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

PHILIP WEISS, BRIDGET CUEVAS, ROSEMARY SWEARINGEN, THEODORE KALAGERESIS, and KENNETH MERACLE,	
Plaintiffs,	**Case No. 2024CH09334**
vs.	**Judge David B. Atkins**
	Calendar 16
CHICAGO TEACHERS UNION, LOCAL 1, IFT-AFT, AFL-CIO; STACY DAVIS GATES, President; and MARIA T. MORENO, Financial Secretary,	
Defendants.	

DEFENDANTS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF THEIR 2-619.1 MOTION TO DISMISS

ARGUMENT

I. The Plaintiffs' Claim on Its Face Is for Damages for Breach of Contract and that Claim Is Defective on Its Face.

On the first page of their Complaint, Plaintiffs say that they "bring this lawsuit for breach of contract." Plaintiffs' lawsuit contains one count which, on page 6, they style as "Breach of Contract." Plaintiffs allege in paragraph 33 that Defendants' conduct "has resulted in damages to Plaintiffs." Plaintiffs plead that they suffered damages, yet they refuse to identify these damages.

In Defendants' Memorandum of Law in Support of Their 2-619.1 Motion to Dismiss of ("Memo"), Defendants pointed to Illinois case law that a claim for breach of contract must provide some details about damages to be sufficiently pleaded, such as "how the damages were incurred" and "how they could be proved with reasonable certainty." *Latex Glove Co. v. Gruen*, 146 Ill. App. 3d 868, 874 (1st Dist. 1986).

Plaintiffs do not dispute that their complaint is insufficient to plead a breach of contract, because they failed to plead any facts about damages. Instead, they say they do not have to show damages because they are seeking specific performance. That is not how they styled the single count of their complaint and they in fact alleged that they do have damages. Plaintiffs say in their response that they should be allowed to amend their complaint. But a plaintiff cannot use a response to a motion to dismiss as a mechanism to change the allegations of the complaint. *Luciano v. Waubonsee Community College*, 245 Ill. App. 3d 1077, 1087 (2nd Dist. 1993). The complaint as it stands is insufficient and should be dismissed.

II. The Case Is Moot Even If the Financial Audit and Audited Reports are Not in Plaintiffs' Preferred Form, Because CTU's President Has Discretion to Decide What Forms Those Documents Should Take.

Plaintiffs bring suit under Article VI Section 1.d. of the Union's Constitution, which pertains to publication of an "audited report." Plaintiffs pointedly did *not* bring suit under Constitution Article VI Section 2.a, which requires an annual "audit" be prepared that is made available for inspection by every Union member. (See, Complaint, ¶¶ 18-19 and Ex. A at 23.)

Plaintiffs' response includes a sworn declaration from plaintiff Philip Weiss. In paragraphs 17 to 20 of Weiss's declaration he describes his successful efforts to inspect the audit at CTU's offices, which he says occurred on February 25, 2025.

Weiss further admits in paragraph 14 of his declaration that he can access the audited report in the Union's member portal. The audited report consists of the two summary pages showing all major categories of revenue, expenses, assets, liabilities and the Union's net asset position. (Ex. 3 to Weiss Declaration).

Plaintiff Weiss accordingly has everything he seeks in the complaint and more. None of the other Plaintiffs have alleged that they were denied that opportunity. The Plaintiffs now further insist

that they have no damages and only seek their rights to inspect the audit of CTU's finances. Because that has now happened, the case is moot. *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 24, appeal denied 116 N.E.3d 943 (2019); *Interstate Bakeries Corp. v. Bakery, Cracker, Pie and Yeast Wagon Drivers Union, Local 734*, 58 Ill. App. 2d 485, 489-90 (1st Dist. 1965).

This lawsuit should now be dismissed as moot, because Plaintiffs have not identified any damages they might have suffered in the past to be remedied. Nevertheless, Weiss persists in his claim by opining without authority that the "audited report" should be presented in another form. Plaintiffs' response brief suggests a variety of forms that audit report could take. Plaintiffs refer to the form of an audit that would be acceptable to the Public Company Accounting Oversight Board. See 15 U.S.C §§ 7211 *et seq.* Plaintiffs cite Black's Law Dictionary. Plaintiffs suggest that perhaps CTU's audits ought to be in the same form as audits required by a consent decree applicable to the City of Chicago, though Plaintiffs do not say what form that consent decree itself required. Plaintiffs say that the audited report could be in the form of documents CTU published in the past.

Given Plaintiffs' barrage of suggestions, it is hard to know what Plaintiffs are saying would satisfy them. But CTU's By-Laws provide the answer for the Court here. The By-Laws state that CTU's President "shall decide all questions concerning the interpretation and application of this Constitution." (Complaint Ex. A at 22.) Where a union in Illinois has granted discretionary power to its internal decision-makers, Illinois courts defer to that unless it is "arbitrary." *Diamond v. United Food & Commer. Workers Union Local 881,* 329 Ill. App. 3d 519, 526 (3d Dist. 2002), appeal denied 201 Ill. 2d 564 (2002). Plaintiffs' own Response brief makes clear that CTU's determination of what form the audited report should take is *not* arbitrary, because Plaintiffs themselves cannot say what specific form the audited report should take, as described above.

Plaintiffs now have everything they asked for, but instead are attempting in effect to compel the Union to publish its full audits rather than permit its members to inspect them. But this Court

does not have the power to override CTU's internal discretion about what the By-Laws require for the form of the audited report. *Diamond,* 329 Ill. App. 3d at 526. CTU's President is vested with discretion to determine that; not Plaintiffs. (Complaint Ex. A at 22.)

III. Instead of Dealing With the *Zander* Opinion Granting Immunity to CTU's Officers, Plaintiffs Cite Inapposite Federal and Maryland State Law.

Plaintiffs say that Defendants Davis Gates and Moreno ("Officer Defendants") rely on cases "concern[ing] the Labor Management Relations Act ["LMRA"]" (Response at 6). That's just not true.

The truth is that Officer Defendants relied on *Zander v. Carlson*, 2020 IL 125691, a case involving Illinois law. *Zander* discussed the LMRA, but was clear that "federal labor law is not directly controlling." *Id.* at ¶ 21. *Zander* specifically involved a union member seeking to sue the lawyer "assigned by the union to handle [Zander's] grievance" for malpractice. *Id.* at ¶ 19. The Supreme Court held that Zander could not sue the lawyer for malpractice, because only the union itself could be sued. *Id.* at ¶ 32. The lawyer, as an agent of the union, "was immune from individual liability for any actions he took or failed to take in connection with assisting Zander on behalf of the union." *Id.*

This case is directly applicable here. It applies Illinois law governing Illinois unions and their agents, and holds that those agents are "immune from individual liability." The Officer Defendants are therefore immune individually and must be dismissed from any lawsuit based on their actions as CTU's representatives. *Id.*

The cases Plaintiffs cite in response are wildly off base. Plaintiffs cite *Kouba v. Flynn*, 2017 U.S. Dist. LEXIS 70208, *8 (N.D. Ill. May 3, 2017), and *Scheaffer v. Carpenters Local 377*, 88 Fed. Appx. 945, 947 (7th Cir. 2004), which arise under 29 U.S.C. § 501(b). That federal statute allows for suits against union agents who are derelict in their duties to the union. But that is not Plaintiffs' Complaint. Plaintiffs' Complaint alleges that they do not claim that the Officer Defendants

breached a contract as to Plaintiffs, not their duties to CTU. Plaintiffs allege that the Defendants' "resulted in damages to Plaintiffs" (Complaint ¶ 33), not damages to CTU. Plaintiffs' claim is based entirely on CTU's own By-Laws and has nothing to do with the Officer Defendants' duties to CTU. Thus this federal provision does not apply.[1]

Plaintiffs also cite the Maryland case of *Stanley v. Am. Fed'n of State & Mun. Emples. Local No. 553*, 884 A.2d 724, 732 (Md. App. 2005), which cites another Maryland case, *Byrne v. Mass Transit Admin.*, 58 Md. App. 501, 508, 473 A.2d 956 (1985), for the principle that a union member may sue a union's officers if they "refused to take to arbitration the member's grievance against his employer." That may well be the law in Maryland. But this is Illinois and the Illinois Supreme Court has made the Officer Defendants "immune from individual liability." *Zander*, 2020 IL 125691, ¶ 32.

[1] Because Plaintiffs have not brought suit under the Illinois law of contracts and not under 29 U.S.C. § 501(b), it does not matter that Plaintiffs have failed to fulfill two key prerequisites for suing under that federal statute. They have not alleged at CTU's leadership is "refus[ing] or fail[ing] to sue" the Officer Defendants, nor have they alleged that they have received "leave of the court obtained upon verified application and for good cause shown."

CONCLUSION

The Officer Defendants are immune from personal liability and must be dismissed. *Zander v. Carlson*, 2020 IL 125691, is clear and controls on this subject.

Plaintiffs say they do not mean to sue for breach of contract and do not need to show damages, because they seek specific performance as a remedy. That is strange to hear because Plaintiffs allege in their Complaint that they are suing for breach of contract and that they have damages. Plaintiffs cannot change the nature of their complaint through a response to a motion to dismiss. Plaintiffs' Complaint is facially insufficient and should be dismissed.

Even under what Plaintiffs would like their complaint to be, it should be dismissed because their claim for specific performance is moot. They now have access to the CTU's audited report and its financial audit, to the extent the CTU's By-Laws allow them. All they have left is that they would prefer those documents to be in a different form. But that personal preference is not a claim. They have no authority that their preferred form is required, if any particular preference can even be ascertained among the various possibilities they suggest. The authority in fact is that CTU's president is charged with resolving questions like that and the Court must defer to her decision under Illinois precedent. *Diamond v. United Food & Commer. Workers Union Local 881,* 329 Ill. App. 3d 519, 526 (3d Dist. 2002).

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Respectfully submitted,

/s/ Josiah A. Groff

March 19, 2025

CERTIFICATE OF SERVICE

I, Josiah A. Groff, an attorney, hereby certify that, on March 19, 2025, I caused to be served the foregoing DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR 2-619.1 MOTION TO DISMISS to all attorneys of record by using the Odyssey eFileIL service, and to the following by email:

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