

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT FOR THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF BOONE**

RMS INSURANCE SERVICES, INC. *et al.* )  
)  
Plaintiffs, )  
vs. )  
)  
DONALD G. SATTLER, *et al.* )  
)  
Defendants. )

2021 L 30

FILED BY *ACH*  
BOONE COUNTY ILLINOIS  
JAN 18 2023  
*Pamela Coduto*  
CLERK OF THE CIRCUIT COURT

**ORDER**

Plaintiffs, RMS Insurance Services, Inc. d/b/a Flanders Insurance Agency, Inc., and Owen G. Costanza, have filed a multi-count amended complaint against the Defendants, Donald G. Sattler, Marion Thornberry, and Elisabeth M. Rodgers., alleging tortious interference with a business advantage, tortious interference with a contract, civil conspiracy, and defamation. In response, the defendants have filed a motion to dismiss counts I, II and III of the complaint pursuant to 735 ILCS 5/2-615 and a motion for summary judgment pursuant to 735 ILCS 5/2-1005 as to the entire complaint.

■ **Procedural background**

The original complaint in this case was filed on October 18, 2021. The Plaintiffs, an individual, Owen Costanza, and his insurance agency, RMS Insurance Services, Inc. d/b/a Flanders Insurance Agency (referred to collectively as “Costanza”), claimed that he was a local politician and that the defendants, Donald Sattler, Marion Thornberry, Elisabeth Rodgers and Cheryl Russell-Smith, all active in local politics, had conspired to defame him and his business reputation in order to make him unelectable. In support of his complaint, Costanza attached a flyer (below), distributed by the defendants both before and after an election in which he was a candidate.

**My Opponents Criminal Record Is:**

- 1995 Pleads Guilty to Filing a False Report in Boone County
- 1999 Terminated from Liberty Insurance for Fraud Misrepresentation
- 1999 Pleads Guilty Writing Bad Check in Boone County
- 2000 Home Foreclosure in Boone County
- 2000 Completes Chapter 7 Bankruptcy Filed In 1996 As Chapter 13
- 2007 Pleads Guilty for Drunk Driving Winnebago County
- 2008 Wisconsin DOI Denies Insurance License for False Application
- 2010 Indiana DOI Fines Him \$1500 False Application & Revokes Insurance License
- 2011 Terminated from RMS Service Group for Misappropriating Company Funds
- 2012 Answers Fraudulently Again on Illinois DOI License Renewal Application
- 2014 Illinois DOI Investigates Numerous Complaints by Insurance Customers, Past Terminations, Criminal History, Unlawful Fund Withdrawals, and Fines & Discipline from Wisconsin and Indiana (IL-14-HR-0482 & IN-934-AG10-8031-135)
- 2014 Illinois DOI Revokes Insurance Business License for Major Agency Violations
- 2015 Illinois DOI Disciplines and Fines Him \$30,000.00 for Multiple Repeat Violations

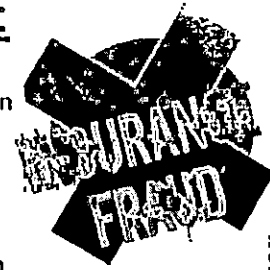


EXHIBIT 1 - False Flyer

We cannot allow a repeat criminal like Mr. Costanza to Defraud our village like he has defrauded his creditors, customers, past employers and the Wisconsin, Indiana, and Illinois Departments of Insurance. What else has he done to us?

**Restore Integrity to Poplar Grove.**

*Paid for by friends of Sattler for Village President*



The 40-page long complaint included 17 counts alleging tortious interference with a prospective business advantage, tortious interference with a contract, civil conspiracy to interfere with and defame Costanza and his business, defamation, and defamation *per se* (business reputation). Defendant Russell-Smith was dismissed without prejudice soon after the original filing. The remaining defendants responded to the complaint by filing a motion to dismiss pursuant to 735 ILCS 5/2-619(a)(9), raising the Illinois Citizen Participation Act (735 ILCS 110/1 *et seq.*) as an affirmative bar to the complaint.

On May 11, 2022, the court entered a Memorandum of Decision and Order which denied the motion to dismiss for the reasons set forth in the order. The court's order included an analysis of the Act, including that its purpose is to protect defendants from so-called strategic lawsuits against public participation (SLAPP suits). *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 15. In determining whether to grant the defendants' motion the court considered: (1) whether the

defendants' acts were in furtherance of the constitutionally protected right to actively participate in government in order to obtain favorable government action; (2) whether the plaintiff's claims were solely based on, related to, or in response to the defendants' acts in furtherance of their constitutional rights; and, (3) whether the plaintiff failed to prove that defendants' acts were not genuinely aimed at solely procuring favorable government action. *Id.* at ¶ 16.

In its prior order, the court found that Costanza has sued the defendants here for acts taken by them in furtherance of their right to petition the government to obtain favorable outcomes. Indeed, the complaint alleges that the defendants circulated the flyer (above) in order to defeat Costanza's bid for public office. However, the court was unable, at the time, to determine as a matter of law that Costanza's claims were meritless and solely based in retaliatory motive. The allegations of the flyer were reviewed one by one by the court and determined to be facially true. However, the court found that taken in context of the whole, the flyer could be reasonably construed as misleading and defamatory. The court held:

As to the balance of statements attributed to the Defendants, however, whether the statements are blatantly false, partially false or substantially true and whether the statements were intended and understood to be false, misleading, defamatory and injurious to Plaintiffs are questions of fact for the jury.

Memorandum of Decision and Order, May 11, 2022, p. 12.

Costanza subsequently filed an amended complaint, which added a few more specific allegations regarding damages, but was substantially similar to the original complaint. Having removed Russell-Smith as a defendant the new complaint consists of 13 counts against the three remaining defendants. Again, the flyer is attached to the amended complaint as its Exhibit 1.

The defendants' motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure asserts that the first three counts of the amended complaint, each alleging tortious interference with a prospective business advantage, are insufficient in law. The motion for summary judgment

argues that there is no genuine dispute of material fact regarding the truth of the allegations in the flyer so that judgment may be entered in favor of all three defendants.

■ **Legal standards**

A section 2–615 motion to dismiss attacks the legal sufficiency of claims based on defects apparent on the face of the pleading. See *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (2006). A section 2–615(a) motion presents the question of whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief may be granted. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25 citing 735 ILCS 5/2–615(a) (West 2010). In ruling on a section 2–615 motion, the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill.2d 381, 385 (2005).

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Nationwide Financial, LP v. Pobuda*, 2014 IL 116717, ¶ 25. Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. *Bagent v. Blessing Care Corp.*, 224 Ill.2d 154, 163 (2007). On a motion for summary judgment, the trial court has a duty to construe the record strictly against the movant and liberally in favor of the nonmoving party. *Williams v. Manchester*, 228 Ill.2d 404, 417 (2008). As a result, summary judgment is not appropriate: (1) if “there is a dispute as to a material fact”; or, (2) if “reasonable persons could draw divergent inferences from the undisputed material facts.” (*Id.*).

In opposing a motion for summary judgment, it is the non-movant's burden to produce some fact or evidence sufficient to create a genuine issue of material fact or raise a contested issue above the level of mere speculation. *Judge-Zeit v. General Parking Corporation*, 376 Ill.App.3d 573, 584 (1st Dist. 2007).

■ **Analysis**

In support of their motion for summary judgment, the defendants have provided affidavits, documents from the public record, as well as documents obtained from the Departments of Insurance for Illinois, Indiana and Wisconsin. In response, Costanza has supplied his own affidavit.

As background, Costanza was the village president, an elected official, of the Village of Poplar Grove from April, 2017, until April 6, 2021, when his bid for reelection failed in the primary election. The individual who succeeded him and defeated him in that election was one of the defendants in this case, Donald Sattler.

All three defendants are alleged to have intentionally sought to ruin Costanza's career in local politics and to have collaterally damaged his business as an insurance producer. Costanza has alleged that the defendants' wrongful dissemination of defamatory statements has continued, post-election.

Costanza also points to evidence outside the record in the form of a website and a Facebook page which have also published much or all of the information in the flyer. Most recently, the website (a blog) and the Facebook page have posted a transcript of the proceedings held in court on November 10, 2023, when argument on the instant motions was held. One of the defendants, Rodgers, admits that she is the creator and administrator of the Facebook page. Defendants assert that Costanza, too, is behind a Facebook page on which the defendant, Sattler, is often criticized in his capacity as Village President.

In response to the allegations of post-election publication of information, the defendants assert the allegations have been repeated since the election because Costanza continues to participate in local politics and actively pursue positions in both Village government and the local Republican Party. (All of the parties involved in this litigation are Republicans.) It has been represented to the court that Costanza is currently a candidate for the position of Trustee on the Village Board of Trustees. Accusations of continued public disparagement each side by the other continue as of the preparation of this decision.

Costanza's complaint continues to rely most heavily on the flyer which was prepared and initially disseminated during the primary election for village president. All three defendants concede that they have publicly disseminated the allegations in the flyer to one extent or another.

Costanza's position is that because the flyer highlights his "criminal record" and "insurance fraud" in larger, bold, red-highlighted typeface, it is intended to convey that he has been criminally convicted of insurance fraud and that he is a serial felon. It was this argument which led the court to deny the prior motion to dismiss brought by the defendants pursuant to the Citizen's Participation Act. Not surprisingly, Costanza argues that the defendants' current motions are no more than a bad faith rehash of their earlier, already denied, motion.

Unlike the prior motion to dismiss, where the defendants bore the burden of affirmatively showing a lack of merit in Costanza's suit against them (*Garrido*, 2013 IL App (1st) 120466, ¶ 19), the motions here place a burden on Costanza to adduce evidence which supports a cognizable claim or creates a disputed issue. The motion to dismiss the first three counts on the new complaint argues that the specific tort pled – tortious interference with a business advantage – is not sufficiently factually supported. The motion for summary judgment argues there is no material fact

in dispute, thus entitling them to judgment as a matter of law. Having filed a properly supported motion for summary judgment, the burden now is with Costanza to produce some fact or evidence sufficient to create a genuine issue of material fact or raise a contested issue above the level of mere speculation. *Judge-Zeit*, 376 Ill.App.3d at 584.

**i. The motion to dismiss**

In the first three counts of Costanza's amended complaint, he alleges that the defendants knew that he was involved as the principal of an insurance agency in the community. He further alleges that the flyer above was distributed by the defendants to local businesses and individuals who they knew to be clients or potential clients of his agency. Finally, Costanza points to specific clients of his agency who have left or have failed to purchase insurance because of the defendants' publication of the flyer.

In order to sufficiently plead tortious interference with a prospective business advantage, Costanza must allege: (1) a reasonable expectation of entering into a valid business relationship; (2) the defendant's knowledge of the plaintiff's expectancy; (3) purposeful interference by the defendants that prevents the expectancy from coming into fruition; and, (4) damages proximately resulting from the defendants' interference. *Midwest REM Enterprises, Inc. v. Noonan*, IL App (1st) 132488, ¶ 70.

The defendants argue that Costanza has failed to adequately plead any reasonable expectation of acquiring any new (a school district) or repeat (a dental clinic) insurance business. Specifically, defendants assert that Costanza has not identified with particularity any such prospective client. Rather, they argue he has only pled generally that he was very hopeful about getting new or repeat business in the community and that his hope did not materialize.

Mere hope of a future business relationship is not sufficient to establish a reasonable expectancy. *Williams v. Weaver*, 145 Ill.App.3d 562, 569 (1st Dist. 1989); see also, *CD Consortium Corporation v. Saint John Capital Corporation*, 2021 IL App (1st) 2011159-U, ¶ 19 citing *Williams*. Costanza has not pled, for example, that he had provided quotes to a school district and was told that his agency was one of two final vendors being considered and then, after the flyer, the district stopped returning his calls. He has also pled that a dental clinic had purchased insurance with his agency for several years and after dissemination of the flyer, did not renew. Neither gives rise to any sort of reasonable expectation of any sort of particularized business advantage with an entity or individual. Neither having a customer decide not to renew without some evidence of at least an indication that the customer planned to renew and reneged, nor a bare allegation that an uncommitted prospect stopped returning calls is sufficient to establish a *reasonable* expectation of business or even a causal nexus.

The defendants' motion to dismiss counts I, II and III of plaintiff's complaint as insufficiently pled should be granted. For the reasons outlined below, however, the dismissal of those three counts will be with prejudice.

**ii. The motion for summary judgment**

Regarding the first three counts of Costanza's complaint, one cannot tortiously interfere with a prospective business advantage by engaging in competitive speech with a business rival because such speech is privileged. *Miller v. Lockport Realty Group, Inc.* 377 Ill.App.3d 369, 375-76 (1st Dist. 2007). In those cases where privilege may be apparent from the face of the complaint, it is the plaintiff's burden to plead facts demonstrating that the privilege does not apply. *Id.* In the instant matter, Costanza has pled that none of the defendant's behavior was privileged because they knew the allegations of the flyer to be false. The crux of the defendants' motion for summary



judgment is that their statements are all privileged because those statements are indisputably, materially and substantially true.

It is undisputed that at the time of the flyer was publicly disseminated, Costanza was an elected official and running for another public office. The gravamen of his amended complaint is that the statements made in the flyer and repeated on social media and literally, in the public square, all concerned his fitness for public office. Therefore, as the court has previously held, the allegations involve a public person and matters of public concern. Thus, in determining whether there is a genuine issue of material fact giving rise to a question of whether Costanza or his business were defamed, the court must consider not only privilege associated with truth, but the heightened protections of privilege arising out of the First Amendment to the U.S. Constitution.

Protections afforded to speech (expression) by the First Amendment are designed to assure, “unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Miller v. California*, 413 U.S. 15, 24-35 (1973). These protections have been interpreted as limiting the reach of state defamation laws. See *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 755 (1985). To what extent state defamation laws are constrained by the Constitution requires consideration of the status of the plaintiff, whether he is a public figure and whether the speech at issue is of public concern. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 775 (1986). Additionally, if speech addresses a matter of public concern, the burden is on the plaintiff to prove that the defendant actually knew the statement was false at the time it was published. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill.2d 381, 395-96 (2008).

Thus, under Illinois law, recovery for a defamatory statement in this case will only be allowed if there is a showing of actual malice. This requires proof by the plaintiff that has, “established both that the utterance was false and that it was made with knowledge of its falsity or

in reckless disregard of whether it was false or true.” *Catalano v. Pechous*, 83 Ill.2d 146, 155 (1980); *Jacobson v. CBS Broadcasting, Inc.*, 2014 IL App (1st) 132480, ¶ 36, (citations omitted). Reckless disregard means that the defendant had a “high degree of awareness” that the statement was probably false or “entertain[ed] serious doubts as to its truth.” *Jacobson*, quoting *Kuwik v. Starmark Star Marketing & Administration, Inc.*, 156 Ill.2d 16, 24–25 (1993).

Here, Costanza accepts that the individual statements are at least substantially true but contends that the context provided by the headings, “Insurance Fraud” and “My Opponent’s Criminal Record,” impliedly make the entirety of the flyer both false and defamatory. Where a plaintiff contends that the defamatory expression was implied from a context rather than stated directly, he is required to establish that the defendants were at least subjectively aware of the implied meaning, or at least recklessly disregarded the potential for such implication. *Jacobson*, citing *Saenz v. Playboy Enterprises, Inc.*, 841 F.2d 1309, 1318 (7th Cir.1988); *Woods v. Evansville Press Co., Inc.*, 791 F.2d 480 (7th Cir.1986).

Further, a statement is protected only if it may be reasonably interpreted as stating actual fact, rather than opinion or conjecture. *Imperial Apparel*, 227 Ill.2d at 398. Determining whether a statement may be reasonably interpreted as factually true involves examination in the light of several criteria: (1) do the statements have a precise and readily understood meaning, (2) are the statements objectively verifiable, and (3) whether the statements’ social context signals that it has factual content. *Id.* Finally, determining whether a statement is a factual assertion that could give rise to a defamation claim is a question of law for determination by the court. *Id.*

Rather than adduce the falsity of any of the statements made by the defendants, Costanza has filed an affidavit in which he states that he has never been criminally convicted of insurance fraud. The affidavit also states that he has lost at least one large insurance client and another

prospective client has stopped returning his calls since publication of the flyer. Finally, the affidavit claims the defendants have continued to repeat the allegations of the flyer. Of particular concern to Costanza is his allegation that defendants have at least impliedly stated to third persons that he has been convicted of – as opposed to simply having committed – insurance fraud.

Accordingly, with the actual malice standard in mind, and looking for disputed material issues of fact, a review of the actual statements made after the charged statement about his criminal record follows:

- **In 1995, Costanza pled guilty to filing a false report.**

It is undisputed that this statement is true.

- **In 1999, Costanza was terminated by Liberty Insurance [sic] for fraud and misrepresentation.**

This statement is objectively verified by administrative records obtained through an FOIA request in which in which Costanza's then employer, Liberty Mutual Insurance, filed an administrative complaint with the Wisconsin Department of Insurance accusing him of fraud and misrepresentation, after which his employment with Liberty Mutual was terminated for cause.

- **In 1999, Costanza pled guilty to writing bad checks.**

It is undisputed that this statement is true.

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

It is undisputed that this statement is true.

- **In 2000, Costanza completed a bankruptcy filing.**

It is undisputed that this statement is true.

- **In 2007, Costanza pled guilty to drunk driving.**

It is undisputed that this statement is true.

- **In 2008, the State of Wisconsin denied Costanza's request for an insurance license due to a false application.**

This statement is objectively verified by the administrative record obtained through FOIA requests. The Wisconsin Department of Insurance denied Costanza's application for a producer's license due to submission of an application which included incomplete or misleading information, specifically denying and failing to disclose criminal convictions and termination for cause by Liberty Mutual Ins. After Costanza corrected his application, a producer's license was granted by Wisconsin after a 30 day hold.

- **In 2010, the State of Indiana fined Costanza for a false application and revoked his insurance license.**

This statement is objectively verified by the administrative record obtained through FOIA requests in which the Indiana Department of Insurance fined Costanza \$1,500 for having filed an application for a producer's license which included false or misleading statements (denials) regarding criminal convictions and prior disciplinary action. The order of the Department was entered by consent. Costanza argues that this is misleading because his license was not revoked, it was denied.

- **In 2014, the Illinois Department of Insurance investigated numerous complaints by insurance customers, past terminations, criminal history, unlawful fund withdrawals, 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.**

All three of these statements refer to a single investigation conducted by the Illinois Department of Insurance and are objectively verified by the administrative record obtained through FOIA requests. At the time, Costanza was operating as an insurance producer through RMS Service Group, Inc. d/b/a Alliance Insurance Agency. At the conclusion of the investigation and by consent order, the Illinois license of the Costanza owned and operated entity, RMS Service Group, Inc., was revoked and the entity, by and through Costanza, agreed to pay \$30,000.00 in civil fines.

- **We cannot allow a repeat criminal like Mr. Costanza to defraud our village like he has defrauded his creditors, customers, past employers and the Wisconsin, Indiana, and Illinois Departments of Insurance. What else has he done to us?**

It is here that the message intended to be conveyed by the previous statements is encapsulated. The defendants wanted the voters of the Village to believe that Costanza was not deserving of their trust or their votes. Nothing could be more representative of the, "unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

*Miller*, 413 U.S. at 24-35. The social context of this message is inarguably to paint Costanza as unworthy of holding elected office.

Nonetheless, Costanza argues that the statements made in the flyer should not be protected because the defendants knew that he had never been criminally convicted of insurance fraud and that criminality will be inferred from the overall context of the flyer. The question of law for the court is whether the statements made in the flyer, including both express assertions as well as implications drawn from the whole, are factual in nature, and whether they were made with a high degree of knowledge their falsity. *Jacobson*, 2014 IL App (1st) 132480, ¶ 36.

The first question in determining whether the various statements made in the flyer are factual is determining whether those statements have a precise and well understood meaning. *Imperial Apparel*, 227 Ill.2d at 398. As previously noted, Costanza's position is that he has been accused of being criminally convicted of insurance fraud. He does not dispute that he has been accused of insurance fraud by a prior employer or that he has been administratively disciplined and fined for misrepresentations made to the departments of insurance for three different states. Nor does he dispute that in Illinois the producer's license for one of his operating entities has been permanently revoked and that entity was civilly fined \$30,000.00 for repeated misrepresentations. He also admits to criminal convictions for two misdemeanor offenses, one involving dishonesty, and pleading guilty to a third in which he received court supervision so that no conviction entered.

Whether the statements have precise meaning or are well understood is clouded by the headers regarding Costanza's criminal record and insurance fraud. It must be remembered that there is no direct allegation that Costanza has ever been criminally convicted of the crime of insurance fraud. In the context of the Illinois Criminal Code, insurance fraud is generally defined as the defrauding of insurance companies by making false or exaggerated claims against a policy

of insurance. See 720 ILCS 5/17-10.5. Outside of the Criminal Code, fraud has a generally understood meaning.

A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.

<https://legal-dictionary.thefreedictionary.com/Fraud>

There is no dispute that Costanza has been accused of, fired, and administratively disciplined for having committed fraud in the ordinary sense of the word. The defendants assert that the flyer and related statements are substantially and materially true. In other words, that the gist or sting of the flyer is true. See *Gist v. Macon County Sheriff's Department*, 284 Ill.App.3d 367, 371 (4th Dist. 1996). When determining the gist or sting of allegedly defamatory material, the court must look at the pertinent angle or overall point of the material and not items of secondary importance which are immaterial to the truth of the defamatory statement. *Id.* Where substantial truth is ordinarily a question of fact for a jury, where no reasonable jury could find that substantial truth has not been established by the defendants, the question becomes one of law. *Id.*

*Gist* is instructive because there the Sheriff's Department and a local TV station had disseminated a flyer which characterized the plaintiff, who was wanted on an arrest warrant for burglary to a motor vehicle as a "most wanted fugitive," who "might be armed," and "should be considered dangerous." *Id.* at 371-72. There, both the trial court and the reviewing court found the essence of the matter to be that the plaintiff was wanted on an arrest warrant to be entirely true. *Id.* On the other hand, the assertions that plaintiff might be armed, should be considered dangerous, or was a most wanted fugitive were all secondary details which, under the totality of the circumstances were immaterial and did not change the substantive overall truth of the flyer. *Id.*

Put simply, falsehoods that do not harm Costanza's reputation any more than a full recital of the true facts about him are not actionable.

Whether he left the children alone at night on some occasions when Ruby was working, or was fired for drinking rather than for having liquor on his person while working, or preferred to spend money on his car than on his children's shoes, are details that, while not trivial, would not if corrected have altered the picture that the true facts paint.

*Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1228 (7th Cir. 1993) (Cited with approval in *Gist*, and applying Illinois law.)

The sting of the flyer is that Costanza has engaged in professional misrepresentation and fraud, within the ordinary meaning of the word, in his capacity as an insurance producer. In his personal life, he has pled guilty to at least three misdemeanor criminal offenses and filed a personal bankruptcy. It is verifiably true that Costanza has a criminal record. It is inarguably true that three different states delayed, withheld or revoked professional licensure as an insurance producer as a result of his repeated misrepresentations. In Illinois, he was administratively fined \$30,000.00 for repeated instances of misrepresentation and mishandling of client funds. Given Costanza's record of misfeasance, malfeasance and nonfeasance in both his professional and personal lives, the court finds that no reasonable jury could find that characterizations of that record as criminal or as involving insurance fraud exaggerate the substantial truth of defendants' statements. This is especially true in the insurance industry which is so heavily regulated *because* it is susceptible to fraud. See 20 ILCS 1405/1405-1 *et seq.*; 215 ILCS 5/1 *et seq.*

As discussed above, the defendants have provided documentation from the public record as well as documentation received in response to FOIA requests which objectively verify the substantive truth of each of allegations made in the flyer. However, the statements regarding "my opponent's criminal record" and "insurance fraud", which both appear in larger type and red ink, are amorphous and not so easily verifiable.

Both are technically true. Costanza does have a misdemeanor criminal record and has engaged in fraud, as that term is generally understood, in his work as an insurance professional. To the extent that the meaning of the headings on the flyer are open to differing subjective interpretations, they are no more than assertions of opinion, not defamatory facts applicable to the plaintiff. See *Imperial Apparel*, 227 Ill.2d at 398.

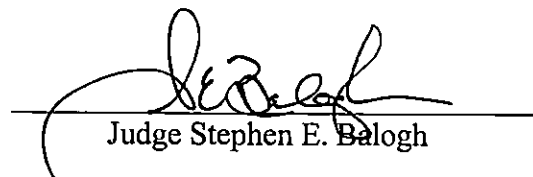
Finally, the court must examine whether there is anything about the social context of the statements that renders them more likely to be construed as factual rather than opinion. *Id.* The social context of those remarks is that they were made in the effort to keep Costanza from being elected to a position of trust in their community and, on a continuing basis, to keep him from holding any position of trust within the Village or the local Republican Party.

Therefore, the court finds that the statements made by the defendants in regard to Costanza were and are privileged because they concern a matter of public interest and involve a public person. The statements are, as discussed above, factual in nature and substantially true.

■ **Conclusion**

For all of the foregoing reasons, the defendants' motion for summary judgment is heard and granted and summary judgment is hereby entered in favor of the defendants, Donald G. Sattler, Marion Thornberry and Elisabeth M. Rodgers, and against the plaintiffs, RMS Insurance Services, Inc. d/b/a Flanders Insurance Agency, Inc., and Owen G. Costanza, and the entire amended verified complaint is dismissed with prejudice. The status conference set for January 20, 2023 at 3:00 p.m. shall be stricken.

Enter: 1.18.2023

  
Judge Stephen E. Balogh