

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MARK FREEDMAN,

Plaintiff,

v.

AMERICAN ACADEMY OF ACTUARIES,
THOMAS TERRY, CASUALTY ACTUARY
SOCIETY, and WAYNE FISHER,

Defendants.

Case No. 14 CH 19600

Judge Peter Flynn

MOTION TO DISMISS THE COMPLAINT PURSUANT TO 735 ILCS 5/2-619.1

Defendants American Academy of Actuaries and Thomas Terry move this Court for an order dismissing Counts I, II, and IV of Plaintiff Mark Freedman's Complaint ("Freedman") with prejudice pursuant to 735 ILCS 5/2-619.1. Count I (Breach of Contract) and Count II (Declaratory Judgment) must be dismissed under 735 ILCS 5/2-615 and Count IV (Defamation Per Se) must be dismissed under both 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(9). In support of this motion, Defendants incorporate their combined memorandum of law and further state as follows:

I. Motion to Dismiss Pursuant to 735 ILCS 5/2-615.

1. Counts I and II of Freedman's Complaint are barred because Freedman has failed to exhaust the internal remedies provided in the Academy's disciplinary processes;

2. Counts I and II do not state a claim for relief because the well-pleaded factual allegations of Freedman's Complaint do not allege that the Academy and Terry have breached any contract, bylaw or procedural rule in the Actuarial Board of Counseling and Discipline's consideration of professional disciplinary complaints filed against Freedman.

3. Count IV of Freedman's Complaint fails to state a claim of defamation per se against Defendant Terry because the well-pleaded factual allegations of Freedman's Complaint do not allege that the challenged statements are defamatory on their face.

4. Count IV of Freedman's Complaint fails to state a claim of defamation per se against Defendant Terry because the well-pleaded factual allegations of Freedman's Complaint establish that the challenged statements are not defamatory per se under the "innocent construction" doctrine.

5. The reasons for the motion under section 2-615 are set forth more fully in the attached Memorandum in Support of the Motion to Dismiss of Defendants American Academy of Actuaries and Thomas Terry and the exhibits attached thereto.

II. Motion to Dismiss Pursuant to 735 ILCS 5/2-619(a)(9).

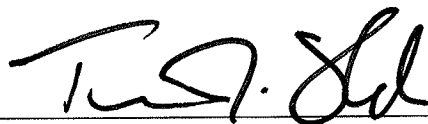
1. In addition, pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(9), Defendant Thomas Terry moves this Court for an order dismissing Count IV (Defamation Per Se) of Freedman's Complaint with prejudice. The reasons for this motion under Section 2-619 are as follows:

2. Damages claims against Terry are barred by Section 108.70(a) of the Illinois General Not for Profit Corporation Act, 805 ILCS 105/108.70(a).

3. The reasons for the motion under section 2-619(a)(9) are set forth more fully in the attached Memorandum in Support of the Motion to Dismiss of Defendants American Academy of Actuaries and Thomas Terry and the exhibits attached thereto.

WHEREFORE, Defendants respectfully request that the Court grant this motion and dismiss Counts I, II, and IV of Plaintiff's Complaint with prejudice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Defendants Combined Motion To Dismiss American Academy Of Actuaries And Thomas Terry's Complaint** was served upon:

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via U.S. Mail, proper postage prepaid, and Electronic Mail before the hour of 5:00 p.m. this 14th day of January 2015, from the law offices of FREEBORN & PETERS LLP, 311 S. Wacker, Suite 3000, Chicago, Illinois 60606.

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 Certificate of Service are true and accurate.

