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 SUR-REPLY IN OPPOSITION TO MOTION TO DISMSS

Now comes Plaintiff Mildred Crespo ("Plaintiff"), by her attorney, Thomas D. Rosenwein of Rosenwein Law Group, and for her Sur-Reply to the Reply filed by Defendant to its Motion to Dismiss Plaintiff's Complaint ("Motion") states as follows:

In her Motion, Defendant attached an affidavit and argued that Plaintiff's complaint could only be brought in the Court of Claims, not the Circuit Court of Cook County, because she was acting as an "agent" of the state. Her affidavit conclusorily asserted that she was an "agent" of the state due to her status as Chair of the NEIU El Centro Advisory Council. (Motion, Ex. A., ¶4)

In her Reply, Defendant abandons that contention and instead contends agency law does not apply because she is an "employee" of the state. That assertion is based on language in the State Lawsuit Immunity Act ("SLIA") and purports to be supported by applicable case law. However, Defendant's cases do not support her assertion.

Defendant relies principally upon *Toth v. England*, 348 Ill.App.3d 378 (5th Dist. 2004), but Defendant ignores the facts in that case and omits the relevant language that is applicable here. In *Toth*, a visiting nurses association and one of its social worker employees, England, were sued for actions by England for filing a petition for guardianship and motion to freeze assets of a

disabled person authorized by the Illinois Elder Act (now known as the Adult Protective Services Act). The court found that the defendant association was designated by the Illinois Department on Aging as the acting elder abuse provider agency for the county in which plaintiff lived pursuant to the Elder Act (see, 320 ILCS 20/2(b)) and that the Illinois Department's regulations demonstrated that provider agencies and their employees "are performing the State's work pursuant to the State's direction." (at 381).[1] In addition, England received state training in fulfilling the Elder Act's responsibility for adult protective services. On these facts, the court found that both the association and England were *de facto* state employees Obviously, these facts are not even close to those alleged in the instant matter, where Defendant is neither a designated provider under a separate statutory act nor trained for her advisory role by the state.

Moreover, Defendant ignores the clear statement in *Toth* that "[w]here a State employee acting with the scope of his employment is charged with breaching a duty that arose independently of his State employment, sovereign immunity will not apply," citing *Currie v. Lao*, 148 Ill.2d 151, 159 (1992). Here, the duties that Defendant is charged with breaching are ones owed by every Illinois citizen to another, *i.e.*, to not interfere with the another's contract or prospective economic advantage and not to defame another. This is the rule stated in *Fritz v. Johnson*, 209 Ill.2d 302, (2004) (accused state employees of the Illinois Department of Veterans Affairs not entitled to immunity for, *inter alia*, violating duty not to make false accusations of disorderly conduct) and affirmed in *Leetaru v. Bd. of Trs. of the Univ. of Ill*., 2015 IL 117485 ¶ 46 (no immunity when acting in excess of authority). This is also the rule stated in Defendant's cited authority, *Healy v. Vaupel*, 133 Ill.2d. 295 (1990) (actions alleging state actor acted in excess of authority may be

[1] "Further, the Elder Act provides that the Department must approve the designation of provider agencies and 'monitor the use of services, provide technical assistance to the provider agencies[,] and be involved in program development activities.'" 320 ILCS 20/3(b) (West 2000)."

brought in circuit court). See, also, *Hoffman v. Yack,* 57 Ill.App.3d 744 (Dist. (1978) (action by university instructor against supervisor not barred by sovereign immunity where suit alleged deliberate, malicious conduct outside scope of employment).

When is a claim against a state employee a claim against the state itself? The standard is set forth in *Healy v. Vaupel, supra,* and more recently confirmed in *Kucinsky v. Pfister*, 2020 IL App (3d) 170719, ¶51 (2020):

> A claim against a state official or employee is a claim against the "state" when (1) there are no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts, (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment, and (3) the actions complained of involve matters ordinarily within that employee's normal and official functions for the State.

Here, (1) the allegations are that Defendant did act beyond the scope of her authority in interfering with Plaintiff's contract and her future prospect of becoming permanent director of El Centro. Defendant's authority, as documented in the very by-laws attached to Defendant's affidavit, *i.e.*, advisory council advises the El Centro director and makes recommendations directly "to the Director." (Ex. 1 to Defendant's affidavit). Those duties do not extend to denigrating the director, stirring up the El Centro staff against her or in any way reporting to NEIU administrators or others for assessment of the employment qualifications of the director. The complaint alleges that Defendant undertook her campaign to oust Plaintiff from her interim director position because Plaintiff dared to question whether a different community organization, with which Defendant was friendly, could contribute for its use of El Centro facilities.

Here, (2) the duty to not interfere with another's contract or future employment prospects and to not defame, are duties owed by every Illinois resident not, for example, a duty by which a state-designated provider agency is authorized to bring abuse charges.

Here, (3) the actions complained of are not part of the normal or official duties of Defendant as chair of her advisory group but instead are far from those duties of advice and recommendations to be made directly to the El Centro director.

Lastly, we call the Court's attention to the very recent First District decision in *Blakemore v. Catholic Charities*, 2025 Il App. (1st) 240985 (decided June 23, 2025) (reversing sovereign immunity dismissal of suit), which not only held that agency law framework is applicable to assessing whether a defendant can avail itself of sovereign immunity (¶¶ 28-31), but also applied the *Healy* factors and remanded for discovery as to the third factor as "dismissal of plaintiff's suit without conducting further discovery was premature because the agency issue was not 'so clear' as to be undisputed." ((¶ 38)

While Plaintiff submits it is clear in the instant matter that sovereign immunity does not apply, in the event this Court determines that there are ambiguities that prevents such a ruling, we submit that the parties should be allowed to engage in discovery to clarify any such ambiguities before a definitive ruling is made.

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

Mildred Crespo

By: 

_____
One of Her Attorneys

Dated: November 21, 25

Thomas D. Rosenwein (#25630)
Rosenwein Law Group

105 West Madison Street, Suite 2300
Chicago, Illinois 60602
(312) 792-1957
E-Mail: TRosenwein@rlawgrp.com

NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Monica H. Khetarpal
Raseq Moizuddin
Jackson Lewis P.C.
150 North Michigan Avenue. Suite 2500
Chicago, IL 60601
Tel.: 312.787.4949
Monica.Khetarpal@jacksonlewis.com
Raseq.Moizuddin@jacksonlewis.com

On November 21, 2025, the undersigned certifies that he caused the attached Sur-Reply to Defendant's Motion to Dismiss on the above-identified counsel by email directed to the above-identified counsel.

Thomas D. Rosenwein (25630)
Rosenwein Law Group
105 W. Madison Street, Suite 2300
Chicago, Illinois 60602
(312) 792-1957
trosenwein@rlawgrp.com

/s/ Thomas D. Rosenwein