2015 IL App (1st) 151176-U

THIRD DIVISION
December 2, 2015

No. 1-15-1176

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CYNTHIA FRIERSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County, Illinois.
	)	
v.	)	No. 14 L 5742
	)	
UNIVERSITY OF CHICAGO,	)	Honorable
	)	Janet Adams Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly dismissed plaintiff's second amended complaint where facts insufficient to state a claim for tortious interference.

¶ 2 Plaintiff Cynthia Frierson was employed by the University of Chicago's Pritzker School of Medicine as its Director of Financial Aid from December 2010 until she was terminated in February 2013. She later sued the university for defamation (a claim that was time-barred at the time she filed it) and, in an amended pleading, for tortious interference with prospective economic advantage, a claim dismissed by the trial court with prejudice pursuant to the

university's motion to dismiss for failure to state a claim. Because the trial court correctly concluded that Frierson could not plead the elements of the sole claim asserted, we affirm the dismissal of her complaint.

¶ 3 BACKGROUND

¶ 4 Frierson commenced employment with the university on December 1, 2010. Frierson's supervisor was Sylvia Robertson, the Assistant Dean for Admissions & Financial Aid for the medical school.

¶ 5 On December 5, 2012, Robertson completed an evaluation of Frierson's performance, which cited numerous deficiencies. Among other things, Robertson noted that Frierson had missed a submission deadline for the Association of American Medical Colleges that "negatively impacted [the university's] reputation," "delayed progress" on an important financial aid tool for students and had adopted an approach toward awarding financial aid that could have "resulted in significant overspending." These and other shortcomings led Robertson to recommend Frierson's termination. Pursuant to Robertson's recommendation, Frierson was terminated from her position effective April 30, 2013.

¶ 6 Frierson filed this lawsuit on May 29, 2014, naming only the university as a defendant, and asserting two claims for defamation *per se* and *per quod* based on Robertson's negative evaluation. The university responded with a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(5) (West 2014), asserting that Frierson's claims were time-barred as they were not commenced within the one-year limitations period applicable to defamation claims. 735 ILCS 5/13-201 (West 2012).

¶ 7 Just before the hearing on the university's motion commenced, Frierson filed her first amended complaint, which re-alleged her defamation claims and added a claim for tortious

interference with prospective economic advantage. Frierson did not seek leave to file her amended pleading.

¶ 8 The university again moved to dismiss the amended complaint asserting both the untimeliness of the defamation claims as well as the legal insufficiency of the tortious interference claim. Among other arguments, the university contended that, as a matter of law, it could not interfere with its own contract with Frierson. In her response, Frierson addressed only her tortious interference claim and conceded at the hearing on the university's motion that she was abandoning her defamation claims. The trial court granted the university's motion to dismiss the tortious interference claim with leave to replead.

¶ 9 Frierson filed her second amended complaint re-asserting her tortious interference claim, but adding, without leave of court, Robertson as a defendant, apparently in an attempt to cast Robertson as the third party who induced the university to terminate her employment. Frierson alleged both that Robertson acting within the scope of her employment in recommending her termination and that Richardson acted maliciously or without justification (and, thus, outside the scope of her employment) in including "false statements" in Frierson's evaluation. Based on her allegation that Robertson was acting within the scope of her employment in connection with Frierson's evaluation, Frierson sought to hold the university liable for her conduct under a theory of *respondeat superior*.

¶ 10 The university and Robertson (collectively, defendants) filed a motion to dismiss the second amended complaint and renewed their argument that the tortious interference claim was not legally viable. In addition to their argument that Frierson had not identified a third person who could have interfered with Frierson's employment relationship with the university, defendants also argued that even if Robertson could be considered a third party for purposes of

the claim, Robertson's conduct in evaluating Frierson was privileged and, in any event, the shortcomings identified in the evaluation were neither unjustified nor antagonistic. Finally, defendants contended that accepting Frierson's allegation that Robertson acted with malice as true, she would not have been acting within the scope of her employment and, as a result, the university could not be held liable for her conduct. Defendants also requested sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013), for what it characterized as Frierson's repeated filings of deficient pleadings.

¶ 11 The trial court granted the motion to dismiss the second amended complaint with prejudice. In its order, the trial court granted the motion "for the reasons stated in defendants' motion." Defendants' request for sanctions was denied.

¶ 12 ANALYSIS

¶ 13 A section 2-615 motion tests the legal sufficiency of the complaint. *Hadley v. Doe*, 2015 IL 118000, ¶ 29. The motion requires the trial court to accept all well-pled facts, as well as inferences reasonably drawn from those facts, as true. *Id.* We review the dismissal of Frierson's second amended complaint pursuant to section 2-615 *de novo*. *Id.*

¶ 14 The sole count in Frierson's second amended complaint is tortious interference with prospective economic advantage, pled against the University of Chicago and Sylvia Robertson. Initially, we note that although the amended complaint purports to add Robertson as a defendant for the first time, Frierson never sought leave to file this complaint. Thus, naming Robertson had no legal effect. See 735 ILCS 5/2-616 (West 2014); see also *Walker v. McGuire*, 2015 IL 117138, ¶ 39 ("A plaintiff must take affirmative steps to amend his complaint, which may only be accomplished with leave of court."). Perhaps recognizing this, Frierson abandons her arguments against Robertson on appeal, leaving only her claim against the university, which is

premised on the doctrine of *respondeat superior*. See *Vancura v. Katris*, 238 Ill. 2d 352, 275 (2010) ("Under the theory of vicarious liability, or *respondeat superior*, an employer can be liable for the torts of an employee that are committed within the scope of the employment).

¶ 15 In order to state a cause of action for tortious interference, the plaintiff must allege that the defendant purposefully interfered with and defeated plaintiff's legitimate expectation of entering or continuing a valid business relationship, causing plaintiff damages. *Soderlund Brothers, Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606,615 (1995). Ordinarily, the defendant's interference must be directed towards a third party, *Douglas Theater Corp. v. Chicago Title & Trust Co.*, 266 Ill. App. 3d 1037, 1047 (1995): an employer cannot interfere with its own business relationship with its employee, *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 411 (1999).

¶ 16 There is an exception, however, where a corporate officer interferes with an employee's employment with the corporation. Specifically, where the officer acts "solely for their own gain or solely for the purpose of harming plaintiff," the officer's conduct may support a tortious interference claim, "since such conduct is not undertaken to further the corporation's interest." *Mittelman v. Witous*, 135 Ill. 2d 220, 249 (1989). "To be tortious, a corporate officer's action must be done without justification or maliciously." *Id.*

¶ 17 It is this exception Frierson relies on here, arguing that Robertson's performance review was unjustified and malicious. But Frierson offers no facts supporting her claim that Robertson acted maliciously or solely for Robertson's own gain. Indeed, there is nothing in the complaint that suggests Robertson benefitted from Frierson's termination. Instead, Frierson merely disputes the accuracy of Robertson's statements in her performance evaluation and baldly describes them as "without justification" and "maliciously based." Such conclusory allegations are insufficient

to state a claim for tortious interference. See *Willcutts v. Galesburg Clinic Association*, 201 Ill. App. 3d 847, 851 (1990) (dismissal of pleading upheld where plaintiff failed to allege specific actions by defendants directed at third parties but instead presented "broad, conclusory allegations"); see also *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 735 (2009) ("[A] pleading that merely paraphrases the elements of a cause of action in conclusory terms is insufficient.").

¶ 18 Because Frierson fails to allege specific acts of malice, she likewise cannot overcome the qualified privilege attached to Robertson's statements. It is well-settled that corporate officers are privileged against claims that their activities interfered in a third party's relationships with their principals. *Citylink Group, Ltd. v. Hyatt Corp.*, 313 Ill. App. 3d 829, 841 (2000). Of course, that privilege may be defeated by a showing that the officer's acts were unjustified or malicious. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 157-58 (1989). But allegations of malice must be plead with specificity, *id.*, and Frierson's failure to so plead is fatal to her claim.

¶ 19 Even assuming *arguendo* that Frierson had sufficiently alleged that Robertson was acting "solely in her own interest," as she contends, this, too, dooms her cause of action against the university, as it is premised on a *respondeat superior* theory of liability. While an employer may be liable even for malicious acts of its employees provided they are committed within the scope of the employment, the employer is *not* liable where the acts were committed solely for the benefit of the employee. *Dennis v. Pace Suburban Bus Service*, 2014 IL App (1st) 132397, ¶ 12. And because Frierson explicitly argues that Robertson acted "solely for the purpose of hurting plaintiff," it follows that the university cannot be liable for Robertson's actions.

¶ 20 In sum, Frierson has pled herself out of court: no cause of action against the university lies regardless of whether Frierson has successfully alleged tortious interference against Robertson.

¶ 21 CONCLUSION

¶ 22 For the reasons stated, we affirm the trial court's order dismissing Frierson's second amended complaint.

¶ 23 Affirmed.