

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

SHERRI CAPPELLI, ROBERT CAPPELLI,	:	
and ANDREW CAPPELLI, Individually and as	:	
Administrators and Personal Representatives	:	
Representatives of THE ESTATE OF	:	
RICHARD CAPPELLI	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 98-5983
HAVERFORD TOWNSHIP, HAVERFORD	:	
TOWNSHIP POLICE DEPARTMENT,	:	
DENNIS DONNELLY, KEITH GILMAN,	:	
PETER BOGUTZ, JOHN VIOLA, MICHAEL	:	
FLYNN, ROBERT MURPHY, STEVEN	:	
FORTROW, Individually and in their capacity as	:	
Police Officers in the Haverford Township Police:	:	
Department, DEFENSE TECHNOLOGY	:	
CORPORATION OF AMERICA and ARMOR	:	
HOLDINGS, INC.	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

March , 1999

Presently before the court is Defendants Haverford Township, Haverford Township Police Department, Dennis Donnelly, Keith Gilman, Peter Bogutz, John Viola, Michael Flynn, Robert Murphy and Steven Fortrow's Motion to Dismiss and Plaintiffs' Response thereto. For the following reasons, Defendants' Motion will be granted with respect to Plaintiffs' claims against the Haverford Township Police Department and Plaintiffs' claims for punitive damages against Haverford Township and Defendant Officers in their official capacities and denied with respect to Defendant Officers' qualified immunity defense.

I. FACTUAL BACKGROUND

Plaintiffs allege in their Complaint that on or about January 9, 1997, decedent Richard

Cappelli was inside a bar located at 1901 Old West Chester Pike, Havertown, Pennsylvania when he was approached by the Defendant Officers. A physical confrontation ensued between Defendant Officers and Richard Cappelli, wherein Defendant Officers “repeatedly and unnecessarily sprayed Richard Cappelli’s face, nose, mouth, eyes and throat with pepper spray.” (Compl. ¶ 17.) Plaintiffs allege that the pepper spray attacks “occurred while Richard Capelli was standing, while he was on the ground, and while he was on the ground in the prone position, with his hands and feet restrained behind his back. The Officers restrained Richard Cappelli by physical force and with handcuffs.” (Compl. ¶¶ 18-19.) Plaintiffs further allege that as a result of said events, Richard Cappelli died on January 9, 1997.

Plaintiffs allege that Defendants Haverford Township and Haverford Township Police Department were aware or should have been aware of the inherent dangers created when pepper spray is utilized in conjunction with the restraint techniques that were pursued against Richard Cappelli and that Defendant Haverford Township failed to properly instruct, train, and supervise Defendant Officers.” (Compl. ¶¶ 21-22, 37-38.) Furthermore, Plaintiffs allege that Defendant Officers acted in conformity with the practices, policies and customs of Defendants Haverford Township and the Haverford Township Police Department, and those practices , policies and customs were unconstitutional in that the conduct of Defendant Officers constitutes excessive force in violation of the Fourth Amendment. (Compl. ¶¶ 25-26, 40-42.)

II. DISCUSSION

A motion to dismiss a complaint for failure to state a claim may not be granted unless it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The facts must be taken as

true and reviewed in the light most favorable to the plaintiff. Id.

A. Claims Against Defendant Haverford Township Police Department

Plaintiffs have named Haverford Township and the Haverford Township Police Department as Defendants. As a matter of law, the claims against the Haverford Township Police Department must be dismissed as the Police Department is not alleged to be a separate legal entity that can be sued. See Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 377 (E.D. Pa.1995); Baldi v. Philadelphia, 609 F. Supp. 162, 168 (E.D. Pa. 1985) (Police department did not have separate corporate existence from city so as to permit it to be sued for civil rights violations.) Accordingly, Defendants' Motion will be granted with respect to Plaintiffs' claims against the Haverford Township Police Department.

B. Claims Against Moving Defendants for Punitive Damages

Plaintiffs demand punitive damages against all Moving Defendants. Punitive damages may not be awarded against municipal bodies under 42 U.S.C. § 1983. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981). Likewise, punitive damages cannot be recovered from defendants in their official capacities. Gregory v. Chehi, 843 F.2d 111, 120 (3d Cir. 1988). Accordingly, any claims for punitive damages against Defendant Haverford Township and the Defendant Officers in their official capacities must be dismissed. Punitive damages are available, however, in a § 1983 action against a defendant in his or her individual capacity. See Smith v. Wade, 461 U.S. 30, 51 (1983). Therefore, Plaintiffs have adequately stated a claim for punitive damages against the Defendant Officers in their individual capacities.

C. Qualified Immunity

Defendants argue that all claims against the Defendant Officers must be dismissed as the

officers are entitled to qualified immunity. Under the doctrine of qualified immunity, “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The Third Circuit has “adopted a broad view of what constitutes an established right of which a reasonable person would have known,” which requires “an inquiry into the general legal principles governing analogous factual situations, if any, and a subsequent determination whether the official should have related this established law to the instant situation.” Stoneking v. Bradford Area School District, 882 F.2d 720, 726 (3d Cir. 1989) (citations omitted).

In the present case, Plaintiffs have alleged that the Defendant Officers continued to spray Richard Cappelli with the pepper spray, after Mr. Cappelli was already subdued, causing his death. These allegations state a claim for a violation of Richard Cappelli’s constitutional right to be free from the use of excessive force. If Plaintiff can prove these allegations, Defendant Officers would not be entitled to qualified immunity. Therefore, taking the facts in the light most favorable to Plaintiffs, this court will deny Defendants’ Motion to Dismiss on the grounds of qualified immunity without prejudice to Defendants to raise the issue of qualified immunity by appropriate motion after discovery has been conducted by all parties.

Defendants request that this court tailor discovery narrowly and dictate the sequence of discovery so as to protect Defendants’ immunity defense. Plaintiffs argue that they will suffer an unreasonable burden with regard to both time and cost if the court limits discovery to the issue of qualified immunity. This court concludes that tailoring discovery at this point in the litigation

is unnecessary. Those facts which relate to issues that bear upon a qualified immunity defense will make up the bulk of discovery, and it would be unreasonable to preclude Plaintiffs from obtaining other relevant discovery while exploring the issue of qualified immunity. Therefore, discovery will proceed in accordance with the scheduling order filed in this matter.

D. Claim Against Defendant Haverford Township

A local government may be found liable for alleged violations of constitutional rights for acts implementing an official policy, practice or custom of the municipality. Monell v. Dept. of Social Services of the City of New York, 436 U.S. 688, 690-91 (1978). This court has already concluded that Plaintiffs have stated a claim against the Defendant Officers for a violation of Richard Cappelli's constitutional rights under the Fourth Amendment. Plaintiffs have also alleged that Defendant Haverford Township was aware or should have been aware of the inherent dangers created when pepper spray is utilized in conjunction with the restraint techniques that were pursued against Richard Cappelli and that Defendant Haverford Township failed to properly instruct, train, and supervise Defendant Officers. As the Federal Rules of Civil Procedure require notice pleading, this court concludes that Plaintiffs have also stated a claim against Defendant Haverford Township under §1983.

III. CONCLUSION

Plaintiffs have stated claims under § 1983 for a violation of Richard Cappelli's constitutional rights under the Fourth Amendment against Defendant Haverford Township and the Defendant Officers individually and in their official capacities. All claims against Defendant Haverford Township Police Department will be dismissed as the Police Department is not alleged to be a separate legal entity that can be sued. All claims for punitive damages against

Defendant Haverford Township and Defendant Officers in their official capacities will be dismissed.

Defendants' Motion to Dismiss based on qualified immunity will be denied without prejudice to Defendants to raise the issue of qualified immunity by appropriate motion after discovery has been conducted by all parties. Discovery will proceed in this matter in accordance with the scheduling order filed in this matter.

An appropriate Order follows.

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CORPORATION OF AMERICA and ARMOR	:	
HOLDINGS, INC.	:	
Defendants.	:	

ORDER

AND NOW, this day of March, 1999, upon consideration of Defendants Haverford Township, Haverford Township Police Department, Dennis Donnelly, Keith Gilman, Peter Bogutz, John Viola, Michael Flynn, Robert Murphy and Steven Fortrow's Motion to Dismiss and Plaintiffs' Response thereto, IT IS HEREBY ORDERED that:

1. Defendants' Motion is GRANTED with respect to all claims against Defendant Haverford Township Police Department;
2. Defendants' Motion is GRANTED with respect to Plaintiffs' claims for punitive

damages against Defendant Haverford Township and Defendant Officers in their official capacities;

3. Defendants' Motion is DENIED with respect to Defendant Officers' qualified immunity defense WITHOUT PREJUDICE to Defendants to raise the issue of qualified immunity by appropriate motion after discovery has been conducted by all parties.

4. Discovery will proceed in this matter in accordance with the scheduling order filed in this matter.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.