

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 20-CV-00246

Deborah Taylor v. Todd West

Decision on Motion to Dismiss

The defendant, Todd West, has moved to dismiss the complaint against him, alleging that the plaintiff, Deborah Taylor, has failed to state a valid claim against him, has requested remedies that could not legally be provided, failed to serve him with her amended complaint in a timely fashion, failed to sue the correct defendant, and failed to provide grounds to support a suit against him individually rather than the limited liability company of which he is a principal.

The plaintiff opposes this motion, and argues that she has stated valid claims, for which she is entitled to relief.

The plaintiff has filed an amended complaint comprised of 80 paragraphs, and twelve separate requests for relief.

These allegations state, in summary, that the defendant breached a contract with the plaintiff by dismissing her from his commercial driver's license school without cause, denying her use of the school's tractor trailer combination to take the CDL skills exam, and failing to "help her as much as [she] need[ed]" as he had promised to do. She also alleges that the defendant discriminated against her by treating her differently than the male students in the school in several ways, i.e., by keeping the school open to male students but not to her, allowing male students to use the school's tractor trailer combination for the CDL exam while not allowing her to do so, removing her from the list of students authorized to take the CDL exam while leaving male students on that list, and not allowing her to complete her training, but allowing two male students to do so. She also alleges that the defendant "put her at risk" by allowing her to drive at the school premises without an instructor present. She does not allege that she was injured by that conduct, however.

The plaintiff seeks extraordinary remedies based on these alleged breaches of contract and discriminatory acts. Essentially all her requests for relief are equitable in nature, rather than requests for monetary relief. She asks for injunctive relief, including that the defendant be ordered to reinstate her as a student at his school, that he be required to send her a letter admitting error, that she be invited and permitted to train at the school during specific hours, that she be provided a licensed trainer, who will provide a minimum of 50% of their time on her training, one on one, that she be given at least sixteen hours of over the road training, on specific routes, including the testing route, that she be provided the same tractor trailer unit for testing that other students had, that she be permitted to re-test if she does not have an accident or commit a moving violation during the test, and that she be provided

an additional eight hours of re-training if another test is needed. She does request very specific monetary relief, in the alternative, if this injunctive relief is not available.

The defendant's motion to dismiss alleges that the plaintiff's complaint should be dismissed for the following reasons: (1) because she has failed to state a cause of action, i.e., because she is requesting relief to which she is not entitled and which the court cannot grant; (2) because she has failed to state any grounds for relief of any kind; (3) because she has named the defendant as an individual as the sole defendant, when her contract, if any, was in fact with a limited liability company, Northeast Driver Training, LLC; and (4) because she has failed to serve the complaint on the defendant on time. The defendant also seeks a court order finding that the complaint is "vexatious" and frivolous and asserts that as a result he should be awarded his attorney's fees.

Factual Allegations

In her amended complaint, the plaintiff alleges the following specific facts:

On March 10, 2020, she entered into a written contract with the defendant. She attached the document in question to her original complaint. It is titled "memorandum of understanding" and is signed by the defendant, on behalf of Northeast Driver Training, LLC., and the plaintiff. It states the following:

Northeast Driver Training LLC team is here as your full-service training partner to help you prepare for the road ahead. We commit to be prepared, organized and professional. As your instructor we will push and direct you to help you achieve your personal best.

It specifically states that

Northeast Driver Training LLC does not guarantee that you will earn your CDL A or B. We will coach you through the preparation for the permit exam if needed, provide computer programs that help prepare you and provide One-on One driving practice in large on-site yard and on local roads and highways. Ultimately it is your responsibility to meet deadlines and follow through with the training.

The agreement also states that "there is no cancellation fee or penalty however we do have a refund policy. Northeast Driver Training, LLC are here to help you as much [as] you need. The programs are to be completed within 45 days of the 1st class."

Plaintiff alleges that she already had a CDL B that permitted her to drive a school bus, and that she enrolled in the training program at issue here so she could get her CDL A, and that she informed the defendant, Mr. West, of these facts and of her limited experience driving tractor-trailers. She also alleges that Defendant West was "concerned" that due to her limited experience she might need to attend school for longer than the 74 hours of training that was minimally required, before she would actually be prepared to take the CDL-A skills test.

She agreed to pay \$3,700 to complete training for that test, and paid \$800 up front, with the balance payable on the day before she took the skills test.

She alleges that the defendant gave her access to and the ability to drive a tractor trailer at the school yard, but that he did not provide one-on-one training or provide any other instructor to supervise or teach her. She alleges that she repeatedly asked for help and teaching, especially about how to execute backing maneuvers, and that the defendant failed to provide any assistance. She alleges that she drove

the defendant's truck in his yard for 154 hours, without learning to conduct backing maneuvers successfully, and that when she asked the defendant for help, he said he did not know how to train her. She alleges that he provided only 15 minutes of in person training to her, and that she saw him offer significantly more training to two male students.

She alleges that on June 16, 2020, Defendant West informed her that the school was closing temporarily, until the Springfield DMV reopened to offer testing for CDLs. He told the plaintiff he was going to refund the tuition she had paid. She declined this offer and stated her intention to "successfully complete the training and tak[e] the CDL skills test" when Springfield DMV reopened. Amended Complaint ¶ 52.

She also attached to her initial complaint an e-mail that she sent to Defendant West, on June 17, 2020, stating her willingness to take the skills test in Rutland or Colchester, and his reply on the same date confirming that the Springfield DMV office was closed, and that it was uncertain when it would reopen.

She alleges that on June 20, 2020, Defendant West sent her a letter (she says she attached it to her complaint, but it is not in the court's file). In his letter he stated he was returning the tuition he paid her and "ending any further training here."

On June 25, 2020, the plaintiff was contacted by DMV in Rutland, and offered the chance to take the necessary skills test in that location.

The plaintiff alleges that a DMV CDL skills test examiner told her that two of the defendant's male students were scheduled to take the CDL test in Rutland.

She also states in her complaint that she was able to schedule an appointment to take the test. Amended Complaint ¶ 61. She does not state in her complaint what the result of that test was. Her amended complaint was dated August 14, 2020.

In her response to the motion to dismiss, the plaintiff has made additional factual assertions, but they cannot be considered in connection with this motion, because they are neither under oath nor a part of her complaint.

Legal Conclusions

The plaintiff is self-represented, while the defendant is represented by counsel, Attorney Christopher Rundle, for the limited purposes of this motion. The court is obligated "to insure that there [is] no 'unfair imposition or unconscionable advantage . . . taken of one who acts as [her] own attorney.'" *Olde and Co., Inc. v. Boudreau*, 150 Vt. 321, 322-323 (1988) (citation omitted). However, the court is not obligated "to offer affirmative help to a pro se litigant." *Nevitt v. Nevitt*, 155 Vt. 391, 401 (1990). "[S]uch litigants will receive some leeway in the evaluation of their arguments, although they are nonetheless bound to observe the rules of procedure." *In re Grundstein*, 2020 VT 102, ¶ 7, *petition for cert. filed* April 9, 2021 (No. 20-1423).

Vermont Rule of Civil Procedure 8(a) requires that a complaint "shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks." V.R.C.P. 8(a). A motion to dismiss a party's claims, alleging that the

party has failed to set any valid claims or demands for relief, “should not be granted unless it is beyond doubt ‘that there exist no facts or circumstances that would entitle the plaintiff to relief.’” *Richards v. Town of Norwich*, 169 Vt. 44, 48 (1999) (citation omitted). On review, Vermont courts assume the truth of all the plaintiff’s factual allegations and reasonable inferences from the plaintiff’s pleadings and construe defendants’ contravening allegations as false. See *id.* at 48–49.

Failure to Name the Correct Defendant

The plaintiff has named the wrong defendant in her complaint. Her contract was with Northeast Driver Training, LLC, not with Defendant West. The purpose of establishing corporate structures is partly to avoid individual liability for owners. Shareholders or owners of a corporation are not generally liable for the debts or obligations of the corporation. “The court will look beyond the corporation to its shareholders for liability, that is, pierce the corporate veil, where the corporate form has been used to perpetrate a fraud, and also where the needs of justice dictate.” *Agway, Inc. v. Brooks*, 173 Vt. 259, 272 (2001) (citation omitted). The court can only “pierce the corporate veil” and hold individual owners responsible for the acts or wrongs of the company under extraordinary circumstances. No such circumstances are alleged here. The plaintiff’s claims against the individual defendant, Todd West, are therefore dismissed.

Because she is self-represented, and her pleadings demonstrate that she mistakenly believed that by naming the individual defendant she was in effect suing the LLC, the court will grant the plaintiff two weeks from the date this decision is being issued to correct this error, filing a motion to amend her complaint again, to substitute the LLC as the defendant in this matter, instead of Mr. West. The court notes that if she files such a motion, and if it is granted, she will be required to serve the LLC through its registered agent, as she did with the individual defendant, Mr. West. (See discussion of service below.)

Failure to State a Claim or Failure to Request Relief that can be Granted

In the expectation that the plaintiff will indeed file a motion to amend her complaint to substitute the LLC as the defendant in this case, the court will address the other issues raised by the individual defendant in his motion to dismiss. In referring to “the defendant” below, the court is referring in this section to the LLC, Northeast Driving School.

The plaintiff is seeking extensive injunctive relief, essentially requiring specific performance of what she believes are the Driving School’s contractual obligations to her. “Specific performance” means an order of the court that requires a party to perform specific acts based on contractual obligations. However, in general, that remedy is available only when money damages will not furnish an adequate remedy. *People’s United Bank, NA v. Alana Provençale, Inc.*, 2018 VT 46, ¶ 17. The burden is on the petitioner to demonstrate that the legal remedy (as opposed to the equitable remedy of specific performance) is not adequate. Also, “[i]n order to grant specific performance of a contract, there must be a valid contract, and its terms must be specific and distinct and leave no reasonable doubt of meaning.” *Reynolds v. Sullivan*, 136 Vt. 1, 3–4 (1978) (citation omitted). Specific performance is in essence injunctive relief. It is most often ordered when there are clear contractual arrangements for the sale or transfer of real estate. Injunctive relief can also be ordered to require a person to refrain from certain actions. However, injunctive relief that requires a person to perform services for another

person is not generally permitted. Rather, monetary damages sufficient to enable the aggrieved party to obtain equivalent services elsewhere is generally the appropriate remedy, if they can show that the service contract was breached.

Here, the sole contract is the “memorandum of understanding” filed with the complaint and referred to in connection with the amended complaint. The court concludes that, taking all the plaintiff’s allegations in the light most favorable to her, and disregarding any contravening statements made by the defendant, the plaintiff still cannot demonstrate that she is entitled to any of the injunctive, specific performance relief she seeks. The court cannot order Northeast Driver Training, LLC or its agents to reinstate her as a student, to send her a letter admitting error, to invite and permit her to train at the school during specific

hours, to provide her a licensed trainer, to provide her the same tractor trailer unit for testing that other students had, or any other services. To issue such an order over the defendant’s objections would in effect be to place the defendant in involuntary servitude to the plaintiff. That would be unlawful, and arguably unconstitutional. The defendant’s motion to dismiss those requests for affirmative injunctive relief is therefore granted.

The plaintiff alleges that the defendant made specific commitments in his contract to provide her with training, and that the defendant breached those agreements, causing her damages. She seeks a money judgment against the defendant for those damages as an alternative to the injunctive relief discussed above. The court concludes that taking the evidence in the light most favorable to the plaintiff, and disregarding all the defendant’s assertions, she has made out claims for breach of contract, and that if she can establish them, she may be entitled to monetary relief. The motion to dismiss her claims for breach of contract is therefore denied. (Subject to her motion to amend the complaint to substitute the appropriate defendant, as stated above).

The plaintiff also alleges that the defendant offered her different and lesser services and access to training and necessary equipment based on her gender, and treated male students differently and preferentially. If established, these allegations could establish a violation of Vermont’s Public Accommodations Act, 9 V.S.A. § 4502, which bars discrimination in public accommodations based on sex. The defendant’s motion to dismiss these claims is also denied, because the evidence, when viewed in the light most favorable to the plaintiff, might support this claim.

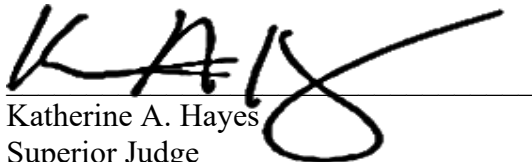
Failure of Timely Service

The defendant’s counsel correctly argues that the plaintiff failed to make timely service on Mr. West. Under V.R.C.P. 3, “[w]hen an action is commenced by filing, summons and complaint must be served upon the defendant within 60 days after the filing of the complaint.” The case was filed on June 26, 2020, and the clerk issued a summons on that date. On July 10, the defendant filed a letter with the court stating that he had received the summons, but did not receive a copy of the complaint. After some correspondence between the court and the plaintiff, the plaintiff did arrange service by sheriff. A return of service was filed on October 5, 2020, showing that Defendant West was served by sheriff on September 27, 2020. If service is not timely made, an action may be dismissed. V.R.C.P. 3; V.R.C.P. 41(b)(1)(ii). The court concludes that the belated service made in this case has not prejudiced the defendant, and that dismissal on that ground is therefore unwarranted. The request to dismiss this case based on tardy service is therefore denied.

Order

Based on the conclusions stated above, the plaintiff's claims made against the defendant, Todd West, are dismissed; however, the plaintiff shall have 14 days to file a motion to amend her complaint to substitute the appropriate party defendant. The plaintiff's requests for specific performance relief are dismissed. The balance of the defendant's motion to dismiss will be denied, provided that the motion for substitution of the appropriate defendant is filed in a timely manner. If the plaintiff fails to file the motion to substitute the corporate defendant for the dismissed individual defendant in a timely fashion, all her claims may be dismissed.

It is so ordered.



Katherine A. Hayes
Superior Judge
Signed electronically

So Ordered