

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RUBEN LOZA,)	
)	
Plaintiff,)	
)	No. 09 C 2474
v.)	
)	The Honorable William J. Hibbler
CITY OF CHICAGO, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

On April 23, 2009, Plaintiff Ruben Loza filed a complaint setting forth various state and federal claims against the City of Chicago and two Chicago police officers. In Counts I through III of his complaint, Loza asserts claims stemming from his arrest on December 16, 2007 pursuant to 42 U.S.C. § 1983 for unlawful search and seizure, false arrest, and excessive force. In Count IV he seeks statutory indemnification of the defendant officers by the City pursuant to 745 ILCS 10/9-102. The City moves to dismiss Count IV of the complaint, arguing that it is barred by the statute of limitations in 745 ILCS 10/8-101. For the reasons set forth below, the Court denies the City's motion.

DISCUSSION

I. Standard of review

Motions to dismiss test the sufficiency, not the merits, of the case. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). To survive a motion to dismiss under federal notice pleading, a plaintiff must "provide the grounds of his entitlement to relief" by alleging "enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007) (internal quotation marks,

brackets, and citation omitted). Specific facts are not necessary. *Erickson v. Pardus*, 551 U.S. 89, ----, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007). The Court treats well-pleaded allegations as true, and draws all reasonable inferences in the plaintiff's favor. *Disability Rights Wisc., Inc. v. Walworth County Bd. Of Supervisors*, 522 F.3d 796, 799 (7th Cir. 2008).

II. Analysis

The City of Chicago is correct that a claim for statutory indemnification under § 9-102 is subject to a one year statute of limitations. 745 ILCS 10/8-101. However, the City is mistaken about how the statute of limitations applies in this case. In *Wilson v. City of Chicago*, 120 F.3d 681, 684 (7th Cir. 1997), the court pointed out that “the City cannot be made to pay a judgment while the liability of its employee is still in question.” Nonetheless, the court held that a plaintiff could ask the court to enter a judgment against the City pursuant to § 9-102 that would take effect when and if the plaintiff obtained a judgment against the employee defendant. *Id.* at 685. The court found that in that case, the plaintiff was essentially asking for a declaratory judgment. *Id.* The logical implication of the *Wilson* decision is that the actual fact that gives rise to a claim under § 9-102 is the court entering judgment against the employee defendant, even though it may be appropriate for a plaintiff to bring the claim in anticipation of that fact.

The City's citation to *Williams v. Lampe*, 399 F.3d 867 (7th Cir. 2005) is inapposite. In that case, the court held that “[w]hile the two-year period still applies to § 1983 claims against [municipality defendants and their employees], the one-year period applies to state-law claims that are joined with a § 1983 claim.” *Id.* at 870. As described above, a one-year statute of limitations does apply to Count IV of Loza's complaint, but that period had not even started running yet when Loza filed his complaint.

CONCLUSION

For the above reasons, Defendant City of Chicago's motion to dismiss Count IV is DENIED.

IT IS SO ORDERED.

9/25/09
Dated

Wm. J. Hibbler
Hon. William J. Hibbler
United States District Court