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

SHELDON LANGER, RONALD M. YERMACK, and LANCE R. GOLDBERG, individually on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CME GROUP, INC., a Delaware Corporation; THE BOARD OF TRADE OF THE CITY OF CHICAGO, INC., a Delaware Corporation,

Defendants.

No. 14 CH 829
Judge Celia Gamrath
Calendar 6

ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

This case comes on Defendants', CME Group, Inc. (CMEG) and The Board of Trade of the City of Chicago, Inc. (CBOT), Motion to Dismiss or Strike Certain Allegations in Plaintiffs' Second Amended Complaint pursuant to 735 ILCS 5/2-615, 5/2-619, and 5/2-619.1. The Motion to Dismiss is granted in part as follows: Plaintiffs' claims relating to revenue sharing, exclusive access to Globex, and disgorgement are dismissed with prejudice. Allegations based on Core Right 4 and Special Voting Right 3 are stricken. Plaintiffs' request for injunctive relief is stricken without prejudice. The Motion to Dismiss is denied in all other respects.

BACKGROUND

Plaintiffs Sheldon Langer, Ronald M. Yermack, and Lance R. Goldberg filed this putative class action against Defendants CMEG and CBOT on behalf of themselves and similarly situated Class B shareholders of CMEG common stock and Class B members of CBOT. Plaintiffs are entitled to certain rights and privileges on the Chicago Mercantile Exchange (CME) and CBOT, depending on their member interests. CME and CBOT are

derivative Exchanges headquartered in Chicago and owned by CMEG. Plaintiffs are comprised largely of old line traders who owned the two Exchanges before their respective demutualizations in 2000 and 2005 and merger in 2007.

At the merger in July 2007, CME and CBOT amended their individual Charters governing the rights and privileges of members. Plaintiffs' Complaint alleges CMEG and CBOT breached these Charters and contractual obligations to Plaintiffs, causing them damages. The Complaint contains two counts: Breach of contract and breach of implied covenant of good faith and fair dealing.

CME

From its founding in 1898 and throughout the 20th Century, CME was an Illinois mutual company owned and controlled by its member traders. In November 2000, CME demutualized and converted to a Delaware for-profit corporation. Demutualization resulted in the conversion of membership interests into Class A Common Stock, which conferred equity rights, and Class B Common Stock, which conferred the traditional equity rights and trading rights of its associated membership divisions.

Prior to demutualization, CME members had referendum voting rights that allowed them to override Board action in adopting any new Exchange rules or amending or repealing existing rules. As part of demutualization, CME members gave up these referendum rights. In return, CME agreed Class B members would have the right to vote on any changes, amendments, or modifications to four Core Rights memorialized in the Amended and Restated Certificate of Incorporation of Chicago Mercantile Exchange (CME Charter) (eff. Nov. 13, 2000), which are now embodied in the CMEG Charter. At issue are Core Rights 2 and 4, under which CME agreed to protect:

2. The trading floor access rights and privileges granted to each series of Class B Common Stock, including the Commitment to Maintain Floor Trading;

4. The eligibility requirements for any Person to exercise any of the trading rights or privileges inherent in any series of Class B Common Stock.[1]

Plaintiffs interpret these Core Rights broadly, while Defendants construe them narrowly. Although contract interpretation is generally a question of law, Core Right 2 cannot be summed up as neatly as Defendants hope. It requires additional evidence to ascertain the parties' intent and meaning of terms. Accordingly, and for the reasons below, the court denies Defendants' Motion to Dismiss because it is premature to conclude, as a matter of law, the Aurora Data Center (ADC) is not a trading floor within the context of Core Right 2 and there is no Core Right protecting Plaintiffs' access to Globex and preferential fees.

CBOT

In 2005, CBOT also demutualized and converted from a not-for-profit member-owned organization to a for-profit corporation. CBOT amended its Certificate of Incorporation (CBOT Charter) to provide Class B members with Trading Rights and Special Voting Rights over amendments to the Certificate of Incorporation, Bylaws, or Rules that, in the sole and absolute determination of the CBOT Board of Directors, adversely affects specified rights, including:

2. The requirement that . . . holders of Class B memberships who meet the applicable membership and eligibility requirements will be charged transaction fees for trades of the Corporation's products for their accounts that are lower than the transaction fees charged to any participant who is not a holder of Class B membership for the same products, whether trading utilizing the open outcry trading system or the electronic trading system; and

3. The membership qualifications or eligibility requirements for holding any Series of Class B membership or exercising any of the membership rights and privileges associated with such Series. *See* Sec. IV(D)(2)(b).

[1] This is the current version of Core Right 4 upon which Plaintiffs rely in their Complaint. They cite a prior version of Core Right 4 in their Opposition brief to the Motion to Dismiss (pp. 9-10, 26), arguing language not in existence.

The CBOT Charter also provides CBOT members will continue to enjoy their existing trading rights and privileges, including their rights and privileges with respect to electronic trading systems. *See* Sec. IV(D)(1)(f).

GLOBEX

An impetus for this case surrounds the relocation of Globex from CME's downtown trading floor to the Aurora Data Center (ADC) and charging of new co-location fees in 2012 to members who previously accessed Globex for free. Globex is CMEG's electronic trading system that provides real-time price data and access to global markets. The ADC is a massive data center in Aurora that houses the trade matching engines for Globex products. Close proximity to Globex gives traders a distinct advantage – an advantage Plaintiffs claim they have an exclusive right to access for free.

Over the past two decades, CME and CBOT have transitioned from an open outcry market to a predominantly electronic marketplace in which hand signals were traded in for computers. The groundwork for this transition was laid in the early 1990s, when the Globex electronic trading platform was launched through a joint venture between CME and CBOT, from which CBOT later withdrew.

In September 1997, when CME launched the E-Mini, a futures product traded electronically and indexed to the S&P 500, CME placed Globex terminals on the trading floor with proximity and visibility to the S&P 500 pit. In March 1999, CME developed a hand-held device called Galax-C, which was designed to provide traders with real-time access to Globex data while on the trading floor.

Under the CME Rules that existed at the time, specifically Rule 582, the number of Globex Screen Rights (GSR) was limited to the number of CME memberships. Each GSR was

associated with an individual membership, such that CME members had the exclusive right to execute trades directly through Globex terminals located on the trading floor and share in any revenues generated from leasing Globex access to third parties. Members were not charged any additional fee or surcharge for this access and were able to access Globex from the trading floor and remotely. A member who owned a GSR, but did not trade electronically, had the ability to put his GSR into a pool to be leased out by CME. Rule 582 called for CME to distribute *pro rata* all GSR lease fees collected to each owner of a Class B share who did not make use of the GSR attributable to their membership.

While CME was completing demutualization in 2000, it decided to allow open access to Globex. Electronic trading on Globex then changed from a largely closed system to an open system in which CME allowed direct electronic access to the Globex order book and products traded on Globex for all market participants, including non-members. In 2001, CBOT similarly allowed open access to its own electronic trading platform, e-cbot. E-cbot was migrated onto Globex in January 2008.

As part of CME's implementation of open access in 2000, CME adopted and announced a number of Rule changes, including the elimination of Rule 582. CME approved and publicized the change to open access and elimination of Rule 582 between the time that the CME membership voted on demutualization and the time the Commodity Futures Trading Commission (CFTC) approved the demutualization transaction. Ever since open access began in 2000, both non-members and members have had the ability to directly access and trade on Globex. CME has collected Globex access and communication fees from both, but has not paid any access or communication fees to Plaintiffs.

In August 2010, CMEG moved the primary matching engine for Globex to the ADC. In January 2012, CMEG began to offer co-location at the ADC. Through co-location, CMEG directly leases space in the ADC to members and non-member customers so that they can directly access Globex with high-speed servers in close proximity to the Globex matching engines. This reduces the latency for trade and market information. CMEG charges a fee to anyone who co-locates at the ADC and has allowed multiple individuals to trade on one membership. Plaintiffs contend this reduces demand to lease their memberships and devalues Class B shares. Plaintiffs further contend they, as members, are entitled to exclusive access to the ADC – a new trading floor, so they claim – and to the best, most proximate, free access to Globex.

COMPLAINT

Plaintiffs allege CMEG and CBOT breached contractual obligations to Plaintiffs by modifying, without member vote, trading rights and privileges afforded to Class B members and eligibility requirements for exercising trading rights and privileges. Specifically, Plaintiffs complain Defendants have bypassed the lease market for Class B memberships by permitting non-members to receive the same access and proximity to Globex as members, which has significantly reduced the value of their shares and constitutes a breach of contract. They also allege Defendants breached Plaintiffs' Core and Special Rights by not giving members preferential treatment and lower fees vis-à-vis the ADC and the right to share in Globex access fee revenues. In the alternative, Plaintiffs contend Defendants breached the implied covenant of good faith and fair dealing by denying Plaintiffs preferential fees and free, best access to the ADC and Globex.

Plaintiffs contend Defendants violated Core Rights 2 and 4 of the CMEG Charter and Special Voting Rights 2 and 3 contained in the 2005 CBOT Charter. Plaintiffs also rely upon Special Trading Rights of the CBOT Charter, Section IV.D.1(f), which states: "In addition to the rights and privileges set forth above, except as otherwise provided in the Certificate of Incorporation, Bylaws or the Rules, each holder of a Class B membership of any Series shall be entitled to all trading rights and privileges with respect to those products that such holder is entitled to trade on the open outcry exchange system of the Corporation or any electronic trading system maintained by the Corporation or any of its affiliates or any of their respective successors or successors-in-interest."

Defendants argue this section is not among the Special Voting Rights and therefore does not require a member vote in order to adversely change it. While this may be true, the Complaint overall adequately states a claim for breach of contract premised on a violation of protected trading rights and, alternatively, for breach of implied covenants.

DISCUSSION

LEGAL STANDARD

Defendants move to dismiss or strike certain allegations in the Complaint in a combined motion filed under 735 ILCS 5/2-619.1. A section 2-615 motion to dismiss challenges the legal sufficiency of a pleading based on defects apparent on its face. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004). In reviewing the sufficiency of a pleading, the court accepts as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). The court construes the allegations in the pleading in the light most favorable to the plaintiff. *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 11-12 (2005).

A section 2-619 motion to dismiss admits the legal sufficiency of all well-pled facts in a complaint, but raises defects, defenses, or other affirmative matter that avoid the legal effect of plaintiff's claim. *See Advocate Health & Hosps. Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (1st Dist. 2004). A court must construe the documents, affidavits, and evidence in the light most favorable to the non-moving party, and the defendant bears the burden of proving any defense it relies upon. *Id.*; *Wolf v. Bueser*, 279 Ill. App. 3d 217, 222 (1st Dist. 1996).

ANALYSIS

1. Illinois' ten-year statute of limitations bars Plaintiffs' claims relating to revenue sharing and exclusive access to Globex, including their request for disgorgement.

a. Open Access and Rule 582 were eliminated in 2000.

The court agrees with Defendants that open access and the elimination of Rule 582 in the year 2000 precludes Plaintiffs' claims of revenue sharing and right of exclusive access to Globex. These claims are dismissed with prejudice.

First, there are no well-pled facts to show CBOT members, unlike CMEG shareholders, ever had rights to revenue sharing or exclusive access to Globex under the CBOT Charter. Second, while the CME Charter did provide such rights to members, these rights emanated from Rule 582, which was eliminated more than ten years ago. Any supposed breach by Defendants in eliminating Rule 582 and providing for open access is barred by Illinois' ten-year statute of limitations. *See* 735 ILCS 5/13-206. Although this case is governed by Delaware substantive law, a statute of limitations is procedural, so Illinois' ten-year statute applies. *See, e.g.*, *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 351–52 (2002).

In order to block implementation of open access and elimination of Rule 582, Plaintiffs had to exercise their referendum right, which they held prior to the completion of demutualization in 2000. They did not exercise this right, and open access was complete prior to

demutualization. Even if, as Plaintiffs suggest, an affirmative member vote was required to eliminate exclusive access and revenue sharing under Rule 582, failing to hold a member vote was a one-time occurrence that triggered the statute of limitations in 2000, or 2001 at the latest,[2] according to the Complaint.

The continuing harm or continuing violation theory advanced by Plaintiffs cannot save their claims. While the theory has utility with respect to installment contracts, it is inapplicable to claims for a single breach of contract. *See Hassebrock v. Ceja Corp.*, 2015 IL App (5th) 140037, ¶35. "'If a single breach occurs, either by repudiation or material failure of performance, the claim accrues at that time and the statute of limitations begins to run for all claims on that contract.'" *Id.*, quoting *Hi-Lite Products Co. v. American Home Products Corp.*, 11 F.3d 1402, 1409 (7th Cir. 1993).

The facts of this case are analogous to those in *Hassebrock*, such that Defendants allegedly breached and repudiated Plaintiffs' right to exclusive access and revenue sharing from Globex when they eliminated Rule 582 and obtained approval for open access in 2000. Thus, even if this was a continuous-performance-type contract entitling Plaintiffs to a continual revenue stream, there was a single breach that triggered the statute of limitations in the year 2000 when Rule 582 was eliminated and supposedly breached by failure to hold a vote.

Accordingly, Plaintiffs' claims for revenue sharing and exclusive access to Globex under the CMEG Charter are dismissed with prejudice under 735 ILCS 5/2-619(a)(5). Similar claims brought by CBOT members necessarily fail as a matter of law and are dismissed under 735 ILCS 5/2-615 for failure to state a claim. Not only do Plaintiffs fail to point to a specific protectable right to Globex or Globex access revenue stream within their Charter, but they identify no

[2] This argument stems from Plaintiffs' contention that Rule 582 was still in the Rulebook in 2000.

Special Voting Right violated with respect to these rights or a right to share leasing fees generated from the ADC. In fact, such revenue sharing in the form of a dividend or distribution is prohibited by Article IV.B.2.(c) of the CBOT Charter.

b. Disgorgement for Globex-related fees is not recoverable.

Because the court is dismissing all claims concerning revenue sharing from Global access, the court strikes Plaintiffs' request for disgorgement (Prayer for Relief, ¶3). Historically, disgorgement is not a remedy for breach of contract since its underlying purpose of preventing unjust enrichment is incongruent with the compensatory nature of breach of contract damages. However, the Restatement (Third) of Restitution seems to extend its application, recognizing the newness of disgorgement in the context of bad faith, breach of fiduciary duty, opportunistic breach of contract, and insider trading – none of which are alleged here. Notwithstanding, disgorgement of Globex-related fees is not recoverable by Plaintiffs because the underlying claims have been dismissed and there is no possibility Plaintiffs can recover. Accordingly, Plaintiffs' claim for disgorgement is stricken with prejudice under 735 ILCS 5/2-615.

2. Plaintiffs' claim to the most proximate, free access to Globex survives dismissal, but allegations premised on Core Right 4 and Special Voting Right 3 are stricken.

The court denies Defendants' Motion to Dismiss Plaintiffs' breach of contract claim based on a violation of their right to the most proximate, free access to Globex. However, this claim cannot be premised on Core Right 4 or Special Voting Right 3, which govern eligibility of membership. These allegations shall be stricken from the Complaint for they are not well pled or supported by a reasonable interpretation.

To grant a section 2-615 motion, this court must find Plaintiffs cannot prove any set of facts, under any circumstances, that would entitle them to relief. *See Marshall v. Burger King*

Corp., 222 Ill.2d 422, 429 (2006). The court must accept as true all well-pled allegations in the Complaint and draw all reasonable inferences in Plaintiffs' favor. *Id.*

As stated above, Plaintiffs' right to exclusive access to Globex and revenue sharing was eliminated with the advent of open access. However, this does not foreclose CMEG Plaintiffs' claim for breach of Core Right 2, which they allege includes a right to the most proximate, free access to Globex housed at the ADC, a new type of trading floor. The most proximate, free access to Globex was a right and privilege Plaintiffs enjoyed before it moved to the ADC. Non-members did not enjoy this same right or privilege and would lease a membership in order to have floor access and proximity to Globex.

To survive this Motion to Dismiss, Plaintiffs have alleged sufficiently that the ADC is a trading floor, attempting to explain how it functions as a trading floor within the meaning of the Charter. By relocating Globex to a new floor and charging an access fee to members, Defendants allegedly breached Plaintiffs' trading floor access rights and privileges.

Defendants raise cogent reasons why the ADC is not a trading floor within the meaning of Core Right 2. Ultimately, this will be a question of fact requiring evidence and further information as to how the ADC operates as a trading floor. But for now, drawing all reasonable inferences in CMEG Plaintiffs' favor, the court finds they have pled sufficient facts to state a claim for breach of their right to the most proximate, free access to Globex housed at the ADC.

CBOT Plaintiffs' claim is more tenuous, as there is no counterpart to Core Right 2 in the CBOT Charter. Nonetheless, there exists a viable claim based on their Special Trading Rights deigned to protect the right to the electronic trading system, which Plaintiffs allege encompasses free, proximate access to Globex. Alternatively, as discussed below, all Plaintiffs have sufficiently alleged a breach of implied covenants of good faith and fair dealing in this regard.

However, Plaintiffs cannot rely on Core Right 4 and Special Voting Right 3 to support their claim to the most proximate, free access to Globex. The court agrees with Defendants that Core Right 4 and Special Voting Right 3 are clearly limited to eligibility requirements governing things like moral character, age, good credit, and financial wherewithal. They do not provide for expansive trading rights, but relate solely to Plaintiffs' rights to protect against CMEG unilaterally changing the eligibility requirements to be a trading member or lessee of a Class B membership. Plaintiffs' capacious reading of these rights and comparative language in the Charters cannot withstand scrutiny, even when viewed in the most favorable light. As such, these allegations are stricken from the Complaint and cannot form a basis for breach of contract.

3. Plaintiffs' claims for preferential fees survive dismissal.

Defendants' Motion to Dismiss Plaintiffs' claims for preferential fees is denied. Special Voting Right 2 of the CBOT Charter clearly gives Plaintiffs a protected right to lower transaction fees than non-members. What these transaction fees consist of remains to be seen and cannot be decided on a motion to dismiss.

The court rejects the notion that without pointing to an affirmative change to the Charter, Bylaws, or Rules, Plaintiffs cannot state a claim for breach. What the CBOT Charter forbids be done directly cannot be done indirectly without a member vote. To hold otherwise would make Plaintiffs' rights illusory.

The CMEG Charter, unlike the CBOT Charter, does not expressly identify preferential fees in the Core Rights. However, this is not fatal to Plaintiffs' claim. CMEG Rule 121 and Bylaw 6.3(d) recognize preferential fees for members as a trading right and privilege – a privilege once limited only to members and individuals who leased a membership. Although the prospectus recognizes management discretion and incentive pricing, Plaintiffs allege this has

become a permanent fixture that guts their Core Rights. When construing all well-pled facts in Plaintiffs' favor, it is plausible their rights protect against extending membership rights and preferential fees to non-members and diluting the leasing market by permitting multiple individuals to trade on a single membership. Defendants have failed to meet the heavy burden that currently must be satisfied to obtain dismissal of this claim under section 2-615.

In short, both sides have presented reasonable yet different interpretations of the Charters and attendant materials on the issue of preferential fees. This alone is sufficient to withstand a motion to dismiss. *See UtiliSave, LLC v. Miele,* No. 10729-VCP, 2015 WL 5458960, at *7 (Del. Ch. Sept. 17, 2005).

4. Plaintiffs' request for injunctive relief is stricken.

In the prayer for relief, Plaintiffs argue they are entitled to injunctive relief to co-locate at the ADC without having to pay an access fee, to share revenues generated by Globex fees, and to compel ECMs and other customers to purchase or lease memberships from them to enhance the value of their Class B shares.

Illinois law governs the determination of whether injunctive relief is an appropriate remedy and the procedural elements of asserting a claim for injunctive relief. *See Am. Food Mgmt., Inc. v. Henson,* 105 Ill. App. 3d 141, 147 (5th Dist. 1982). "[A]n injunction is an extraordinary remedy which may be granted when the plaintiff establishes that his remedy at law is inadequate and he will suffer irreparable harm without the injunctive relief." *Sadat v. Am. Motors Corp.,* 104 Ill. 2d 105, 115 (1984). A well-pleaded complaint for injunctive relief must contain facts that "establish the inadequacy of legal remedy and the irreparable injury the plaintiff will suffer without the injunction." *Id.* at 116.

Plaintiffs contend injunctive relief is necessary because the violations are continuous and ongoing, making their remedy at law inadequate. However, Plaintiffs have failed to plead specific facts necessary to demonstrate this element or the suffering of irreparable harm.

Plaintiffs argue "no magic words are required" to plead facts supporting an injunction. However, facts that clearly establish injunctive relief is necessary still must be pleaded. *See Wilson v. Wilson*, 217 Ill. App. 3d 844, 856 (1st Dist. 1991). Plaintiffs also must plead how money damages is inadequate and will not make them whole. *See Maas v. Cohen Associates, Inc.*, 112 Ill. App. 3d 191, 196 (1st Dist. 1983) (injunctive relief is not proper where monetary damages is an adequate remedy). Plaintiffs' mere conclusory allegations fall short of the requisite pleading standard. Their request for injunctive relief is stricken without prejudice under section 2-615.

5. Motion to Dismiss Count II is denied.

Plaintiffs plead Count II in the alternative, asserting a breach of implied covenants of good faith and fair dealing in the CMEG and CBOT Charters. They allege development of the ADC and other co-location facilities and fees could not have been anticipated by the parties. Had they been, the members would have negotiated rights to preferential access and co-location fees at the time of establishment of the Charters.

Under Delaware law, the implied covenant of good faith and fair dealing is "'best understood as a way of implying terms in the agreement,' whether employed to analyze unanticipated developments or to fill gaps in the contract's provisions." *Dunlap v. State Farm Fire & Cas. Co.*, 878 A. 2d 434, 441 (Del. 2005), quoting *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A. 2d 436, 443 (Del. 1996). Courts will imply terms when "the party asserting the

implied covenant proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected." *Nemec v. Shrader*, 991 A. 2d 1120, 1126 (Del. 2010). "Thus, to properly plead a claim for breach of the implied covenant, [plaintiff] must allege some injury to his contractual interest as a result of the breach of the implied obligation." *Kuroda v. SPJS Holdings LLC,* 971 A. 2d 872, 888–89 (Del. Ch. 2009). The appropriate legal test "is this: is it clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith — had they thought to negotiate with respect to that matter." *Katz v. Oak Industries, Inc.,* 508 A. 2d 873, 880 (Del. Ch. 1986). If yes, a court may conclude such act constitutes a breach of the implied covenant of good faith. *Id.*

Defendants argue the Charters are not silent on the issues raised by Plaintiffs. Rather, they outline specific Core Rights and Special Voting Rights that require a member vote before they may be altered. Defendants contend the absence of certain rights and words is meaningful. They urge the court not to rewrite the Charters to benefit Plaintiffs.

Defendants make much of the fact Class B Plaintiffs did not specifically negotiate rights relating to Globex and sought only to protect their trading floor access rights and privileges. However, this ignores how Globex was accessed on the trading floors solely by members and the lease market that existed prior to co-location. It ignores that close proximity and free Globex access was a privilege of membership, notwithstanding the advent of open access. It ignores Plaintiffs' allegations that relocation of Globex to the ADC was not predicted and co-location fees were not contemplated at the time of demutualization. Had this been known or

contemplated, Plaintiffs allege they would have negotiated rights expressly in the Core and Special Voting Rights to preserve the value of their shares.

The court finds merit to Plaintiffs' contention in light of the unanticipated dynamic changes to Globex, relocation of Globex to the ADC, new co-location fees, and expansion of access rights to non-members trading on an individual membership. The Charters were designed to protect critical, fundamental rights of membership, including floor access rights and privileges and other enumerated trading rights. Accepting as true all well-pled allegations, Plaintiffs have sufficiently alleged injury to their contractual rights as a result of a breach of an implied obligation.

The court is cognizant the implied duty of good faith and fair dealing is a limited, extraordinary remedy intended to enforce the parties' contractual bargain by preventing one party from engaging in conduct that frustrates the other party's right to the benefit of a contract. Although the doctrine is rarely utilized, it would be premature to dismiss Count II as to Plaintiffs' preferential fee claims and preferential access to Globex at the ADC. Defendants' Motion to Dismiss Count II is denied in this regard, but granted to the extent Plaintiffs seek exclusive access to Globex and revenue sharing in Count II. These claims are barred unequivocally for the reasons set forth in section 1 of this Order.

CONCLUSION

Defendants' Motion to Dismiss is granted in part as follows: Plaintiffs' claims relating to revenue sharing, exclusive access to Globex, and disgorgement are dismissed with prejudice. Allegations based on Core Right 4 and Special Voting Right 3 are stricken. Plaintiffs' request for

injunctive relief is stricken without prejudice. The Motion to Dismiss is denied in all other respects.

Plaintiffs are granted to April 16, 2018 to re-plead and file a Third Amended Complaint. This case is set for status on April 30, 2018, at 9:00 a.m. The court anticipates setting discovery deadlines on that date as to the meaning of Core and Special Voting Rights and preferential fees. The parties should discuss an appropriate discovery schedule in advance of the status hearing.

In the meantime, as discussed in open court, the parties are encouraged to try a dispute resolution process as an alternative to the adversarial court process. Reaching a resolution is completely voluntary, but a mediator is in a position to help clarify and streamline the issues and hopefully find a mutually beneficial solution for everyone involved in a timely, less expensive way.

IT IS ORDERED:

1. Defendants' Motion to Dismiss is granted in part and denied in part.
2. Plaintiffs shall re-plead and file a Third Amended Complaint by April 16, 2018.
3. This case is set for status on April 30, 2018, at 9:00 a.m.

Judge Celia Gamrath

MAR 16 2018

Circuit Court - 2031

ENTERED: _____

Judge Celia Gamrath, No. 2031
Circuit Court of Cook County, Illinois
Chancery Division