NO. 5-09-0289

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE COUNTY OF ST. CLAIR, ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>CASEYVILLE RIFLE AND PISTOL CLUB, INC.,<br><br>Defendant-Appellee. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the<br>Circuit Court of<br>St. Clair County.<br><br>No. 07-CH-1158<br><br>Honorable<br>Andrew J. Gleeson,<br>Judge, presiding. |

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Chapman and Justice Wexstten concurred in the judgment.

**R U L E 2 3 O R D E R**

*Held*: The circuit court improperly granted the defendant's section 2-619(a)(9) motion to dismiss the plaintiff's complaint for injunctive relief.

The plaintiff, the County of St. Clair (St. Clair County), filed a complaint for injunctive relief against the defendant, Caseyville Rifle and Pistol Club, Inc. (the Rifle Club), seeking to enjoin the Rifle Club from operating a shooting range on its property located near the runway of a United States Air Force base. St. Clair County appeals the judgment of the circuit court of St. Clair County that dismissed the complaint with prejudice pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(9) (West 2008)). For the following reasons, we reverse.

BACKGROUND

The United States Air Force operates Scott Air Force Base (Scott AFB), which is a United States Air Force aircraft installation located in St. Clair County, Illinois. Scott AFB has one active runway that serves a considerable amount of incoming and outgoing aircraft

traffic, both military and civilian, on a day-to-day basis.

In order to coordinate the development of land adjacent to its aircraft installations, in the 1970s, the United States Department of Defense established the Air Installation Compatible Use Zone (AICUZ) Program to address the community noise and safety impacts of its military air installations. The program is "an effort to coordinate the requirements of the missions of military air installations, with the development of the surrounding communities." *Branning v. United States*, 228 Ct. Cl. 240, 250, 654 F.2d 88, 95 (1981). "The AICUZ is a concept of identifying compatible and incompatible land use around an air station, the purpose being to guide compatible private development through cooperation with local jurisdictions in order to minimize public exposure to aircraft noise and accident potential, while at the same time maintaining the operational capability of the station." *Branning*, 228 Ct. Cl. at 250, 654 F.2d at 95.

AICUZ studies define restrictions on land uses in the vicinity of air installations to ensure the land use is compatible with the installation's operations and to ensure that "people and facilities are not concentrated in areas susceptible to aircraft accidents." 32 C.F.R. §256.1(b)(1) (1995). The AICUZ studies take into account two principal factors–aircraft noise impact on the area and aircraft accident potential. *Branning*, 228 Ct. Cl. at 250, 654 F.2d at 95. The present case concerns aircraft accident potential.

In AICUZ studies, the areas surrounding a particular air installation that are impacted by possible aircraft accidents are designated as Accident Potential Zones (APZ). *Branning*, 228 Ct. Cl. at 250, 654 F.2d at 95. The APZs are classified as "Clear Zone," "APZ-I," or "APZ-II," depending on the area's potential for aircraft accidents. The Clear Zone is the most critical area with respect to aircraft accidents, the APZ-I has a moderate potential for aircraft accidents, and the APZ-II is the least critical zone but still possesses significant potential for aircraft accidents. *Branning*, 228 Ct. Cl. at 251, 654 F.2d at 95. The AICUZ

studies are for advisory purposes only, and the authority to permit or restrict the development or use of private lands is left to the local jurisdiction. *Blue v. United States*, 21 Cl. Ct. 359, 362 (1990).

In February of 2001, the United States Air Force prepared and issued its most recent AICUZ study for Scott AFB. This AICUZ study states, "[A]n aircraft accident is a high-consequence event and, when a crash does occur, the result is often catastrophic." The study further states, "Designation of safety zones around the airfield and restriction of incompatible land uses can reduce the public's exposure to safety hazards." The study indicated that the Air Force developed its zone classifications "from analysis of over 800 major Air Force accidents that occurred within 10 miles of an Air Force base between 1968 and 1995."

On July 11, 2003, the Illinois legislature enacted the County Air Corridor Protection Act (Air Corridor Protection Act) (620 ILCS 52/1 *et seq.* (West 2008)) to address incompatible land use and development issues around Scott AFB. Pub. Act 93-176, §1, eff. July 11, 2003; 93d Gen. Assem., House Proceedings, April 3, 2003, at 196-97 (statements of Representative Hoffman); 93d Gen. Assem., Senate Proceedings, May 9, 2003, at 96-97 (statements of Senator Clayborne). Section 10 of the Air Corridor Protection Act grants a county with an Air Force installation the authority to control incompatible land use around the installation, and section 15 further authorizes the county, under certain circumstances, to acquire land by eminent domain. 620 ILCS 52/10, 15 (West 2008).

The Rifle Club's property in the present case is a 31.87-acre parcel located in St. Clair County and is commonly known as 1359 North County Road, Mascoutah, Illinois. The parcel overlaps into APZ-I and/or APZ-II for Scott AFB as defined in the February 2001 AICUZ. Sometime before January 28, 2005, the Rifle Club made it known that it intended to build a shooting range on its 31.87-acre parcel. It is unclear from the record what events

took place prior to January 28, 2005, with respect to the proposed shooting range. On January 28, 2005, Lieutenant Colonel Stephen E. Shea, the commander of the 375th Civil Engineer Squadron at Scott AFB, wrote a letter to the City of Mascoutah, stating that the Rifle Club's proposed location for its shooting range was within APZ-I and APZ-II of Scott AFB and was underneath the Scott AFB's "runway's approach-departure glide slope." Lieutenant Colonel Shea further informed the City of Mascoutah as follows:

> "We have determined that the proposal would subject the [Rifle] Club patrons and visitors to increased risk of aircraft accidents and other hazards given that all land uses below take-off and final approach flight paths, by definition, expose the public to significantly higher danger and noise inconvenience. In addition, at that general location, above-ground firearm/explosive use by the public would constitute additional potential hazards to aircraft safety."

Lieutenant Colonel Shea informed the City of Mascoutah that the proposed location for the Rifle Club "within APZ I & II is not compatible with the current military flight mission at Scott AFB."

On November 18, 2005, St. Clair County filed an action (cause No. 05-ED-1158) for the condemnation of the Rifle Club's property pursuant to section 15 of the Air Corridor Protection Act (620 ILCS 52/15 (West 2008)). This eminent domain action is not the subject matter of the present appeal but is the subject matter of a separate appeal before this court (No. 5-09-0100).[1] While the eminent domain case was pending in the circuit court,

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[1]On November 28, 2007, the circuit court dismissed St. Clair County's eminent domain proceeding, ruling that it lacked subject matter jurisdiction over the case because the county failed to enact an enabling resolution or ordinance prior to the filing of the eminent domain complaint. In No. 5-09-0100, St. Clair County appealed the judgment of the court dismissing the eminent domain proceeding.

the Rifle Club began operating its shooting range on the property in February or March 2007. St. Clair County initially filed a motion for a temporary restraining order in the pending eminent domain proceeding to prevent the Rifle Club from operating the shooting range. However, St. Clair County ultimately decided to seek injunctive relief in a separate proceeding.

On October 9, 2007, St. Clair County filed the complaint in the present case, a two-count complaint for injunctive relief against the Rifle Club. Both counts of the complaint requested the circuit court to enter preliminary and permanent injunctions enjoining the Rifle Club from using the property as a shooting range. Count I requested an injunction pursuant to section 10 of the Air Corridor Protection Act (620 ILCS 52/10 (West 2006)), and count II requested an injunction pursuant to section 11 of the Airport Zoning Act (620 ILCS 25/11 (West 2006)).

St. Clair County alleged in its complaint that the Rifle Club's shooting range was located approximately 1.5 to 1.7 miles directly south of Scott AFB's runway and was entirely within an APZ. St. Clair County also alleged that aircraft fly above the shooting range at 450 feet above the ground, which is within the lethal range of rounds fired at the shooting range. St. Clair County alleged, "The discharging of firearms upon [the Rifle Club's] property places United States Air Force pilots, crew, and any military and non-military personnel that may utilize [Scott AFB's] runway at risk for harm and possible death due to an errant round(s) escaping the shooting range or intentionally discharged round(s) fired at an aircraft." St. Clair County also alleged that the operation of the shooting range jeopardized the lives of the Rifle Club's members and their invitees and guests who may gather in the APZ and under the glide path and glide slope to Scott AFB's runway. On the same day that St. Clair County filed its complaint for injunctive relief, the county also filed a motion requesting a preliminary injunction.

In its answers to St. Clair County's pleadings, the Rifle Club maintained that aircraft utilizing the airspace above the Rifle Club's property were not within the lethal range of fire due to the design and construction of the facility. The Rifle Club also maintained that the February 2001 AICUZ study for Scott AFB did not reference or prohibit shooting ranges or similar facilities and that the study stated that the risk of people on the ground being killed or injured by aircraft accidents was "minuscule." The Rifle Club asserted that its facility was a low-intensity use that was appropriate within an APZ-II.

On June 23, 2008, the Rifle Club filed a motion to dismiss St. Clair County's complaint. The parties appeared in court for a hearing on the motion to dismiss on October 14, 2008, and the circuit court granted the Rifle Club's oral request to withdraw its answer to St. Clair County's complaint. The circuit court then granted the Rifle Club's motion to dismiss the complaint. The court dismissed count II (Airport Zoning Act) with prejudice but granted St. Clair County 14 days to file an amended complaint with respect to count I (Air Corridor Protection Act). On October 28, 2008, St. Clair County filed an amended complaint for injunctive relief and an amended motion for a preliminary injunction seeking injunctive relief pursuant to section 10 of the Air Corridor Protection Act. On November 21, 2008, the Rifle Club filed a motion to dismiss the amended complaint pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2008)).

On February 9, 2009, the parties appeared in court for a hearing on the motion to dismiss. The circuit court granted the Rifle Club's motion and dismissed St. Clair County's amended complaint with prejudice pursuant to section 2-619 of the Code. In articulating the basis for its ruling, the court stated that there was no question that St. Clair County had a clear and ascertainable right in the matter but that the county had not made a showing of immediate and irreparable harm. The court stated as follows:

"I don't think that they've made a showing to this Court that that gun club is

any more dangerous than the customary use of that land *** it's contiguous with. The area out there is clearly area utilized by hunters and all kinds of people who are operating firearms in the immediate area. Perhaps not to the same concentration, but they certainly operate and hunt *** and use firearms in that particular area."

The court further added that a person could go to the side of the road and shoot a rifle and that "[a] lot of people do." The court also ruled that an eminent domain proceeding provided the county with an adequate remedy at law and that the eminent domain case was the proceeding that the county should proceed under.

In a handwritten order, the circuit court ruled that St. Clair County failed to establish that it does not have an adequate remedy at law, failed to establish an irreparable harm, and failed to establish "that the status quo doesn't include the ongoing operation of the club."

The court entered its final written order granting the motion to dismiss on June 5, 2009. The court's final written order stated as follows:

"Plaintiff has not made a showing of immediate and irreparable harm because it cannot show that the Defendant's rifle and pistol club is any more dangerous than the customary use of the land that it is contiguous with. The Court specifically finds that the area around Defendant's rifle and pistol club is utilized by hunters and other people who operate firearms in the immediate area. Thus, the operation of Defendant's rifle and pistol club is not any more dangerous than the danger from the general public, as persons could simply discharge firearms from the road.

*** Further, Plaintiff has an adequate remedy at law–eminent domain, which it may pursue.

THEREFORE, Plaintiff cannot establish immediate and irreparable harm and no adequate remedy at law ***."

ANALYSIS

The Rifle Club filed a combined motion to dismiss pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2008)). Section 2-619.1 of the Code allows a combined motion to dismiss but requires the combined motion to be divided into parts, with each part limited to either section 2-615 or section 2-619 and the points or grounds relied upon under that particular section. 735 ILCS 5/2-619.1 (West 2008). It does not allow for hybrid motion practice. *Storm & Associates, Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1046, 700 N.E.2d 202, 206 (1998). "Meticulous practice dictates that a lawyer specifically designate whether her motion to dismiss is pursuant to section 2-615 or section 2-619." *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484, 639 N.E.2d 1282, 1289 (1994).

"[A] motion to dismiss under section 2-615 differs significantly from a motion for involuntary dismissal under section 2-619." *Becker v. Zellner*, 292 Ill. App. 3d 116, 122, 684 N.E.2d 1378, 1383 (1997). "A significant difference between the two motions is that a section 2-615 motion is based on the pleadings rather than on the underlying facts." *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29, 801 N.E.2d 1103, 1109 (2003). A section 2-615 motion is solely concerned with defects on the face of the complaint. *Becker*, 292 Ill. App. 3d at 122, 684 N.E.2d at 1383. It admits "all well-pleaded facts and attacks the legal sufficiency of the complaint." *Randle v. AmeriCash Loans, LLC*, 403 Ill. App. 3d 529, 533, 932 N.E.2d 1200, 1203 (2010). The allegations in the pleadings are the only matters that the court is to consider in ruling on a 2-615 motion. *Illinois Graphics Co.*, 159 Ill. 2d at 485, 639 N.E.2d at 1289.

A section 2-619 motion, however, " 'admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats the claim.' " *Becker*, 292 Ill. App. 3d at 122, 684 N.E.2d at 1383 (quoting *Brock v. Anderson Road Ass'n*, 287 Ill. App. 3d 16, 21, 677 N.E.2d 985, 989 (1997)). It assumes that a cause of action has been

stated. *Cwikla*, 345 Ill. App. 3d at 29, 801 N.E.2d at 1109. A section 2-619 motion "raises defects, defenses or other affirmative matter which appears on the face of the complaint or is established by external submissions which act to defeat the plaintiff's claim." *Neppl v. Murphy*, 316 Ill. App. 3d 581, 584, 736 N.E.2d 1174, 1178 (2000). "[A] section 2-619 proceeding enables the court to dismiss the complaint after considering issues of law or easily proved issues of fact." *Neppl*, 316 Ill. App. 3d at 585, 736 N.E.2d at 1179.

In the present case, the circuit court stated at the conclusion of the hearing on the motion to dismiss and in its handwritten order that it was dismissing St. Clair County's amended complaint pursuant to section 2-619. In its brief, the Rifle Club does not cite section 2-615 as an alternative basis to affirm the circuit court's dismissal order. Therefore, we will focus our analysis of the propriety of the circuit court's dismissal order only under section 2-619 standards.[2]

In ruling on a section 2-619 motion, the circuit court may consider the pleadings, depositions, and affidavits. *Doe v. Montessori School of Lake Forest*, 287 Ill. App. 3d 289, 296, 678 N.E.2d 1082, 1088 (1997). An appeal from a circuit court's dismissal of a complaint pursuant to section 2-619(a)(9) of the Code is subject to *de novo* review. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115, 896 N.E.2d 232, 235 (2008).

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[2]The June 5, 2009, final order cites section 2-615 of the Code, but the court stated at the hearing on the motion that it was dismissing the case pursuant to section 2-619. The court also cited section 2-619 in its February 9, 2009, handwritten order, and both parties treat the dismissal order as one under section 2-619 of the Code. Therefore, we will treat the dismissal as one under section 2-619. The analysis of a dismissal order on appeal can be complicated by a defendant's and trial court's failure to clearly delineate the basis for the motion to dismiss and ruling thereon. *Illinois Graphics Co.*, 159 Ill. 2d at 488, 639 N.E.2d at 1291.

In the present case, neither the circuit court's ruling nor the Rifle Club's motion to dismiss specified the subsection of section 2-619(a) upon which they relied. Our review of the record indicates that the parties and the circuit court seem to have proceeded under section 2-619(a)(9), which permits an involuntary dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2006). This appears to be the only subsection of section 2-619(a) that is applicable in the present case. Therefore, we will treat the circuit court's June 5, 2009, order as a dismissal pursuant to section 2-619(a)(9).

Motions to dismiss pursuant to section 2-619(a)(9) of the Code attack the complaint by raising an affirmative matter that avoids the legal effect of or defeats the claim. *Housman v. Albright*, 368 Ill. App. 3d 214, 218, 857 N.E.2d 724, 729 (2006). "The phrase 'affirmative matter' refers to something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461, 808 N.E.2d 995, 998 (2004). Affirmative matters include "any defense other than a negation of the essential allegations of the plaintiff's cause of action." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115, 619 N.E.2d 732, 735 (1993). It does not include " 'merely evidence upon which defendant expects to contest an ultimate fact stated in the complaint.' " *Smith*, 231 Ill. 2d at 121, 896 N.E.2d at 238 (quoting 4 R. Michael, Illinois Practice §41.7 at 332 (1989)). Therefore, although the Rifle Club may challenge St. Clair County's legal conclusions, all well-pleaded facts and the inferences arising from those facts must be taken as true for purposes of a motion under section 2-619(a)(9). *In re Marriage of Diaz*, 363 Ill. App. 3d 1091, 1094, 845 N.E.2d 935, 938-39 (2006).

It is the defendant's burden to prove the affirmative matter defeating the plaintiff's claim. *Daniels v. Union Pacific R.R. Co.*, 388 Ill. App. 3d 850, 855, 904 N.E.2d 1003, 1008

(2009). The defendant bears the initial burden of presenting the affirmative matter (*Reilly v. Wyeth*, 377 Ill. App. 3d 20, 36, 876 N.E.2d 740, 755 (2007)), and unless the grounds for the motion appear on the face of the pleading being challenged, the motion must be supported by affidavit. 735 ILCS 5/2-619(a) (West 2008). If the defendant meets its burden, "the burden then shifts to the plaintiff to establish that the defense is 'unfounded or requires the resolution of an essential element of material fact before it is proven.' " *Reilly*, 377 Ill. App. 3d at 36, 876 N.E.2d at 755 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116, 619 N.E.2d 732, 735 (1993)). "Where, as here, a cause of action is dismissed pursuant to a section 2-619 motion, the questions on appeal are whether a genuine issue of material fact exists and whether the defendant is entitled to a judgment as a matter of law." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389, 757 N.E.2d 471, 477 (2001).

St. Clair County's amended complaint sought injunctive relief under the Air Corridor Protection Act. Section 10 of the Air Corridor Protection Act (620 ILCS 52/10 (West 2008)) gives the county the authority to control the use of land that is designated as an APZ in an AICUZ study. Specifically, section 10 of the Air Corridor Protection Act states as follows:

> "Any county with a United States Air Force installation with runways of at least 7,500 feet in length has the authority to protect the safety of the community by controlling the use of land around that installation, notwithstanding any ordinance of or authority granted to any municipality. The county's land use authority is limited to the area designated in the Air Installation Compatible Use Zone Study adopted by the United States Air Force for that installation and the runways it occupies or uses." 620 ILCS 52/10 (West 2008).

Section 15 of the Air Corridor Protection Act gives the county express power to

acquire, by eminent domain, land that is used in a manner that is incompatible with an AICUZ study. Section 15 provides as follows:

> "If a land use exists or a municipality approves a land use that is incompatible with the Air Installation Compatible Use Zone Study, and any portion of the affected land is within areas designated in the Air Installation Compatible Use Zone Study as clear zones and runway protection zones, accident potential zones I, or accident potential zones II, *** the county may use eminent domain to acquire either the fee simple title to that portion of the affected land or the easement rights in that portion of the affected land that are necessary for the compatible land use defined under the Air Installation Compatible Use Zone Study. If a municipality within those zones controls the use of land in a manner compatible with the Air Installation Compatible Use Zone Study, the county does not have eminent domain authority." 620 ILCS 52/15 (West 2008).

St. Clair County's complaint sought injunctive relief against the Rifle Club to prevent the Rifle Club from operating a rifle and pistol range on their property. St. Clair County's complaint sought a preliminary injunction and a permanent injunction. In general, in order to be entitled to a preliminary injunction, a party is "required to demonstrate (1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62, 866 N.E.2d 85, 91 (2006). "In order to be entitled to a permanent injunction, the party seeking the injunction must demonstrate: (1) a clear and ascertainable right in need of protection; (2) that he or she will suffer irreparable harm if the injunction is not granted; and (3) that there is no adequate remedy at law." *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772, 919 N.E.2d 76, 85 (2009).

In its June 5, 2009, order, the circuit court found that St. Clair County had a clear and ascertainable right but that it failed to show irreparable harm if the injunction is not granted and that it failed to show that there was no adequate remedy at law. In order to analyze the circuit court's dismissal under section 2-619(a)(9), we must analyze St. Clair County's allegations with respect to these elements and the "affirmative matter" that the circuit court considered in determining that St. Clair County could not establish an irreparable injury or an inadequate remedy at law.

With respect to irreparable injury, St. Clair County alleged that the Rifle Club is operating a shooting range on its property and that the property is located entirely within an APZ near Scott AFB. In addition, St. Clair County alleged that the Rifle Club's property is in the glide path and glide slope to Scott AFB's runway and that aircraft traverse the Rifle Club's shooting range only 450 feet above the ground, "within lethal range of common rounds fired at the shooting range." The county further alleged that the shooting range presented "a clear hazard to aircraft landing or taking off from [Scott AFB]" and that the discharging of firearms places "United States Air Force pilots, crew, and any military and non-military personnel that may utilize [Scott AFB's] runway at risk for harm and possible death due to an errant round(s) escaping the shooting range or an intentionally discharged round(s) fired at an aircraft." In addition, St. Clair County alleged that the location of the shooting range causes the Rifle Club's members, guests, and invitees to gather in an APZ and in the glide path and glide slope to Scott AFB's runway. St. Clair County alleged that use of the property as a shooting range puts "human lives at risk on the ground and in the air, thus jeopardizing the health, safety and welfare of the community."

The record on appeal includes an affidavit and excerpts from the deposition testimony of Duncan MacPherson, an expert in the field of ballistics and aerospace. MacPherson stated in his affidavit and deposition that he had conducted tests to determine the threat of

small arms fire to aircraft utilizing Scott AFB. He concluded in his affidavit "[t]hat common pistol ammunition poses a clear and unequivocal fatality risk to an aircraft's crew," "[t]hat rifle ammunition generally has much more bullet energy than pistol ammunition and thus poses a greater fatality risk to an aircraft's crew," and "[t]hat an airplane's structure/frame provides relatively little protection from most bullets."

The record also includes the affidavit of and excerpts from the deposition testimony of J.F. Joseph, an expert in the field of aviation and aviation hazards. Joseph testified that he is not an expert in ballistics but has "extensive training and experience with small arms fire" as well as aviation accident analysis/reconstruction. Joseph states in his affidavit that he had reviewed maps and site plans of the Rifle Club's property, flight paths of aircraft landing and departing at Scott AFB, the February 2001 AICUZ study for Scott AFB, and "the relevant standard operating procedures of military planes departing and landing at [Scott AFB]." Joseph opines in his affidavit that the Rifle Club's shooting range "places at risk human lives on the ground and in the air" and that small arms fire from the shooting range is "capable of downing military aircraft that utilize [Scott AFB]" and navigate the APZs surrounding Scott AFB. According to Joseph, a shooting range within an APZ is an incompatible use of the property because it places unnecessary risk to human lives on the ground and in the air and the use does not comply with the February 2001 AICUZ study for Scott AFB.

At his deposition, when asked about the threat from the use of guns in the flight pattern near Scott AFB, Joseph testified as follows:

> "[A] direct flight path would be my concern. Not just in the vicinity. *** [W]e can have hunters throughout the airport periphery and by virtue of their location would be a threat to aircraft. *** But particularly if we have a concentrated area where small arms fire may be providing exposure to aircraft on a direct flight path to

a runway or from a runway would be the predominant threat."

Joseph noted that there would be more people handling firearms on the Rifle Club's property than there would be in other ancillary areas around the approach path to the airport. He also testified that the possibility of an unintentional discharge of a firearm was a lot higher at the Rifle Club than from someone sitting on the side of the road. When asked about the woods to the west of the shooting range, Joseph testified that he did not know if anyone hunted in those woods or, if so, what type of firearm was used. Hunting with a shotgun did not concern him as much as "small arms fire."

The Rifle Club's section 2-619(a)(9) motion to dismiss did not include any affidavits, deposition testimony, or exhibits. In granting the Rifle Club's motion, however, the circuit court found that St. Clair County failed to make a showing of irreparable harm "because it cannot show that [the Rifle Club's property] is any more dangerous than the customary use of the land that it is contiguous with." The circuit court "specifically [found] that the area around [the Rifle Club's property] is utilized by hunters and other people who operate firearms in the immediate area." The circuit court, therefore, concluded that the Rifle Club's shooting range was "not any more dangerous than the danger from the general public, as persons could simply discharge firearms from the road."

The circuit court's finding with respect to irreparable harm is incorrect. "It is *** well settled that under section 2-619 any grounds for dismissal not appearing on the face of the complaint must be supported by affidavit." *Becker*, 292 Ill. App. 3d at 124, 684 N.E.2d at 1385. There is nothing in the record concerning the nature and extent of the use of the property contiguous with the Rifle Club's property. There was no evidence that any hunting occurred on any of the surrounding property, much less evidence of the nature and frequency of any such hunting or the nature of the firearms used in such hunting. The circuit court, therefore, found these extrinsic facts without any basis to do so under section 2-619(a)(9)

standards.

Furthermore, even if there was an affidavit, deposition, or other competent evidence setting out facts or opinions concerning the use of the property contiguous with the Rifle Club's property, that evidence would not be in the nature of affirmative matter that would avoid the legal effect of or defeat St. Clair County's claim. As we outlined above, St. Clair County's amended complaint alleges specific facts concerning the dangerous nature of a shooting range located on the Rifle Club's property. St. Clair County's allegations are supported by factual statements concerning the nature of the flight paths of aircraft arriving and leaving Scott AFB, the location of the shooting range, and expert opinions in affidavits and deposition testimony concerning the dangerous risks at issue. At best, an affidavit setting forth the use of contiguous properties, as found by the circuit court, would establish a material issue of fact, not an affirmative matter that justifies a dismissal order pursuant to section 2-619(a)(9). See *Smith*, 231 Ill. 2d at 122, 896 N.E.2d at 239 (citing *Hodge*, 156 Ill. 2d at 115, 619 N.E.2d at 735 (holding that an "affirmative matter" means a defense other than a negation of the plaintiff's essential allegations)).

St. Clair County has sufficiently alleged that the location of the Rifle Club's shooting range places at risk human lives on the ground and in the air and jeopardizes the health, safety, and welfare of the community. In its 2001 AICUZ study for Scott AFB, the Air Force specifically noted that "an aircraft accident is a high-consequence event and, when a crash does occur, the result is often catastrophic." Considering the allegations of the complaint and that there is an alleged risk to human life involved, irreparable harm is unquestionably at the heart of this case.

In granting the Rifle Club's section 2-619(a)(9) motion to dismiss, the circuit court also found that St. Clair County had "an adequate remedy at law–eminent domain, which it may pursue." We disagree with the circuit court's conclusion; St. Clair County's power to

pursue an eminent domain proceeding does not deny it the ability to seek injunctive relief.

The existence of a remedy at law does not, by itself, defeat a request for injunctive relief; the remedy at law has to be adequate. *K.F.K. Corp. v. American Continental Homes, Inc.*, 31 Ill. App. 3d 1017, 1021, 335 N.E.2d 156, 159 (1975). An adequate remedy at law is one that is "clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." *K.F.K. Corp.*, 31 Ill. App. 3d at 1021, 335 N.E.2d at 159.

As noted above, the Air Corridor Protection Act contains two sections that define a county's power to implement the act. 620 ILCS 52/10, 15 (West 2008). The power of the county to seek an injunction is encompassed within the general power granted to the county in section 10 to control land use to protect the safety of the community. Nothing in the Air Corridor Protection Act suggests that section 15's power of eminent domain is the sole and exclusive power a county has to control incompatible land use around Air Force installations. Accordingly, the power to acquire land by eminent domain is not a remedy at law that prevents St. Clair County from obtaining an injunction under section 10 of the Air Corridor Protection Act.

For example, in *State of Illinois Medical Center Comm'n v. Peter Carlton at Ogden & Oakley, Inc.*, 169 Ill. App. 3d 769, 772, 523 N.E.2d 1091, 1092 (1988), the plaintiff was a commission that the legislature created under "An Act in relation to the establishment of a medical center district" (Ill. Rev. Stat. 1985, ch. 111½, par. 5001 *et seq.*) (now the Illinois Medical District Act (70 ILCS 915/0.01 *et seq.* (West 2008))). The plaintiff had the duty to manage a medical center district in the city of Chicago " 'to provide conditions most favorable for the special care and treatment of the sick and injured and for the study of disease.' " *State of Illinois Medical Center Comm'n*, 169 Ill. App. 3d at 772, 523 N.E.2d at 1092 (quoting Ill. Rev. Stat. 1985, ch. 111½, par. 5018). The plaintiff brought an action

against the defendants to enjoin them from building a fast food restaurant within the medical center district, and the trial court entered a preliminary injunction enjoining the restaurant's construction. *State of Illinois Medical Center Comm'n*, 169 Ill. App. 3d at 772, 523 N.E.2d at 1092.

On appeal, the defendants argued, among other issues, that the injunction was improper because the commission had eminent domain powers which provided it an adequate remedy at law. *State of Illinois Medical Center Comm'n*, 169 Ill. App. 3d at 779, 523 N.E.2d at 1097. Section 3 of the statute authorizes the plaintiff to acquire property within the district by the exercise of the right of eminent domain. Ill. Rev. Stat. 1985, ch. 111½, par. 5004 (now 70 ILCS 915/3 (West 2008)). The court noted, however, that the statute permitted the plaintiff to institute any appropriate action to prevent or abate any unlawful act within the district. *State of Illinois Medical Center Comm'n*, 169 Ill. App. 3d at 779, 523 N.E.2d at 1097. The court concluded that because the plaintiff had determined that the restaurant was incompatible with the character of the district, it could properly enjoin the construction of the restaurant. *State of Illinois Medical Center Comm'n*, 169 Ill. App. 3d at 779, 523 N.E.2d at 1097. The court stated as follows: "The fact that the Commission has not yet acquired the property for its own use does not destroy its right to injunctive relief, particularly where the Commission is contemplating several medical uses for the property." *State of Illinois Medical Center Comm'n*, 169 Ill. App. 3d at 779, 523 N.E.2d at 1097.

Similarly, we reject the Rifle Club's argument that St. Clair County cannot seek injunctive relief because the Air Corridor Protection Act allows it to acquire property in an APZ by eminent domain. St. Clair County has alleged that the Rifle Club's shooting range is incompatible with Scott AFB's AICUZ study and is dangerous to the community, and section 10 of the Air Corridor Protection Act grants St. Clair County the "authority to protect

the safety of the community by controlling the use of land" within the APZs around Scott AFB. The purpose of the Air Corridor Protection Act would be frustrated if the only means St. Clair County had to protect the safety of the community under the act was through eminent domain. Such an interpretation of the statute would also render section 10 superfluous. "[S]tatutes should be construed, if possible, so that effect may be given to all of their provisions; so that no part will be inoperative or superfluous, void or insignificant; and so that one section will not destroy another." *In re Estate of Wilson*, 238 Ill. 2d 519, 561, 939 N.E.2d 426, 451 (2010).

We believe that by granting the county, in section 10 of the Air Corridor Protection Act, the "authority to protect the safety of the community by controlling the use of land," the legislature intended to grant the county authority to institute appropriate actions that promote community safety within APZs, including actions to enjoin acts that are dangerous and incompatible with Scott AFB's AICUZ study. Therefore, the circuit court incorrectly ruled that St. Clair County cannot seek injunctive relief because eminent domain provided an adequate remedy at law.

In reversing the circuit court's dismissal order, we make no findings and offer no opinion on whether or not the Rifle Club's shooting range is situated at an improper and dangerous location that poses irreparable harm and justifies an injunction under the Air Corridor Protection Act. We simply hold that the record contains no affirmative matter that avoids the legal effect of or defeats St. Clair County's claim; instead, the complaint, affidavits, exhibits, and depositions in the record raise material issues of fact that should be decided by a trier of fact at an evidentiary hearing or a trial, not by the circuit court on a section 2-619(a)(9) motion based on the arguments of counsel.

The Rifle Club argues that the circuit court's denial of a preliminary injunction should be affirmed because it began operating its shooting range prior to St. Clair County filing its

complaint for injunctive relief. Therefore, the Rifle Club argues, a preliminary injunction would change the status quo rather than preserve it. We disagree.

To be entitled to a preliminary injunction, the plaintiff is required to show, among other things, that the court should preserve the status quo until the case can be decided on its merits. *Steam Sales Corp. v. Summers*, 405 Ill. App. 3d 442, 453, 937 N.E.2d 715, 725 (2010). As noted above, this dispute has generated two separate lawsuits filed by St. Clair County under the Air Corridor Protection Act: an eminent domain proceeding and this proceeding for injunctive relief. St. Clair County filed the eminent domain proceeding on November 18, 2005, before the Rifle Club began operating its shooting range. In the eminent domain proceeding, St. Clair County filed a motion for a temporary restraining order and an application for a preliminary injunction to prevent the Rifle Club from operating the shooting range. On March 30, 2007, over the "strenuous objection" of St. Clair County, the circuit court granted the Rifle Club a continuance of that proceeding but without prejudice to St. Clair County's request for injunctive relief. Ultimately, St. Clair County filed a separate complaint for injunctive relief instead of seeking injunctive relief in the eminent domain proceeding.

Accordingly, under the particular facts and procedural history of this case, the status quo that is relevant is the status quo that existed at the time St. Clair County filed its eminent domain complaint. St. Clair County filed its eminent domain complaint prior to the Rifle Club's operation of a shooting range on its property.

Finally, St. Clair County argues, alternatively, that it is not required to allege and prove an inadequate remedy at law and irreparable injury, because injunctive relief is inherent in the Air Corridor Protection Act. St. Clair County cites *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 634, 834 N.E.2d 643, 649 (2005), for the proposition that "where a governmental agency is authorized to seek injunctive relief, it is not necessary to

plead or establish the traditional equitable elements necessary to obtain an injunction."

In *Sadat v. American Motors Corp*., 104 Ill. 2d 105, 111-12, 470 N.E.2d 997, 1000 (1984), the supreme court discussed the general rule that a plaintiff is not required to plead and prove the traditional elements to obtain an injunction where the plaintiff is seeking equitable relief created by a statute. The supreme court, however, noted that this general rule is applied only when "injunctive relief was expressly authorized as a means of enforcing compliance with the respective statutes." *Sadat*, 104 Ill. 2d at 112, 470 N.E.2d at 1000. In those cases, "the violation of such a statute implies an injury to the general public." *Sadat*, 104 Ill. 2d at 113, 470 N.E.2d at 1001. "Such injury necessitates the statutory authorization for equitable relief and supplants the traditional equitable pleading requirements." *Sadat*, 104 Ill. 2d at 113, 470 N.E.2d at 1001.

In the present case, we hold that section 10 of the Air Corridor Protection Act authorizes the county to institute appropriate actions that promote community safety within an APZ, including injunctive relief. However, this statutory grant of authority is a generalized statutory provision, not an express statutory authority to issue injunctions. The statute does not provide specific conditions under which injunctive relief should be granted. Therefore, while the statutory scheme under the Air Corridor Protection Act authorizes a county to seek injunctive relief, it does not supplant the traditional equitable pleading and proof requirements for injunctive relief.

CONCLUSION

For the foregoing reasons, we reverse the judgment of the circuit court of St. Clair County granting the Rifle Club's section 2-619(a)(9) motion to dismiss, and we remand for further proceedings.

Reversed; cause remanded.