

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-4447

(Summary Calendar)

ARCHIE C. EPES, ET AL.,

Plaintiffs-Appellants,

VERSUS

CITY OF BOSSIER CITY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana
(CA 90 0594 S)

(November 23, 1992)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Automated Building Corporation and its sole stockholder, Archie Epes (hereafter, collectively "Epes"), brought suit against the City of Bossier City ("the City"), for damages resulting from the City's order to condemn housing units on Epes' property. Epes brought suit under 42 U.S.C. § 1983 (1988), claiming the City denied him due process of law. The district court granted summary judgment for the City. We affirm.

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

In May of 1986, the City sent a letter to Epes, notifying him that the Director of Permits and Inspections had recommended that the housing units located on Epes' property be condemned. This recommendation was based on the substandard condition of the units, and Epes' failure to correct housing code violations. The City also notified Epes that it would review the Director's recommendation at a City Council meeting on June 17, 1986, where Epes would be required to show cause as to why the buildings should not be condemned. At the meeting, the City approved the recommendation, and condemned the units.

Epes appealed the City's decision to the 26th Judicial District Court, Bossier County, and the Second Circuit Court of Appeals for Louisiana. Both courts affirmed the City's decision. The Supreme Court of Louisiana denied Epes' writ of certiorari. The units were subsequently destroyed on March 31, 1989.

On April 2, 1990,¹ Epes filed a suit for damages in federal district court under 42 U.S.C. § 1983 (1988), alleging that the City violated his constitutional rights.² The district court

¹ Epes claims that March 31, 1990, was a Saturday, and that April 1, 1990, was a Sunday. He therefore argues that his one year limitations period did not toll. See Brief for Epes at 4.

² Epes claims that the condemnation and demolition of his property denied him due process because: (1) the City failed to record a notice of condemnable property in the public records))as required by state law))prior to Epes buying the property; and (2) Epes' rights in the property vested once the City issued permits to Epes to improve the property.

granted summary judgment for the City, holding that Epes' claim had prescribed, and, nevertheless, would fall on the merits.

Epes appeals the district court's decision, contending that: (1) his cause of action under § 1983 did not prescribe; and (2) the City's condemnation and demolition of his property violated his constitutional right to due process. Since we conclude that Epes' § 1983 claim prescribed, we do not reach the merits of Epes' claim.

II

A

We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Central R.R.*, 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

B

To render a decision in this matter, we need only resolve a single legal issue)whether Epes' cause of action under § 1983

accrued on: (1) the date Epes knew of the City's order to condemn the units; or (2) the date the units were demolished. We conclude that Epes' cause of action accrued on the date that he knew of the City's condemnation order.

Epes' constitutional claim under 42 U.S.C. § 1983 is subject to Louisiana's one year statute of limitations for tort actions.³ See *Watts v. Graves*, 720 F.2d 1416, 1423 (5th Cir. 1983) (per curiam) ("[W]rongs committed by Louisiana state officials in violation of federal law are considered to be torts subject to Louisiana's one-year statute of limitations for tort actions." (citation omitted)); *Jones v. Orleans Parish Sch. Bd.*, 688 F.2d 342, 344 (5th Cir. 1982), *cert. denied*, 461 U.S. 951, 103 S. Ct. 2420, 77 L. Ed. 2d 1310 (1983). While the limitations period is determined by reference to state law, when a cause of action under § 1983 accrues is determined by federal law. *Graves*, 720 F.2d at 1423; *Lavellee v. Listi*, 611 F.2d 1129, 1130 (5th Cir. 1980). A cause of action under § 1983 accrues when the "plaintiff knows or has reason to know of the injury which is the basis of the action." *Listi*, 611 F.2d at 1131 (quoting *Cox v. Stanton*, 529 F.2d 47, 50 (4th Cir. 1975)). Epes contends that the injury which is the basis of his action is the demolition of the units on his property. We disagree.

Though we have not decided a case directly on point, the facts here are analogous to those we faced in *Peter Henderson Oil v. City*

³ See La. Civ. Code. Ann. art. 3536 (West 1953 and Supp. 1992).

of *Port Arthur, Texas*, 806 F.2d 1273 (5th Cir. 1987)) a case concerning the question of when a § 1983 action accrued. In *Peter Henderson*, the City of Port Arthur rejected appellants' application for a drilling permit because of a city ordinance requiring the consent of nearby property owners. *Id.* at 1274. The appellants claimed that the consent requirement was unconstitutional, and brought suit under 42 U.S.C. § 1983. *Id.* We held that the basis of appellants' cause of action was the ordinance itself, and not the effect of the ordinance)) the rejection of appellants' application. *Id.* at 1275 ("[When the City of Port Arthur passed the ordinance], appellants were given explicit, unambiguous notice that the property would be subject to the requirement of consent by nearby landowners. Their injury therefore dates from that time.").

Similarly, the City demolished the units on Epes' property, pursuant to its condemnation order. See City's Record Excerpt 15. Epes claimed that the condemnation order deprived him of due process, and brought suit under 42 U.S.C. § 1983. At the council meeting of June 17, 1986, Epes was given explicit, unambiguous notice that his property was being condemned, and would be demolished within 60 days. See *id.* ("[T]he owners of said structures were present at the meeting and presented their case . . ."). Thus, the basis of Epes' cause of action was the City's condemnation order, and not the effect of that order)) the demolition of the units. Cf. *Delaware State College v. Ricks*, 449 U.S. 250, 258, 101 S. Ct. 498, 504, 66 L. Ed. 2d 431 (1980) (In an

employment discrimination case brought under Title VII,⁴ plaintiff's claim accrued "at the time the tenure decision was made and communicated to [plaintiff] . . . even though one of the *effects* of the denial of tenure))the eventual loss of a teaching position))did not occur until later."). Accordingly, Epes' cause of action accrued on June 17, 1986))the date Epes knew of the City's condemnation order. See *Duplantis v. Bonvillain*, 675 F. Supp. 331, 337 (E.D. La. 1987) (where plaintiff brought suit under § 1983 for constitutional violations arising from the condemnation of his property, cause of action accrued at time of condemnation proceedings); *Toteff v. Village of Oxford*, 562 F. Supp. 989, 993 (E.D. Mich. 1983) (same). Because Epes did not file a claim with the district court until April of 1990, his claim is time-barred.⁵

III

For the foregoing reasons, we **AFFIRM**.

⁴ "In deciding when the statute of limitations commences to run [for employment discrimination claims brought] under . . . § 1983, we look to the Title VII cases." *Perez v. Laredo Junior College*, 706 F.2d 731, 733 (5th Cir. 1983).

⁵ Even if the filing of an appeal in Louisiana state court tolled the statute of limitations, Epes' limitations period would have begun again on November 28, 1988))the date that the Supreme Court of Louisiana denied Epes' writ of certiorari. Because Epes filed his claim more than a year after this date, his claim clearly prescribed.