

Briefs and Other Related Documents

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NOT PRECEDENTIAL

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United States Court of Appeals,
 Third Circuit.
 Harry T. LIPSCHULTZ; Estate of Sylvia Lipschultz;
 Sylvia Holdings,
 Inc., Appellants,

v.

LOGAN ASSISTANCE CORPORATION;
 Redevelopment Authority of the City of
 Philadelphia; Noel Eisenstat; Office of Housing and
 Community Development;
 John Kromer; Department of Licenses and
 Inspections; City of Philadelphia.

Nos. 01-1564, 01-1565.

Submitted Pursuant to Third Circuit LAR 34.1(a)
 March 4, 2002.
 Decided Oct. 21, 2002.

Property owners filed β 1983 claim against city redevelopment agency and others, based on city's decision to compensate only residential landowners for property damage in the neighborhood due to sinking. The United States District Court for the Eastern District of Pennsylvania, [Curtis Joyner](#), J., granted summary judgment in favor of city and the other defendants on some counts and dismissed the other counts without prejudice. Property owners appealed. The Court of Appeals, [Scirica](#), Circuit Judge, held that: (1) claim was untimely, and (2) continuing violation doctrine did not apply to extend limitations period.

Affirmed.

West Headnotes

[1] Limitation of Actions **95(15)**

241k95(15) Most Cited Cases

Property owners' personal injury claims brought under β 1983 against city redevelopment authority were barred by Pennsylvania's applicable two-year limitations period, where owners knew of their injuries resulting from city's refusal to compensate them for sinking non-residential buildings for many years, and owners knew or should have known for more than two years that residents would depart the neighborhood, which would injure their pharmacy's business. [42 U.S.C.A. \$\beta\$ 1983](#); [42 Pa.C.S.A. \$\beta\$ 5524](#).

[2] Limitation of Actions **58(1)**

241k58(1) Most Cited Cases

Property owners who brought β 1983 claim against city, based on city's decision not to compensate non-residential property owners for sinking properties, failed to show a continuing violation, and thus, their claim was not timely under Pennsylvania's applicable two-year limitations period for personal injury claims, where each disbursement made by city to residents with sinking properties did not represent a separate unlawful act, but were merely consequences of city's policy; the allegedly discriminatory act occurred when city issued policy excluding businesses and mixed-use properties from compensatory relief, and plaintiff owners' injuries stemmed from that single, permanent act. [42 U.S.C.A. \$\beta\$ 1983](#); [42 Pa.C.S.A. \$\beta\$ 5524](#).

***528** On Appeal from the United States District Court for the Eastern District of Pennsylvania. D.C. Civil Action No. 99-cv-03626. (Honorable J. Curtis Joyner).

Before [SCIRICA](#) and [ROSENN](#), Circuit Judges, and [WARD](#), District Judge. [\[FN*\]](#)

[FN*](#) The Honorable Robert J. Ward, United States District Judge for the Southern District of New York, sitting by designation.

***529** OPINION OF THE COURT

[SCIRICA](#), Circuit Judge.

****1** Harry Lipschultz and the estate of his mother Sylvia Lipschultz, property owners in the Logan section of Philadelphia, filed this β 1983 claim based on the City of Philadelphia's decision to compensate only residential landowners for property damage in

the neighborhood. Because the Lipschultzes's causes of action were time barred, we will affirm.

I.

The City first discovered that Logan buildings were sinking in 1984. In September 1986, Philadelphia Mayor Wilson Goode issued a compensation letter to Logan residents affected by the property damage. The policy authorized the City to provide compensation for residents who wished to move out of Logan but excluded businesses and mixed-use properties from compensation packages.

The Lipschultzes owned four properties in the Logan section of Philadelphia, consisting of residential units and a family pharmacy. The City offered to compensate the Lipschultzes for their residential units, but they decided to remain in Logan. A decade later, in July 1997, the family sold the pharmacy's assets. In May 1999, the Lipschultzes initiated these lawsuits against the City and its representatives. The District Court granted summary judgment in favor of the City and the other defendants on some counts and dismissed the other counts without prejudice. We consolidated the separate cases on this appeal.

II.

The District Court had jurisdiction under [28 U.S.C. § 1331](#) and [28 U.S.C. § 1367](#). We have jurisdiction under [28 U.S.C. § 1291](#).

III.

[\[1\]](#) A federal court should apply the state's statute of limitations for personal injury claims brought under [42 U.S.C. § 1983](#). *E.g.*, [Sameric Corp. v. City of Philadelphia](#), 142 F.3d 582, 599 (3d Cir.1998). In Pennsylvania, the relevant statutory period is two years. *See* Pa. Cons.Stat. Ann. § 5524 (West Supp.1997). This period begins to toll from the time a grievant "knew or should have known of the injury upon which its action is based." [Sameric](#), 142 F.3d at 599.

Here, the Lipschultzes knew of their injuries as far back as 1986. Mayor Goode's initial correspondence to Logan community members specifically offered compensation only to owner-occupants of residential units. This letter put the Lipschultzes on notice of their pharmacy's ineligibility for compensation.

The Lipschultzes admit they "were aware of the City's policy of not compensating businesses." *Brief for Appellants* at 48. Nevertheless, they argue they did not incur an actionable injury until they "gave up

on Logan and sold their assets." *Id.* Based on Mayor Goode's letter, the Lipschultzes knew or should have known residents would depart Logan and injure their pharmacy's business. At the very least, they admitted in a March 15, 1996, letter that their neighborhood had been "decimated" by the departure of many residents. Nevertheless, they did not file claims until May 25, 1999.

As the Supreme Court has recognized, statutes of limitations are not "simply technicalities," but rather, "fundamental to a well-ordered judicial system." [Board of Regents v. Tomanio](#), 446 U.S. 478, 487, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980). Here, the statute of limitations bars the Lipschultzes' claims.

*530 IV.

**2 [\[2\]](#) In an effort to revive their time-barred claims, the Lipschultzes argue the City's disbursement of federal and local funds to Logan residents constituted continuing violations. The continuing violations doctrine [\[FN1\]](#) is an "equitable exception to the timely filing requirement." [West v. Philadelphia Elec. Co.](#), 45 F.3d 744, 754 (3d Cir.1995).

[FN1](#). This doctrine also is known as the "continuing wrong" doctrine. *E.g.*, [Sameric Corp. v. City of Philadelphia](#), 142 F.3d 582, 599 (3d Cir.1998).

To determine whether there was a continuing violation, we undertake a three-factor analysis of the defendant's affirmative acts. [Cowell v. Palmer Twp.](#), 263 F.3d 286, 292-93 (3d Cir.2001) ("The focus of the continuing violations doctrine is on affirmative acts of the defendants."). Specifically, we look to the subject matter, frequency, and degree of permanence of the defendant's conduct. *Id.* (holding that the degree of permanence is the "most important of the factors"); *see also* [Berry v. Board of Supervisors](#), 715 F.2d 971, 981 (5th Cir.1983). To establish a continuing violation, the plaintiff has the burden of proving that the defendant's conduct is "more than the occurrence of isolated or sporadic acts." [Cowell](#), 263 F.3d at 292 (quoting [West](#), 45 F.3d at 755).

The Lipschultzes did not meet their burden here. "A continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation." *Id.* at 293 (quoting [Ocean Acres Ltd. v. Dare County Bd. of Health](#), 707 F.2d 103, 106 (4th Cir.1983)). In [Cowell](#), a township imposed two municipal liens on plaintiffs' land. Plaintiffs failed

to bring their [B 1983](#) claim until six years after the imposition of the second lien, long after the statute of limitations had run. We held the Township's conduct in issuing the liens and later refusing to remove them constituted a single, rather than continual, act, meaning the continuing violations doctrine did not apply.

Here, the Lipschultzes' argument rests on the premise that each disbursement to Logan residents represented a separate unlawful act. But these disbursements were merely consequences of the City's policy rather than independent discriminatory conduct. [\[FN2\]](#) As the Supreme Court expressed, "the proper focus [for the continuing violation theory] is upon the time of the *discriminatory acts*, not upon the time at which the *consequences* of the acts become most painful." [Delaware State College v. Ricks](#), 449 U.S. 250, 258, 101 S.Ct. 498, 66 L.Ed2d 431 (1980) (emphasis in original). Here, the allegedly discriminatory act occurred in September 1986 when the City issued its policy excluding businesses and mixed-use properties from compensatory relief. All of the Lipschultzes' injuries stem from this single, permanent act, meaning the continuing violations doctrine does not apply.

[FN2](#). The decision cited by the Lipschultzes, [Brenner v. Local 514](#), 927 F.2d 1283, 1296 (3d Cir.1991), does not support their proposition. *Brenner* involved repeated hostile acts by the Local against certain union members. This pattern of continual conduct was not present in *Cowell* nor this case.

V.

For the foregoing reasons we will affirm the judgment of the District Court.

50 Fed.Appx. 528, 2002 WL 31357636 (3rd Cir.(Pa.))

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- [2001 WL 34556418](#) (Appellate Brief) Reply Brief for the Appellants (Oct. 25, 2001)Original Image of this Document (PDF)

- [2001 WL 34556419](#) (Appellate Brief) Brief of Appellees City of Philadelphia; Office of Housing and Community Development; Department of Licenses and Inspections; and John Kromer (Oct. 05, 2001)Original Image of this Document (PDF)

- [2001 WL 34556420](#) (Appellate Brief) Brief for the Appellants (Aug. 21, 2001)Original Image of this Document (PDF)

- [01-1565](#) (Docket) (Mar. 09, 2001)

- [01-1564](#) (Docket) (Mar. 09, 2001)

- [2001 WL 34556417](#) (Appellate Brief) Brief for the Logan Assistance Corporation Appellee (2001)Original Image of this Document (PDF)

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