

**THIRD JUDICIAL DISTRICT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JORDAN BREE RIGHTER, Plaintiff, v. TIMOTHY BALLARD, an individual and as the ALTER-EGO of OPERATION UNDERGROUND RAILROAD, INC., a Utah non-profit corporation; and as the ALTER-EGO OF DEACON, INC., a Nevada corporation; MATTHEW COOPER, an individual, Defendants.	MEMORANDUM DECISION AND ORDER ON DEFENDANT’S TIMOTHY BALLARD AND OPERATION UNDERGROUND RAILROAD, INC. AND DEACON, INC.’s MOTIONS TO DISMISS Case No. 230908862 Judge Kristine Johnson
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Before the Court are: (1) Defendant Timothy Ballard’s (“Ballard”) Motion to Dismiss; and (2) Defendant Underground Railroad, Inc. (“OUR”) and Deacon, Inc.’s (“Deacon”) (collectively, “OUR”) Motions to Dismiss. Oral argument was held on June 5, 2024. For the reasons set forth below, the Motions are granted.¹

Factual Background

This action stems out of Plaintiff Jordana Bree Righter’s (“Righter”) involvement with OUR as an independent contractor to assist in operations performed by OUR directed at human trafficking. Righter is a licensed clinical social worker and a former United States Marine. Her claims arise from two separate occurrences. First, she agreed to travel to the British Virgin Islands with co-defendants Cooper, Ballard and others. She claims that the group spent a week at a beach front home, and that she was to be Cooper’s partner pursuant to the “Couples Ruse.” Righter

¹ There is considerable overlap between the two Motions to Dismiss. Accordingly, they will be addressed in one opinion, with distinctions noted herein.

alleges that OUR adopted the Couples Ruse as a procedure whereby Ballard and other men on OUR trips, or “operations,” would be accompanied by a female participant in the operation acting as the male’s sexual partner so as to prevent detection by traffickers when the male would not engage with the women or children allegedly being trafficked. The Complaint contains significant detail about this “Couples Ruse” as allegedly described by Ballard, but it does not allege that all of the statements were made by Ballard to Righter. It also alleges that Ballard and others used the Couples Ruse as a ploy to engage in sexual contact with such women outside the scope of the Couples Ruse, but it does not allege that Ballard ever engaged in sexual contact with Righter.² Rather, Righter’s allegations in connection with the British Virgin Islands trip are that the trip essentially was a week of partying and recreation (where any “trafficking” taking place essentially was created by Ballard’s group while visiting strip clubs) and that Ballard “attempted to goad Cooper to be more sexually aggressive” with Righter and that led to her being sexually touched by Cooper under false pretenses.

Second, Righter alleges that after the trip concluded she informed OUR that she would never participate in another trip, and that Ballard was creating a demand for trafficking on such trips because of his behavior. She claims that OUR “enticed her to remain” by offering her the opportunity to join an OUR Thailand operation if she could pass a 4 day training in Salt Lake City. At this training she was struck in the face by two OUR operators involved in cosplay training, resulting in an orbital blow fracture and ongoing injury. She claims Ballard was present during the incident but refused to call emergency services.

² The only possible exception would be paragraph 60 of the Complaint, which alleges that “[b]efore going to the British Virgin Islands, Plaintiff was required to go to a strip club in Salt Lake City so that she could prove herself to Tim Ballard and Matt Cooper, where she was sexually touched under false pretenses.” It provides no detail regarding who engaged in this conduct or what the “sexual touching” consisted of.

The parties agree that the British Virgin Islands trip took place before October 2021, and the Salt Lake training occurred in October 2021. It is undisputed that Righter signed an Independent Contractor Agreement dated February 2, 2022 that was to be effective February 12, 2022 to March 12, 2022.

Memorandum Decision

To survive a motion to dismiss, “the complaint must allege facts sufficient to satisfy each element of a claim, otherwise the plaintiff has failed to show that he is entitled to relief.” *Cardiff Wales LLC v. Wash. Cty. Sch. Dist.*, 483 P.3d 1262, 1263 (Utah Ct. App. 2021) (citation omitted). “[M]ere conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude dismissal.” *Koerber v. Mismash*, 315 P.3d 1053, 1054 (Utah Ct. App. 2013) (citation omitted).

Pursuant to Utah Rule of Civil Procedure 12(b)(6), the Court is required to take all factual allegations from the Complaint as true and consider reasonable inferences drawn therefrom in the plaintiff’s favor. The motion should be granted if “as a matter of law, the plaintiff could not recover under the facts alleged.” *Golding v. Ashley Cent. Irr. Co.*, 793 P.2d 897, 898 (Utah 1990).

I. Independent Contractor Agreement

Both motions seek dismissal of all claims based upon the Release of Liability in the Independent Contractor Agreement. The Release, contained in Paragraph 7.2, contains two sentences. The first reads:

I hereby agree that I, my assignees, heirs, successors, distributees, guardians, legal representatives and any and all other persons or entities who may claim by or through me in any way or manner, ***voluntarily release from liability and forever discharge Company***, its successors, assigns, agents, representatives, officers, directors, employees, contractors, attorneys, insurers or any of its affiliated individuals or organizations, no

matter how designated or described, ***for any injury or damages, up to and including death***, including property damage to any personal property which I may own, possess or have an interest in, and which shall include such injuries or damages from negligent acts, other acts, or omissions, ***howsoever caused, by any employee, agent, representative or contractor of Company or any of its affiliated individuals or organizations***. (Emphasis added).

The second sentence goes on to read:

I hereby ***release and forever discharge Company and any of its affiliated individuals and organizations***, its successors, assigns, agents, representatives, officers, directors, employees, contractors, attorneys, insurers or otherwise, no matter how described or designated, ***from any and all cause of action, claims, demands, or attachment of property***, that I, my assignees, heirs, successors, distributees, guardians and legal representatives ***now have or may have for injury or damage***, including property damage or less, ***related to any work I perform hereunder***, including any injury and/or damage of whatsoever kind and/or degree which may occur at any point along or be associated with in any manner, even if said actions, claims, demands, or attachments are a result of acts of negligence, other acts, or omissions, ***howsoever caused by an employee, agent, or contractor of Company or any of its affiliated individuals or organizations***. (Emphasis added).

Defendants Ballard and OUR argue that Section 7.2 is clear and unambiguous, and that the release contained in the first sentence bars Righter's claims here against OUR and its officers (including Ballard). Specifically, Defendants contend that the first sentence releases any claims Righter had at the time she executed the agreement (presumably including the claims here, which arose prior to 2022) while the second sentence pertains to claims that may arise based upon work she performed under the agreement. Righter contends that the release does not apply to the claims here because it only pertains to work performed under the agreement, or, at most, that there is an ambiguity in the agreement.

In interpreting a contract, we look "to the writing itself to ascertain the parties' intentions, and we consider each contract provision ... in relation to all of the others, with a view toward giving effect to all and ignoring none." *WebBank v. American General Annuity Service Corp.*, 54 P.3d 1139, 1144 (Utah 2002) (citation omitted). Furthermore, "[i]f the language within the four

corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law." (Internal citations omitted). However, "if the language of the contract is ambiguous such that the intentions of the parties cannot be determined by the plain language of the agreement, 'extrinsic evidence must be looked to in order to determine the intentions of the parties.'" *Id.* (internal citations omitted). If a contract is ambiguous, then "the court may consider the parties' actions and performance as evidence of the parties' true intention. An ambiguity exists in a contract term or provision 'if it is capable of more than one reasonable interpretation because of 'uncertain meanings of terms, missing terms, or other facial deficiencies.'" *Id.* "Whether an ambiguity exists in a contract is a question of law . . . [w]hen ambiguity exists, the intent of the parties becomes a question of fact." *Id.* at 1144-45 (internal citations omitted).

Here, the two sentences of 7.2 are unambiguous. The first sentence is limited neither to work performed under the agreement nor as to time. It releases OUR and its affiliates, officers, directors, etc., from liability for any injury or damage. This release, executed after the events at issue here, applies to any claims arising from those events.³ The second sentence, however, is limited to claims for injury or damage for "any work [Righter] performed" under the agreement. The second sentence, then, does not operate to preclude Righter's claims here but the first sentence does. As noted above, contract provisions are to be construed in relation to other provisions. Here, a facial reading of 7.2 demonstrates that its two sentences pertain to different time periods and different conduct. In other words, the first sentence would be devoid of meaning

³ Counsel for Righter argued for the first time at oral argument that the Utah Legislature's recent enactment of legislation regarding confidentiality clauses pertaining to sexual harassment may be applicable here. Utah Code Ann. § 34A-5-114. Because it was not briefed, the Court will not address this argument.

if it did not cover injuries arising before the execution of the agreement and was limited to work performed under the agreement.⁴

II. Conspiracy (As to OUR and Ballard)

Because all of Righter's claims against OUR and Ballard are barred by the agreement, the Court is not required to reach the remainder of the arguments raised in the Motions but will do so for purposes of completeness. With respect to conspiracy, the question is whether the intraconspiracy doctrine applies. If so, there can be no conspiracy claim here since it is undisputed that the individual defendants are agents of OUR. Defendants cite to *Tomlinson v. NCR Corp.*, 296 P.3d 760 (Utah Ct. App. 2013), *rev'd on other grounds*, 345 P.3d 523 (Utah 2014). The *Tomlinson* court held that a complaint identifying a corporation and its agents as co-conspirators did not properly state a civil conspiracy claim because "'it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself,' because they do not constitute two separate persons." *Id.* at 768.

While Righter argues that it is unclear whether Utah has adopted the intracompany immunity doctrine, she cannot overcome the foregoing language. Nor has Righter cited authority to indicate that the possible exceptions (such as criminal conspiracies pursued under Federal Civil Rights statutes) are applicable here. To the extent that Righter alleges that there is some other

⁴ Righter's strongest argument is that the second sentence contains the term "now have or may have," thus potentially creating an ambiguity with the first sentence. Admittedly, there is some question as to this language since the agreement was signed on February 2 - ten days before the effective date, raising a question as to what claims Righter could have had when work began that were related to work performed thereunder. However, the second sentence is expressly limited to work performed under the agreement (*i.e.*, for the February 2022-March 2022 period). The first sentence is not. The two sentences read in conjunction with each other support the conclusion set forth herein. See *Gillmor v. Macey*, 121 P.3d 75, 65 (Utah Ct. App. 2005) ("[h]armonizing conflicting or apparently ambiguous contract language before concluding that provisions are actually ambiguous is an important step in the hierarchy of rules for contract interpretation . . . to harmonize the provisions of a contract, 'we examine the entire contract and all of its parts in relation to each other and give a reasonable construction of the contract as a whole to determine the parties' intent.'" (citation omitted)).

criminal conduct at issue, she does not allege exactly what that conduct is. Righter directs the Court to Paragraphs 60 and 66 of the Complaint, both of which refer to “sexual touching” under “false pretenses.” Those allegations, absent more, do not rise to the level of criminal conduct. Nor has she pled facts sufficient to invoke the “independent personal stake” exception (assuming it is recognized in Utah).

Furthermore, even if the doctrine did not apply in Utah, Righter has not pled facts to show that there was a meeting of the minds between OUR, Ballard and Cooper as required for a claim of civil conspiracy. *Peterson v. Delta Air Lines, Inc.*, 42 P.3d 1253 (Utah Ct. App. 2002). The Complaint alleges that Ballard, Cooper and third parties utilized the Couples Ruse which OUR adopted as policy. However, it does not specify if or how OUR had a meeting of the minds with Ballard, Cooper or others regarding using the Ruse as a ploy to further sexual misconduct or sexual assault or battery. Accordingly, even if Righter could rely upon the co-conspirators’ alleged unlawful acts in support of the overt act requirement, her failure to allege facts in support of a claim of meeting of the minds on the unlawful purpose renders dismissal appropriate.

III. Fraud (Against Ballard)

Righter’s fraud claim against Ballard requires her to “state with particularity the circumstances constituting fraud or mistake.” Utah R. Civ. P. 9(c); *see Robinson v. Robinson*, 368 P.3d 105, 118 (Utah Ct. App. 2016) (pleading fraud requires more than “[c]onclusory allegations, unsupported by relevant surrounding facts, are insufficient”) (citation omitted).

However, with respect to Ballard, the Complaint relies primarily upon statements he allegedly made to unidentified third parties (“female operators, like Plaintiff”). Paragraphs 28-52 contain numerous statements regarding the Couples Ruse attributable to Ballard, but no allegation that those statements were ever made to Righter. Indeed, it is unclear from the face of the

Complaint whether Righter was aware of those statements before the events at issue or learned about them later through third parties or publicly available sources. While the Complaint does allege that Ballard described the Couples Ruse to Righter, it does not identify the false representation in that statement. When pressed at oral argument, Righter’s counsel indicated that the best example in the Complaint of a specific false statement allegedly made by Ballard to Righter was that the Couples Ruse was a “legitimate operations tactic” and that it was needed to save children. However, absent allegations that Ballard told her exactly what the Couples Ruse consisted of, that statement is insufficient under Rule 9. *See Fid. Nat. Title Ins. Co. v. Worthington*, 344 P.3d 156 (Utah Ct. App. 2015) (fraud claim properly dismissed where complaint failed to identify a “false representation”).

IV. Negligence (As to OUR and Ballard)

As currently pled, Righter’s negligence claims fail to allege a duty on the part of OUR and Ballard. The existence of a duty is critical to any negligence claim. *Rocky Mtn. Thrift Stores Inc. v. Salt Lake City Corp.*, 887 P.2d 848, 852 (Utah 1994). However, the Complaint does not specify the nature of the duty allegedly owed by OUR or by Ballard. While there potentially may be sources of such a duty, the Complaint’s silence in this regard mandates dismissal. Similarly, with respect to the Premises Liability claim against OUR, OUR correctly notes that the Complaint again does not specify what duty was owed, nor does it even allege that the facility in question was an OUR facility. The claim is subject to dismissal.

V. Piercing Corporate Veil (As to OUR and Ballard)

Finally, Righter’s claim for piercing the corporate veil does not withstand a motion to dismiss as a stand-alone claim for relief. The Utah Court of Appeals held in *Val Peterson Inc. v. Tennant Metals Pty. Ltd.*, 537 P.3d 660 (Utah Ct. App. 2023) that dismissal of a cause of action

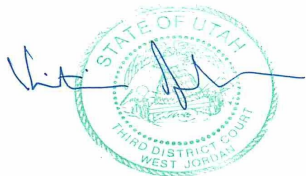
purporting to allege a claim of alter ego liability as a stand-alone claim was proper; “[a]lter ego theory is not an independent claim for relief; rather, it is a theory of liability.” *Id.* at 673 (citation omitted). However, defendant could “amend its complaint to include alter ego as a theory of recovery under its surviving claims as appropriate.” *Id.* at 674.

Here, Righter’s sixth cause of action, “Piercing the Corporate Veil Against All Corporate Defendants” cannot survive as a stand-alone claim under the foregoing authority. To the extent that it is a theory of liability relative to her other claims, however, the Court finds that she has alleged sufficient detail, particularly as contained in paragraphs 12-14, 23 and 82 to survive a motion to dismiss.

For the foregoing reasons, the Complaint as to OUR and Ballard is dismissed with prejudice because Righter’s claims are precluded by the release contained in paragraph 7.2 of the agreement. **Alternatively**, Righter’s claims against OUR and Ballard for Conspiracy, Negligence and Premises Liability are dismissed without prejudice, as is Righter’s claim against Ballard for Fraud.

It is so ordered.

DATED this 27th day of June, 2024.

A handwritten signature in blue ink is written over a circular green court seal. The seal contains the text "STATE OF UTAH" at the top, "THIRD JUDICIAL DISTRICT COURT" in the middle, and "WEST JOURNAL" at the bottom. The signature appears to be "Kristine Johnson".

BY THE COURT: HONORABLE KRISTINE JOHNSON
Third Judicial District, Salt Lake County
State of Utah, Salt Lake Department