

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

HARMON FRANKLIN and)	
NANCY FRANKLIN,)	
)	
Plaintiffs,)	
)	
VS.)	No. 01-1380
)	
M.S. CARRIERS,)	
MIKE STARNES, and)	
MIKE REAVES,)	
)	
Defendants.)	

ORDER GRANTING MOTION TO DISMISS OF
MIKE STARNES AND MIKE REAVES

Plaintiffs, proceeding pro se, filed this action against Defendants seeking damages for breach of contract, defamation, and injunctive relief for alleged violations of Federal transportation regulations. Defendants Mike Starnes and Mike Reaves have moved to dismiss Plaintiffs' breach of contract and defamation claims. For the reasons stated below, the motion to dismiss of Mike Starnes and Mike Reaves is GRANTED.

Facts

On January 20, 2001, Harmon Franklin entered into a contract hauling a greement with M.S. Carriers. Essentially this agreement provided that Mr. Franklin would provide his truck and driving services to M.S. Carriers in exchange for a monetary compensation for every

mile traveled under M.S. Carriers direction. See Complaint, at 4-6.

On March 13, 2001, M.S. Carriers dispatched Mr. Franklin from Tyler, Texas, to Seagoville, Texas. See id., ¶ 28. Upon arrival at the M.S. Carrier terminal at Seagoville, Mr. Franklin was ordered to report to a drug testing center north of Dallas. See id. Mr. Franklin reported to the drug testing facility and took a drug test before returning to the Seagoville terminal. See id. After returning to the terminal, M.S. Carriers dispatched him to Fort Smith, Arkansas. See id.

On April 30, 2001, M.S. Carriers used Mr. Franklin's services to carry a load from El Paso, Texas, to Roanoke, Texas. See id., ¶ 33. While at Roanoke, Mr. Franklin received a message on the truck's qualcomm¹ system. See id. The message informed Mr. Franklin that he needed to report to the terminal at Seagoville. See id. Mr. Franklin assumed this was for another drug test and replied that he would stop by the drug testing station north of Dallas, but that he was not going to report to the Seagoville station. See id. at Exhibit D. After being warned that his failure to report to the Seagoville station would require the cancellation of his contract with M.S. Carriers, Mr. Franklin returned to the Memphis terminal. See id. ¶ 33.

On May 18, 2001, Mr. Franklin sent a letter to Starnes stating his reasons for believing that the contract hauling agreement was wrongfully terminated. See id. ¶ 36. In response to

¹ Qualcomm is apparently an onboard communication system linking drivers with their dispatchers.

this letter, Reaves² sent Mr. Franklin a letter which stated “very simply put, you did not respond to a federally required random drug test.” See id. at Exhibit F. A copy of this letter was sent to Starnes. See id.

A complaint should not be dismissed for failure to state a claim unless it is clear that the plaintiff would not be entitled to relief even if the factual allegations were proven. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The factual allegations must be taken as true, Hammond v. Baldwin, 866 F.2d 172, 175 (6th Cir. 1989), and it must be apparent that the plaintiff “can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hammond, 866 F.2d at 175. The complaint must be read in the light most favorable to the plaintiff. Allard v. Weitzman (In re Delorian Motor Co.), 991 F.2d 1236, 1240 (6th Cir. 1993).

Plaintiffs’ Breach of Contract Claims Against Defendants Starnes and Reaves

Starnes and Reaves have argued that they did not enter into a contract with Plaintiffs and, accordingly, Starnes and Reaves cannot be held liable for breach of contract. For a valid contract to exist under Tennessee law, the parties to the contract must have a meeting of their minds and mutually assent to the contract. See Jamestowne on Signal, Inc. v. First Federal Sav. & Loan Ass'n, 807 S.W.2d 559 (Tenn.App. 1990).

In Plaintiffs’ response, Plaintiffs admit that “at no time have the plaintiffs claimed that

² It is unclear why Mr. Reaves responded to the letter which was sent to Mr. Starnes. Plaintiff states that this letter was accidentally sent to Mr. Reaves. In any event, the resolution of this factual question is unnecessary for the disposition of the current motion.

Starnes or Reaves [were parties] to the contract of Harmon Franklin and M.S. Carriers.” See Answer to Defendants Motion to Dismiss Defendants Starnes and Reaves, at 1. Furthermore, Plaintiffs’ complaint does not allege any basis for piercing the corporate veil of M.S. Carrier to allow Starnes or Reaves to be held liable as officers or agents of M.S. Carriers.

Instead of arguing that Starnes and Reaves are liable on the contract, Plaintiffs’ response brief alleges that they “conspired, had a meeting of the minds, interfered with, and caused the contract between Harmon Franklin and M.S. Carriers to be fraudulent[ly] breached and terminated.” See id., at 1. In both the complaint and the response, Plaintiffs fail to allege any set of facts to support these new allegations. Furthermore, Plaintiffs’ complaint does not state a cause of action for tortious interference with a contract and Starnes and Reaves cannot be held liable for conspiracy to breach a contract. See Trau-Med of America, Inc. v. Allstate Ins. Co., — S.W.3d— (Tenn. March 25, 2002)(stating that “[a]s long as the agent is acting within the scope of his or her authority, the agent and the corporation are not separate entities and cannot be the sole parties to a conspiracy).

Accordingly, taking Plaintiffs’ complaint in the light most favorable to Plaintiffs, Plaintiffs would be unable to prove a breach of contract action against Defendants Starnes or Reaves. Accordingly, Plaintiffs’ breach of contract action against Starnes and Reaves is DISMISSED.

Plaintiffs’ Defamation Claim against Starnes and Reaves

Plaintiffs’ complaint alleges that Defendant Reaves’ response to Mr. Franklin’s letter

asking Mr. Starnes to reinstate his contract was slander.³ Starnes and Reaves have moved to dismiss this count based upon a lack of publication.

Under Tennessee law, a person can be held liable for his or her published false statements concerning a private person. See Press, Inc. v. Verran, 569 S.W.2d 435, 442 (Tenn. 1978)(adopting the Restatement (second) of Torts, § 580B). For a person to publish a statement, the person must disseminate that statement to a third party. See Applewhite v. Memphis State University, 495 S.W.2d 190, 193 (Tenn.1973). Furthermore, communication among officers and agents of a corporation in the normal course of business is not considered publication under Tennessee law. See Freeman v. Dayton Scale Co., 19 S.W.2d 255, 258 (Tenn. 1929); Woods v. Helmi, 758 S.W.2d 219 (Tenn. Ct. App.1988).

In this case, it is clear that the allegedly slanderous letter was sent to Harmon Franklin and a copy was sent to Defendant Starnes. As to Defendant Starnes, there is no basis to hold a recipient of an allegedly libelous letter liable for the contents of that letter. Concerning Defendant Reaves, it is clear that Reaves sent the letter in the ordinary course of business to another officer of his employer, M.S. Carriers and to Mr. Franklin. Since Reaves only sent the letter to Mr. Franklin and a co-officer of M.S. Carriers, the letter was not disseminated to a third party and cannot be considered libelous. Accordingly, Plaintiffs' action against Starnes and Reaves for defamation is DISMISSED.

Claims By Nancy Franklin

³ Since the allegedly defamatory statement was written, if in fact it was defamatory, it would be libelous, not slanderous.

Plaintiff Nancy Franklin must be dismissed as a party. It should first be noted that Mr. Franklin cannot represent Ms. Franklin under Tennessee law. See Tenn. Code Ann. § 23-3-101, *et. seq.* Since Ms. Franklin did not sign the complaint in this action, she has not actually filed a claim in this action. As a result, Ms. Franklin should be dismissed as a party to this action.

Even if Ms. Franklin had signed the complaint, she has not stated a claim upon which relief can be given. Plaintiffs do not dispute that Ms. Franklin was not a signatory to the contract between Mr. Franklin and M.S. Carriers. Rather, Plaintiffs allege that Ms. Franklin was a third party beneficiary to the contract between Mr. Franklin and M.S. Carriers.

“Generally, contracts are presumed to be ‘executed for the benefit of the parties thereto and not third persons.’” Owner-Operator Independent Drivers Ass'n, Inc. v. Concord EFS, Inc., 59 S.W.3d 63, 68 (Tenn. 2001) (quoting Oman Constr. Co. v. Tennessee Cent. Ry. Co., 370 S.W.2d 563, 572 (1963)). An exception to this rule is that “third parties may enforce a contract if they are intended beneficiaries of the contract.” Owner-Operator, 59 S.W.3d at 69 (citing Willard v. Claborn, 419 S.W.2d 168, 169 (1967)). It is not sufficient to show that the third-party would have received benefit from the contract. See id. Rather, a third-party must show that “that the contract was made and entered into directly or primarily for the benefit of such third person, and before he can avail himself of the exceptional privilege of suing for a breach of agreement to which he is not a party he must at least show that it was intended for his direct benefit.” See id. (quoting Abraham v. Knoxville Television, Inc., 757

S.W.2d 8, 11 (Tenn.Ct.App.1988).

In this case, Ms. Franklin has no standing to enforce Mr. Franklin's contract with M.S. Carriers. Plaintiffs have argued that Defendants knew that Ms. Franklin would receive benefits from the contract and that she was a partial owner of the truck that Mr. Franklin leased to M.S. Carriers. Regardless, Plaintiffs have alleged no set of facts which if proven would establish that the lease hauling contract was intended for the primary or direct benefit of Ms. Franklin. Accordingly, Ms. Franklin has not stated a cause of action against any defendant in this action and must be dismissed as a party.

Conclusion

Plaintiffs have not stated causes of action for breach of contract and defamation against Starnes and Reaves and dismissal pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure is appropriate as to those claims. Accordingly, the motion to dismiss of Defendants Mike Starnes and Mike Reaves is GRANTED. Since Ms. Franklin has not stated a cause of action against any Defendant, Plaintiff Nancy Franklin is DISMISSED as a party to this action.

IT IS SO ORDERED.

JAMES D. TODD
UNITED STATES DISTRICT JUDGE

DATE