IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

MILDRED CRESPO,	
Plaintiff,	
v.	**No. 2025 L 009086**
ROSITA LOPEZ,	**Calendar Y**
Defendant.	**Hon. John J. Tully, Jr.**

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Plaintiff Mildred Crespo ("Plaintiff" or "Mildred"), by her attorney, Thomas D. Rosenwein of Rosenwein Law Group, hereby submits her Response to Defendant's Motion to Dismiss Plaintiff's Complaint ("Motion").

INTRODUCTION

As more fully discussed below, Defendant's Motion has no basis in law or fact. This Court has jurisdiction of this action as Defendant is neither an employee nor an "agent' of Northeastern Illinois University ("NEIU"). In addition, Mildred has set forth the specific terms of the contract with which Defendant interfered, which fully satisfies pleading requirements at this stage of the proceedings (Count II). Lastly, Defendant does not even address, let alone challenge, the defamation claim against her (Count III), so that Count survives in this Court in any event.[1]

THE LEGAL STANDARD

Defendant brings its Motion pursuant to §2-691.1 of the Code of Civil Procedure, *i.e.*, combining a §2-615 and §2-619 attack in one motion.

[1] For the convenience of the Court, the Complaint is attached hereto as Exhibit A.

As this Court is well aware, in ruling on a §2-615 motion, a court must determine whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff and taking all well-pleaded facts as true, are sufficient to state a cause of action upon which relief may be granted. *Doe-3 v. McLean County Unit District No. 5 Board of Directors* , 2012 IL 112479, ¶ 16. A court should not dismiss a complaint pursuant to this section unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.,* 222 Ill. 2d 422, 429 (2006)

In ruling on §2-619 motion, a court must accept as admitted all well-pleaded facts in plaintiffs' complaint. In addition, all inferences that can reasonably be drawn from such facts are construed in plaintiffs' favor. *Morr-Fitz, Inc. v. Blagojevich* , 231 Ill. 2d 474, 488 (2008). Further, a cause of action should not be dismissed under §2-619 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78, (2003)

With these standards in mind, we turn to Defendant's contentions.

ARGUMENT

A. This Case Is Properly In The Circuit Court Of Cook County As Defendant Is Neither An Employee Nor Agent Of NEIU

While Defendant's Motion devotes pages expounding on the Court of Claims statute, that recitation only serves to obscure the crucial missing piece in Defendant's tortured contention that Plaintiff's claims are actually against the State of Illinois, *i.e*., any proof that Defendant qualifies as an employee or agent of NEIU. Defendant is neither, and the very exhibits attached to Defendant's motion give the lie to that assertion.

Initially, we note that Defendant, while citing cases that lawsuits against state employees are to be brought in the Court of Claims, makes no assertion in her affidavit (Ex. A to the Motion)

that she is or ever was an "employee" of NEIU. As stated in her affidavit, Defendant's prior higher education employment was at a different institution, Northern Illinois University ("NIU"), where she states she is an "Associate Professor Emeritus," *i.e*., a retired associate professor. (Motion, Ex. A., ¶2). Moreover, even if Defendant were an employee of NEIU, which she is not, the law is clear that intentional interference with contract is *per se* outside the scope of employment under Illinois law. *See*, *Hoffman v. Yack*, 57 Ill.App.3d 744 (5th Dist. 1978) ("[w]hen an employee of the State exceeds his authority by wrongful acts, he ceases to be a representative of the State").

Accordingly, Defendant's contention that Plaintiff's action is against the State of Illinois rests entirely on the notion that she is an "agent" of NEIU. Defendant makes the conclusory statement that as Chair of the NEIU El Centro Advisory Council, she "act[s] as an agent of NEIU to represent its interests as they relate to NEIU's broader community, including local community organizations, like the Logan Square Neighborhood Association, and neighboring residents and prospective students." (Id., ¶4).

However, this conclusory statement is unsupported in fact and law.

Factually, Defendant's affidavit statement is contradicted by the express statement of purpose contained in the by-laws of the Advisory Council upon which Defendant relies and attaches to her affidavit (Ex. 1). That document states:

> A. Purpose. The Council shall advise the Director in the setting of basic goals, policies and procedures for NEIU-EL CENTRO. It shall make recommendation regarding program plan, and provide for continuing analysis of need for education, training and related services. The Council shall make recommendations based upon its analysis to the Director. (Motion, Ex 1)

As the by-laws make plain, the Advisory Council, as its name makes explicit, is strictly advisory and has no power to bind NEIU, incur debt on its behalf, sign contracts or otherwise transact business on behalf of NEIU. Its sole *raison d'etre* is to "advise" and "make

recommendations." And that advice and those recommendations go only to the Director of the El Centro campus, not to NEIU's governing board, which is the statutorily specified Board of Trustees of Northeastern Illinois University. (110 ILCS 680/25-10).

In law, a mere allegation of agency is insufficient to establish actual agency. *Connick v. Suzuki Motor Co.*, 174 Ill.2d 482, 498 (1996). Accord, *Bogenberger v. Pi Kappa Alpha Corp*., 2018 IL 120951 (Ill 2018). And the burden of proving the existence of an agency relationship and the scope of authority is on the party seeking to charge the alleged principal. See, *e.g*., *Anderson v. Boy Scouts of America*, Inc., 226 Ill.App.3d 440, 444 (1st Dist. 1992) (finding no existence of agency where there are no provisions in the bylaws, charter or regulations of the BSA which "specially grant BSA or its district councils' direct supervisory powers over the method or manner in which adult volunteer scout leaders accomplish their tasks.")

Crucially, the law is clear that a principal-agent relationship exists only when the principal has the right to control the manner in which the agent performs its work, and the agent has the ability to subject the principal to liability. *Anderson, supra* at 443. See, also, *MJ & Partners Restaurant v. Zadikoff,* 10 F.Supp 922, 931 (N.D.Ill. 1998) (applying Illinois law –"[t]o determine whether an agency relationship exists the court must consider two factors: (1) whether the principal has the right to control the manner and method in which agent performs his services, and (2) whether the agent has the power to subject the principal to personal liability.")

It is the right to control the manner in which the work is performed that is the predominant factor in determining whether a principal-agent relationship exists. As stated in *Lang v. Silva*, 306 Ill.App.3d 960, 972 (1st Dist. 1999):

> A principal-agent relationship is said to exist where the principal has the right to control the manner and method in which the agent performs his work and the agent has the ability to subject the principal to personal liability.[citations omitted] There is no rigid rule for determining whether a person is an agent or employee or an independent

> contractor. [citation omitted] Among the factors to be considered when making the determination are: the right to control the manner in which the work is performed; the right to discharge; the method of payment; whether taxes are deducted from the payment; the level of skill required to perform the work; and the furnishing of the necessary tools, materials, or equipment. [citations omitted] No single factor is determinative but the right to control the manner in which the work is performed is considered to be the predominant factor. [citations omitted]

Neither Defendant's affidavit nor the Advisory Council's bylaws show that NEIU has the right to control how the Advisory Council performs its work. And plainly, nor does Defendant's affidavit or the attached by-laws authorize NEIU to discharge the Advisory Council members, specify a method of payment or how taxes might be treated if payment were made (there is no payment to Advisry Council members), set any skill level for qualification as an Advisory Board member or provide for any materials, equipment or tools to the Advisory Council.

Rather, the by-laws demonstrate that the Advisory Council acts voluntarily and on its own behalf to provide whatever advice and recommendations it wishes without being under the supervision of NEIU in doing so. Nor is there any assertion or support for the notion that the El Centro campus, let alone NEIU, has any obligation or commitment to follow or even consider the advice or recommendations of the Advisory Council.[2]

In addition, even if Defendant could be considered an "agent" of some unspecified sort for NEIU, which she is not, the Complaint alleges that she acted beyond her authority. Illinois case law holds that a state agent acting beyond authority is subject to Circuit Court jurisdiction, *not* that of the Court of Claims. See, *Leetaru v. Bd. of Trs. of the Univ. of Ill*., 2015 IL 117485 ("[t]he doctrine of sovereign immunity affords no protection, however, when it is alleged that the State's

[2] Similarly, while Defendant alludes to NEIU "partnering" with community groups on a website page (Motion, Ex. B), such language hardly qualifies as creating an agency relationship. There is no partnership contract or agreement mentioned nor any terms of such "partnership" elucidated. This is public relations language that without more is meaningless.

agent acted in violation of statutory or constitutional law or in excess of his authority, and in those instances an action may be brought in circuit court."); See, also, *Healy v. Vaupel*, 133 Ill.2d 295, 309 (2009) (same).

Here, as noted above, the bylaws of the Advisory Council make plain that any advice or recommendations are to be made only to the Director of El Centro. The Complaint makes clear that Defendant was not engaged in providing advice of recommendations to the El Centro Director but instead was acting out of personal animus to harm Plaintiff by defaming her to others.

The Complaint alleges that Defendant campaigned to oust Mildred from her position as Interim Director of El Centro by "plying Mildred's supervisor (the Provost) with derogatory comments" and also made "similar comments attaching Mildred's integrity as an employee to other influential NEIU employees," including to an NEIU professor and Director of a different organization (Complaint, ¶¶15, 16, 18, 20) as well as encouraging Mildred's staff to complain about Mildred (Id., ¶17). Such conduct is wholly outside the scope of the Advisory Council and/or its Chair as set forth in the bylaws. As noted above, p. 3, the Advisory Council bylaws limit its authority to advising the El Centro Director on the "setting of basic goals, policies and procedures for NEIU-EL CENTRO," and for recommendations regarding "program plan, and provide for continuing analysis of need for education, training and related services." (Motion Ex. 1, §A) Defaming Plaintiff's abilities and integrity to persons other than the Director is simply beyond any scope of Defendant's duty.

Accordingly, as Defendant has not and cannot show she is a state "agent," and because the Complaint alleges conduct beyond the scope of Defendant's authority in any event, there is no basis to dismiss Count 1 of the Complaint (intentional interference with prospective economic advantage).

B. The Complaint Properly Sets Forth the Terms of the Contract Which Defendant is Alleged to Have Violated

Defendant's Motion asserts that Count II (interference with contractual relationship) should be dismissed because the contract was not attached. However, Defendant does not dispute that the Complaint contains a clear statement of the terms of the contract. In fact, the Complaint alleges the contract terms with specificity:

> 5. NEIU's provost then asked Mildred to assume the duties of Director on an interim basis. Those duties involve the overseeing of all academic, financial and programmatic operations of El Centro, all in the service of the students, particularly Latino and first-generation students.
>
> 6. Agreeing to serve, she was then appointed Interim Director of El Centro, effective November 1, 2024 and ending June 30, 2025, with a permanent Director to be selected in an open national search. The appointment of Mildred to Interim Director was in the nature of a "try-out" for Mildred at a new and higher administrative level and an important step in her career, as she was informed she could be considered for the permanent Directorship when her Interim appointment was complete. (Ex. A hereto)

Illinois is a fact pleading jurisdiction and all the facts have been presented with respect to the contract with which Defendant is alleged to have interfered in addition to the nature of that interference. It is the interference and the acts constituting that interference that is the gravamen of Count II , *not* the contract *per se*. That contract will be an exhibit at trial. As stated in *Board of Education v. Kankakee Federation of Teachers Local No. 886,* 46 Ill. 2d 439, 446-47 (1970) ("it is a rule of pleading long established, that a pleader is not required to set out his evidence. To the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts."). Accord, *Farm Credit Bank of St. Louis v. Biethan*, 262 Ill.App.3d 614, 622 (5th Dist., 1994), "there is no law that every relevant document which counsel seeks to introduce as an exhibit at trial must be attached to his pleading."

That said, and to avoid any doubt, we attach as Exhibit B hereto the contract document containing the terms to which Plaintiff assented by assuming the post of Interim Director.

C. Count III is Unchallenged

Defendant has not made any specific challenges to Count III for defamation. Accordingly, at a minimum, the Motion must be denied with regard to Count III.

WHEREFORE, Plaintiff Mildred Crespo r prays that this Court deny the Motion to Dismiss and set a date for Defendant's answer to the Complaint.

Mildred Crespo
By:

One of Her Attorneys

Dated: October 9, 25

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