UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRANSMITTAL SHEET FOR OPINIONS FOR POSTING

Will this opinion be published?	No
Bankruptcy Caption:	In re Iya Foods, Inc.
Bankruptcy No.:	25bk00341
Adversary Caption:	Iya Foods, Inc., et al v. 31W290 Schoger, LLC
Adversary No.:	25ap00068
Date of Issuance:	August 20, 2025
Judge:	Deborah L. Thorne
Appearances:	
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Summary:

Plaintiff filed a 12-count adversary complaint, including claims over which the bankruptcy court had "related to" jurisdiction. Defendant stated it did not consent to the bankruptcy court's entry of final orders and moved to dismiss several counts and strike some allegations. HELD: The court has jurisdiction to hear the motion to dismiss, which in this case is not a final order. Some of the counts survive; others are dismissed without prejudice.

United States Bankruptcy Court, Northern District of Illinois

JUDGE	Deborah L. Thorne	**Case No.**	25-00341
DATE	August 20, 2025	**Adversary No.**	25-00068
CASE TITLE	Iya Foods, Inc. et al v. 31W290 Schoger, LLC		
TITLE OF ORDER	ORDER ON MOTION TO DISMISS		

STATEMENT

Iya Foods[1] ("Iya") specializes in the production and sale of gluten-free and traditional African foods. Its owner, Toyin Kolawole, is an immigrant from Nigeria; she founded the company in 2015. (Dkt. No. 1, Compl. ¶¶ 29, 17.)[2] The company began an import business but shifted to bakery and production, for which it relies on specialized and expensive manufacturing equipment. Iya sells its products direct to customers (e.g., through Amazon) and co-manufactures products for many regional supermarket chains. (*Id*. at ¶ 17.) Iya's signature product was the Iya Chiper, which was to be distributed to grocery stores. (*Id*. at ¶ 19.)

To manufacture its signature product, Iya needed a new facility with particular venting system capabilities. (*Id*. at ¶¶ 5, 20, 31.) In April 2022, Iya found the building that became its new facility and the subject of much of the dispute in this adversary complaint. It used to be a YMCA, and, one month prior to the start of its negotiations with Iya, its new owner, Schoger LLC ("Schoger"), had begun marketing it as a "Class A Warehouse and Sports Facility Space." (*Id*. at ¶¶ 21-23, 27.)

Iya moved into the property, but the relationship between Iya and its new landlord quickly soured. Iya's business prospects also declined, and Iya filed a chapter 11 bankruptcy petition in

[1] The plaintiffs are both Iya Foods, Inc., the debtor in the underlying bankruptcy case (Case No. 25-00341), and Iya Facility, LLC, a related entity.

[2] Unless the court notes otherwise, citations to court documents refer to the docket of the adversary proceeding, Case No. 25-00068.

January 2025. (Case No. 25-00341, Dkt. No. 1.) Based on events explained in detail below, Iya Foods then filed a twelve-count adversary complaint against Schoger, who answered several counts and moved to dismiss others. Schoger also moved to strike several statements from Iya's complaint.

Iya's adversary complaint paints a picture of misplaced trust, broken promises, and racial animus. Several claims are intertwined, so analysis of one relates to the disposition of another. Rather than taking up each count in the order presented by the parties, the court has organized them chronologically around several nexuses of facts common to multiple claims. The court first addresses claims that the landlord obtained and abused Iya's confidence, first "grooming" the business, then fraudulently inducing it into the lease. Next, the court analyzes Iya's allegations that the landlord breached its contract and failed to fulfill promises on which Iya relied to its detriment. Finally, the court considers claims Iya has pleaded relating to the landlord's conduct directed at its staff and customers.

Ultimately, based on what follows, the court concludes that the following counts should be dismissed without prejudice: Count IV (Tortious Interference with Business Expectancy or Opportunity), Count VI (Violation of the Illinois Eavesdropping Act), Count VII (Promissory Estoppel), Count X (Intentional Infliction of Emotional Distress), and Count XI (Breach of Fiduciary Duty). The claims that survive, including claims that were not the subjection of this motion, are: Count I (Breach of Contract), Counts II and III (Fraudulent Inducement), Count V (Trespass), Count VIII (Intrusion Upon Seclusion), Count IX (Breach of Covenant of Quiet Enjoyment), and Count XII (42 U.S.C. § 1981).

Legal Standards on a Motion to Dismiss

To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); Fed. R. Civ. P. 12(b)(6). The Seventh Circuit has clarified that a complaint must meet two basic requirements: first, it must provide fair notice of the grounds upon which it rests; second, it must plausibly suggest that the plaintiff has a right to relief, raising the possibility beyond a mere speculative level. *E.E.O.C. v. Concentra Health Servs. Inc.*, 496 F.3d 773, 776 (7th Cir. 2007). While "detailed factual allegations" are not required, a pleading that merely offers "labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Ashcroft*, 556 U.S. at 678 (quoting *Bell Atl. Corp*, 550 U.S. at 570).

In construing a complaint, a court must "accept all well-pleaded facts as true and draw reasonable inferences in the plaintiff['s] favor." *Roberts v. City of Chicago*, 817 F.3d 561, 564 (7th Cir. 2016); *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011). In general, courts consider only the plaintiff's complaint on a Rule 12(b)(6) motion. Rule 10(c), however, provides that a copy of any written instrument that is an exhibit to a pleading is a part thereof for all purposes. *Rosenblum v. Travelbyus.com Ltd.*, 299 F.3d 657, 661 (7th Cir. 2002); Fed. R. Civ. P. 10(c). Documents attached to a motion to dismiss are considered part of the pleadings only if they are referred to in the plaintiff's complaint and are central to the claim. *Wright v. Assoc. Ins. Cos. Inc.,* 29 F.3d 1244, 1248 (7th Cir. 1994).

Finally, when a complaint sounds in fraud, on a motion to dismiss, the court must determine whether the complaint has pleaded the surrounding circumstances with particularity. Fed. R. Civ. P. Rule 9(b); *see, e.g., Sava v. 21St Century Spirits, LLC*, No. 22 C 6083, 2024 WL

3161625, at *10-11 (N.D. Ill. June 25, 2024). In the Seventh Circuit, a plaintiff must describe the "who, what, when, where, and how" of the fraud. *DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990). But a complaint need not describe the details of the fraudulent conduct "as a journalist would hope to relate them to [the] general public"; all that is needed is a "basic outline of fraud in order to alert the defendant of the purported fraud he is defending against." *4820 & 4901, Ltd. v. Tesler (In re Tesler)*, 647 B.R. 710, 717 (Bankr. N.D. Ill. 2023) (quoting *Gasunas v. Yotis* (*In re Yotis*), 521 B.R. 625, 634 (Bankr. N.D. Ill. 2014)).

Jurisdiction

The plaintiff's complaint involves claims that are before this court only because they are "related to" Iya's pending bankruptcy; they might have been brought in a different court but for the bankruptcy proceeding. 28 U.S.C. § 1334(b). The District Court's internal operating procedures refer such matters to the bankruptcy courts. Internal Operating Procedure § 15(a). When all parties do not consent to the bankruptcy court's jurisdiction over an action involving claims that might have been brought in a court of general jurisdiction, the bankruptcy court proposes final orders to the district court for the non-core matters. 28 U.S.C. § 157(c); Fed. R. Bankr. P. 9033. "Although bankruptcy judges may 'hear and determine' matters within their core jurisdiction, they may only 'hear' matters that are non-core." *Jackson Nat'l Life Ins. Co. v Kendig (In re Ben Franklin Retail Stores, Inc.)*, 231 B.R. 717, 718 (Bankr. N.D. Ill. 1999).

The court makes no finding of facts in this order and is not entering a final judgment on any of the claims. It therefore has jurisdiction over this motion and will retain jurisdiction over this matter. *See In re Jartran, Inc.*, 886 F.2d 859, 864 (7th Cir. 1989) (denial of a motion to dismiss bankruptcy case not a final order and not appealable). Under the federal rules, "[w]hen an action

presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims." Fed. R. Civ. P. 54(b) (made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7054(a)). But a judgment dismissing some claims will be final "only if the court expressly determines that there is no just reason for delay." *Id.; see Jackson,* 231 B.R. at 720-22. "Otherwise, any order . . . that adjudicates fewer than all the claims . . . does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims[.]" Fed. R. Civ. P. 54(b).

Discussion

The following discussion summarizes Iya's allegations and explains which counts survive the Motion to Dismiss. The discussion moves through the alleged events in roughly chronological order, from the time of contract negotiations, to when Iya moved in and began operating, up to the landlord's conduct directed at Iya's staff and customers. The court ends by explaining why the Motion to Strike is denied.

I. "Grooming" and Fraud: Counts XI (Breach of Fiduciary Duty) and II and III (Fraudulent Inducement)

According to Iya, there was more than a typical landlord-tenant relationship between Iya and Schoger. Iya states that during lease negotiations, Owner No. 1 attempted to instill confidence by showing his support for the Black community at large. He repeatedly referenced his support of African American causes, his law firm's work with the Obama Presidential Library, and his work with Black leadership in the Chicago community. (Dkt. No. 1, Compl. ¶ 28.) Iya also alleged that Owner No.1's actions and statements to Kolawole, and his position as a respected attorney, instilled a sense of trust and confidence. (*Id.* at ¶¶ 29; 141.) The "grooming" also included

concessions to include certain provisions into the lease. (*Id.* at ¶ 33.) This "grooming," Iya alleges, created a fiduciary duty which Schoger breached. Because the court could find no support for the proposition that a corporation could be "groomed" in this manner, Count XI is dismissed for failure to plead a claim for which the court can grant relief.

Iya alleges that during negotiations Schoger abused Iya's trust in another manner: the landlord fraudulently misrepresented the condition of the building that was the subject of the lease. Iya alleged that Schoger misrepresented the property in three ways: first, Schoger's marketing materials labeled it as Class A and claimed the roof was new; second, Owner No. 1 indicated in conversations that the roof was in "excellent condition and defect-free"; and third, an added clause in the lease described the roof as being in "good working condition." (*Id*. at ¶¶ 23, 30, 33, 59). But Iya alleged that the property was not Class A, and the "roof [was] nearly 22 years old, in poor condition, leak[ed], and ha[d] exceeded its useful life." (*Id*. at ¶¶ 24–26.) Unlike the claim for breach of fiduciary duty, Iya has properly pleaded these counts, and the Motion is denied as to Counts II and III.

a. Breach of Fiduciary Duty (Count XI)

To state a claim for breach of fiduciary duty, a plaintiff must allege: 1) that a fiduciary duty exists, 2) that the fiduciary duty was breached, and 3) that such breach proximately caused the plaintiff's injury. *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000). A fiduciary relationship may exist as a matter of law or may arise "as a result of the special circumstances of the parties' relationship where one places trust in another so that the latter gains superiority and influence over the former." *Benson v. Stafford*, 407 Ill. App. 3d 902, 912 (2010). When determining whether special circumstances exist, courts consider factors such as kinship, age, health, education, business

experience, and the extent to which the less sophisticated party relied on the dominant party to handle its business and trusted it. *Id.* at 913.

The landlord-tenant relationship is not ordinarily construed as a fiduciary relationship. *Moore v. Hermes (In re Hermes)*, 340 B.R. 369, 373 (Bankr. C.D. Ill. 2006); *See Long v. Lyon (In re Estate of Long)*, 311 Ill. App. 3d 959, 966-67 (2000) (holding landlord-tenant relationship was considered a fiduciary duty because the landlord made a tenant his executor and gave him power to make his health care decision, thus showing the landlord had "placed special trust and confidence in" the tenant). Iya's principal does not lack capacity and did not engage Owner No. 1 as counsel. There is nothing to suggest that Iya or its principal had any relationship with Schoger that would create a fiduciary duty as a matter of law.

Because no fiduciary duty arose as a matter of law, Iya must allege circumstances that support an inference that Schoger gained influence and superiority over Iya as a matter of fact. *Khan v. Deutsche Bank AG*, 2012 IL 112219, at ¶¶ 58-60 (2012). Mere trust in fulfilling contractual obligations or superior legal sophistication is insufficient to establish such a relationship. *Prescott v. Allstate Life Ins. Co.*, 341 F. Supp. 2d 1023, 1028; *see also Cacciatore v. Mobil Oil Corp.*, No. 98 CV 4727, 2000 U.S. Dist. LEXIS 11550, at *16 (N.D. Ill. July 25, 2000); s*ee also Timaero Ir. Ltd. v. Boeing Co.*, No. 19 C 8234, 2021 U.S. Dist. LEXIS 47994, at *21 (N.D. Ill. Mar. 15, 2021) ("asymmetric information alone does not show the degree of dominance needed to establish a special trust relationship."). The allegation that Owner No. 1 used his professional reputation and support for the Black community to induce Iya to place trust and confidence in him is not sufficient to establish the kinds of "special circumstances" courts have considered when finding that a fiduciary duty exists as a matter of fact. Without more, the conduct

alleged could be described as customer relations—at worst, a hard sell. Therefore, the claim brought under Count XI must be dismissed.

b. Fraudulent Inducement (Counts II and III)

The elements for fraudulent inducement under Illinois Law are: "(1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induced the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement." *Robbins v. Dream Big Ath., LLC*, 2019 Ill. App. (1st) 190073-U, P28 (1st. Dist. 2019). To establish a false statement of material fact, three requirements must be met: "(1) the defendant must make a misrepresentation; (2) it must involve a fact; and (3) the misrepresentation must be material." *Wernikoff v. Health Care Serv. Corp.*, 376 Ill. App. 3d 228, 233 (2007).

The misrepresentations about the building's condition were clearly material. Iya would "not have executed the lease agreement and would have found an alternative location" if not for Schoger's misrepresentations. (Dkt. No. 1, Compl. ¶¶ 81, 90.) *See Wernikoff*, 376 Ill. App. 3d at 234 (holding a fact is material if a "buyer would have acted differently knowing the information"). And the court finds that the Class A designation was not just puffery. The court takes judicial notice of the fact that "Class A" is a commonly used designation for commercial properties, and its use by a real estate professional could reasonably lead Iya to believe that the space possessed true Class A characteristics. *See Sava v. 21St Century Spirits, LLC*, No. 22 C 6083, 2024 WL 3161625, at *7-8 (N.D. Ill. June 25, 2024) (finding that labeling vodka as "handcrafted" is not mere puffery, since consumers could reasonably believe it signifies the product is not mass-produced).

Rule 9(b) and Illinois law require Iya to plead the other elements of fraudulent inducement with particularity, a standard Iya has met. Fed. R. Civ. P. 9(b); *Tesler*, 647 B.R. at 717. The court finds Iya is sufficiently particular about the source and circumstances of the misrepresentations, stating that the marketing materials contain two misrepresentations: the Class A designation and the new roof. (Dkt. No. 1, Compl. ¶¶ 23, 76–79; 86–88). For the "Class A" designation, Iya has pleaded each of the who, what, where, and when with particularity: the *who* (Landlord & Owner No. 1), the *what* (specific marketing materials quote), the *where* (marketing materials), and the *how* (marketing materials). (*Id*. at ¶ 23.) The allegations about the defect-free roof were likewise supported by particular facts—along with the marketing materials, the lease also contained a guarantee that the roof was in good working order. (*Id*. at ¶¶ 30, 33, 59.)

Schoger objects to the *when* component, claiming that a time period defined by "during lease negotiations" and "at all times" is too broad to satisfy Rule 9(b). (Dkt. No. 14, Motion, p. 5.) Lease negotiations took place from April 2022 to May 27, 2022, the parties entered into the agreement on June 10, 2022, and the lease was assigned to Iya on July 15, 2022.[3] (Dkt. No. 1, Compl. ¶¶ 27, 38–40.) Illinois courts have not clearly defined a period that is "particular" enough for Rule 9(b). *See, e.g.*, *Pactiv LLC*, No. 20 CV 01296, 2020 WL 7123070, at *7; *cf. H.C. Duke & Son, LLC v. Prism Mktg. Corp.*, No. 4:11 CV 04006-SLD-JAG, 2013 WL 5460209, at *3 (C.D. Ill. Sept. 30, 2013). In *Pactiv,* a month and a half was considered reasonably particular; in *Prism,* twenty-five months was too long and imprecise. Here, the relevant period is closer to that of *Pactiv* than *Prism*. More important, the court finds that the period of negotiation is discrete enough

[3] Toyin Kolawole, the debtor's principal, signed the lease on behalf of Iya Facility, LLC, with Iya Foods acting as guarantor. (Dkt. No. 1, Compl., Exhibit A, p. 26.) Iya Facility then assigned the lease to Iya Foods; Ms. Kolawole was the signatory for both entities. (Dkt. No. 1, Compl., Exh. B, p. 2.)

to provide the "basic outline of fraud in order to alert the defendant of the purported fraud he is defending against." *Tesler*, 647 B.R. at 717 (quoting *Yotis*, 521 B.R. at 634).

Finally, the court finds that Iya has pleaded it relied on the representations, and its reliance on the landlord's misrepresentations was justified. *Adler v. William Blair & Co.,* 271 Ill. App. 3d 117, 125 (1995). In Illinois, a plaintiff can plausibly plead justifiable reliance by alleging that a defendant has inhibited the plaintiff's inquiry into a representation by, for example, prohibiting a plaintiff from examining a business's books. *Mother Earth, Ltd. v. Strawberry Camel, Ltd.*, 72 Ill. App. 3d 37, 40-4 (1979); *see also Metro. Cap. Bank & Tr. v. Feiner*, Ill. App. 190895 (1st. Dist. 2020), ¶ 52. The facts here are analogous. Schoger allegedly inhibited Iya's inquiries, forbidding Kolawole from inspecting the roof before signing the lease due to "legal liability and insurance concerns." (Dkt. No. 1, Compl. ¶ 30). Under Illinois law, these allegations are sufficient.

II. Broken Promises: Counts I (Breach of Contract) and VII (Promissory Estoppel)

The next group of facts concerns Schoger's performance after the contract was signed. Under Count I, for breach of contract, Iya alleges that Schoger breached the lease agreement in twenty-one different ways, by (among other things) failing to provide working facilities, failing to complete promised improvements on the facilities or to allow Iya's contractors to perform work, failing to calculate rent and other charges properly, interfering with Iya's business operations, and failing to allow the parking lot to operate at full capacity. (Dkt. No. 1, Compl. ¶ 73.) Count VII, on the other hand, is based on the doctrine of promissory estoppel: Iya states that Schoger made two oral promises to Iya: a promise to remove the basketball hoops and a promise to provide a parking easement on a neighboring property owned by Schoger.

For the reasons explained below, Iya's claim for breach of contract may proceed, but the Motion is granted regarding the promissory estoppel claim.

a. Breach of Contract (Count I)

Schoger seeks to strike and dismiss just one of Iya's twenty-one allegations for breach of contract: the claim that Schoger breached the lease agreement by failing to allow the parking lot to operate at full capacity. (Dkt. No. 14, Motion, pp. 4–5; Dkt. No. 1, Compl. ¶ 73(xiii).)[4] Specifically, Schoger argues that because the lease contains a description of the parking that would be available, and this lease contradicts Iya's claims, the court should strike and dismiss the allegation.

Iya has stated that Schoger did not provide parking consistent with the lease agreement. At this stage of litigation, that is sufficient to put Schoger on notice of what Iya intends to prove at trial. Based on what Iya has said, it is not implausible that the reality of their parking access differed from what was in the lease agreement. Whether or not the contract did, in fact, provide for what Iya believes it was entitled to is a question of fact for the parties to deal with in discovery and at trial. The Motion is denied as to this count.

b. Promissory Estoppel (Count VII)

In Illinois, the elements of promissory estoppel are: 1) the defendant made an unambiguous promise to the plaintiff, 2) plaintiff relied on such promise, 3) plaintiff's reliance was expected and foreseeable by defendants, and 4) plaintiff relied on the promise to its detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009). Even though "detailed factual

[4] Schoger raised a new allegation in its reply brief, arguing that Iya's claim for consequential damages should be dismissed as well. The court will not consider this allegation because it wasn't included in the motion. nor did Iya's response to the motion raise the issue.

allegations" are not required, a pleading that merely offers "labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678.

Iya has asked the court to apply the doctrine of promissory estoppel to two promises Schoger made during lease negotiations: to provide parking and to remove basketball hoops. Iya has not shown that its reliance on either promise was either reasonable or was foreseeable to Schoger. Iya argues that its reliance was expected and foreseeable by Schoger because Owner No. 1 "groomed Kolawole to place trust and confidence in him." (Dkt. No. 1, Compl. ¶ 119.) The argument is a bit tautological: Schoger expected Iya to rely on its promises because it trained Iya to rely on its promises. As the court discussed in the former section, it appears that "grooming," as the word is used by the plaintiff, means establishing a relationship akin to a fiduciary relationship under Illinois law: one party has ascendancy over another. Section II.a explains that the allegations fail to show that sort of relationship here, so the plaintiff cannot rely on "grooming" to plead these elements of promissory estoppel. When an oral promise does not make it into a final lease, it is not reasonable or foreseeable that a commercial tenant would rely on it.[5] This is the precise ill that the statute of frauds attempts to inoculate against. Count VII is dismissed for failure to state a claim for which relief can be granted.

[5] The court does not pass on the validity of the contract at this stage, since Iya has asked for it to be rescinded on the grounds of fraudulent inducement. But the court does note that Iya has not expressly pleaded that the contract is invalid. Fraud in the inducement does not invalidate a contract but rather renders it voidable by the recipient of the misrepresentation. Rest. 2d Contr. § 164.

III. Intrusion and Hostility: Counts XII (42 U.S.C. § 1981), VI (Illinois Eavesdropping Act), X (Intentional Infliction of Emotional Distress), and IV (Tortious Interference with Business Expectancy)

Iya contends that once it had begun operations, the landlord disrupted Iya's business and disturbed its employees by making racially discriminating and derogatory statements, appearing at the facility unannounced, and surveilling staff with security cameras and cell phones. Based on this conduct, Iya alleged that Schoger violated 42 U.S.C. § 1981, which protects contracts from racial discrimination. (Dkt. No. 1, Compl. ¶¶ 146-52.) Iya also alleged that Schoger eavesdropped on it and filed a claim under the Illinois Eavesdropping Statute ("IES"), 720 ILCS 5/14. (*Id.* at ¶¶ 106-14.) These actions, Iya alleges, caused emotional distress to Iya's staff. (*Id.* at ¶¶ 136-37.) Finally, Iya's complaint also includes a count for tortious interference with a business expectancy, arguing that Schoger's alleged failure to make repairs and misconduct in other counts described in this section prevented Iya from achieving its business expectancy. (*Id.* at ¶¶ 94-96.)

The claim based on § 1981 may proceed, but the claims for violation of the IES, for intentional infliction of emotional distress, and for tortious interference with a business expectancy were not sufficiently pleaded and must be dismissed.

a. 42 U.S.C. § 1981 (Count XII)

Section 1981 provides relief for contractual injuries caused by intentional racial discrimination against a minority. *Morris v. Office Max, Inc.*, 89 F.3d 411, 413–14 (7th Cir. 1996). The statute protects "the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 450–51 (2008) (quoting 42 U.S.C. § 1981(b)). Direct evidence of intentional discrimination is not required; instead, a plaintiff can point to "scraps of circumstantial evidence." *Morgan v. SVT, LLC*, 724 F.3d 990,

996 (7th Cir. 2013). These "scraps" are not limited to discriminatory acts against the plaintiff. *See, e.g., CBOCS*, 553 U.S. at 451 (affirming decision that, in part, found the manager firing *other* minority employees as indirect evidence of discriminatory intent).

Iya sufficiently pleaded that it lost a legally protected right under § 1981. The breach of express contractual terms falls comfortably within "the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b). For example, Iya alleged that Schoger rejected contractors based on their race, which harmed operations. (Dkt. No. 1, Compl. ¶ 53.) This was against the contract's terms for reasonably accepting contractors. Altogether, Iya adequately alleged various, specific contractual rights which racial discrimination impaired.

Schoger challenged Iya's § 1981 his claim in its Motion to Dismiss, contending that Iya did not plead sufficient facts of a loss of a protected right and conflated damages to Iya and its principal, Kolawole. (Dkt. No. 14, Motion, p. 10). Iya does not state, nor does the court read, that Count XII lists multiple claims of § 1981 by Iya and its principal, Kolawole.[6] In support of its § 1981 claim, Iya lists ten statements that were directed to parties like Kolawole or contractors. (Dkt. No. 1, Compl. ¶ 148.) Taken as true, statements like "this is why I prefer working with white people" and "that he liked his Africans 'obedient and grateful'" can reasonably lead to an inference of racial discrimination. (*Id.*) These statements individually might not support claims by each listener; nevertheless, they serve as "scraps of circumstantial evidence." *Morgan*, 724 F.3d at 996. Further, Iya alleged that "but for the race" of its principal, *its* contractual rights would not have

[6] Schoger contends that Iya "combines allegations of damage to Kolawole with claims of damages to [Iya] without separation of the claims." (Dkt. No. 14, Motion, p. 10.) The court presumes that Schoger refers to ¶ 148 of the Complaint, which lists at least 10 statements that Iya cites to support that Schoger "intended and continues to intend to discriminate on the basis of race." (Dkt. No. 1, Compl. ¶ 148.)

been injured. (*Id.* at ¶ 150.) Iya does not explicitly make separate claims in Count XII, and the more plausible reading is that these statements are intended as evidence of Schoger's state of mind. The Motion to Dismiss, as to Count XII, is denied.

b. Illinois Eavesdropping Act (Count VI)

The Illinois Eavesdropping Act (IES) protects non-consenting parties to a private conversation from, among other things, being surreptitiously recorded. 720 ILCS 5/14-2(a)(1) & (3). A corporation can be a party to a conversation when the surveilled individuals are employees acting in their official capacity. *Cook Au Vin, LLC v. Mid-Century Insurance Co.*, 226 N.E.3d 694, 700 (Ill. App. Ct. 2023) (citing and interpreting *McDonald's Corp. v. Levine*, 439 N.E.2d 475 (Ill. App. Ct. 1982)).

Iya's complaint fails to establish that it was a party to any private conversation. Iya properly alleged that its employees were recorded but only states baldly recordings were "surreptitious," so it is unclear whether the conversations were private. More importantly, Iya fails to allege that, during such conversations, the recorded employees were acting in their official capacity. (*See generally* Dkt. No. 1, Compl. ¶¶ 106–14.) The IES only covers parties to a conversation, and Iya, being a corporation, has the burden to show it was a party. Taking all the allegations as true, the court cannot come to this conclusion. The count is dismissed because Iya fails to show why it, instead of its employees, is the proper plaintiff of this claim.

Even if Iya had demonstrated it had standing under the IES, the court is skeptical that it pleaded sufficient facts to state a claim for which relief can be granted. The statute protects the oral element of a private conversation. *People v. Davis*, 185 N.E.3d 1223, 1228 (Ill. 2021). Accordingly, even when taking all alleged facts as true, a claim that fails to allege audio was picked up would not state a claim for which relief could be granted under the IES. Iya alleged

only that "[t]o the extent these security cameras and cell phone captured audio they are an eavesdropping device." (Dkt. No. 1, Compl. ¶ 110.) A claim that states Schoger is liable if Schoger violated the statute would be little more than a naked legal conclusion. As it stands, Count VI is more akin to a recitation of the cause of action, and would not state a claim for which relief could be granted even if Iya had been a party to the conversation.

c. Intentional Infliction of Emotional Distress (Count X)

Under Illinois law, Iya may recover damages for intentional infliction of emotional distress only if Iya proves: 1) the defendant's conduct was extreme and outrageous, 2) the defendant intended to inflict severe emotional distress or knew that there was at least a high probability that the defendant's conduct would inflict severe emotional distress, and 3) the defendant's conduct did cause severe emotional distress. *Harriston v. Chicago Tribune Co.*, 992 F.2d 697, 702 (7th Cir. 1993) (quoting *McGrath v. Fahey*, 533 N.E.2d 806, 809 (Ill. 1988)).

The Plaintiff in this case is a corporation, not a human being, and courts have consistently held that a corporate (non-human) plaintiff cannot suffer emotional distress because "a corporation lacks the cognizant ability to experience emotions." *Allen-Slattery, Inc. v. Lee (In re Lee)*, No. 11-12065-LT7, 11-90447-LT, 2012 Bankr. LEXIS 4719, at *22 (Bankr. S.D. Cal. Sep. 26, 2012); *see also Green v. Chi. Tribune Co.*, 286 Ill. App. 3d 1, 13-14 (1996). Taking all allegations as true, Iya failed to state a claim upon which relief can be granted. Count X is dismissed.

d. Tortious Interference with Business Expectancy (Count IV)

Under Illinois law, Iya must prove: "(1) a reasonable expectation of entering into a valid business relationship; (2) the defendant's knowledge of the expectancy; (3) the defendant's intentional and unjustified interference that prevents the realization of the business expectancy; and (4) damages resulting from the interference." 1 Illinois Tort Law § 11.02 (2025); *Chicago's*

Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA, 384 Ill. App. 3d 849, 862 (1st Dist. 2008). The claim for tortious interference is extremely narrow in Illinois: it must be based on actions the defendant has taken that were *directed* at third parties; it is not sufficient that the plaintiff's business expectancy was merely affected by the defendant's actions, however tortious. *Downers Grove Volkswagen, Inc. v. Wigglesworth Imps., Inc.*, 190 Ill. App. 3d 524, 529 (1989); *Chicago's Pizza, Inc.*, 384 Ill. App. 3d at 863. For there to be interference, the existence of an actual valid contract between the plaintiff and third parties is not necessary if the business prospect is sufficiently plausible. *E.J. McKernan Co. v. Gregory*, 252 Ill. App. 3d 514, 532 (1993).

Taking all allegations in the complaint as true and drawing all possible inferences in Iya's favor, Iya's allegations establish Iya had a business relationship with customers such as Amazon and Food Lion but fail to suggest that Shoger targeted those third parties with a business relationship. (Dkt. No. 1, Compl. ¶¶ 17, 19.) The law requires Iya's to describe actions directed toward Iya's current or prospective customers. *Joliet Avionics v. Lumanair, Inc.*, No. 19 C 8507, 2020 U.S. Dist. LEXIS 136832, at *4-6 (N.D. Ill. Aug. 1, 2020) (holding actions that are not directed toward specific party do not constitute tortious interference even if the action may *affect* business expectancy); *House of Brides, Inc. v. Alfred Angelo, Inc.*, No. 11 C 7834, 2014 U.S. Dist. LEXIS 1850, at *36 (N.D. Ill. Jan. 8, 2014). What Iya has alleged here—that the landlord failed to provide adequate facilities or make repairs, prevented contractors from working, and harassing Iya's staff—is not conduct directed at third parties.

Therefore, even if Iya sufficiently pleaded facts for the second and fourth elements of tortious interference with a business relationship, the claim brought under Count IV must be dismissed.

IV. The Motion to Strike is Denied

Schoger has asked the court to strike certain allegations to the extent that they are scandalous and immaterial, namely allegations in paragraphs 1-6, 17, 28-29, 32-34, 49-53, 55-57, 63, 68 and 69. The federal rules permit a court to "strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "Generally, Rule 12(f) motions are disfavored because of their potential for use as a delay tactic." *Ardagh Metal Packaging USA Corp. v. Am. CRAFT Brewery, LLC*, 718 F. Supp. 3d 871, 878 (N.D. Ill. 2024) (citing *Heller Fin., Inc. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286, 1294 (7th Cir. 1989)). The decision whether to strike materials "is soundly within the court's discretion." *Id.* (citing *Delta Consulting Grp., Inc. v. R. Randle Const., Inc.*, 554 F.3d 1133, 1141 (7th Cir. 2009).

The court declines to strike any of the allegations under Rule 12(f). Striking allegations is unlikely to "remove unnecessary clutter from the case" and may indeed result in delays rather than expedition. *Heller Fin., Inc.,* 883 F.2d at 1294. Many of the allegations at issue relate directly to the claim under section 1981. Other allegations appear to support claims that were not at issue in this Motion.

Conclusion

For the foregoing reasons, for following claims are dismissed without prejudice: Count IV (Tortious Interference with Business Expectancy or Opportunity), Count VI (Violation of the Illinois Eavesdropping Act), Count VII (Promissory Estoppel), Count X (Intentional Infliction of Emotional Distress), and Count XI (Breach of Fiduciary Duty). The claims that survive, including claims that were not the subjection of this motion, are: Count I (Breach of Contract), Counts II

and III (Fraudulent Inducement), Count V (Trespass), Count VIII (Intrusion Upon Seclusion), Count IX (Breach of Covenant of Quiet Enjoyment), and Count XII (42 U.S.C. § 1981).

Dated: 8/20/2025

Honorable. Deborah L. Thorne
United States Bankruptcy Judge