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

**PHILIP WEISS, BRIDGET CUEVAS,)
ROSEMARY SWEARINGEN,)
THEODORE KALAGERESIS,)
and KENNETH MERACLE,)**

Plaintiffs,)

vs.)

**CHICAGO TEACHERS UNION,)
LOCAL 1, IFT-AFT, AFL-CIO;)
STACY DAVIS GATES, President;)
and MARIA T. MORENO, Financial)
Secretary,)**

Defendants.)

Case No. 2024CH09334

Judge David B. Atkins

Calendar 16

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

INTRODUCTION

Plaintiffs bring this lawsuit asking the Court to “require CTU [the Chicago Teachers Union] to provide its members with an audited report annually.” Plaintiffs further complain that the CTU failed to print an annual “audited report” in its publication. But this lawsuit is pointless because the CTU makes its full annual audits available for inspection by any CTU member so requesting, and though it ceased printing or regularly publishing any publication several years ago, it now posts the annual summary audited reports on its member website.

Plaintiffs are fully aware, and do not deny, that the CTU’s full annual audits are available for inspection by any CTU member so requesting. Rather, they ignore this fact and seek only to discredit the CTU in the eyes of the public because the CTU no longer prints a regular Union publication wherein a summary audited report would be placed.

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CTU is hiding nothing from Plaintiffs. It appears that Plaintiffs are less interested in disclosure of the CTU's audits than in exploiting an outdated CTU Constitution provision providing an alternate means for printing a summary audit report. This lawsuit should be dismissed as both moot and pointless because the full annual audits are available for Plaintiffs' and any other CTU members' inspection and the summary audit reports are now published on the CTU website that any CTU member can access. This lawsuit is a waste of the Court's time.

Plaintiffs' Complaint styles their claim as a contract claim for an alleged violation of Article VI, Section 1(d) of CTU's bylaws. That provision states, "Each year, the Financial Secretary shall furnish an audited report of the Union which shall be printed in the Union's publication." (Complaint Ex. A at 23). But the CTU no longer has a publication and the audits are available to Plaintiffs as described above. Plaintiffs must plead and prove damages in order to make a claim for breach of contract. Plaintiffs do allege the bare conclusion that they have damages. But that bare allegation fail to meet the Illinois fact-pleading standard for pleading damages. Illinois pleading standards require pleading the type and amount of damages, or the case will be dismissed. Indeed, it is particularly doubtful that Plaintiffs have any damages at all, because Plaintiffs actually have access to the audit materials as set forth above. Their Complaint should be dismissed for this reason as well.

Plaintiffs' dubious motives for this lawsuit are further revealed by their inexplicable choice to sue CTU's President Stacy Davis Gates, and CTU's Financial Secretary, Maria T. Moreno (together, the "Officer Defendants"), as individuals, even though the Illinois Supreme Court quite recently ruled that a plaintiff cannot sue a union's officers individually for "action they undertake on behalf of the union." *Zander v. Carlson*, 2020 IL 125691, ¶ 20. The Officer Defendants must be dismissed for that reason.

FACTUAL BACKGROUND

For purposes of this Defendants' Memorandum of Law in Support of Their 2-619.1 Motion to Dismiss ("Motion"), this statement of facts is derived from Plaintiffs' allegations in their Complaint filed October 9, 2024 ("Complaint"), assuming the allegations are true without agreeing they are true. This Motion also submits additional facts provided by the Declaration of Kurt Hilgendorf, attached as Exhibit 1, along with additional material authenticated by that Declaration. These additional facts are submitted pursuant to 735 ILCS 5/2-619(a).

Plaintiffs' Complaint was filed October 9, 2024. The Complaint attaches CTU's Constitution and Bylaws as Exhibit A. Plaintiffs contend that they are dues-paying members of CTU and that the Constitution and Bylaws form a contract between CTU and Plaintiffs. Plaintiffs' particular complaint is that CTU has not "furnish[ed] an audited report of the Union which shall be printed in the Union's publication." (Complaint Ex. A at 23). Specifically, Plaintiffs complain that despite CTU's "contractual obligation to furnish an audited report of the Union each year and to print the audit report in CTU's publication, CTU and its financial secretary have failed to do so since 2020, when it released an audit covering 2018 and the first half of 2019." (Complaint ¶ 19). Plaintiffs allege that they have requested copies of audit reports, but that CTU has not provided them. (Complaint ¶¶ 21-23). CTU does not publish a "Union publication" at this time, however, and has not had one for a number of years. (Ex. 1 ¶ 2.)

Plaintiffs style the single count of their Complaint as being for a "Breach of Contract" (Complaint at 6). Plaintiffs allege that "Defendants' breach of the CTU Constitution and Bylaws has resulted in damages to Plaintiffs." (Complaint ¶ 33.) But nothing in Plaintiffs' Complaint says anything what the nature or extent of those supposed damages might be.

Plaintiffs seek for relief a declaratory judgment; a direction that Defendants "specifically perform their contractual obligation to furnish audited financial reports of the Union in the Union's

publication”; costs; and further unspecified relief. But it is not CTU that is preventing Plaintiffs from seeing the audit materials. It is Plaintiffs themselves, for two reasons.

First, CTU has made audit reports from 2019 through 2022 available online to its members, including Plaintiffs. CTU no longer distributes a printed publication and so makes this audit information available this way. (Ex. 1 ¶ 5.) These audit reports are in the nature of summaries of the full audit reports.

Second, the full audit reports are available for in-person inspection upon request. Plaintiff Weiss wrote to CTU on January 8, 2025—only after this lawsuit was filed—to ask “when they can be available after school hours for viewing.” (Ex. 2.) CTU responded the same day to say that the full audits were available for inspection “next week, Monday through Friday, between 9:00 a.m. and 5:00 p.m. Please let me know what days and times work best for you.” Weiss never responded. (Ex. 1 ¶ 6.)

ARGUMENT

Initially, the Officer Defendants must be dismissed as a matter of law. Individual union representatives, acting within the scope of their responsibilities as union representatives, cannot be individually sued under Illinois law. CTU is the only appropriate defendant here.

More importantly, Plaintiffs’ claims against CTU fail on the merits. First, Plaintiffs have failed to plead adequate facts about their damages. Under Illinois law, failing to plead any factual detail about nature or extent of damages from breach of contract warrants dismissal under Section 2-615.

It does not appear on the face of the Complaint that Plaintiffs are seeking specific performance. But if they were to claim that no damages need be pleaded because they are seeking

specific performance, then they face another impassable hurdle. They now have access to the audit reports they want. Any claim for specific performance is moot.

I. The Officer Defendants Must Be Dismissed (2-615)

The Complaint alleges conduct by Davis Gates and Moreno only in their roles as officers of the CTU. Therefore, they must be dismissed as defendants because union agents cannot be individually sued “for action they undertake on behalf of the union.” *Zander v. Carlson*, 2020 IL 125691, ¶ 20. This immunity extends to individual union officers “even if that individual’s conduct was unauthorized by the union and was in violation of an existing collective bargaining agreement.” *Id.*, citing *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 402 (1981). Thus, the principle that a union agent cannot be sued individually is the same under Illinois and federal law.

Because Plaintiffs’ Complaint is improperly suing the Officer Defendants in their individual capacity for actions they took as CTU representatives, the claim against the Officer Defendants must be dismissed.

II. Plaintiffs’ Breach of Contract Claim Against CTU Is Insufficiently Pleaded Because Plaintiffs Offer No Specific Facts About Their Damages (2-615).

“The essential elements of a breach of contract are as follows: (i) the existence of a valid and enforceable contract, (ii) performance by the plaintiff, (iii) breach of the contract by the defendant, and (iv) resultant injury to the plaintiff.” *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 27. Plaintiffs have failed to plead sufficiently the injury they supposedly suffered.

“Illinois is a fact-pleading jurisdiction, mandating that plaintiffs allege facts sufficient to bring their claims within the scope of the cause of action being asserted.” *Akinyemi v. JP Morgan Chase Bank, N.A.*, 391 Ill. App. 3d 334, 338 (1st Dist. 2009). This requires providing facts about damages. A complaint for breach of contract may not merely allege that a plaintiff has damages; it must provide some facts about what they are, otherwise dismissal is “appropriate under section 2-

615.” *Id.* To be sufficient, 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). Because Plaintiffs have only alleged that they have some unspecified damages, without any explanation of what type or how much, they have failed to adequately plead a claim for a breach of contract. *Id.*

This is not merely technical, given the particular nature of Plaintiffs’ contract claim. They claim that they have not had the chance to review audit reports. They give no explanation about how allegedly not having CTU’s financial information has changed their lives for the worse or what they would have done with that information, if they had it sooner. The very nature of Plaintiffs’ claim should make it clear that Plaintiffs will struggle to plead damages “with reasonable certainty.” *Gruen*, 146 Ill. App. 3d at 874. Indeed, it is hard to see what damages Plaintiffs could possibly have, as they have access to the requested audit materials online and in-person (Ex. 1 ¶¶ 3-5). But damages are “essential” to any claim of breach of contract. *Beck*, 2013 IL App (1st), 120891, ¶ 27. Even under a generous reading of the Complaint, there is simply no clear reason to think that CTU’s failure to give Plaintiffs access to the audit reports in the way and at the time Plaintiffs wanted could cause any damage to Plaintiffs. Plaintiffs’ inadequate pleading of the necessary element of damages dooms their claim for breach of contract.

III. **Any Claim for Specific Performance Is Moot Because Plaintiffs Now Have the Audit Reports (2-619).**

It is perhaps giving Plaintiffs too much of the benefit of the doubt to say that they might not need to plead damages if they are seeking specific performance. Consider that Plaintiffs have chosen to style their Complaint as being for “breach of contract” and further consider that they have pleaded that they do have damages (though not what those damages might be).

But nevertheless indulging Plaintiffs and pretending that they did file a claim for specific performance, any claim for specific performance would still fail as moot. A claim is deemed moot “where the result will not be affected regardless of how those issues are decided.” *People v. Julie M. (In re Julie M.)*, 2021 IL 125768, ¶ 21. “Mootness is a matter properly raised under section 2-619.” *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 24, appeal denied 116 N.E.3d 943 (2019). A claim seeking provision of information is moot if the information has been subsequently provided. *Id.* ¶ 38. See also, *Interstate Bakeries Corp. v. Bakery, Cracker, Pie and Yeast Wagon Drivers Union, Local 734*, 58 Ill. App. 2d 485, 489-90 (1st Dist. 1965) (trial court should dismiss as moot a claim for directive to defendant to take an action where “intervening events have made the issue moot”).

Here, Plaintiffs have had access to the audit reports they requested since at least January 8, 2025 (Exhibit 2). This Court cannot “grant effective relief” because any possible order to give the Plaintiffs the audit reports will already been complied with. *Garlick*, 2018 IL App (2d) 171013, ¶ 38. Any claim for specific performance should be dismissed as moot. *Interstate Bakeries Corp.*, 58 Ill. App. 2d at 489-90.

CONCLUSION

The Officer Defendants must be dismissed. Per the Illinois Supreme Court, only CTU can be sued, not its representatives.

Plaintiffs have stated no claim against CTU. They say they are bringing a claim for breach of contract. If so, they must plead the nature and extent of their damages, not merely allege without explanation that they have them. Plaintiffs' failure to plead the nature and extent of damages makes any breach of contract claim subject to dismissal under Section 2-615. If Plaintiffs were to say that they are only seeking specific performance by CTU, that would be subject to dismissal under Section 2-619, because CTU has provided the Court with an affidavit and other evidence showing that Plaintiffs already have access to the audit reports, making a claim for specific performance moot.

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Respectfully submitted,

/s/ Josiah A. Groff

February 4, 2025

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

**PHILIP WEISS, BRIDGET CUEVAS,)
ROSEMARY SWEARINGEN,)
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STACY DAVIS GATES, President;)
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Secretary,)**

Defendants.)

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DECLARATION OF KURT HILGENDORF

COUNTY OF COOK)
) SS
STATE OF ILLINOIS)

I, Kurt Hilgendorf, an adult citizen of Illinois, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, do hereby certify that the statements set forth below are true and correct.

1. I am employed by Chicago Teachers Union (“CTU”) as the Legislative Coordinator/Special Assistance to the President. I am personally familiar with the claims and contentions Plaintiffs are raising in this matter. I am also personally familiar with the preparation of CTU audits and audited reports. I offer this Declaration in support of the Defendants’ Memorandum of Law in Support of Their 2-619.1 Motion to Dismiss (“Memo”).

2. Plaintiffs allege that CTU is not printing audited reports in the Union's publication. But the CTU has not printed a publication, nor regularly published an online publication, for several years.

3. To the best of my knowledge, the CTU has always made its full annual audits available for personal inspection by any CTU member upon request. The full audits are different than the summary audited reports previously printed in the CTU's publication.

4. In recent years, CTU has been catching up on finalizing audits. The audits have been delayed due to the COVID pandemic, new reporting requirements from the Chicago Teachers Pension Fund ("CTPF") which took time to comply with, and turnover in CTU staff. But the full annual audits have been available for inspection by CTU members as follows:

- (a) The 2019 audit has been available since about December 2020.
- (b) The 2020 audit has been available since on or about December 13, 2024.
- (c) The 2021 audit has been available since on or about December 13, 2024.
- (d) The 2022 audit has been available since on or about December 13, 2024.
- (e) The 2023 audit is still being finalized but I anticipate that it will be available within a week or two.

5. Though the CTU no longer prints a publication, audited reports were posted on the CTU member portal website at <https://members.ctunet.com/>, on about the same dates set forth above. CTU members may access these pages on the CTU member portal website.

6. On January 8, 2025, Plaintiff Philip Weiss emailed the CTU to request to review the full audit reports in-person. CTU responded by email and suggested possible times for him to do that. Weiss never communicated further about his request. A copy of these email communications are attached to this Declaration as Exhibit A.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, based on knowledge, information and belief.

Date: 2/4/25


Kurt Hilgendorf

-----Original Message-----

From: Edwards, Alicia R. On Behalf Of InformationRequest

Sent: Wednesday, January 8, 2025 12:10 PM

To: 'Philip Weiss' <phil237@ct.gov>

Subject: RE: Full Audits

Good afternoon,

Happy New Year. The accounting department is available next week, Monday through Friday, between 9:00 a.m. and 5:00 p.m. Please let me know what days and times work best for you.

Thank you,
Alicia Edwards

-----Original Message-----

From: Philip Weiss [mailto:phil237@ct.gov]

Sent: Wednesday, January 8, 2025 6:35 AM

To: InformationRequest <InformationRequest@ct.gov>

Subject: Full Audits

Greetings CTU,

I am requesting to see the "full audits" of the Union referenced in the "Audited Reports" that were posted in the members portal. Please let me know when they can be available after school hours for viewing.

Thank you

Phil Weiss

EXHIBIT A

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