

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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JUDE D. MAYDWELL,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 01-1559
	:	
NORMAN M. YOFFE, ESQUIRE	:	
(Individual),	:	
AVCO FINANCIAL SERVICES	:	
CONSUMER DISCOUNT COMPANY ONE,	:	
FARMERS FIRST BANK, and	:	
DONALD G. BECKER (Individual),	:	
	:	
Defendants.	:	

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MEMORANDUM

ROBERT F. KELLY, J.

JUNE 19, 2001

Presently before this Court is the Motion to Dismiss filed by Defendant Norman M. Yoffe, Esquire ("Mr. Yoffe"). The Plaintiff, Jude D. Maydwell ("Mr. Maydwell"), acting pro se, filed his Complaint on March 30, 2001, then, upon leave of Court pursuant to Federal Rule of Civil Procedure 15(a), filed an Amended Complaint on April 12, 2001. For the reasons that follow, Mr. Yoffe's Motion is granted.

**I. FACTS.**

Mr. Maydwell's claims against the various Defendants in this action arise from mortgage foreclosure and ejectment proceedings which took place from 1995 through 1998. Mr. Maydwell and his family were ejected from their home on December 3, 1998. Mr. Yoffe represented Defendant AVCO Financial Services Consumer Discount Company One in the foreclosure proceedings against the Mr.

Maydwell. Mr. Yoffe represented Mr. Maydwell at no time. Mr. Maydwell's claims against Mr. Yoffe are limited to an allegation that Mr. Yoffe told Mr. Maydwell that if he "were to push for my civil rights, he [Yoffe] would make sure that I could never buy a postage stamp on credit." (Compl., ¶ 6.) Mr. Maydwell also contends that Mr. Yoffe reported his debt, which was then recorded on Mr. Maydwell's credit reports. (Id.) Mr. Maydwell does not, however, deny the accuracy of his credit reports. (Id.)

## **II. STANDARD.**

A motion to dismiss, pursuant to Fed. R. Civ. P. 12(b) (6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

## **III. DISCUSSION.**

Mr. Maydwell alleges that Mr. Yoffe violated his civil rights. As Mr. Yoffe correctly notes, this Court can dismiss a complaint for failing to state a claim where the face of the

complaint reveals an obvious affirmative defense such as the statute of limitations. (Yoffe's Mem. Law in Supp. Mot. Dismiss at 11)(citing ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 n.9 (3d Cir. 1994)(citing Davis v. Grusemeyer, 996 F.2d 6177 (3d Cir. 1993)(affirming 12(b)(6) dismissal of complaint as being barred by the statute of limitations))). In Pennsylvania, there is a two-year statute of limitations for civil rights violations pursuant to 42 U.S.C. section 1983. Bougher v. Univ. of Pitt., 882 F.2d 74, 78 (3d Cir. 1989)(borrowing, in a Title IX action, Pennsylvania's two-year statute of limitations for personal injury actions); Wilson v. Garcia, 471 U.S. 261, 266-267 (1985)(examining the rule that a federal court adjudicating section 1983 claims will adopt the state statute of limitations of the most closely analogous state law claim); 42 Pa. C.S.A. § 5524. On the face of Mr. Maydwell's Complaint, the alleged violations of his civil rights occurred in 1997 and 1998. Because he did not file his Complaint until March 25, 2001, however, Mr. Maydwell's civil rights claims are barred by the two-year Pennsylvania statute of limitations.

#### **IV. CONCLUSION.**

Because Mr. Maydwell's claims against Mr. Yoffe are barred by the two-year statute of limitations under 42 U.S.C. section 1983, the allegations in his Complaint against Mr. Yoffe must be dismissed.

An appropriate Order follows.

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DONALD G. BECKER (Individual),	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 19th day of June, 2001, upon consideration of the Motion to Dismiss filed April 30, 2001 by Defendant Norman M. Yoffe (Dkt. No. 7), and the Plaintiff's Response thereto, it is hereby ORDERED that the Motion to Dismiss is GRANTED and Defendant Norman M. Yoffe, Esquire is DISMISSED with prejudice.

BY THE COURT:

Robert F. Kelly,	J.
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