IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TIMOTHY J. EATON, Plaintiff, v. THE UNIVERSITY OF DELAWARE, a corporation of the State of Delaware, and JEFFREY GATES, Defendants.	)	C.A. No. 00-709-GMS

MEMORANDUM AND ORDER

I. INTRODUCTION

On August 8, 2000, the plaintiff, Timothy J. Eaton ("Eaton"), filed a three count complaint against the defendants, The University of Delaware (the "University") and Jeffrey Gates ("Gates") (D.I. 1). In his complaint, Eaton alleges violations of 42 U.S.C. § 1983,[1] common law assault, and the Delaware Constitution of 1897, Art. I, §§ 6 and 7. The University and Gates timely answered the complaint (D.I. 6). On June 1, 2001, the University filed a motion for summary judgment on all claims pending against it (D.I. 82). Eaton timely answered (D.I. 85) and the University timely replied (D.I. 86).[2] Upon reviewing

[1]Since § 1983 cannot alone serve as a basis of relief, Eaton has alleged that he was "deprived of the rights and privileges secured by the United States Constitution, particularly under the provisions of the Fourth, [Fifth], and Fourteenth Amendments." *See* Compl. at ¶ 19; *see also* Joint Status Rept. at ¶ 6 (D.I 19) (changing ¶ 19 of complaint to include Fifth Amendment violation).

[2]The parties argue about why Gates did not file a motion for summary judgment on the claims pending against him. *Compare* Def. Ans. Br. Sum. J. at 8 n.3, *with* Pl. Reply Br. Sum. J. at 3 n.2. The court believes it is inappropriate to speculate about Gates' motivations for not filing a dispositive

the parties' submissions, including the limited record, the court concludes that, as a matter of law, the University cannot be held liable under 42 U.S.C. § 1983.[3] Therefore, the court will enter summary judgment in favor of the University on Counts I and III. As to Court II, however, court finds that Eaton has sufficiently plead respondeat superior liability against the University for any claim of assault and battery against Gates.

II. STANDARD OF REVIEW

To prevail on a motion for summary judgment, the moving party must establish "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See* Fed. R. Civ. P. 56(c). A district court, however, may not resolve factual disputes in a motion for summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) (stating that "at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial"); *see also Pi Lambda Phi Fraternity, Inc. v. Univ. of Pittsburgh*, 229 F.3d 435, 441 n. 3 (3d Cir. 2000).

In considering a motion for summary judgment, all evidence submitted must be viewed in a light most favorable to the party opposing the motion. *See McCarthy v. Recordex Serv., Inc.*, 80 F.3d 842, 847 (3d Cir. 1996) (citing *Anderson*, 477 U.S. at 247); *see also Matsushita Elec. Indus. Co. v. Zenith*

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motion. Rather, it is sufficient to note that, regardless of the court's disposition of the claims against the University, a trial against Gates must proceed as scheduled.

[3]The court has received Eaton's letter dated July 10, 2001 requesting oral argument on the issue of respondeat superior and § 1983 liability (D.I. 87). The University submitted a letter on July 20, 2001 stating that Eaton's request was untimely (D.I. 88) to which Eaton responded (D.I. 89). Aside from issues raised by the parties, given the limited time between the request and the approaching trial (as well as the press of other matters), the court decided not to grant Eaton's request.

Radio Corp., 475 U.S. 574, 587 (1986). Although the summary judgment hurdle is difficult to overcome, it is by no means insurmountable. As the Supreme Court has stated, "once the party seeking summary judgment has demonstrated the absence of a genuine issue of material fact, its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for trial." *See id.* at 586-87 (citations omitted). In other words, the inquiry involves determining "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *See Brown v. Grabowski*, 922 F.2d 1097, 1111 (3d Cir. 1990) (internal quotations and citations omitted).

As both parties appear to agree, this case presents no disputed issues of material fact vis á vis the University. From the face of the complaint, Eaton does not allege any independent conduct by the University; he predicates his claims entirely on the doctrine of respondeat superior. *See* Compl. at ¶¶ 3, 8, 11; *see also* Def. Ans. Br. Sum. J. at 10. The University, for its part, admits that Gates is its employee. *See* Ans. at ¶¶ 8, 19; *see also* Pl. Reply Br. Sum. J. at 2. Finally, for the purposes of deciding the instant motion, the court will assume, without deciding, that Gates used "excessive force" in violation of the various claims asserted in the complaint.

III. DISCUSSION

As noted above, the issues before the court are purely legal ones. First, whether the University is responsible for actions of its employees under 42 U.S.C. § 1983.[4] Second, whether Eaton has sufficiently

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[4]The University asserts that this question deals with both Claims I and III since the relevant violations of the state constitution are co-terminus with the United States Constitution. *See* Def. Op.

plead Count II so as to put the University on notice that the claim was asserted against it. If the court finds the answer to either question is negative – that the University cannot be held liable or that it was not on notice – Eaton cannot proceed with his claims. On the contrary, if the court answers either question in the affirmative, Eaton may proceed on that claim. The court will address the issues in turn.[5]

A. The University Cannot Be Held Liable Under 42 U.S.C. § 1983

It is beyond dispute that municipalities and other "local government units" cannot be held vicariously liable for the actions of their employees. *See Monell v. Dept. of Social Servs.*, 436 U.S. 658 (1978); *see also, e.g., C.H. ex. rel. Z.H. v. Oliva*, 226 F.3d 198, 202 (3d Cir. 2000) (stating that "there is no vicarious, respondeat superior liability under § 1983) (citing *Monell*, 436 U.S. at 694). Furthermore, it is similarly well established that the Eaton could not pursue his claims against the state of Delaware and certain types of "state actors." *See Will v. Michigan Dept. of State Police,* 491 U.S. 63-64 (1989); *see also Melo v. Hafer*, 912 F.2d 628, 634 (3d Cir. 1990) (concluding that "neither a state nor state officials sued in their official capacities for money damages are 'persons' under § 1983") *cf. Quern v. Jordan*, 440 U.S. 332, 342(1979) (finding that § 1983 does not override state's traditional Eleventh Amendment immunity). Therefore, the question becomes, whether the University is more like the state of Delaware or like a municipality.

Both parties' briefs contain incomplete analysis of precedent and make conclusory assertions. *See*

Br. Sum. J. at 8 (citing cases). Eaton does not appear to contest this statement in his brief. Additionally, the court has reviewed the cases cited by the University and conducted an independent investigation into the case law. Therefore, the court will analyze Claims I and III together insofar as they relate to the University.

[5]Because of the lack of factual dispute between the University and Eaton, the court will dispense with a background statement of facts and proceed directly to a discussion of the legal issues.

Pl. Op. Br. Sum J. at 7 (stating "[t]here is no dispute that the University is a state actor . . . ."); Def. Ans. Br. Sum. J. at 9 (asserting that "[i]t is well decided that the University is not a state agency."). A more accurate statement of the law is that the University is a "state actor" in some circumstances but not in others. An examination of mandatory and persuasive precedent leads the court to conclude (1) the University cannot invoke the Eleventh Amendment shield provided to states, (2) the University is a "person" "acting under color of state law" and can be sued under § 1983, and (3) Eaton cannot sue the University under the doctrine of respondeat superior for a violation of § 1983.

This court has held that the University is not an "arm or alter ego of the state of Delaware under the Eleventh Amendment and therefore is not immune from suit." *See Gordenstein v. Univ. of Del.*, 381 F. Supp. 781, 722 (D. Del. 1974). In *Gordenstein*, then District Court Judge Walter K. Stapleton focused on the financial relationship between the University and the state of Delaware. Judge Stapleton found that since the University "has both the power and the resources to pay any judgment entered against it," and the Board of Trustees had "entire control and management of the University," that the considerations underlying the Eleventh Amendment ban were not present.[6] *See Gordenstein,* 381 F. Supp. at 721-23. Therefore, the court agrees with Eaton insofar as his assertion that the University's status

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[6]Analogies to other institutions of higher learning are of limited value because "each state university exists in a unique governmental context, and each must be considered on the basis of its own peculiar circumstances. *See Kovats v. Rutgers,* 822 F.2d 1303, 1312 (3d Cir. 1987) (citation omitted). Nevertheless, other state universities have not been able to use the Eleventh Amendment bar. *See id.* (Rutgers); *Samuel v. Univ. of Pittsburgh*, 375 F. Supp. 718, 722 (W.D. Pa. 1974), *aff'd in part, rev'd in part on other grounds*, 538 F.2d 991 (3d Cir. 1976) (declining to apply bar to University of Pittsburgh, Temple University, and Penn State University); *Hanshaw v. Delaware Tech. & Comm. Coll.*, 405 F. Supp 292, 296 (D. Del. 1974) (finding that defendant "has not successfully invoked the Eleventh Amendment as a bar to the monetary damage relief requested by plaintiffs.").

prevents it from relying on the Eleventh Amendment's protective cloak in defending against his claims.

Eaton's complete reliance on *Gordenstein*, however, is misplaced since the University did not assert the Eleventh Amendment as a ground upon which the court should grant it summary judgment.[7] Although Eaton would have the court believe that *Gordenstein* is dispositive of the University's liability under the § 1983, this is simply not the case. A determination that the University is not immune from suit under the Eleventh Amendment is entirely separate from whether it is a "state actor" for purposes of the Fourteenth Amendment. *See Gordenstein*, 381 F. Supp. at 722 n.23 (stating that "clearly the Fourteenth Amendment test for 'state action' is less rigorous than the test for an 'arm' of the state mandated under the Eleventh Amendment") (discussing cases); *Cf. King v. Caesar Rodney Sch. Dist.*, 396 F. Supp. 423, 427 n.7 (D. Del. 1975) (stating that determination that local school district is not immune from suit under the Eleventh Amendment "is not inconsistent with the principle that the action of local school districts is 'state action' for the purposes of the fourteenth amendment") (citing cases).

Neither party provided the court with information on the relationship between the University and the state of Delaware. Nevertheless, the court believes that statutes and caselaw (both state and federal) unequivocally support a finding of sufficient state action for Fourteenth Amendment, and by extension § 1983, purposes. *See Krynicky v. Univ. of Pittsburgh*, 742 F.2d 94, 97 (3d Cir. 1984) (stating that "the requirement of section 1983 that the challenged activity be taken under color of state law has been treated as identical to the state action element of the fourteenth amendment.") (internal citations and footnote

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[7]The University's Answer, however, suggests that it could raise the defense of sovereign immunity to Eaton's claims. *See* Ans. at 4 (stating that "[p]laintiff's claims may be barred in whole or part by the doctrine[] of sovereign . . . immunity."). As the above discussion demonstrates, however, the University cannot maintain such a defense at trial.

omitted) (citing cases). Although there is no uniform test for ascertaining whether state action exists, the Supreme Court has suggested two approaches that are relevant to this case; the "symbiotic relationship" and the "nexus" tests. *Compare, e.g.*, *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 725 (1961) (symbiotic relationship), *with Jackson v. Metropolitan Edison, Co.*, 419 U.S. 449, 453 (1974) (nexus).

The court concludes that the relationship between the state of Delaware and the University is sufficient under both of the above mentioned tests to establish the requisite amount of state action to trigger § 1983. The nexus test is easy; the Delaware Code explicitly confers powers on the University to appoint police officers who have state law enforcement officer powers on the University campus. *See* 14 Del. C. § 5194. The key to the "symbiotic relationship" test is determining whether:

> the State has so far insinuated itself into a position of interdependence with [the acting party] that it must be recognized as a joint participant in the challenged activity, which, on account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment.

Burton, 365 U.S. at 725. The Delaware General Assembly has conferred numerous benefits and requirements on the University throughout the Delaware Code. For the sake of brevity, the court will only list a few examples.

The benefits go to the core of the University. *See, e.g.*, 30 Del. C. §§ 5506(d)(1) and 545(b)(1)(a) (stating University is a "state agency" for tax purposes); 29 Del. § 6102(b) (providing that University is "state agency" for certain General Fund purposes); 14 Del. C. § 5701 (designating University as land-grant college, meaning that Delaware General Assembly "donat[ed] public lands" for its use); *id.* at § 5310 (providing that Delaware Secretary of State must send University all duplicates of public

documents); *id.* at § 5115 (proving that University can issue tax exempt revenue bonds for various purposes); *id.* at § 5114 (granting University power of eminent domain); *id.* § 5102 (establishing "leading object" of University as promoting education of persons "of all classes").

The requirements imposed by the Delaware General Assembly equally shape the University. *See, e.g., id.* at §§ 5302-5309 (requiring that University provide courses on Delaware history and government to be taken by all students as well as maintain School of Agriculture, Department of Physical Education, and summer school for teachers); *id.* at. § 5110 (requiring President of University to "make a report of all the activities of the University" to Board of Trustees who shall, in turn, transmit it to Governor and General Assembly); *id.* at §5105 (requiring that Governor shall not only serve on Board of Trustees, but also appoint eight active members).

It is also instructive to look at how the Delaware state courts view the University. In an oft-cited and landmark opinion from 1950, then Vice-Chancellor, and former Chief Judge of the Third Circuit Court of Appeals, Collins J. Seitz explicitly held under that for purposes of both the common law and the Fourteenth Amendment, the University is a state agency. *See Parker v. Univ. of Delaware*, 75 A.2d 225, 228-30 (Del. Ch. Ct. 1950); *see also Delaware State Univ v. Delaware State Univ. Chapter of the Amer. Assn. of Univ. Professors*, Civ.A.No. 1389-K, 2000 WL 713763 (Del. Ch. Ct. May 9, 2000) (citing *Parker*). At least one court in this district has cited *Parker* with approval. *See Gordenstein*, 381 F. Supp. at 725 & n.32. The court, therefore, holds that the University is a "state actor" for purposes of § 1983.

The final piece of the puzzle in resolving Eaton's Claims I and III is the argument that the parties focus on in their papers: whether the University can be held liable for violations of § 1983 under the

doctrine of respondeat superior.[8] Given the above discussion, the court can dispose of this issue rather easily. Put simply, the University cannot be held liable under a theory of respondeat superior for the federal and state constitutional claims that Eaton raises. *Scott v. Univ. of Delaware*, 385 F. Supp. 937, 944 (D. Del.1974) (holding that University can be sued under § 1983 but that it "may not be vicariously liable for wrongful acts of [its] employees"); *see also Harel v. Rutgers*, 5 F. Supp.2d 246, 267 (D.N.J. 1998) (citing *Monell*, 436 U.S. at 658, 691) (holding that Rutgers, "'a government entity' cannot be held liable for the actions of its employees on a theory of respondeat superior"); *Cf. Salehpour v. Univ. of Tennessee*, 159 F.3d 199, 207-07 (6th Cir. 1998) (stating that university president and chancellor were not subject to supervisory liability absent showing they encouraged or condoned actions); *D.O. Kline v. Northern Texas State Univ.*, 782 F.2d 1229, 1235 (5th Cir. 1986) (holding that dean who merely supervised and disciplined faculty was not liable under § 1983 merely because of supervisory position).[9]

B. The University Was On Notice That Count II Included Vicarious Liability

The University seeks a grant of summary judgment in its favor on Court II on the ground that Eaton's complaint failed to assert a claim against it. According to the University, Count II "makes no mention of [the University] or of the doctrine of respondeat superior." *See* Pl. Op. Br. Sum. J. at 9. The issue before the court, however, is more nuanced than whether Eaton makes an explicit mention of the

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[8]The court does not mean to suggest that the proceeding discussion is dicta or unnecessary to the holding in any way. On the contrary, the above issues are integral to the court's analysis. First, the parties implicitly and vaguely raised the arguments, and the court needed to unravel them. Second, the court has an independent duty to satisfy itself of the "metes and bounds" of its authority.

[9]Even if the court had found that the University was not a state actor, Eaton's claims must still fail since respondeat superior cannot support § 1983 claims against private universities. *See Dove v. Fordham Univ.*, 56 F. Supp.2d 330, 336 (S.D.N.Y. 1999) (citing cases).

doctrine of respondeat superior in Count II. Rather, Eaton must merely satisfy the requirement of notice pleading under the Federal Rules of Civil Procedure. In other words, the court's task is not to determine the artfulness of the complaint or its choice of language, but rather if the University was fairly on notice. *See* Fed. R. Civ. P. 8(a)(2); *see also Remick v. Manfredy*, 238 F.3d 246, 263-64 (3d Cir. 2001) (holding that district court improperly dismissed claim by imposing pleading requirement beyond that required by the Federal Rules of Civil Procedure since plaintiff "put the defendants on notice as to the circumstances surrounding the alleged tortious behavior."); *Lundy v. Admat of New Jersey, Inc.*, 34 F.3d 1173, 1193 & n.14 (3d Cir. 1994) (Becker, J. concurring and dissenting in part) (describing rationale behind liberal notice pleading requirement) (citing cases).

Count II of Eaton's complaint reads as follows: "The plaintiff incorporates herein and makes part hereof the allegations contained in paragraphs 1 through 19. As a result of the assault and battery by the defendant, Gates, the plaintiff Eaton has suffered significant physical injuries as described above." The University contends that the use of the singular "defendant" and the express mention of Gates makes Count II different than Counts I and III (which refer to both Gates and the University and use the word "defendants"). Eaton replies that Count II's incorporation of paragraphs 1 through 19 (specifically paragraph 8),[10] is, standing alone, sufficient to satisfy the liberal notice pleading requirements. *See* Def. Ans. Br. Sum. J. at 12. Although the court disagrees with both parties' arguments, it finds that the University was adequately placed on notice of possible respondeat superior liability in Claim II.

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[10]Paragraph 8 of the complaint states, "At all times relevant . . . Gates . . . was acting in the course of his employment by . . . the University . . . which is, under the doctrine of respondeat superior, responsible for his actions."

Eaton's complaint, the University's Answer, and the conduct of the parties to date all combine to convince the court that the University was on notice that it was included in Court II of the complaint under the doctrine of respondeat superior. First, as already stated, paragraph 8 of the complaint (which was incorporated in Count II) explicitly alleges that Gates was acting within the scope of his employment. Further, in Eaton's prayer for relief, he asked the court to award him various types of damages for, inter alia, violations of state statutory rights. *See* Compl. at ¶ 24(b). Since the only state statutory rights Eaton's complaint could conceivably allege are assault and battery, it seems that this statement is further notice to the University that Eaton intended the inclusion of an allegation of vicarious liability in Count II.[11]

Second, Gates and the University filed a joint Answer to Eaton's complaint. The University, therefore, responded to paragraph 8 of Eaton's complaint by stating "Admitted that Gates was employed by the University in October, 1998. The remaining allegations . . . are denied." *See* Ans. at ¶ 8. This statement was incorporated by reference in the University's answer which denied Count II. *See id.* at ¶ 20-21. Additionally, the Answer contains affirmative defenses which state, inter alia, that Eaton "fails to state a cause of action for respondeat superior liability."[12] *See id.* at ¶ 4. Third, the Joint Status Report that the parties submitted to the court on May 29, 2001 stated that one of the "basic issues" in the case was, ". . . whether or not the common law claim of assault is barred by the state Tort Claims Act."

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[11]The parties have not presented the court with any Delaware statute which codifies common law assault and battery in the civil context. Nevertheless, Counts I and II only allege federal and state constitutional violations.

[12]Although the reference to respondeat superior could merely refer to Claims I and III, the language of the Answer is not so limited. Furthermore, elsewhere in its Answer, the University asserts that Eaton fails to state a cause of action under § 1983 and various other defenses relating to immunity. As a result, the court concludes that the University's broad inclusion of respondeat superior in its answer is not merely limited to Eaton's § 1983 and constitutional claims.

Although this statement could refer to Gates or the University, the point is that it is sufficiently vague so as to possibly encompass both of them.

Given the above conduct by the parties, it seems unfair to let the University now argue that it was completely unaware that it was included in Count II of the complaint. Up until the filing of the instant motion, the University and Gates have acted in concert; they are represented by the same attorneys and have not sought to differentiate themselves in their prior submissions to the court. To suddenly assert that the University was unaware of the progression of this case and the underlying theories is surprising, to say the least. Further, not only did the University fail to raise the issue of Claim II before the instant motion, but its Answer and contribution to the Joint Status Report suggest that it either believed respondeat superior liability applied to the entire cause of action or that it failed to alert the court (and Eaton) to this possible defense.[13] Finally, it appears that the University may be unduly parsing Eaton's complaint. Reading the complaint as a whole, there is no doubt that Eaton claims that the University is liable under the doctrine of respondeat superior for an incident between Eaton and Gates.

The court, therefore, finds that Eaton's complaint is sufficient to put the University on notice of his claim of respondeat superior liability for Gates' alleged assault and battery. Such a determination, however, does not prevent the University from presenting any or all of its affirmative defenses at trial. Rather, the court is unwilling to bar Eaton from the courthouse door on such a slim ground.[14]

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[13]The University seeks to chastize Eaton for failing to seeking to amend his complaint, either at a prior point or now. The court notes, however, that the University did not bring a motion to dismiss Count II prior to – or concurrent with – the filing of a motion for summary judgment.

[14]The parties also devote a portion of their briefs to arguing whether Gates' conduct constitutes an intentional tort within the meaning of Delaware law. *Compare* Pl. Op. Br. Sum. J. at 9-10, *with* Def. Ans. Br. Sum. J. at 12. The court declines to address this issue since not only does it not have any

IV. CONCLUSION

The court will grant the University's motion for summary judgment in part. Since it is sufficiently connected with the state of Delaware for purposes of § 1983 liability, the University cannot be held liable for Gates' actions under a theory of respondeat superior. The court will therefore enter summary judgment in favor of the University on Counts I and III of the complaint. The court will not grant the University summary judgment on Count II of the complaint since it finds that Eaton has sufficiently plead respondeat superior liability.

Therefore, IT IS HEREBY ORDERED that:

1. The University's motion for summary judgment (D.I. 82) is GRANTED IN PART pursuant to Federal Rule of Civil Procedure 56(c).

2. Summary judgment BE AND IS HEREBY ENTERED in favor of the University on Counts I and III of the complaint.

Dated: July 31, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

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facts before it upon which it can make such a finding, but Gates has not filed a motion for summary judgment on this ground. Such an assertion by the University, however, underscores the court's earlier point that the dual representation of Gates and the University by the same attorneys suggests that the University cannot claim surprise or that it was unaware of the underlying factual disputes and how they relate to any allegations of liability.