

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

WILLIAM W. THOMAS, JR.
Plaintiff

v.

Civil Case No.: 7:10-CV-00553

CITY OF STAUNTON, VIRGINIA, et als.
Defendants

ANSWER PRESENTING DEFENSES UNDER RULE 12

Defendant, City of Staunton, Virginia (herein, Staunton) files this Answer presenting defenses under Rule 12, in response to the Complaint filed by Plaintiff, William W. Thomas, Jr. (herein, Thomas). The defenses under Rule 12 are presented first, followed by the Answer.

MOTION TO DISMISS

Defendant, City of Staunton, Virginia (herein, Staunton) files this Motion to Dismiss the Complaint filed by Plaintiff, William W. Thomas, Jr. (herein, Thomas), and in support thereof states as follows:

1. In the Complaint Thomas asserts that in 1967 he was indicted for the murders of two women. (Complaint, ¶¶ 7, 8.) He avers he was tried for one of the murders, but was acquitted. (Complaint, ¶¶ 9, 10.)

2. Thomas alleges in the Complaint that on the day after the murders another person confessed to the chief detective for the Staunton Police Department that she killed the victims, but that the detective “proceeded with a phony investigation; and lied to the Commonwealth’s Attorney, and Virginia State Police; and caused charges to be against” Thomas. (Complaint, ¶¶ 12, 13.) He asserts that the detective and Staunton “went on with a

vigorous investigation and, reportedly, made, from time to time, derogatory remarks about” Thomas until 2008. (Complaint, ¶ 13.) Thomas avers that he “incurred expense of defending himself against crimes he did not commit” as well as “loss of liberty, loss of income and loss of ability to earn income, injury to physical health ... great emotional injury, loss of reputation, loss of assets, and general loss of adequate quality of life.” (Complaint, ¶ 25.)

3. In the Complaint Thomas states that he bases his cause of action against Staunton upon 42 U.S.C. 1983, upon which he relies for “redress [of] violations of Rights secured to Plaintiff by the United States Constitution, the Virginia Constitution, the laws of the United States and the laws of Virginia.” (Complaint, ¶ 1.)

4. Although Thomas asserts that a second indictment “remained open” against him until December, 2008 (Complaint, ¶ 11), it cannot be genuinely disputed that no such second indictment ever existed. Attached hereto as Exhibit A, and incorporated herein, is an Affidavit executed by Thomas E. Roberts, Clerk of the Circuit Court of the City of Staunton, who confirms that a search of his records reveals the existence of no such indictment or similar second charge.

5. Thomas names as defendants in this case various “John Does” but fails to allege any facts which would constitute any cause of action against them. Further, Staunton cannot be held liable pursuant to 42 U.S.C. 1983 for any actions or omissions of the alleged “John Does”, or any of its employees or agents, under a theory of *respondeat superior*. See, e.g., *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018 (1978).

6. Pursuant to *Monell*, an action implementing or executing “a policy statement, ordinance, regulation, or decision officially adopted” by a municipality’s officers, or a constitutional deprivation “visited pursuant to governmental ‘custom’ even though such a custom

has not received formal approval” is a prerequisite to any claim under 42 U.S.C. 1983 against a municipality. *Id.*, 436 U.S. at 690, 98 S. Ct. at 2035-2036. The only official policy, ordinance, regulation, decision or custom alleged by Thomas to have been adopted by Staunton is “an official policy of slander, intended to hold the Plaintiff liable for two murders which it knew, or should have known, Plaintiff did not commit.” (Complaint, ¶ 22.)

7. However, slander, or more broadly, defamation, does not constitute a cause of action for relief pursuant to 42 U.S.C. 1983. *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 123 S. Ct. 1160 (2003); *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155 (1976).

8. Even if slander could form the basis of a cause of action under 42 U.S.C. 1983, Thomas alleges no statement which could constitute slander. Indeed, the only statement alleged by statement is that of a “city official [who] was quoted as saying ‘we spent so much money on him we’ve got to get him for something.’” (Complaint, ¶ 22.) Such a statement would not be a publication about the plaintiff of an actionable statement, with the requisite intent. See *Ramey v. Kingsport Publishing Corp.*, 905 F. Supp. 355 (W.D. 1995).¹

9. Thomas fails to set forth facts in the Complaint sufficient to support a claim for which relief can be granted under 42 U.S.C. 1983, or for slander or any other cause of action

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As to the requisite intent, Thomas fails to allege any malice on the part of Staunton or any other defendant. “It is a familiar and well settled rule of law, that in every instance of slander, verbal or written, malice is an essential ingredient; it must in either be expressly or substantially averred in the pleadings, and whenever thus substantially averred, and the language, either written or spoken, is proved as laid, the law will infer malice, until the proof, in the event of denial, be overthrown, or the language itself be satisfactorily explained. There is but one exception to this rule, and that is where the words spoken or written fall within the category of what the law characterizes as confidential or privileged communications.” *Dillard v. Collins*, 66 Va. (25 Gratt.) 343 (1874).

against Staunton or against John Doe Nos. 1 through 6, and the Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6).

10. Any cause of action asserted by Thomas in the Complaint is barred by the applicable limitations period. As stated above, Thomas asserts that he bases his action on 42 U.S.C. 1983. (Complaint, ¶ 1.) Because that statute contains no limitations period, the period applicable to actions based on the statute is determined pursuant to the analogous Virginia cause of action, which in this case would be defamation, given that an “official policy of slander” by Staunton is the only policy or custom Thomas alleges. See *King v. Prince George’s County*, 827 F.2d 952, 955 n.2 (4th Cir. 1987).

11. No slanderous comment or other actionable statement is alleged by Thomas in the Complaint, nor is any date for any such comment or statement alleged. In paragraph 20, however, Thomas asserts that he advised Staunton “of intent to bring suit” on May 20, 2009, which indicates that any such slander would have allegedly occurred prior thereto.

12. The Complaint was not filed until December 13, 2010, nearly 18 months later. The limitations period for actions based on libel or slander in Virginia is one year. Va. Code (1950) § 8.01-247.1, as amended. The Complaint is therefore barred by the applicable limitations period and should be dismissed.

13. In the Complaint Thomas recites various factual allegations pertaining to Staunton’s alleged investigation of two murders which took place on April 11, 1967, but the Complaint is devoid of any assertions which would constitute the basis of any cause of action against Staunton. Further, many of the allegations are immaterial, impertinent and scandalous, including, inter alia, the entirety of the allegations contained in paragraphs 6, 13 through 18 and

22.

14. Thomas fails in the Complaint to plead facts “plausibly suggesting (not merely consistent with)” a violation of 42 U.S.C. 1983, or any other cause of action. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Thomas further fails to plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. _____, 129 S. Ct. 1937, 1949 (2009). A “formulaic recitation of the elements” of a claim in a Complaint is insufficient as a matter of law. *Id.*, 129 S. Ct. at 1951.

15. Thomas fails to set forth in the Complaint “a short and plain statement of the claim showing that the pleader is entitled to relief” as required by Rule 8(a)(2). The Complaint should, therefore, be dismissed, pursuant to Rule 12(f).

WHEREFORE, pursuant to Rules 12(b) and 12(f) of the Federal Rules of Civil Procedure, Defendant, City of Staunton, Virginia, by counsel, respectfully prays that the Complaint filed by Plaintiff, William W. Thomas, Jr., be dismissed with prejudice and that Thomas be ordered to pay Staunton’s attorney’s fees and costs incurred in this matter.

ANSWER

Defendant, City of Staunton, Virginia (herein, Staunton) files this Answer to the Complaint filed by Plaintiff, William W. Thomas, Jr. (herein, Thomas), and states as follows:

1. Thomas alleges no factual allegations in paragraph 1 of the Complaint, but to the extent Thomas asserts that any actions of Staunton are violative of 42 U.S.C. 1983, of the United States Constitution, the Virginia Constitution, the laws of the United States and/or of Virginia, those allegations stand denied.

2. Staunton admits that this Court has jurisdiction to hear claims for relief pursuant to 42 U.S.C. 1983.

3. Staunton lacks knowledge or information sufficient to form a belief about the allegation that Thomas is a resident of the Commonwealth of Virginia. Staunton denies that it was proper for Thomas to file the Complaint.

4. Staunton denies the allegations contained in paragraph 4 of the Complaint. The City of Staunton is municipality which is independent of Augusta County, Virginia.

5. Staunton lacks knowledge or information sufficient to form a belief about the truth of the allegations made by Thomas in paragraph 5 of the Complaint, and those allegations therefore stand denied.

6. Staunton denies that any persons or entities, living or dead, acted in conspiracy and collusion with Staunton, its agents and representatives, to deprive Thomas of any rights. Further, Staunton denies that it participated in, or has any liability for, any harassment of Thomas, any trespass upon or destruction of Thomas's property, any taping of Thomas's phones or the placement of "spyware" on Thomas's computers. Staunton also denies that any of its employees or agents failed to perform their duties under the law.

7. Staunton admits the allegations contained in paragraph 7 of the Complaint.

8. Staunton denies the allegations contained in paragraph 8 of the Complaint.

To the contrary, only one indictment, relating to one murder, that of Constance Hevener, was returned against Thomas.

9. Staunton admits the allegations contained in paragraph 9 of the Complaint.

10. Staunton admits the allegations contained in paragraph 10 of the Complaint.

11. Staunton denies the allegations contained in paragraph 11 of the Complaint, as there was no second charge or indictment, except that Staunton admits that Sharon Diane Crawford Smith confessed to the murders of the two women in question.

12. Staunton admits the allegations contained in paragraph 12 of the Complaint, except that Staunton denies that Smith stated that Dave Bocock helped her hide at his farm.

13. Staunton denies the allegations contained in paragraph 13 of the Complaint, except that it admits that, following the dismissal of the indictment, it continued to periodically investigate information pertaining to the murders until the confession of Sharon Diane Crawford Smith in 2008.

14. Staunton does not know what “reliable sources advise” Thomas or others with respect to the allegations set forth in the first sentence of paragraph 14 of the Complaint, and those allegations therefore stand denied. Staunton does not know whether the allegations contained in the second sentence of paragraph 14 of the Complaint are true, and those allegations therefore stand denied.

15. Staunton admits that Lacy King is the Mayor of the City of Staunton. Staunton denies the remaining allegations of paragraph 15 of the Complaint.

16. Staunton denies the allegations contained in paragraph 16 of the Complaint, although Staunton admits that Bocock is deceased and that his remains were cremated.

17. Staunton denies the allegations contained in paragraph 17 of the Complaint.

18. Staunton admits that Lowell Sheets spoke with Sharon Diane Crawford Smith about the murders in question, but Staunton denies the remaining allegations contained in paragraph 18 of the Complaint.

19. Staunton denies the allegations contained in paragraph 19 of the Complaint, in that there were no charges pending against Thomas relating to either murder following the dismissal in 1968 of the single charge.

20. Staunton denies the allegations contained in paragraph 20 of the Complaint.

21. Staunton denies the allegations contained in paragraph 21 of the Complaint.

22. Staunton denies the allegations contained in paragraph 22 of the Complaint.

23. Staunton denies the allegations contained in paragraph 23 of the Complaint.

24. Staunton denies the allegations contained in paragraph 24 of the Complaint.

25. Staunton denies the allegations contained in paragraph 25 of the Complaint.

26. Staunton denies that Thomas is entitled to any recovery whatsoever.

27. Staunton does not know whether the allegations contained in paragraph A of the Addendum filed by Thomas are correct, and those allegations therefore stand denied.

28. Staunton denies the allegations contained in paragraph B of the Addendum.

29. Staunton does not know whether the allegations was alleged in paragraph C of the Addendum, and those allegations therefore stand denied.

30. Staunton does not know whether the allegations contained in paragraph D of the Addendum are correct, and those allegations therefore stand denied.

31. Staunton does not know whether the allegations contained in paragraph E of the Addendum are correct, and those allegations therefore stand denied.

32. Staunton does not know whether the allegations contained in paragraph F of the Addendum are correct, and those allegations therefore stand denied.

33. Staunton does not know whether the allegations contained in paragraph G of

the Addendum are correct, and those allegations therefore stand denied.

34. As an affirmative defense, Staunton asserts that the claims and causes of action asserted by Thomas in the Complaint are barred by the applicable statutes of limitations.

35. Staunton denies all allegations contained in the Complaint which are not expressly admitted herein.

WHEREFORE, Defendant, City of Staunton, Virginia, by counsel, respectfully prays that the Complaint filed by Plaintiff, William W. Thomas, Jr., be dismissed with prejudice and that Thomas be ordered to pay Staunton's costs and attorney's fees incurred in this matter.

Respectfully Submitted,

CITY OF STAUNTON, VIRGINIA
By Counsel

s/Victor M. Santos

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CERTIFICATE

I certify that a true copy of this Answer was mailed on this _____ day of June, 2011 to:

William W. Thomas, Jr.
722 Spottswood Road
Spottswood, Virginia 24476

s/John C. Wirth s/Victor M. Santos