

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

<b>CARL MILTON PHELPS, JR.</b>	<b>:</b>	<b>CIVIL ACTION</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>NO. 04-CV-4574</b>
	<b>:</b>	
<b>CITY OF PHILADELPHIA</b>	<b>:</b>	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**March 22 , 2005**

Plaintiff Carl Milton Phelps, Jr. (“Plaintiff”) brings this action against the City of Philadelphia (“Defendant”). Now before the Court is Defendant’s Motion to Dismiss. For the reasons stated below, the Court will grant the Motion.

**I. Background**

Plaintiff’s handwritten Complaint appears to allege generally that the Philadelphia Police Department has not responded to incident reports about unauthorized entry into his residence at 5449 Malcolm Street from 1987 to 1999. See Complaint.<sup>1</sup> Plaintiff also recites multiple incidents of illegal entry into his home by civilian neighbors, who are not listed as defendants. See id. He further alleges that on two unspecified occasions, City of Philadelphia employees entered his home without a warrant. See id.<sup>2</sup>

---

<sup>1</sup> The Complaint specifically states that “this action is because of non-reaction of the City’s police and District Attorneys [sic] office on Incident Reports about unauthorized entry into my home at 5449 Malcolm St.” Complaint.

<sup>2</sup> Plaintiff also states in his Complaint that some time in 2000 he shot an unnamed individual who he claims was unlawfully in his home and that the individual was eventually found dead. See Complaint. The Complaint further states that Plaintiff was arrested and

## II. Legal Standard

When deciding a motion to dismiss pursuant to Rule 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). However, courts “need not credit a complaint’s bald assertions or legal conclusions when deciding a motion to dismiss.” Morse v. Lower Merion Sch. Dist., 132 F.2d 902, 906 (3d Cir. 1997). Although allegations in a complaint shall be construed favorably to the pleader, courts should not read causes of action into a complaint when they are not present. Krouse v. American Sterilizer Co., 126 F.2d 494, 499 n.1 (3d Cir. 1997).

## III. Analysis

### A. Section 1983 Claim

It appears that Plaintiff is alleging violations of his constitutional rights and seeking recovery under 42 U.S.C. § 1983. To establish a claim under 42 U.S.C. 1983, Plaintiff must show that Defendant, acting under color of law, deprived him of a right or privilege secured by the Constitution or laws of the United States. See Williams v. Borough of West Chester, 891 F.2d 458, 464 (3d Cir. 1989); Wiley v. Jeffes, 777 F.2d 143, 145 (3d Cir. 1985). Defendant  

---

convicted for assaulting a neighbor, about whom he has complained to the police since 1987. See id.

cannot be held liable pursuant to Section 1983 for an injury solely inflicted by its employee. See Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978). Defendant is responsible under Section 1983 only when “the execution of [Defendant’s] policy or custom ... inflicts the injury.” Id. at 694. Therefore, to state a claim on which relief can be granted, Plaintiff is required to show that a state actor deprived him of his constitutional rights, and that the policy, custom, or practice of Defendant caused such deprivation. See id.

Plaintiff fails to plead any facts from which he could recover against Defendant. His claim that police allegedly failed to respond to incident reports, even if true, does not amount to a deprivation of a constitutional right. Further, Plaintiff’s allegations that “City employees” entered his home without a warrant are insufficient to establish the policy, custom or practice necessary to hold Defendant liable under Section 1983.

#### **B. Statute of Limitations**

Claims brought under Section 1983 are subject to state statutes of limitations governing personal injury actions. See Owens v. Okure, 488 U.S. 235, 241 (1989); Cito v. Bridgewater Township Police Dep’t, 892 F. 2d 23, 25 (3d Cir. 1989) (stating that the statute of limitation for any Section 1983 claim is the state statute which limits actions for personal injuries). Under 42 Pa. C.S.A. § 5524(7), a two-year statute of limitations is imposed for “any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct ...” Pa. C.S.A. § 5524(7). Accordingly, the applicable statute of limitations for any civil rights claims arising under Section 1983 is two years.

A Section 1983 action accrues on the date a plaintiff knew or should have known that his or her rights had been violated. Lanning v. Southeastern Pennsylvania Transp. Auth., 176 F.R.D.

132, 146 (E.D. Pa. 1997) (citing Genty v. Resolution Trust Corp., 937 F.2d 889 (3d Cir. 1991)).

In the present case, the only state action alleged by Plaintiff occurred some time between 1987 and 2000. See Complaint. Accordingly, even if the Complaint alleged facts sufficient to maintain a cause of action against Defendant, Plaintiff's claims would be barred by the applicable statute of limitations.

#### **IV. Conclusion**

For the foregoing reasons, the Court will grant Defendant's Motion to Dismiss. An appropriate Order follows.

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

<b>CARL MILTON PHELPS, JR.</b>	<b>:</b>	<b>CIVIL ACTION</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>NO. 04-CV-4574</b>
	<b>:</b>	
<b>CITY OF PHILADELPHIA</b>	<b>:</b>	

**ORDER**

**AND NOW**, this 22<sup>nd</sup> day of March, 2005, upon consideration of Defendant's Motion to Dismiss (docket no. 8), and Plaintiff's Response thereto (docket no. 11), it is **ORDERED** that the Motion is **GRANTED** for the reasons stated in the accompanying Memorandum.

**BY THE COURT:**

**S/Bruce W. Kauffman**  
**BRUCE W. KAUFFMAN, J.**