IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

KWAKU OWIRODU, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
EXTRA MILE INTERNATIONAL, INC., et al.,	)
	)
Defendants.	)

ENTERED
Judge Neil H. Cohen-2021
SEP 24 2025
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

MEMORANDUM AND ORDER

Defendants Extra Mile International, Inc. ("EMI"), EMI Management, Inc. ("EMI Management"), and Boris Stojanovic, Maya Stojanovic, Nicholas Mihailovic and Katerina Cikalova (collectively "Individual EMI Defendants") and KCC Consulting, Inc. ("KCC") have filed a Motion to Strike and Dismiss Amended Complaint pursuant to 735 ILCS 5/2-615 and 5/2-606.

Defendant Phoenix ELD, LLC ("Phoenix") has filed a Motion to Dismiss pursuant to 735 ILCS 5/2-619.1.

I. Background

Plaintiffs Kwaku Owirodu, Scott Fisher, Charles Collier, Kegan Hacker, Robert Hawes, James Middleton, Jonathon Pearson, Keith Pickens-Bell, Eduardo Reyes and Pavel Rodriguez, individually and on behalf of others similarly situated, have filed an Amended Class Action Complaint against EMI, EMI Management, the Individual EMI Defendants, KCC and Phoenix.

Owirodu was formerly employed by EMI as an over-the-road "Company Driver" driving trucking routes exclusively assigned by EMI. Fisher is currently employed by EMI as a Company Driver ("Company Driver Plaintiffs"). The remaining Plaintiffs were formerly employed, or are presently employed, by EMI as truck drivers in EMI's "lease-to-own" program ("Lease Driver Plaintiffs").

The Lease Driver Plaintiffs allege that in recruiting them, the EMI Defendants made numerous false representations to induce the Lease Driver Plaintiffs to enter into exploitative lease contracts which included numerous previously undisclosed terms adverse to the Lease Driver Plaintiffs, omitted terms required under the Truth In Leasing Act ("TILA"), and included other deceptive terms.

The Company Driver Plaintiffs allege that the EMI Defendants misclassified them as independent contractors despite making repeated representations during recruitment that the

Company Driver Plaintiffs would be employees. The Company Driver Plaintiffs further allege that the EMI Defendants have withheld the "independent contractor" agreements signed by the Company Driver Plaintiffs at the start of their employment, have imposed illegal deductions from their paychecks in violation of the Illinois Wage Payment and Collections Act ("IWPCA"), engaged in a scheme to refuse to pay agreed upon rates, and have concealed their practices by refusing to issue accurate pay statements.

Plaintiffs allege that Phoenix is the electronic log device ("ELD") service provider used by EMI and Plaintiffs to record hours of service. Plaintiffs allege that Phoenix knowingly developed and provided the technological infrastructure that enabled the EMI Defendants to systematically falsify Plaintiffs' hours of service records and misclassify drivers in direct violation of federal regulations governing ELDs.

Counts I through VII of the Amended Complaint are asserted on behalf of the Lease Driver Plaintiffs. Count I asserts a claim for consumer fraud against the EMI Defendants. Count II asserts claims for violation of the Illinois Business Opportunities Sales Law ("IBOSL") against the EMI Defendants. Count III asserts a claim for violation of the TILA against the EMI Defendants. Count IV asserts a claim for breach of contract against the EMI Defendants. Count V asserts a claim for violation of the IWPCA against the EMI Defendants. Count VI asserts a claim for violation of the Illinois Paid Leave for All Workers Act ("PLAWA") against the EMI Defendants. Count VII asserts a claim for civil conspiracy against all Defendants.

Count VIII through XI of the Amended Complaint are asserted on behalf of the Company Driver Plaintiffs. Counts VIII through X assert claims against the EMI Defendants for violations of the IWPCA. Count XI asserts a claim against the EMI Defendants for violation of the PLAWA. Count XII asserts a claim for civil conspiracy against all Defendants.

II. Phoenix's Motion to Dismiss

Phoenix is moving to dismiss Counts VII and XII of the Amended Complaint pursuant to 735 ILCS 5/2-619 and 735 ILCS 5/2-615.

A. *Section 2-619*

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id. Section 2-619(a)(9) authorizes dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

Phoenix is seeking dismissal based upon the affidavit of Radu Murzac. However, this affidavit does not admit the factual allegations of the Amended Complaint, but contradicts them. "[T]he difference between proper section 2-619 motions and improper ones [is] the difference between 'yes but' motions and 'not true' motions." Doe v. Univ. of Chicago Med. Ctr., 2015 IL

App (1st) 133735, ¶40. "A proper section 2-619 motion is a 'yes but' motion that admits both that the complaint's allegations are true and that the complaint states a cause of action, but argues that some other defense exists that defeats the claim nevertheless." Id.

"On the other hand, a motion that attempts to merely refute a well-pleaded allegation in the complaint is a 'not true' motion that is inappropriate for section 2-619." Id. at ¶41. "A 'not true' motion at the pleading stage, in essence, serves as nothing more than an answer that denies a factual allegation and is not a basis for dismissal. Such a fact-based motion is appropriate for a summary judgment motion or for resolution at trial." Id.

Phoenix's §2-619 motion is an improper "not true" motion and is therefore denied.

B. *Section 2-615*

"A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. Yoon Ja Kim v. Jh Song, 2016 IL App (1st) 150614-B, ¶41. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "All well-pleaded facts and all reasonable inferences from those facts are taken as true. Where unsupported by allegations of fact, legal and factual conclusions may be disregarded." Kagan v. Waldheim Cemetery Co., 2016 IL App (1st) 131274, ¶29. "In determining whether the allegations of the complaint are sufficient to state a cause of action, the court views the allegations of the complaint in the light most favorable to the plaintiff. Unless it is clearly apparent that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed." Id.

Phoenix contends that Counts VII and XII fail to allege sufficient facts to state a claim for civil conspiracy. "Civil conspiracy consists of a combination of two or more persons for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means. . . . A cause of action for civil conspiracy exists only if one of the parties to the agreement commits some act in furtherance of the agreement, which is itself a tort. . . . To state a cause of action for conspiracy, a plaintiff must allege not only that one of the conspirators committed an overt act in furtherance of the conspiracy, but also that such act was tortious or unlawful in character." Adcock v. Brakegate, Ltd., 164 Ill. 2d 54, 63-64 (1994).

"Because conspiracies are often purposefully shrouded in mystery, claims of conspiracy do not permit the plaintiff to allege, with complete particularity, all of the details of the conspiracy or the exact role of the defendants in the conspiracy." Scott v. Aldi, Inc., 301 Ill. App. 3d 459, 465 (1st Dist. 1998). "As a conspiracy is rarely susceptible of direct proof, a plaintiff cannot be required to plead with specificity the very facts that can only be proven by circumstantial evidence." Id. However, a plaintiff is required to allege some facts from which the existence of a conspiracy can be circumstantially inferred. Id. at 465-66.

The Amended Complaint contains sufficient specific facts from which it can be inferred that Phoenix knowingly participated in the editing and the deletion of ELD records and hours of service with the EMI Defendants in furtherance of a conspiracy against the Lease Driver Plaintiffs. The Amended Complaint further contains sufficient specific facts from which it can be inferred that Phoenix knowingly created a system allowing the systematic falsification of hours-of-service logs by deleting, modifying and overwriting records to conceal violations of federal regulations, knew how EMI would use its system, and continued to provide these functionalities to EMI allowing EMI to exploit the Company Driver Plaintiffs.

Counts VII and XII state claims for civil conspiracy.

Phoenix's Motion to Dismiss Counts VII and XII is denied.

III. The EMI Defendants' Motion to Strike and Dismiss

A. *Section 2-606*

The EMI Defendants argue that the Amended Complaint should be stricken based upon Plaintiffs' failure to attach their contracts with EMI to the Amended Complaint. Section 2-606 of the Code of Civil Procedure provides that:

> If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes.

735 ILCS 5/2-606.

Plaintiffs previously represented to the court that Plaintiffs do not have copies of the contracts as the EMI Defendants never provided copies and refused to do so at Plaintiffs' request. This court allowed Plaintiffs to issue discovery to the EMI Defendants seeking production of the contracts.

On June 11, 2025, Plaintiffs issued Illinois Supreme Court Rule 214 Requests to Produce which included a request for "[a]ny document Defendant EMI purports to constitute, reflect and/or memorialize the terms of an independent contractor agreement and/or other contract and/or other agreement, including but not limited to for the operation of commercial motor vehicle equipment and/or other provision of other services, by and between Defendant EMI and any named Plaintiff and/or any entity associated with any named Plaintiff."

There is no indication that the EMI Defendants ever responded to the Request to Produce. Plaintiffs filed a Petition for Rule to Show Cause for non-compliance with Plaintiffs' discovery requests, but the Request for production of Plaintiffs' contracts was not specifically addressed in the Petition.

Plaintiffs contend that they have complied with §2-606 by attaching Plaintiffs' affidavits showing that the contracts are not accessible to them. The affidavits, however, are not attached to the Amended Complaint filed with the Clerk of the Court. While the affidavits are attached to Plaintiffs' Response, §2-606 requires that the affidavits be attached to the pleading. As the court finds that the affidavits are sufficient to show the contracts are inaccessible to Plaintiffs, contrary to the EMI Defendants assertions, Plaintiffs are granted leave to attach the affidavits to the Amended Complaint.

Furthermore, even without the affidavits attached, the Amended Complaint sufficiently complies with §2-606. Attached to the Amended Complaint are exemplar contracts that Plaintiffs allege are substantially identical to those executed by Plaintiffs.

Finally, only the breach of contract claims and the TILA claim are founded upon the contracts between Plaintiffs and EMI. There is no requirement to attach any contract for the remaining claims.

There is no basis to strike the Amended Complaint for failure to comply with §2-606.

B. *The Claims Against the Individual EMI Defendants*

The Individual EMI Defendants argue that the claims against them should be dismissed because Plaintiffs do not allege sufficient facts to pierce EMI's corporate veil.

Initially, the majority of the claims asserted in the Amended Complaint allege that the Individual EMI Defendants are directly individually liable for their own wrongdoing. An agent can be held personally liable for a tortious act toward a third person even if acting within the scope of his or her agency. Lyons v. Christ Episcopal Church, 71 Ill. App. 3d 257, 266 (5th Dist. 1979).

For any claims that do not rely upon direct liability, "Illinois courts will pierce the corporate veil where: (1) a unity of interest and ownership appears so strong that the separate personalities of the corporation and the parties who compose it no longer exist, and (2) under the circumstances, adhering to the fiction of a separate corporation would promote injustice or inequitable circumstances." Saletech, LLC v. E. Balt, Inc., 2014 IL App (1st) 132639, ¶27.

"In determining whether the first prong is met, a court generally will not rest its decision on a single factor, but will examine many factors, including: (1) inadequate capitalization; (2) failure to issue stock; (3) failure to observe corporate formalities; (4) nonpayment of dividends; (5) insolvency of the debtor corporation; (6) nonfunctioning of the other officers or directors; (7) absence of corporate records; (8) commingling of funds; (9) diversion of assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors; (10) failure to maintain arm's-length relationships among related entities; and (11) whether the corporation is a mere façade for the operation of the dominant stockholders." Bank of America v. WS Mgmt., 2015 IL App (1st) 132551, ¶100. The party seeking to pierce the corporate veil must come forward with a substantial showing that the corporation is a sham for the dominant personality. Id.

The Amended Complaint alleges "despite operating a nationwide trucking operation with over 100 power units . . . EMI had issued 1,000 common shares with a par value of '0.000000' and paid-in-capital of only $10.00," and that "the equipment was leased from related entities also owned and controlled by the Individual EMI Defendants with similarly minimal capitalization." (Am. Compl. ¶¶ 285, 294, 331, 426). The Amended Complaint further alleges that the entities are managed by EMI Management and share the same business address. The Amended Complaint further asserts that the carefully structured relationships between the entities controlled by the Individual EMI Defendants allows the Individual EMI Defendants to shield assets while personally directing violations of the law that have harmed Plaintiffs. (Id. at ¶ 286).

The court finds that these allegations sufficiently support Plaintiffs' alter ego theory of liability against the Individual EMI Defendants.

C. *Class Allegations*

The EMI Defendants argue that the Amended Complaint does not sufficiently allege facts supporting class certification. The EMI Defendants, however, are actually arguing that class certification is inappropriate. This argument is best made in response to a motion for class certification, not on a motion to dismiss.

III. Conclusion

Phoenix's Motion to Dismiss is denied. The EMI Defendants' Motion to Dismiss is also denied.

The status date of September 29, 2025 at 9:30 a.m. stands, to be conducted remotely via Zoom unless otherwise notified:

[Remote hearing login removed from this web copy]

Enter: 9-24-25

Neil H. Cohen #2021

Judge Neil H. Cohen