1983 Practice Highlights

TEXAS STATE BAR – GOVERNMENT LAW SECTION

LAREDO ROADSHOW, APRIL 26, 2019

Overview

- Congress passed 42 U.S.C. § 1983 as part of the Enforcement Act of 1871, legislation designed to implement the 14th Amendment and combat the rise of the Ku Klux Klan in the Reconstruction Era.

- The statute took on new importance for state and local governments following the Supreme Court's decision in *Monroe v. Pape*, 65 U.S. 167 (1961).

- The Supreme Court clarified that § 1983 could be used for three main purposes:
  1. To "override certain kinds of state laws" that denied Constitutional rights;
  2. "Provide a remedy where state law was inadequate;"
  3. "To provide a federal remedy where the state remedy, though adequate in theory, was not available in practice." *Id*. at 173-174.

Overview

- The second seminal case is *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).
- The Supreme Court found that: "Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies." *Id*. at 690.
- However, "a municipality cannot be held liable under § 1983 on a respondeat superior theory." *Id*. at 691.
- "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Id*. at 694.

Elements in § 1983 Actions

(1) **Conduct by a "person";**

- Can Plaintiff Establish a Basis for Imposing Liability on Municipality based on Policy, Practice, or the Decision of a Policy Maker?

(2) Who acted "under color of state law;"

- Is the Official Protected by Qualified Immunity?

(3) Proximately causing;

(4) A deprivation of a federally protected right.

§1983 Pleading Requirement Post-*Iqbal*

Fed. Rule Civ. Proc. 8(a)(2): "a short and plain statement of the claim showing that the pleader is entitled to relief."

Shaw v. Villanueva, 918 F.3d 414 (5th Cir. 2019)

- "Post-*Iqbal*, formulaic recitations or bare-bones allegations will not survive a motion to dismiss."
  - Legal conclusions without well-pleaded facts supporting those conclusions "will not thwart dismissal."
- §1983 allegations must be supported by sufficient factual content to state a plausible claim for relief.

Factual basis - Legal theories

- *Johnson v. City of Shelby*, 135 S.Ct. 346 (2014).
  - Twombly and Iqbal concern the *factual* allegations a complaint must contain to survive a motion to dismiss.
    - A plaintiff must plead facts sufficient to show that her claim has *substantive plausibility*.
  - Court should not grant a motion to dismiss for "imperfect statement of the legal theory supporting the claim asserted" if factual basis of events in the complaint contains sufficient "factual allegations." *Id*.
    - Reversing Fifth Circuit's affirmance of district court's summary judgement for city officials based on plaintiffs' failure to invoke 42 U.S.C. § 1983 in complaint.
      - Municipal liability claim no heightened pleading standard
      - Not dismissal but opportunity to amend complaint and add a citation to § 1983.

Factual basis - Legal theories

- Determining What's "Conclusory" or "Nonconclusory":

Facts: Must be pled in a complaint and, ultimately, proven to a jury.

Law: May have imperfect statement of the legal theory.

"Federal pleading rules call for "a short and plain statement of the claim showing that the pleader is entitled to relief, Fed. Rule Civ. Proc. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Id*.

Municipal Liability and 12(b)(6)

- Elements:
  - 1. An official policy (or custom), of which
  - 2. A policy maker who can be charged with actual or constructive knowledge, and
  - 3. A constitutional violation whose "moving force" is that policy (or custom).

Municipal Liability and 12(b)(6)

Robinson v. Hunt County, Texas, No. 18-10238, 2019 WL 1594319 (5th Cir. Apr. 15, 2019)

- Plaintiff must plead a constitutional violation.
  - Viewpoint discrimination on County Facebook page.
- Whether constitutional violations alleged in complaint are attributable to the County.
  - Who's the policy maker? Sheriff or County Commissioner's Court?
  - Directly attributable through official action or imprimatur.
    - Isolated unconstitutional actions by municipal employees will almost never trigger liability.
- Policy/Custom was Moving Force for Constitutional Violation.

Pleading Facts and Law in Municipal Liability Claims

Groden v. City of Dallas, 826 F.3d 280 (5th Cir. 2016).

- Law: Identity of Policymaker.
  - Specific identity of policymaker under statutory scheme is a legal question that need not be pled.
  - Complaint need only allege facts that show an official policy, promulgated or ratified by the policymaker, under which the municipality is liable.
    - Compare with qualified immunity analysis: unavailability of *respondeat superior* liability in personal capacity claims

- Facts: Unconstitutional Policy.
  - Allegation of a "crackdown policy," not any official ordinance.
  - Requires factual description of crackdown policy.

School District Liability and 12(b)(6)

Littell v. Houston Indep. Sch. Dist., 894 F.3d 616 (5th Cir. 2018)

- This case was brought in response to student searches conducted at a Houston Public School. $50 dollars went missing and after no one came forward, the school administrators had the class of students strip searched.

- Failure to Train Case: Did Plaintiffs adequately allege an "official municipal policy" for *Monell* liability?
  - Plaintiff alleged official municipal policy of providing no training to employees' on their legal duty not to conduct unreasonable searches.
    - District Court dismissed finding no pattern of constitutional violations by school officials.

School District Liability and 12(b)(6)

Littell (cont'd)

- Reversed by Fifth Circuit: holding that Plaintiffs plausibly alleged deliberate indifference through a different legal theory. Facts alleged in Plaintiffs' amended complaint permitted reasonable inference that the risk of public officials' conducting unconstitutional searches was or should have been a "highly predictable consequence" of the school district's decision to provide its staff no training regarding the constitutional restraints on searches.
  - Plaintiffs' allegations sufficed at pleading stage to show that school district knew or should have known to a high degree of certainty that VP and other employees would be placed in situations requiring knowledge of Fourth Amendment search law.
  - Plaintiffs alleged school district provided "no training whatsoever" as to how to conduct a lawful search.

Qualified Immunity and 12(b)(6)

- Qualified Immunity shields officials performing discretionary actions so long as they do not violate legal and constitutional rights a reasonable person would know. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

- "Qualified Immunity shields Government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights. So it is both a defense to liability and a limited entitlement not to stand trial or face the other burdens of litigation." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009).

Qualified Immunity and 12(b)(6)

- Court's Screening Role:
  - Federal Rule of Civil Procedure 12(b)(6) allows defendants to assert by motion the defense that plaintiff "fail[ed] to state a claim upon which relief can be granted."
  - Qualified Immunity claims should be resolved at the "earliest possible stage in the litigation."
    - This protects officials from unwarranted liability AND "costly, time-consuming, and intrusive" pre-trial discovery. *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012)

      Tools:

      - ordering P to file either a detailed reply to D's answer under Fed. Rule Civ. Proc. 7
      - Tailoring discovery to protect D from unnecessary embarrassments or burdens.

Pleading Facts in Qualified Immunity Cases

Iqbal's plausibility standard:

When a defendant asserts qualified immunity, the plaintiff bears the burden of *pleading facts* that demonstrate liability and defeat immunity. *Shaw v. Villanueva*, 918 F.3d 414 (5th Cir. 2019).

- The plaintiff was arrested on false information and alleged that the County Sheriff and Chief Deputy had conspired to arrest him as part of a county political dispute.
- Because the Plaintiff arrested based on a warrant issued by a Justice of the Peace, they were entitled to immunity based on the independent intermediary doctrine. The only exception would be if the officers had tainted the decision making process in issuing the warrant.
- Because none of the Plaintiff's *factual* allegations showed that Defendants Sheriff and Chief Deputy had consciously lied in the affidavit for the warrant, District Court's denial of qualified immunity to the 12(b)(6) Motion to Dismiss was granted.

Review of 12(b)(6) Motions

1. Separate the Factual Allegations from the Legal Conclusions in the Complaint.

2. Determine Whether the Factual Allegations State a Plausible, as Opposed to Possible or Speculative, Claim for Relief.

3. If the Complaint Contains Allegations that Defendant acted with Discriminatory Animus, Consider Whether there is a more Plausible Explanation for the Conduct.