

2. The Record On Appeal was due on or before August 28, 2023 pursuant to Illinois Supreme Court Rules 326 and 608(c);
3. On August 28, 2023 the Clerk of the Circuit Court of Cook County, Illinois sent an email to Plaintiffs-Appellants' Attorney indicating that the Record on Appeal was prepared and indicating there was a balance due of \$228.50;
4. On August 29, 2023 Plaintiffs-Appellants' Attorney paid the balance due in the electronic method indicated;
5. On August 30, 2023 Plaintiffs-Appellants' Attorney received two (2) emails from the Appellate Clerk's Office indication that the First Judicial Appellate Clerk had received the Record On Appeal due on August 28, 2023 late on August 30, 2023;
6. The Appeals Clerk of the First Judicial District of Illinois accepted the Record on Appeal on September 7, 2023.
7. Appellants' Brief is due 35 days from filing the Record on Appeal (Illinois Supreme Court Rule 343(a)).
8. Therefore Appellants' Brief is due October 12, 2023.
9. The total number of days requested was 9 days for the Record on Appeal to be filed and the number of days granted was 9 days.
10. The total number of days granted on all previous motions was 9 days.
11. The total number of days requested, and the total number of days granted on all the previous motions for extension of time filed by other parties are zero days.
12. The total number of days that will have elapsed from the date of filing of the Notice of Appeal to the date the case will be ready for disposition if the present extension and no further extensions are granted is 217 days.

13. On October 10, 2023 and before filing this motion, Appellants Attorney emailed a copy of this motion and indicated he would be seeking an extension of time for 60 days to file the Appellants' Brief based upon inconsistent Orders filed in the Trial Court, one of which was based on Illinois Supreme Court Rule 304(a), in comparison to the Trial Court transcript of September 21, 2023. (Please see Appellants' Exhibits A through E attached).
14. Appellants' Attorney's is a sole practitioner with a full schedule of additional court matters and hearings.
15. Within Appellants' Attorneys e-mail to the Defendants' legal representatives was a request that Appellants' Attorney be informed, for inclusion within the motion, whether Defendants' (4) four representing law firms objected to the extension.
16. At the time of finagling this Motion for Extension of Time to file Appellants' Brief one law firm replied, "no Objection", one law firm responded indirectly by noticing and setting a Motion Requesting a Status set for October 31, 2023, and the final two law firms have not responded.

Wherefore, Plaintiffs-Appellants prays that this Honorable Court recognize Plaintiffs-Appellants' Attorney good faith efforts to comply with the Illinois Supreme Court rules regarding the preparation and filing of Appellants' Brief, grant 60 additional days up to and including December 11, 2023 to file and serve Appellants' Brief and any additional relief this Honorable Court deems equitable and just.

Dated: October 11, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

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, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

PROOF OF DELIVERY

I am sending this **MOTION TO EXTEND THE TIME FOR FILING APPELLANTS'**

BRIEF , proposed Order and Notice of Filing to: see Service list as follows

by an approved electronic filing service provider (EFSP) on October 11, 2023 at 4:45 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: October 11, 2023

/s/ Alphonse A. Talarico

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EXHIBIT A



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

PAUL DULBERG and THE PAUL DULBERG)
REVOCABLE TRUST,)

Plaintiffs,)

v.)

Case No. 2022 L 010905

KELLY N. BAUDIN a/k/a Baudin & Baudin,)
Baudin & Baudin, an Association of Attorneys,)
Law Offices of Baudin & Baudin, Baudin &)
Baudin Law Offices, et al.)

Defendants.)

ORDER

This matter coming before the Court for hearing on Defendants, Joseph David Olsen, Craig A. Willette, and Raphael E. Yalden II's Combined Motion to Dismiss Count III of Plaintiffs' Complaint at Law, Plaintiffs present through counsel, Alphonse Talarico, and personally present, Defendants present through counsel, Jason W. Jochum, the Court having heard argument on the Defendants' Combined Motion to Dismiss Count III and reviewed the briefs and submissions by the parties, the Court being duly advised in the premises,

IT IS HEREBY ORDERED:

- 9271
9220
9226
1. For the reasons stated on the record, Defendants, Joseph David Olsen, Craig A. Willette, and Raphael E. Yalden II's Combined Motion to Dismiss Count III of Plaintiffs' Complaint at Law is granted, with prejudice. There being no further allegations against these Defendants, they are dismissed from this matter, with prejudice.
 - 9208 2. Further, the Court finds that, pursuant to Ill. Sup. Ct. R. 304(a), there is no just cause or reason for delay of enforcement of this order, and it is final and appealable.

Dated: May 25, 2023

Entered: 

Hon. Michael F. Otto

Order Prepared By:

Jason W. Jochum

LEWIS BRISBOIS BISGAARD & SMITH, LLP

550 W. Adams Street, Suite 300

Chicago, Illinois 60661

(312) 345-1718

Jason.Jochum@lewisbrisbois.com

Firm I.D. No. 41737

Judge Michael F. Otto

MAY 25 2023

Circuit Court – 2065

EXHIBIT B



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

PAUL DULBERG and THE PAUL DULBERG)
REVOCABLE TRUST,)

Plaintiffs,)

v.)

KELLY N. BAUDIN a/k/a Baudin & Baudin,)
Baudin & Baudin, an Association of Attorneys,)
Law Offices of Baudin & Baudin, Baudin &)
Baudin Law Offices, et al.)

Defendants.)

Case No. 2022 L 010905

ORDER

This matter coming before the Court for hearing on Defendant ADR Systems of America, L.L.C.'s Section 2-615 Motion to Dismiss, the parties being present, and the Court being duly advised in the premises,

IT IS HEREBY ORDERED:

- 4271 1. For the reasons stated on the record, Defendant ADR Systems' Motion to Dismiss is granted and Plaintiffs' Complaint is dismissed without prejudice;
- 6015 2. This matter as to ADR is continued for status to July 31, 2023 at 9:45 a.m.

By: 

Hon. Michael Otto

Robert A. Chapman
CHAPMAN SPINGOLA, LLP
190 South LaSalle Street, Suite 3850
Chicago, Illinois 60603
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rchapman@chapmanspingola.com
wdickmann@chapmanspingola.com
Firm I.D. No. 29411
Counsel for Defendant ADR Systems of America, L.L.C.

Judge Michael F. Otto

MAY 25 2023

Circuit Court – 2065

EXHIBIT C



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

PAUL DULBERG and THE PAUL DULBERG)
REVOCABLE TRUST,)

Plaintiffs,)

v.)

Case No. 2022 L 010905

KELLY N. BAUDIN, *et al.*)

Defendants.)

ORDER

This matter coming before the Court for hearing on Defendants Kelly N. Baudin, William Randal Baudin, II and Kelran Inc. a/k/a The Baudin Law Group, Ltd.'s (the "Baudin Defendants") motion to dismiss; and for status on Defendant Allstate Property and Casualty Insurance Company's ("Allstate") motion for summary judgment; a hearing having been held and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

- 4271
4226
1. The Baudin Defendants' motion to dismiss is GRANTED on statute of limitations grounds, only. In light of the order of dismissal, the Court makes no ruling on the other grounds for dismissal asserted in the Baudin Defendants' motion as they are moot. The Baudin Defendants are hereby dismissed with prejudice from this cause.
 - 6/25
6/28
4/23
 2. The previously-set hearing on Defendant Allstate Property and Casualty Insurance Company's ("Allstate") motion for summary judgment, set for September 21, 2023, at 11:15 a.m., shall stand.
 3. The hearing on the Allstate's motion will be held in-person and via Zoom (Meeting ID: 768 225 2047 | Passcode: 902018 | Call In #: 312-626-6799).

Judge Michael F. Otto

AUG 29 2023

Circuit Court – 2065

Order Prepared By:

Jeremy N. Boeder

TRIBLER ORPETT & MEYER, P.C.

225 W. Washington Street, Ste 2550

Chicago, Illinois 60606

(312) 201-6400

jnboeder@tribler.com

Firm I.D. No. 39950

Attorneys for Baudin Defendants

Date: August 29, 2023

Entered:

Hon. Michael F. Otto

EXHIBIT D

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

PAUL R. DULBERG, Individually, and
THE PAUL R. DULBERG REVOCABLE
TRUST,

Plaintiffs,

v.

KELLY N. BAUDIN A/K/A BAUDIN &
BAUDIN, BAUDIN & BAUDIN AN
ASSOCIATION OF ATTORNEYS, LAW
OFFICES OF BAUDIN & BAUDIN,
BAUDIN & BAUDIN LAW OFFICES,
WILLIAM RANDAL BAUDIN II A/K/A
BAUDIN & BAUDIN, BAUDIN & BAUDIN
AN ASSOCIATION OF ATTORNEYS, LAW
OFFICES OF BAUDIN & BAUDIN,
BAUDIN & BAUDIN LAW OFFICES,
KELRAN, INC A/K/A THE BAUDIN LAW
GROUP, Ltd., JOSEPH DAVID OLSEN,
A/K/A YALDEN, OLSEN & WILLETTE
LAW OFFICES, CRAIG A WILLETTE,
A/K/A YALDEN, OLSEN & WILLETTE
LAW OFFICES, RAPHAEL E YALDEN II,
A/K/A YALDEN, OLSEN & WILLETTE
LAW OFFICES, ADR SYSTEMS OF
AMERICA, LLC., ASSUMED NAME ADR
COMMERCIAL SERVICES, ALLSTATE
PROPERTY AND CASUALTY INSURANCE
COMPANY,

Defendants.

No. 2022 L 10905

Calendar U

ORDER

This cause coming before the Court for hearing and ruling on Defendant Allstate Property and Casualty Insurance Company's Motion for Summary Judgment, Counsel for Plaintiff, Paul R. Dulberg, Individually, and The Paul R. Dulberg Revocable Trust ("Plaintiff"), Counsel for Defendant, Allstate Property and Casualty Insurance Company ("Allstate"), and Counsel for the "Olsen Defendants" all appearing before the Court, the Court having heard oral argument from Plaintiff and Defendant Allstate and having considered all briefs and exhibits, including Plaintiff's recently filed counter-affidavit, the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. Allstate's Motion for Summary Judgment is GRANTED for the reasons stated on the record. This is a final and appealable order.

Prepared by:

ENTERED:

Christine V. Anto
Michelle E. Tinajero
AMUNDSEN DAVIS, LLC (Firm ID. No. 42907)
150 North Michigan Avenue, Suite 3300
Chicago, Illinois 60601
T: (312) 894-3278
canto@amundsendavislaw.com
mtinajero@amundsendavislaw.com

Judge

Date

Judge Michael F. Otto

SEP 21 2023

Circuit Court – 2055

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - LAW DIVISION

PAUL R. DULBERG and THE PAUL)
R. DULBERG REVOCABLE TRUST,)

Plaintiff,)

vs.)

KELLY N. BAUDIN, et al,)

Defendants.)

No. 2022 L 010905

Zoom video conference of the Hearing
held before the HONORABLE MICHAEL F. OTTO,
Courtroom 1407, taken pursuant to notice, commencing
at 11:15 a.m., Thursday, September 21, 2023.

Reported by: Connie L. James, CSR
License No. 084.002510

A P P E A R A N C E S:

ALL PARTIES APPEARING VIA ZOOM VIDEO CONFERENCE:

FOR PLAINTIFF:

ALPHONSE TALARICO LAW OFFICES

BY: MR. ALPHONSE TALARICO

707 Skokie Boulevard - Suite 600

Northbrook, Illinois 60062

(312) 808-1410

FOR DEFENDANT ALLSTATE:

AMUNDSEN DAVIS

BY: MS. MICHELLE TINAJERO

150 N. Michigan Avenue - Suite 3300

Chicago, Illinois 60601

(312) 894-3200

FOR DEFENDANTS OLSEN, WILLETTE & YALDEN:

LEWIS BRISBOIS BISGAARD & SMITH, LLP

BY: MR. JASON JOCHUM

550 W. Adams Street - Suite 300

Chicago, Illinois 60661

(312) 345-1718

I N D E X

HEARING ON MOTION FOR SUMMARY JUDGMENT:

Arguments:

By Ms. Tinajero.....Pg. 5

By Mr. Talarico.....Pg. 7

By Ms. Tinajero.....Pg. 14

By Mr. Talarico.....Pg. 16

Court's Ruling on the Motion.....Pg. 16

1 THE COURT: Good morning. Would everyone please
2 identify themselves for the record?

3 MR. TALARICO: Good morning, Your Honor.
4 Alphonse Talarico. I represent the Plaintiffs.

5 MS. TINAJERO: Good morning, Judge Otto. My name
6 is Michelle Tinajero. I represent Allstate Property
7 and Casualty Insurance Company.

8 THE COURT: Thank you.

9 Mr. is it Mr. Jochum?

10 MR. JOCHUM: Jochum, Your Honor. Sorry.

11 THE COURT: All right. Good morning.

12 MR. JOCHUM: Jason Jochum representing what we
13 refer to as the Olsen Defendants, Joseph Olsen, Craig
14 Willette and Raphael Yalden. They were dismissed
15 earlier, but I'm just observing because we're still on
16 appeal.

17 THE COURT: Thank you. I see we are also joined
18 by Mr. Dulberg, individually, as well as Thomas Kost,
19 K O S T, who is identified in his Zoom window as, the
20 quote, full trustee of Paul R. Dulberg Revocable Trust,
21 unquote.

22 We're up today for hearing on Allstate's
23 Motion For Summary Judgment, which has been fully
24 briefed. Anything to discuss before we move forward

1 with that hearing?

2 Mr. Talarico for the Plaintiff?

3 MR. TALARICO: Judge, no, nothing.

4 THE COURT: Ms. Tinajero, ready?

5 MS. TINAJERO: Yes, Your Honor.

6 THE COURT: Okay. You'll have the first and last
7 word.

8 I will say for the record I have read the
9 briefs, I have, of course, reviewed the exhibits as
10 well as the authority that the parties have cited. So
11 no within should feel that they need to read their
12 brief to me, but I will, of course, give both sides an
13 opportunity to be heard.

14 Ms. Tinajero, it's your motion, you'll have
15 the first and last word.

16 MS. TINAJERO: Thank you, Your Honor. I will
17 keep it brief this morning since you have gone through
18 the briefs.

19 ARGUMENT BY

20 MS. TINAJERO:

21 The arguments set forth in our Motion For
22 Summary Judgment are very straight forward. You know,
23 as to the unsigned agreement, the position Plaintiffs
24 have taken that a party is bound by and, therefore, can

1 breach an unsigned, undated agreement is a legally
2 flawed position. Simply put, Allstate cannot be bound
3 by an unsigned agreement.

4 As to the binding mediation agreement, which
5 is the only executed valid agreement between the
6 parties, which is undisputed, to the extent terms were
7 modified and/or admitted between the unsigned agreement
8 and the executed binding mediation agreement, it is not
9 alleged Allstate does not maintain that it played any
10 role in drafting anything about the mediation
11 agreement. And, importantly, such amendments were made
12 before the binding mediation was executed.

13 Additionally, the monetary parameters set
14 forth in the agreement remains the same in both the
15 unsigned agreement and the executed binding mediation
16 agreement.

17 The damage that Dulberg identifies in the
18 complaint, you know, in an amount in excess of \$261,000
19 do not flow from any breach complained of as against
20 Allstate. And it's our position that there are no set
21 of facts under which Dulberg can prove a breach of an
22 unsigned agreement or the executed binding mediation
23 agreement.

24

1 Further, Dulberg executed a release, which is
2 attached to our Motion For Summary Judgment. The terms
3 of the release are clear, certain, free from doubt and
4 Dulberg admits to signing the release in his reply to
5 Allstate's affirmative defenses. That's all I have,
6 Your Honor.

7 THE COURT: Thank you, Tinajero.

8 Mr. Talarico?

9 ARGUMENT BY

10 MR. TALARICO:

11 I think I would like to start in reverse
12 order. I would like to address, Judge, the release.

13 Mr. Dulberg -- I filed on behalf of
14 Mr. Dulberg, he signed a counter-affidavit, which was
15 sent to the Court and I believe it's actually been
16 delivered personally to your courtroom today. It was
17 filed yesterday. Mr. Dulberg had been sick for a few
18 days and he couldn't cooperate or give me any of his
19 time, but I filed it yesterday and it's in opposite to
20 the release, the reasons why the release is not
21 effective. His reasoning is that he was forced to do
22 this against his will.

23 In his counter-affidavit he indicated, and I
24 think copied transcripts of e-mails that he received

1 from his own attorney forcing -- telling him that if he
2 didn't sign the release, the Judge would hold him in
3 contempt and he would be jailed, different than the
4 general terms of contract by signing a release, which
5 is a contract, under those terms cannot be enforced
6 against the person that's being threatened with jail,
7 and/or being held in contempt. Plus, that particular
8 release makes no sense, Judge.

9 If you really think about all of the things
10 they talk about in their motion and affidavit,
11 especially the affidavit.

12 I would like to bring up the fact that the
13 statement, the affiant says the money was paid and then
14 the releases were sent out to be signed. Judge, I
15 would ask you to take judicial notice that insurance
16 companies do not pay first and then send out releases.

17 Furthermore, since this matter was already
18 adjudicated and an order was entered by the arbitration
19 judge, there was no need for a release; that Allstate
20 had paid, according to their own affidavit, and now
21 they're trying to enforce and ask for and force
22 Mr. Dulberg to sign a release. I think that brings up
23 a considerable amount of questionable contrary facts
24 just on its own, Judge.

1 So I would hope that you would contemplate
2 what I'm saying and see that summary judgment is so
3 inappropriate, that's just one of hundreds of things
4 that we are at different ends of the spectrum on. And
5 I think that's all been supplied to Your Honor, but,
6 most importantly, this release issue, it is contrary to
7 the logic that the money was paid first and released.
8 In my practice, Judge, but I've never settled with an
9 insurance company that would pay first and then ask for
10 a release. That's all I have to say today, Judge.
11 Thank you.

12 THE COURT: Okay. Mr. Talarico, the only
13 argument you want to make today is a brand new argument
14 based on, I believe, duress that did not appear
15 anywhere in your response brief. It is based
16 exclusively on an affidavit that was filed yesterday
17 and hand delivered to the Court minutes before this
18 proceeding began.

19 That's the only argument you want to make?
20 You don't want to address anything that Ms. Tinajero
21 spelled out in the motion or the reply regarding the
22 enforceability of an unsigned agreement, which is the
23 entire basis of Count 5? I just want to make sure that
24 you have a full opportunity to make whatever arguments

1 you wish.

2 FURTHER ARGUMENT

3 BY MR. TALARICO:

4 First, I would like to get back to the
5 release. The release was filed yesterday, Your Honor.
6 It was filed and it was accepted. I sent it out to
7 Your Honor this morning at about 6:00 a.m. with the
8 attached exhibits and all the other counsel of record.
9 What response I got was please send a hard copy from
10 your support staff. So I had a hard copy delivered to
11 the courtroom today, but this was filed yesterday.

12 Judge, this was filed pursuant to, and I
13 think it's clear there, Subsection C of the Motion For
14 Summary Judgment. I'm allowed to do that, Your Honor.
15 And I just complied with the statute, 735 5 -- Well,
16 you know, Judge, better than I know. But 105
17 Subsection C says I can file counter-affidavits up to
18 the time of hearing and I did that.

19 So I don't think I violated anyone and I
20 tried -- I sent a message to everybody that if anybody
21 objects, they want more time to review, they want more
22 time to respond, we have no objection. And I also --
23 counsel suggested the reason why Mr. Dulberg is here
24 because if the Court wants to examine him as to the

1 affidavit, he's more than willing to answer questions
2 of the Court.

3 THE COURT: This is not an evidentiary hearing.

4 MR. TALARICO: You're right, Your Honor. I just
5 made that option.

6 THE COURT: The other question I asked you, and,
7 again, you focused exclusively on this 11th hour
8 affidavit, which only addresses the effectiveness of
9 the release, I want to make sure that you've had the
10 opportunity to address today, if you choose, because I
11 didn't see anything really in your brief that addresses
12 why the draft agreement attached as Exhibit 6B to the
13 complaint would be enforceable?

14 MR. TALARICO: Why it wouldn't be enforceable?
15 Is that what you said? I'm sorry.

16 THE COURT: Why it would be enforceable because
17 that's your claim. Count 5 is for breach of contract.

18 MR. TALARICO: Yes, Judge.

19 THE COURT: The breach that you claim in
20 Paragraph 106 is that Defendant breached the contract
21 by not following the terms regarding amending the
22 contract, but the only amendments that you cite are the
23 changes between Exhibit 6B and Exhibit 11. So for
24 there to possibly be a breach of contract, Exhibit 6B

1 must have been enforceable, otherwise you can't
2 possibly have a claim for its breach. And Ms. Tinajero
3 on behalf of Allstate has argued in the motion and the
4 reply that because Exhibit B was unsigned it was not
5 enforceable.

6 THE COURT: Judge, Exhibit B was the only exhibit
7 permitted by the bankruptcy court. It was presented to
8 the bankruptcy judge as unsigned and the bankruptcy
9 judge, Judge Lynch, said to the trustee "sign the
10 contract and you can go forward." Trustee never signed
11 it. They refused to sign -- They didn't actually
12 refuse to sign it, but he didn't. Then another
13 contract appeared.

14 One of the things we said, Judge, is that
15 this matter -- this binding mediation agreement had
16 been already presented to the trial court judge maybe
17 6 months before. So there's all of these issues of
18 what's the valid contract, names are changing from the
19 Defendant being liable, the contract now says a
20 relative of the Dulbergs is liable to Paul, but there's
21 a person, David Dulberg, he exists.

22 Again, the bankruptcy judge saw an unsigned
23 contract and told and instructed his trustee to sign
24 it.

1 We have an enforceable contract, I believe.
2 And I think that the fact that all of these things were
3 done -- and forgive me, Judge, because I don't practice
4 bankruptcy -- but in violation of the stay that had
5 been in effect that whole time. I think that with all
6 of those issues I should be allowed as representative
7 of the Plaintiff to do some discovery upon to see
8 really what the truth of the matter is, we've had
9 allegations back and forth.

10 THE COURT: You said that the bankruptcy court
11 directed the trustee to sign the agreement. So what
12 possible relevance can any prior alleged violations of
13 the stay have to do with Allstate's liability under any
14 contract?

15 MR. TALARICO: Judge, the terms of the contract,
16 we say that the signed contract is a contract. The
17 terms of the contract as accepted and signed by all the
18 parties were -- when I say parties I mean Dulberg
19 denies he signed it, but, anyway, the terms of the
20 contract are sufficient, they say that the breach is
21 that they changed the terms of the contract from the
22 contract they presented to the Court; that the plain
23 language of the contract says if you do this you have
24 to do it, you have to submit hard copies, you have to

1 do it in advance, I think it's 2 weeks, you have to get
2 permission by the ADR. None of that was done. And
3 both Baudin and the attorney for Allstate were
4 participants in that. So I believe that's a breach of
5 contract.

6 THE COURT: Mr. Talarico, that assumes that the
7 unsigned contract was enforceable. What factual or
8 legal support do you have for that proposition because
9 I saw not a single case cited in your brief at all?
10 And the extensive factual recitation appears completely
11 irrelevant. So what did you point me to that I
12 overlooked in your brief that provides factual or legal
13 support for the proposition that the unsigned contract
14 is enforceable?

15 MR. TALARICO: Judge, I will rest now. I said
16 what I have to say. What I pointed you to was the fact
17 that the only contract empowered was the unsigned one.
18 So I'm going to stay on that and I'm finished talking.
19 Thank you, Judge.

20 THE COURT: Thank you, Mr. Talarico.

21 Ms. Tinajero, if you wish?

22 FURTHER ARGUMENT

23 BY MS. TINAJERO:

24 Judge, just briefly. I will say as to the

1 counter-affidavit that was filed this morning, or at
2 least a courtesy copy of which we only received this
3 morning, it's Allstate's position it should be
4 stricken.

5 A briefing schedule was entered in this case.
6 Dulberg, Plaintiff's counsel received an extension of
7 time to file his response. But, more importantly,
8 procedural matters aside, all the information contained
9 in the counter-affidavit it doesn't create a genuine
10 issue of material fact as to Allstate's breach of an
11 unsigned agreement:

12 Any representations that the Baudin
13 Defendants made or the Olsen Defendants made to Dulberg
14 in the course of the binding mediation proceedings, any
15 execution of the binding mediation agreement or in
16 Dulberg's execution of the release have no bearing on
17 the specific claim against Allstate here, which is
18 breach of an unsigned contract. That's all, Your
19 Honor.

20 MR. TALARICO: Your Honor, may I respond?

21 THE COURT: You had a full opportunity to argue,
22 Mr. Talarico, but in the interest of making a complete
23 record, what did you wish to say, bearing in mind that
24 Ms. Tinajero will have the last word?

1 FURTHER ARGUMENT

2 BY MR. TALARICO:

3 Yes. I'm repeating myself but --

4 THE COURT: Then why are you taking everybody's
5 time if all you're going to do is repeat yourself?

6 MR. TALARICO: One sentence, Judge, will be all I
7 want.

8 I'm allowed to do that pursuant to 735 ILCS
9 5/2-1005(c). Thank you, Judge.

10 THE COURT: All right. You did, indeed, repeat
11 yourself, but I suppose if you wanted to say that a
12 second time for the record, fine.

13 COURT'S RULING

14 ON THE MOTION:

15 Plaintiff's counsel is correct, Section 2
16 1005 of the Illinois Code of Civil Procedure, 735 ILCS
17 5/2-1005, Subparagraph (c), does permit an opposing
18 party to, quote, prior to or at the time of the hearing
19 on the motion file counter-affidavits, unquote.

20 I remain unconvinced of the wisdom of that
21 provision of the Illinois Code of Civil Procedure, but
22 there's nothing unconstitutional about it and judges
23 don't ignore or overlook a statute simply because they
24 can't understand why in the world that would be the

1 law. So, yes, there is nothing procedurally improper
2 about launching an affidavit at the opposing parties
3 and the Court hours before a hearing on a fully briefed
4 Motion For Summary Judgment. So I have received the
5 affidavit.

6 The affidavit, as I said, essentially seeks
7 to lay ground work for a claim of duress in executing
8 the release. I don't see anything about duress by
9 Allstate and I don't see anything in the affidavit, nor
10 have I heard anything in counsel's argument today, that
11 would suggest that Allstate was not entitled to rely on
12 the release, but the release issue is only one of the
13 arguments that Allstate makes in support of its Motion
14 For Summary Judgment.

15 Even if I were to find that there were an
16 issue of material fact as to the enforceability of the
17 release, Allstate is entitled to summary judgment on
18 Count 5 of the complaint as pled because the only
19 breach of contract that the Plaintiff alleges is
20 failure to follow, quote, the terms regarding amending
21 the contract. But the only amendments of the contract
22 that the Plaintiff identifies are changes from an
23 unsigned version of the contract to the final signed
24 version of the contract.

1 The Plaintiff provides no authority to
2 support the proposition that the unsigned contract was
3 binding on Allstate or anyone else. And if the
4 contract, itself, was not binding, definitionally the
5 terms regarding amending the contract, quote, unquote,
6 cannot have been bind. There is no other breach pled.
7 So Allstate ask entitled to summary judgment.

8 In addition, even if hypothetically, because
9 I understand Mr. Talarico's point, that the unsigned
10 version of the contract was the version presented to
11 the bankruptcy judge in advance, even if theoretically
12 there might be some potential claim for hoodwinking the
13 bankruptcy judge, or something like that, I don't know
14 what it would be, even if hoodwinking the bankruptcy
15 judge, quote, unquote, were a basis for finding a
16 contract enforceable, even so the breaches that the
17 Plaintiff claims did not cause any injury.

18 Mr. Talarico notes that there were a few
19 changes and one does appear to have introduced a
20 typographical error in terms of the individual who
21 would be responsible to the Plaintiff, but both
22 contracts, the unsigned and the signed, were identical
23 as far as Allstate's obligation and there is no
24 suggestion, there is not even any suggestion, let alone

1 an issue of material fact that Allstate paid the full
2 amount that it was obligated to pay under either
3 version of the contract.

4 So Allstate is entitled to summary judgment
5 not only on the grounds that there was no breach, but,
6 even if there were a breach, there was no injury.

7 The motion for summary judgment is granted in
8 its entirety.

9 And the parties will have to remind me, I
10 don't believe there are any other parties remaining,
11 but, perhaps, I'm overlooking someone.

12 Mr. Talarico, to your knowledge are there any
13 other party defendants remaining in the case?

14 MR. TALARICO: Not at this moment, Your Honor.
15 There are no more, you've already released everyone.

16 THE COURT: Okay. So then today's order will be
17 final and appealable.

18 Ms. Tinajero, I'll ask you to draft a short
19 written order. It doesn't need to say anything more
20 than that the parties appearing on Allstate's Motion
21 For Summary Judgment, Court having heard argument of
22 both sides, having considered all briefs and all
23 exhibits, including the recent affidavit by Plaintiff
24 Paul Dulberg grants summary judgment for the reasons

1 stated on the record. This is a final and appealable
2 order.

3 Thank you, everybody. Have a good day.
4 We're in recess.

5 MS. TINAJERO: Thank you, Judge.

6 MR. TALARICO: Thank you, Your Honor.

7 (Whereupon the hearing concluded at 11:40 a.m.)
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1 REPORTER'S CERTIFICATE

2
3 I, CONNIE L. JAMES, CSR No. 084.002510,
4 Certified Shorthand Reporter, certify:


5
6 That the foregoing proceedings were taken before
7 me at the time and place therein set forth;

8 That all statements made at the time of the
9 hearing were recorded stenographically by me and were
10 thereafter transcribed;

11 That the foregoing is a true and correct
12 transcript of my shorthand notes so taken;

13 I further certify that I am not a relative
14 or employee of any attorney of the parties, nor
15 financially interested in the action.

16 I declare under penalty of perjury under the Laws
17 of Illinois that the foregoing is true and correct.

18 Dated this 2nd 

19
20 CONNIE L. JAMES, CSR No. 084.002510
21
22
23
24

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
2022L010905

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