No. 2-21-0043

In the
Appellate Court of Illinois
Second Judicial District

POWER DRY OF CHICAGO, INC. d/b/a CHICAGO WATER AND FIRE RESTORATION,

Plaintiff-Appellant,

v.

MATTHEW BEAN; MAURISSA BEAN; RAYMOND D. BEAN; LUTHERAN MUTUAL FIRE INSURANCE COMPANY; L.J. SHAW & COMPANY; CALIBER HOME LOANS, INC.; AND UNKNOWN NECESSARY PARTIES,

Defendants-Appellees.

Appeal from the Circuit Court for the Sixteenth Judicial Circuit,
Kane County, Illinois,
Case No. 2020 CH 00250
The Honorable James R. Murphy, Judge Presiding

BRIEF OF DEFENDANTS-APPELLEES, LUTHERAN MUTUAL FIRE INSURANCE COMPANY AND L.J. SHAW & COMPANY

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Oral Argument Requested

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NATURE OF THE CASE

Following a fire in the home of defendants/appellees Matthew and Maurissa Bean, Maurissa signed a contract with plaintiff/appellant Power Dry of Chicago, Inc. d/b/a Chicago Water and Fire Restoration ("CWFR"), which got into a dispute with the Bean's homeowner's insurer and the adjuster it had retained over the value of the claim submitted. CWFR sued the Beans, their mortgagee, their insurer and the adjuster. This appeal follows the grant of three separate motions to dismiss filed by the defendants/appellees pursuant to section 2-619 of the Illinois Code of Civil Procedure, dismissing counts I through VII of the eight-count amended complaint on the grounds that the CWFR contract was void under the Illinois Insurance Code because CWFR was acting as an unlicensed public adjuster. The issue raised on the pleadings is whether the trial court properly granted the section 2-619 motions to dismiss.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court correctly granted defendants' section 2-619 motions to dismiss on the grounds that the contract between the Beans and CWFR was void because CWFR was acting as an unlicensed public adjuster, where CWFR did not refute the emails upon which the motions were based.

STATEMENT OF FACTS

On March 2, 2020, a fire occurred in the home occupied by Matthew and Maurissa Bean ("Matthew" and "Maurissa") located at 35W382 Sunset Drive, Saint Charles, Illinois (R.C675, 677, 1588). The home was owned by Matthew (R.C253, 674, 1588). His father, Raymond Bean ("Raymond"), was named as a mortgagor on the mortgage on the house (R.C916). Caliber Home Loans, Inc. ("Caliber") held the mortgage on the residence,

following an assignment by the prior mortgage holder, Mortgage Electronic Registration Systems, Inc. ("MERS") (R.C913). Matthew had a homeowners policy of insurance for the property with Lutheran Mutual Fire Insurance Company ("Lutheran Mutual") (R.C140-88, 1588). Following the fire, Lutheran Mutual retained L. J. Shaw & Company ("L.J. Shaw") to adjust the claim (R.C670).

On March 2, 2020, the same day as the fire, Maurissa signed a "Mitigation and Repair Work Authorization" with Power Dry of Chicago d/b/a Chicago Water and Fire Restoration ("CWFR") (R.C23-25, 692-94). The Authorization provided that CWFR would perform mitigation and repair services as set forth in an "Xactimate" estimate to be created by CWFR (R.C23, 692)[1.] Under the heading, "Insurance Matters and Direct Pay Authorization" the Authorization stated that the "Customer [Maurissa] will assign all rights and benefits to its insurance payments for the loss to [CWFR] in order to expedite payments and fulfillment of this contract" (R.C23, 692).

At the time it was dealing with the Beans, CWFR did not have a license in Illinois to act as a public adjuster (R.C940, 1660). Nor did it have such a license from January 1, 2020, through June 30, 2020 (R.C940, 1660). After its original objections to a request to admit on the subject were overruled, plaintiff eventually admitted these facts to be true (R.C811-12, 929, 940-41, 1660-61).

CWFR exchanged numerous emails with Maurissa, stating that it would work with their insurer to reach an agreed price for the scope of their work and would negotiate with the insurer on behalf of the Beans to limit their out-of-pocket expenses to their deductible

[1]Xactimates were generated in various amounts for mitigation services ($12,764.39; $9,954.05 and $9,139.31) (dated 3/11/20, 3/18/20 and 3/23/20)(R.C678, 1411, 1470) and for repair work ($11,065.01) (dated 3/6/20) (R.C1388).

(R.C205-16, 260-303, 1478-1507). On March 3, 2020, at 1:27 p.m., CWFR emailed Maurissa saying "once the repair estimate is complete we will send a copy to you via email and submit the estimate directly to Lutheran Mutual. We work with your insurance company to reach an agreed price on the scope so that when we do move forward with the rebuild, you are only responsible for your deductible" (R.C206, 270). It also suggested Maurissa send them a copy of the paperwork prepared by L. J. Shaw, claiming it "tends to help expedite the agreement process as we are able to pinpoint any discrepancies and negotiate on your behalf to reconcile" (R.C206, 270). Shortly thereafter, at 1:55 p.m., CWFR told Maurissa that "[t]he mitigation invoice will be finalized *** and submitted to Luther [sic] Mutual. Any discrepancies will be negotiated by our In House Mitigation Estimator" (R.C205, 269).

On March 4, 2020, at 8:29 a.m., CWFR emailed Maurissa that they would "negotiate with the insurance company to come to a mutual agreement. *** We do this so that we are in agreement with the price and scope before the work is completed, leaving only the deductible as the out-of-pocket expense." (R.C209, 266). That afternoon, at 2:48 p.m., CWFR told her it would meet with her once the reconstruction estimate, which it was sending to her and Lutheran Mutual, had been approved by Lutheran Mutual (R.C210, 267).

On March 10, 2020, at 8:29 a.m., CWFR commented on a response that Maurissa received from L.J. Shaw about CWFR's estimates, saying, "I can tell you that if this is the answer your carrier is giving you, you might want to ask for a different adjuster or the current adjuster supervisor. L.J. [Shaw] doesn't seem to be handling this claim in good faith. *** [I]f L.J. [Shaw] is that far apart from us, something is wrong. Perhaps ask how

much your coverage limits are? If coverage limits are above our amounts, there is no reason that L.J. [Shaw] shouldn't be able and willing to work with us to get to a mutual agreement. *** In the meantime, find out the coverage limits for this loss/policy coverage." (R.C215-16, 277-78, 302).

The following day, on March 11, 2020, in a 5:28 p.m. email, CWFR attempted to assure Maurissa, stating that it had "worked with L.J. Shaw on numerous claims and I cannot think of an instance where we couldn't come to an agreement that appeased all parties involved. I have confidence that your file will be no different. Our office will work with the adjuster on getting our representative onsite at the same time to make this happen." (R.C224, 281). Although CWFR did not have a copy of the Bean's insurance policy, it advised Maurissa about their policy stating, "That leaves your insurance company responsible for indemnifying you for any 'fair and reasonable' costs associated with the loss, minus the above mentioned deductible." (R.C224, 281). CWFR even suggested that if it were unable to come to an agreement with the insurer's adjuster, "We would then either justify our decision and supply supporting documentation, from our continuing education of industry norms, or forfeit/alter those charges to come to an agreement with the adjuster." (R.C224, 281).

CWFR and L.J. Shaw did not reach an agreement as to the value of the loss (R.C9-10, 677-78, 1358, 1366, 1470). CWFR originally sought $12,764.39 for the mitigation work (R.C677-78, 1470, 1476) and $11,065.01 for the repair work (R.C1388). L.J. Shaw estimated $4,725.23 as the actual cash value for both mitigation and repairs (R.C1366).

On March 23, 2020, Maurissa posted a review of CWFR on the Better Business Bureau's website complaining that CWFR had misled them by not providing a quote until

the work was done and by assuring them that their insurance would cover all costs (R.C17, 51, 1776). She claimed if the Beans had known the cost and that they may have been responsible for thousands of dollars, they would have never agreed to the work (R.C51, 1776). CWFR responded with a lengthy comment contending that:

> "Our Project Managers are trained to identify whether losses are covered by insurance policies. Your loss was a "covered loss." That your insurance carrier failed to pay for your loss according to the policy, or to provide funds appropriately, is not something within our control. However, as I believe we have demonstrated, we advocated for you to receive the coverage you paid for. (R.C1777, 1783).
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> * * *
>
> As a policy holder you have the right to choose your own vendor. If an insurance company refuses to work with your chosen contractor to indemnify you, that is highly problematic. After your adjuster refused to work with us, we had our attorney send your adjuster and your insurance carrier a demand letter. (This is a great example of how we were advocating for you.) (R.C 1177-78, 1783-84)."

On April 15, 2020, two days after CWFR filed suit, Maurissa's review was retracted (R.C1784).

On March 24, 2020, CWFR recorded a mechanic's lien against the Beans' residence in the amount of $12,764.39 for the mitigation work (R.C20-21), even though it had reduced its Xactimate for the mitigation work down to $9,954.05 on March 18, 2020, six days earlier (R.C1411). On March 23, 2020, the day before the mechanic's lien was recorded, CWFR reduced it further to $9,139.31 (R.C678, 760).

On April 13, 2020, CWFR filed an eight-count complaint in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, against Matthew, Maurissa, Raymond, Lutheran Mutual, L.J. Shaw, Cherry Creek Mortgage Co. ("Cherry Creek") and Unknown Necessary Parties (R.C6-51). Raymond was served on April 20, 2020, but never filed an

appearance in the case and was never defaulted (R.C611). The complaint alleged that Cherry Creek had a mortgage interest in the property (R.C7). Subsequently, CWFR filed a first amended complaint which was the same as the original complaint except that it dropped Cherry Creek as a defendant and added instead MERS as the mortgagee (R.C674–788, 675). On MERS' motion, Caliber was substituted as the proper party defendant (R.C929-30), because MERS previously had assigned its rights, title and interest in the mortgage to Caliber (R.C913-14, 916-18).

Count I of the original and amended complaint was directed against Matthew, Raymond and, eventually, Caliber, seeking the foreclosure on the $12,764.39 mechanic's lien which CWFR had filed against the residence (R.C11-13, 20-21, 679-80, 689-90). Counts II and III were directed against Matthew and Maurissa (R.C13-14, 681-82). Count II asserted a breach of contract action, attaching the Mitigation and Repair Work Authorization," signed by Maurissa, as the contract (R.C24, 693). Count III was an action for *quantum meruit* seeking to recover the difference between what CWFR had been paid and the amount it claimed its services were worth (R.C13-14, 681-82). Counts IV and V were both directed against Lutheran Mutual (R.C14-16, 682-84). Count IV was a breach of contract action which alleged that Matthew's rights under his insurance policy with Lutheran Mutual had been assigned to CWFR, so that it had become a third party beneficiary under the policy (R.C14, 682). It alleged that Lutheran Mutual breached the policy by failing to pay the full amount sought by CWFR (R.C15, 683). Count V claimed that Lutheran Mutual's refusal to pay CWFR the sums it sought was vexatious and unreasonable and constituted bad faith under the Illinois Insurance Code (R.C15-16, 683-84). Counts VI and VII were both against L.J. Shaw (R.C16-17, 684-85). Count VI alleged

tortious interference with prospective business advantage (R.C16, 684), while Count VII alleged tortious interference with a contract (R.C17, 685). The last count, Count VIII, was directed against only Maurissa (R.C17-18, 685-86). It claimed Maurissa defamed it in the review she posted on the Better Business Bureau's website (R.C17, 51, 679, 685).

In response to the complaint, Lutheran Mutual and L.J. Shaw filed a motion to dismiss, pursuant to section 2-619(a)(2) and (9) of the Code of Civil Procedure, contending that CWFR's claims were barred by the Public Adjusters' Law and Act, which require public adjusters to be licensed and declare that any contract entered into by someone acting as a public adjuster without a license is void and invalid (R.C83-248). Lutheran Mutual and L.J. Shaw argued that CWFR was adjusting a claim without a public adjuster's license (R.C86-90). Consequently, the contract signed by Maurissa was void and invalid (R.C90). Lutheran Mutual and L.J. Shaw attached copies of emails exchanged between Maurissa and CWFR (R.C203-222), asserting that the emails established that CWFR was in fact acting as a public adjuster (R.C86-90).

Matthew and Maurissa responded to the complaint with a Motion to Strike Counts I, II and III, brought pursuant to Section 2-619(a)(9) of the Code of Civil Procedure (R.C252-305). The Beans argued that the plaintiff's claims failed because they were based upon a contract that was void and invalid because CWFR was adjusting an insurance claim in violation of the statute regarding Public Insurance Adjusters and Registered Firms Act (R.C252, 255-56). The Beans attached an affidavit from Maurissa that authenticated the emails between her and CWFR (R.C259). The affidavit was not challenged and, eventually, in response to a request to admit, CWFR admitted the emails were genuine copies of emails sent by it to Maurissa (R.C1661). The Beans contended that the emails

established that CWFR was acting as a public adjuster (R.C255-56). They claimed that the *quantum meruit* action failed because the contract was contrary to public policy (R.C256-57). The Beans argued that the mechanic's lien foreclosure action failed as well, because it required the existence of an enforceable contract, which CWFR did not have (R.C257-58).

The plaintiff filed separate responses to both the motion to dismiss and the motion to strike (R.C837-899, 900-912). In its response to Lutheran Mutual and L.J. Shaw's motion, CWFR argued that the assignment was permitted under Illinois law (R.C839-40). It also claimed that it was not acting as a public adjuster, but rather as a beneficiary under the policy (R.C840-42). In its response to the Beans' motion, CWFR claimed that it contracted with Maurissa to perform mitigation and reconstruction services, not public adjusting services (R.C903) and that it was not acting as a public adjuster (R.C904).

On October 30, 2021, the Beans filed a reply in support of their motion to strike (R.C935-50). They argued the contract with CWFR was void *ab initio* because CWFR did not have a public adjuster's license (R.C935-36). The Beans pointed out that even CWFR's own paperwork belied its denial that it was engaged in public adjusting (R.C937). The Xactimate referred to the Beans' "Claim Rep" as "General Executive Adjuster" and twice referred to the "Net Claim," rather than giving a total due for services rendered (R.C937, 947, 978). The estimate even stated that CWFR was in the business of "providing insurance adjustment estimates" (R.C 937, 949). The Beans contended that the plaintiff's *quantum meruit* claim was an attempt to avoid the licensing requirement for public adjusters and should be denied (R.C938). They also asserted that the mechanic's lien

action failed because it required the existence of an enforceable contract, which plaintiff did not have (R.C939).

Lutheran Mutual and L.J. Shaw filed a memorandum in support of their motion to dismiss on November 3, 2020 (R.C1006-1586). They argued that the emails established that CWFR was not trading for its own account, but rather acted as a public adjuster (R.C1009-11). CWFR agreed to negotiate on behalf of the Beans; told them it would work with their insurer; advised them their insurer was not acting in good faith; opined that the policy provided coverage for the loss; and told the Beans not to take the insurer's offer (R.C1010-1011). They attached additional documents produced by the Beans in response to written discovery, which further established the claim that CWFR was acting as a public adjuster, including an email from Vincent Guaderrama of CWFR in which he falsely identified himself as an Illinois licensed public adjuster, even providing a license number (R.C1010-11, 1478). Lutheran Mutual and L.J. Shaw contended that since CWFR's claimed right to payment flowed from a contract which was void because it was acting as a public adjuster without a license, all of the claims against them failed (R.C1011-13).

On November 4, 2020, in response to the amended complaint Caliber filed a Motion to Dismiss Count I, the only count directed against it, pursuant to Section 2-619(a)(9) of the Code of Civil Procedure (R.C1587-1664). Like the other defendants, Caliber contended that CWFR was unlawfully engaged in the business of adjusting a claim without being licensed as a public adjuster, in violation of the Illinois Insurance Code, which made the Bean contract void and invalid (R.C1590-93). Caliber argued that a mechanic's lien action must be based on a valid contract (R.C1593). Therefore, since CWFR's contract was void, the mechanic's lien was invalid (R.C1593).

On November 12, 2020, CWFR moved for leave to file a sur-reply and objection to Lutheran Mutual's motion to dismiss contending that they added new arguments it could not have anticipated (R.C1756-70). In its sur-reply, filed on November 19, 2020, CWFR argued, among other things, that the Authorization signed by Maurissa constituted a valid assignment to CWFR of the Beans' right to insurance benefits (R.C1790-91). It also contended that CWFR was not acting as a public adjuster (R.C1791-92, 1795-96).

On November 13, 2020, Lutheran Mutual and L.J. Shaw moved to supplement the material supporting their motion to dismiss, arguing that the copy of Maurissa's Better Business Bureau review of CWFR that was attached to the amended complaint did not contain CWFR's complete response which was posted online (R.C1779-84). It omitted the second and third pages, which contained statements that contradicted CWFR's assertions that it was not engaged in public adjusting (R.C1780).

Oral argument was held on the three motions on December 10, 2020 (Sup.R.4-46). Lutheran Mutual and L.J. Shaw argued that a public adjuster represents an insured, negotiates values, and plays for compensation, which is defined in the Act as an assignment of proceeds, all of which CWFR did (Sup.R.11). The emails established that CWFR investigated the loss and advised the insured on aspects of a first party claim under the policy (Sup.R.11-12). This made it a public adjuster, which, because it was not licensed, made its contract with the Beans void (Sup.R.13, 14). Without the contract, there was no assignment of rights (Sup.R.17).

Lutheran Mutual and L.J. Shaw also contended that the assignment was not an overall assignment of all rights under the insurance contract (Sup.R.17). The only thing assigned was the right to proceeds for the loss (Sup.R.17-18). They argued that the claim

of tortious interference with a contract failed because the contract was void (Sup.R.18) and the claim for tortious interference with an economic expectancy also failed because one could not reasonably expect an economic benefit to flow from a contract that is prohibited by law (Sup.R.18-19).

Matthew and Maurissa argued that the gist of all the arguments was that CWFR conducted themselves as a public adjuster (Sup.R.21). The Xactimate estimate referred to a claim representative, to an "executive adjuster," and to a net claim, rather than an invoice (Sup.R.21). CWFR's own documents even stated that it was in the business of providing public adjustment estimates (Sup.R.23). The estimate was prepared by a person who no longer had a public adjusting license, but who represented he possessed one (Sup.R.23). When CWFR negotiated the claim with Lutheran Mutual it was, in essence, adjusting the claim for compensation as defined in the statute, the assignment of benefits (Sup.R.23). Since CWFR was acting as a public adjuster without a license, the assignment failed because the contract was void (Sup.R.24-25).

Caliber adopted the arguments of the other defendants and added that because the contract was void, the mechanic's lien should also be voided because it depended on the validity of the contract (Sup.R.25-26).

CWFR responded that it was looking to put money in its own pockets, not trying to adjust a claim (Sup.R.27). Because their services are generally covered under insurance, they interact directly with the insurance company to get paid, after getting an assignment (Sup.R.27-28). CWFR analogized what they were doing to a doctor, who argues with an insurance company about its bills, but that does not constitute public adjusting (Sup.R.28-29).

Lutheran Mutual and L.J. Shaw responded to the doctor analogy by contending the doctor did not falsely claim he was a public adjuster, as Vinnie Guaderrama of CWFR did in an email (Sup.R.33). The Beans responded that a physician does not give a patient an estimate that says his claims rep is an executive adjuster; they give them an invoice (Sup.R.37).

On December 10, 2020, the court granted CWFR's motion to file a sur-reply and Lutheran Mutual and L. J. Shaw's motion to supplement (Sup.R.44). It took the section 2-619 motions under advisement and continued the matter for a ruling (Sup.R.41, 44; R.C2186).

On January 5, 2021, the trial court ruled on the motions (Sup.R.61-75). It found that the emails exchanged demonstrated that CWFR and its representatives crossed a line that they should not have crossed by making promises to the Beans that CWFR would make sure the Beans only had to pay their deductible and telling them CWFR would negotiate an agreement and help them get the insurance benefits so they would only have to pay the deductible (Sup.R.67-68). The court concluded that CWFR was representing an insured with an insurer for compensation, as defined by statute, by negotiating values, damages and depreciation, and by applying the laws to the circumstances, which constituted public adjusting, for which they did not have a license (Sup.R.72-73). The court found that by crossing that line, the contract became void (Sup.R.68, 72-73). Therefore, the trial court granted the motions to dismiss and entered Rule 304(a) language (Sup.R.68, 70, 73). It also stated that it agreed with Lutheran Mutual and L.J. Shaw that CWFR was not standing in the shoes of the homeowners, because there was no effective assignment (Sup.R.68, 69). There was only a commitment by the Beans to make the claim

check payable to CWFR and to assign their benefits, if any (Sup.R.68). An agreement as to the reconstruction work was never reached, so as to it there was nothing that could have been interfered with tortiously (Sup.R 69).

Following the argument an order was entered on January 6, 2021, reflecting the court's rulings (R.C2213-14). In it the court ordered that for the reasons stated on the record, the section 2-619 motions of Lutheran Mutual, L.J. Shaw, Matthew, Maurissa and Caliber were granted and Counts I through VII of the amended complaint were dismissed with prejudice (R.C2213). It also found that there was no just reason to delay the enforcement or appeal of its ruling (R.C2214). CWFR's case against Maurissa for defamation continued (R.C2214).

On February 3, 2021, the CWFR filed a notice of appeal, appealing the trial court's decision of January 6, 2021, dismissing counts I through VII of the amended complaint (R.C2215). This appeal ensued.

ARGUMENT

I. THE STANDARD OF REVIEW OF THE GRANT OF A SECTION 2-619 MOTION TO DISMISS IS *DE NOVO.*

The standard of review of the granting of a motion to dismiss brought pursuant to 735 ILCS 5/2-619 is *de novo*. *Patrick Engineering, Ins. v. City of Naperville*, 2012 IL 113148, ¶31; *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008); *Krilich v. American National Bank and Trust Co.*, 334 Ill. App. 3d 563, 571 (2002). Therefore, a reviewing court may base its affirmance of the trial court's decision on any ground appearing in the record, regardless of whether the trial court relied on that ground or whether the court's reasoning was correct. *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 907

(1996). Accord, *Segobiano-Morris v. Grayslake Community Consolidated School Dist. No. 46,* 2015 IL App (2d) 140822, ¶11.

CWFR's citation to *Landau, Omahana & Kopka, Ltd. v. Franciscan Sisters Health Care Corp.*, 323 Ill. App. 3d 487 (2001) is misleading, because it ignores a critical portion of the sentence referenced. Specifically, the Court in *Landau* said, "*Because the trial court did not specify any grounds it relied on in dismissing plaintiff's complaint*, we will presume plaintiff's complaint was dismissed on one of the grounds argued by defendants." *Id*. at 492 (emphasis added). CWFR has ignored the first part of that sentence, skewing its meaning. Here the trial court explained its ruling when it issued its decision on January 5, 2001, finding that the contract with the Beans, on which Counts I through VI were predicated, was void because CWFR was engaged in public adjusting without a license (Sup.R.66-73). There is no need to rely on a presumption as to why the trial court ruled.

II. THE TRIAL COURT PROPERLY DISMISSED COUNTS I THROUGH VII OF THE AMENDED COMPLAINT BECAUSE CWFR WAS ENGAGED IN PUBLIC ADJUSTING WITHOUT A LICENSE, WHICH MADE THE CONTRACT WITH THE BEANS VOID.

A. The Trial Court Properly Heard The Matter As A Section 2-619 Motion To Dismiss.

A section 2-619 motion to dismiss admits the legal sufficiency of a complaint but raises defects, defenses or other affirmative matter that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Krilich v. American National Bank and Trust Co.*, 334 Ill. App. 3d 563, 572 (2002). An affirmative matter refers to a defense that negates the cause of action or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *McIntosh v. Walgreens Boot Alliance, Inc.*, 2019 IL 123626, ¶16. In the instant case, the defendants all

asserted that the contract between the Beans and CWFR (upon which Counts I through VII were based) was void under 215 ILCS 5/512.53(c), because CWFR was acting as a public adjuster without holding the required license. This is the type of affirmative matter that is properly raised on a section 2-619 motion. It was established by external submissions and acted to defeat plaintiff's claims in Counts I through VII.

If the affirmative matter asserted in a section 2-619 motion is not apparent on the face of the complaint, the motion must be supported by an affidavit or certain other evidentiary materials. *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997); *Kedzie and 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). If the movant satisfies its initial burden of going forward on the motion by presenting affidavits supporting the asserted defense, the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted is unfounded as a matter of law or requires the resolution of an essential element of material fact before it is proven. *Epstein*, 178 Ill. 2d at 383; *Kedzie*; 156 Ill. 2d at 116; *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1189 (2003). If, after considering the pleadings and affidavits, the trial court finds that the plaintiff has failed to carry the shifted burden, the motion may be granted, *Epstein*, 178 Ill. 2d at 383; *Kedzie*, 156 Ill. 2d at 116.

In ruling on a section 2-619 motion to dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the non-moving party. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). All well-pleaded facts and any reasonable inferences that arise from them are to be accepted as true, but a court cannot accept as true mere conclusions of law or fact unsupported by specific factual allegations. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶31; *Super Mix of*

Wisconsin, Inc. v. Natural Gas Pipeline Co. of America, LLC, 2020 IL App (2d) 190034, ¶33. A section 2-619 motion does not admit the truth of any allegations in the complaint that touch on the affirmative matters raised in the motion. *McIntosh,* 2019 IL 123626, ¶16.

If the grounds for dismissal are set forth in an affidavit, and the affidavit is not contradicted by a counter-affidavit, the facts contained in the affidavit will be taken as true, notwithstanding contrary unsupported allegations in the complaint. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004); *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 907 (1996); *Krilich*, 334 Ill. App. 3d at 572. If a counter-affidavit is offered, it must comply with Illinois Supreme Court Rule 191(a). This means that the counter-affidavit must be based on the affiant's personal knowledge, set forth facts with particularity, and not consist of conclusions, but rather of facts admissible in evidence. *Luciano v. Waubonsee Community College,* 245 Ill. App. 3d 1077, 1084 (1993). If a counter-affidavit is based on speculation or information and belief, it will be insufficient to refute the positive averments of facts made in the original affidavit. *Id*. at 1084-85.

B. Public Adjusters Are Required To Be Licensed In Illinois And Contracts Entered Into By Unlicensed Public Adjusters Are Void.

At all times relevant in this case, there were two provisions of the Illinois Insurance Code which dealt with public adjusters -- the Public Adjusters Law, 215 ILCS 5/1501 *et seq.*, and the Public Insurance Adjusters and Registered Firms statute (hereinafter referred to as the "Public Insurance Adjusters statute"), 215 ILCS 5/512.51 *et seq*.[2] Both

[2] The Public Insurance Adjusters statute was effective at all times relevant in this case – on the date of the fire, the date of the CWFR contract, the date plaintiff filed suit, and the date the trial ruled. Therefore, it applies in this case. It has since been repealed by Pub. Act. 102-135, effective July 23, 2021, which amended a number of provisions of the Illinois Insurance Code, including 215 ILCS 5/512.51 through 5/512.64. Any change should not be applied retroactively, because the repeal of the Public Adjusters Law was a substantive change, not a procedural one. See *Perry v. Department of Financial and Professional Regulation*, 2018 IL 122349, ¶43.

require that anyone acting as a public insurance adjuster must be licensed. 215 ILCS 5/1515(a); 215 ILCS 5/512.53(a). The Public Adjusters Law provides, "A person shall not act, advertise, solicit, or hold himself out as a public adjuster or to be in the business of adjusting insurance claims in this State, nor attempt to contract for public adjusting services, unless the person is licensed as a public adjuster." 215 ILCS 5/1515(a). This provision applies to businesses as well as individuals. "A business entity acting as a public adjuster is required to obtain a public adjuster license." 215 ILCS 5/1515(c). The Public Insurance Adjusters statute also requires anyone engaged in public adjusting to be licensed. It provides as follows:

> "License Required. (a) No person may engage in the business of adjusting insurance claims, nor advertise, solicit or hold himself out to be in the business of adjusting insurance claims, solicit or hold himself out to be a Public Insurance Adjuster, nor attempt to obtain a contract for Public Adjusting services, unless licensed or registered in accordance with the provisions of this Article." 215 ILCS 5/512.53(a).

Under the Public Insurance Adjusters statute, engaging in the business of adjusting insurance claims without the required license constitutes a Class A misdemeanor. 215 ILCS 5/512.53(b). In addition, all contracts entered into by one engaged in the business of public adjusting without a license "*are void and invalid*." 215 ILCS 5/512.53(c) (emphasis added). In a similar vein, the Public Adjuster Law also provides that it is a Class A misdemeanor for anyone to violate its provisions requiring public adjusters to be licensed. 215 ILCS 5/1610. The Public Adjuster Law also states that any person who acts as a public adjuster without holding a valid and current license "is hereby declared to be *inimical to the public welfare and to constitute a public nuisance*." 215 ILCS 5/1605 (emphasis added). The Illinois Administrative Code, as authorized by 215 ILCS 5/1615, expressly

provides that contracts entered into by one engaged in public adjusting without a license are void. It states, "All contracts entered into by anyone violating section 1515 [of the Public Adjusters Law, which contains the licensing requirement] . . . are void." 50 Ill. Adm. Code 3118.35.

C. CWFR's Own Words Establish That CWFR Was Engaged In Public Adjusting Without The Required License, Making Its Contract With The Beans Void And Invalid.

CWFR contends that it was not engaged in public adjusting because it was not representing the Beans, but rather, was acting as a policyholder seeking to enforce its own rights to benefits under the policy. However, CWFR's own words contained in a series of emails it exchanged with Maurissa refute plaintiff's contention and establish that despite its protestations otherwise, CWFR's conduct amounted to public adjusting.

The Public Insurance Adjusters statute defines a public insurance adjuster as "a person engaged in the business of adjusting insurance claims who is licensed." 215 ILCS 5/512.52(b). A "person" encompasses both natural persons and business entities. 215 ILCS 5/512.52(e). "Adjusting insurance claims" is defined as "representing an insured with an insurer for compensation, and while representing that insured either negotiating values, damages, or depreciation, or applying the loss circumstances to insurance policy provisions." 215 ILCS 5/512.52(a). Compensation is defined to include, but is not limited to, the "1. any assignment of insurance proceeds; 2. any agreement to make repairs for the amount of insurance proceeds payable; or 3. assertion of any lien against insurance proceeds payable." 215 ILCS 5/512.51(d).

The Public Adjusters Law contains similar definitions. It defines a public adjuster as follows:

> "any person who, for compensation or any other thing of value on behalf of the insured:
>
> (i) acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in adjusting a claim for loss or damage covered by an insurance contract;
>
> * * *
>
> (iii) directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured." 215 ILCS 5/1510.

As in the Public Adjuster Law, a "person" is defined as both an individual and a business entity. 215 ILCS 5/1510. "'Adjusting a claim for loss or damage covered by insurance contract' means negotiating values, damages, or depreciation or applying the loss circumstances to insurance policy provisions." 215 ILCS 5/1510.

When the emails that Maurissa and CWFR exchanged between March 3, 2020, and March 11, 2020, are examined in light of these definitions, it is readily apparent that CWFR was acting as a public adjuster. It was negotiating values and damages on behalf of the Beans; it was applying the loss circumstances to insurance policy provisions; it was advising them about first party claims; and it was doing so for compensation, as defined in the law. It claimed an assignment of insurance proceeds and promised the Beans they would only be responsible for their deductible, both of which constitute "compensation" as defined in 215 ILCS 5/512.51(d).

The following are some of the statements made by CWFR in its emails to Maurissa that demonstrate that CWFR was engaged in public adjusting in connection with the Bean claim:

1) "Once the repair estimate is complete we will send a copy to you via email and submit the estimate directly to Lutheran Mutual. *We work with your insurance company to reach an agreed price on the scope so that when we do move forward with the rebuild, you are only responsible for your deductible."* (3/3/20 1:27 p.m. email) (R.C206, 270) (emphasis added).

2) "If you would like to provide us with a copy of the scope that Lutheran Mutual wrote based on their inspection of your home, we find that this tends to help expedite the agreement process as we are able to pinpoint any discrepancies and *negotiate on your behalf* to reconcile." (3/3/20 1:27 p.m. email) (R.C206, 213, 270) (emphasis added).

3) "The mitigation invoice will be finalized *** and *submitted to Luther [sic] Mutual. Any discrepancies will be negotiated by our In House Mitigation Estimator*" (3/3/20 1:55 p.m. email) (R.C205, 269) (emphasis added).

4) As for the mitigation work, "we bill after for [*sic*] the work is complete and *negotiate with the insurance company to come to a mutual agreement*. The reconstruction side (replacing anything that was removed) *is sent to insurance* prior to the rebuild work beginning. *We do this so that we are in agreement with the price and scope before the work is completed, leaving only the deductible as the out-of-pocket expense.*" (3/4/20 8:29 a.m. email) (R.C209, 266) (emphasis added).

5) "A Reconstruction Project Manager will be scheduled to meet you at your home *once the rebuild estimate is submitted and then approved by Lutheran Mutual.*" (3/4/20 2:48 a.m. email) (R.C210, 267) (emphasis added).

6) "As we discussed previously, the reconstruction estimate will be completed and sent to both you and Lutheran Mutual." (3/4/20 2:48 a.m. email) (R.C210, 267)

7) "The comparative insurance estimate has been received and forwarded to Estimator Derrick for review. ...[*H]e will then be pinpointing any major discrepancies and reaching out to adjuster Paul* [of L.J. Shaw] *to negotiate and reconcile.* (3/9/20 10:03 a.m. email) (R.C241) (emphasis added).

8) "The mitigation cost is not finalized yet but *I can tell you that if this is the answer your carrier is giving you, you might want to ask for a different adjuster or the current adjuster supervisor. LJ [Shaw]*

*doesn't seem to be handling this claim in good faith. *** [I]f LJ [Shaw] is that far apart from us, something is wrong. Perhaps ask how much your coverage limits are? If coverage limits are above our amounts, there is no reason that LJ [Shaw] shouldn't be able and willing to work with us to get to a mutual agreement. *** In the meantime, find out the coverage limits for this loss/policy coverage*." (3/10/20 8:29 a.m. email) (R.C215-16, 277-78) (emphasis added).

9) "When it comes to super specific policy details, carriers typically won't give a third party that information. *We obviously know this is a covered loss."* (3/10/20 8:29 a.m. email) (R.C215, 277) (emphasis added).

10) *"There is coverage for the loss, we just need to get to a mutual agreement with your carrier as what that amount is."* (3/11/20 4:41 p.m. email) (R.C 225) (emphasis added).

11) "[Our Mitigation Production Manager] has over 15 years of experience in this filed and holds a number of certifications. *He can explain a little more thoroughly the way insurance is supposed to work for their policy holders.*" (3/11/20 4:57 p.m. email) (R.C225).

12) "*That leaves your insurance company responsible for indemnifying you for any 'fair and reasonable' costs associated with the loss, minus the above mentioned deductible,* in order to get the home back to pre-loss condition. I put quotes on that because there are occasions where a contractor and an insurance company may have different opinions on fair and reasonable. That is generally where I, or someone on my team, come in. It's not all that uncommon for 2 people to view the same loss differently. In these instances it is standard for the adjuster to review a contractors invoice and mark a few things that he/she may consider unnecessary of 'overkill' as they say. *We would then either justify our decision and supply supporting documentation,* from our continuing education of industry norms, *or forfeit/alter those charges to come to an agreement with the adjuster."* (3/11/20 5:28 email) (R.C224, 281) (emphasis added).

13) "I have personally worked with L.J. Shaw on numerous claims and I cannot think of an instance where we couldn't come to an agreement that appeased all parties involved. I have confidence that your file will be no different. *Our office will work with the adjuster on getting our representative onsite at the same time to make this happen.*" (3/11/20 5:28 email) (R.C224, 281) (emphasis added).

These are not the words of a contractor trading for its own account. These are the words of one who was acting as a public adjuster, as defined in 215 ILCS 5/512.52(e) and 215 ILCS 5/1510. By its own words, CWFR confirmed that it was adjusting a first party insurance claim on behalf of an insured. (Nos. 1, 2, 4 and 12). It was negotiating values and claimed damages with an insurer. (Nos. 1, 2, 3, 4, 7, 10, 12 and 13). It was applying the loss circumstances to a policy and advising the insured about its insurance policy (Nos. 1, 2, 4, 7, 8, 9, 10, 11, 12, 13), (even though it did not have a copy of the policy) (R.C27). It did so in exchange for the alleged assignment of the Beans' insurance proceeds, and indicated it would do the work for the amount of the insurance proceeds and the Beans' deductible. Both constitute "compensation" or "a thing of value," under the statutes. Hence, CWFR was engaged in public adjusting.

The emails were authenticated by an affidavit from Maurissa in accordance with Illinois Supreme Court Rule 191(a) (R.C259-305, 1612-1658). It was based on her personal knowledge, set forth facts with particularity and averred that the copies attached to it were true and accurate copies of emails which were sent and received by her at the dates and times indicated on them at her email address, which was used by her exclusively (R.C259). CWFR did not challenge the affidavit in any way. It did not move to strike it. It did not provide any affidavit to controvert the authenticity of the emails. Therefore, the facts contained in her affidavit, that the emails were true and correct copies of emails she exchanged with CWFR, must be taken as true. *Raintree Homes, Inc. v. Village of Long Grove,* 209 Ill. 2d 248, 262 (2004) ("When supporting affidavits have not been challenged or contradicted by counteraffidavits or other appropriate means, the facts stated therein are deemed admitted"); *Krilich v. American National Bank and Trust Co.,* 334 Ill. App. 3d

563, 572 (2002) (If facts set forth in an affidavit supporting a motion to dismiss are not contradicted by a counteraffidavit, they will be taken as true notwithstanding contrary unsupported allegations in the complaint"); *Luciano v. Waubonsee Community College,* 245 Ill. App. 3d 1077, 1085 (1993) ("Well-alleged facts within an affidavit must be taken as true when they are not contradicted by counteraffidavits").

CWFR did submit the "Declaration" of Trevor Madera, but the Declaration did not controvert Maurissa's affidavit in any way. Instead, it simply asserted that CWFR had not been able to obtain a statement from Maurissa, but that it "suspects" that she would testify CWFR never attempted to provide public adjusting services to her (R.C849-50). A counter affidavit that is based on speculation or on information and belief, is insufficient to refute positive averments of facts made in a Rule 191 affidavit submitted in support of a motion to dismiss or motion for summary judgment. *Luciano,* 245 Ill. App. 3d at 1085 ("where the averments made in a plaintiff's affidavit are premised upon information and belief, they are insufficient as against positive averments of facts made in an opposing defendant's affidavit"). Madera's Declaration did not raise a question of fact which could have defeated the section 2-619 motions.

Eventually, in its amended response to a request to admit, CWFR admitted the emails were "true, correct, and genuine copies of email sent by CWFR to Maurissa" (R.C941, 1661). The issue of the authenticity of the emails was established by CWFR's own admission, as well as by Maurissa's uncontradicted affidavit.

CWFR does not challenge the authenticity of the emails on appeal. It does not even address them, instead simply brushing them aside as "extrinsic evidence," which it claims the trial court viewed in light most favorable to the defendants. On a section 2-619 motion,

it is proper for a party to rely on external submissions to support its motion. See, *e.g.*, *Krilich,* 334 Ill. App. 3d at 572. In fact, if the affirmative matter asserted in a section 2-619 motion is not apparent on the face of the motion, it must be supported by affidavit or other evidentiary materials. *Epstein v. Chicago Board of Education,* 178 Ill. 2d 370, 383 (1997). In this case, the defendants established that CWFR was engaged in unlicensed public adjusting through the uncontradicted affidavit of Maurissa. The burden then shifted to CWFR to establish that the defense that it was engaged in unlicensed public adjusting was unfounded or required the resolution of an essential element of material fact. *Id.* CWFR did not meet that burden here. Therefore, the trial court properly granted the motions to dismiss.

D. CWFR Waived Any Argument That It Was Not Permitted to Depose Maurissa Bean Because It Did Not Ask For Her Deposition In The Trial Court; Invited Any Error; And Waived The Argument On Appeal By Failing To Cite Any Relevant Authority.

CWFR claims on appeal that the trial court erred because it "refused to allow CWFR to depose Ms. Bean." (Appellant's Brief, p. 14). This contention is made without citation to the Record on Appeal, which is not surprising because the trial court never refused to permit CWFR to take Maurissa's deposition. This is because CWFR never sought to take her deposition in the trial court. It did not even notice it up. It is well-established that an argument raised by an appellant for the first time on appeal is waived or forfeited. *In re Shauntae P.,* 2012 IL App (1st) 112280, ¶93; *Nationwide Mutual Fire Insurance Co. v. T and N Master Builder and Renovators,* 2011 IL App (2d) 101143, ¶23; *Helping Others Maintain Environmental Standards v. Bos,* 406 Ill.App.3d 669, 695 (2010). This argument was forfeited by CWFR because it did not raise the issue in the trial court.

Nothing prevented CWFR from taking Maurissa's deposition. All of the defendants had been served and the time for them to appear had passed, so discovery could proceed under the Rules, and it did. Ill. S. Ct. R. 201(d). Discovery was ongoing and active in the case. Lutheran Mutual, L.J. Shaw and CWFR had issued each other interrogatories, requests to produce, and even requests to admit (R.C616-17, 777, 809-10, 954-66, 967-76, 977-91, 992-1001, 2136-50, 2151-63, 2201-03, 2206-08). Most had been answered, objected to or responded to in some fashion (R.C772, 779, 811-12, 2164-77, 2179-80). There had been motions about discovery and some rulings (R.C 781-831, 929, 951-1001, 2129-81). Discovery can proceed in any sequence. Ill. S. Ct. Rule 201(e). Maurissa was a party in the case and was represented by counsel. If CWFR had wanted to take her deposition, it could have done so quite easily by simply noticing it up. Ill. S. Ct. R. 201(a)(3).

Under the invited-error doctrine, a party cannot complain on appeal about an error that it brought about or participated in. *People v. Hughes,* 2015 IL 117212, ¶33; *Direct Auto Insurance Co. v. Bahena,* 2019 IL App (1st) 172918, ¶36. Accordingly, CWFR should not now be heard to complain on appeal about not having been permitted to take Maurissa's deposition, when it did not need the court's permission to take the deposition, did not even notice up her deposition., and failed to comply with Supreme Court Rule 191(b).

If a party believes that additional discovery is needed to properly respond to a section 2-619 motion, Illinois Supreme Court Rule 191(b) specifies the procedure which should be followed. "Failure to comply with Rule 191(b) defeats an objection on appeal that insufficient time for discovery was allowed." *Giannoble v. P&M Heating & Air*

Conditioning, Inc., 233 Ill. App. 3d 1051, 1064 (1992). Accord, *Olive Portfolio Alpha, LLC v. 116 West Hubbard Street, LLC*, 2017 IL App (1st) 16057, ¶23. The party must file an affidavit of a party which "contains a statement that any of the material facts which ought to appear in the affidavit are known only to persons whose affidavits affiant is unable to procure by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured and *what affiant believes they would testify to if sworn, with the reasons for his belief*." Ill. S. Ct. R. 191(b)(emphasis added),

In response to the section 2-619 motions, CWFR submitted the Declaration of Trevor Madera, in which he stated that CWFR had not had an opportunity to obtain a statement from Maurissa; that CWFR was not able to obtain Maurissa's testimony other than through a properly noticed deposition; that CWFR "suspects" that if it were to depose Maurissa, she would testify the CWFR never provided or attempted to provide public adjusting services to her; and that it "further suspects" that she would acknowledge that she never heard or saw CWFR negotiate with Lutheran Mutual or L.J. Shaw other than for its own account (R.C849-50).

Madera's Declaration does not comply with Rule 191(b). It does not affirmatively state with specificity what facts Madera believed Maurissa would testify to. Nor does it explain the reason for his belief. It simply engages in rank speculation, asserting what CWFR "suspected" Maurissa might testify to. A Rule 191(b) affidavit cannot be based on speculation. *See, Olive,* 2017 IL App (1st) 160357, ¶29 (affidavit based on speculation was insufficient under Rule 191(b)). Rule 191(b) requires assertions of facts, not conclusions. *Id*.; *Rush v. Simon & Mazian, Inc.*, 159 Ill. App. 3d 1081, 1085 (1987). Whether CWFR was acting as a public adjuster is a legal conclusion. "The affidavit must

state specifically what the affiant believes the prospective witness would testify to if sworn and reasons for the affiant's belief." *Giannoble,* 233 Ill. App. 3d at 1065. Madera's Declaration does not contain these essential requirements. CWFR's failure to comply with Rule 191(b) defeats its argument that it should have been permitted to take Maurissa's deposition.

In addition, the speculative nature of Madera's Declaration is highlighted by Maurissa's review of CWFR on the Better Business Bureau's website, which plaintiff attached to the complaint and amended complaint (R.C51, 768). In it, Maurissa said that CWFR "assured us that our insurance company would cover all costs and CWFR would deal directly with the insurance company. *** They misrepresented that insurance would cover any and all work." (R.C51, 768). Her statement comports with the emails and describes the activities of a public adjuster. Hence, Madera's "suspicion" about how Maurissa would testify is baseless.

Lastly, CWFR argues that the trial court erred by allegedly refusing to allow it to depose Maurissa without any citation to either the Record on Appeal or legal authority (CWFR brief at p. 16). Arguments raised by parties on appeal must be made with citation to authorities and to the pages of the Record relied upon. Ill. S. Ct. R. 341(h)(7). Points not argued are waived and cannot be raised in the reply brief. *Id*. Arguments inadequately presented without citation to authority or citation to the Record on Appeal are waived. *Board of Managers of Eleventh Street Loftominium Ass'n v. Wabash Loftominium, L.L.C.,* 376 Ill. App. 3d 185, 188 (2007); *Vernon Hills III Ltd. Partnership v. St. Paul Fire and Marine Insurance Co.*, 287 Ill. App. 3d 303, 311 (1997); *Holmstom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). Here CWFR's argument that the trial court committed reversible error

by supposedly refusing to permit it to take Maurissa's deposition has been waived because it was made without citation to the record or pertinent authority.

E. The Alleged Assignment Was Void And Unenforceable Because It Was Part Of A Void Contract.

CWFR claims it was not a public adjuster because it was not acting on behalf of the Beans, but rather on its own behalf pursuant to an alleged assignment of rights that was part of the void contract. This circuitous argument fails because case law establishes that contracts for the performance of an act which violates a statute designed for the protection of the public, are void and incapable of enforcement. Because CWFR's contract was void, any claimed assignment contained in the contract was also void.

"'In Illinois when a statute declares that it shall be unlawful to perform an act and imposes a penalty for its violation, contracts for the performance of an act are void and incapable of enforcement.'" *Aste v. Metropolitan Life Insurance Co.* 312 Ill. App. 3d 972, 980 (2000) (quoting *Broverman v. City of Taylorville,* 64 Ill. App. 3d 522, 526 (1978)). Where legislation was enacted for the protection of the public, courts generally will not enforce a contract involving a party who does not have a license called for by the legislation. *Id.* The court, in *Aste,* applied this principle to void an arbitration clause in a customer profile, deemed to constitute a solicitation of an offer to purchase securities, created by a salesperson who was not licensed to sell securities as required by the Illinois Securities Law of 1953. The court concluded that the statute was designed for the protection of the public and reflected a strong public policy. *Id.* at 981.

In the instant case, it is not only unlawful under both the Public Adjusters Law and the Public Insurance Adjusters statute for one to engage in public adjusting without a

license, but it also constitutes a Class A misdemeanor. 215 ILCS 5/1610; 215 ILCS 5/512.53(b). The statutes are designed to protect the public, protections which the Beans were not afforded because CWFR was not licensed as a public adjuster.

The statutes require public adjusters to undergo a written examination regarding their duties and responsibilities, as well as insurance laws and regulations. 215 ILCS 5/1530. Continuing education is mandatory. 215 ILCS 5/1565. They have to maintain a security bond or irrevocable letter of credit. 215 ILCS 5/1560. They cannot have a financial interest in any aspect of the claim; acquire any interest in the salvage; refer work to a person with whom they have a financial interest; or permit an unlicensed person to do license work. 215 ILCS 5/1590(c),(d)&(e). They have to give the Department of Insurance access to their books, if requested. 215 ILCS 5/1600. They are required to serve with objectivity and complete loyalty to best serve the interests of their client. 215 ILCS 5/1590(a). The amount they can charge for a fire loss is capped. 215 ILCS 5/1570. If they refer a client to a contractor or vendor, they must present them with at least two good faith competitive bids for the work. 50 Ill. Admin. Code 3118.90(a). Their contracts have to be in writing on a form filed with and approved by the Department, and must specify the services they are to perform and the full fee they are to receive. 215 ILCS 5/1575(a)(7),(11) &(j). They cannot provide services until the written contract has been signed. 215 ILCS 5/1575(j). Before the client signs the contract, the public adjuster must give them a disclosure document regarding the claims process, and written notice of their rights as consumers. 215 ILCS 5/1575(f)&(i). There are limits on when they can contact a client, both in relation to the loss-producing event and the time of day. 215 ILCS 5/1590(b). They

cannot provide legal advice or settle a claim without the knowledge and consent of the client. 215 ILCS 5/1590(k)&(l).

These provisions reflect a strong public policy requiring public adjusters to be licensed so as to protect the public. This public policy is stated directly in the statutes themselves: "Any person who acts as or holds himself out to be a public adjuster without holding a valid and current license to do so is hereby declared to be inimical to the public welfare and to constitute a public nuisance." 215 ILCS 5/1605. Therefore, CWFR's entire contract with the Beans, including the purported assignment, should not be enforced, because CWFR does not have the license required by legislation designed to protect the public.

While there are no Illinois cases that deal with the validity of an assignment contained in a contract of one who is acting as an unlicensed public adjuster, decisions from other states, which employ similar statutory schemes, have addressed the issue. It is appropriate to look to decisions from other states for guidance where there is no Illinois case on point. *People v. Holt*, 2013 IL App (2d) 120476 ¶*10; Rhone v. First American Title Insurance Co.*, 401 Ill. App. 3d 802, 812 (2010); *Carroll v. Curry*, 392 Ill. App. 3d 511, 517 (2005). Although not binding precedent, they are persuasive authority entitled to respect. *Kostal v. Pinkus Dermatopathology Laboratory, P. C.*, 357 Ill. App. 3d 381, 395 (2005). Accord, *Carroll*, 392 Ill. App. 3d at 517.

45 states have statutes requiring public adjusters to be licensed. *33 Carpenters Construction, Inc. v. State Farm Life and Casualty Co*., 939 N.W.2d 69, 77 (Iowa 2020) (citing Thompson Reuters, *Public Adjusters: Licensing and Education Requirements*, 0110 Surveys 76 (Dec. 2018)). The purpose of such statutes is to protect policyholders and

insurers from unscrupulous practices which often occur after catastrophes, such as fires, when the insured and insurer are vulnerable to exploitation. *State Farm, Id.* As explained by the Iowa Supreme Court:

> "The goal of the licensing statutes is to 'curtail unethical and abusive practices' by public adjusters who 'present[] danger to the public by "chasing fires" and soliciting clients under conditions of duress.' *Building Permit Consultants, Inc.v. Mazur,* 122 Cal.App.4th 1400, 19 Cal. Rptr. 3d 562, 570 (2004). The unethical practices include 'price gouging[,] ... collusion[,] ... high-pressure sales tactics, fraud, and incompetence.' *Id.* at 571. Homeowners and their insurers are especially vulnerable to exploitation 'in the wake of earthquakes, fires, floods and similar catastrophes.' *Id.* A recent report by the Insurance Information Institute concluded,
>
> > In Florida abuse of [assignment of benefits contracts (AOBs)] has fueled an insurance crisis. The state's legal environment has encouraged vendors and their attorneys to solicit unwarranted AOBs from tens of thousands of Floridians, conduct unnecessary or unnecessarily expensive work, then file thousands of lawsuits against insurance companies that deny or dispute the claims. This mini-industry has cost consumers billions of dollars as they are forced to pay higher premiums to cover needless repairs and excessive legal fees. And consumers often do not even know that their claims are driving these cost increases.
> >
> > The abuse therefore acts somewhat like a hidden tax on consumers, helping to increase what are already some of the highest insurance premiums in the country." *State Farm,* 939 N.W.2d at 77-78 (Citation omitted.)

The Iowa Supreme Court recently issued three decisions holding that the post loss assignment of insurance benefits by a homeowner to a residential contractor was void where the contractor was acting as an unlicensed public adjuster. *State Farm,* 939 N.W.2d at 77; *33 Carpenters Construction, Inc. v. Cincinnati Insurance Co.,* 939 N.W.2d 82 (Iowa 2020); *33 Carpenters Construction, Inc. v. IMT Insurance Co.,* 939 N.W.2d 95 (Iowa 2020). In *State Farm,* the Iowa Supreme Court found that contracts entered into by a

residential contractor acting as an unlicensed public adjuster were void under Iowa statutes. 939 N.W.2d at 80. The court reviewed the contractor's actions and concluded they directly aligned with the statutory definition of a public adjuster. *Id*.

Iowa law defined a public adjuster as:

> " 'Any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:
>
> *a.* Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.
>
> * * *
>
> *c.* Directly or indirectly soliciting business investigating or adjusting losses or advising an insured about first-party claims for loss or damage to real or personal property of the insured.' "

Id. at 79 (citing Iowa Code § 522C.2(7)). A "person" is defined as either an individual or a business entity. Iowa Code § 522C.2(6). These definitions are similar to Illinois' definitions of a public adjuster. 215 ILCS 5/512.52(a), (b) & (e); 215 ILCS 5/1510. The contractor approached the homeowners offering to inspect their home and found hail damage to the roof and siding. It directed the homeowners to file a claim for the damage; attended the inspection of the property by the insurer's adjusters; and had them sign documents agreeing to pay it the proceeds from their insurance in exchange for it repairing the damage.

The Court found that these activities demonstrated that the contractor was acting on behalf of the insureds; was aiding the insureds in negotiating their claim to effect a settlement; and was advising the insureds about first party claims for damage to real property. *Id*. at 81. The Court also observed that the contractor's conduct was consistent with the description it posted on its website regarding the process which would be followed.

It said in part, "We will meet personally with your insurance adjuster, as an ADVOCATE on YOUR behalf, and discuss the work that needs to be completed to repair your home to its original beauty and value." *Id*. at 74 (emphasis in original). The Court concluded that the process described and followed exemplified the solicitation of a business investigating losses and advising insureds regarding claims. All of this made the contractor an unlicensed public adjuster, and the assignment unenforceable and void. *Id*. at 81.

The description the contractor posted on its website of the process it would follow is similar to the response that CWFR posted on the Better Business Bureau's website to Maurissa's review of it. CWFR described its activities as follows:

> *"Our Project Managers are trained to identify whether losses are covered by insurance policies. Your loss was a "covered loss." That your insurance carrier failed to pay for your loss according to the policy*, or to provide funds appropriately, is not something within our control. *However, as I believe we have demonstrated, we advocated for you to receive the coverage you paid for.*
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> * * *
>
> *As a policy holder you have the right to choose your own vendor.* If an insurance company refuses to work with your chosen contractor to indemnify you, that is highly problematic. *After your adjuster refused to work with us, we had our attorney send your adjuster and your insurance carrier a demand letter. (This is a great example of how we were advocating for you.)"* (R.C1177-78, 1783-84) (emphasis added).

Like the contractor's post in *State Farm*, these statements describe a contractor adjusting a homeowner's claim on behalf of the insured by negotiating values with the insurer and applying the loss circumstance to the policy. They even claimed they were advocating on behalf of the insured – twice. In other words, it aligns with the definition of a public adjuster as defined by statute. Like the contractor in *State Farm,* CWFR was not licensed as a public adjuster. Under Illinois law, like Iowa law, the assignment and contract signed by the Beans was void and unenforceable.

In *33 Carpenters Construction, Inc. v. Cincinnati Insurance Co.*, 939 N.W.2d 82 (Iowa 2020), the lower courts examined the contractor's activities and determined that they aligned with the statutory definition of a public adjuster in that it was acting for and aiding the homeowner in negotiating for and attempting to settle the homeowner's first-party insurance claim. *Id*. at 84-85. Therefore, the courts found that the assignment of claims and benefits that the homeowner signed was invalid. *Id*. The Iowa Supreme Court affirmed finding that the homeowner's assignment of its claim to the contractor was void and unenforceable under Iowa statutes and rejected the contention that only the Iowa Insurance Commissioner could enforce the licensing requirements for public adjusters. *Id*. at 84-85.

In *33 Carpenters Construction, Inc. v. IMT Insurance Co.*, 939 N.W. 2d 95 (Iowa 2020), the trial court found that the same contractor was acting as an unlicensed public adjuster by acting for or aiding the homeowner in negotiating for or effecting the settlement with a homeowner's insurer of the first party claim of the homeowner. *Id*. at 97. The Supreme Court affirmed the finding, holding that the assignment of claim and benefits signed by the homeowner was void and unenforceable because the contractor was acting as an unlicensed public adjuster. The court also rejected the argument that the Iowa Insurance Commissioner had the sole authority to enforce the licensing requirements. *Id.*

The analysis of the Iowa cases supports the trial court's conclusion here that an assignment of insurance benefits contained in the contract of a contractor who is acting as an unlicensed public adjuster is void. The assignment does not make the conduct of the contractor the actions of one pursuing its own claim under the policy. Instead, what matters is the actual actions of the contractor. Here, the unrefuted emails conclusively establish that CWFR was negotiating values and damages with the insurer on behalf of the Beans;

was advising the Beans about their policy; and was applying the loss circumstance to the policy. The emails irrefutably show CWFR it was working with the Beans, bringing them into the loop on the negotiations with the insurer and telling them how to approach their carrier, not just pursuing a claim on its own behalf. It even admitted in the posting on the Better Business Bureau website that it had advocated on behalf of the Beans (R.C 1177-78). All of this constituted unlicensed public adjusting, which made *the entire* contract entered into with the Beans, including the alleged assignment, void and invalid. 215 ILCS 5/512.53(c).

CWFR's arguments imply an "either/or" proposition – either CWFR was a contractor or it was a public adjuster. But this is a logical fallacy, called a false dilemma fallacy, because the two options offered are not the only possibilities. As recognized by the cases discussed above, the problem is that contractors are crossing over into public adjusting without being properly licensed. Just because they do contractor work does not mean they are not also acting as unlicensed public adjusters. As the Iowa Supreme Court recognized, the abuse of assignments of benefits by contractors engaged in unlicensed public adjusting is one of the reasons that 45 states have enacted statutes requiring public adjusters to be licensed. *State Farm,* 939 N.W.2d at 77-78. What matters is what the contractor does. Here, the unrefuted emails established that CWFR's actions align squarely with the definition of a public adjuster. The purported assignment does not change the character of CWFR's conduct. The assignment, along with the rest of the CWFR contract, was void and unenforceable.

CWFR's contention that it was not acting as a public adjuster under the applicable statutes because otherwise the law's provisions would apply to autobody shops, mechanics,

dentists, hospitals, attorneys and general contractors, which it calls an absurd result, ignores the provisions of the statute itself. The Public Adjusters Law applies to claims for loss or damage arising under policies that insure real or personal property. 215 ILCS 5/1510. By its own terms, it does not apply to medical insurance. In addition, by its own terms, health care providers and attorneys are expressly exempt from the licensing requirements. 215 ILCS 5/1515(d)(1) & (4); 215 ILCS 5/512.53(a). Autobody shops and mechanics often have contracts with insurers so their situation is not analogous to CWFR. General contractors who engage in public adjusting do fall within the purview of the statute. Indeed, as noted above, contractors' abuse of assignments of benefits is one of the problems the licensing requirements were intended to address. *State Farm*, 939 N.W.2d at 77-78.

F. The Trial Court Did Not Ignore Evidence Supporting CWFR's Contention That It Was Not Acting As A Public Adjuster.

CWFR's claim that the trial ignored documents that establish that CWFR was not acting as a public adjuster fails because it is not supported by the Record and is unpersuasive. CWFR cites R.C1480 and C1630 in support of its contention, alleging the emails on these pages show CWFR declined to handle a claim for "small things" which it claims demonstrates CWFR was not acting as a public adjuster. However, neither page contains documents which establish CWFR was not acting as a public adjuster.

Page C1480 contains an email exchange on March 4, 2020, between CWFR and Maurissa, in which in response to an inquiry from Maurissa about "small things," like replacing food and paying for dry cleaning, CWFR told Maurissa that she needed to talk to her insurance carrier directly about that. CWFR advised her that, "Those costs would most likely be separate. They might ask you for receipts and then reimburse you, however,

all carriers are different so I would reach out to them and ask what your coverages are for those items and the process." (R.C1480). This exchange does not disprove a public adjusting relationship; it establishes it. CWFR was advising Maurissa, an insured, about how to handle a first party claim for spoiled food and dry cleaning. Such conduct falls squarely within the definition of public adjusting.

Page C1630 contains a March 10, 2020, email in which CWFR says that, "When it comes to super specific policy details, carriers typically won't give a third party that information. We obviously know that this is a covered loss." (R.C1630). As with the March 4, 2020, email, CWFR was advising an insured about a first party insurance claim for damages and applying the loss circumstances to the policy. Such conduct constitutes public adjusting as defined by statute. This conduct further supports the trial court's conclusion that CWFR was acting as an unlicensed public adjuster.

CWFR also claims that the trial court ignored that it received partial payment. This argument is made without citation to authority. CWFR just cites a page of the amended complaint where it alleges that Matthew paid it in part (R.680). Merely referring to unsubstantiated allegations of a complaint is insufficient to counter an affidavit compliant with Ill. S. Ct. R. 191(a) on a section 2-619 motion. See *e.g., Krilich v. American National Bank and Trust Co.*, 334 Ill. App. 3d 563, 572 (2002). More importantly, Lutheran Mutual had a contractual obligation under the insurance policy it had with Matthew to adjust the loss and make a payment to the insured (R.C467), independent of the invalidity of the Beans' contract with CWFR. If Matthew, in turn, conveyed the payment to CWFR, that does not overcome the numerous unrefuted emails which establish that CWFR was adjusting a claim. In addition, in *33 Carpenters Construction, Inc. v. State Farm Life and*

Casualty Co., 939 N.W.2d 69 (Iowa 2020), although the insurer had paid the contractor's claim in part, *Id.* at 773, the Iowa Supreme Court still found the contractor to be engaged in unlicensed public adjusting, which is what CWFR was doing in the instant case.

III. ALL CAUSES OF ACTION AGAINST LUTHERAN MUTUAL AND L.J. SHAW FAIL BECAUSE THERE WAS NO VALID CONTRACT BETWEEN THE BEANS AND CWFR.

A. The Breach Of Contract Claim Fails Because The Contract Between The Beans And CWFR Was Void And Invalid.

Count IV of the amended complaint alleges a breach of contract action against Lutheran Mutual (R. C682-83). CWFR claims that its contract with the Beans contained a valid assignment of benefits of Matthew's rights under the policy, such that CWFR became a third-party beneficiary under the policy (R.C682). It alleges that Lutheran Mutual breached the policy by refusing to pay CWFR the full amount of the claim it allegedly submitted (R.C683). Although CWFR's brief does not address the dismissal of Count IV separately, Lutheran Mutual will do so for clarity.

The breach of contract action hinges on the alleged assignment, which is part of the contract with the Beans that is void under 215 ILCS 5/512.53(c) and 50 Ill. Adm. Code 3118.35. Therefore, like the rest of the contract, it is void and invalid. Without the assignment, CWFR cannot maintain a breach of contract action against Lutheran Mutual. Therefore, the trial court correctly dismissed Count IV of the amended complaint.

However, assuming *arguendo* that the assignment was not void, the purported assignment does not convey all of the Beans' rights to benefits under the policy such that it became a third-party beneficiary under the policy as alleged in the amended complaint. The language that CWF contends constitutes the assignment is the following:

> "Insurance Matters and Direct Pay Authorization: The Xactimate Invoice will be submitted by CWAFR or Customer to the insurer of the Customer. Customer will assign all rights and benefits to its insurance payments for the loss to CWAFR in order to expedite payments and fulfillment of this Contract." (R.C692).

Assignments are governed by contract law and reviewed *de novo*. *Cincinnati Insurance Co. v. American Hardware Manufacturers Ass'n,* 387 Ill. App. 3d 85, 99 (2008). Although no particular form is required, an assignment must describe the subject matter of the assignment with sufficient particularity to render it capable of identification. *Id.* An assignment can transfer the whole or part of something. *Id.* In this case, the language cited by CWFR does not actually transfer any interest in Matthew's insurance policy. It simply says Maurissa *will* assign her rights and benefits to their insurance *payments* to CWFR in order to expedite payments (R.C692). "Will" means something to be done in the future, not something being done right then. Also, the interest that it says Maurissa will assign is not all of the Beans' rights under the policy. It says Maurissa will assign her rights to payments under the policy. Essentially, the quoted language authorizes direct payment of proceeds under the policy to CWFR, as the section is entitled. Hence, the purported assignment does not make CWFR a third-party beneficiary under the policy, as alleged in the amended complaint.

In contrast, the assignment in *Dr. Charles W. Smith III, Ltd. v. Connecticut General Life Insurance Co.*, 122 Ill. App. 3d 725 (1984), the case CWFR relies on, positively authorizes payment to another at that point in time. In provides, "AUTHORIZATION TO PAY DENTIST--I hereby authorize payment directly to the below named Dentist of the Group Insurance Benefits otherwise payable to me." *Id.* at 726 (capitalization in original). This is very different language than what is included in the CWFR contract. It actively

conveys the right to payment to the dentist; it did not say it will convey an interest at some point in the future. *Smith* is distinguishable in other ways. In *Smith*, the court did not conclude that the Authorization constituted a valid assignment of rights under the policy. It specifically declined to address the issue. *Id*. at 728. The Authorization was a preprinted form prepared by the insurer and distributed by it to be used to facilitate the distribution of the insureds' benefits to third parties who provide dental services to its insureds. The court noted that "a contract will be construed most strongly against the preparer." *Id*. at 728. The language the insurer chose to use was unambiguous and without conditions. Therefore, the court found that "under the facts and circumstances of this case, we conclude that defendant is estopped from attacking the validity of its own form." *Id*. at 729. See also, *Robert S. Pinzur. Ltd. v. The Hartford*, 158 Ill. App. 3d 871, 878 (1987) ("in *Smith* an assignment was found by estoppel rather than on the basis that the direct payment language, *per se,* created an assignment").

Here, the language in question was drafted by CWFR, not Lutheran Mutual or the Beans. Therefore, under *Smith*, it should be interpreted against CWFR. It does not clearly convey the Beans' rights under their insurance policy to CWFR; it only says that at some time in the future, it will convey its rights to payment to CWFR, not all of its rights under the policy. If CWFR wanted the Beans to convey to it all of their rights under their homeowner's policy to them, it should have used language that said so.

CWFR also argues that the purported assignment was valid even though Lutheran Mutual did not consent to it. This is a straw man argument, because the trial court did not base its decision on the issue at all. While Lutheran Mutual initially raised it in its motion to dismiss, it did not pursue the argument and did not mention it in oral argument on the

motions. As the report of proceedings from the December 10, 2020, argument on the motions (Sup.R.4-46) and from the January 5, 2021, hearing at which the trial court rendered its opinion (Sup.R.61-75), clearly establish, the argument did not impact the trial court's decision to dismiss Counts I through VII of the amended complaint in any way.

B. The Bad Faith Claim Against Lutheran Mutual Fails Because The Contract Between the Beans and CWFR Was Void, And Even If It Were Not, It Did Not Contain A Valid Assignment Of All Of The Beans' Rights Under The Policy.

Count V of the amended complaint asserts a claim against Lutheran Mutual for bad faith under 215 ILCS 5/155 (R.C683-84). Section 155 of the Insurance Code provides an extracontractual remedy to policyholders if their insurers' refusal to settle or pay a claim under a policy is unreasonable and vexatious. *Cramer v. Insurance Exchange Agency*, 174 Ill.2d 513, 519 (1996). The remedy "extends only to the party insured...and policy assignees." *Yassin v. Certified Grocers of Illinois, Inc.*, 133 Ill.2d 458, 466 (1990) (citations omitted). Accord, *Statewide Insurance Co. v. Houston General Insurance Co.*, 397 Ill. App. 3d 410, 426 (2009). It does not extend to third parties. *Yassin*, 133 Ill. 2d at 466; *Statewide*, 397 Ill. App. 3d at 426; *Stamps v. Caldwell*, 133 Ill. App. 2d 524, 528 (1971).

In the amended complaint, CWFR alleges it was an assignee of the Lutheran Mutual policy issued to Matthew (R.C683). However, as discussed above, the alleged assignment is void and unenforceable, like the rest of the contract with the Beans, because CWFR was engaged in public adjusting without the required license. 215 ILCS 5/512.53(c). Also as discussed above, even if the assignment was not void, it did not convey to CWFR all of the Beans' rights under the policy, such that CWFR succeeded to the same position as the

Beans under the policy. At best, the assignment was just an authorization for direct payment. Without an assignment of benefits that made CWFR an assignee who succeeded to the same position as the insured, CWFR was just a third party, and, as such, was not entitled to recovery under section 155. *Yassin*; 133 Ill. 2d at 466; *Statewide*, 397 Ill. App. 3d at 426; *Stamps,* 133 Ill. App. 2d at 528. Therefore, the trial court correctly dismissed Count V of the Amended Complaint.

C. The Claims Against L.J. Shaw For Tortious Interference With A Business Expectancy And For Tortious Interference With A Contract Both Fail Because CWFR's Contract With The Beans Was Void And Invalid.

Counts VI and VII of the amended complaint were directed against L.J. Shaw (R.C684-85). Count VI alleged tortious interference with a prospective business advantage (R.C684). Count VII alleged tortious interference with a contract (R.C685). The elements of a cause of action for tortious interference with a prospective business advantage are (1) plaintiff's reasonable expectation of entering into a valid business relationship; (2) defendant's knowledge of plaintiff's expectancy; (3) purposeful or intentional interference by defendant which prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to plaintiff as a result of such interference. *Soderlund Brothers, Inc. v. Carrier Corp*., 278 Ill. App. 3d 606, 615 (1996). In this instant case, CWFR cannot meet the first element of the cause of action. As discussed above, CWFR's contract with the Beans was void and invalid because CWFR was engaged in unlicensed public adjusting. 215 ILCS 5/512.53(c); 50 Ill. Adm. Code 3118.35. Furthermore, the contract was "inimical to the public welfare" and "a public nuisance." 215 ILCS 5/1605. One who engages in public adjusting without the required

license, is guilty of a Class A misdemeanor. 215 ILCS 5/512.53(b); 215 ILCS 5/1610. One cannot have a reasonable expectation of entering into a valid business relationship where the expectation is based on a void contract that is inimical to the public welfare, and encompasses activity that is criminal. Therefore, the trial court properly dismissed Count VI of the amended complaint.

The elements of an action for intentional interference with a contract are (1) the existence of a valid, enforceable contract between plaintiff and another; (2) defendant's awareness of this contract; (3) defendant's intentional and unjustified inducement of a breach of contract; (4) a subsequent breach by the other caused by defendant's wrongful conduct; and (5) damages resulting from the breach. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill.2d 145, 154-55 (1989); *Strosberg v. Brauvin Realty Services, Inc.*., 295 Ill. App. 3d 17, 32 (1998); *Leahy Realty Corp. v. American Snack Foods Corp.*, 253 Ill. App. 3d 233, 249 (1993). Again, CWFR cannot meet the first element of the cause of action, because it does not have a valid and enforceable contract with the Beans. As established above, CWFR's contract with the Beans is void and invalid. 215 ILCS 5/512.53(c); 50 Ill. Adm. Code 3118.35. Therefore, the trial court properly dismissed Count VII of the amended complaint.

IV. LUTHERAN MUTUAL AND L.J. SHAW DO NOT ADDRESS THE DISMISSAL OF COUNTS I THROUGH III BECAUSE THEY DO NOT PERTAIN TO THEM.

CWFR's arguments in sections B4 and B7 of Appellant's Brief pertain to Count I (the mechanic's lien action) and Count III (the *quantum meruit* action) of the amended complaint. (It appears that CWFR did not separately address Count II, the breach of contract action against Matthew and Maurissa.) Lutheran Mutual and/or L.J. Shaw do not

address these arguments because these counts are not directed against them. However, to the extent that any assertions contained in these arguments could be interpreted to impact the actions against them, Lutheran Mutual and L.J. Shaw adopt the arguments of Matthew and Maurissa Bean contained in their appellate brief.

CONCLUSION

For the reasons set forth above, Appellees Lutheran Mutual and L.J. Shaw respectfully request that this Court affirm the decision of the trial court dismissing Counts I through VII of the Amended Complaint with prejudice.

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Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341 (a) and (b). The length of this brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) Statement of Points and Authorities, the Rule 341 (c) Certificate of Compliance, the Certificate of Service, and those matters to be appended to the brief under Rule 342 (a) is 13,636 words and 44 pages.

Janella L. Barbrow
Attorney for Defendants/Appellees
Lutheran Mutual Fire Insurance
Company and L.J. Shaw & Company

Subscribed and sworn to before me
this 11th day of August, 2021

Sarah Oliver

OFFICIAL SEAL
SARAH OLIVER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:05/23/23

No. 2-21-0043
IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

POWER DRY OF CHICAGO, INC., d/b/a CHICAGO WATER AND FIRE RESTORATION *Plaintiff-Appellant* **v. MATTHEW BEAN; MAURISSA BEAN; RAYMOND D. BEAN; LUTHERAN MUTUAL FIRE INSURANCE COMPANY; L.J. SHAW & COMPANY; CALIBER HOME LOANS, INC.; AND UNKNOWN NECESSARY PARTIES,** *Defendants-Appellees.*	)	Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois No. 2020 CH 00250 The Honorable James J. Murphy, Judge Presiding

NOTICE OF FILING

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PLEASE TAKE NOTICE that on **August 11, 2021**, the undersigned submitted for e-filing with the Clerk of the Appellate Court in the above-captioned matter the **Brief of Defendants/Appellees Lutheran Mutual Fire Insurance Company and L.J. Shaw & Company and this Notice of Filing**, copies of which are attached hereto and herewith served upon you.

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CERTIFICATE OF SERVICE

The undersigned, Janella L. Barbrow, certifies, pursuant to Section 1-109 of the Code of Civil Procedure, that she emailed a copy of the **Brief of Defendants/Appellees Lutheran Mutual Fire Insurance Company and L.J. Shaw & Company and this Notice of Filing** to the attorneys listed above at the email addresses listed above on **August 11, 2021** before 5:00 p.m.

Janella L. Barbrow

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Janella L. Barbrow