PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-1632

PAUL MCGOVERN,

Appellant,

v.

CITY OF PHILADELPHIA,

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No.: 07-cv-03817)
District Judge: Honorable Paul S. Diamond

Submitted Under Third Circuit LAR 34.1(a)
January 8, 2009

Before: CHAGARES and HARDIMAN, *Circuit Judges* and ELLIS,* *District Judge*

ORDER AMENDED OPINION

IT IS HEREBY ORDERED that the opinion in the above case, filed January 27, 2009, be amended as follows:

*The Honorable Thomas Selby Ellis, III, Senior District Judge for the United States District Court for the Eastern District of Virginia, sitting by designation.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Page 4, which read:

II.

The District Court had jurisdiction over McGovern's civil rights claim under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). Appellate jurisdiction exists pursuant to 28 U.S.C. § 1291 and we exercise plenary review over the District Court's order granting the City's Rule 12(b)(6) motion. *Edgar v. Avaya, Inc.*, 503 F.3d 340, 344 (3d Cir. 2007). We accept all well-pleaded allegations in the complaint as true and draw all reasonable inferences in McGovern's favor. *Miller v. Fortis*, 475 F.3d 516, 519 (3d Cir. 2007). The District Court's judgment is proper only if it is clear that "no relief could be granted under any set of facts that could be proved consistent with the allegations." *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 456 (3d Cir. 2006) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

shall read:

II.

The District Court had jurisdiction over McGovern's civil rights claim under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). Appellate jurisdiction exists pursuant to 28 U.S.C. § 1291 and we exercise plenary review over the District Court's order granting the City's Rule 12(b)(6) motion. *Edgar v. Avaya, Inc.*, 503 F.3d 340, 344 (3d Cir. 2007). We accept all well-pleaded allegations in the complaint as true and draw all reasonable inferences in McGovern's favor. *Miller v. Fortis*, 475 F.3d 516, 519 (3d Cir. 2007). The District Court's judgment is proper only if, accepting all factual allegations as true and construing the complaint in the light most favorable to the plaintiff, we determine that the plaintiff is not entitled to relief under any reasonable reading of the complaint. *See Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008) (citing *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)).

BY THE COURT:

/s/ Thomas M. Hardiman
Circuit Judge