

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL  
DISTRICT BOONE COUNTY, ILLINOIS

RMS INSURANCE SERVICES, INC., )  
an Illinois corporation d/b/a FLANDERS )  
INSURANCE AGENCY, INC., and )  
OWEN G. COSTANZA, an individual, )  
 )  
Plaintiffs, )

vs. )

CASE NO. 2021-L-30 )

DONALD G. SATTLER, an individual, )  
MARION THORNBERRY, an individual, )  
ELISABETH M. RODGERS, an individual, and )  
and CHERYL RUSSELL-SMITH, an individual, )  
 )  
Defendants. )

DEFENDANTS', DONALD G. SATTLER, MARION  
THORNBERRY, AND ELISABETH M. RODGERS,  
735 ILCS 5/2-1005 MOTION FOR SUMMARY JUDGMENT

NOW COME the Defendants, DONALD G. SATTLER, MARION THORNBERRY, and ELISABETH M. RODGERS, by their attorney, TRENT M. FERGUSON, and for their 735 ILCS 5/2-1005 Motion for Summary Judgment filed herein against the Plaintiffs, RMS INSURANCE SERVICES, INC., an Illinois corporation d/b/a FLANDERS INSURANCE AGENCY, INC., and OWEN G. COSTANZA, an individual, state as follows:

A motion for summary judgment is properly granted where the pleadings, depositions, admissions, and affidavits establish that no genuine issue of material fact exists and that the movant is entitled to summary judgment as a matter of law. 735 ILCS 5/2-1005 (West 2008); *J. Maki Constr. Co. v. Chi. Reg'l Council of Carpenters*, 379 Ill. App. 3d 189, 190 (2nd Dist.,

2008)

Plaintiffs filed a Complaint alleging the statements contained in a political flyer were defamatory. The flyer contained 13 specific allegations as well as the overall classification of the Plaintiff, Mr. Costanza, having a criminal record and being a repeat criminal. A copy of the flyer is attached hereto as Exhibit A.

In Illinois, an allegedly defamatory statement is not actionable if it is substantially true, even though it is not technically accurate in every detail. *Lemons v. Chronicle Publishing Co.*, 253 Ill. App. 3d 888, 890 (4th Dist., 1993). (Plaintiff was caught shoplifting by store employees and then pulled a knife, newspaper article's statements that employees were security guards, the plaintiff was convicted of four rather than three offenses, and one employee was stabbed as opposed to cutting himself while trying to disarm the plaintiff, were of little relevance. *Wilson v. United Press Assos.*, 343 Ill. App. 238 (1st Dist., 1951) (the "gist" or "sting" of a report of a supreme court decision was that the plaintiff, after having been convicted, was granted a new trial, and the newspaper's report that the plaintiff had begun to serve his sentence was immaterial). A statement that plaintiff was convicted of domestic violence when he instead plead guilty to simple battery which was later expunged. *Hardman v. Arlan*, 2019 IL App. 173196 (1st Dist., 2019). A statement that a father sexually assaulted his stepdaughter 30-50 times, when the stepdaughter testified he had done so only 8 times. *Koniak v. Heritage Newspapers, Inc.*, 198 Mich. App. 577 (1993). A statement that a man was sentenced to death for six murders, when in fact he was only sentenced to death for one. *Stevens v. Independent Newspapers, Inc.*, 15 Media L. Rep. 1097 (Del. Super. Ct. 1998). A statement that Terry Nichols was arrested after the Oklahoma City Bombing, when actually he had only been held as a

material witness. *Nichols v. Moore*, 396 F. Supp. 2d 783 (E.D. Mich. 2005). A statement that a man was charged with sexual assault, when actually he had only been arrested but not arraigned. *Rouch v. Enquirer & News of Battle Creek*, 440 Mich. 238 (1992).

A defendant bears the burden of establishing the substantial truth of his assertions, which he can demonstrate by showing that the “gist” or “sting” of the defamatory material is true. *Lemons*, 253 Ill. App. 3d at 890.

When determining the “gist” or “sting” of the allegedly defamatory material, a court must “look at the highlight of the article, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement. *Vachet v. Central Newspapers, Inc.*, 816 F.2d 313, 316 (7th Cir., 1987)

While determining substantial truth is normally a question for the jury, the question is one of law where no reasonable jury could find that substantial truth had not been established. *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill.App. 3d 62 (1st Dist., 2010).

In response to Plaintiff’s original Complaint, Defendants filed a Motion to Dismiss under the Illinois Citizen Participation Act, 735 ILCS 100/1, et seq (the “SLAPP Act”)(requiring, amongst other things, for the plaintiffs’ claims to be solely based on or related to the defendants’ acts in furtherance of their right to obtain favorable government action (*Brettman v. Breaker Press Co.*, 2020 Il App (2d) 190817-U (2020)).

The Motion was heard and on May 11, 2022, this Court issued a Memorandum of Decision and Order that denied the Motion but found several of the statements on the flyer to be

true and thus the claims regarding same to be meritless. The statements that were found to be true are as follows:

In 1999, Costanza plead guilty to writing bad checks.

In 2000, Costanza suffered a home foreclosure in Boone County, Illinois.

In 2000, Costanza completed a bankruptcy filing.

In 2011, Costanza was terminated from RMS for misappropriating company funds.

In 2014, the Illinois Department of Insurance Investigated Numerous Complaints by Insurance Customers, Past Terminations, Criminal History, Unlawful Fund Withdrawals and Fines and Discipline from Wisconsin and Indiana.

In 2014, Illinois Revokes Insurance Business License for Major Violations.

In 2015, the Illinois Department of Insurance Disciplines and Fines Costanza \$30,000.00 for Multiple Repeat Violations.

A copy of the Memorandum of Decision and Order is attached hereto as "Exhibit B"

The remaining allegations are addressed as follows:

**REMAINING ALLEGATION #1:**  
**IN 1995, COSTANZA PLEADS GUILTY TO FILING**  
**A FALSE POLICE REPORT IN BOONE COUNTY, ILLINOIS**

In paragraph 15 his affidavit, attached hereto as "Exhibit C", Costanza affirms that he did plead guilty to a Class B misdemeanor relating to this charge.

Also attached hereto as “Exhibit D” are three pages from the 17th Judicial Circuit Court on Boone County’s website showing Costanza’s guilty plea in Case Number 1995-CM-170 in exchange for court supervision and the court withholding of judgement.

Because the statement is true, the Plaintiffs’ action for defamation regarding the statement that he plead guilty to filing a false police report, must fail.

**REMAINING ALLEGATION #2:**  
**IN 1999, COSTANZA WAS TERMINATED FROM**  
**LIBERTY INSURANCE FOR FRAUD MISREPRESENTATION**

Attached hereto as “Exhibit E” are three pages from the State of Wisconsin, Office of the Commissioner of Insurance, Agent Licensing Section, filed by Liberty Insurance Corporation, setting forth that Costanza was terminated from Liberty Insurance Corporation and that the reason Costanza was terminated from their employment was for “fraud” and “misrepresentation”. The document further provides a statement from Liberty Insurance Company that they believe Costanza filed a fraudulent claim on a vehicle he owned and that they insured.

In his affidavit attached hereto as “Exhibit C”, Costanza does not refute that he was terminated for fraud and misrepresentation, only that there was never a finding of fraud entered.

In a letter to the State of Indiana, Costanza admits he was terminated for cause from an insurance agency contract or another business relationship with an insurance agency. See Exhibit H attached hereto.

Because the statement is true, the Plaintiffs’ action for defamation regarding the statement that he was terminated from Liberty Insurance for Fraud and Misrepresentation, must fail.

**REMAINING ALLEGATION #3:**  
**IN 2007, COSTANZA PLEAD GUILTY TO**  
**DRUNK DRIVING IN WINNEBAGO COUNTY, ILLINOIS**

Winnebago County court records indicate Costanza did enter a guilty plea of DUI on February 27, 2007, in the 17th Judicial Circuit Court, Winnebago County, case number 2007-DT-70. The Court later entered a “court supervision” disposition of the case. Attached hereto as “Exhibit F” are four pages from the 17th Judicial Court’s online website showing same.

In this Court’s Memorandum of Decision dated May 11, 2022 the court notes that Costanza, in his affidavit attached hereto as Exhibit C, did plead guilty to a class C misdemeanor charge of driving under the influence of alcohol.

Because the statement is true, the Plaintiffs’ action for defamation regarding the statement that he plead guilty to drunk driving, must fail.

**REMAINING ALLEGATION #4:**  
**IN 2008, THE STATE OF WISCONSIN DEPARTMENT OF**  
**INSURANCE DENIED INSURANCE LICENSE FOR FALSE APPLICATION**

In this Court’s Memorandum of Decision dated May 11, 2022, the court notes that Costanza, in his affidavit attached hereto as Exhibit B, did admit his application for a license in Wisconsin was denied in 2008.

Attached hereto as Exhibit G is a copy of select pages from the State of Wisconsin, Office of the Commissioner of Insurance Report from 2008 stating that Costanza “Has had his license denied for 31 days. This action was based on allegations of failing to disclose previous criminal

convictions on an insurance license application and failing to disclose a company termination for allegations of misconduct.”

Attached hereto as Exhibit I is a letter and a press release from the State of Wisconsin stating they denied Costanza’s license application.

Attached hereto as Exhibit J is a letter from Owen Costanza to the State of Montana Licensing Department in which he states the State of Wisconsin “denied” his application.

Because the statement is true, or in the alternative, substantially true, the Plaintiffs’ action for defamation regarding the statement that Costanza was denied an insurance license for false application must fail.

**REMAINING ALLEGATION #5:**  
**IN 2010, THE INDIANA DEPARTMENT OF INSURANCE**  
**FINED COSTANZA \$1,500.00 FOR A FALSE APPLICATION**  
**AND REVOKED HIS INSURANCE LICENSE**

In this Court’s Memorandum of Decision dated May 11, 2022, the court notes that the previous submitted exhibit of the Defendants, attached hereto as Exhibit H, confirms that the State of Indiana, Commissioner of Insurance, fined Costanza the sum of \$1,500.00 in connection with the filing of an application for insurance license which contained three false statements. Specifically, the State of Indiana found, and Costanza agreed in a written Agreed Entry, that he:

- A. falsely responded “No” when asked on the application “[h]ave you ever been convicted of a crime, had a judgment withheld or deferred, or are currently charged with committing a crime?”

- B. falsely responded “No” when asked on the application “[h]ave you ever been named as a party in an administrative proceeding regarding any professional or occupational license?”
- C. falsely responded “No” when asked on the application “[h]ave you ...ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged conduct.”

Attached hereto as Exhibit H is a copy of the Final Order and Approval as well as the Agreed Entry from the State of Indiana, Commissioner of Insurance.

In the same Agreed Entry, both the State of Indiana and Costanza agreed that by falsely answering the application, he was subject to revocation of his Indiana non-resident insurance license.

Thus, it is true that Costanza answered falsely on the application by failing to disclose prior criminal convictions and was fined \$1,500.00 for doing same. Costanza, in his affidavit attached hereto as “Exhibit C”, Page 5, Paragraph 22, admits same.

Costanza’s Illinois insurance producer business entity license for RMS Service Group, Inc., was revoked in the State of Illinois in 2014. Costanza, in his affidavit attached hereto as “Exhibit C”, Page 5, Paragraph 22, admits same. Costanza was the Registered Agent and President of RMS Service Group, Inc. (See Exhibit K)

Here the “sting” or “gist” or essence of the statement was that Costanza was found to have made three significant false statements on his application to the Indiana Department of Insurance and had his businesses’ insurance producer license revoked in Illinois.



The statement being true, or, in the alternative, substantially true, the Plaintiffs' action for defamation regarding the statement that Costanza answered falsely on his Indiana insurance application must fail.

**REMAINING ALLEGATION #6:**  
**IN 2012, COSTANZA ANSWERS FRAUDULENTLY AGAIN**  
**ON ILLINOIS DEPARTMENT OF INSURANCE RENEWAL APPLICATION**

That attached hereto as Exhibit K is a copy of an Order of Dismissal and a Stipulation and Consent Order from the Illinois Department of Insurance with the signed and notarized signature of Costanza on February 18, 2015, and also signed by the Acting Director, James A. Stephens on February 20, 2015, (hereinafter "Illinois Stipulation and Consent Order").

In the Illinois Stipulation and Consent Order, it states that Costanza and the Director of Insurance agree, amongst other things that:

- A. "J. In 2008, the State of Wisconsin denied the Business Entity's (RMS Insurance Group, Inc.) and Licensee's (Costanza's) application for failing to disclose previous criminal convictions on an insurance application and failing to disclose a company termination for allegations of misconduct."
- B. "In 2010, the State of Indiana filed an Agreed Entry with a \$1,500.00 civil penalty against Licensee (Constanza) for failing to disclose prior criminal convictions, having a judgment withheld or deferred, pending criminal investigation, or being named as a party in administrative proceedings regarding a professional or occupational license or registration on their application."

On his 2010 and 2012 Illinois Insurance renewal applications, Costanza answered "no" each time to question #2 when asked about his involvement in an administrative proceeding

regarding a professional or occupational license or registration and “no” to question #1 when asked if he had been convicted of a crime or had a judgment withheld or deferred.... Both of these answers are false as shown within this Motion and the attachments hereto and made a part hereof. Attached hereto is group exhibit M which are Costanza’s 2010 and 2012 insurance application with the State of Illinois.

As the State of Illinois points out in it’s Stipulation and Consent Order, Costanza incorrectly answered their renewal application despite the administrative proceedings and penalty being recently issued. As part of it’s Stipulation and Consent Order, Costanza agreed to and was fined \$30,000.00. See Exhibit K attached hereto.

Also attached as Exhibit L is a letter from the Illinois Department of Insurance dated July 19, 2022, confirming Costanza answered “no” in his 2010 and 2012 Illinois renewal applications when asked if he had ever been named or involved with an administrative proceeding regarding any professional license or registration.

Because the statement is true the Plaintiffs’ action for defamation regarding Costanza’s failure to disclose his recent administrative proceedings on his 2010 and 2012 Illinois insurance renewal application must fail.

**THE OVERALL ALLEGATION THAT  
PLAINTIFF COSTANZA HAS A  
“CRIMINAL RECORD” AND IS A “REPEAT CRIMINAL”**

Based on the exhibits attached hereto, it appears Costanza does, in fact, have a criminal record, having committed multiple crimes, including but not limited to, pleading guilty to drunk

driving, writing a bad check, and filing a false police report, as well as being terminated from an insurance agency for fraud and misrepresentation.

The State of Indiana, in its Agreed Entry, found that Costanza had a “criminal record” and failed to disclose same on his application to sell insurance (see Exhibit H).

Costanza signed the Agreed Entry specifically agreeing he failed to disclose his “criminal record”. (See Exhibit K).

Costanza, in his letter to the State of Montana Licensing Department admitted he had misdemeanor convictions. (See Exhibit J).

That the State of Wisconsin denied Costanza’s license for 31 days for failing to disclose his “criminal convictions.” (See Exhibit G).

The statement in the flyer of Costanza having a “criminal record” is consistent with the statements of the State of Indiana, the State of Wisconsin, and those of Costanza himself.

That Costanza should not be able to deny he has a criminal record when he himself admitted to same in a signed document.

Because the statement is true, the Plaintiffs’ action for defamation regarding the statement that Costanza was denied an insurance license for false application must fail.

In the alternative, if the statement on the flyer that Costanza has a “criminal record” and is a “repeat criminal” is not true, it is substantially true.

The “gist” or “sting” is not that Costanza has a criminal record, but rather that he committed the individual crimes. That statements in the flyer that list Costanza’s guilty pleas are for writing bad checks, filing a false police report, and drunk driving. The distinction between being convicted and pleading guilty is immaterial to the substantial truth of the statement. The

“sting” is that Costanza plead guilty, which is true. The Illinois Criminal Code makes no distinction under it’s definition of “Conviction” (720 ILCS 5/2-5) (from Ch. 38, par. 2-5) Sec. 2-5. "Conviction". "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury (West 2008).

Viewing all the statements under the totality of the circumstances, the only conclusion can be that the flyer was true, Costanza should be barred from denying he had a criminal record when he admitted same, and/or the statements in the flyer are substantially true.

Such a dismissal would square with other courts in similar circumstances.

WHEREFORE the Defendants, DONALD G. SATTLER, MARION THORNBERRY, and ELISABETH M. RODGERS, pray as follows:

A. That as no reasonable jury could find that the flyer was not true, or in the alternative, substantially true, the Plaintiffs’ First Amended Complaint should be dismissed, with prejudice, and the Defendants awarded their costs and attorney fees.

DONALD G. SATTLER, MARION THORNBERRY,  
and ELISABETH M. RODGERS, Defendants,

By:   
TRENT M. FERGUSON, One of Their Attorneys

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Defendants', Donald G. Sattler, Marion Thornberry, and Elisabeth M. Rodgers, 735 ILCS 5/2-1005 Motion for Summary Judgment was served upon the following:

Attorney Timothy P. Donohue  
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via email on the 22<sup>nd</sup> day of August, 2022.

Kim Himes

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