

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF GASTON

SUPERIOR COURT DIVISION

08 CVS 3154

JASON FISHER, BYRON ADAMS,  
B.C. BARNES, CHERYL BARTLETT,  
KATHY BEAM, CAROLYN BOGGS,  
SUSETTE BRYANT, DANNY CASE,  
GENE DRY, RICKY GRIFFIN, WENDY  
HERNDON, EVERETT JENKINS,  
SANDRA LANGSTON, CYNTHIA  
STAFFORD, MARY TAUTIN, and  
TIMOTHY THOMAS,

Plaintiffs,

v.

COMMUNICATION WORKERS OF  
AMERICA, COMMUNICATION  
WORKERS OF AMERICA, DISTRICT 3,  
and COMMUNICATION WORKERS OF  
AMERICA LOCAL 3602,

Defendants.

**ORDER**

Before the Court is the Motion of Plaintiff Daniel Case (“Case”) to Dismiss the Counterclaims of Defendants Communication Workers of America (“CWA”), Communication Workers of America, District 3 (“District 3”), and Communication Workers of America Local 3602 (“Local 3602”)<sup>1</sup> (the “Motion”). In their Counterclaims, Defendants allege that (1) Case is liable for contribution pursuant to the North Carolina Uniform Contribution Among Tort-Feasors Act, N.C. Gen. Stat. § 1B-1 to -7 (2007) (“UCATA”), and (2) that Defendants are entitled to equitable subrogation against Case for any damages awarded to Plaintiffs.

CWA and District 3 purported to voluntarily dismiss their UCATA Counterclaims, without prejudice, in their opposition to Case’s Motion to Dismiss. (*See* CWA’s Resp. Mot.

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<sup>1</sup> On 1 December 2008, CWA and District 3 filed their Answer and Counterclaim. On that same date, Local 3602 filed a separate Answer and Counterclaim. These separate Answers and Counterclaims are substantially similar.

Dismiss Countercl. 2 n.2.) Because Local 3602 adopted and incorporated CWA's response to the Motion (*see* Defendant/Counterclaimant Local 3602's Response to Plaintiff Daniel Case's Motion to Dismiss Counterclaim, filed 20 January 2009), Local 3602 also purported to voluntarily dismiss its UCATA Counterclaim. The Court, however, finds that this is insufficient for purposes of Rule 41 of the North Carolina Rules of Civil Procedure. Accordingly, the Court **ORDERS** Defendants to file a proper Notice of Dismissal within **five (5) days** of entry of this Order.

After considering the remaining Counterclaims alleging equitable subrogation, the Motion, the briefs of the parties, and the arguments of counsel, the Court **GRANTS** the Motion and dismisses the Counterclaims.

In their remaining Counterclaims, Defendants allege that, "on the same day that the Notice was posted, . . . Case removed it from the bulletin board and disclosed the contents of the Notice to third parties." (CWA Countercl. ¶ 6; Local 3602 Countercl. ¶ 6.) As a result, Defendants allege they are entitled to equitable subrogation with respect to any damages awarded to Plaintiffs as a result of the dissemination or disclosure of the Notice. (CWA Countercl. ¶ 9; Local 3602 Countercl. ¶ 9.)

Case denies these allegations. Plaintiffs' counsel also stipulated at the hearing held on 26 February 2009 that his clients' claim for damages against Defendants is not grounded in anything that Case may have done with the Notice. Additionally, all parties agree that Case is not an agent of Defendants. As a result, the Court holds that Defendants' Counterclaims for equitable subrogation have no place in this litigation, as Defendants' liability (if any) on the claims asserted in the Amended Complaint will depend solely on Defendants' actions (and those of Defendants' agents and/or employees) *vis-à-vis* the Notice.

Accordingly, the Court **GRANTS** Plaintiffs' Motion and **DISMISSES** Defendants' Counterclaims alleging equitable subrogation.

**SO ORDERED**, this the 9th day of March 2009.

/s/ Albert Diaz  
Albert Diaz  
Special Superior Court Judge