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2/15/2018 4:07 PM
2017-L-011355
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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
LAW DIVISION
CLERK DOROTHY BROWN

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

JANE DOE, Plaintiff, v. LYFT, INC.; LYFT ILLINOIS, INC.; ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, Defendants.	)))))))))))	Case No. 17-L-011355 Hon. Patricia O'Brien Sheahan Calendar D

DEFENDANT STERLING INFOSYSTEMS, INC.'S
MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-615

I. INTRODUCTION

Plaintiff Jane Doe's ("Plaintiff") Complaint, which arises from an alleged sexual assault committed by Defendant Angelo McCoy ("McCoy") while McCoy was acting as a driver for Defendant Lyft, Inc. ("Lyft"), does not allege sufficient facts to state a cause of action for negligence against Defendant Sterling Infosystems, Inc. ("Sterling"). Specifically, Plaintiff has not pleaded any facts to establish that Sterling owed Plaintiff a legal duty under the circumstances alleged in the Complaint. Plaintiff seeks to hold Sterling – the background check company Lyft allegedly hired and with whom Plaintiff had no contact – liable for McCoy's criminal act because it allegedly "[f]ailed to conduct an adequate background check of [McCoy]." (Compl. at Count XI, ¶ 102(a).) Plaintiff must allege more and very specific facts against Sterling in order to even make a threshold claim for negligence.

It is well-settled that, under Illinois law, there is no duty imposed on one for the benefit of the other to prevent the criminal acts of a third party absent a legally-recognized "special relationship" or "voluntary undertaking." Here, Plaintiff has not alleged – even by conclusory allegations – that such a special relationship exists between her and Sterling (i.e., innkeeper-guest, carrier-passenger, business inviter-invitee, custodian-protectee) or between Sterling and McCoy (i.e., parent-child, employer-employee, or principal-agent). Nor has Plaintiff alleged that Sterling voluntarily undertook a duty in this scenario. Therefore, as the Illinois Supreme Court has instructed, this Court must apply Illinois's "no-affirmative-duty" rule, which necessarily results in finding that Sterling did not owe Plaintiff a duty to protect her from McCoy's criminal act, and requires the dismissal of Plaintiff's negligence claim against Sterling.

II. BACKGROUND

According to the Complaint, at approximately 11 p.m. on July 7, 2017, Plaintiff requested a ride through Lyft's ridesharing application. (Id., ¶ 83.) McCoy responded to her request and

picked her up. (Id., ¶ 84) Plaintiff fell asleep shortly after she got into his vehicle. (Id., ¶¶ 84-85.) Later, McCoy allegedly parked the vehicle and sexually assaulted Plaintiff. (Id., ¶ 86.) Based on these factual allegations, Plaintiff asserts the following claims: assault and battery and false imprisonment against both McCoy and Lyft; negligence, negligent hiring, negligent supervision, negligent retention, and fraud against Lyft; and a single negligence count against Sterling. (See generally id.)

Plaintiff's claim against Sterling is based on a background check that Sterling allegedly prepared for Lyft regarding McCoy. (Id. at Count XI, ¶ 100.) Plaintiff alleges that "Sterling had a duty to exercise reasonable care in conducting background checks of Lyft drivers who transport members of the general public, including [Plaintiff]." (Id. at Count XI, ¶ 101.) She further alleges that Sterling was negligent because it "failed to conduct an adequate background check of [McCoy]." (Id. at Count XI, ¶ 102(a).) Finally, Plaintiff alleges that as a result of Sterling's alleged negligence, she "was sexually assaulted, and suffered personal and pecuniary injuries." (Id. at Count XI, ¶ 103.) Plaintiff does not allege any contract or other relationship, or any interaction, with Sterling.

III. LEGAL STANDARD

A section 2-615 motion to dismiss[1] challenges the legal sufficiency of a complaint based on defects apparent on its face. See 735 ILCS 5/2-615; Marshall v. Burger King Corp., 222 Ill.

[1] Pursuant to Paragraph 8 of this Court's Standing Order, Sterling moves to dismiss the Complaint pursuant to 735 ILCS 5/2-615 ("Sterling's 2-615 motion") prior to moving to dismiss pursuant to 735 ILCS 5/2-619. Here, Lyft has separately filed its Motion to Dismiss Pursuant to 735 ILCS 5/2-619 or to Stay the Proceedings and Compel Arbitration ("Lyft's 2-619 motion") contemporaneously with Sterling's 2-615 motion. If this Court denies Sterling's 2-615 motion, but grants Lyft's 2-619 motion, Sterling intends to file a similar motion to compel arbitration. Under federal law, which governs the Lyft arbitration provision, Sterling can enforce the provision as to the claim against Sterling. See, e.g., Paragon Micro, Inc. v. Bundy, 22 F. Supp. 3d 880, 890 (N.D. Ill. 2014) (non-signatory can compel arbitration "when the signatory raises

2d 422, 429 (2006). To avoid dismissal, a pleading "must assert a legally recognized cause of action and it must plead facts which bring the particular case within that cause of action." Chandler v. Ill. Cent. R.R. Co., 207 Ill. 2d 331, 348 (2003) (emphasis added). In determining the sufficiency of a pleading, a court must "disregard any conclusions of fact or law that are not supported by allegations of specific fact." Richco Plastic Co. v. IMS Co., 288 Ill. App. 3d 782, 784-85 (1st Dist. 1997). If a court finds that, after disregarding any legal or factual conclusions, there are insufficient allegations of fact to state a claim, it should dismiss the complaint. Knox Coll. v. Celotex Corp., 88 Ill. 2d 407, 426 (1981). Here, Plaintiff alleges only legal conclusions – and not facts – to support her negligence claim against Sterling. (See Compl. at Count XI, ¶¶ 97-103). Therefore, the single claim against Sterling should be dismissed. See Bogenberger v. Pi Kappa Alpha Corp., 2018 IL 120951, ¶¶ 37, 42 (affirming dismissal of negligence claim where plaintiff failed to allege facts establishing a duty owed by defendant to plaintiff to prevent criminal acts of third parties).

III. ARGUMENT

Plaintiff's negligence claim against Sterling should be dismissed because she has not sufficiently alleged facts to support the conclusion that Sterling owed her a duty to protect her from McCoy's criminal act, a necessary element of a negligence claim. This Court is no doubt well-versed in the elements of a negligence claim: (i) the existence of a duty owed by the defendant to the plaintiff; (ii) a breach of that duty; and (iii) an injury proximately caused by that breach. Bogenberger, 2018 IL 120951, ¶ 21 (citation omitted). Here, Sterling's motion challenges the existence of a duty, which "is a question of law for the court to decide." Id. If no

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allegations of 'substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract'" (citations omitted)).

duty exists, a negligence claim necessarily fails. Iseberg v. Gross, 366 Ill. App. 3d 857, 861 (1st Dist. 2006).

A. There Is No Duty to Protect Others From Criminal Attack by Third Persons.

It is well-established that, under Illinois law, there is "no duty to act affirmatively to protect others from criminal attack by third persons absent a 'special relationship' between the parties." Iseberg v. Gross, 227 Ill. 2d 78, 94 (2007); see also Bogenberger, 2018 IL 120951, ¶ 41 (no duty to another to prevent criminal act of third party); Hills v. Bridgeview Little League Ass'n, 195 Ill. 2d 210, 228 (2000) (same). Indeed, the Illinois Supreme Court very recently ruled that "Illinois jurisprudence regarding an affirmative duty is clear," and reaffirmed that the so-called "no-affirmative-duty" rule "stands as the law of this state." Bogenberger, 2018 IL 120951, ¶¶ 37, 41 (quoting Iseberg, 227 Ill. 2d at 101); see also Iseberg, 227 Ill. 2d at 87, 94 (noting the Illinois Supreme Court's "long history of adherence" to "no-affirmative-duty" rule (citations omitted)).

B. Plaintiff Has Not Alleged A Special Relationship or Voluntary Undertaking.

While the general rule applicable to the circumstance as alleged in the Complaint is the "no-affirmative-duty" rule, Plaintiff has nonetheless not alleged any facts that bring her into either the "special relationship" or "voluntary undertaking" exceptions to the no-affirmative-duty rule. Plaintiff has not alleged – even in conclusory fashion – that one of the legally-recognized special relationships existed between her and Sterling or between Sterling and McCoy, the tortfeasor. Likewise, Plaintiff has not alleged that Sterling voluntarily undertook a duty to protect her from McCoy's criminal behavior, let alone facts that support such an allegation.

Illinois courts have recognized four types of relationships between a plaintiff and defendant that may give rise to a duty[2] to protect the plaintiff from a third-party's criminal act: (i) innkeeper-guest; (ii) common carrier-passenger; (iii) business inviter-invitee; and (iv) custodian-protectee. See Bogenberger, 2018 IL 120951, ¶ 33 (citation omitted); see also Iseberg, 227 Ill. 2d at 87-88 (noting same four relationships). Illinois courts have also recognized three types of relationships between a defendant and the tortfeasor that may also give rise to a duty to protect another from the tortfeasor's criminal act: (i) parent-child; (ii) principal-agent; and (iii) employer-employee. See Bogenberger, 2018 IL 120951, ¶ 33 (citation omitted). Finally, absent one of these special relationships, Illinois courts have held a party may "voluntarily or contractually assume[] a duty to protect another from the harmful acts of a third party." Iseberg, 366 Ill. App. 3d at 861.

Plaintiff's negligence claim against Sterling is based on a few conclusory allegations that McCoy sexually assaulted her because Sterling "[f]ailed to conduct an adequate background check of [McCoy]" for Lyft. (Compl. at Count XI, ¶¶ 100-102.) However, Plaintiff's only allegation regarding the existence of a duty is purely conclusory, i.e., that "Sterling had a duty to exercise reasonable care in conducting background checks of Lyft drivers who transport members of the general public, including [Plaintiff]." (Id. at Count XI, ¶ 101.) Further, Plaintiff alleges only that Lyft contracted with Sterling, (Id. at Count XI, ¶ 99), but does not (and cannot) allege that Sterling somehow voluntarily assumed a duty to protect Plaintiff by that contract.

[2] Even if a legally-recognized "special relationship" exists or a defendant voluntarily undertakes a duty to protect a plaintiff from the criminal act of a third party, the criminal act must still be foreseeable to give rise to a duty. See Sameer v. Butt, 343 Ill. App. 3d 78, 86 (1st Dist. 2003) (citation omitted). Here, however, Plaintiff has also failed to allege any facts that would establish the foreseeability of McCoy's alleged criminal conduct.

The Illinois Supreme Court's position is clear: conclusory allegations (i.e., that a duty exists) are insufficient to withstand dismissal under section 2-615. See Bogenberger, 2018 IL 120951, ¶ 33; Iseberg, 227 Ill. 2d at 86-87. Plaintiff has not alleged facts that establish any of the legally-recognized special relationships existed between her and Sterling or between Sterling and McCoy. Further, Plaintiff does not allege facts that establish Sterling voluntarily undertook a duty. Accordingly, Plaintiff has not pleaded sufficient facts to impose a duty on Sterling – a background check company with whom Plaintiff had no contact – to protect her from the criminal behavior of a third party such as McCoy.

C. Plaintiff Has Not Sufficiently Alleged A Duty Owed By Sterling.

According to the Illinois Supreme Court, absent factual allegations that establish a legally-recognized special relationship or a voluntary undertaking, a court must apply the general rule that no duty exists and dismiss the negligence claim pursuant to section 2-615. Iseberg, 227 Ill. 2d at 87-88, 98-101; see also Bogenberger, 2018 IL 120951, ¶¶ 37, 41-42 (affirming dismissal of negligence claim where no allegations that exception to no duty rule applied); Iseberg, 366 Ill. App. 3d at 862 ("The complaint does not allege that one of the special relationships between plaintiff and the defendants exists that would impose a duty on defendants; accordingly, we must apply the general rule."). Based on the well-established law, and the allegations in the Complaint, this Court should dismiss Plaintiff's negligence claim (Count XI) against Sterling pursuant to 735 ILCS 5/2-615.

IV. CONCLUSION

Sterling respectfully requests that this Court (i) grant this motion; (ii) dismiss Count XI of Plaintiff's Complaint pursuant to 735 ILCS 5/2-615; and (iii) grant such other relief as this Court deems just and proper.

Dated: February 15, 2018

Respectfully submitted,

STERLING INFOSYSTEMS, INC.

By: *s/ Bruce R. Van Baren*

Michael O'Neil
Caroline C. Plater
Bruce R. Van Baren
REED SMITH LLP (44486)
10 S. Wacker Dr., 40th Floor
Chicago, IL 60606-7507
(312) 207-1000
michael.oneil@reedsmith.com
cplater@reedsmith.com
bvanbaren@reedsmith.com

Attorneys for Defendant
Sterling Infosystems, Inc.

CERTIFICATE OF SERVICE

I certify that I served the foregoing on the following parties and counsel of record:

Via First-Class Mail to:

Angelo McCoy (No. 2017-0721223)
c/o Cook County Department of Corrections
P.O. Box 089002
Div11-BG-311-1
3015 S. California Blvd.
Chicago, IL 60608

Defendant

Via Electronic Mail to:

Timothy s. Tomasik
Patrick J. Giese
TOMASIK KOTIN KASSERMAN LLC
161 North Clark Street, Suite 3050
Chicago, Illinois 60601
(312) 605-8800
tim@tkklaw.com
pat@tkklaw.com

Counsel for Plaintiff Jane Doe

Beth Stewart
Emily A. Rose
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, NW
Washington, DC 20005
(202) 434-5075
bstewart@wc.com
erose@wc.com

and

Anthony J. Carballo
Martin Syvertsen
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606
312.360.6000
tcarballo@freeborn.com
msyvertsen@freeborn.com

Counsel for Lyft Illinois Inc. & Lyft, Inc.

Dated: February 15, 2018

s/ Bruce R. Van Baren
Bruce R. Van Baren

FILED
8/10/2018 4:31 PM
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE, Plaintiff, v. LYFT, INC.; LYFT ILLINOIS, INC.; ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, Defendants.	2017L011355 Case No. 17-L-011355 Judge Patricia O'Brien Sheahan

[PROPOSED] ORDER ON DEFENDANT LYFT, INC.'S PARTIAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO 735 ILCS § 5/2-615

Upon Defendant Lyft, Inc.'s Partial Motion to Dismiss for Failure to State a Claim Pursuant to 735 ILCS § 5/2-615, IT IS ORDERED Defendant Lyft, Inc.'s Partial Motion to Dismiss for Failure to State a Claim Pursuant to 735 ILCS § 5/2-615 is granted. Counts III, IV, V, VI, VII, and VIII are dismissed with prejudice and without leave to replead.

Dated: _____

ENTERED: _____
Hon. Patricia O'Brien Sheahan

PREPARED BY:

Anthony J. Carballo
Martin Syversten
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000
Firm No. 71182
tcarballo@freeborn.com
msyversten@freeborn.com

Beth A. Stewart (*pro hac vice*)
Emily A. Rose (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
bstewart@wc.com
erose@wc.com

Attorneys for Defendant Lyft, Inc.