

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD BANKS, JUDY BANKS,	:	CIVIL ACTION
ROGER McCARREN and LARRY MEYER	:	
	:	
Plaintiffs	:	
	:	
v.	:	NO. 3:08-cv-01110
	:	
KAREN GALLAGHER, ANTHONY MARIANO,	:	
WILLIAM STADNITSKI and DICKSON	:	(CAPUTO, D.J.)
CITY BOROUGH	:	(MANNION, M.J.)
	:	
Defendants	:	

EDWARD J. KRAFT, JR.	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
KAREN GALLAGHER, ANTHONY MARIANO	:	
and DICKSON CITY BOROUGH	:	
	:	
Defendants	:	

**DEFENDANTS, KAREN GALLAGHER, ANTHONY MARIANO,
WILLIAM STADNITSKI AND DICKSON CITY BOROUGH'S ANSWER AND
AFFIRMATIVE DEFENSES TO THE COMPLAINT OF PLAINTIFFS,
RICHARD BANKS, JUDY BANKS, ROGER McCARREN AND LARRY MEYER**

Defendants, Karen Gallagher, Anthony Mariano, William Stadnitski and Dickson City Borough, by and through their attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker LLP state their Answer and Affirmative Defenses to the Complaint of Plaintiffs, Richard Banks, Judy Banks, Roger McCarren and Larry Meyer, as follows:

JURISDICTION

1. Admitted.

THE PARTIES

2-4. Admitted on information and belief.

5. Admitted.

6. Admitted in part; denied in part. It is admitted only that Defendant, William Stadnitski, was at all relevant times the Chief of Police for the Dickson City Police Department. The remaining allegations are denied. The remaining averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

7. Admitted in part; denied in part. It is admitted only that Dickson City is a municipal corporation duly organized, existing and operating under and pursuant to the applicable laws of the Commonwealth of Pennsylvania. By way of further response, it is admitted only that Dickson City had the responsibility of hiring, supervising and disciplining its police officers including Gallagher, Mariano and Stadnitski. The remaining allegations are denied.

FACTUAL ALLEGATIONS

8. Admitted in part; denied in part. It is admitted only that on May 9, 2008, the plaintiffs were upon the premises of Old County Buffet, a public eating facility within the jurisdiction and geographical limits of Dickson City. The remaining averments are denied. The remaining averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

9. Denied. The averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

10. Admitted in part; denied in part. Defendants are without information or knowledge to admit or deny that the Plaintiffs were “so engaged” and therefore the allegation is denied. The remaining allegations of the paragraph are admitted.

11. Denied. The averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

**COUNT I – RICHARD BANKS, ROGER McCARREN
AND LARRY MEYER V. GALLAGHER AND MARIANO**

12. Defendants repeat and allege their answers to Paragraphs 1 through 11 as though fully set forth herein.

13. Admitted in part; denied in part. It is admitted only that plaintiffs, Richard Banks, Roger McCarren and Larry Meyer were asked to report to a different section of the restaurant. The remaining averments are denied. The remaining averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

14. Denied. The averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

15. Admitted part; denied in part. It is admitted that Richard Banks refused to produce identification and he was handcuffed and placed in a police car. The remaining averments are denied. The remaining averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

16-19. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

20. Admitted in part; denied in part. It is admitted only that Gallagher informed Banks that she was advised by the ADA “to take the weapon and that he [Banks] could speak to the Chief of police about it on Monday.” The remaining allegations are denied. The remaining

averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

21-23. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

**COUNT II – JUDY BANKS AND RICHARD BANKS
V. GALLAGHER AND MARIANO**

24. Defendants repeat and allege their answers to Paragraphs 1 through 23 as though fully set forth herein.

25-27. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

COUNT III – ALL PLAINTIFFS V. DICKSON CITY

28. Defendants repeat and allege their answers to Paragraphs 1 through 27 as though fully set forth herein.

29-30. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

COUNT IV – ALL PLAINTIFFS V. WILLIAM STADNITSKI

31. Defendants repeat and allege their answers to Paragraphs 1 through 30 as though fully set forth herein.

32. Admitted in part; denied in part. It is admitted only that Defendant Stadnitski is the Chief of Police. The remaining allegations are denied. The remaining averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

33-35. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

**COUNT IV – ALL PLAINTIFFS V. ALL DEFENDANTS
(IMPROPERLY DESIGNATED AS SECOND COUNT IV)**

36. Defendants repeat and allege their answers to Paragraphs 1 through 35 as though fully set forth herein.

37. Denied. The averments contained in this paragraph constitute a conclusion of law to which no responsive pleading is required.

COUNT V – ALL PLAINTIFFS V. GALLAGHER AND MARIANO CONSPIRACY

38. Defendants repeat and allege their answers to Paragraphs 1 through 37 as though fully set forth herein.

39-42. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

**COUNT VI – CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA-
ARTICLE I § 8**

43. Defendants repeat and allege their answers to Paragraphs 1 through 42 as though fully set forth herein.

44-45. Denied. The averments contained in these paragraphs constitute conclusions of law to which no responsive pleading is required.

PRAYER FOR RELIEF

Wherefore, Defendants, Karen Gallagher, Anthony Mariano, William Stadnitski and Dickson City Borough, respectfully request that Plaintiffs, Richard Banks, Judy Banks, Roger McCarren and Larry Meyer's Complaint be dismissed and all other relief that the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a cause of action against Defendants upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The actions and conduct of the Defendants, to the extent they occurred as alleged, were objectively reasonable under the circumstances of which Defendants were then and there aware, and they enjoy a qualified immunity from all liability. Saucier v. Katz, 533 U.S. 194, 201 (2001); Sharrar v. Felsing, 128 F.3d 810 (3d Cir. 1997).

THIRD AFFIRMATIVE DEFENSE

Defendants relied on the advice of counsel in performing their duties.

FOURTH AFFIRMATIVE DEFENSE

The Defendants' alleged actions and/or inactions did not rise to the level of constitutional violations, and therefore, the Plaintiffs did not suffer any infringement of their constitutional rights. The actions and conduct of the Defendants did not violate any clearly established constitutional or federal statutory right of which the Defendants reasonably should have been aware.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs were afforded all constitutional protections to which they were entitled at the time of the alleged incident.

SIXTH AFFIRMATIVE DEFENSE

The Defendants did not violate any rights or laws of the Constitution of the United States, in particular, 42 U.S.C. § 1983 and § 1988 the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

SEVENTH AFFIRMATIVE DEFENSE

The Defendants did not violate the Constitution or the laws of the Commonwealth of Pennsylvania.

EIGHTH AFFIRMATIVE DEFENSE

The Defendants did not violate any article or section of the Constitution of the Commonwealth of Pennsylvania.

NINTH AFFIRMATIVE DEFENSE

The Defendants conduct did not deprive the Plaintiffs of any rights, privileges or immunities secured by the Constitution or laws of the Commonwealth of Pennsylvania.

TENTH AFFIRMATIVE DEFENSE

The Defendants conduct did not deprive the Plaintiffs of any rights, privileges or immunities secured by the Constitution or laws of the United States.

ELEVENTH AFFIRMATIVE DEFENSE

The Defendants did not conduct an illegal stop of the Plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

The Defendants did not conduct an illegal detention of the Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

The Defendants did not conduct an illegal search of the Plaintiffs.

FOURTEENTH AFFIRMATIVE DEFENSE

The Defendants did not conduct an illegal seizure of the Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

The Defendants did not deprive the Plaintiffs of their property.

SIXTEENTH AFFIRMATIVE DEFENSE

The Defendants did not illegally and unjustifiably frisk the Plaintiff, Richard Banks.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Defendants did not illegally and unjustifiably arrest the Plaintiff, Richard Banks.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Defendants did not illegally and unjustifiably handcuff the Plaintiff, Richard Banks.

NINETEENTH AFFIRMATIVE DEFENSE

The Defendants did not illegally seize the Plaintiffs' property.

TWENTIETH AFFIRMATIVE DEFENSE

The Defendants did not illegally confiscate and retain the Plaintiffs' property.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Defendants did not deny Plaintiffs' due process of law.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The Defendants did not threaten the Plaintiffs.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Defendants did not coerce the Plaintiffs.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The Defendants weres not negligent, grossly negligent, careless, reckless or deliberately indifferent with regard to the Plaintiffs.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

No actions of the Defendants were malicious, wanton, willful, reckless or indifferent.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

All actions taken or inactions of he Defendants were justified, legal and legitimate.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to establish any intentional or reckless act(s) that merit an award of punitive damages.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Gallagher and Mariano did not conspire to violate the Civil Rights of the plaintiffs.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Gallagher and Mariano have not each done and/or have not caused to be done acts in furtherance of any conspiracy whereby the Plaintiffs have been injured and have been deprived of their rights under the United States Constitution and the First, Fourth, Fifth and Fourteenth Amendments.

THIRTIETH AFFIRMATIVE DEFENSE

Gallagher and Mariano did not have actual knowledge of any conspiracy to deprive the Plaintiffs of their rights protected by §1983.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs have suffered no damages.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief of compensatory and punitive damages may be granted.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' punitive damages claims are unconstitutional.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred or limited by their own actions.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

The Defendants are entitled to sovereign immunity with respect to Plaintiffs' claims.

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By: /s/Louis J. Isaacsohn
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Dickson City Borough

Dated: September 22, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing Answer to Complaint was served by First-Class United States Mail, postage prepaid upon the following:

Robert J. Magee, Esquire
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By: /s/ Louis J. Isaacsohn
Louis J. Isaacsohn, Esquire

Dated: September 22, 2008