

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

MARK L. MORRO,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 97-CV-0389
WACKENHUT CORRECTIONS	:	
CORPORATION, INC.,	:	
Defendant.	:	

**MEMORANDUM -ORDER**

**Green, S.J.**

**October 12, 1999**

Presently before the court are cross motions for summary judgment by Plaintiff Mark Morro and Defendant Wackenhut Corrections Corporation, Inc., and the responses from both parties thereto. For the reasons set forth below, Plaintiff's Motion will be DENIED and Defendant's Motion will be GRANTED as to Count One relating to the leaky toilet in his cell. Count Two of Plaintiff's claims related to the general prison conditions will be DISMISSED. Defendant's Motion will be GRANTED as to Count Three relating to Defendant's alleged interference with Plaintiff's access to the courts. Defendant's Motion will be DENIED as to Count Four, Plaintiff's claim that Defendant violated his right to freedom of religion.

**I. FACTUAL AND PROCEDURAL HISTORY**

On September 3, 1997, Plaintiff Morro brought action under 42 U.S.C. § 1983 ("Section 1983") for violations of his constitutional rights. By Order of this court dated December 22, 1997, Plaintiff's Motion to Amend Complaint was granted, and Plaintiff added a First Amendment claim to the complaint as well as additional allegations concerning his Eighth Amendment claim. In sum, Plaintiff Morro constitutional claim may be divided into four counts

against the Defendant, three under the Eight Amendment and one under the First Amendment. Count One alleges that Plaintiff Morro was forced to live in unsanitary conditions in a cell where the floor was covered with two inches of toilet water, including urine and feces, as a result of a leaking toilet. Plaintiff Morro claims that he complained of and filed grievances concerning the situation, but the problem was not fixed until after he slipped and was injured. Count Two claims that general prison conditions at the Delaware County Prison violate the Eight Amendment because the cells and cafeteria are infested with rats and roaches. Plaintiff's Count Three alleges that during a search of his cell at the Delaware County Prison, correctional officers employed by Defendant removed legal documents from his cell in an effort to deny him access to the courts. Count Four claims that Defendant's employees returned to the sender, mail addressed to Plaintiff Morro and marked the returned mail as "racial or religious hatred" in violation of his First Amendment right to freedom of religion.

On May 28, 1999, Plaintiff Morro filed a Motion for Summary Judgment which Defendant Wackenhut responded to on June 9, 1999. Defendant Wackenhut also filed a separate Motion for Summary Judgment on June 9, 1999 and Plaintiff Morro responded on June 24, 1999<sup>1</sup>.

## **II. DISCUSSION**

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no

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<sup>1</sup> Plaintiff Morro stated in his Answer to Defendant's Motion for Summary that he no longer contends that Defendant violated his constitutional rights by restricting him to his cell for 22 hours per day. (Pl.'s Answer to Def.'s Mot. for Summ. J. at 1). Accordingly, this claim, first raised in Plaintiff's Amended Complaint, will be dismissed by the Court.

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the nonmoving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

**A. Plaintiff’s Motion for Summary Judgment**

Plaintiff’s Motion for Summary Judgment (“Plaintiff’s Motion”) essentially reiterates the factual allegations of his complaint as outlined above. Defendant Wackenhut does not dispute in the Response to Plaintiff’s Motion for Summary Judgment (“Def.’s Response”) that (1) Plaintiff Morro slipped and fell when he was attempting to enter his bed at Delaware County Prison, (2) some of Plaintiff’s incoming mail was marked “racial or religious hatred” and returned to the sender, (3) some of Plaintiff’s legal papers were lost or misplaced after a search of Plaintiff’s cell, and (4) the toilet fixture in Plaintiff’s cell at Delaware County Prison leaked. (See Def.’s Resp. at 1-2.) Defendant Wackenhut, however, does dispute that any of Plaintiff’s factual allegations constitute a violation of Plaintiff’s constitutional rights. (See Def.’s Resp. at 2.)

Additionally, Plaintiff Morro concludes in the final paragraph of Plaintiff’s Motion that “Plaintiff believes that there are issues to be brought before the court.” (See Pl.’s Mot. at 2.) Construed liberally, Plaintiff’s Motion appears to argue in favor of a trial rather than for judgment as a matter of law. Viewing the evidence in a light most favorable to Defendant Wackenhut, a genuine issue of material facts exists as to whether Defendant violated the constitutional rights of the Plaintiff Morro. Thus, Plaintiff Morro has failed to demonstrate that

there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Accordingly, Plaintiff's Motion for Summary Judgment is denied.

**B. Defendant's Motion for Summary Judgment**

Defendant Wackenhut principally presents four arguments to support its Motion for Summary Judgment (Def.'s Motion): 1) Defendant is not liable for Plaintiff's injury because respondeat superior cannot form the basis of liability under Section 1983, 2) Count Two of Plaintiff's claim is barred by the Prison Litigation Reform Act, 3) Plaintiff's allegations about the confiscation of legal papers from his cell does not allege actual injury, and 4) Plaintiff Morro failed to establish a violation of his right to freedom of religion because the return of his incoming mail was rationally related to legitimate penological interests.

It is well settled that the doctrine of respondeat superior cannot serve as the basis for liability in a Section 1983 claim. Rouse v. Plaintier, 182 F.3d 192, 200 (3d Cir. 1999). Plaintiff Morro alleges in his Answer to Defendant's Motion for Summary Judgment ("Pl.'s Answer") that Defendant Wackenhut is liable for the actions and/or inactions of its employees. (See Pl.'s Answer at 2.) Moreover, Plaintiff has not argued that Defendant has acted with deliberate indifference. On summary judgment, Plaintiff has the burden of coming forth with evidence that raises a genuine dispute of material fact. Plaintiff has not established and no reasonable inference may be drawn that Defendant had knowledge of or was directly involved in the alleged constitutional violation. Accordingly, Plaintiff's first claim which seeks to hold Defendant Wackenhut liable under the doctrine of respondeat superior is not viable. Defendant's Motion for Summary Judgment will be granted as to Count One.

Next, the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(e), provides that “

[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” The PLRA, 42 U.S.C. §1997e(c)(2), further provides that, “[i]n the event that a claim . . . fails to state a claim upon which relief may be granted, . . . the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies. At his deposition, Plaintiff Morro was asked by Defendant’s counsel if he was harmed by the alleged infestation of rodents and roaches. Morro responded, “Not physically, no.” (See Plaintiff’s Deposition Testimony at pp. 80-81.) Moreover, Plaintiff Morro reiterates in Plaintiff’s Answer that he has suffered no physical injury and indicates that his injury may be psychological. (See Pl.’s Answer at 2.) Recovery for such an injury is clearly barred by the Prison Litigation Reform Act without a prior showing of physical injury. Therefore, Plaintiff Morro has failed to state a claim for which relief may be granted under the PLRA. Count Two of Plaintiff Morro’s claim relating to general prison conditions will be dismissed.

In further support of its motion, Defendant Wackenhut relies on the Supreme Court’s holding in Lewis v. Casey, 518 U.S. 343 (1996), which held that to pursue a claim of denial of access to the courts an inmate must allege actual injury, such as the loss or rejection of a legal claim. See Oliver v. Fauver, 118 F.3d 175, 177 (3d Cir. 1997). Viewed broadly, Plaintiff’s complaint does not allege actual injury to a legal claim because of the confiscation of his documents. Plaintiff’s legal claims were not prejudiced by the loss of his papers, as illustrated by Plaintiff’s admission that the documents taken were only copies of those in the possession of his attorney. Furthermore, Plaintiff has not come forth with any evidence that shows that he was injured as a result of the confiscation. Because Plaintiff Morro has alleged no actual injury as a



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CORPORATION, INC., :  
Defendant. :

**ORDER**

AND NOW, this 12th day of October, 1999, upon consideration of Plaintiff's and Defendant's cross motions for summary judgement and responses from both parties thereto, IT IS HEREBY ORDERED that Plaintiff's Motion is DENIED and Defendant's Motion is GRANTED as to Count One regarding the leaky toilet in his cell. IT IS FURTHER ORDERED that Count Two of Plaintiff's claim related to the general prison conditions is DISMISSED and Defendant's Motion is GRANTED as to Count Three relating to Defendant's alleged interference with access to the courts. Defendant's Motion is DENIED as to Count Four, Plaintiff's claim that Defendant violated his right to freedom of religion. IT IS FURTHER ORDERED that Plaintiff's claim related his confinement to his cell for 22 hours per day is DISMISSED.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.