

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

CHARLES SILVERMAN,	)	
	)	
Plaintiffs,	)	
	)	No. 05 L 9005
	)	
v.	)	Calendar A
	)	
DAN HALEY, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

This cause comes before the court on Defendants' Section 2-615 Motion to Dismiss, due notice given, the motion fully briefed and the Court fully advised of the premises herein, finds as follows:

Under section 2-615, the dismissal of a count is only appropriate, when if viewed in a light most favorable to the non-moving party, the factual allegations underlying the count are insufficient to state a cause of action upon which relief can be granted. Abbasi v. Paraskevoulakos, 187 Ill. 2d 386, 391 (1999). A motion under either section admits all well-pleaded facts and any reasonable inferences that can be drawn from them. Id. In addressing the motion, the Court must construe the pleadings in the light most favorable to the nonmoving party. DMS Pharm. Group v. County of Cook, 345 Ill. App. 3d 430, 439 (1st Dist. 2003).

The Illinois Supreme Court has stated for a plaintiff to sustain a claim for defamation he must prove that the defendant made a false statement concerning the plaintiff; that there was an unprivileged publication to a third party with fault by the defendant; and that the publication damaged the plaintiff. Krasinski v. United Parcel Service, Inc., 124 Ill. 2d 483, 490 (1988). To sustain a cause for false light invasion of privacy, the plaintiff must have plead that he was placed in a false light before the public as a result of the defendant's actions; that the false light would be highly offensive to a reasonable person and that the defendant acted with actual malice. Kurczaba v. Pollock, 318 Ill. App. 3d 686, 696 (1st Dist. 2000). The Plaintiff has argued that the article published on July 26, 2005 by the Defendants in the Wednesday Journal of Oak Park and River Forest was defamatory and presented the Plaintiff in a false light. The article complained of states in pertinent part:

“The Cicero Township School Treasurer’s Office plans to dump its records dating back more than a decade, keeping only those listed on an attorney general’s website, the treasurer said earlier this month.

“The Announcement came at the July 11 regular quarterly meeting of the Trustees of the Schools – the governing body that controls investments for six school districts in Oak Park, Berwyn and Cicero – when the board returned from a mid-meeting closed session and said three new employees had been approved for hire.

“The board voted to hire the employees at the end of the meeting, after a reporter asked whether any official action had been taken. Robert Burman – president of the board at the time – and Oak Park resident Bill Sullivan, who was elected to lead the board at a special meeting last week said they did not realize the Open Meetings Act required the action to be taken in open session.

“Schools Treasurer Marty O’Connor said the board had discussed finding a law student to go through “35 years” of records and try to dispose of “33 of them.” O’Connor said he obtained a list of what the office needed to keep from an attorney general’s office website.

“In fact, records disposal is handled by the Illinois State Archives section of the Secretary of State’s Office.

“Later O’Connor showed the room where records are kept in cardboard boxes and filing cabinets. He then said records probably went back to 1981, when the office moved to its present 1010 Lake St. space.

“However, most of the space in the room was taken up by boxes with labels dating them from 2000 or later. He retrieved some records from the cabinets from the early 1990s.

“O’Connor said the office hired a law student for the disposal so only the correct documents would be thrown out, and that the office needed to identify what documents it had in order to streamline retrieval.

“The office hired Charles Silverman, a law student at DePaul University’s College of Law, for \$15 an hour.

“Sullivan added that the office is seeking a written legal opinion on what can be destroyed, and will take an inventory before destroying any records.

“The Local Records Act forbids disposal of public records ‘except as provided by law.’ Unlawful destruction of public records is a Class 4 felony.

“The act charges the Cook County Local Records Commission with overseeing proper destruction of records. A Local Records Disposal Certificate must be filed with and approved by the commission before any records may be destroyed.

“Village of Oak Park Attorney Ray Heise said the village obtains a permitted schedule for disposal of public records.” See, Exh. A. attached to Compl.

Plaintiff alleges that several of the claims in the article are false and defame him and legal ability. Plaintiff specifically attacks three statements as being either false or misleading.

Plaintiff first alleges that the statements, “Schools Treasurer Marty O’Connor said the board had discussed finding a law student to go through ‘35 years’ of records and try to dispose of ‘33 of them.’ O’Connor said he obtained a list of what the office needed to keep from an attorney general’s office website. In fact, records disposal is handled by the Illinois State Archives section of the Secretary of State’s Office,” mislead the reader because the attorney general’s website would be the proper place to determine what

records should be kept. Plaintiff has attempted to argue that the article intimates that he would incorrectly dispose of records that should be protected and as such attacks his ability to carry out his duties and hampers potential future employment. The Court cannot agree. Plaintiff does not allege that a single portion of the quoted text is actually false but merely that it may be misleading. The Plaintiff also does not make a cogent argument as to how the statements taken as a whole defame him personally. The only mention of a law student would be that one would be hired to go through and dispose of the records. Such an innocuous statement taken both by itself and in context of the entire article cannot be defamatory. The Court chooses not to read beyond the actual text of the article in an effort to support a cause of action for the Plaintiff.

Next, Plaintiff alleges that the Defendants' statements that the records room contained documents that are more recent are false. The statements complained of are "Later O'Connor showed the room where records are kept in cardboard boxes and filing cabinets. He then said records probably went back to 1981, when the office moved to its present 1010 Lake St. space. However, most of the space in the room was taken up by boxes with labels dating them from 2000 or later. He retrieved some records from the cabinets from the early 1990s." Plaintiff characterizes this statement as a flat-out lie and states that he was defamed by the characterization. Plaintiff alleges that the statement "imputes great incompetence to the Treasurer, Mr. O'Connor, and to Plaintiff." Compl., ¶ 7. The Court cannot find any support for the Plaintiffs claim in the statement. Even if the statements are false, there is no reasonable inference that the statements attacked the Plaintiff, his competence as the Treasurer's employee or his future fitness to practice law. It is essential that the statements complained of be "of and concerning" the Plaintiff. See, Schiavarelli v. CBS, Inc., 333 Ill. App. 3d 755, 765 (1st Dist. 2002). The statement does not mention the Plaintiff at all, nor does it mention a law student. The article never mentions that it was the Plaintiff's responsibility to make the Treasurer aware of the contents of the records room and the brief mentions of the Plaintiff cannot support inference that he had such a duty. Plaintiff has not and cannot sufficiently allege that the statements complained of were "of and concerning" him. Thus, even if the statement was false, a claim for defamation on behalf of the Plaintiff cannot be supported by it.

Finally, the Plaintiff complains that a "highly oversimplified quote" of the Local Records Act implies that the Plaintiff's employer and the Plaintiff are in violation of the law. Compl. ¶ 8. The final statement complained of is "The Local Records Act forbids disposal of public records 'except as provided by law.' Unlawful destruction of public records is a Class 4 felony." Plaintiff argues that the statement imputes criminal conduct to his employer and him. Plaintiff argues that the statement distorts the requirements of the Local Records Act and that in so doing characterizes the Plaintiff as assisting in its violation. The statement, however, does not stand alone. In fact, the article states immediately prior to the complained of statement that "Sullivan added that the office is seeking a written legal opinion on what can be destroyed, and will take an inventory before destroying any records." This clearly indicates that the Office and its employees were taking precautions not to violate the Local Records Act. Further, even if read by itself, the statement has not been argued to be false, but, only overly simplified and potentially misleading. Even if the statement can be viewed as misleading, a misleading

true statement cannot support a claim for defamation, libel or false light. See Kurczaba v. Pollock, 318 Ill. App. 3d 686, 696 (1st Dist. 2000); Krasinski v. United Parcel Service, Inc., 124 Ill. 2d 483, 490 (1988). Each of those torts requires a false statement. Plaintiff has not alleged that the statement regarding the Local Records Act was false and thus it cannot support the Plaintiff's complaint.

As none of the statements complained of can support a claim for defamation on behalf of the Plaintiff, the Motion to Dismiss must be granted. Even when viewed in the light most favorable to the Plaintiff, the Complaint and the underlying article cannot support claims for defamation or false light invasion of privacy. The Court sees no potential for the Plaintiff to sufficiently allege a claim based on the article, there is no reason to grant leave to replead.

IT IS HEREBY ORDERED that Defendants' Section 2-615 Motion to Dismiss pursuant is granted with prejudice. This Order is Final and Appealable.

ENTER.

**Assoc. Judge ABISHI C. CUNNINGHAM**

NOV 28 2005  
Judge Abishi C. Cunningham

**Circuit Court - 223**