

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
SPRINGFIELD, SANGAMON COUNTY, ILLINOIS

WILLIAM EBERT d/b/a American
Auto Body,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

JAN 26 1958
COURT CLERK

93-L-58

Case No. 93-L-_____

JURY DEMAND

COMPLAINT

NOW COMES the Plaintiff, William Ebert d/b/a American Auto Body, by and through his attorneys, Beeman Law Offices, A Professional Corporation, and for and in support of his cause of action against the Defendant, State Farm Mutual Automobile Insurance Company (hereinafter State Farm), affirmatively states as follows:

COUNT I

(Injunctive Relief)

For his first cause of action against the defendant State Farm, the plaintiff, William Ebert, affirmatively states as follows:

1. At all times mentioned herein and for approximately the last 19 years, the plaintiff is and has been the owner and operator of American Auto Body, an auto body repair business located at 1520 Pope, Springfield, Sangamon County, Illinois.

2. Defendant, State Farm, is and at all times mentioned herein, was an Illinois Corporation engaged in the insurance business with its principal office located in Bloomington, McClean

County, Illinois and with offices located at 2801 West Lawrence Avenue, Springfield, Sangamon County, Illinois.

3. For approximately 10 years, the Plaintiff has signed on behalf of American Auto Body the Defendant's "Repair Facility Criteria Survey Form" which the Defendant uses to compile a repair facility reference guide in which the Plaintiff's business has regularly appeared.

4. The Plaintiff again signed the Defendant's "Repair Facility Criteria Survey Form" on May 17, 1991.

5. On or about February 25, 1992, the plaintiff received an unsigned letter on State Farm letterhead stating in relevant part as follows:

"You are hereby notified that American Auto Body has been removed from State Farm Insurance repair facility reference for failure to adhere to criteria number 1.

This action has been taken due to incidents wherein firearms were inappropriately displayed to State Farm personnel when they were on your premises for business reasons and other unprofessional conduct which our employees have been subjected to during the course of their dealings with American Auto Body. Our employees have been requested not to enter your premises for business purposes at any time."

See "Exhibit A", attached hereto and hereby incorporated by reference.

6. Criteria number 1 referenced in the Defendant's letter to Plaintiff of February 24, 1992 states:

"The repairer agrees to follow ethical and professional business practices in its business conduct with State Farm representatives and our mutual customers."

See "Exhibit B", attached hereto and hereby incorporated by reference.

7. Upon receipt of the Defendant's unsigned letter of February 24, 1992, the Plaintiff requested further explanation from State Farm as to why his business was removed from its repair facility reference guide and what specific conduct by Plaintiff was the basis for Defendant's assertion that the Plaintiff had subjected Defendant's employees to unprofessional conduct. The Plaintiff also requested of the Defendant the specific circumstances involved in the "incidents wherein firearms were inappropriately displayed to State Farm personnel."

8. The only response received by the Plaintiff to his requests for further explanation of the basis for Defendant's actions were contained in a letter from the Defendant, signed by Mr. Gary Weakly, State Farm's Property Claim Superintendent, dated March 24, 1992 which stated, in part, as follows:

"The quality of work performed by American Auto Body was not the basis for our action. Our decision was made solely out of concern for the safety and well being of our employees."

See "Exhibit C", attached hereto and incorporated by reference.

9. The Plaintiff is a collector of guns. He also keeps a gun on his property for the security of his person, family and business. The Plaintiff has a firearm owner's identification card as required by law and the Plaintiff's right to keep such a weapon on his property is conduct protected by the laws of the United States and the State of Illinois.

10. The Plaintiff has never "inappropriately displayed firearms to State Farm personnel" or engaged in or subjected Defendant's employees to "unprofessional conduct".

11. On or before March 27, 1992, existing and prospective customers of the Plaintiff began receiving form letters from the Defendant in the form of "Exhibit D" attached hereto and hereby incorporated by reference, discouraging them from doing business with American Auto Body.

12. Despite the Defendant's statements in its letter to Plaintiff dated March 24, 1992 that its action in removing the Plaintiff from its repair facility reference guide was not due to the quality of services provided by the plaintiff, Defendant, its servants, employees, agents and representatives made and continue to make statements to existing and prospective customers of American Auto Body to the effect that American Auto Body is unreliable, overcharges for services rendered and is unable to furnish goods and services contracted for in a timely fashion.

13. Upon information and belief, Defendant, its servants, agents, employees and representatives were and are making oral statements to the Plaintiff's current and prospective customers similar to those contained in the Defendant's form letters, to the effect that American Auto Body is unreliable, overcharges for services, is unable to furnish goods and services contracted for in a timely fashion and that State Farm would not pay for repairs if they were made by the Plaintiff. These statements were and are being made by the Defendant, its servants, agents and employees to its insureds and to those persons whose automobiles were damaged by the Defendant's insureds, who express an interest, desire or intent to have their damaged automobiles repaired by American Auto Body.

14. Upon information and belief, Defendant, its agents, employees and representatives were making such oral statements to its insureds and those persons whose automobiles were damaged by the Defendant's insureds, prior to the wrongful removal of the Plaintiff from the Defendant's repair facility reference guide.

15. By the above described conduct, the Defendant, its servants, employees, agents, and representatives, have willfully and intentionally interfered with and continue to willfully and intentionally interfere with the right of the Plaintiff to engage in his lawful business enterprise free from such interference by the Defendant by performing the acts and making the statements alleged herein.

16. That the defendant, its agents, servants, or employees, intending to harass, annoy, injure, destroy and otherwise interfere with the performance of Plaintiff's business, has and continues to induce, persuade and entice the plaintiff's current and prospective customers not to have business relations or transactions with the Plaintiff.

17. The Defendant, its servants, agents, and employees have used their special position as insurers of certain of the Plaintiff's current and prospective customers to induce, persuade and entice the Plaintiff's current and prospective customers to refuse to transact or do further business with the plaintiff.

18. That defendant, its servants, agents, and employees, when attempting to induce, persuade and entice the Plaintiff's customers to cease business relations with the plaintiff, and also when

attempting to induce, persuade, convince and entice Plaintiff's prospective customers to refuse to contact, contract with or transact business with the plaintiff, made false, fraudulent and malicious representations to Plaintiff's current and prospective customers to the effect that plaintiff was unreliable, would overcharge for services rendered, and that the plaintiff was unable to furnish the goods and services contracted for in a timely fashion.

19. That as a result of this unjustified, unlawful, malicious, wrongful and fraudulent conduct by the defendant, its servants, agents, employees and representatives, the plaintiff has suffered and continues to suffer irreparable harm in that the plaintiff and his business' goodwill and reputation are being damaged and the Plaintiff and his business have and will continue to lose goodwill, reputation, business and profits if this unlawful, unjustified, malicious and fraudulent conduct of the Defendant continues.

20. That the plaintiff is engaged in a lawful undertaking and is entitled to lawfully and peacefully prosecute and pursue his business, and to be protected in his business, property and property rights, and that the acts of the defendant, its servants and agents constitute unwarranted, unlawful and malicious interference with the prosecution of Plaintiff's business and is responsible for an injury to the property rights and business of the Plaintiff.

21. That the wrongful actions of the Defendant, its servants, employees, agents and representatives were and are prompted by malice, and all acts charged herein were done maliciously, fraudulently, and without legal justification or excuse.

22. The Plaintiff is without a full, complete and adequate remedy at law to address the irreparable damage which has been caused and will continue to be caused by Defendant if not restrained and enjoined by this Court.

WHEREFORE, the Plaintiff, William Ebert, respectfully prays as follows:

A. That this court enter a preliminary injunction pending a final determination of this cause, directed to the Defendant, its servants, employees, agents and representatives which:

(1) Enjoins and prohibits using or sending form letters such as the one marked "Exhibit D", to its insureds, to persons whose automobiles are damaged by Defendant's insureds, and to current or prospective customers of American Auto Body;

(2) Enjoins and prohibits the making of disparaging or derogatory statements or remarks about the Plaintiff or American Auto Body, orally or in writing, to its insureds, to persons whose automobiles are damaged by Defendant's insureds, to current or prospective customers of American Auto Body or to the general public, which statements question or denigrate the competency of or the quality of services provided by American Auto Body, Plaintiff's personal or business integrity, the ability of American Auto Body to provide services and goods contracted for in a timely fashion,

or state or imply that American Auto Body overcharges for services which it provides, or that if an insured or person whose automobile is damaged by the Defendant's insured contracts with the Plaintiff that he or she will have to pay for the repairs themselves;

(3) Enjoin and prohibit using the entire practice of the "Repair Facility Criteria Survey Form" and the Repair Facility Reference Guide unless and until American Auto Body is restored to the reference guide; and

(4) Mandates and requires that American Auto Body be restored to the Repair Facility Reference Guide and that criteria number 1 be declared invalid for vagueness, that it be made more definite, and that it be applied in a manner which is not arbitrary and capricious.

B. That this court, upon a final hearing and determination, enter a permanent injunction directed to the Defendant which:

(1) Enjoins and prohibits using or sending form letters such as the one marked "Exhibit D", to its insureds, to persons whose automobiles are damaged by the Defendant's insureds, and to current or prospective customers of American Auto Body.

(2) Enjoins and prohibits the making of disparaging or derogatory statements or remarks about the Plaintiff or American Auto Body, orally or in writing, to its insureds, to persons whose automobiles are damaged by the Defendant's insureds, to current or prospective customers of American Auto Body or to the general public, which statements question or denigrate the competency of or the quality of services provided by American Auto Body, Plaintiff's

personal or business integrity, the ability of American Auto Body to provide services and goods contracted for in a timely fashion, or state or imply that American Auto Body overcharges for services which it provides, or that if an insured or a person whose automobile is damaged by the Defendant's insured contracts with the Plaintiff that he or she will have to pay for the repairs themselves.

(3) Enjoins and prohibits using the entire practice of the "Repair Facility Criteria Survey Form" and the Repair Facility Reference Guide unless and until American Auto Body is restored to the reference guide; and

(4) Mandates and requires that American Auto Body be restored to the Repair Facility Reference Guide and that criteria number 1 be declared invalid due to vagueness, that it be made more definite and that it be applied in a manner which is not arbitrary and capricious.

COUNT II

(Tortious Interference with Prospective Business Advantage)

1-22. For its second cause of action against the defendant, the Plaintiff adopts and realleges Paragraphs 1 through 22 of Count I and makes the same a part hereof as though fully set forth herein.

23. The Plaintiff had and continues to have a reasonable expectation of entering into contracts for automobile repairs and similar business relationships with the Defendant's insureds and

those persons whose automobiles were and will be damaged by the Defendant's insureds.

24. By and through its previous dealings with the Plaintiff, the Defendant knew and had reason to know, and knows and has reason to know that its conduct has interfered with and will interfere with the reasonable expectations of American Auto Body that it will enter into contracts for the repair of automobiles with the Defendant's insureds and with those persons whose automobiles were and will be damaged by the Defendant's insureds.

25. The defendant, its servants, employees, agents and representatives, with full knowledge of the Plaintiff's competence and expertise in the field of auto body repair, intending to harass, annoy, injure, destroy and otherwise interfere with the Plaintiff's business, did and continues to knowingly, intentionally, and maliciously induce, persuade and entice the Defendant's insureds and those persons whose automobiles were damaged by the Defendant's insureds, who were and are current or prospective customers of the Plaintiff, to repudiate, cancel, or refuse to contact, enter into contracts and transact business with the Plaintiff.

26. The defendant, its servants, employees, agents and representatives have willfully and intentionally interfered with and continue to willfully and intentionally interfere with the prospective business advantage of American Auto Body by performing the acts and making those statements alleged hereinabove.

27. As a direct and proximate result of this unlawful, wrongful and fraudulent conduct by the Defendant, its servants, agents, employees and representatives, the Plaintiff and his business have been injured by the loss of business, profits, goodwill and reputation valued at a sum in excess of \$15,000.00.

WHEREFORE, the Plaintiff, William Ebert, respectfully prays as follows:

A. For a Judgment in favor of Plaintiff and against the Defendant for all of the net profits which the evidence shows were reasonably certain to accrue to Plaintiff but for the wrongful conduct by the Defendant and for costs of suit.

B. For such other relief as is warranted by the evidence presented.

Count III

(Punitive Damages)

1-27. For its third cause of action against the Defendant, the Plaintiff adopts and realleges Paragraphs 1 through 27 of Counts I and II and makes the same a part hereof as though fully set forth herein.

28. The Defendant, its servants, employees, agents and representatives fraudulently induced, persuaded and enticed its insureds to repudiate, cancel or refuse to contact, enter into contracts with or transact business with Plaintiff by using false, malicious and fraudulent representations. Furthermore, in an attempt to slander the goodwill and reputation of the Plaintiff's

business, the Defendant, its servants, employees, agents and representatives misrepresented to its insureds, to those persons whose automobiles were damaged by the Defendant's insureds, to the current and prospective customers of Plaintiff and to the general public that Plaintiff's services were overpriced, were unreliable, and were not performed in a timely manner. The Defendants' acts interfering with the prospective business relationships of the Plaintiff were intentional, malicious, fraudulent and without legal justification. The above described acts of the Defendants were done to and did harass, annoy, injure, destroy and otherwise interfere with Plaintiff and his business, causing the Plaintiff to continually lose customers, business, goodwill, reputation and profit on repair work which would have been performed by Plaintiff but for the Defendant's actions. The actions of the defendants were and are prompted by malice and all acts charged herein were done maliciously, fraudulently and without legal justification or excuse.

29. Upon information and belief, Defendant State Farm has and continues to engage in the course of conduct complained of herein despite having previously been enjoined from doing so in other jurisdictions.

WHEREFORE, Plaintiff, William Ebert respectfully prays as follows:

A. For a Judgment in favor of the Plaintiff and against the Defendant for punitive damages in such sum of as is consistent with the evidence presented at trial plus costs of suit; and

B. For such other and further relief as is warranted by the evidence or as the court deems just.

COUNT IV

(Breach of Contract)

1.-10. For its fourth cause of action against the Defendant, the Plaintiff adopts and realleges paragraphs 1 through 10 of Count I and makes the same a part hereof as though fully set forth herein.

11. For and in consideration of the plaintiff's execution of State Farm's Repair Facility Criteria Survey Form, the Defendant agreed to and did list the Plaintiff in its repair facility reference guide.

12. At all times mentioned herein the Plaintiff has met the Defendant's requirements as contained in the criteria form.

13. The Defendant breached the contract of the parties by removing the Plaintiff's name from the repair facility reference guide despite the Plaintiff's compliance with the agreed upon criteria.

14. By reason of the Defendant's breach of this contract, the Plaintiff and its business have been injured by its loss of business and profits in excess of \$15,000.00.

WHEREFORE, the Plaintiff, William Ebert, respectfully prays as follows:

A. For a Judgment in favor of Plaintiff and against the Defendants for all of the net profits which the evidence shows were

reasonably certain to accrue to Plaintiff but for the breach of contract by the Defendants plus costs of suit.

B. For such other relief as is warranted by the evidence presented.

WILLIAM EBERT d/b/a American Auto
Body, Plaintiff

BY: _____
His Attorneys

PLAINTIFF DEMANDS A TRIAL BY JURY OF TWELVE ON ALL ISSUES.

