

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

ANNABEL K. MELONGO)
)
 Plaintiff)
)
 v.)
)
 ASA ROBERT PODLASEK; ASA JULIE)
 GUNNIGLE; INVESTIGATOR KATE)
 O’HARA (Star No. 423); INVESTIGATOR)
 JAMES DILLON (Star No. 1068);)
 INVESTIGATOR ANTONIO RUBINO)
 (Star No. 5043); INVESTIGATOR RICH)
 LESIAK (Star No. 5000); UNKNOWN COOK)
 COUNTY SHERIFF’S OFFICERS; DR.)
 MATTHEW S. MARKOS; ASST. ATORNEY)
 GENERAL KYLE FRENCH; COOK COUNTY)
 SHERIFF THOMAS DART; COOK COUNTY;)
 INVESTIGATOR RANDY ROBERTS;)
 SCHILLER PARK DETECTIVE WILLIAM)
 MARTIN; VILLIAGE OF SCHILLER PARK;)
 CAROL SPIZZIRRI,)
)
 Defendants)

Case No. 13-CV-4924

Honorable Judge John Z. Lee

Magistrate Judge Sheila M. Finnegan

**DETECTIVE WILLIAM MARTIN AND THE VILLAGE OF SCHILLER PARK’S
REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS PLAINTIFF’S SECOND
AMENDED COMPLAINT**

Detective William Martin and the Village of Schiller Park, by and through their attorneys of record, for their reply in further support of their motion to dismiss Plaintiff Annabel K. Melongo’s (“Plaintiff”) Second Amended Complaint (the “Second Amended Complaint”) pursuant to Fed. R. Civ. P. 12(b)(6) (the “Motion”), state as follows:

ARGUMENT

I. PLAINTIFF'S §1983 CLAIM AGAINST DETECTIVE MARTIN IS TIME BARRED (COUNT I)

Although Plaintiff has failed to respond to almost all of Detective Martin's arguments, Plaintiff has clarified that she is not bringing any claims against him regarding the eavesdropping prosecution. Plaintiff also states that she is in fact pursuing a § 1983 claim against Detective Martin for arresting and initiating computer tampering charges against her without probable cause allegedly in violation of her fourth amendment rights (Response, p. 2). With this clarification, the Court's decision is clear.

Plaintiff claims that her lawsuit is timely in light of her acquittal of the computer tampering charges on July 28, 2014. Notwithstanding her recent court victory, her fourth amendment claims arose years ago and she cannot pursue any fourth amendment claims at this time.

Under Illinois law, § 1983 lawsuits are governed by the two year statute of limitations set forth in 735 ILCS 5/13-202. *Wallace v. Kato*, 549 U.S. 384, 387-388 (2007). In *Kato*, the Supreme Court held that "the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process." 549 U.S. at 397. According to Plaintiff's Second Amended Complaint, she was arrested for computer tampering 8 years before she filed the Second Amended Complaint (on or about November of 2006) and she was indicted on January 17, 2007. As a result, any fourth amendment claims related to her arrest are clearly time barred.

Plaintiff cannot avoid the application of the two year statute of limitations for what she admits is a fourth amendment claim by trying to transform it into a malicious prosecution claim.

Williams v. Heavener, 217 F.3d 529, 531 (7th Cir. 1998). Plaintiff's § 1983 claim for fourth amendment violations is unquestionably time barred and the Court should dismiss Count I of Plaintiff's Complaint with prejudice.

II. ALL OF PLAINTIFF'S STATE LAW CLAIMS ARE ALSO TIME BARRED (COUNT IV)

Likewise, all of Plaintiff's state law claims against Detective Martin¹ are time barred pursuant to Illinois' one year statute of limitations. 745 ILCS 10/8-101. Plaintiff did not file suit against Detective Martin until November 4, 2014, years after the accrual of all of her claims related to the computer tampering arrest and prosecution. All of Plaintiff's state law claims accrued years prior to her exoneration². As a result, the Court should dismiss Count IV of Plaintiff's Complaint against Detective Martin.

III. THE COURT SHOULD DISMISS COUNT III AGAINST THE VILLAGE OF SCHILLER PARK

The Court should also dismiss Plaintiff's *Monell* pattern and practice claim with prejudice. A municipality cannot be liable under *Monell* when there is no underlying constitutional injury by the municipal employee. *Sallenger v. City of Springfield*, 630 F.3d 499, 504 (7th Cir. 2010). As argued in the Motion and above, all of Plaintiff's claims against Detective Martin are time barred and fail as a matter of law. Once the constitutional claims against Detective Martin are dismissed, the Court must dismiss any municipal claims against the Village of Schiller Park.

It is telling that Plaintiff cites no cases to support her position that she has adequately alleged a *Monell* pattern and practice claim against the Village of Schiller Park. Although

¹ Although Plaintiff claims that her state law claims are pled properly, the Court should reject her simple identification of the name of the torts she claims to be pursuing without pleading any of the elements of the torts.

² As argued in the motion to dismiss (and not responded to at all by Plaintiff), Plaintiff cannot maintain a claim for malicious prosecution against Detective Martin, who, as an arresting officer, did not prosecute Plaintiff.

Plaintiff asserts that she has pled enough, her *Monell* claim is decidedly insufficient.

Notwithstanding Plaintiff's use of buzz words and recitation of a "pattern, practice and custom" Plaintiff has not plead facts that support a reasonable inference that the Village of Schiller Park engaged in a widespread practice so permanent and well-settled that it constituted a custom and practice which caused the alleged harm. *Coleman v. City of Chicago*, 2014 WL 3706584 at *3, 13 C 6792 (N.D. Ill, July 25, 2014). Conclusory boilerplate allegations of the existence of a custom and practice do not sufficiently state a cause of action against a municipality. *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995). The Court should therefore dismiss Plaintiff's *Monell* claim (Count III) due to her failure to allege facts supporting the existence of a municipal policy which caused the alleged constitutional violation.

WHEREFORE, for these reasons and those presented in the motion to dismiss, Defendants Detective William Martin and the Village of Schiller Park respectfully request that this Honorable Court dismiss Plaintiff's Second Amended Complaint against Detective William Martin (Counts I, IV and VI) and the Village of Schiller Park (Count III) with prejudice and any other such further relief as this Honorable Court deems just and appropriate.

February 23, 2015

Respectfully Submitted,

DETECTIVE WILLIAM MARTIN and THE
VILLAGE OF SCHILLER PARK

By: /s/ Eric D. Kaplan
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The undersigned, one of the attorneys for Defendant Detective Martin and the Village of Schiller Park, hereby certifies that he served the foregoing pleading(s) on all counsel of record through the CM/ECF Filing System for delivery on or before 5:00 p.m. on February 23, 2015.

Dated: February 23, 2015

By: /s/ Eric D. Kaplan
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