



## ARGUMENTS OF THE PARTIES

### **Motion to Dismiss**

Allstate argues that Counts I-IV for breach of contract must be dismissed because NAPAA lacks associational standing to bring the claims as the participation of its members is required. Counts I -IV should also be dismissed because Plaintiffs have failed to plead that the members substantially performed their obligations under the EA Agreement. Allstate argues that due to this failure, Plaintiffs are not entitled to receive declaratory/injunctive relief. Next, Allstate argues that Count I must be dismissed because it is inconsistent with the EA Agreements and contradicted by the allegations contained in Plaintiffs' Complaint. Allstate argues that under the EA Agreement, Allstate has the sole ability to approve or disprove the sale of an EA's economic interest and has approved the sale of those interests to other existing EAs. Count II must likewise be dismissed because the EA Agreement is clear that EAs do not have exclusive territories. As to Count III, Allstate argues that Plaintiffs are attempting to create an implied right to payment which does not exist under the contract. The Court should decline to do so. As to Count IV, Allstate argues that the EA Agreement grants Allstate the exclusive ability to control the technology used by EAs and only require the EAs to pay the expenses of maintaining the technology. The EA does not confer any control rights onto the EAs themselves. Allstate goes on to argue that Counts V, VI, and VII for tortious interference should be dismissed because the allegations are pled on information and belief and as such are insufficient. Finally, Count VIII for breach of the implied covenant of good faith fails because it is inconsistent with the language of the EA Agreement.

In response Plaintiffs argue that NAPAA has established its associational standing to sue on behalf of its members. Plaintiffs argue that because NAPAA is seeking declaratory judgment as to Counts I-IV, not money damages, little member participation is required which is sufficient to satisfy the third element. Plaintiffs argue that Counts I-IV have been properly plead and need not be dismissed. However, if the Court disagrees, the proper course of action is amendment, not dismissal. Regarding the arguments germane to each Count, Plaintiffs argue that Count I adequately plead a claim for breach of contract as to Allstate's blanket denial policy. Plaintiffs argue that the few instances cited by Allstate in which a sale was approved does not undercut Plaintiffs' argument. Next, Plaintiffs argue that the expansion of IAs into markets served by EAs is a breach of the EA Agreement. Although the EA Agreement allows Allstate to determine the number of agencies and EAs in an area, the EA Agreement does not include terms for IAs. Allstate's course of dealings and statements made by Allstate representatives show that there was an implied term within the EA Agreement that IAs will only be authorized in areas unserved by EAs. Plaintiffs argue the allegations contained in Counts III and IV also support a claim for breach of the EA. Plaintiff argue that Allstate's poaching of policies through its CCC/Internet and Allstate's attempts to force EAs to use its telephone system is improper under the EA Agreement. Plaintiffs further argue that NAPAA is entitled to injunctive relief for all of its breach of contract claims. As to Counts V, VI, and V, Plaintiffs argue that

the Individual Plaintiffs have all stated claims upon which relief can be granted. Finally, as to Count VIII, Plaintiffs argue that Allstate breached the implied duty of good faith by arbitrarily choosing to refuse the sale of Verbarg's agency after a qualified buyer was found.

In reply, Allstate argues that Plaintiffs' positions as active and former Allstate agents is insufficient to establish performance under the EA Agreements. Simply accepting the EA Agreements is insufficient. NAPAA has likewise failed to establish any claim for breach of contract or entitlement to injunctive relief for the reasons stated in Allstate's Motion. Additionally, Allstate argues that the implementation of the AAV platform does not violate the EA Agreement because Allstate has the right to establish technology requirements for ensuring compliance with the Telephone Consumer Protection Act and safeguarding its customers. Allstate argues that Plaintiffs have also failed to allege performance of their obligations as to the Individual Plaintiffs' claims for tortious interference and have failed to meaningfully respond to the arguments for breach of the implied duty of good faith.

### **Motion to Sever**

Allstate seeks to sever the Plaintiffs claims into four separate claims arguing that the claims are legally and factually distinct. Allstate argues that NAPAA's association claims are not based on the same facts and circumstances of the Individual Plaintiffs and merely refer generally to its members. Allstate argues that NAPAA's claims should be transferred to Chancery as NAPAA only seeks declaratory judgment and injunctive relief. The Individual Plaintiffs' claims should also be severed although Allstate concedes that Joseph and Brad Rehonic's claims need not be severed as they involve the same facts and witnesses.

In response Plaintiffs argue the joinder of their claims is proper as all the claims involve similar transactions, and questions of law and fact. All the claims stem from Allstate's breach of the EA Agreement. Plaintiffs argue that severing the claims will not promote judicial efficiency or the preservation of resources. NAPAA's claims should be kept before the law division. Nothing contained in the General Orders is meant to be a jurisdictional bar to the claims, but as a means of convenience to the Court.

In reply Allstate argues that NAPAA's equitable claims should be severed and transferred to Chancery under General Order 1.3. The Individual Plaintiffs' claims should also be severed as the claims involve distinct individuals, contracts, and facts.

### **Motion to for Preliminary Injunction**

NAPAA seeks a preliminary injunction enjoining Allstate from requiring the implementation and use of Allstate's AAV system arguing that the EA Agreement contained a contractual guarantee of autonomy as to the telephone systems used within the agencies. Allstate's is attempting to usurp that autonomy by terminating the contracts of EAs who refuse to implement the AAV system.

In response Allstate argues that NAPAA cannot meet the high burden necessary to obtain a preliminary injunction. Allstate argues that the ability to supply and maintain a telephone system is only granted when Allstate does not supply the telephone system. NAPAA cannot show that it possess a clearly ascertainable right that is being infringed upon, that EAs will suffer irreparable injury, lack an adequate remedy at law, or that the EAs will suffer greater harm without that injunction than Allstate will suffer if the injunction is issued. Allstate argues that although the EAs agreed to indemnify Allstate, this indemnity is insufficient to shield Allstate from harm.

In reply NAPAA argues that the EA Agreement clearly gives EA the right to supply and maintain their own telephone systems. The right does not merely pertain to the use of agency owned technology. NAPAA's member are entitled to injunctive relief for breach of the EA Agreement due to Allstate's breach. NAPAA's members have no adequate remedy at law. Monetary damages would be inadequate as EA employees who implemented the AAV system have had their personal information uploaded to Allstate, and any EAs that refuse face termination. The balance of hardship weighs in NAPAA's favor as theory have multiple avenues to reduce their exposure through indemnity.

## OPINION OF THE COURT

### **Motion to Dismiss**

A Section 2-615 motion attacks the legal sufficiency of a complaint. *Beahringer v. Page*, 204 Ill.2d 363, 369 (2003); *Weather-man v. Gary Wheaton Bank of Fox Valley, N.A.*, 186 Ill.2d 472, 491 (1999), The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. *Beahringer*, 204 Ill. 2d at 369. When considering a Section 2-615 motion to dismiss, pleadings are to be liberally construed to do justice between the opposing parties. *Abbott v. Amoco Oil Co.*, 249 Ill. App. 3d 774, 778 (2d Dist. 1993). All well pleaded facts within the four corners of the complaint are regarded as admitted and true, together with all reasonable inferences drawn in the light most favorable to the plaintiffs. *Id.* Illinois is a fact-pleading jurisdiction. *See, e.g., Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006); *Weiss v. Waterhouse Securities, Inc.*, 208 Ill.2d 439, 45a1 (2004). While the plaintiff is not required to set forth evidence in the complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368-69 (2004); *Chandler v. Illinois Central R.R. Co.*, 207 Ill.2d 331, 348 (2003); *Vernon v. Schuster*, 179 Ill.2d 338, 344 (1997). Because Illinois is a fact-pleading jurisdiction, the plaintiffs must allege facts, not mere conclusions, to establish their claim as a viable cause of action. *See Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 305 (2008); *Iseberg v. Gross*, 227 Ill. 2d 78, 86 (2007).

When proceeding under a 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint but does not admit conclusions of law. *Piser v. State Farm Mut. Auto. Ins. Co.*, 405 Ill. App. 3d 341, 346 (1<sup>st</sup> Dist. 2010). In reviewing the sufficiency of the complaint, the Court accepts as true all well-pleaded facts and all reasonable inferences

that may be drawn from those facts. *Porter v. Decatur Mem. Hosp.*, 227 Ill. 2d 343, 352 (2008). A Section 2-619 motion to dismiss should be granted only when it raises affirmative matter which negates the plaintiff's cause of action completely, or refutes critical conclusions of law, or conclusions of material but unsupported fact. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). Upon ruling on a 2-619 motion, the court must deny the motion if there is a material and genuine question of fact. 735 ILCS § 5/2-619(c); see also, *Semansky v. Rush-Presbyterian-St. Luke's Medical Ctr.*, 208 Ill. App. 3d 377, 384 (1st Dist. 1990).

### I. Standing

“Associational standing refers to the ability of an association to sue as a representative body on behalf of its members. The doctrine is firmly established in federal law. The Illinois Supreme Court expressly adopted the test for associational standing from the United States Supreme Court.” *Ill. Rd. & Transp. Builders Ass'n v. Cty. of Cook*, 2021 IL App (1st) 190396 ¶ 19. “An association has standing to sue on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* at ¶ 20. “Economic harm is considered a sufficient injury to confer standing.” *Id.* at ¶ 36.

Allstate has argued that NAPAA cannot seek declaratory judgment as to the EA Agreement because the participation of the individual members would be required. NAPAA has argued that little participation of the individual members would be necessary as NAPAA's claim involves questions of law to be resolved by the Court. Upon consideration the Court finds that NAPAA has stated a valid basis for associational standing. Allstate's Motion to Dismiss pursuant to 735 ILCS 5/2-619 is DENIED.

### II. Breach of Contract

In order to state a claim for breach of contract, a plaintiff must show: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) a breach of the subject contract by the defendant; and (4) that the defendant's breach resulted in damages. *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 69 (1st Dist. 2004); *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439, 450 (2009). Additionally, in alleging a breach of contract, a plaintiff's pleadings must allege facts sufficient to indicate the terms of the contract claimed to have been breached. See *id.*

The Court finds that Count I of Plaintiffs' Complaint is insufficiently pled. Although Plaintiffs claim that Allstate violated the terms of the EA Policy, Plaintiffs' have failed to point to a specific provision on which their claim is based. As pled by Plaintiffs', Allstate has the discretion to choose to approve or deny the sale of agency. Plaintiffs' have not sufficiently alleged that Allstate breached the EA Agreement by making determinations that were not beneficial to the Plaintiffs. As such, Allstate's Motion to Dismiss Count I of Plaintiffs' Complaint is GRANTED.

The Court finds that a question of fact exists as to whether Plaintiffs' have sufficiently pled a claim for breach of the EA Agreement based on the introduction of IA's into the EA territories. Allstate's Motion to Dismiss Count II of Plaintiffs' Complaint is DENIED.

As to Count III, the Court finds that Plaintiffs' have failed to allege sufficient facts to plead a claim for breach of contract. As such, Allstate's Motion to Dismiss Count III of Plaintiffs' Complaint is GRANTED.

The Court finds that a question of fact exists as to whether Plaintiffs have stated a claim for breach of contract as to Count IV. Dismissal is therefore improper and Allstate's Motion to Dismiss Count IV of Plaintiffs' Complaint is DENIED.

### III. Tortious Interference

"To state a cause of action for intentional interference with prospective economic advantage, a plaintiff must allege (1) a reasonable expectancy of entering into a valid business relationship, (2) the defendant's knowledge of the expectancy, (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy, and (4) damage to the plaintiff resulting from the defendant's interference." *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 406-07 (1996). To prevail on a claim for tortious interference plaintiffs, must identify specifically which parties were expected to enter into a business relationship. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 862 (1st Dist. 2008).

Upon consideration of the submissions, the Court finds that Plaintiffs' have sufficiently stated a claim for tortious interference. Plaintiffs have alleged that they had a reasonable expectancy of selling their businesses, Allstate knew of this expectancy, Allstate interfered in the sale of their businesses, and caused damage to the Plaintiffs. Allstate's Motion to Dismiss Counts V, VI, and VII of Plaintiffs' Complaint is DENIED.

### IV. Breach of Implied Duty of Good Faith and Fair Dealing

"A plaintiff sustains a cause of action for breach of contract for abuse of discretion based on a violation of the implied covenant of good faith and fair dealing by alleging that the defendant exercised its discretion in a manner contrary to the reasonable expectations of the parties." *Slay v. Allstate Corp.*, 2018 IL App (1st) 180133 ¶ 32. "The duty of good faith and fair dealing requires a party vested with discretion under the contract to exercise that discretion reasonably and with proper motive and not arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties." *Id.* at ¶ 33.

Upon consideration of the submissions the Court finds that Plaintiffs have sufficiently stated a cause of action for implied duty of good faith and fair dealing. Plaintiffs have alleged that Allstate "arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties" exercised their discretion to reject the proposed buyer for Verbarg's agencies. Allstate's Motion to Dismiss Count VIII of Plaintiffs' Complaint is DENIED.

**Motion to Sever and Transfer**

The presence of NAPAA’s claim for declaratory relief does not in and of itself require that the claim be severed and transferred to the Chancery Division. It is within the discretion of the Court to determine whether transfer under these circumstances is warranted. The Court finds that it is not. Allstate’s Motion is therefore DENIED.

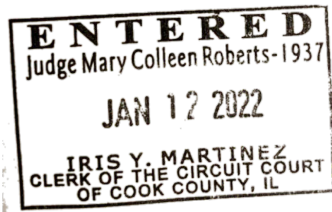
**Motion for Preliminary Injunction**

“Plaintiffs have the burden of proving that they are entitled to injunctive relief. To meet this burden of proof, plaintiffs must establish by a preponderance of the evidence that (1) they possess a certain and clearly ascertained right which needs protection; (2) they will suffer irreparable injury without the protection of the injunction; (3) there is no adequate remedy at law for the injury; and (4) they are likely to be successful on the merits.” *Baal v. McDonald's Corp.*, 97 Ill. App. 3d 495, 499 (1981).

Upon consideration of the submissions the Court finds that Plaintiffs have failed to meet their burden of proof entitling them to injunctive relief. Specifically, the Court finds that Plaintiffs have not established that they will suffer irreparable harm without the protection of the injunction, nor have they established that there is no adequate remedy at law for their injuries, which the Court believed is compensable through money damages. For these reasons, Plaintiffs’ Motion for Preliminary Injunction is DENIED.

Wherefore, it is hereby ORDERED:

1. Defendant Allstate’s Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9) is DENIED.
2. Defendant Allstate’s Motion to Dismiss pursuant to 735 ILCS 5/2-615 is GRANTED in part and DENIED in part.
  - a. Defendant Allstate’s Motion to Dismiss Count I and III pursuant to 735 ILCS 5/2-615 is GRANTED.
  - b. Defendant Allstate’s Motion to Dismiss Counts II and VI-VIII pursuant to 735 ILCS 5/2-615 is DENIED.
3. Defendant Allstate’s Motion Sever and Transfer is DENIED.
4. Plaintiffs’ Motion for Preliminary Injunction is DENIED.



Entered:

*Judge Mary Colleen Roberts*  
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Judge Mary Colleen Roberts

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Circuit Court of Cook County, Illinois  
County Department, Law Division