

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Steve Foley Cadillac, Inc.
d/b/a Steve Foley Cadillac,
Bentley of Northbrook, Steve
Foley Rolls Royce, Rolls
Royce Motor Cars Chicago;
Napleton's Auto Werks, Inc.,
d/b/a Napleton's Audi,
Napleton's Honda, Napleton
Mercedes Benz; Napleton
6677, Inc. d/b/a Land Rover
Rockford, Jaguar Rockford;
and Napleton Motor Corp.
d/b/a Napleton Porsche,
Napleton Subaru,

Plaintiffs,

v.

New York Marine and Gen-
eral Insurance Company,
and Corkill Insurance Agen-
cy, Inc.,

Defendants.

No. 20-L-6774

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Judge Jerry A. Esrig

ORDER

New York Marine and General Insurance Company ("New York Marine") moves under 735 ILCS 5/2-615 to dismiss, with prejudice, the complaint filed by the plaintiffs named above. For the reasons below, the motion is granted.

I.

A section 2-615 motion to dismiss attacks the sufficiency of a complaint and raises the question of whether a complaint states a cause of action upon which relief can be granted. *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). All well-pleaded facts must be taken as true and any inferences should be drawn in favor of the non-movant. 735 ILCS 5/2-615; *Hammond v. S.I. Boo, LLC*, 386 Ill. App. 3d 906, 908 (1st Dist. 2008). Plaintiffs are not required to prove their case at the

pleading stage; they are merely required to allege sufficient facts to state all elements which are necessary to constitute each cause of action in their complaint. *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (1st Dist. 2007). A section 2-615 motion should not be granted unless no set of facts could be proved that would entitle the plaintiff to relief. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

II.

Plaintiffs are Illinois corporations in the business of selling and repairing automobiles.¹ Defendant New York Marine is a New York company in the business of selling commercial property insurance to Illinois businesses such as plaintiffs. Plaintiffs are insured by New York Marine under two policies. The first policy was issued to the first four plaintiffs (“Foley plaintiffs”) and the second was issued to the last three plaintiffs (“Napleton plaintiffs”). The policies provide identical coverage.

In support of their complaint, plaintiffs allege the following:

As of March 9, 2020, plaintiffs sustained physical damage to insured property and business income losses caused by the COVID-19 pandemic and related governmental orders.² Specifically, after one of plaintiffs’ executive officers, among others, became infected with, and spread the COVID-19 virus at plaintiffs’ businesses, the presence of COVID-19 virus molecules in plaintiffs’ insured properties caused direct physical damage to the air quality, surfaces, personnel, services, and interests of plaintiffs. Such damage, in conjunction with Governor Pritzker’s Executive Orders, forced plaintiffs to restrict, slowdown, or cease ordinary business activities, causing (1) a loss of business income, (2) a substantial amount of plaintiffs’ labor force being furloughed, (3) a substantial amount of plaintiffs’ contracts with its labor forces being suspended or cancelled, and (4) an increase in expenses to continue business operations.

Plaintiffs claim they are entitled to coverage for their losses pursuant to the policies issued to them by defendant and bring three counts for New York Marine’s failure to issue such coverage: Count I (Declaratory Judgment), Count II (Breach of

¹ For the purposes of the motion, the court takes as true the well-pleaded allegations of the complaint to the extent they are not contradicted by any exhibits attached thereto. *Bd. of Managers v. Pasquinelli, Inc.*, 354 Ill. App. 3d 749, 759 (1st Dist. 2004).

² The court takes judicial notice of the COVID-19 pandemic and related governmental orders issued by Governor J.B. Pritzker.

