

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

MARIA FIGUEROA, GENARO)
VAZQUEZ, and FABIAN PEREZ,)
individually and on behalf of all other)
laborers similarly situated,)

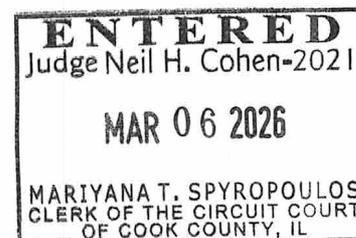
Plaintiffs,)

v.)

2025 CH 04411

VISUAL PAK HOLDINGS, LLC,)
and M.M.D. INC., d/b/a The All Staff)
Group,)

Defendants.)



MEMORANDUM AND ORDER

Defendant M.M.D., Inc., d/b/a The All Staff Group (“MMD”), has filed a Combined Motion to Dismiss pursuant to 735 ILCS 5/2-619 and to Transfer Venue pursuant to 735 ILCS 5/2-104.

Defendant Visual Pak Holdings, LLC (“Visual Pak”) has filed an Amended Combined Motion to Dismiss pursuant to 735 ILCS 5/2-619 and to Transfer Venue pursuant to 735 ILCS 5/2-104.

I. Background

Plaintiffs Maria Figueroa, Genaro Vazquez, and Fabian Perez, individually and on behalf of all other persons similarly situated (“Plaintiffs”), and the Chicago Workers’ Collaborative (“CWC”), as an interested party, have filed a First Amended Class Action Complaint (“First Amended Complaint”) against MMD and Visual Pak.

Plaintiffs are contracted by MMD as “day or temporary laborers” and were assigned to work at ABF Labs, LLC and American Blending & Filling, LLC, both of which Plaintiffs allege are owned by Visual Pak. CWC is a not-for-profit group that monitors employers’ compliance with worker safety, wage and hour requirements of Illinois and federal law. Plaintiffs and the CWC assert that Defendants have violated the Illinois Day and Temporary Labor Standards Act (“the Act”), 820 ILCS 175/1 *et seq.*, in numerous ways.

The Attorney General has intervened in this action pursuant to 735 ILCS 5/2-408(c) because Defendants have raised the issue of the constitutional validity of 820 ILCS 175/67.

II. MMD's and Visual Pak's Motions to Dismiss and Transfer Venue

MMD and Visual Pak have both filed Motions to Dismiss pursuant to 735 ILCS 5-619(a)(9). As the arguments raised by Defendants substantially overlap, the court will consider the motions to dismiss together.

A §2-619 motion to dismiss “admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action.” Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits “the disposal of issues of law or easily proved facts early in the litigation process.” Id. Section 2-619(a)(9) authorizes dismissal where “the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9).

A. CWC's Standing

Defendants argue that CWC lacks standing to bring suit because CWC's standing is based upon section 67 of the Act which is unconstitutional. CWC and the Illinois Attorney General (“Attorney General”) contend that section 67 of the Act is not unconstitutional and grants standing to CWC.

Under Illinois law, in order to have common law standing to bring a claim a plaintiff must “demonstrate ‘some injury in fact to a legally cognizable interest.’” Flynn v. Ryan, 199 Ill. 2d 430, 436 (2002)(internal citation omitted). “‘The claimed injury must be (1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief.’” Carr v. Koch, 2012 IL 113414, ¶ 28. The mere possibility of harm is insufficient to establish standing in Illinois. Maglio v. Advocate Health & Hosps. Corp., 2015 IL App (2d) 140782, ¶¶ 25.

Statutory standing “requires the fulfillment of statutory conditions in order to sue for legislatively created relief.” People v. Coe, 2018 IL App (4th) 170359 citing Wilson v. Tromly, 404 Ill. 307, 310 (1949). “The ‘legislature, having conferred a right of action *** may determine who shall sue, and the conditions under which the suit may be brought.’” Id.

1. Section 67 of the Act

Section 67 of the Act provides in relevant part as follows:

(a) Upon a reasonable belief that a day and temporary labor service agency or a third party client covered by this Act is in violation of any part of this Act, an interested party may initiate a civil action in the county where the alleged offenses occurred or where any party to the action resides, asserting that a violation of the Act has occurred, pursuant to the following sequence of events:

(1) The interested party submits to the Department of Labor a complaint describing the violation and naming the day or temporary labor service agency or third party client alleged to have violated this Act.

2) The Department sends notice of complaint to the named parties alleged to have violated this Act and the interested party. The named parties may either contest the alleged violation or cure the alleged violation.

(3) The named parties contest or cure the alleged violation within 30 days after the receipt of the notice of complaint or, if the named party does not respond within 30 days, the Department issues a notice of right to sue to the interested party as described in paragraph (4).

(4) The Department issues a notice of right to sue to the interested party, if one or more of the following has occurred:

(i) the named party has cured the alleged violation to the satisfaction of the Director;

(ii) the Director has determined that the allegation is unjustified or that the Department does not have jurisdiction over the matter or the parties; or

(iii) the Director has determined that the allegation is justified or has not made a determination, and either has decided not to exercise jurisdiction over the matter or has concluded administrative enforcement of the matter.

820 ILCS 175/67.

Section 5 of the Act defines “interested party” as “an organization that monitors or is attentive to compliance with public or worker safety law, wage and hour requirements, or other statutory requirements.” 820 ILCS 175/5. Under section 67(d) of the Act, an interested party prevailing in a civil action receives 10% of any statutory penalties assessed and attorney’s fees and expenses. The remainder of any awarded statutory penalties are deposited into the Child Labor and Day and Temporary Labor Services Enforcement Fund. 820 ILCS 175/67(d).

2. The constitutionality of section 67 of the Act

a. Necessity of deciding the constitutionality of section 67 of the Act

Initially, the Attorney General contends that this court need not reach the issue of the constitutionality of section 67 of the Act because CWC may have associational standing. CWC adopts this argument.

CWC’s standing is determined based upon the allegations of the First Amended Complaint. Guns Save Life, Inc. v. Raoul, 2019 IL App (4th) 190334, ¶ 18 quoting Illinois Ass’n of Realtors v. Stermer, 2014 IL App (4th) 130079, ¶ 26. An association has standing to sue on

behalf of its members where “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1997); International Union of Operating Engineers, Local 148 v. Ill. Dep't of Employment Sec., 215 Ill. 2d 37, 46 (2005).

The First Amended Complaint does not set forth facts supporting the existence of associational standing for CWC. More importantly, CWC is not asserting any claims on behalf of its members under the Act. Rather, CWC is asserting claims under section 67 of the Act on behalf of itself. “[W]ith statutory standing, the legislature created the right of action and determined ‘who shall sue, and the conditions under which the suit may be brought.’” Faucett v. Walgreens Co., 2025 IL 131444, ¶ 39. If section 67 is unconstitutional, CWC lacks any standing to assert claims on behalf of itself under the Act.

Furthermore, Defendants challenge the filing of this suit in Cook County. Under section 95 of the Act, which allows the individual Plaintiffs to seek compensatory and statutory damages, any private cause of action must be brought in the county where Plaintiffs live or the county where the violations of the Act occurred. 820 ILCS 175/95. Plaintiffs live in Lake County and the alleged violations occurred in Lake County. CWC is the only party residing in Cook County. Therefore, venue is only proper in Cook County if CWC can maintain a cause of action under section 67 of the Act. Defendants contend that CWC cannot maintain such a cause of action because section 67, which allows CWC to do so, is unconstitutional. Therefore, the court must decide the constitutionality of section 67.

b. Whether section 67 of the Act is unconstitutional

Defendants contend that section 67 of the Act is unconstitutional because the State of Illinois is the real party in interest and section 67 usurps the Attorney General’s power to represent the State. It is well established that “legislation that usurps the common-law powers of the attorney general is invalid.” State ex rel. Leibowitz v. Family Vision Care, LLC, 2020 IL 124754, ¶ 76, citing People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 501-02 (1976).

Defendants argue that section 67 authorizes improper “*qui tam*” actions which unconstitutionally usurp the Attorney General’s authority to represent the State. “[A] ‘*qui tam*’ action’ is an action brought under a statute authorizing an informant to bring a civil action to recover a penalty for the commission or omission of a certain act and providing that a part of the penalty be paid to the informer.” Scachitti v. UBS Fin. Svcs., 215 Ill. 2d 484, 506 (2005).

The Attorney General argues that section 67 is not a *qui tam* statute. First, this argument is contrary to the Attorney General’s prior assertion in Staffing Services Association of Illinois v. Flanagan, Case No. 1:23-cv-16208, Docket No. 32 (N.D. Ill. Jan. 19, 2024), that the “interested party” provision of section 67 of the Act “establishes a *qui tam* similar to those which have existed throughout American history.” (MMD Reply, Ex. A).

Second, section 67 clearly establishes the right to bring a *qui tam* action. “*Qui tam* suits by definition involve suits brought by private parties to assist the executive branch in its enforcement of the law, the violation of which affects the interest of the government, not the individual relator, whose only motivation in bringing the suit is to recover a piece of the action given by statute.” United States ex rel. Hall v. Tribal Dev. Corp., 49 F.3d 1208, 1212 (7th Cir. 1995). Here, section 67 of the Act allows “interested parties” to bring suit to enforce the Act and awards the interested party ten percent of any statutory penalties imposed and the State ninety percent thereby motivating interested parties to file suit. The State, not the interested party, is the entity with “an actual and substantial interest in the subject matter of the action . . .” Scachitti, 215 Ill. 2d at 506. Section 67 is a *qui tam* statute.

The issue now is whether section 67 of the Act improperly usurps the power of the Attorney General to represent the State thereby rendering section 67 unconstitutional. The case of Lyons v. Ryan, 201 Ill. 2d 529 (2002), is instructive.¹

In Lyons, the Illinois Supreme Court considered the constitutionality of section 20-104(b) of the Illinois Code of Civil Procedure. Section 20-104(b) allowed “a private citizen to bring a lawsuit to recover damages from persons who have defrauded the state if the Attorney General, after notice, fails to take file suit or take other action within 60 days.” 735 ILCS 5/20-104(b). Our supreme court found that although the statute was well-intentioned, the legislature cannot “reduce the Attorney General’s common law authority in directing the legal affairs of the state.” Lyons, 201 Ill. 2d at 541. Section 20-104(b) improperly usurped the Attorney General’s common law authority by conferring standing on private citizens to commence and prosecute actions on behalf of the State. Id.

Here, section 67 of the Act does not contain any limitations on an interested party’s prosecution of an action. In fact, section 67 allows an interested party to bring suit even when the Illinois Department of Labor (“IDOL”) has determined the complained of violation has been cured or determined that no violation has occurred. 820 ILCS 175/67(a)(4)(i) and (ii). Section 67 does not provide for any notice to the Attorney General of the suit. Nor does section 67 provide that the Attorney General has the right to dismiss or settle a suit brought by an interested party.

Other statutes allowing for *qui tam* actions which have been found to be constitutional provide for control over the litigation by the Attorney General by granting the Attorney General authority to intervene at any time, authority to control the litigation, and the authority to dismiss or settle the litigation at any time regardless of the wishes of the *qui tam* plaintiff. E.g., Scachitti, 215 Ill. 2d at 505-06 (discussing the False Claims Act, 740 ILCS 175/4); Leibowitz, 2020 IL 124754, ¶¶ 77-79 (discussing the False Claims Act and the Insurance Claims Fraud Prevention Act, 740 ILCS 92/15). Unlike these statutes, the Act does not provide for any notice to the Attorney General or provide for the Attorney’s General’s control of the litigation.

The Attorney General argues that it was unnecessary for the legislature to insert such authority over suits brought by “interested parties” because the Attorney General has such

¹ Both sides argue that the case of Wingert v. Hradisky, 2019 IL 123201, provides support for their respective positions. The court finds that Wingert is not helpful to either side’s arguments.

authority under 15 ILCS 205/6.3. Section 6.3 of the Attorney General Act affirms the Attorney General's authority "to intervene in, initiate, and enforce all legal proceedings on matters related to the payment of wages, the safety of the workplace, and fair employment practices . . . whenever the Attorney General determines that such action is necessary to protect the rights and interests of Illinois workers and Illinois businesses." 15 ILCS 205/6.3(b).

Section 67 of the Act allows the filing of a *qui tam* suit by an interested party with no notice to the Attorney General. The Attorney General cannot exercise its authority to represent the State if it has no notice of the filing of a suit under section 67 of the Act.² By allowing an interested party to file suit with no notice to the Attorney General, section 67 usurps the Attorney General's authority to represent the State and control the litigation. Nothing in section 6.3(b) of the Attorney General Act cures this infirmity.

The Attorney General argues that under section 67, an interested party must notify the IDOL prior to filing suit and the IDOL can share this information with the Attorney General. The Attorney General is mistaken. Section 67(a)(1) only requires the submission of a complaint to the Department of Labor setting forth the alleged violation of the Act and the name of the alleged violator. 820 ILCS 175/67(a)(1). Section 67 does not require that an interested party notify the IDOL of the *filing of a suit* against the alleged violator.

While the failure to require that an interested party notify the Attorney General of the filing of suit under section 67 of Act renders section 67 an unconstitutional usurpation of the Attorney General's authority, section 67 is also unconstitutional in that it does not grant the Attorney General any control over the interested party's suit. Importantly, section 67 does not allow the Attorney General to dismiss or settle an action brought by an interested party. The general right to intervene in a suit granted by section 6.3(b) of the Attorney General Act does not cure this infirmity. A right to intervene is not the same as a right to control the litigation, including the right to dismiss that litigation over the objections of the plaintiff.

Section 67 constitutes the sole basis for CWC's claims against Defendants. Section 67, however, is unconstitutional. Therefore, CWC has no statutory standing under section 67 and cannot maintain its section 67 claims against Defendants.

Counts V, VI and VII of the First Amended Complaint are dismissed with prejudice.

B. Venue

Both Defendants contend that venue is not proper in Cook County. It is undisputed that if CWC is not a party to this action, venue is not proper in Cook County. Under section 95 of the Act, which allows the individual Plaintiffs to seek compensatory and statutory damages, any private cause of action must be brought in the county where Plaintiffs live or the county where the violations of the Act occurred. 820 ILCS 175/95. Plaintiffs live in Lake County and the alleged violations occurred in Lake County. CWC is the only party residing in Cook County.

² The court notes that the only reason the Attorney General is aware of this litigation is because Defendants have raised a constitutional challenge.

Because CWC's claims have been dismissed from this case with prejudice, venue is not proper in Cook County. Therefore, this court finds that this case should be transferred to Lake County.

C. Arguments for Dismissal of Plaintiffs' Claims

Defendants also raise arguments for the dismissal of the individual Plaintiffs' claims under section 95 of the Act. Both Defendants contend that Plaintiffs' claims are preempted by federal law. Visual Pak contends that it is not "third party client" under the Act. It would not be proper for this court to consider these arguments as venue is not proper in Cook County.

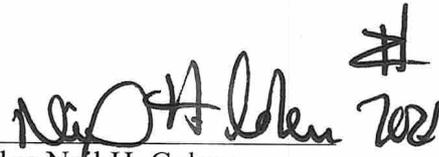
III. Conclusion

Counts V, VI and VI of the First Amended Complaint are dismissed with prejudice. The court finds that CWC lacks standing to bring its statutory claims against Defendants because section 67 of the Act is unconstitutional. The court's finding of unconstitutionality is final and appealable pursuant to Illinois Supreme Court Rule 302(a)(1).

The remainder of this case is transferred to the Honorable Michael J. Mullen, Presiding Judge of the Chancery Division, for purpose of transfer to the Honorable Charles S. Beech II, Chief Judge of the Circuit Court of Cook County, for the purpose of transfer to the Chief Judge of the Nineteenth Judicial Circuit.

The status date of March 12, 2026 is stricken.

Enter: 36-9p


Neil H. Cohen
Judge Neil H. Cohen