

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT R. TOLAN, MARIAN TOLAN, §
BOBBY TOLAN, AND §
ANTHONY COOPER, §

Plaintiffs, §

VS. §

CIVIL ACTION NO. 4:09-1324

JEFFREY WAYNE COTTON; §
JOHN C. EDWARDS; §
RANDALL C. MACK, CHIEF OF §
POLICE; BYRON HOLLOWAY, §
ASSISTANT CHIEF OF POLICE; §
CYNTHIA SIEGEL, MAYOR; §
BERNARD SATTERWHITE, CITY §
MANAGER; THE CITY OF BELLAIRE; §
AND THE BELLAIRE POLICE §
DEPARTMENT, §

Defendants. §

JURY TRIAL DEMANDED

DEFENDANT CITY OF BELLAIRE, TEXAS'
DEFENSES, ANSWER AND JURY DEMAND

TO THIS HONORABLE UNITED STATES DISTRICT COURT:

Defendant, City of Bellaire (City), Texas, comes now in response to the claims and allegations contained within Plaintiffs' Original Complaint and files its Defenses, Answer and Request for Jury Trial, and would respectfully show the Court and Jury as follows:

FIRST DEFENSE

1. Plaintiffs fail to allege facts which state a claim for which relief can be granted.

SECOND DEFENSE

2. The Plaintiffs' conduct was the sole cause of the occurrence which forms the basis of this lawsuit and their alleged harm and damage, if any. Alternatively, the Plaintiffs' conduct was a proximate cause of the occurrence which forms the basis of this lawsuit and Plaintiffs' alleged harm and damage, if any.

THIRD DEFENSE

3. Plaintiffs have not shown they are proper Parties to this action and they lack standing to assert claims alleged. Plaintiffs were neither injured, nor deprived of any right, privilege or immunity protected by the Constitution or laws of the United States nor can they, consistent with the law, assert claims on behalf of other individuals.

FOURTH DEFENSE

4. The City is entitled to governmental immunity and a presumption of entitlement thereto, from the Plaintiffs' state, common law, claims.

FIFTH DEFENSE

5. There is no waiver of the City's governmental immunity from the Plaintiffs' state, common law, claims under the procedural and substantive requirements of Chapter 101 of the Texas Civil Practice and Remedies Code; commonly known as the Texas Tort Claims Act.

SIXTH DEFENSE

6. The City's liability for state common law claims, if any, is barred or limited by the provisions of the Texas Tort Claims Act.

SEVENTH DEFENSE

7. Punitive or exemplary damages are not recoverable against the City under any law or any claim advanced by Plaintiffs.

EIGHTH DEFENSE

8. The City asserts its employees entitlement to dismissal of the claims against them under § 101.106 of the Texas Civil Practice & Remedies Code.

ANSWER

9. Subject to the foregoing defenses, the City answers Plaintiffs' factual allegations as follows: Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, the City denies each allegation contained within the Plaintiffs' Original Complaint except those expressly admitted herein.

10. The City admits the allegations within ¶¶ 11, 26, 37-38, 40, 44, 60-61, 166, 178 and ¶ 196 of the Plaintiffs' complaint.

11. The City denies the allegations within ¶¶ 16, 21, 32, 34-35, 42, 45, 50-51, 53-59, 62-70, 72-89, 91-92, 95-96, 98-109, 111-118, 120-165, 167-177, 179-195 and ¶¶ 197-212 of Plaintiffs' complaint.

12. In response to ¶ 5 of the Plaintiffs' complaint, the City denies there is any basis for suing Sergeant Jeffrey Wayne Cotton in his individual or official capacity.

13. In response to ¶ 6 of the Plaintiffs' complaint, the City denies there is any basis for suing Officer John C. Edwards in his individual or official capacity.

14. In response to ¶ 7 of the Plaintiffs' complaint, the City denies that Chief of Police Randall C. Mack is a final policymaker and also that there is any basis for suing him in his individual or official capacity.

15. In response to ¶ 8 of the Plaintiffs' complaint, the City denies that Assistant Chief of Police Byron Holloway is a final policymaker and also that there is any basis for suing him in his individual or official capacity.

16. In response to ¶ 9 of the Plaintiffs' complaint, the City denies that Mayor Cynthia Siegel is a final policymaker and also that there is any basis for suing her in her individual or official capacity.

17. In response to ¶ 10 of the Plaintiffs' complaint, the City denies that City Manager Bernard Satterwhite is a final policymaker and also that there is any basis for suing him in his individual or official capacity.

18. In response to ¶ 12 of the Plaintiffs' complaint, the City admits that its police department is a department of the City of Bellaire but denies the remaining allegations therein.

19. In response to ¶ 13 of the Plaintiffs' complaint, the City admits that venue is proper in this Court and that this Court has jurisdiction to adjudicate the federal claims the Plaintiffs' assert. The City denies all other allegations within ¶ 13 of the Plaintiffs' complaint including, but not limited to, that any basis for waiver of the City's governmental immunity from suit for state law claims exists.

20. The City is without sufficient knowledge and information to form a belief as the truth of the allegations within ¶¶ 1-4, 14-15, 17, 29-30 and ¶ 39 of the Plaintiffs' complaint.

21. In response to ¶ 18 of the Plaintiffs' complaint, the City admits that Robert Tolan has played baseball and attended school in the City but denies the remaining allegations therein.

22. In response to ¶¶ 19-20 of the Plaintiffs' complaint, the City admits that Robert Tolan worked as a waiter. The City denies the remaining allegations within ¶¶ 19-20 of the Plaintiffs' complaint.

23. In response to ¶ 22 of the Plaintiffs' complaint, the City admits that, on December 31, 2008, at approximately 2:00 o'clock a.m., Robert Tolan and Anthony Cooper arrived 804 Woodstock, Bellaire, Harris County, Texas 77401 but denies the remaining allegations therein.

24. In response to ¶ 23 of the Plaintiffs' complaint, the City admits that Robert Tolan parked a vehicle on the street in front of the house located at 804 Woodstock but denies the remaining allegations therein.

25. In response to ¶ 24 of the Plaintiffs' complaint, the City admits that Anthony Cooper, who was sitting on the passenger side of the vehicle, searched the passenger compartment of the vehicle but the City denies the remaining allegations therein.

26. In response to ¶ 25 of the Plaintiffs' complaint, the City admits that, when Robert Tolan opened the door of the vehicle he had been driving, he saw headlights shining into the vehicle and that he pointed this out to Anthony. The City denies the remaining allegations within ¶ 25 of the Plaintiffs' complaint.

27. In response to ¶ 27 of the Plaintiffs' complaint, the City admits that Robert Tolan exited the vehicle and that Anthony Cooper continued to search the passenger compartment of the vehicle. The City denies the remaining allegations within ¶ 27 of the Plaintiffs' complaint.

28. In response to ¶ 28 of the Plaintiffs' complaint, the City admits that Anthony Cooper and Robert Tolan walked away from the vehicle but the City denies the remaining allegations therein.

29. In response to ¶ 31 of the Plaintiffs' complaint, the City admits that Robert Tolan and Anthony Cooper were carrying various items including, but not limited to, cell phones. The City denies the remaining allegations within ¶ 31 of the Plaintiffs' complaint.

30. In response to ¶ 33 of the Plaintiffs' complaint, the City admits that Officer Edwards directed Robert Tolan and Anthony Cooper to get down on the ground but denies the remaining allegations therein.

31. In response to ¶ 36 of the Plaintiffs' complaint, the City admits that Sergeant Cotton, who is white, arrived on the scene but the City denies the remaining allegations therein.

32. In response to ¶ 41 of the Plaintiffs' complaint, the City admits that, at some time that evening, Bobby Tolan spoke with Officer Edwards regarding the identities of those involved and the report the vehicle was stolen but the City denies the remaining allegations within ¶ 41 of the Plaintiffs' complaint.

33. In response to ¶ 43 of the Plaintiffs' complaint, the City admits that Marian Tolan spoke out and physically interfered during the officers' attempt to secure the scene, but the City denies the remaining allegations therein.

34. In response to ¶ 46 and ¶¶48-49 of the Plaintiffs' complaint, the City admits that Marian Tolan made comments regarding Robert Tolan and the report the vehicle was stolen but the City denies the remaining allegations within ¶ 46 and ¶¶48-49 of the Plaintiffs' complaint.

35. In response to ¶ 47 of the Plaintiffs' complaint, the City admits that Marian Tolan made comments regarding Robert Tolan, Anthony Cooper, Bobby Tolan and the house located at 804 Woodstock but the City denies the remaining allegations within ¶ 47 of the Plaintiffs' complaint.

36. In response to ¶ 52 of the Plaintiffs' complaint, the City admits that Robert Tolan stated something like get your fucking hands off her but the City denies the remaining allegations within ¶ 52 of the Plaintiffs' complaint.

37. In response to ¶ 71 of the Plaintiffs' complaint, the City admits that Sergeant Cotton called for an ambulance to care for Robert Tolan after the shooting and that Anthony Cooper, Bobby Tolan and Marian Tolan sat briefly in separate police cars. The City denies the remaining allegations within ¶ 71 of the Plaintiffs' complaint.

38. In response to ¶ 90 of the Plaintiffs' complaint, the City admits that Robert Tolan was taken to a trauma unit at Ben Taub hospital where he underwent surgery and received other medical care but the City denies the remaining allegations therein.

39. In response to ¶ 93 of the Plaintiffs' complaint, the City admits that Assistant Chief Holloway stated that, in his opinion, there was no apparent basis for the allegation that racial profiling caused Robert Tolan to be shot. The City denies the remaining allegations within ¶ 93 of the Plaintiffs' complaint.

40. In response to ¶ 94 of the Plaintiffs' complaint, the City admits that Assistant Chief Holloway released a statement on behalf of the City's police department that an altercation ensued as officers attempted to detain and question Robert Tolan. The City denies the remaining allegations within ¶ 94 of the Plaintiffs' complaint.

41. In response to ¶ 97 of the Plaintiffs' complaint, the City admits that, at a City Council meeting after Robert Tolan was shot, its City Manager stated that it would be appropriate to wait until after the investigation was complete before making judgments about the incident. The City denies the remaining allegations within ¶ 97 of the Plaintiffs' complaint.

42. In response to ¶ 110 of the Plaintiffs' complaint, the City admits that Texas law requires a peace officer to demonstrate weapons proficiency annually but the City denies the remaining allegations within ¶ 110 of the Plaintiffs' complaint.

43. In response to ¶ 119 of the Plaintiffs' complaint, the City admits that Sergeant Cotton was indicted by a Harris County Grand Jury upon the accusation of assault of Robert Tolan but the City denies the remaining allegations within ¶ 119 of the Plaintiffs' complaint.

REQUEST FOR JURY TRIAL

44. The City asserts its right to a trial by jury on all issues, in accordance with Rule 38 of the Federal Rules of Civil Procedure.

PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant, City of Bellaire, Texas, prays that it be released, discharged, and acquitted of all charges and allegations filed against it, that judgment be rendered in its favor, either prior to, or at the conclusion of a trial of this matter, that Plaintiffs take nothing by reason of this suit, and that the City recover all costs of court and attorney's fees incurred in defending against the Plaintiffs' claims, as well as all general and other relief to which the City is justly entitled in law and equity.

Respectfully Submitted,

By: /S/ William S. Helfand
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record in accordance with the District's ECF service rules on this 28th day of May, 2009 to:

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/S/ William S. Helfand_____