

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

DONALD S. SABATINI	:	Civil Action
	:	
v.	:	
	:	
ROBERT J. REINSTEIN, DEAN OF	:	No. 99-2393
TEMPLE UNIVERSITY SCHOOL OF	:	
LAW AND VICE PRESIDENT,	:	
TEMPLE UNIVERSITY	:	
	:	
and	:	
	:	
TEMPLE UNIVERSITY SCHOOL OF LAW	:	
	:	
and	:	
	:	
TEMPLE UNIVERSITY	:	

MEMORANDUM

Ludwig, J.

August 18, 1999

Defendants Robert J. Reinstein, Temple University School of Law,¹ and Temple University move to dismiss the complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6).² Jurisdiction is federal question and supplemental. 28 U.S.C. §§ 1331, 1367.

¹Defendants note that the case-caption incorrectly designates James E. Beasley School of Law as Temple University School of Law.

²Under Rule 12(b)(6), the allegations of the complaint are accepted as true and all reasonable inferences are drawn in the light most favorable to plaintiff. See Wiener v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997). Claims alleging civil rights violations are held to a “liberal standard,” and should not be dismissed “unless it is readily discernable that the facts cannot support entitlement to relief.” Lake v. Arnold, 112 F.3d 682, 684-85 (3d Cir. 1997) (quoting Carter v. City of Philadelphia, 989 F.2d 117, 188 (3d Cir. 1993)).

The following is alleged in the complaint. Both in May 1997 and May 1998, Temple campus police officers ordered plaintiff to stop distributing leaflets in the lobby of McGonigle Hall while law school's graduation ceremonies were being held. Compl. ¶ 30. The leaflets consisted of newspaper articles accusing Temple University of having a poor civil rights record. Id. at ¶¶ 23-24. Thereafter, a campus police supervisor threatened to arrest plaintiff unless he stopped distributing the leaflets on Temple property. Id. at ¶¶ 32-39.

On May 10, 1999, plaintiff filed this § 1983 action asserting violations of freedom of speech and equal protection under the federal constitution together with supplemental claims under the Pennsylvania Constitution were also alleged. Defendants moved to dismiss the first amendment claims against defendant Reinstein (Counts I and II) as well as those under the equal protection clause of the fourteenth amendment (Counts III and IV) and article I of the Pennsylvania Constitution (Counts V and VI) against all defendants. The motion to dismiss will be granted and the claims dismissed.

1. Claims solely against defendant Robert J. Reinstein - "It is well-settled that liability under § 1983 may not be based on the doctrine of respondeat superior." Rouse v. Plantier, ___ F.3d ___, ___ (3d Cir. 1999) (citation omitted). To hold individual supervisors liable under § 1983, plaintiff must prove "that they personally 'participated in violating [plaintiff's] rights, . . . that [they] directed others to violate them, or that [they] . . . had knowledge of and acquiesced in

[their] subordinates' violations.” Robinson v. City of Pittsburgh, 120 F.3d 1286, 1293 (3d Cir. 1997) (quoting Baker v. Monroe Twp, 50 F.3d 1186, 1190-91 (3d Cir. 1995).

Here, the complaint does not specify that Reinstein personally participated in the disputed incidents or that he approved of or acquiesced in the actions taken against plaintiff. Nor are the allegations sufficient to support such inferences. The only persons alleged to have been personally involved are Temple police officers - who are not named as defendants. Plaintiff's statement that “[a]t all times material thereto, [d]efendants acted through their agents and employees, whose conduct [d]efendants had a duty to supervise and control,” compl. ¶ 10, sounds in respondeat superior liability. Accordingly, the claims against Reinstein must be dismissed.³

2. Equal protection claims (Counts III and IV) - To state an equal protection claim, plaintiff must show that:

(1) the person, compared with others similarly situated, was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion, to punish or inhibit the

³The factual matters set forth in plaintiff's rebuttal brief may not be considered in determining whether Reinstein had the requisite personal involvement. “It is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.” Commonwealth of Pa. v. Pepsico, Co., 836 F.2d 173, 181 (3d Cir. 1988) (quoting Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1107 (7th Cir. 1984)). However, plaintiff's request for leave to amend will be granted. “[L]eave [to amend] shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a).

exercise of constitutional rights, or by a malicious or bad faith intent to injure the person.”

Homan v. City of Reading, 963 F. Supp. 485, 490 (E.D. Pa. 1997) (quoting Zahra v. Town of Southold, 48 F.3d 974, 683 (2d Cir. 1995)); see also Government of Virgin Islands v. Harrigan, 791 F.2d 34, 36 (3d Cir. 1986); Knepp v. Lane, 848 F. Supp. 1217, 1221 (E.D. Pa. 1994).⁴

Here, no facts have been averred that demonstrate that plaintiff was selectively treated. The basis of his equal protection claim is the same as that of his first amendment claim - that he was prevented from distributing leaflets at the law school graduation ceremony. Plaintiff does not contend that other persons or groups were engaged in similar conduct or that they were treated differently. It is not enough to allege that defendants violated plaintiff's first amendment rights; his rights must have been violated while the rights of others engaged in like conduct were not. Accordingly, Counts III and IV must be dismissed.

3. Pennsylvania Constitutional law claims (Counts V and VI) - The

⁴Plaintiff correctly maintains that it is not necessary for the complaint to plead that he is a member of a protected class in order to state a claim under the fourteenth amendment equal protection clause. A complaint need only allege that plaintiff was intentionally treated differently from those similarly situated. See Jubilee v. Horn, 975 F. Supp. 761, 766-67 (E.D. Pa. 1997); see also Esmail v. Macrane, 53 F.3d 176-80 (7th Cir. 1995) (“[N]either in terms nor in interpretation is the [fourteenth amendment’s equal protection] clause limited to protecting members of identifiable groups.”). Whether the alleged discrimination is based on membership in a protected class or, as here, exercise of a fundamental right implicates the level of scrutiny required. See Artway v. Attorney General of State of N.J., 81 F.3d 1235, 1267 (3d Cir. 1996).

complaint also alleges violations of Pennsylvania's constitutional rights to freedom of expression and petition. Pa. Const. art. I, §§ 7, 20.

Although its courts have not decided whether a private cause of action exists under sections 7 and 20 of the Pennsylvania Constitution, federal courts have held that there is no such right. See Lees v. West Greene School Dist., 632 F. Supp. 1327, 1335 (W.D. Pa. 1986) (article 1, § 7 “contains no provision, express or implied, which creates a private right of action for violations of an individual’s right to free speech”); Pendrell v. Chatham College, 386 F. Supp. 341, 344 (W.D. Pa. 1974) (“Article I, Section 7 . . . imposes a limitation upon the power of the State to interfere with freedom of the press and freedom of speech, but contains no self-executing private cause of action, express or implied.”); Holder v. City of Allentown, 1994 WL 236546, at *3 (E.D. Pa. May 27, 1994) (granting summary judgment as to § 7 claim because no such cause of action exists); cf. Western Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co., 335 Pa. Super. 493, 500, 485 A.2d 1, 5 (1985) (section 7 “is not a self-executing, affirmative declaration” of an individual’s right to free speech; constitutional provisions “are usually only commands to the legislature to enact laws to carry out the purposes of the framers of the Constitution, or mere restrictions upon the power of the legislature to pass laws”) (citations omitted).⁵ Accordingly, these claims will also

⁵Although case law has not specifically dealt with the right to bring a cause of action under § 20, the prohibition against such claims under § 7 applies with equal force to the analogous freedom of petition provision. See Western Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co., 335 Pa. Super.

be dismissed.

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493, 499, 485, A.2d 1, 4 (1985) (the court's "interpretation of section 7 is controlling also of any interpretation of section[] . . . 20.").

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	:	
TEMPLE UNIVERSITY	:	

ORDER

AND NOW, this ___ day of August, 1999, the motion to dismiss of defendants Robert J. Reinstein, Temple University School of Law, and Temple University is granted. Fed. R. Civ. P. 12(b)(6). Counts III, IV, V, and VI are dismissed against all defendants. Counts I and II are dismissed without prejudice as to defendant Reinstein.

Edmund V. Ludwig, J.