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SECOND CIRCUIT REVIEW

Expert Analysis

Pleading Standards for §1983 Claims Against Govt. Supervisors

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In *Tangreti v. Bachmann*, No. 19-3712 (2d Cir. Dec. 28, 2020), the U.S. Court of Appeals for the Second Circuit clarified the impact of the Supreme Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), on the standard for establishing §1983 claims against government supervisors. In an opinion written by Circuit Judge Steven J. Menashi and joined by Circuit Judge John M. Walker Jr., the court held that "there is no special rule for supervisory liability" under §1983. Rather, "a plaintiff must plead that each government-official defendant, through the official's own individual actions, has violated the Constitution," a showing that will vary depending on the constitutional violated alleged. As a result, a plaintiff can no longer state a viable §1983 claim against a government supervisor based on a lesser mental state than would be required to establish an underlying constitutional violation.

Section 1983 and Second Circuit Precedent

Section 1983 provides a cause of action against a person who, acting under color of state law, deprives a plaintiff of a constitutionally protected right. The Second Circuit has long held that, to make out a §1983 claim against a government supervisor, "*respondeat superior* does not suffice and a showing of some personal responsibility of the defendant is required." *Johnson v. Glick*, 481 F.2d 1028, 1034 (2d Cir. 1973). In its 1995 decision in *Colon v. Coughlin*, the court identified five categories of evidence on which a plaintiff could rely to establish the requisite "personal responsibility":

> (1) the defendant participated directly in the alleged constitutional violation, (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong, (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) the defendant exhibited deliberate indifference to the rights of [the plaintiff] by failing to act on information indicating that unconstitutional acts were occurring.

58 F.3d 865, 873 (2d Cir. 1995).

In 2009, the Supreme Court decided *Iqbal v. Ashcroft*, in which plaintiff alleged that senior government officials "knew of, condoned, and willfully and maliciously agreed to" unconstitutionally detain him

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based on his race, religion, and/or national origin. 556 U.S. at 669. In articulating the applicable pleading standard, the Supreme Court held that because government officials cannot be held vicariously liable for unconstitutional conduct, a plaintiff "must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Id. at 676. The factors necessary to establish such a violation, the court explained, would "vary with the constitutional provision at issue." Id. The *Iqbal* plaintiff's claim of invidious discrimination in contravention of the First and Fifth Amendments required him to plead that defendants, supervisors or otherwise, had acted with discriminatory purpose. Id. A supervisor's mere knowledge that a subordinate had such a purpose would not suffice. Id. at 677.

Over the ensuing decade, district courts have reached diverging conclusions as to the viability of the *Colon* test post-*Iqbal*. Some district courts have held that only *Colon*'s first category and first half of the third category survive *Iqbal*; the remaining categories, involving inaction or acquiescence on the supervisor's part, cannot support liability. See *Bellamy v. Mount Vernon Hosp.*, 2009 WL 1835939, at *6 (S.D.N.Y. June 26, 2009). Other district courts have held that *Iqbal* requires a greater showing of intent for §1983 claims of invidious discrimination, but preserves the *Colon* framework for other types of constitutional violations. See, e.g., *Sash* v. *United States*, 674 F. Supp. 2d 531, 543-44 (S.D.N.Y. 2009). The Second Circuit acknowledged the conflict *Iqbal* had created among district courts, but failed to resolve the issue.

'Tangreti' Background

Tangreti sued Bachmann and other supervisory officials within the Connecticut Department of Corrections, asserting, among other claims, a §1983 claim. Tangreti alleged that defendants had violated her Eighth Amendment right to protection from sexual assault. She claimed that officers at the York Correctional Institution in Connecticut sexually abused her, and that Christine Bachmann, a counselor supervisor at York, observed several allegedly "inappropriate interactions" between Tangreti and one of the officers, as well as changes in Tangreti's physical appearance and behavior. She alleged that Bachmann failed to take corrective action until another inmate told Bachmann that Tangreti was being abused.

> The Second Circuit's decision in 'Tangreti' clarifies 'Iqbal's' impact on §1983 claims against government supervisors.

After discovery closed, defendants moved for summary judgment, arguing that because the right Tangreti invoked was not "clearly established," they were entitled to qualified immunity. The district court granted judgment in favor of all defendants except Bachmann, who it found was "conceivably personally involved" in violating Tangreti's "clearly established" rights. *Tangreti v. Semple*, 2019 WL 4958053, at *19 (D. Conn. Oct. 8, 2019). Applying *Colon*, the district court held that Bachmann either was "grossly negligent" in supervising the officers, or had failed to act on information indicating that Tangreti was at risk of substantial sexual abuse. Id. Because it was "clearly established" that either category of conduct could result in §1983 liability, Bachmann was not entitled to qualified immunity. Id. at *21-22.

Second Circuit's Opinion

In *Tangreti*, the Second Circuit held that *Colon*'s "special rule for supervisory liability" is no longer viable. *Tangreti v. Bachman*, ___ F.3d ____, No. 19-3712, 2020 WL 7687688, at *6 (2d Cir. 2020 Dec. 28, 2020). Following *Iqbal*, the court explained, a plaintiff may no longer state a §1983 claim against a defendant by showing that, as a supervisor, the defendant behaved knowingly or with deliberate indifference that a constitutional violation would occur at the hands of

her subordinates, unless that is the same state of mind required for the underlying constitutional deprivation. Id. Rather, to plead a claim, a plaintiff must show a deliberate, intentional act on the defendant's part to violate her legal rights. Id. The focus must be on what the *supervisor* did or caused to be done; the injury attributable to the *supervisor's* conduct, and the mental state necessary to hold the *supervisor* liable, which can be no less than what is required to hold any other defendant liable. Id.

To establish an Eighth Amendment violation, a plaintiff must show, among other things, that the defendant "had subjective knowledge of a substantial risk of serious harm to an inmate and disregarded it." Id. at *4. That requires the defendant to have been aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and to have actually drawn that inference. Because a supervisor's liability depends on her own conduct, not that of her subordinates, Tangreti was obligated to show that Bachmann was *personally* aware of such facts and *personally* drew such an inference.

There, the court found that Tangreti fell short. Although Bachmann perhaps could or should have made an inference of the risk of sexual abuse to Tangreti, there was insufficient evidence in the record to show that Bachmann actually made such an inference until *after* she had questioned Tangreti, at which point she took appropriate corrective action. Neither of the allegedly "inappropriate interactions" Bachmann observed involved a sexual interaction: Bachmann noticed Tangreti "lingering at the doorway" of an office while the officer sat behind a desk, and later witnessed the same officer having an allegedly "inappropriate" conversation with Tangreti about "other staff members."And although Bachmann had noticed changes in Tangreti's appearance and emotional behavior, including that Tangreti was "anxious" and "very emotional," there was no evidence that Bachmann had inferred that the changes stemmed from sexual abuse.

> Following the decision, a plaintiff may no longer state a viable claim against a government supervisor based on a lesser mental state than would be required to establish an underlying constitutional violation.

Accordingly, it could not be said that Bachmann had violated a constitutional right owed to Tangreti, much less a "clearly established" one. The Second Circuit therefore remanded the case and instructed the district court to enter summary judgment for Bachmann.

Conclusion

The Second Circuit's decision in *Tangreti* clarifies *Iqbal*'s impact on §1983 claims against government supervisors. Following the decision, a plaintiff may no longer state a viable claim against a government supervisor based on a lesser mental state than would be required to establish an underlying constitutional violation. The decision offers much-needed guidance to district courts, plaintiffs, and government-supervisor defendants on the pleading standard for §1983 claims against government supervisors post-*Iqbal*. It remains to be seen how district courts will apply *Tangreti*'s holding to Eighth Amendment claims involving different factual scenarios, as well as to claims asserting violations of other constitutional provisions.