

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COLLEEN M. CARROLL,)	8:08-CV-377
)	
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
CITY OF OMAHA, NEBRASKA,)	
CONSTANCE GARRO, MIKE)	
ASHBROOK, JOHN DOE, and)	
JOE DOE)	
)	
Defendants.)	

COMES NOW the Plaintiff Colleen M. Carroll, and for her causes of action against Defendants states and alleges as follows:

I. JURISDICTION/VENUE

1. Plaintiff invokes this Court’s jurisdiction under 28 U.S.C. §§1343(3) and (4) and 1331 and the pendent and supplemental jurisdiction of the Court pursuant to 28 U.S.C. §1367. This action, authorized and instituted pursuant to the Civil Rights Act of 1866 (42 U.S.C. §1983), and the Fourth and Fourteenth Amendment to the United States Constitution, is brought to remedy the unlawful seizure and excessive force and taking of property without due process when Defendants shot and killed Plaintiff’s pet dog without any justification, in violation of federal law

2. The actions giving rise to Defendants’ liability, as alleged in this Complaint, occurred in the City of Omaha, County of Douglas, State of Nebraska. Venue is, therefore, proper in the District of Nebraska pursuant to 28 U.S.C. §1391(b).

II. PARTIES

3. Plaintiff Colleen M. Carroll is a citizen of the State of Nebraska and at all relevant times a resident of the City of Omaha.

4. Defendant City of Omaha is a body corporate and politic and a political subdivision of the State of Nebraska, duly organized and existing under the laws of the State of Nebraska. Defendant City of Omaha operates under its authority, the Omaha Police Department of which the individual named Defendants are employees.

5. At all relevant times, Defendant Constance Garro was a police officer for the Omaha Police Department. In committing the acts and omissions alleged in this Complaint, Defendant Garro was acting under color of law and within the course and scope of his employment as a police officer for the Omaha Police Department and Defendant City of Omaha. Defendant Garro is sued both in her individual capacity and in her capacity as a police officer for the Omaha Police Department and Defendant City of Omaha.

6. At all relevant times, Defendant Mike Ashbrook was a police officer for the Omaha Police Department. In committing the acts and omissions alleged in this Complaint, Defendant Ashbrook was acting under color of law and within the course and scope of his employment as a police officer for the Omaha Police Department and Defendant City of Omaha. Defendant Ashbrook is sued both in his individual capacity and in his capacity as a police officer for the Omaha Police Department and Defendant City of Omaha.

7. Plaintiff is ignorant of the true name and capacity of Defendants John Doe and Joe Doe and, therefore, sues these Defendants by such fictitious name. Plaintiff is

informed and believes and thereon alleges that the Defendants so named are additionally responsible for the shooting of Plaintiff's pet, as described in this Complaint. Plaintiff will amend her Complaint to state the true name and capacity of Defendants John Doe and Joe Doe, when they have been ascertained. Said Defendants were acting under color of law and within the course and scope of their employment as police officers for the Omaha Police Department and Defendant City of Omaha. Said Defendants are sued both in their individual capacity and in their capacity as police officers for the Omaha Police Department and Defendant City of Omaha. Any reference in this Complaint to "Defendant," or "Defendants," includes Defendants John Doe and Joe Doe.

8. Each Defendant sued in this Complaint acted as the agent or employee of every other Defendant.

III. FACTUAL ALLEGATIONS

9. On November 18, 2004, at approximately 2:15 p.m., Defendants Garro and Ashbrook and, on information and belief, the other individual Defendants, acting under color of law and apparent authority as agents of the City of Omaha, executed a "no knock search warrant" on Plaintiff's home at 6568 Military Ave., Omaha, Nebraska.

10. At the time Defendants executed the search warrant, Plaintiff was located in the living room of her home accompanied by her pet dog, "Lucky Boy," a chocolate lab mix. Lucky Boy was confined in the living room and separated from the outside of Plaintiff's home by a closed storm door.

11. Prior to entering Plaintiff's home in the course of executing the search warrant, and while their presence remained unannounced, and from a position standing

outside of Plaintiff's home, Defendants fired at least one shot through Plaintiff's storm door and into Plaintiff's home.

12. The shot fired by Defendants from outside Plaintiff's home entered her home through a doorway, and struck and wounded Plaintiff's pet, Lucky Boy. Lucky Boy died shortly thereafter, due to the wound caused by the gunshot.

13. There was no provocation warranting the shooting of Lucky Boy by Defendants. At the time the Defendants shot Lucky Boy, he posed no threat to any of the officers executing the search warrant on November 18, 2004 or to any member of the public, as he was physically separated from Defendants and all other members of the public, and had displayed no aggressive behavior toward either the Defendants or anyone else.

14. At the time the Defendants shot Lucky Boy, Defendants knew, or should have known, that Lucky Boy posed no threat to any officer and was a peaceful family pet.

15. Upon information and belief, Defendant City of Omaha through the Omaha Police Department, has knowingly and willfully adopted a policy or practice, whether written or unwritten, of condoning and encouraging the shooting of family pets, specifically dogs, when executing search warrants, regardless of whether these pets present any threat to officers and before any threat can be ascertained.

16. Only after shooting Plaintiff's pet chocolate lab, Lucky Boy, from outside Plaintiff's home did Defendants enter the home, when a search of the home was conducted.

17. Plaintiff was neither arrested nor charged with any crime following the execution of the search warrant by Defendants on November 18, 2004.

III. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF 42 U.S.C. §1983 Fourth Amendment Against Defendants Garro, Ashbrook, John Doe and Joe Doe

18. Plaintiff realleges and incorporates by reference paragraphs 1 through 17, as though fully set forth in this cause of action.

19. Defendants Garro, Ashbrook, John Doe and Joe Doe acted under color of law in shooting Lucky Boy without lawful justification, thereby depriving Plaintiff of certain constitutionally-protected rights, including, but not limited to, the right to be free from the unreasonable seizure of property by law enforcement officers as guaranteed by the Fourth Amendment of the Constitution of the United States.

20. As a proximate result of Defendants' conduct, Plaintiff has suffered and will continue to suffer property loss and damage, emotional distress and mental anguish. Further, Plaintiff incurred general damages for the deprivation of her constitutional rights.

21. Defendants Garro and Ashbrook and John Doe and Joe Doe acted in reckless and callous disregard for the constitutional rights of Plaintiff, and with willful oppression and malice. Plaintiff, therefore, seeks an award of punitive damages against these Defendants.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF
42 U.S.C. §1983, Fourteenth Amendment
Against Defendants Garro, Ashbrook, John Doe and Joe Doe

22. Plaintiff realleges and incorporates by reference paragraphs 1 through 17 as though fully set forth in this cause of action.

23. Defendants Garro, Ashbrook and John Doe and Joe Doe acted under color of law in shooting Lucky Boy without lawful justification, thereby depriving Plaintiff of certain constitutionally-protected rights, including, but not limited to, the right to be free the destruction of private property or the taking of property without due process of law as guaranteed by Fourteenth Amendment of the Constitution of the United States.

24. As a proximate result of Defendants' conduct, Plaintiff suffered and will continue to suffer property loss and damage, emotional distress and mental anguish. Further, Plaintiff incurred general damages for the deprivation of her constitutional rights.

25. Defendants Garro and Ashbrook and John Doe and Joe Doe acted in reckless and callous disregard for the constitutional rights of Plaintiff, and with willful oppression and malice. Plaintiff, therefore, seeks an award of punitive damages against these Defendants.

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF
42 U.S.C. §1983
Against Defendant City of Omaha

26. Plaintiff realleges and incorporates by reference paragraphs 1 through 17 as though fully set forth in this cause of action

27. The policies, practices, acts and omissions of Defendant City of Omaha, and the deliberate indifference of said Defendant, and the adoption and ratification of the misconduct of Defendants Garro, Ashbrook, John Doe and Joe Doe, as described in this Complaint, were moving forces behind the violations of constitutional rights and the resulting damages suffered by Plaintiff.

28. The policies, practices and customs of Defendant City of Omaha violated Plaintiff's rights under the Fourth and Fourteenth Amendments of the Constitution of the United States.

WHEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF
42 U.S.C. §1983
Against All Defendants

29. Plaintiff realleges and incorporates by reference paragraphs 1 through 17 and 27 and 28 as though fully set forth in this cause of action.

30. Defendants conducted the execution of the search on Plaintiff's home in an unreasonable manner and used excessive force in the destruction of Plaintiff's pet dog and, therefore, violated Plaintiff's rights under the Fourth Amendment of the Constitution of the United States.

31. As a result of Defendants' unlawful conduct, Plaintiff suffered great humiliation, embarrassment, and emotional distress and mental anguish, all to Plaintiff's damage to an extreme extent.

WHEREFORE, Plaintiff prays for relief as set forth below.

V. PRAYER

WHEREFORE, Plaintiff prays for the following relief against the Defendants:

A. Entry of a judgment against Defendants and each of them determining that they violated the Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

B. Entry of a judgment on each of Plaintiff's causes of action, jointly and severally against each and every Defendant, awarding to Plaintiff damages for loss of her pet dog in an amount in excess of \$5,000.00 and damages for emotional distress, mental anguish, loss of property and humiliation.

C. Entry of a judgment on Plaintiff's First, Second and Fourth causes of action, awarding to Plaintiff punitive damages against the individual Defendants in an amount in excess of \$250,000.00.

D. Entry of a judgment awarding to Plaintiff the costs of this suit and reasonable attorney's fees and expenses as allowed by 42 U.S.C. §1988.

E. Such other and further relief as the Court may deem just and proper.
Plaintiff designates Omaha, Nebraska as place of trial.

Plaintiff requests a jury trial.

DATED THIS 18th day of August, 2008.

Colleen M. Carroll, Plaintiff

BY:



Robert V. Broom - #10444

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