SUMMARY MEMORANDUM AND OPINION; NOT INTENDED FOR PUBLICATION.

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| AMIRA CHEBLI,<br><br>Plaintiff,<br><br>v.<br><br>JOHN BOARDMAN, *et al.*,<br><br>Defendants. | Civil Action No. 11-cv-415 (RLW) |

**MEMORANDUM OPINION**

Plaintiff Amira Chebli brings this action against John Boardman, Unite Here Local 25 ("Local"), and Unite Here International Union's ("International Union"). According to Plaintiff, Boardman committed several torts for which he is individually liable (Counts I – V), and because he was an employee, agent, and servant of the Local and International Union during the relevant time, the Local and International Union are vicariously liable for the torts of Boardman under a theory of *respondeat superior* (Counts VI – X). The International Union has moved to dismiss the Complaint as it pertains to them. That motion is now fully briefed and ripe for resolution. Having considered the Motion, Opposition, and Reply, the International Union's Motion to Dismiss (Docket No. 18) is hereby GRANTED.

## I. FACTUAL SUMMARY

This action arises out of an alleged altercation between Plaintiff, a supervisor at the Madison Hotel, and John Boardman, an Executive Secretary of Defendant Unite Here Local 25, during the handling of a labor issue between the Madison Hotel management and the Local members working at the Madison. (Am. Comp. ¶¶ 1, 5, 15-30). During this altercation, Boardman allegedly raised his voice and aggressively approached Plaintiff, called Plaintiff a

Dockets.Justia.com

"liar" in front of several of her employees, and touched her forehead with his finger on numerous occasions. (Am. Comp. ¶¶ 34 – 38). Plaintiff 's Complaint states claims for assault (Count I), battery (Count II), intentional infliction of emotional distress (Count III), negligence (Count IV), and defamation (Count V). Plaintiff alleges that the Local and the International Union "knew, should have known, and condoned" the alleged actions of Boardman. (Am. Compl. ¶ 65). Thus, Plaintiff claims that the Local and the International Union are vicariously liable for the Boardman's tortious conduct under a *respondeat superior* theory (Counts VI – X).

## II. LEGAL STANDARD

"To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, acceptable as true, to state a claim to relief that is plausible on its face." Anderson v. Holder, 691 F.Supp.2d 57, 61 (D.D.C. 2010) (brackets omitted) (quoting Ashcroft v. Iqbal, --- U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007)) (internal quotes omitted). Although "detailed factual allegations" are not required by Rule 8(a), a plaintiff is still required to provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" to survive a motion to dismiss. Iqbal, 129 S.Ct. at 1937.

A court considering a Rule 12(b)(6) motion must construe the complaint in the light most favorable to plaintiff and must accept as true all reasonable factual inferences drawn from well-pleaded factual allegations. In re United Mine Workers of Am. Employee Benefit Plans Litig., 854 F. Supp. 914, 915 (D.D.C. 1994). Although the Court must accept the plaintiffs' factual allegations as true, "the court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations." Kowal v. MCI Commc'n Corp., 16 F.3d

1271, 1276 (D.C. Cir. 1994). If "the [C]ourt finds that the plaintiffs have failed to allege all the material elements of their cause of action," then the Court may dismiss the complaint without prejudice, Taylor v. FDIC, 132 F.3d 753, 761 (D.C. Cir.1997), or with prejudice, provided that the Court "determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency," Firestone v. Firestone, 76 F.3d 1205, 1209 (D.C. Cir. 1996) (internal quotes and citations omitted).

## III. ANALYSIS

In Counts VI – X, Plaintiff asserts that the International Union is vicariously liable for the tortious actions of John Boardman under a *respondeat superior* theory of liability. Plaintiff's claims against the International Union all fail as a matter of law.

The D.C. Circuit has explained that "it has long been established that a collective entity, including a labor organization, may only be held responsible for the authorized or ratified actions of its officers and agents." Berger v. Iron Workers Reinforced Rodmen Local 201, 843 F.2d 1395, 1427 (D.C. Cir. 1988) (internal quotes omitted). The same holds true when "an international union is sued for the conduct of its affiliated local." Id. Thus, to attribute liability to an international union, "a plaintiff must adduce *specific evidence* that the international 'instigated, supported, ratified or encouraged' those actions . . . or 'that what was done was done by their agents in accordance with their fundamental agreement of association.' " Berger, 843 F.2d at 1427 (quoting Carbon Fuel Co. v. United Mine Workers, 444 U.S. 212, 217 (1979)) (emphasis added).

Plaintiff argues that the International Union "has not met its burden of proving that Local 25 is truly autonomous and has no operational connection with the parent union." (Pl.'s Opp'n at 4). This, however, is not International Union's burden to bear. Although detailed factual allegations are not required by Rule 8(a), Plaintiff is still obligated to provide the "grounds" of

her “entitlement to relief.” Twombly, 550 U.S. at 555. Thus, it is Plaintiff’s burden to establish that an agency relationship exists between the International Union and the Local.

Plaintiff has alleged no facts that the International Union authorized, ratified or approved any of the alleged misconduct by Boardman. Plaintiff has also failed to allege that any agency relationship exists between the International Union and the Local. Instead, Plaintiff merely alleges that the International Union and the Local “knew, should have known, and condoned” the alleged tortious actions of Boardman. (Comp. ¶ 65). However, Plaintiff provides no facts to establish how the International Union “knew” or how they “condoned” the alleged misconduct.

Plaintiff suggests that Defendant’s motion to dismiss is premature because information gained through discovery would establish the relationship between the International Union and the Local. (Pl.’s Opp’n at 5). Specifically, Plaintiff states that “[t]he agency relationship between the international union and Local 25 will be established during discovery as we examine the international union’s constitution and its operational activities and relationship with Local 25.” Plaintiff’s argument is unavailing because Plaintiff has ample opportunity to examine the International Union's constitution, which is publicly available, before filing her complaint or opposition to the instant motion. Thus, Plaintiff’s lack of information concerning the relationship between the International Union and the Local appears to be a result of a lack of diligence rather than a lack opportunity to conduct discovery.

Thus, Plaintiff’s attempt to hold the International Union vicariously liable for the actions of Local officials fails because she has not alleged that the International Union stands in an agency relationship with the Local. Accordingly, the Court will grant defendant’s motion to dismiss Counts VI-X.

## IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss the Complaint is GRANTED. Counts VI – X, as they relate to the International Union, are hereby dismissed without prejudice.

SO ORDERED.[1]

Date: August 12, 2011

/s/
Robert L. Wilkins
United States District Judge

[1] An order will be issued contemporaneously with this memorandum opinion dismissing Plaintiff's Complaint as to Unite Here International Union.