IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PHILIP EMIABATA and
SYLVIA EMIABATA,

Plaintiffs,

ORDER

07-C-465-C

v.

MARTEN TRANSPORT, LTD. and
FREIGHTLINER, INC.,

Defendants.

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In this civil action for money damages, plaintiffs Sylvia and Philip Emiabata allege that defendant Marten Transport, Ltd. fired them from their jobs as truck drivers after an employee of defendant Freightliner, Inc. reported to Marten Transport that he found alcohol in plaintiffs' truck. In an order dated August 23, 2007, I construed plaintiff's complaint as asserting a violation of Title VII of the Civil Rights Act of 1964 and several state law claims. The case is before the court on defendant Freightliner's motion for a more definite statement under Fed. R. Civ. P. 12(e), or, in the alternative, a motion to dismiss for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6).

Defendant Freightliner identifies four defects in plaintiffs' complaint: (1) they "fail

to plead any facts that connect Freightliner, Inc. to the activities alleged in the complaint"; (2) they "failed to plead any facts that establish the unknown individual referred to by Plaintiffs as 'Brady' is in any way employed by or was otherwise acting on behalf of Freightliner, Inc."; (3) they failed to identify a "duty" Freightliner owed to them; and (4) they failed to identify "any legal cause of action" against Freightliner. Although I agree with Freightliner that plaintiff's complaint could be clearer, I must deny its motion because plaintiff's complaint is adequate to give Freightliner fair notice under Fed. R. Civ. P. 8.

With respect to defendant Freightliner's first asserted deficiency, it believes that plaintiffs have not provided adequate factual notice of its involvement in the actions alleged in the complaint. But Freightliner's involvement is clear enough. Plaintiffs allege that both defendants conspired to get plaintiffs fired by directing one of Freightliner's employees (whom plaintiffs identify as "Brady") to plant alcohol in plaintiffs' truck on approximately March 12, 2007. Plaintiffs do not spell out the details of the alleged conspiracy, but such details are not required; it is sufficient to allege the general purpose of the conspiracy, the parties involved in it and the approximate date it occurred. Loubser v. Thacker, 440 F.3d 439, 442-43 (7th Cir. 2006). Plaintiffs allege each of these things.

Second, with respect to defendant Freightliner's argument that plaintiffs failed to "establish" that "Brady" was acting on Freightliner's behalf, it overstates plaintiffs' pleading burden. As the court of appeals has emphasized, plaintiffs do not have to "establish"

anything in their complaint; it is enough to allege the general facts. Brown v. Budz, 398 F.3d 904, 914 (7th Cir. 2005) ("to survive a motion to dismiss under Rule 12(b)(6), the plaintiff does not have to 'show' anything; he need only allege"). Establishing facts comes later, either at the summary judgment stage or at trial.

Defendant Freightliner's third and fourth asserted deficiencies are premised on a belief that plaintiffs were required to identify their legal theories in their complaint, but this belief is wrong as well. Jogi v. Voges, 480 F.3d 822, 826 (7th Cir. 2007) ("It is established, however, that complaints need not plead legal theories."). It is Freightliner's burden to show in a motion to dismiss that plaintiff cannot state a claim upon which relief may be granted under *any* legal theory, which Freightliner has not attempted to do. In any case, liberally construed, plaintiffs' allegations that Freightliner conspired to have plaintiffs fired from their jobs states a claim for tortious interference with a contract. (Because plaintiffs are already proceeding on a discrimination claim under federal law, I may exercise supplemental jurisdiction over any state law claim that is part of the same case or controversy as the federal law claim. 28 U.S.C. § 1367.) To the extent defendant Freightliner wishes to extract any other potential legal theories from plaintiffs, it may do so through contention interrogatories. Fed. R. Civ. P. 33; American Nurses' Association v. Illinois, 783 F.2d 716, 723 (7th Cir. 1986).

One other matter is before the court, which is plaintiffs' "motion ex parte for status

on this case," filed just after the case was transferred from the Western District of Texas to the Western District of Wisconsin. In their motion, plaintiffs request information about the effect of the transfer and they ask the court to rule on any motions that were pending at the time of the transfer. With respect to the plaintiffs' request for case status information, this information should have been given to them at the recent preliminary pretrial conference held before the magistrate judge. Also, because defendant Freightliner's motion for a more definite statement was the last motion filed in Texas that had not yet been resolved, plaintiff's motion will be denied as moot.

ORDER

IT IS ORDERED that

1. Defendant Freightliner Inc.'s motion for a more definite statement or, in the alternative, to dismiss the case for failure to state a claim upon which relief may be granted is DENIED.

2. Plaintiffs Sylvia Emiabata's and Philip Emiabata's motion for case status

information is DENIED as moot.

Entered this 19th day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge