service, like medical care, to those incarcerated people is one part of the government function of incarceration. See Farmer v. Brennan, 511 U.S. 825, 832 (1994) (holding that Eighth Amendment imposes duties on prison officials to provide humane conditions of confinement, including duty to "ensure that inmates receive adequate food"). Thus, the City of Philadelphia had a duty to provide food service to inmates housed at CFCF. (Aramark's Mot. Ex. B., Service Agreement (stating that City has obligation to provide all food service to persons who are inmates of City correctional facilities).) Aramark entered into a contract with the City of Philadelphia to provide such food services at CFCF. Plaintiff was then assigned to kitchen duty, under the supervision of Aramark's employee, Smith, and was subsequently assaulted. (Compl. ¶¶ 10 & 15.) The court finds that Aramark acted under color of state law for purposes of § 1983 by performing the traditional government function of providing food service at a prison. See Giron 14 F. Supp. 2d at 1249 (stating that "[i]f a state government must satisfy certain constitutional obligations when carrying out its functions, it cannot avoid those obligations and deprive individuals of their constitutionally protected rights by delegating governmental functions to the private sector").

B. Respondeat Superior

The doctrine of respondeat superior may not be employed to impose § 1983 liability. Monell v. Department of Soc. Servs., 436 U.S. 658, 691 (1978); Blanche Road Corp. v. Bensalem Township, 57 F.3d 253, 263 (3d Cir. 1995). Aramark asserts that, assuming the of truth Plaintiff's allegations against Smith, Plaintiff could still not maintain an action against Smith's employer, Aramark. However, Plaintiff's Complaint does not seek to impose liability upon Aramark through a respondeat superior theory. Instead, Plaintiff seeks to impose direct liability upon Aramark, through its associated policies or customs which were allegedly violative of Plaintiff's constitutional rights. The Complaint states that "Defendant[] Aramark . . . as a matter of policy or practice, [has], with deliberate indifference to the rights of inmates, failed to adequately discipline, train, supervise and/or otherwise direct employees . . . concerning the rights of inmates, thereby causing defendants in this case to engage in the unlawful conduct described herein." (Compl. ¶ 33.) See City of Canton v. Harris, 489 U.S. 378, 388 (1989) (stating that state actor "can be liable under § 1983 for inadequate training of its employees"); Monell, 436 U.S. at 690-91 (1978) (discussing imposition of § 1983 liability on state actors when a custom or policy causes injury).

IV. CONCLUSION

For the foregoing reasons, the court will deny Aramark's motion.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of July, 1999, upon
consideration of defendant Aramark Services, Inc.'s Motion for
Judgment on the Pleadings and plaintiff Raymond McCullum's
response thereto, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.