

5442-106
DPW/slc

**IN THE CIRCUIT COURT OF ILLINOIS
CHAMPAIGN COUNTY, SIXTH JUDICIAL CIRCUIT**

FILED
SIXTH JUDICIAL CIRCUIT

NOV 17 2016

33 *[Signature]*
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

DERVANNA H.A. TROY-MCKOY,)

Plaintiff,)

vs.)

Case No. 16-L-106

GEORGE GOLLIN, BRAD SCHWARTZ, and)

THE BOARD OF GOVERNORS OF THE)

UNIVERSITY OF ILLINOIS,)

Defendants.)

**DEFENDANT'S SECTION 2-619 MOTION TO DISMISS PLAINTIFF'S COMPLAINT
AND MEMORANDUM OF LAW IN SUPPORT**

NOW COME the Defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, improperly designated as "THE BOARD OF GOVERNORS OF THE UNIVERSITY OF ILLINOIS", by its attorneys, HEYL, ROYSTER, VOELKER & ALLEN, and respectfully moves to dismiss the Complaint filed by the Plaintiff, DERVANNA H.A. TROY-MCKOY, pursuant to 735 ILCS 5/2-619(a)(1), and in support thereof states:

1. Plaintiff DERVANNA H.A. TROY-MCKOY, a Florida resident, filed this lawsuit on June 29, 2016. In his "Complaint for False Light", plaintiff alleges that he is a former student at St. Luke School of Medicine – Liberia where he was accepted on February 14, 2003 (¶¶ 4-5; Ex. A at p. 20). Based on one of the exhibits attached to the Complaint, plaintiff received a Doctor of Naturopathic Medicine degree from St. Luke School of Medicine on March 18, 2003 -- one month after being accepted (Ex. D at p. 25).

2. THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, which plaintiff has improperly designated as "THE BOARD OF GOVERNORS OF THE UNIVERSITY OF ILLINOIS" (hereinafter referred to as "the University"), is one of the three named defendants. The other two named defendants are GEORGE GOLLIN and BRAD SCHWARTZ. Defendant GEORGE GOLLIN is a Professor of Physics at the University of Illinois at Urbana-Champaign ("Professor Gollin") who is also interested in, and has published on, the topic of fraudulent universities and professional schools (so called "diploma-mills"). Defendant BRAD SCHWARTZ is a medical doctor who is the former Dean of the University of Illinois at Urbana-Champaign College of Medicine ("Dr. Schwartz"); however, he is no longer employed by the University.

3. The University has been served with summons and the Complaint; however, neither Professor Gollin nor Dr. Schwartz has been served. Thus, they have not entered their appearance in this case.

4. Plaintiff's Complaint should be dismissed because this Court does not have jurisdiction of the subject matter of the action pursuant to Section 2-619(a)(1) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(1). This Court does not have subject matter jurisdiction over plaintiff's claims pursuant to the Illinois Court of Claims Act, 705 ILCS 505/8(d), and University of Illinois Act, 110 ILCS 305/1, both of which vest exclusive jurisdiction in the Illinois Court of Claims for claims for damages against the State, including claims against the University and its employees, sounding in tort. Plaintiff's Complaint for False Light sounds in tort and is asserted against the University and two of its employees acting within the scope of their official duties and legal authority. Accordingly, this Court lacks subject matter jurisdiction over plaintiff's claims.

5. In addition, plaintiff's Complaint for False Light should also be dismissed for lack of subject matter jurisdiction, pursuant to section 2-619(a)(1) of the Code of Civil Procedure, based on the doctrine of sovereign immunity and the State Lawsuit Immunity Act. The State Lawsuit Immunity Act provides that, except as provided in the Court of Claims Act and certain other statutes not relevant to this case, "the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1. Plaintiff seeks to make the State a defendant and subject it to liability in this case, through the University and its two employees, without following the provisions of the Court of Claims Act. As a result, this Court lacks subject matter jurisdiction.

6. Plaintiff apparently agrees with the University's legal position herein since the caption for his Complaint is for the Court of Claims of the State of Illinois, and in ¶ 12 of the Complaint, plaintiff alleges that "*the appropriate court to sue the defendants is the Illinois Court of Claims, 705 ILCS 505/8.*" (Emphasis added.)

7. The University is filing a memorandum of law in support of its motion to dismiss that follows and is incorporated herein by reference.

WHEREFORE, defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, respectfully requests that this Court enter an Order: (1) dismissing plaintiff's Complaint for False Light with prejudice and to award to this defendant its costs herein; and (2) granting such other and further relief as the Court deems appropriate and just.

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS, Defendant

BY: 

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SCANNED

MEMORANDUM OF LAW IN SUPPORT

INTRODUCTION

This case involves claims sounding in tort ("false light") asserted against the University and two of its employees (one current and one former) acting within the scope of their official duties and legal authority, which plaintiff has erroneously filed in this Court rather than submitting to the exclusive jurisdiction of the Illinois Court of Claims, as state law requires. Plaintiff's claims cannot proceed in this Court against the University or its employees for two reasons:

First, this Court does not have subject matter jurisdiction over the Complaint, because the Illinois Court of Claims Act and the University of Illinois Act vest exclusive jurisdiction in the Court of Claims for tort claims asserted against the University and its employees acting within the scope of their authority.

Second, sovereign immunity and the State Lawsuit Immunity Act bar plaintiff's suit against the University and its employees, other than as authorized by the Court of Claims Act.

The defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, respectfully submits that plaintiff cannot assert a claim cognizable in this Court as a matter of law. His Complaint should therefore be dismissed with prejudice.

PLAINTIFF'S ALLEGATIONS IN HIS COMPLAINT FOR FALSE LIGHT

Plaintiff alleges that he "was an active student of St. Luke School of Medicine – Liberia, in good standing." (Complaint, ¶ 4). He was accepted as a student at St. Luke School of Medicine – Liberia in February 2003." (*Id.*, ¶ 14, Ex. A). One of the exhibits that plaintiff attached to the Complaint indicates that he received a Doctor of Naturopathic Medicine degree from St. Luke School of Medicine on March 18, 2003 -- only one month after being accepted. (*Id.*, Ex. D at p. 25). Plaintiff "enjoyed a good reputation ... as a student of St. Luke School of Medicine." (*Id.*, ¶ 5).

Plaintiff alleges that Professor Gollin is an employee of and a professor at the University of Illinois. (*Id.*, ¶¶ 6, 40). Plaintiff alleges that, in November 2009, Professor Gollin authored a 91-page document entitled "Analysis of the Practices and Policies of The St. Luke School of Medicine in Recent Years", which he then sent to the National Accreditation Board of the Republic of Ghana and which he posted on the University of Illinois website for approximately two years. (*Id.*, ¶¶ 30-31). (It should be noted that, although plaintiff alleges that he has attached said publication by Professor Gollin to his Complaint as Exhibit 1, that exhibit was not attached to the Complaint, nor were any of the plaintiff's numbered exhibits referred to as Exhibits 1-10 attached to the Complaint). Plaintiff further alleges that said publication by Professor Gollin contains 160 false statements and that it was written by him to place plaintiff and the St. Luke School of Medicine "before the public in a false light in a manner that was highly offensive to a reasonable person." (*Id.*, ¶¶ 31-34). According to the Complaint, some of the false statements contained in Professor Gollin's article include the following: (a) "The school awards academic credit without requiring demonstration of mastery of the subject matter for

which the credits are approved." (b) "The school's articulation agreements with other schools reveal that the school awards transfer credits regardless of the level of mastery of the subject matter associated with the transferred credits." (*Id.*, ¶ 48).

Plaintiff alleges that Professor Gollin enlisted defendant Dr. Schwartz to write a letter to make false and malicious statements against him and the St. Luke School of Medicine. (*Id.*, ¶ 41). (It should be noted that, although plaintiff alleges that he has attached a copy of Dr. Schwartz's letter to his Complaint as Exhibit 7, there is no such exhibit attached to the Complaint). Plaintiff alleges that the purpose of Dr. Schwartz's letter was "to stop the accreditation of St. Luke School of Medicine in Ghana" and that it was sent to the Ghanaian National Accreditation Board. (*Id.*, ¶¶ 42-43). Plaintiff claims that the letter is "libelous on its face and portrays the plaintiff in false light." (*Id.*, ¶ 43).

Finally, plaintiff alleges that "defendants were the agents and employees of their codefendants and in doing the things alleged in this complaint were acting with the course and scope of such agency and employment." (*Id.*, ¶19).

ARGUMENT

I. Legal Standard

A motion to dismiss under 735 ILCS 5/2-619 admits the legal sufficiency of the Complaint but asserts affirmative matters that defeat the claim. *Van Meter v. Darien Park District*, 207 Ill.2d 359, 367 (2003). The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation. *Czarobski v. Lata*, 227 Ill.2d 364, 369 (2008). Lack of jurisdiction under the Court of Claims Act is properly raised under section 2-619(a)(1), which provides for dismissal where the Court "does not have jurisdiction of the subject

matter of the action[.]” 735 ILCS 5/2-619(a)(1). See *Leetaru v. Bd. of Trustees of Univ. of Illinois*, 2015 IL 117485, ¶ 41, 32 N.E.3d 583, 594 (2015) (evaluating jurisdictional challenge under Court of Claims Act pursuant to section 2-619(a)(1)). Sovereign immunity from suit is likewise properly raised under section 2-619(a)(1). See *id.* (evaluating sovereign immunity as a jurisdictional issue under section 2-619(a)(1)); *Sellers v. Rudert*, 395 Ill.App.3d 1041, 1045 (4th Dist. 2009) (same). Here, plaintiff’s Complaint for False Light should be dismissed under section 2-619(a)(1) for lack of jurisdiction, based on the Court of Claims Act, the University of Illinois Act, the State Lawsuit Immunity Act, and sovereign immunity.

II. This Court Does Not Have Jurisdiction Over Plaintiff’s Claims Because They Fall Under the Exclusive Jurisdiction of the Illinois Court of Claims

This Court does not have subject matter jurisdiction over plaintiff’s Complaint, because all of plaintiff’s claims fall under the exclusive jurisdiction of the Illinois Court of Claims in accordance with the unambiguous provisions of the Illinois Court of Claims Act and the University of Illinois Act. The Court of Claims Act states that the Court of Claims “shall have exclusive jurisdiction to hear and determine,” among other disputes, “[a]ll claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit, and all like claims sounding in tort against ... the Board of Trustees of the University of Illinois[.]” 705 ILCS 505/8 (d). The University of Illinois Act mirrors this same rule, stating, “The Board of Trustees of the University of Illinois shall ... [have power] ... to sue and be sued, provided that any suit against the Board based upon a claim sounding in tort must be filed in the Court of Claims[.]” 110 ILCS 305/1.

Plaintiff unquestionably asserts only claims sounding in tort for false light. Accordingly, to the extent his claims lie against the University, this Court lacks subject matter jurisdiction and

exclusive jurisdiction resides with the Court of Claims. In determining whether a claim lies against a State entity such as the University, "the formal identification of the parties as they appear in the record is not dispositive," and "substance takes precedence over form." *Leetaru*, 2015 IL 117485, at 41144. "That an action is nominally one against the servants or agents of the State does not mean that it will not be considered as one against the State itself." *Id.* (citing *Senn Park Nursing Center v. Miller*, 104 Ill.2d 169, 187 (1984)). "The prohibition 'against making the State of Illinois a party to a suit cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested.'" *Id.* at ¶ 45 (quoting *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990); *Sass v. Kramer*, 72 Ill.2d 485, 491 (1978)).

Just as the Court of Claims has exclusive jurisdiction over plaintiff's claim against the University, the same is true as to plaintiff's claims against Professor Gollin and Dr. Schwartz – each of whom is alleged to have been under the employ of the University at all times relevant to the Complaint, and each of whom is alleged to have been acting with the scope of their employment and agency in connection with their alleged acts of placing plaintiff in a false light. Employees of the University, acting within the scope of their employment, are subject to the same exclusive jurisdiction of the Court of Claims as the University itself, as acts performed by State agents within the scope of their official duties are regarded as acts of the State.

The Supreme Court has prescribed a test for determining when actions against a State employee are actions against the State; such an action lies against the State when there are: "(1) no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts; (2) the duty alleged to have been breached was not owed to the public

generally independent of the fact of State employment; and (3) where the complained-of actions involve matters ordinarily within that employee's normal and official functions of the State." *Jenkins v. Lee*, 209 Ill.2d 320, 330 (2004) (citing *Healy*, 133 Ill.2d at 309)). Put simply, if a plaintiff "does not allege that any of the defendants acted outside the scope of their authority or in violation of the law, exclusive jurisdiction over the action must lie in the Illinois Court of Claims." *Healy*, 133 Ill.2d at 311. See also *Leetaru*, 2015 IL 117485, at ¶ 46.

Here, plaintiff specifically alleges that the University's employee defendants were employed by the University and acting within the scope of their employment and agency at all relevant times and in connection with all alleged wrongful acts asserted in the Complaint. Plaintiff does not allege that the University's employee defendants acted outside of their authority or in violation of the law, distinguishing the present case from *Leetaru*, in which the Supreme Court allowed an injunction claim not sounding in tort to proceed against the University in state court rather than the Court of Claims, because the action sought to be enjoined was specifically directed at allegedly unlawful action outside of the University employees' authority and in violation of the law. *Leetaru*, 2015 IL 117485, at ¶ 48-50. Plaintiff makes no similar allegations in this case. Thus, exclusive jurisdiction lies in the Illinois Court of Claims, and plaintiff's claims should be dismissed for lack of subject matter jurisdiction.

III. Plaintiff's Claims Are Barred by Sovereign Immunity

Because plaintiff failed to file his Complaint against the University in the Court of Claims, as required by Illinois law, his claims are also barred by the doctrine of sovereign immunity. The Illinois Constitution of 1970 abolished the doctrine of sovereign immunity "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. See also *PHL, Inc. v. Pullman*

Bank & Trust Co., 216 Ill.2d 250, 259-60 (2005). The General Assembly subsequently reestablished the doctrine by enacting the State Lawsuit Immunity Act, 745 ILCS 5/0.01 *et seq.* (the "Immunity Act"). Section 1 of the Immunity Act provides that, except as provided in the Court of Claims Act and certain other statutes not relevant to this case, "the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1. *See also Township of Jubilee v. State of Illinois*, 2011 IL 111447, ¶ 22.

Here, plaintiff's claims are asserted against the University—a body corporate and politic of the State with the capacity to sue and be sued. 110 ILCS 305/1. Likewise, plaintiff's claims against Professor Gollin and Dr. Schwarz, asserted against them in their capacity as employees of the University acting within the scope of their official duties and agency, are also in fact claims against the University, and consequently claims against the State. *See Healy*, 133 Ill.2d at 307-11. Lawsuits brought against "a State employee in his individual capacity will be found to be a claim against the State where a judgment for the plaintiff could operate to control the actions of the State or subject it to liability." *Currie v. Lao*, 148 Ill.2d 151, 158 (1992).

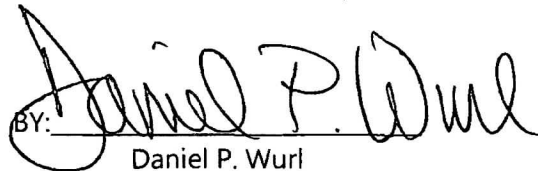
Because plaintiff's claims make the State a defendant in this Court, seek to subject the State to liability, and have not been filed with the Court of Claims as required by law, they are barred by sovereign immunity. 745 ILCS 5/1. Sovereign immunity bars a claim where the alleged negligence claim "arose out of the State employee's breach of duty that is imposed on him solely by virtue of his State employment." *Currie*, 148 Ill.2d at 159. A judgment for plaintiff would subject the University to liability, not only as a co-defendant, but as the employer of Professor Gollin and Dr. Schwarz, both of whom are alleged to have acted as employees and agents of the University in violation of alleged duties imposed on them solely by virtue of their

State employment. Accordingly, plaintiff's claims as asserted in this Court are barred by sovereign immunity, and the Complaint should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, the defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, respectfully requests that the Court dismiss plaintiff's Complaint for False Light with prejudice and to award this defendant its costs herein and grant such other and further relief as the Court deems appropriate and just.

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS, Defendant

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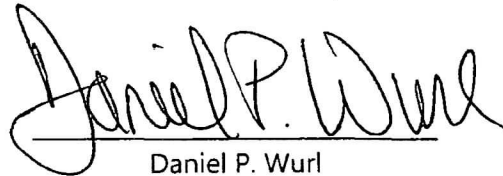
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **DEFENDANT'S SECTION 2-619 MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT** was served upon all parties of record to the above cause by enclosing the same in an envelope addressed to such parties at their address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Box in Urbana, Illinois, on the 17th day of November, 2016.

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