

2026 IL App (1st) 250429-U
No. 1-25-0429
Order filed October 30, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT, SIXTH DIVISION

CREATIVE WERKS LLC, Third-Party Plaintiff-Appellant,

v.

METROSTAFF INC., Third-Party Defendant-Appellee.

Appeal from the Circuit Court of Cook County, Illinois.
Honorable Allen Price-Walker, Judge, Presiding.
No. 2019 CH 02030

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Pucinski and Evans concurred in the judgment.

ORDER

¶ 1 *Held:* Staffing agency that provided temporary employees to a company was not contractually obligated to indemnify the company for the company's alleged BIPA violation.

¶ 2 This is an indemnification case between Creative Werks, a food packaging company, and MetroStaff Incorporated (MSI), a temporary staffing agency that provided employees to Creative Werks. After MSI employees sued Creative Werks for allegedly violating the Biometric Information Privacy Act (BIPA) (740 ILCS 14/1 *et seq.* (West 2018)) through its use of a fingerprint-scanning timeclock, Creative Werks filed a third-party complaint seeking contractual indemnification from MSI. Creative Werks maintained that the parties' service agreements

required MSI to indemnify it for noncompliance with legal obligations relating to MSI's employees. The circuit court dismissed the complaint because MSI played no role in the alleged BIPA violation and therefore had no contractual duty to indemnify Creative Werks. We agree and affirm.

¶ 3

I. BACKGROUND

¶ 4

A. The Service Agreements

¶ 5 MSI and Creative Werks entered into two Temporary Staff Services Agreements, the 2015 agreement and the 2018 agreement, which form the basis of Creative Werks's indemnification claim. The 2015 agreement was effective from January 1, 2015, to December 31, 2017. Section 5(c) states that MSI:

“assumes complete responsibility for complying with all legal requirements pertaining to the hiring of its employees. Without limiting the generality of the foregoing, [MSI] represents, warrants, and guarantees to [Creative Werks] that it is and during the Term shall remain in full compliance with all requirements imposed by applicable law, and that it shall hire its employees pursuant to applicable law, including the Immigration Reform and Control Act ('IRCA'), Title VII of the Civil Rights Act of 1964, [various other enumerated statutes], and any other applicable local, state, and federal laws, rules, regulations, and orders pertaining to employees.”

Section 11 provides that MSI:

“agrees to indemnify and hold [Creative Werks] harmless from and against any and all claims, actions, liabilities, losses, damages, costs, and expenses, including attorneys' fees and court costs, which [Creative Werks] may suffer, sustain, or incur as a result of, in

connection with or arising out of [MSI's] breach, or the breach of [MSI's] staff, of any of the provisions of this Agreement.”

¶ 6 The 2018 agreement was effective from January 1, 2018, to December 31, 2020. Section 6(c) is nearly identical to section 5(c) of the 2015 agreement, except that MSI “assumes complete responsibility for complying with all legal requirements pertaining to its employees.” Section 6(f) provides MSI will “indemnify [Creative Werks] and hold [Creative Werks] harmless against any judgments, lawsuits, damages, penalties or costs and expenses pertaining to [MSI's] employer responsibilities relating to items (A) through (E) above.” Section 12 contains an indemnification clause identical to section 11 of the 2015 agreement.

¶ 7 B. The Alleged BIPA Violation and Present Lawsuit

¶ 8 In December 2014, Creative Werks implemented a timeclock system that required all temporary and hourly employees to scan a fingerprint when reporting to work. In 2019, plaintiffs Leon Brown and Joseph Cuttrell filed a class action against Creative Werks, alleging the timeclock system violated BIPA. Both plaintiffs were MSI employees assigned to Creative Werks. The putative class includes more than 16,000 employees, over 15,000 of whom were employed by MSI.

¶ 9 In 2024, Creative Werks filed a third-party complaint against MSI, seeking indemnification for the claims asserted in the BIPA class action. MSI moved to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2024)). The circuit court granted the motion. It found that MSI could not have violated BIPA because nothing in the record showed that MSI collected or received biometric data and that the agreements did not require MSI to indemnify Creative Werks for Creative Werks's own alleged BIPA violation.

¶ 10 After the ruling, Creative Werks orally moved for leave to amend, stating: “Your Honor, if there’s any opportunity to amend the pleading, that in fact the case in that limited context, if there is any sharing of biometric information, biometric identifiers, et cetera.” The circuit court denied the motion. Creative Werks appeals.

¶ 11 II. ANALYSIS

¶ 12 A section 2-619 motion to dismiss admits all well-pleaded facts and all reasonable inferences from those facts. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). In reviewing the motion, the court construes the pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* We review a section 2-619 dismissal *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 13 BIPA regulates private entities that collect, capture, purchase, receive, or otherwise obtain biometric data, including fingerprints, or that disclose, redisclose, or disseminate such data. 740 ILCS 14/10, 15 (West 2024). Among other duties, entities must disclose their collection practices, obtain written consent, and establish a retention and destruction schedule. 740 ILCS 14/15 (West 2024). BIPA authorizes a private right of action to enforce those duties. 740 ILCS 14/20 (West 2024); *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 33.

¶ 14 Nothing in the record indicates that MSI collected, obtained, or disseminated biometric data. On the allegations pleaded, the claimed BIPA violation is attributable solely to Creative Werks. See *Salinas v. Arthur Schuman Midwest, LLC*, 2026 IL App (3d) 250239, ¶ 21 (staffing agencies did not violate BIPA when they neither collected nor received biometric data, even though they assigned employees to a company that used biometric timeclocks). Creative Werks nevertheless contends that MSI need not itself be liable under BIPA for the contractual duty to indemnify to arise. It argues that the 2015 and 2018 agreements require MSI to indemnify Creative

Werks for Creative Werks’s own alleged BIPA violations. The agreements do not support that reading.

¶ 15 In construing a contract, our goal is to discern and give effect to the parties’ intent as set forth in the contract language. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). We read the contract as a whole and interpret each provision in light of the others. *Id.*

¶ 16 Under the 2015 agreement, MSI “assumes complete responsibility for complying with all legal requirements pertaining to the hiring of its employees.” Under the 2018 agreement, that responsibility extends to legal requirements “pertaining to its employees” generally. In context, this language assigns MSI responsibility for its own compliance with applicable law. The underlying complaint does not allege that MSI failed to satisfy any legal duty. It alleges that Creative Werks violated BIPA. Because MSI is not alleged to have collected, obtained, stored, transmitted, or disseminated biometric data, no BIPA duty attached to MSI. MSI therefore did not breach either agreement, and the indemnification provisions tied to an MSI breach were not triggered.

¶ 17 Section 6(f) of the 2018 agreement leads to the same conclusion. It requires MSI to indemnify Creative Werks for lawsuits and expenses “pertaining to [MSI’s] employer responsibilities.” However, the alleged violation does not pertain to those responsibilities. Creative Werks, not MSI, implemented the fingerprint-scanning system, and MSI is not alleged to have handled its employees’ biometric data.

¶ 18 The allegations in the underlying complaint reinforce this conclusion. That complaint alleges that Creative Werks recklessly or negligently violated BIPA. Illinois law does not permit indemnification for reckless misconduct. *Davis v. Commonwealth Edison Co.*, 61 Ill. 2d 494, 500-01 (1975) (an agreement to indemnify willful and wanton conduct is unenforceable as contrary to

public policy); *Falkner v. Hinckley Parachute Center, Inc.*, 178 Ill. App. 3d 597, 604 (1989) (same); see *Ziarko v. Soo Line R. Co.*, 161 Ill. 2d 267, 274 (1994) (“willful and wanton” encompasses both reckless and intentional acts). And an agreement indemnifies a party for its own negligence only when it does so in clear, explicit, and unequivocal terms. *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 319 (2008).

¶ 19 In *Buenz*, Frontline agreed to indemnify COSCO for “any and all claims *** arising out of *** the possession, use, operation or returning of the equipment during all periods when the equipment shall be out of the possession of COSCO.” *Id.* at 318. That broad language encompassed claims arising from COSCO’s own negligence. *Id.* at 319. The agreements here are narrower. They limit MSI’s responsibility to “complying with” applicable law and tie indemnification to MSI’s breach or employer responsibilities. Because MSI is not alleged to have violated any law or breached any employer responsibility, the circuit court properly dismissed Creative Werks’s indemnification complaint.

¶ 20 Lastly, Creative Werks argues that the circuit court erred by denying its oral request to amend the complaint to “address *** whether MSI collected or stored biometric information or identifiers as a result of the parties’ relationship and Creative Werks’ requirements to report time clock information for each of the MSI employees.” Creative Werks cites no supporting authority and has therefore forfeited the argument. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19 (appellant forfeited issue by failing to cite legal authority).

¶ 21 Forfeiture aside, the circuit court acted within its discretion. Creative Werks neither filed a written motion nor tendered a proposed amended complaint. See *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 9 (a motion to amend was “fatally flawed” because it did not include the proposed pleading). Nor did Creative Werks identify facts in the record showing

that an amendment could cure the pleading defect. A request resting on speculation and mere possibility does not warrant leave to amend.

¶ 22 Affirmed.