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

ANN GILLESPIE, ILLINOIS DIRECTOR OF INSURANCE, IN HER OFFICIAL CAPACITY,

PLAINTIFF,

V.

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STATE FARM GENERAL INSURANCE COMPANY, AND OGLESBY REINSURANCE COMPANY,

DEFENDANTS.

NO. 2025CH10454

HONORABLE THOMAS M. DONNELLY

COURTROOM 2510

MEMORANDUM OPINION AND ORDER

Ann Gillespie, Illinois Director of Insurance, ("Gillespie") moves to strike the affirmative defenses of State Farm Fire and Casualty Insurance Company, State Farm Mutual Automobile Insurance Company, State Farm General Insurance Company, and Oglesby Reinsurance Company (collectively "State Farm"). State Farm moves for a continuance to obtain discovery pursuant to Rule 191(b). The court grants in part Gillespie's motion to strike State Farm's affirmative defenses and denies State Farm's motion discovery pursuant to Rule 191(b).

Background

Gillespie moves to strike State Farm's affirmative defenses. She moves to strike the first, third, and ninth defenses because they attack the complaint and do not state affirmative matter. She argues that the second, fifth, sixth, seventh, eighth, and tenth plead no facts. She contends the fourth and twelfth plead inapplicable law. She also asserts that the court must strike the eleventh defense because of Gillespie's violation of the Illinois Trade Secrets Act. Gillespie moves to strike these affirmative defenses without leave to replead.

State Farm argues the following. It admits that the first, third, and ninth affirmative defenses fail to state affirmative matter, but insist those defenses "would have been proper" in an attack on the pleading's sufficiency. It admits that the fifth, seventh, eighth, and eleventh affirmative defenses raise legal, not factual questions. The fourth and twelfth affirmative defenses allege Gillespie failed to exhaust administrative remedies. The second affirmative defense questions whether Gillespie was acting in her legal capacity, the sixth affirmative defense alleges specific facts for the defense, and the tenth affirmative defense has been used in similar cases.

Separately, State Farm requests that the court allow it discovery before responding to Gillespie's motion for summary judgment. It contends that this case presents question of fact but asserts that it cannot obtain affidavits regarding those facts. Gillespie replies that statute determine her authority and dispose of her summary judgment motion. Thus, the court should deny fact discovery.

Statement of Law

A mere negation of the claim fails to state affirmative matter. *See Gajda v. Steel Solutions*, 2015 IL App (1st) 142219, ¶¶ 30–32. Affirmative matter includes: 1) failure to exhaust administrative remedies, 2) lack of standing, 3) unclean hands, 4) laches, 5) waiver, and 6) estoppel. *See Vill. of S. Elgin v. Waste Mgmt. of Ill., Inc.*, 348 Ill.App.3d 929, 933–35 (2nd Dist. 2004) (failure to exhaust administrative remedies); *In re Estate of Schlenker*, 209 Ill.2d 456, 461 (2004) (lack of standing); *Anderson v. Nelson*, 2023 IL App (4th) 220801, ¶ 68 (4th Dist. 2023) (unclean hands); *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 50–51 (laches); *R and B Kapital Dev., LLC v. N. Shore Cmty. Bank and Trust Co.*, 358 Ill.App.3d 912, 921 (1st Dist. 2nd Div. 2005) (waiver and estoppel). Most important, an affirmative defense must plead facts. *See* 735 ILCS 5/2-603(a); *JPMorgan Chase Bank, N.A. v. East-West Logistics, LLC*, 2014 IL App (1st) 121111, ¶ 30.

Any party may commence discovery after the appearance of all defendants. *See* Ill. S. Ct. R. 201(d). When faced with a dispositive motion, however, a party may request more time for discovery before the court rules. *See* Ill. S. Ct. R. 191(a)–(b); *see also MEP Constr., LLC v. Truco MP, LLC*, 2019 IL App (1st) 180539, ¶¶ 20–21. The party must file an affidavit listing the material facts it expects to present, the reasons it cannot present them yet, and the reasons for believing those facts will be presented. *See Id.* An affidavit failing on those three prongs proves insufficient. *See Brummel v. Grossman*, 2018 IL App (1st) 170516, ¶ 92 (holding that the affidavit should list witnesses that require deposing, the information they would provide, why the affiant believes they would provide it, and why that has not happened yet); *Olive Portfolio Alpha, LLC v. 116 W. Hubbard St., LLC*, 2017 IL App (1st) 160357, ¶¶ 21–29.

Motion to Strike

Because State Farm concedes the first, third, and ninth affirmative defenses fail to raise affirmative matter, the court strikes these defenses. While the second affirmative defense asserts affirmative matter, it fails to name what facts among the one hundred paragraphs it references, might support that defense. The court strikes the second affirmative defense with leave to replead. The fourth and twelfth affirmative defenses assumes Gillespie must exhaust administrative remedies. She pled and must prove that she may "institute such actions or other lawful proceedings as [s]he may deem necessary." 215 ILCS 5/401(d). State Farm may advance legal arguments about her authority. These may be defenses, but not affirmative defenses. Most importantly, State Farm offers no precedent for the argument that she must exhaust administrative remedies. Although State Farm cites no authority supporting its argument that she lacks authority, it may find some before

it responds to her summary judgment motion. Because the third, fourth, and twelfth affirmative defenses state no affirmative matter, the court strikes them.

The fifth affirmative defense negates paragraph nineteen of the complaint (pleading jurisdiction). This also forms a defense but not an affirmative defense. The court strikes it. The sixth defense pleads laches, waiver, estoppel, and unclean hands, but does not identify specific facts supporting these affirmative defenses. The court strikes it with leave to replead. The seventh affirmative defense pleads that the McCarran-Ferguson Act, 15 U.S.C. § 1011, bars the claim. It argues that Gillespie lacks jurisdiction over insurance transactions outside Illinois. Again, this negates paragraph 60 which pleads her powers. Gillespie pleads and must show her authority. However, this forms a legal question. Thus, her lack of authority may form a defense, but not an affirmative defense. The court strikes it. The eighth affirmative defense again asserts that Gillespie lacks authority which merely negates paragraph 60 of the complaint. The court strikes the eighth affirmative defense.

The tenth affirmative defense asserts separation of powers, but State Farm fails to provide any authority establishing it as an affirmative defense. The court strikes it. The eleventh affirmative defense assumes the court would order a remedy that violates the Illinois Trade Secrets Act, 765 ILCS 1065/1, et seq. State Farm certainly may argue that statutory law bars certain remedies. That would provide a defense to those remedies, but not an affirmative defense. Because the eleventh affirmative defense states no affirmative matter, the court strikes it.

Rule 191(b) Motion

Since it appeared six months ago, State Farm propounded no discovery . Although entitled to discovery, it asked for nothing. *See* Ill. S. Ct. R. 201(d). Now that Gillespie has filed a summary judgment motion, it says it needs discovery. State Farm submits a 191(b) affidavit, but it identifies no material facts it expects to discovery. Instead, State Farm wants to conduct discovery about Gillespie and her policies. It identifies five legal issues that *require* discovery: (1) Gillespie's statutory authority to demand the data, including what State Farm calls "extraterritorial" data; (2) preemption by the federal McCarran-Ferguson Act; (3) defenses based on Gillespie's earlier dismissal of a notice of apparent liability that she issued to State Farm; (4) confidentiality protections for the data in question; and (5) State Farm's unclean hands defense. None of these legal issues suffice to stop summary judgment briefing. The affidavit states no material facts that State Farm expects further discovery will produce. State Farm states no material facts it requires to oppose summary judgment. It merely raises legal issues. State Farm avers that confidentiality agreements would show that even anonymized data "would not protect the confidentiality of State Farm's data" and would not "compl[y] with the Illinois Insurance Code." State Farm possesses sufficient knowledge to have Mr. Berlin or another agent aver this in opposing summary judgment. State Farm need not propound discovery to Gillespie regarding information it possesses.

Additionally, State Farm claims that Gillespie's request for non-Illinois transaction data "is not the sort of data needed or ever previously requested as part of a financial examination." State

Farm also asserts that it expects Gillespie to admit that she did not take "any formal administrative action" to entitle State Farm to an administrative hearing "in connection with the pending financial examinations." If subject to the exhaustion requirement, her failure might be material. State Farm, however, provides no authority subjecting her to exhaustion. Although Berlin questions Gillespie's authority as the Director of the Illinois Department of Insurance, statute dictates her authority. *See* 215 ILCS 5/401. Whether Gillespie previously exercised her authority does not limit her legal authority. Thus, any facts about her exercise of her authority lacks materiality.

State Farm asserts that Gillespie's purpose for requesting State Farm's extraterritorial data fails to advance "Illinois consumer interests." State Farm provides no authority that her subjective purpose would be material. It claims that the "Director sought this data as part of an attempt to regulate on behalf of other states—i.e., to collect, aggregate, and analyze State Farm's transaction data for every jurisdiction nationwide...." Again, it provides no authority that would make this fact material. While it asserts such "conduct is contrary to the McCarran-Ferguson Act and U.S. Supreme Court precedent," it never explains how. Its authority invalidates a Texas tax on New York insurance company and allows the Federal Trade Commission to regulate Nebraska insurance businesses. *See State Bd. of Ins. v. Todd Shipyards Corp.*, 370 U.S. 451, 456 (1962) (invalidating the Texas tax); *see also F.T.C. v. Travelers Health Ass'n*, 362 U.S. 293, 299–302 (1960) (allowing the FTC to regulate). It also provides authority finding the Illinois insurance department without power to resolve an "employment status dispute: whether owner-operators . . . were independent contractors" or employees. *CAT Express, Inc. v. Muriel*, 2019 IL App (1st) 181851, ¶ 15. None of its cases support the materiality of Gillespie's purpose. Therefore, absent a showing that discovery would relate to material questions, the court must deny State Farm's motion to delay summary judgment briefing.

Conclusion

The court strikes State Farm's first, third, fourth, fifth, seventh, eighth, ninth, tenth, eleventh, and twelfth affirmative defenses. The court strikes State Farm's second and sixth affirmative defenses with leave to replead in fourteen days, Gillespie to respond fourteen days thereafter.

The court denies State Farm's motion for continuance to obtain discovery pursuant to Rule 191(b). The court strikes the July 16, 2026, oral argument date.

Defendants shall file a response to the motion for summary judgment on or before August 14, 2026, with a copy thereof to be immediately served upon all parties entitled to notice pursuant to rule.

Plaintiff shall file any reply on or before August 27, 2026, with a copy thereof to be immediately served upon all parties entitled to notice pursuant to rule.

Clerk Status is scheduled for September 10, 2026, at 8:45 AM. No appearance is necessary. At the clerk status, the movant is obligated to deliver copies of all the briefs, pleadings, relevant documents, and the most recent complaint, with an accompanying cover letter containing the case

name, the case number and the date and time of the clerk status. Submissions should be made via email by 8:45 AM and hard copy by 3:00 PM. Please review the court's Standing Order for any change to this order. Failure to provide the court with a complete set of courtesy copies may result in the motion being stricken.

Upon the court's timely receipt of all the courtesy copies, the Court will hold oral argument on September 17, 2026, at 10:00 AM in person in Courtroom 2510.

[redacted]

Entered the 14th of July 2026
Chicago, Illinois

Thomas More Donnelly

Judge

Circuit Court of Cook County

ENTERED
Judge Thomas More Donnelly-1803
JUL 14 2026
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL