KRISTIN NEDIALKOVA, individually and on behalf of all others similarly situated,
Plaintiff(s),
v.
TOTAL AIRPORT SERVICES, LLC,
Defendant(s).

2019 CH 02300

MEMORANDUM OPINION AND ORDER

This cause coming to be heard upon Defendant's Motion to Dismiss pursuant to 735 ILCS 5/2-619, due notice having been given, the Court having reviewed said Motion, response thereto, and reply thereto as well as having listened to oral arguments, IT IS HEREBY ORDERED:

Defendant's Motion is DENIED. Defendant has not demonstrated that it falls within BIPA's exception for government contractors. At best, an issue of fact exists as to whether Defendant was a contractor of, or working for, a governmental entity within the relevant period.

An entity is exempt under section 25(e) if it is (1) a contractor (2) of a unit of government and (3) was working for that unit of government at the time it collected or disseminated biometric information. Black's Law Dictionary has defined a "contractor" as "1. A party to a contract. 2. More specif., one who contracts to do work for or supply goods to another; esp., a person or company that agrees to do work or provide goods for another company." (11th ed. 2019).

Where a defendant submits the existence of some written agreement with a government entity, courts have examined the nature of that agreement to determine whether it renders the defendant a "contractor." *See, e.g., Enriquez v. Navy Pier, Inc.*, 2022 IL App (1st) 211414-U (examining a lease agreement); *Coulter v. Hudson Grp. (HG) Retail, LLC*, 23-C-16176 (N.D. Ill. Nov. 6, 2024) (leases for retail entities).

Defendant argues that it is a government contractor pursuant to (1) the 2011 Handling Operations Permit; and (2) the 2018 Certified Services Provider License Agreement. At the outset, the Court will not consider the 2018 License Agreement because it was not in effect when the alleged violations of BIPA took place. In September, I certified a class in this action of "All individuals who had their fingers scanned . . . from February 21, 2014 through and including January 21, 2018." The License Agreement was entered into October 1, 2018. Whether TAS was a government contractor under the License Agreement therefore has no bearing on whether TAS was a government contractor at the time the class' biometric information was taken.

Turning to the 2011 Permit, the Court is not persuaded that the Permit renders TAS a contractor within the meaning of BIPA § 25(e). It is not apparent that TAS contracted to do work for the City of Chicago.

The terms of the Permit provide Plaintiff the "Privilege" to "conduct handling operations to support airlines and others in the commercial air transportation business . . . operating into and

out of the [Chicago O'Hare International Airport]." For this privilege, TAS pays *the City*, a fee of 7.5% of its gross receipts from handling operations. The Permit sets forth restrictions and conditions for TAS to complete its work at the airport, but the Permit does not expressly provide that TAS will be completing its operations *for* the City. Instead the Permit contemplates operations "to support airlines and others in the commercial air transportation business."

The Permit looks less like a contract wherein TAS completes services for the government, and more like what it calls itself: a permit allowing TAS to complete services for commercial airlines at O'Hare. At this stage, a holistic review of the materials suggests that TAS provides handling services to airlines subject to the scope and conditions of the government-issued permit. It is not apparent that TAS provides handling services on behalf of or at the direction of the City.

This is apparent also from the statements made by Defendant's deponents. The statements by the deponents and affiants are conclusory as to the existence of a contract with the City as well as what services TAS supplied to the City. Sarah Andrews agreed that TAS completed services pursuant to contracts with the airlines, while insisting that these services were directed by the "contract with the city." Andrews Dep. at 14-16. However, when pressed to explain what direction the City gives TAS, Andrews waffles about training materials, airport security, and the scope of their services. Andrews Dep. at 34:15-35:3. This accords with the Permit, which grants TAS a conditional privilege to provide services at O'Hare, but it fails to explain what services TAS does for, on behalf of, or at the direction of the City. Conditions to a permit regulating conduct is distinct from the City directing the services.

Overall, the deposition testimony in support of the defense was conclusory in its characterization of the Permit as a contract and the City as a customer. The Court is unpersuaded by both the Permit and the testimony that TAS is a government contractor.

Lastly, regarding Defendant's analogy to *Enriquez*, the Court does not find that TAS fulfilled the precise government function that CDA is authorized to perform, such that it was undeniably working as a government contractor. The Ordinance establishing the Department of Aviation authorized the Commissioner of Aviation to "regulate, by license, permit or other regulatory structure, persons who provide services to airlines and other tenants at Public Airports." MCC § 2-20-020. The Ordinance does not require the Commissioner to provide services, or to contract for them; it requires that the Commissioner *regulate* them.

In *Enriquez*, the government agency, the MPEA, was required to "carry out . . . [to] provide for the recreational, cultural, commercial, or residential development of Navy Pier and to construct, equip, and maintain grounds, buildings, and facilities for those purposes." The private entity, NPI, was a not-for-profit created "exclusively for civic and charitable purposes. . . [to] lessen[] the burdens of government related to the Operation of Navy Pier, so as to facilitate the ongoing recreational, educational, cultural, and other development of Navy Pier . . . [to] maintain[], repair[], operat[e] . . . [etc.] the grounds, buildings, facilities" on Navy Pier. As the Appellate Court found, NPI was performing "core governmental services for the MPEA" pursuant to a lease agreement.

With what has been presented, the analogy to *Enriquez* is unpersuasive. TAS was not performing core governmental services for the Commissioner of Aviation. Instead, it appears as

though the Commissioner was regulating TAS as an airline service provider through the vehicle of a permit.

This matter is set for status on February 24, 2026 at 10:00 a.m. via ZOOM.

Dated: January 14, 2026

Hon. William B. Sullivan

ENTERED
Judge William B. Sullivan-2142

JAN 14 2026

MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL