

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

WILLIAM H. MALACHI,)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. No. 08C-03-038 CLS
DANIEL SOSA, STEPHEN J.)	
BRUCKNER, RAPHAEL WILLIAMS,)	
PERRY PHELPS, MARK EMIG,)	
JASON McCREARY, DAVID)	
WILLIAMS, HOWARD R. YOUNG)	
CORRECTIONAL INSTITUTION,)	
STATE OF DELAWARE)	
DEPARTMENT OF CORRECTIONS,)	
and STATE OF DELAWARE,)	
)	
Defendants.)	

Date Submitted: June 21, 2011
Date Decided: August 30, 2011

On the State Defendants' Motion for Reargument. **DENIED.**
On the State Defendants' Second Motion to Dismiss. **GRANTED in part and
DENIED in part.**

ORDER

Beverly L. Bove, Esq., Vincent J. X. Hedrick, II, Esq., 1020 W. 18th Street, P.O. Box 1607, Wilmington, DE 19899. Attorneys for Plaintiff.

Judy O. Hodas, Esq., Linda M. Carmichael, Esq., 820 N. French Street, 6th Floor, Wilmington, DE 19801. Attorneys for the State Defendants.

Brian Chapman, Esq., Attorney for Defendant Bruckner.

Scott, J.

Introduction

Before the Court is the State Defendants' motion for reargument or, alternatively, second motion to dismiss and Plaintiff's response in opposition. The Court has reviewed the parties' submissions. For the reasons that follow, the State Defendants' motion for reargument is **DENIED** and the second motion to dismiss is **GRANTED in part and DENIED in part**.

Background

On or about February 21, 2007, Plaintiff William H. Malachi ("Plaintiff") alleges Defendants Stephan J. Bruckner ("Defendant Bruckner") and Daniel Sosa ("Defendant Sosa")¹ assaulted him while he was an inmate at the Howard R. Young Correction Institution ("HRYCI"). Defendants Bruckner and Sosa were prison guards at HRYCI when the alleged assault occurred. The Plaintiff asserts he suffered serious injuries as a result of the alleged assault.

In Count I of the complaint,² the Plaintiff alleges Defendants Sosa and Bruckner committed assault and battery.

Count II alleges Defendants Sosa and Bruckner used excessive force in violation of the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. The Plaintiff also alleges the conduct of

¹ Defendant Sosa had a default judgment entered against him on July 15, 2008.

² All references to the complaint are actually to the third amended complaint filed on August 14, 2009. D.I. 76.

Defendants Sosa and Bruckner was intentional, wanton, malicious, and oppressive. Plaintiff seeks punitive damages.

Count III of the complaint alleges Defendants Raphael Williams, Perry Phelps, Mark Emig, Jason McCreary, and David Williams (collectively “Individual State Defendants”) failed to adequately train and educate Defendants Bruckner and Sosa, failed to discipline them, failed to supervise them, permitted conditions to exist that led to the alleged assault and battery. Plaintiff alleges they established customs, policies, practices and procedures which fail to safeguard the life, health and safety of inmates, resulting in cruel and usual punishment of inmates, and created injury to him. Plaintiff alleges violations of 42 U.S.C. § 1981 and the deprivations of his rights under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, as well as Article I, §§ 7 and 11 of the Delaware Constitution. Plaintiff also alleges the negligence of Defendants Bruckner and Sosa is imputed to the Individual State Defendants through the doctrine of *respondeat superior*.

Count IV alleges the Individual State Defendants violated the Plaintiff’s rights under the Fourth and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. Plaintiff alleges they were acting in their individual capacities and their conduct was intentional, wanton, malicious, and oppressive. Plaintiff seeks punitive damages.

Count V alleges Defendants Bruckner and Sosa conspired to violate the rights of the Plaintiff. He alleges they violated his rights under 42 U.S.C. § 1981, as well as under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 7 and 11 of the Delaware Constitution. In this count, the Plaintiff also alleges the Individual State Defendants violated 42 U.S.C. § 1981 and his rights under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, as well as Article I, §§ 7 and 11 of the Delaware Constitution. The Plaintiff alleges Defendants Bruckner and Sosa violated 42 U.S.C. §§ 1985(3) and 1988.

Count VI alleges the actions of Defendants HRYCI, State of Delaware Department of Corrections (“DOC”), and/or the State of Delaware (collectively “Institution State Defendants”) amounted to excessive force in violation of the Plaintiff’s rights under the Fourth and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983. The Plaintiff alleges the Institution State Defendants are liable under *respondeat superior* for the actions of the Individual State Defendants. The claims against the Institution State Defendants were dismissed on May 25, 2011.

In count VII, the Plaintiff states he suffered serious bodily injuries as a result of the alleged assault and battery. Plaintiff seeks special damages in the amount of \$12, 412.43, as well as general, consequential, and punitive damages.

On May 25, 2011, the following claims were dismissed: 42 U.S.C. §§ 1981, 1983, 1985, 1988, all claims against the Institution State Defendants, and the cross-claim filed by Defendant Bruckner.

Discussion

I. Motion for Reargument

A motion for reargument filed pursuant to Super. Ct. Civ. R. 59(e) provides the Court an opportunity to correct any errors prior to appeal.³ The motion will be denied “unless the Court overlooked a controlling precedent or legal principles, or unless the Court misapprehended the law or facts in a manner that affected the outcome of the decision.”⁴ A motion for reargument is not intended to rehash arguments previously decided.⁵

The Individual State Defendants’ motion for reargument is denied as to the first two claims because the arguments are new. This is the first time the Individual State Defendants have raised immunity under the State Tort Claims Act, 10 *Del. C.* § 4001, and stated the Plaintiff cannot have an independent federal cause of action when his 42 U.S.C. § 1983 claim was dismissed. The motion for

³ *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

⁴ *Ramon v. Ramon*, 963 A.2d 128, 136 (Del. 2008) (citation omitted).

⁵ *Id.*

reargument of the two claims is denied because they are raised for the first time in this motion.⁶

The Court applied the correct standard to determine whether the complaint stated a cause of action entitling Plaintiff to relief. When deciding a motion to dismiss for failure to state a claim “[t]he legal issue to be decided is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”⁷ In finding the complaint sufficient to withstand a motion to dismiss this Court held Plaintiff “may be able to prove a set of facts entitling him to relief if he is able to prove the Individual State Defendants violated his liberty interest without due process.”⁸ By finding the Plaintiff may be able to prove a set of facts entitling him to relief of the alleged violations of the Delaware constitution, the Court implicitly held a reasonable, conceivable set of circumstances susceptible of proof may exist for the Plaintiff to prevail. The Court applied to correct standard when judging the validity of the alleged violations of the Delaware constitution; the motion for reargument of this claim is denied.⁹

⁶ Since they are new arguments they will be addressed in the second motion to dismiss.

⁷ *Stayton v. Clariant Corp.*, 10 A.3d 597, 601 (Del. 2010) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁸ *Malachi v. Sosa*, 2011 WL 2178626, *3 (Del. Super. Ct.).

⁹ Even if the Court applied the standard articulated in the motion for reargument, the Court still holds the Plaintiff is able to overcome the motion to dismiss for his Delaware constitution claims because the complaint articulates how the Individual State Defendants *may* have failed to protect his constitutional interests. The Plaintiff articulated the alleged assault and battery as well as the Individual State Defendants failure to train and supervise, *inter alia*, Defendants Bruckner and Sosa. See Amended Complaint, ¶¶ 31, 49.

II. *The Individual State Defendants' Second Motion to Dismiss*

A. *State Tort Claims Act*

The Individual State Defendants contend the Court lacks subject matter jurisdiction under Super. Ct. Civ. R. 12(h)(3) because they are immune from suit under the State Tort Claims Act, 10 Del. C. §§ 4001-4005. The defense of lack of subject matter jurisdiction may be raised at any point during litigation.¹⁰ Whether sovereign immunity bars recovery is a threshold matter that must be disposed of at the earliest possible date and decision on the issue “must not be deferred pending other proceedings before the trial court.”¹¹ Sovereign immunity acts as a bar to recovery on liability claims unless the General Assembly explicitly waives it.¹² The General Assembly must express a clear intent to waive it.¹³ The defense is only waived when the risk or loss is covered by the state insurance program.¹⁴ Neither party mentions the existence of insurance to cover the Plaintiff’s loss of property so the Court is unable to determine whether the Individual State Defendants are immune from suit for this reason.

¹⁰ Super. Ct. Civ. R. 12(h)(3).

¹¹ *Bell Atl.-Delaware, Inc. v. Global NAPS S., Inc.*, 77 F. Supp. 2d 492, 497 (D. Del. 1999) (citations omitted).

¹² *Turnbull v. Fink*, 668 A.2d 1370, 1374 (Del. 1995) (citing *Wilmington Housing Authority v. Williamson*, 228 A.2d, 782, 786 (Del. 1967)).

¹³ *Pauley v. Reinoehl*, 848 A.2d 569, 573 (Del. 2004) (citations omitted).

¹⁴ 18 Del. C. § 6511.

The alleged violations of the State Tort Claims Act are dismissed because the Plaintiff has failed to state a claim upon which relief can be granted. To state a claim under the State Tort Claims Act, the Plaintiff must allege a violation of:

- (1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other official duty involving the exercise of discretion on the part of the public officer, employee or member shall have supervisory authority;
- (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
- (3) The act or omission complained of was done without gross or wanton negligence.¹⁵

Plaintiff has failed to allege a violation of the State Tort Claims Act. He has not alleged the act or omission complained of arose out of and in connection with the performance of an official duty or any of the other criteria listed in the first prong. He has not alleged the act or omission was not done in good faith or with the belief that the public interest would best be served by it. However, he did allege the conduct of the Individual State Defendants was wanton, satisfying the third prong.¹⁶ Since the statute is conjunctive every element needed to be alleged in order for the Plaintiff to be able to prove a set of facts entitling him to relief. As a result, the alleged violations of the State Tort Claims Act are dismissed.

¹⁵ 10 *Del. C.* § 4001.

¹⁶ Amended Complaint, ¶ 40.

B. Federal Claims

The Individual State Defendants claim the Plaintiff cannot sue for a violation of his federal constitutional rights when his 42 U.S.C. § 1983 claim was dismissed. The Defendants cite no case law or statute to support their proposition. Even if the Individual State Defendants were correct, the Plaintiff has alleged violations of the Fourth,¹⁷ Fifth,¹⁸ Eighth,¹⁹ and Fourteenth²⁰ Amendments to the United States Constitution in addition to his civil rights claims. As a result, the motion to dismiss these claims is denied.

Conclusion

Based on the forgoing, the Defendant's motion for reargument is **DENIED** and the second motion to dismiss to dismiss is **GRANTED**.
IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

¹⁷ Counts II, IV, and VI.

¹⁸ Counts III and V.

¹⁹ Counts III and V.

²⁰ Counts II, III, IV, V, and VI.