No. 126795

IN THE SUPREME COURT OF ILLINOIS

RICHARD L. DENT and RLD RESOURCES, LLC, Respondents-Petitioners v. CONSTELLATION NEWENERGY, INC.; CNE GAS SUPPLY, LLC; CONSTELLATION ENERGY GAS CHOICE, LLC; and CONSTELLATION GAS DIVISION, LLC, Petitioners and Respondents In Discovery	)	On Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-1652 There on Appeal from the Circuit Court of Cook County, No. 19 L 2910 Hon. Patricia O'Brien-Sheahan, Presiding

ANSWER TO PETITION FOR LEAVE TO APPEAL OF CONSTELLATION NEWENERGY, INC., CNE GAS SUPPLY, LLC, CONSTELLATION ENERGY GAS CHOICE, LLC, AND CONSTELLATION GAS DIVISION, LLC

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ANSWER TO PETITION FOR LEAVE TO APPEAL

NOW COME Respondents-Petitioners Richard L. Dent ("Dent") and RLD Resources, LLC ("RLD") (Dent and RLD being collectively referred to as the "RLD Parties"), by and through Law Offices of Paul G. Neilan, P.C., their counsel, and for their Answer (this "Answer") to the Petition for Leave to Appeal (the "PLA") of Constellation NewEnergy, Inc., CNE Gas Supply, LLC, Constellation Energy Gas Choice, LLC, and Constellation Gas Division, LLC (collectively, "Constellation"), state as follows:

I. Introduction.

For the reasons set forth below, this Court should deny Constellation's Petition for Leave to Appeal.

The RLD Parties filed their Verified Petition Under Supreme Court Rule 224 (the "224 Petition") on March 18, 2019, a copy of which is included in the Appendix to this Answer (C9-C23, A014-A015[1]), naming Constellation as respondents in discovery in order to obtain the identities of three persons (referred to as Persons A, B and C) who published false and defamatory statements about Dent. Constellation moved to dismiss the 224 Petition under 735 ILCS 5/2-615 (Constellation's "2-615 Motion") on April 29, 2019. (C38-C53). The trial court granted Constellation's 2-615 Motion on June 21, 2019 (C61) and following that court's denial of the RLD Parties' motion for reconsideration on July 31, 2019 (C105-C107), an appeal was timely filed with the First District Court of Appeals (the "Appellate Court") (C108-C117). The Appellate Court reversed and remanded the case in an opinion published on November 25, 2020, *Dent et al. v.*

Constellation NewEnergy, Inc., et al., 2020 IL App (1st) 191652 (the "*Appellate Court Opinion*"), a copy of which is included in the Appendix. (A016-A036). Constellation filed its PLA on December 29, 2020.

Constellation's argument is that unless the RLD Parties allege facts sufficient to show abuse of the qualified privilege of an employee to report alleged sexual harassment they may not discover the identities of potentially liable parties under S. Ct Rule 224. In this case, though, the 224 Petition does plead facts sufficient to overcome all of Constellation's qualified privilege claims. Constellation's PLA is an attempt to relitigate those claims.

In addition, Constellation states as matters of fact that Person B is an employee of Constellation, and implies that Person B witnessed the alleged sexual harassment of Person A. From these extra-record facts Constellation claims that Person B holds the same qualified privilege as Person A. Constellation also states as a matter of fact that the RLD Parties already knew the identity of Person C, and therefore the 224 Petition is not "necessary" under S. Ct. Rule 224. However, none of these facts are alleged in the 224 Petition or appear in any of its exhibits, and thus Constellation's arguments are based on facts outside the record on appeal in this case.

When ruling on a 2-615 motion the court may not consider underlying facts, the products of discovery, documentary evidence not incorporated in the pleadings as exhibits, testimony of witnesses, nor other evidentiary materials. *E.g.*, *Barber-Colman Co. v. A & K Midwest Insulation*, 236 Ill. App. 3d 1065, 1068-69 (5th Dist. 1992).

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[1] References to pages C1 et seq. are to the page numbers of the Record on Appeal. References to pages A001 et seq. are to the page numbers of the Appendix attached to this Answer.

Constellation's injection of facts outside the 224 Petition in its 2-615 motion, and outside the record on appeal, is improper.

II. The 224 Petition Alleges Facts Sufficient to Overcome Constellation's Qualified Privilege Claims.

A. Whether a Qualified Privilege Was Abused is a Question for the Trier of Fact.

The gist of Constellation's argument is that if the allegations of a S. Ct. Rule 224 petition show the existence of a qualified privilege, no discovery may be had under that rule unless the petitioner also shows facts sufficient to overcome that qualified privilege. But the 224 Petition does allege facts sufficient to overcome that qualified privilege and the Appellate Court correctly recognized that when it stated that the question of whether a qualified privilege exists is a question of law for the court, but the question of whether that qualified privilege was abused is a question for the trier of fact. *Appellate Court Opinion*, par. 40, A032, citing *Kuwik v. Starmark Star Marketing & Admin., Inc.*, 156 Ill. 2d 16, 25 (1993).

B. Any Qualified Privilege in This Case Belongs to Persons A, B and C, Not Constellation.

Constellation emphasizes its own rectitude and lauds the public policy of maintaining the confidentiality of employer investigations of sexual harassment. (PLA pgs. 2, 5, 6, 9, 16, 17, 18, 19 and 22). (PLA, pgs. 10, 15). It stresses both the diligence of its investigation and the discretion with which it maintained the confidentiality of the results. (PLA pgs. 2, 15, 18-19, 19 n.1).

None of that matters. This case is not about Constellation. The 224 Petition names Constellation not as a defendant, but as a respondent in discovery. (C9; A001). The 224 Petition does not allege that Constellation published defamatory statements; it alleges that

Constellation was the party to whom defamatory statements were published. (224 Petition, pars. 7, 8 and 12-15; C10-C12; A002-A004). As the Appellate Court stated, "Constellation and its attorneys were not the entity or people who made the alleged false and defamatory statements about Dent's conduct at the events sponsored by Constellation; they were merely participants in the subsequent investigation of the alleged defamatory statements that resulted in a termination of petitioners' [i.e., the RLD Parties'] at-will contracts." *Appellate Court Opinion*, par. 28; A026. That Constellation's conduct was above reproach has no bearing on the question of whether Persons A, B and C, the publishers of the defamatory statements, either had or abused a qualified privilege. The facts alleged in the 224 Petition are sufficient to overcome all such qualified privilege claims.

In addition, Constellation's professed concern for the public policy goals of preserving confidentiality for employee-reporters or sexual harassment and thorough investigation of such reports is at best disingenuous. Dent was not a Constellation employee. He was an independent contractor. All contracts between Dent and Constellation were at-will. (224 Petition, pars. 10, 11 and Exhibit A thereto; C11-C12, C18-C21; A003-A004, A010-A013). Under Illinois law, contracts terminable at will can be terminated for any reason, good cause or not, or no cause at all. E.g., *Alderman Drugs, Inc. v. Metropolitan Life Ins. Co.*, 161 Ill. App.3d 783, 790–791 (1st Dist. 1987). Constellation owed no duty to Dent to tell him why it was terminating his at-will contracts. It owed no duty to Dent to conduct any investigation. If, as Constellation claims, preserving the confidentiality of employee-reporters of sexual harassment is

always uppermost in its thoughts, query why it didn't just send him a one-sentence termination letter.

C. *Kuwik v. Starmark* and Overcoming the Qualified Privilege.

Relying chiefly on *Kuwik v. Starmark Star Marketing & Admin., Inc.*, 156 Ill. 2d 16 (1993), Constellation argues that the 224 Petition pleads facts giving rise to a qualified privilege but does not plead facts sufficient to overcome the qualified privilege for reporting sexual harassment to an employer. But this argument is without merit and Constellation's reliance on *Kuwik* is misplaced.

In *Kuwik*, a patient's health insurer denied payment for services provided by the plaintiff, a chiropractor, on grounds that the services were outside "the scope and knowledge, as well as the license" of the chiropractor. 156 Ill. 2d at 19-21. In her defamation complaint, the chiropractor alleged that the insurer's statements were false and defamatory of her qualifications to practice. 156 Ill. 2d at 20. In deposition testimony by employees of Starmark, it admitted that its investigation of the plaintiff's licensure was flawed, but they moved for summary judgment on an affirmative defense of qualified privilege, and because no material fact had been alleged showing that the privilege had been abused. 156 Ill. 2d at 21-23.

Constellation relies on *Kuwik* to argue that for the RLD Parties to overcome the qualified privilege they would have to allege (emphasis added):

> …concrete facts establishing, for example, **that the allegedly defamatory statements were fabricated**, that the employer conducted **an investigation that was reckless in its disregard for the truth** or disregarded company policy, or that the findings of the investigation were improperly disseminated. See, e.g., *Kuwik*, 156 Ill. 2d at 30 (to establish abuse of privilege, plaintiff would need to demonstrate a reckless investigation or improper dissemination of the findings)…."

(PLA, pg. 15). Constellation's reliance on *Kuwik* is predicated on putting itself in the *Kuwik* defendant's shoes and then comparing its efforts to the employer's flawed investigation in *Kuwik*. Once again though, Constellation's actions are not relevant because Person C, not Constellation, did the investigation. (224 Petition, pars. 12-15 and Exhibit B; C12 and C22-C23; A004 and A014-A015). In *Kuwik*, the employer, Starmark, performed the flawed investigation and published the defamatory statement. Here, while Constellation is Person A's employer, it did not make any statement or directly perform any investigation, and the 224 Petition does not allege that it did. Constellation hired Person C to do the investigation. (224 Petition, pars. 12-15 and Exhibit B; C12 and C22-C23; A004 and A014-A015). Far from being in conflict with *Kuwik*, the *Appellate Court Opinion* is entirely consonant with it because both the *Kuwik* court and the Appellate Court applied the test for whether a qualified privilege was abused to the parties who were alleged to have published the defamatory statements, not to the party to whom those statements were published.

D. The 224 Petition Alleges Facts Sufficient to Overcome the Qualified Privilege.

1. Constellation Has No Standing to Assert Any Qualified Privilege Claim on Behalf of Persons A, B or C.

The burden of establishing a privilege rests with the party seeking to invoke it. *E.g., Klaine v. Southern Illinois Hosp. Services*, 2016 IL 118217, par. 15, 47 N.E.3d 966, 970. *See also, Daley v. Teruel*, 2018 IL App (1st) 170892, par. 26, 107 N.E.3d 1028, 1035 (privileges are created to protect interests outside the truth-seeking process and therefore must be strictly construed as exceptions to the general duty to disclose). Persons A, B and C published the defamatory statements, not Constellation. (224 Petition, pars. 7, 12-15;

C10-C12; A002-A004). Persons A, B and C are potential defendants under the Rule 224 Petition, not Constellation. (224 Petition, pars. 18-21; C12-C13; A004-A005). As much as Constellation wants to don shining armor and ride to its allies' defense, Persons A, B and C, not Constellation, are the parties who must invoke any qualified privilege defense to the RLD Parties' defamation action, and each of them must carry the burden of establishing their own privilege and rebutting evidence that they abused it. Constellation's mere assertion of a qualified privilege on behalf of Persons A, B and C does not relieve these potentially liable parties of that burden, much less exempt them from the truth-seeking process of discovery.

2. The 224 Petition Alleges Facts Sufficient to Show That Person A Abused the Qualified Privilege.

Even if Constellation had standing to assert a qualified privilege on Person A's behalf, the 224 Petition alleges facts sufficient to overcome it.

In its PLA Constellation characterizes as "conclusory" the RLD Parties' allegation that "…all of these allegations [i.e., the defamatory statements published by Persons A, B and C] were *completely false*." (PLA, pg. 10). But Constellation then contradicts its own argument when, citing *Kuwik*, it says that allegations of *fabricated* defamatory statements would overcome the qualified privilege. (PLA, pg. 15). The 224 Petition alleges that all of the defamatory statements were false, including Person A's. (224 Petition, pars. 8, 16; C11-C12; A003-A004). Constellation's argument makes no sense because a *fabricated* allegation is the same as a *false* one. Accordingly, under Constellation's own criteria the 224 Petition states facts sufficient to overcome the qualified privilege of Person A because the 224 Petition alleges that she published a false statement, thereby abusing her qualified privilege.

3. The 224 Petition's Allegations Show That Person B's Statements Are False and That He Has No Qualified Privilege.

Even if Constellation had standing to assert a qualified privilege on Person B's behalf, the 224 Petition alleges facts sufficient to overcome it.

The 224 Petition alleges that Person B is a gentleman who told Constellation that he observed Dent at the JW Marriott Hotel on Adams Street in Chicago collecting golf materials for the July 2018 golf outing, and that Person B published to Constellation a statement that he observed Dent being drunk and disorderly at that place and time. (224 Petition, par. 7.c; C11; A003).

Facts not alleged in or attached to the complaint cannot support a section 2-615 motion. *Gilmore v. Stanmar, Inc.*, 261 Ill. App. 3d 651, 654 (1994). Contrary to Constellation's Statement of Facts, the 224 Petition does not allege that Person B is an employee of Constellation. It does not allege that Person B was sexually harassed. It does not allege that Person B, who was at the Marriott Hotel on Adams Street in Chicago, was at the Shedd Aquarium patio, where the second alleged incident of sexual harassment of Person A was said to have occurred. It does not allege that Person B was at the 2016 golf outing in the Philadelphia area, where the first alleged incident of sexual harassment was said to have occurred. It does not allege that Person B was a witness to any alleged sexual harassment of Person A. No allegation in the 224 Petition gives rises to any qualified privilege for Person B's false and defamatory statements about Dent.

4. The 224 Petition Alleges Facts Sufficient to Show that Person C Abused the Qualified Privilege.

Even if Constellation had standing to assert Person C's qualified privilege, the 224 Petition alleges facts sufficient to overcome it.

A cause of action should not be dismissed under 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *E.g., Canel v. Topinka*, 212 Ill.2d 311, 318 (2004); *Gilmore*, 261 Ill. App. 3d at 654. The court must also construe the allegations in the 224 Petition in the light most favorable to the RLD Parties as the non-movants. *King v. First Capital Financial Services Corp.*, 215 Ill.2d 1, 11-12 (2005).

Constellation itself suggests a set of facts that would entitle Petitioners to recover from Person C. The PLA repeatedly refers to Persons A and B in parallel as "victims and witnesses," and likewise to Persons A, B and C in parallel as "victims, witnesses and investigators" in connection with their entitlement to the qualified privilege to report sexual harassment. (PLA pgs. 2, 3, 5, 6, 9, 16, 17, 18, 19, 20 and 22). Like a pile-driver, Constellation keeps hammering the terms "witnesses" and "qualified privilege" regarding Person B. Constellation's clear objective is to suggest that Person B witnessed the alleged sexual harassment of Person A, the better to enable him to assert the qualified privilege.

But Person A stated that she was harassed on the patio of the Shedd Aquarium (224 Petition par. 7.a; C10; A002). This Court may take judicial notice of the fact that the Shedd Aquarium is located at 1200 South Lake Shore Drive in Chicago. Person B, however, was at the JW Marriott on Adams Street in Chicago. (224 Petition par. 7.c and 7.d; C11; A003). Nothing in the 224 Petition places Person B at the Shedd Aquarium. Person C, the investigator, published the statements of Persons A and B to Constellation. (224 Petition, pars. 12-15 and Exhibit B thereto; C12 and C22-23; A014-A015). Thus, Constellation's repetitive references in the PLA to Person B as a witness entitled to a qualified privilege suggest that Person B told Person C, the investigator, that he

witnessed the alleged sexual harassment of Person A. Person C then published to Constellation Person B's remarkable statement that from his location inside the JW Marriott on Adams Street he witnessed the alleged harassment of Person A on the patio of the Shedd Aquarium at 1200 South Lake Shore Drive – across a distance of about a mile and a half as the crow flies and with no line of sight. Person C's acceptance and republication of so fanciful a statement from Person B demonstrates nothing if not a reckless disregard for truth.

III. Constellation's PLA States Numerous Facts That Are Outside the Record on Appeal in This Case.

A. Requirements of Supreme Court Rule 315(c)(4)

S. Ct. Rule 315(c)(4) requires that a petition for leave to appeal contain "a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the pages of the record on appeal or to the pages of the abstract." Constellation's PLA states facts that are not of record in this case and misrepresents material facts that are of record.

This Court and the Illinois Appellate Courts have repeatedly made clear that they will disregard evidence that is not in the record on appeal or which otherwise violates Illinois Supreme Court Rules. *See Jane Doe-3 v. McLean County Unit District No. 5 Bd. of Directors*, 2012 IL 112479, at 10 n.4 (all asserted facts that are argumentative are disregarded); *Hubert v. Consol. Med. Laboratories*, 306 Ill. App. 3d 1118, 1120 (2d Dist. 1999) (court "disregard[ed] those portions [of brief] that violate the Supreme Court rules" and "admonish[ed] counsel for failing to comply with the Supreme Court rules"); *John*

Crane Inc. v. Admiral Insurance Co., 391 Ill. App. 3d 693, 698 (2009) ("any inappropriate or unsupported statements shall be disregarded").

Constellation moved to dismiss the 224 Petition under 2-615. (C38-C53). The only facts that are of record in this case are the allegations in the 224 Petition and its exhibits. (C9-C23; A001-A015). The extra-record facts in Constellation's PLA were not before the Appellate Court when it issued the opinion that Constellation now asks this Court to review, nor were they before the trial court when the 2-615 Motion was brought. Pursuant to S. Ct. Rule 315(f), the RLD Parties submit that the corrections described in Section III of this Answer are necessary.

B. Constellation Misrepresents the Facts in This Case.

1. Constellation's December 2018 Letter Does Not Identify Its Attorneys as Person C.

In its Statement of Facts Constellation claims no fewer than four times (PLA, pgs. 6, 8, 10, 11-12) that Person C, its hired investigator, was identified in Constellation's December 19, 2018 letter (the "December 2018 Constellation Letter"), a copy of which is attached as Exhibit B to the 224 Petition. (C22-C23; A014-A015). Constellation then uses this misrepresentation of the record to argue that the RLD Parties already know the identity of Person C, which makes their use of S. Ct. Rule 224 unnecessary, and therefore improper.

Apprehension of Constellation's factual misrepresentation requires a reading of the full text of the paragraph of the December 2018 Constellation Letter on which it relies (emphasis added):

> Mr. Dent has been the subject of **an investigation conducted by a third-party hired by Constellation** to investigate reports that Mr. Dent engaged in grossly inappropriate behavior during the 2016 and 2018 Pro-Am

> Tournament events where Mr. Dent was a guest of Constellation. The reports regarding Mr. Dent's behavior include among other things that Mr. Dent engaged in an inappropriate and unwanted touching of a Constellation employee and that Mr. Dent made unwelcome comments of a sexual nature to a Constellation employee. As you note in the PGN October Letter, **on September 14, 2018, there was a meeting between Richard L. Dent, Grace Speights, Theos McKinney and Timothy W. Wright.** That meeting was to allow Mr. Dent an opportunity to provide his recollection of the events described above. The law requires Constellation to investigate reports of such behavior and the EEOC directs employers to conduct effective investigations. Although Mr. Dent denied the allegations, his denials were not credible and the investigation concluded that the reports accurately described behaviors that were, at a minimum, in violation of Exelon's code of business conduct, completely outside the norms of socially acceptable behavior, and demeaning to Constellation employees. To date, **neither Exelon nor Constellation has disclosed the findings of the investigation to any third-party, other than in privileged communications with its lawyers.**

(C22-C23; A014-A015). Constellation states that it hired an investigator, that two Constellation attorneys (Grace Speights and Theos McKinney) met with Dent on September 14, 2018, and that Constellation discussed the investigation only with its lawyers. The only link between Constellation's "investigator" and the two Constellation attorneys is that they appear in the same paragraph. The December 2018 Constellation Letter was before the Appellate Court as well (C22-C23), and that court referred to Person C as the "unknown investigator." (*Appellate Court Opinion*, par. 47; A035).

The December 2018 Constellation Letter does not state that the third-party investigator is an attorney, or, for that matter, two attorneys that, for some unstated reason, Constellation says should be counted as one. Not a word in that letter identifies Speights and McKinney, either jointly or severally, as the investigator Constellation said it hired. But Constellation says otherwise in its Statement of Facts that (emphasis added):

> Constellation also **confirmed that "Person C" was in fact the attorneys** that Constellation had retained to investigate the allegations, **who had identified themselves to Dent** during the September 14, 2018 interview

> **and whose identities were subsequently confirmed by Constellation** in a letter that Dent attached to the Petition [i.e., the December 2018 Constellation Letter].

(PLA, pg. 10). These statements of fact by Constellation are outside the record on appeal.

Nothing in the 224 Petition or the December 2018 Constellation Letter states that Speights and McKinney "identified" themselves as investigators, and Constellation's peculiar word choice warrants attention. One might reasonably expect that two attorneys visiting someone's offices in Chicago would "introduce" themselves. One might also reasonably expect that two plainclothes police officers knocking at one's front door would "identify" themselves. The sentence from page 10 of the PLA quoted above is a subtle work of ambiguity and obfuscation because Constellation makes it unclear whether, at the September 14, 2018 meeting, its two attorneys simply "introduced themselves," or whether they "identified themselves to Dent" as the investigator. The latter statement appears nowhere in the 224 Petition, but that doesn't stop Constellation from adding this extra-record fact by saying that the two attorneys' "identities were subsequently confirmed by Constellation" in the December 2018 Constellation Letter – the same letter that it claims identifies the two attorneys as the "investigator." The implausibility of Constellation's scenario leaves the hook sticking out of the bait: why, after Speights and McKinney visited Dent on September 14, 2018, would Constellation need to subsequently confirm their identities in a letter issued two months later that plainly does not identify them as the "investigator"? The answer is that Constellation is using its PLA to inject an extra-record fact in its PLA, namely, that the RLD Parties already knew the identity of Person C.

2. On a 2-615 Motion, the December 2018 Constellation Letter Must Be Read in the Light Most Favorable to the RLD Parties as the Non-Movants.

Constellation reads the December 2018 Constellation Letter as an identification of Speights and McKinney as the "investigator." But Constellation's reading is irrelevant.

On a 2-615 motion a court must interpret all pleadings and supporting documents in the light most favorable to the RLD Parties as the non-movants. *E.g., Doe v. Surgical Care of Joliet, Inc.*, 268 Ill. App. 3d 793, 795 (3rd Dist.); *app. den.*, 158 Ill. 2d 550 (1994). A court must construe all reasonable inferences from well-pled allegations of fact in favor of the nonmovant. *Vernon v. Schuster*, 179 Ill. 2d 338, 341 (1997). Constellation's assertion that the December 2018 Constellation Letter identifies Speights and McKinney as the "investigator" is hardly a reasonable inference.

Even if we accept *arguendo* Constellation's claim that the singular term "investigator" in the December 2018 Constellation Letter is really plural, its argument fails because it leads to an absurd result. Assume for argument that the singular "investigator" is really a plural, collective term that covers more than one person. In that letter Timothy Wright's name immediately follows McKinney's. Nothing in the December 2018 Constellation Letter limits the now-plural term "investigator" to Speights and McKinney. Nothing in the letter excludes Wright from inclusion in the now-plural term "investigator." But Wright is one of Dent's attorneys. The notion that Constellation would hire one of Dent's attorneys to investigate allegations against Dent is absurd.

3. Constellation Mischaracterizes "Person C" as Plural.

Constellation's Statement of Facts also includes other, more subtle factual inaccuracies intended to further support its claim that Exhibit B to the 224 Petition, the December 2018 Constellation Letter (C22-C23; A014-A015), identifies its attorneys as

Person C. The PLA smudges the singular "investigator" of that letter into the plural "investigators" that it prefers. (PLA at pgs. 8, 11-12). Constellation even goes so far as to state that "[t]hese attorneys/investigators had previously been disclosed to Dent in the letter attached as Exhibit B to the [224] Petition." (PLA, pgs. 11-12). Constellation's transformation of Person C from singular to plural, together with its repeated efforts to link "attorneys" and "investigators" in the PLA amount to a manipulation of the record calculated to squeeze the Speights and McKinney duo into the single investigator whom Constellation said it hired.

4. Constellation's PLA Adds Extra-Record Facts About Person B.

Despite the absence of any support in the record, Constellation needs Person B to be both an employee and a witness to the alleged harassment so that it can enfold him within the protective carapace of an employee's qualified privilege to report sexual harassment to an employer. So, Constellation adds extra-record facts about Person B in numerous places throughout its PLA, either directly or by paralleling Person B with "witnesses" placed after "victims" (Person A) and before "investigators" (Person C); for example (emphasis added):

> Another individual, **also employed by Constellation, Person B,**…
> (PLA, page 7);

> RLD and Dent… filed a petition for pre-suit discovery from Constellation… **demanding that Constellation disclose the identity of the victim, witnesses, and investigators so that RLD and Dent could sue them for defamation**.… the law appropriately recognizes that **victims and witnesses** reporting workplace sexual harassment **enjoy a qualified privilege** against a defamation claim….
> (PLA, pages 2-3).

As stated above, nothing in the 224 Petition alleges that Person B is either an employee

of Constellation or that he witnessed the alleged harassment of Person A.

IV. Conclusion.

WHEREFORE, for the reasons stated above, the RLD Parties request that this Court deny Constellation's Petition for Leave to Appeal and grant such other relief as the Court deems just.

Dated: January 20, 2021

Respectfully submitted,

RICHARD L. DENT
RLD RESOURCES, LLC

By /s/ ***Paul G. Neilan***
Their Attorney

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is sixteen (16) pages.

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APPENDIX
TO
ANSWER TO PETITION FOR LEAVE TO APPEAL

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

Richard L. Dent and RLD Resources, L.L.C.,

Petitioners,

v.

Constellation NewEnergy, Inc.; CNE Gas Supply, LLC; Constellation Energy Gas Choice, LLC; and Constellation NewEnergy - Gas Division, LLC,

Respondents in Discovery.

Verified Petition Under Supreme Court Rule 224 for Discovery Before Suit to Identify Responsible Persons

NOW COME Petitioners, Richard L. Dent ("Dent") and RLD Resources, L.L.C., a Delaware limited liability company ("RLD Resources") (collectively, "Petitioners"), by and through their attorney, Law Offices of Paul G Neilan, P.C., with their Verified Petition Under Supreme Court Rule 224 for Discovery Before Suit to Identify Responsible Persons (this "Petition"), and in support hereof Petitioners state as follows:

1. Mr. Dent is the Chief Executive Officer of, and owns all of the membership interests in, RLD Resources.

2. RLD Resources is a Delaware limited liability company, and is qualified to do business in Illinois as a foreign limited liability company.

3. RLD Resources' offices are located at 333 North Michigan Avenue, Suite 1810, Chicago, Cook County, Illinois.

4. Each of Respondents maintains a registered agent at c/o Corporate Creations Network, Inc., 350 S. Northwest Highway, #300, Park Ridge, Cook County, Illinois.

5. Prior to October 2018 Petitioners were party to several contracts with Constellation NewEnergy, Inc., a Delaware corporation ("CNE"); CNE Gas Supply, LLC, a Delaware limited liability company ("CNE Gas Supply"); Constellation Energy Gas Choice, LLC, a Delaware limited liability company ("CNE Gas Choice"); and Constellation NewEnergy - Gas Division, LLC, a Kentucky limited liability company ("CNE Gas Division") (CNE, CNE Gas Supply, CNE Gas Choice, and CNE Gas Division being collectively referred to as "Respondents") regarding electricity and natural gas sales, marketing and consulting.

6. On or about September 14, 2018, Ms. Grace Speights and Mr. Theos McKinney III, two attorneys representing Respondents, visited Mr. Dent at RLD Resources' offices in Chicago.

7. At this September 14, 2018 meeting, Ms. Speights and Mr. McKinney told Mr. Dent that certain allegations had been made against him, namely:

a. As part of a Senior-Pro Tour golf outing sponsored by Respondents in or about July 2018 in the Chicago area, Mr. Dent was one of a large number of guests at a pre-golf party held on the patio of the Shedd Aquarium in Chicago. Ms. Speights and Mr. McKinney told Mr. Dent that a woman alleged that at this event Mr. Dent groped her.

b. Mr. Dent asked Ms. Speights and Mr. McKinney who this person was; they refused to name her, and in this Petition she is referred to as "Person A."

c. In connection with this same July 2018 golf outing, Respondents had arranged to distribute to their golfing guests passes, polo shirts and similar items at the Marriott Hotel on Adams Street in Chicago. Ms. Speights and Mr. McKinney told Mr. Dent that a gentleman told Respondents that he had observed Mr. Dent collecting these golf materials at the Marriott Hotel. This gentleman had stated that he, Mr. Dent, was drunk and disorderly at that time.

d. Mr. Dent asked Ms. Speights and Mr. McKinney who this person was; they refused to name him, and in this Petition he is referred to as "Person B."

e. Ms. Speights and Mr. McKinney also told Mr. Dent that Person A – the same unnamed woman who alleged that Mr. Dent groped her at the July 2018 Shedd Aquarium golf party – also alleged that, at a similar golf party at a Constellation Pro-Am golf outing in the Philadelphia, Pennsylvania area in or about June 2016, Mr. Dent had said to her that "she had a butt like a sister."

8. At the September 14, 2018 meeting, Mr. Dent told Ms. Speights and Mr. McKinney that all of these allegations were completely false.

9. At the September 14, 2018 meeting, Ms. Speights and Mr. McKinney told Mr. Dent that because of these allegations Constellation would be reviewing its contractual arrangements with him and RLD Resources.

10. On or about October 1, 2018, Petitioners received from Respondents correspondence, a copy of which is attached as Exhibit A to this Petition (the "Termination Notice").

11. Pursuant to the Termination Notice, Respondents terminated all contracts

between Petitioners and Respondents.[1]

12. In correspondence dated December 19, 2019 from Respondents's counsel, a copy of which is attached as Exhibit B to this Petition, Respondents informed Petitioners that Respondents had hired a third party to investigate these claims against Mr. Dent.

13. Respondents refused to identify this third party, who is referred to in this Petition as "Person C."

14. On information and belief, Person C investigated the claims made against Mr. Dent prior to Respondents' issuance of the Termination Notice on October 1, 2018.

15. On information and belief, Person C published or republished to Respondents the statements of Person A and Person B regarding Mr. Dent described above.

16. The statements concerning Mr. Dent published by Persons A, B and C were:

a. made as statements of fact;

b. false; and

c. not privileged.

17. The statements concerning Mr. Dent published by Persons A, B and C imputed to Mr. Dent acts of moral turpitude and impugned his character, reputation and good name.

18. Respondents' termination of all contractual arrangements with Petitioners

[1]Certain of these contracts are master agreements under which individual transaction confirmations are entered into for forward sales of commodity natural gas and electricity supply. While Respondents have stated that they will honor existing transaction confirmations, Respondents terminated all of the master agreements and will enter into no new transaction confirmations with Petitioners.

damaged Petitioners.

19. In correspondence dated December 19, 2018 from Respondents' counsel attached as Exhibit B to this Petition, Respondents admit that the statements concerning Mr. Dent published by Persons A, B and C were both the cause in fact and proximate cause of Respondents' termination of all contractual arrangements between Respondents and Petitioners.

20. Persons A, B and C may be responsible in damages to Petitioners

21. Petitioners wish to engage in discovery for the sole purpose of ascertaining the identiities and whereabouts of Persons A, B and C.

22. The discovery sought by Petitioners is necessary because Respondents have refused, and continue to refuse, to provide to Petitioners the identities and addresses of Persons A, B and C.

23. Because Respondents' refuse to provide to Petitioners the names and addresses of Persons A, B and C, Petitioners are unable to prosecute against the latter appropriate legal action for recovery of damages.

WHEREFORE, Petitioners respectfully request this court to enter an order authorizing Petitioners to conduct discovery before suit against Respondents pursuant to Illinois Supreme Court Rule 224 solely for the purpose of ascertaining the identities and whereabouts of Persons A, B and C as parties who may be responsible in damages to Petitioners because of their publication of false and defamatory statements about them.

Dated this 15th day of March, 2019

By : _____
Paul G. Neilan
#49710
1954 First Street, #390

Highland Park, IL 60035
T 847 266 0464
F 312 674 7350
C 312 580 5483
pgneilan@energy.law.pro

Exhibit A – Termination Notice dated October 1, 2018 from Respondents to Petitioners
Exhibit B – Letter dated December 19, 2018, from Respondents' Counsel

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

Richard L. Dent and RLD Resources, LLC

Petitioners,

and

Constellation NewEnergy, Inc.; CNE Gas Supply, LLC; Constellation Energy Gas Choice, LLC; and Constellation NewEnergy Gas Division, LLC

Respondents.

Verification of Rule 224 Petition

I, Richard L. Dent, certify that I have knowledge of the matters and things stated in the foregoing Verified Petition Under Supreme Court Rule 224 for Discovery Before Suit to Identify Responsible Persons, and under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in said instrument are true and correct, except as to matters therein stated to be on

information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated this 15th day of March, 2019

By: _____
Richard L. Dent

333 North Michigan Avenue
Suite 1810
Chicago, IL 60601
(312) 795-0798

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

Richard L. Dent and RLD Resources, L.L.C.

v.

Constellation NewEnergy, Inc.; CNE Gas Supply, LLC, et al.

No. _____

CIVIL ACTION COVER SHEET - CASE INITIATION

A Civil Action Cover Sheet - Case Initiation shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate case type which best characterizes your action. Only one (1) case type may be checked with this cover sheet.

Jury Demand ☐ Yes ■ No

PERSONAL INJURY/WRONGFUL DEATH

CASE TYPES:

- ☐ 027 Motor Vehicle
- ☐ 040 Medical Malpractice
- ☐ 047 Asbestos
- ☐ 048 Dram Shop
- ☐ 049 Product Liability
- ☐ 051 Construction Injuries (including Structural Work Act, Road Construction Injuries Act and negligence)
- ☐ 052 Railroad/FELA
- ☐ 053 Pediatric Lead Exposure
- ☐ 061 Other Personal Injury/Wrongful Death
- ☐ 063 Intentional Tort
- ☐ 064 Miscellaneous Statutory Action (Please Specify Below**)
- ☐ 065 Premises Liability
- ☐ 078 Fen-phen/Redux Litigation
- ☐ 199 Silicone Implant

TAX & MISCELLANEOUS REMEDIES

CASE TYPES:

- ☐ 007 Confessions of Judgment
- ☐ 008 Replevin
- ☐ 009 Tax
- ☐ 015 Condemnation
- ☐ 017 Detinue
- ☐ 029 Unemployment Compensation
- ☐ 031 Foreign Transcript
- ☐ 036 Administrative Review Action
- ☐ 085 Petition to Register Foreign Judgment
- ☐ 099 All Other Extraordinary Remedies

By: Paul G. Neilan #49710
(Attorney) (Pro Se)

(FILE STAMP)

COMMERCIAL LITIGATION

CASE TYPES:

- ☐ 002 Breach of Contract
- ☐ 070 Professional Malpractice (other than legal or medical)
- ☐ 071 Fraud (other than legal or medical)
- ☐ 072 Consumer Fraud
- ☐ 073 Breach of Warranty
- ☐ 074 Statutory Action (Please specify below.**)
- ☐ 075 Other Commercial Litigation (Please specify below.**)
- ☐ 076 Retaliatory Discharge

OTHER ACTIONS

CASE TYPES:

- ☐ 062 Property Damage
- ☐ 066 Legal Malpractice
- ☐ 077 Libel/Slander
- ☐ 079 Petition for Qualified Orders
- ☐ 084 Petition to Issue Subpoena
- ■ 100 Petition for Discovery

** Law Offices of Paul G. Neilan, P.C., 1954 1st St, #390
Highland Park, IL 60035

Primary Email: pgneilan@energy.law.pro

Secondary Email: pgneilan@neilanlaw.com

Tertiary Email: _____

Pro Se Only: ☐ I have read and agree to the terms of the *Clerk's Office Electronic Notice Policy* and choose to opt in to electronic notice form the **Clerk's Office** for this case at this email address: _____

Constellation
An Exelon Company

1310 Point Street – 9th Floor
Baltimore, MD 21231
www.constellation.com

October 1, 2018

TERMINATION NOTICE

VIA FEDEX AND E-MAIL

RLD Resources, LLC
333 North Michigan Avenue, Suite 1810
Chicago, IL 60601
Attn: Richard Dent

Dear Richard:

Consistent with our conversations, Constellation NewEnergy, Inc. (on behalf of itself and together with the retail affiliates identified in this letter, "Constellation") has elected to terminate its master agreements with RLD Resources, LLC ("RLD") going forward. Constellation and RLD will continue to honor our obligations under existing confirmations and statements of work tied to customer agreements for the remainder of the respective terms of those customer agreements, but the confirmations and statements of work will not be renewed or extended. (See attached listing.)

I have outlined our existing agreements and termination logistics as follows:

1) **Agreement for Consulting Services between Constellation and RLD dated May 11, 2016 (as amended January 9, 2017, the "Consulting Agreement"):** Pursuant to Section 2 of the Consulting Agreement, this letter shall serve as Constellation's notice of termination of the Consulting Agreement effective immediately. As more fully described in the Consulting Agreement, with respect to the Exhibit As currently in effect:
    a. Exhibit A-1 is hereby terminated effective as of the date of this letter. The performance of the Services described in Exhibit A-1 shall terminate immediately and no payment shall be made for the month of October 2018; and
    b. Exhibit A-2 will terminate effective as of the End Use Customer's December 2018 meter reads, as defined in Exhibit A-2 to the Consulting Agreement ("A-2 End Date"). The performance of the Services described in Exhibit A-2 shall terminate as of the A-2 End Date and payments will continue until such time as payment is collected from the End Use Customer for the December 2018 billing cycle and then remitted to RLD.

Additionally, pursuant to Section 13 of the Consulting Agreement, Constellation hereby requests the return of all papers, materials and property of Constellation held by RLD.

2) **Base Contract for Sale and Purchase of Natural Gas between CNE Gas Supply, LLC and RLD dated August 26, 2014 (as amended, the "NAESB"):** Pursuant to Section 12 of the NAESB, Constellation hereby provides thirty (30) days' prior written notice of termination of the NAESB. This termination shall not affect or excuse the performance of Constellation or RLD under any provision of the NAESB that by its terms survives Constellation's termination. Any existing Transaction Confirmations shall continue until the end of the Delivery Periods identified therein and are not terminated by means of this letter.

3) **Master Power Purchase and Sale Agreement between Constellation and RLD dated December 19, 2012 (as amended, the "EEI"):** Pursuant to Section 10 of the EEI, Constellation hereby provides thirty (30) days' prior written notice of termination of the EEI. Notwithstanding the foregoing, this termination shall not affect or excuse the performance of Constellation or RLD under any provision of the EEI that by its terms survives Constellation's termination. The EEI shall remain in effect with respect to Transactions entered into prior to the effective date of this termination until both RLD and Constellation have fulfilled all of their obligations with respect to the Transactions. For clarity, any existing Confirmations shall continue until the end of the Delivery Periods identified therein and are not terminated by means of this letter.

4) **Master Broker Agreements between RLD and each of (a) Constellation Energy Gas Choice, LLC dated May 27, 2017, (b) Constellation NewEnergy, Inc. dated June 7, 2016; and (c) Constellation NewEnergy – Gas Division, LLC dated May 27, 2017:** Pursuant to Section 8 of each Master Broker Agreement, this letter shall serve as Constellation's written notice to RLD terminating such agreement. This termination shall be effective ninety (90) days from the above date. Any Compensation Schedules currently in effect will remain in effect until such Compensation Schedules expire or are separately terminated and will be governed by the terms of the applicable Master Broker Agreement. Please note that RLD remains bound by sections 6(j), 10, 11, 12, 15, 16, 17, and 20 of each Master Broker Agreement subsequent to termination. Additionally, pursuant to Section 10 of each such Master Broker Agreement, Constellation hereby requests the return of all Confidential Information.

We appreciate our past business dealings with RLD and wish you well in your future endeavors.

Sincerely,
Constellation NewEnergy, Inc.

Mark P. Huston
President, Retail

cc: Nina Jezic (Constellation - VP & Deputy General Counsel, Retail)
Carol Freeman (RLD Resources, LLC)

Customer Agreements

Customer	RLD Product	End Date
Board of Trustees of the Community College District No. 508	Bill audit services	December 2018
State of Illinois	Wholesale Power	December 2019
State of Illinois	Wholesale Gas	June 2019
Cook County	Wholesale Gas	April 2021

Constellation
An Exelon Company

1221 Lamar St., Suite 750
Houston, TX 77010
www.constellation.com

December 19, 2018

VIA E-MAIL

Law Offices of Paul G. Neilan, P.C.
1954 First Street #390
Highland Park, IL 60035
pgneilan@energy.law.pro

RE: October 23, 2018 Correspondence from Paul Neilan to Nina Jezic ("PGN October Letter") and December 17, 2018 Correspondence from Paul Neilan to Nina Jezic and Joseph Kirwan ("PGN December Letter")

Dear Mr. Neilan:

This letter responds to the PGN October Letter and the PGN December Letter, and memorializes prior information that has been provided to you and to your client, Richard L. Dent.

Mr. Dent has been the subject of an investigation conducted by a third-party hired by Constellation to investigate reports that Mr. Dent engaged in grossly inappropriate behavior during the 2016 and 2018 Pro-Am Tournament events where Mr. Dent was a guest of Constellation. The reports regarding Mr. Dent's behavior include among other things that Mr. Dent engaged in an inappropriate and unwanted touching of a Constellation employee and that Mr. Dent made unwelcome comments of a sexual nature to a Constellation employee. As you note in the PGN October Letter, on September 14, 2018, there was a meeting between Richard L. Dent, Grace Speights, Theos McKinney and Timothy W. Wright. That meeting was to allow Mr. Dent an opportunity to provide his recollection of the events described above. The law requires Constellation to investigate reports of such behavior and the EEOC directs employers to conduct effective investigations. Although Mr. Dent denied the allegations, his denials were not credible and the investigation concluded that the reports accurately described behaviors that were, at a minimum, in violation of Exelon's code of business conduct, completely outside the norms of socially acceptable behavior, and demeaning to Constellation employees. To date, neither Exelon nor Constellation has disclosed the findings of the investigation to any third-party, other than in privileged communications with its lawyers.

Given Constellation's legal obligation to investigate such allegations and the protected nature of its findings, any claim that Constellation has "impugn[ed] Mr. Dent's ... name and reputation" is frivolous.

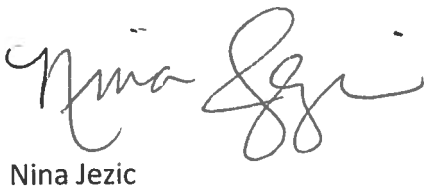
With respect to the PGN December Letter, you allege that the natural gas confirmations NGIDX23877443 and NGIDX23877432, evidencing winter gas supply transactions documented in emails among RLD, Constellation and BP (the "Winter Trades"), are nullities because of the termination of the master agreement between RLD and Constellation. This is an incorrect understanding of the law of contracts. Contrary to your assertion, the existence of a master NAESB agreement is not a pre-requisite to parties entering into binding gas transactions. The written communications documenting the Winter Trades with explicit terms and conditions are valid agreements. Nonetheless, we agree to unwind the Winter Trades as you have requested.

Contrary to your assertions, Constellation's agreement to unwind the Winter Trades and its termination of its relationship with RLD, do not affect Constellation's ability to meet its obligations to the State of Illinois or Cook County. Your statements suggesting otherwise during our December 10, 2018 phone conversation and in the PGN December Letter are baseless. We strongly caution you and your client against making any statements to third parties that seek to interfere in any way with Constellation's customer relationships or that in any way suggest that Constellation has breached any of its contractual obligations or misrepresented information.

Exelon/Constellation stands firm in its decision to terminate its contractual relationship and commercial dealings with RLD and Mr. Dent pursuant to the October 1, 2018 Termination Notice (as defined in the PGN December Letter).

We hope that this letter will allow both parties to put this matter to rest.

Sincerely,
Constellation NewEnergy, Inc.



Nina Jezic
Constellation VP & Deputy General Counsel, Retail

2020 IL App (1st) 191652

No. 1-19-1652

Opinion filed November 25, 2020

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

RICHARD L. DENT and RLD RESOURCES, LLC,	)	Appeal from the
	)	Circuit Court of
Petitioners-Appellants,	)	Cook County.
	)	
v.	)	No. 19 L 2910
	)	
CONSTELLATION NEWENERGY, INC.; CNE GAS SUPPLY, LLC; CONSTELLATION ENERGY GAS CHOICE, LLC; and CONSTELLATION NEW ENERGY-GAS DIVISION, LLC,	)	Honorable
	)	Patricia O'Brien-Sheahan,
Respondents-Appellees.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Presiding Justice Gordon and Justice Reyes concurred in the judgment and opinion.

OPINION

¶ 1 Petitioners, Richard Dent and RLD Resources, LLC (RLD), appeal the circuit court's dismissal with prejudice of their petition for presuit discovery pursuant to Illinois Supreme Court Rule 224 (eff. Jan. 1, 2018). The petition sought disclosure from respondents, Constellation NewEnergy, Inc.; CNE Gas Supply, LLC; Constellation Energy Gas Choice, LLC; and Constellation New Energy-Gas Division, LLC (collectively, Constellation), of the names and

addresses of three unidentified people who published allegedly defamatory statements about Dent that caused respondents to terminate their contractual arrangements with petitioners.

¶ 2 On appeal, petitioners argue that the dismissal of their petition should be reversed because the trial court misapplied the law and erroneously treated respondents' motion to dismiss for failure to state a claim as a motion for summary judgment. Specifically, petitioners argue that they met their burden to show this discovery was necessary because they pled sufficient allegations of a defamation claim to overcome a motion to dismiss for failure to state a claim.

¶ 3 For the reasons that follow, we reverse the judgment of the circuit court.[1]

¶ 4 I. BACKGROUND

¶ 5 On March 18, 2019, petitioners filed a verified petition for presuit discovery against Constellation. Petitioners alleged that prior to October 2018, they were party to several energy supply and marketing contracts with Constellation and all of these contracts were terminable at will.

¶ 6 Petitioners alleged that, in September 2018, two attorneys representing Constellation—Grace Speights and Theos McKinney III—visited petitioners' office and told Dent that certain allegations had been made against him. Specifically, a woman, who was a Constellation employee and whom Constellation's attorneys refused to identify (Person A), alleged that Dent, in June 2016 at a Constellation-sponsored golfing event in the Philadelphia area, said to her that "she had a butt like a sister." Person A also alleged that Dent, in July 2018 at another Constellation-sponsored pregolf party on the patio of the Chicago Shedd Aquarium, groped her. Furthermore, in connection

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

with the same July 2018 golf event, Constellation had arranged for the distribution of guest passes, polo shirts and similar items at the Marriott Hotel on Adams Street in Chicago, and a man, whom Constellation's attorneys refused to identify (Person B), told Constellation that he had observed Dent at the hotel collecting the golf materials and that Dent was drunk and disorderly at that time.

¶ 7 The petition alleged that Dent told Constellation's attorneys at that September 2018 meeting that all of these allegations were completely false and that the attorneys responded that Constellation would review its contractual arrangements with Dent and RLD as a result of these allegations. On October 1, 2018, Constellation sent Dent and RLD a notice terminating all of Constellation's contracts with them. This termination notice was included as an exhibit to the petition. Another petition exhibit, a December 2019 letter from Constellation's counsel to petitioners' counsel, stated that Constellation had hired a third party, whom Constellation refused to identify (Person C),[2] to investigate the claims against Dent. This letter also stated that Dent's denials were not credible and that the investigation concluded that the reports accurately described behavior that violated the company's code of conduct, was outside the norms of socially acceptable behavior, and demeaned Constellation employees. The petition alleged, on information and belief, that Person C investigated the claims against Dent before the termination notice was issued and that Person C published or republished to Constellation the statements of Persons A and B.

¶ 8 The petition concluded with allegations that the statements published by Persons A, B, and C concerning Dent were made as statements of fact, were false, were not privileged, and were the cause in fact and proximate cause of Constellation's termination of all its contractual arrangements with petitioners. Furthermore, the statements imputed to Dent acts of moral turpitude and

[2]Person C was revealed in later proceedings to be multiple people, Persons C.

impugned his character, reputation and good name. The petition asserted that Persons A, B, and C may be responsible in damages to petitioners and that this presuit discovery was necessary because Constellation refused to provide to petitioners the names and addresses of Persons A, B, and C.

¶ 9 Constellation moved to dismiss the petition under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2018)), arguing that the petition was substantially insufficient because the alleged defamatory statements were qualifiedly privileged and that petitioners failed to allege facts showing that the privilege was abused. In this motion, Constellation disclosed that Person B was an employee and made the alleged defamatory statements, which described his observations of Dent on the day in question, in the course of Constellation's investigation of Person A's allegations. Constellation also disclosed that Persons C were the attorneys Constellation retained to investigate Person A's allegations.

¶ 10 Specifically, Constellation argued that the alleged defamatory statements were qualifiedly privileged as a matter of law as statements made to an employer by a victim of sexual harassment concerning inappropriate touching experienced while at work (Person A), statements made to the employer by a witness (Person B) as part of Constellation's investigation consistent with its legal obligations, and statements of the investigators/lawyers (Persons C) relating their findings to Constellation. Constellation also argued that petitioners failed to allege facts sufficient to overcome this qualified privilege, *i.e.*, by alleging facts that, if true, would suffice to demonstrate a direct intent to injure petitioners or a reckless disregard for their rights.

¶ 11 Furthermore, Constellation urged the court to dismiss the petition with prejudice and not allow petitioners leave to replead because, according to Constellation, any amendment would be futile where Constellation had retained third-party counsel to conduct an independent, attorney-

client privileged investigation of the allegations, that investigation included meeting with Dent to inform him of the allegations and obtain his side of the story, Constellation weighed the evidence and decided in good faith to credit its employees' version of events, there was no basis to infer any knowledge of falsity or reckless disregard for the truth, and Constellation did not disclose the findings of the investigation to any third party, other than in privileged communications with its lawyers.

¶ 12 In their response, petitioners argued that Constellation's section 2-615 motion to dismiss should be denied on procedural and substantive grounds. First, although Constellation presented its motion as a section 2-615 motion to dismiss, which attacks only the legal sufficiency of the complaint and defects apparent on the face of the complaint, Constellation improperly introduced new facts regarding Persons B and C and evidence that attacked the factual, rather than the legal, sufficiency of the Rule 224 petition. Constellation also improperly raised the affirmative defense of qualified privilege in its section 2-615 motion to dismiss. Second, Constellation's motion failed under section 2-615 of the Code because the court must accept as true all well-pleaded facts and any reasonable inferences arising therefrom and should not dismiss the Rule 224 petition unless it was apparent that no set of facts could be proved that would entitle petitioners to a judgment in their favor. Petitioners argued that their alleged facts—that three unidentified people fabricated and published completely false and defamatory stories about Dent and then published those stories to a third-party—are more than sufficient to state a *prima facie* defamation case and defeat any qualified privilege claim.

¶ 13 In its reply, Constellation argued that petitioners' allegations, taken as true, established that the allegedly defamatory statements were qualifiedly privileged because all of the statements were

made by an employee victim, a witness, and investigators as part of an employer's sexual harassment investigation and that petitioners failed to plead facts showing that the alleged defamatory statements were intentionally false.

¶ 14 In June 2019, the trial court dismissed petitioners' Rule 224 petition with prejudice, determining *sua sponte* to dispose of the petition for failure to comply with Rule 224. Specifically, the court, citing *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, found that a Rule 224 petition was an inappropriate vehicle to attempt to learn the names of Persons A, B, and C because petitioners knew the identities of the Constellation respondents and their attorneys, Rule 224 was satisfied once a petitioner has identified someone who may be sued, and the Constellation respondents may be liable for damages.

¶ 15 Petitioners moved the court to reconsider its dismissal of the petition with prejudice, arguing that their Rule 224 petition was not the type of impermissible fishing expedition disfavored by the law because petitioners knew everything necessary to bring a defamation action against Persons A, B, and C except their identities. Furthermore, the Constellation respondents-in-discovery did not identify themselves or anyone else as a party who had engaged in the defamation of Dent.

¶ 16 In its response, Constellation argued that the trial court's dismissal of the Rule 224 petition with prejudice was correct because, in accordance with relevant case law, Rule 224's purpose was satisfied since petitioners already knew the identity of a party—namely, Constellation—that was involved in the events that gave rise to the termination of the at-will contracts between petitioners and Constellation. Constellation argued that the absence of a viable claim against it did not mean that Rule 224 discovery continued until petitioners ascertained the identity of a party that engaged

in the wrongdoing that coincided with petitioners' defamation cause of action. In addition, Constellation argued that dismissal of the Rule 224 petition was also proper based on the qualified privilege that covers statements made during the course of an employer's sexual harassment investigation and that petitioners failed to overcome this privilege by alleging facts demonstrating an abuse of that privilege.

¶ 17 After hearing oral argument, the trial court issued a July 2019 written order denying petitioners' motion to reconsider the dismissal. The court stated that the specific, narrow purpose of Rule 224 allows a petitioner to obtain the identity of a potential defendant when the petitioner lacks knowledge of anyone who may be liable in damages but the record here established that petitioners had knowledge that Constellation may be liable in damages based on the terminated contracts.

¶ 18 Petitioners appealed.

¶ 19 II. ANALYSIS

¶ 20 A. Presuit Discovery Under Rule 224

¶ 21 Petitioners argue the trial court erred in ruling that *Low Cost Movers, Inc.* required dismissal with prejudice of their Rule 224 petition. Specifically, petitioners argue that the trial court's ruling undermined the purpose of Rule 224, the alleged facts in their petition showed that no cause of action lies against Constellation or its attorneys for either defamation or breach of contract, and *Low Cost Movers, Inc.* was distinguishable from this case.

¶ 22 This court generally reviews the trial court's ruling pursuant to Rule 224 for an abuse of discretion. *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 711 (2010). However, statutory construction constitutes a question of law, which we review *de novo*. *Sardiga v. Northern Trust*

Co., 409 Ill. App. 3d 56, 61 (2011); see also *Thomas v. Weatherguard Construction Co.*, 2015 IL App (1st) 142785, ¶ 63 (*de novo* consideration means the appellate court performs the same analysis that a trial judge would perform). Rule 224, titled "Discovery Before Suit to Identify Responsible *Persons* and *Entities*," provides in pertinent part as follows:

"(a) Procedure.

(1) Petition.

(i) A person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery.

(ii) The action for discovery shall be initiated by the filing of a verified petition in the circuit court of the county in which the action or proceeding might be brought or in which one or more of the persons or entities from whom discovery is sought resides. The petition shall be brought in the name of the petitioner and shall name as respondents the persons or entities from whom discovery is sought and shall set forth: (A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought and shall ask for an order authorizing the petitioner to obtain such discovery. The order allowing the petition will limit discovery to the identification of responsible *persons* and *entities* and where a deposition is sought will specify the name and address of *each person* to be examined, if

> known, or, if unknown, information sufficient to identify *each person* and the time and place of the deposition." (Emphases added.) Ill. S. Ct. R. 224(a)(1) (eff. Jan. 1, 2018).

¶ 23 It is well settled that our rules are to be construed in the same manner as statutes (Ill. S. Ct R. 2 (eff. July 1, 2017); *People v. Norris*, 214 Ill. 2d 92, 97 (2005)), and the cardinal rule of interpreting statutes is to ascertain and give effect to the intent of the legislature (*McNamee v. Federated Equipment & Supply Co.*, 181 Ill. 2d 415, 423 (1998)). The best evidence of such intent is the statutory language itself, which is to be given its plain meaning. *Johnston v. Weil*, 241 Ill. 2d 169, 175 (2011). Where the meaning is unclear, courts may consider the law's purpose and the evils the law was intended to remedy. *Id.* at 175-76. A statute's language is ambiguous when it is capable of being understood by reasonably well-informed individuals in multiple ways. *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 288 (2008). Although a court should first consider the language of the statute or rule, a court must presume that the court in promulgating a rule, like the legislature in enacting a statute, did not intend absurdity or injustice. See *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 540-41 (1992).

¶ 24 The plain language of Rule 224 allows a petitioner to engage in discovery to ascertain the identity of multiple persons and entities who may be responsible in damages. The court's clear intent in promulgating Rule 224 was to provide a mechanism to enable a person or entity, before filing a lawsuit and with leave of court, to identify parties who may be responsible in damages; however, the court's order allowing the petition will limit discovery to the identification of responsible persons and entities. *Roth v. St. Elizabeth's Hospital*, 241 Ill. App. 3d 407, 414 (1993) (citing Ill. S. Ct. R. 224, Committee Comments (adopted Aug. 1, 1989)); see also *Shutes v. Fowler*,

223 Ill. App. 3d 342, 345-46 (1991) (Rule 224 allows a party to engage in limited presuit discovery about the identity of those who may be responsible in damages "to streamline the court process").

¶ 25 "[T]he only use and purpose of Rule 224 is to ascertain the identity of a potential defendant." (Emphasis omitted.) *Roth*, 241 Ill. App. 3d at 416. Once a potential defendant's identity is learned, a petitioner can then file a case and use either the discovery provisions of the rules or the Code to conduct full discovery of those named as respondents-in-discovery to determine who in fact was responsible, *i.e.*, liable. *Id.* In *Roth*, the petitioner already knew the identity of several healthcare providers who might have been responsible in damages for the decedent's treatment. *Id.* at 419. Nevertheless, the petitioner was still allowed under Rule 224 to obtain the name of an additional doctor who acted as a consultant but whose identity was not revealed by the hospital records. *Id.* The court, however, ruled that the petitioner was not allowed to use Rule 224 to conduct a fishing expedition for information about a physician's impressions of the decedent's medical conditions and whether the physician had ordered tests to determine whether the decedent had sepsis. *Id.* at 420.

¶ 26 In *Beale v. EdgeMark Financial Corp.*, 279 Ill. App. 3d 242, 244 (1996), a stock pledger, who claimed that his stock was sold at a time when the directors had reason to believe that the sale of the corporation was imminent, filed a Rule 224 petition for presuit discovery that went beyond the names and addresses of people who could be responsible in damages. When he filed his petition, he knew the identity of at least one defendant. *Id.* The trial court ruled that the petitioner was entitled to discovery of a document that constituted the corporation's full response to an inquiry from its regulatory agency because the court believed the document would identify certain people who could be responsible in damages. *Id.* at 245. Specifically, the agency had sent the corporation a list of the names and addresses of 36 individuals and married couples and asked the

corporation to identify whether the listed people had any affiliation with the corporation that could have made them privy to nonpublic information about the corporation's activities regarding the issue in question. *Id.* at 247.

¶ 27 This court affirmed the trial court, stating that the document was within the scope of Rule 224 because the mere list of 36 names and addresses did little if anything to narrow the universe of potential defendants from the general members of the stock-purchasing public and the document included additional connecting facts to establish which people were affiliated with the corporation without disclosing specific facts of insider trading or actual acts of wrongdoing. *Id.* at 253-54. Moreover, this court rejected the argument that the petitioner was not entitled to use Rule 224 because he already knew the identity of some defendants and had even filed a federal lawsuit against them, which was pending at the time the trial court ruled on the Rule 224 petition. *Id.* at 251 n.3. This court explained that "*Roth* did not hold that Rule 224 discovery [was] not permitted where the petitioner knows the name of a potential defendant"; rather, the petition in *Roth* was denied because it sought specific information concerning actual liability. *Id.*; see also *Malmberg v. Smith*, 241 Ill. App. 3d 428 (1993) (petitioner, who already knew the identity of the potential libel defendant, a coemployee, and knew that he had accused the petitioner of illegal drug use while on duty, could not use Rule 224 to discover the contents of the coemployee's statement); *Guertin v. Guertin*, 204 Ill. App. 3d 527, 531 (1990) (petitioners, who speculated that their sister-in-law had exerted undue influence in the execution of a will by a deceased relative, could not use Rule 224 to depose the sister-in-law and bank officials before the filing of a complaint because the identity of the defendant was already known).

¶ 28 Based on the plain language of Rule 224 and the relevant caselaw, we find that the trial court abused its discretion when it *sua sponte* dismissed the petition with prejudice based on the

trial court's determination that presuit discovery of the identity of Persons A, B, and C was not necessary because petitioners knew the identity of Constellation and its attorneys. The trial court's ruling does not comport with the intent of Rule 224 to assist a potential plaintiff in seeking redress against people or entities if the potential plaintiff meets the requirement to demonstrate the reason why the proposed discovery seeking the identity of certain individuals is necessary. Here, petitioners met that requirement, alleging that Persons A and B made completely false defamatory statements about Dent and then published those statements to Person C, an investigator, who then reported the defamatory statements to Constellation, which terminated its at-will contracts with petitioners. As discussed below, at this phase of the proceedings, any affirmative defense of a qualified privilege was not relevant in determining whether petitioners met the requirement to show the necessity of presuit discovery under Rule 224. Under the facts as alleged by petitioners and contrary to the trial court's ruling, Constellation and its attorneys were not "individuals or entities who stand in the universe of potential defendants" responsible in damages for defamation or breach of contract. *Beale*, 279 Ill. App. 3d at 252. Constellation and its attorneys were not the entity or people who made the alleged false and defamatory statements about Dent's conduct at the events sponsored by Constellation; they were merely participants in the subsequent investigation of the alleged defamatory statements that resulted in the termination of petitioners' at-will contracts.

¶ 29 The extent of a petitioner's permissible inquiry to limit or define the universe of potential defendants "must be determined by the trial judge on a case-by-case basis and in consideration of the cause of action alleged. When in the trial court's discretion the petitioner seeks to establish actual liability or responsibility rather than potentiality for liability, discovery should be denied." *Id.* at 252-53. Here, however, since the sought-after information of the identity of Persons A, B,

and C pertained only to their potential for liability and not to actual liability, the allowance of that discovery would not have exceeded the scope of Rule 224. Therefore, it was an abuse of discretion for the trial court to *sua sponte* dismiss with prejudice petitioners' Rule 224 petition. "In reaching this conclusion, we are mindful of concerns regarding [the] use of Rule 224 to conduct fishing expeditions" (*id.* at 254) and opening the lid to Pandora's box to enable every potential plaintiff with competent counsel to push the limits of permissible presuit discovery beyond the identity of responsible persons (*Roth*, 241 Ill. App. 3d at 421 (Lewis, J., specially concurring)). "However, we correspondingly recognize the need to allow the trial court to exercise its discretion within the scope and latitude of the rule, to establish boundaries, given the nature of the case before it, and to grant limited discovery to acquire information which would suggest the potentiality of liability so as to make the subsequent filing of a lawsuit a fruitful pursuit." *Beale*, 279 Ill. App. 3d at 254.

¶ 30 Finally, *Low Cost Movers, Inc.*, does not support the trial court's determination that presuit discovery under Rule 224 was not necessary based on petitioners' knowledge of the identity of Constellation, the respondent-in-discovery, and its attorneys. In *Low Cost Movers, Inc.*, the petitioner, an online advertiser alleged that its ads had been flagged and deleted from a website since 2011 and sought presuit discovery from the respondent-in-discovery, the website operator, to obtain the identity of anyone who had flagged the advertiser's advertisements for removal from the website. 2015 IL App (1st) 143955, ¶ 4. The respondent disclosed that since 2014 it had removed, on its own initiative, all of the advertiser's ads based on violations of respondent's terms of use. *Id.* ¶ 5. The respondent asked the petitioner to propose a limited date range so that respondent could assess the cost and feasibility of running a search to identify who had flagged petitioner's ads before 2014. *Id.* ¶ 6. After the petitioner failed to provide any proposed dates, the

respondent argued that it had complied with its obligations under Rule 224, and the trial court *sua sponte* dismissed the petitioner's Rule 224 petition. *Id.*

¶ 31 Thereafter, the petitioner moved to vacate the dismissal, conceding that the respondent had identified itself as one potential defendant but arguing that petitioner should still be allowed to discover if others might have flagged its ads before 2014. *Id.* ¶ 7. The respondent argued that there was every reason to believe it had removed the ads before 2014. *Id.* The trial court denied the motion to vacate, finding that the purpose of Rule 224 had been satisfied because at least one potential defendant had been identified. *Id.* The reviewing court stated that "Rule 224 was not intended to permit a party to engage in a wide-ranging, vague, and speculative quest to determine whether a cause of action actually exist[ed]" and held that the trial court's dismissal of the petition was not an abuse of discretion based on the respondent's disclosure of itself as a potential defendant and the petitioner's failure to provide any date range to limit the respondent's search. *Id.* ¶¶ 17-18.

¶ 32 Unlike *Low Cost Movers, Inc.*, in the instant case no potential defendant has been identified. Furthermore, petitioners' discovery request was not a wide-ranging, vague, and speculative quest to determine whether a cause of action actually existed. Petitioners are not speculating that someone may have defamed Dent; Constellation told petitioners that three specific although unnamed people had made specific factual allegations about Dent.

¶ 33 For the foregoing reasons, we reverse the trial court's dismissal with prejudice of petitioners' Rule 224 petition to discover the identity of Persons A, B, and C.

¶ 34 B. Sufficiency of the Rule 224 Petition

¶ 35 Petitioners contend that Constellation improperly cloaked a motion for summary judgment as a section 2-615 motion to dismiss and introduced new facts not contained in the Rule 224 petition or its exhibits to assert affirmative defenses based on claims of attorney-client privilege and the qualified privilege of an employee to report harassment to an employer. These new facts included Person B's status as a Constellation employee, Person B somehow witnessing the alleged sexual harassment of Person A even though they were at different locations at the time in question, and Person C's status as an attorney.

¶ 36 Petitioners argue that, for purposes of withstanding a 2-615 motion to dismiss, their petition sufficiently alleged all the required elements of a defamation claim against Persons A, B, and C where petitioners alleged that the statements about Dent were defamatory because they imputed to him acts of moral turpitude and impugned his character, good name, and reputation; the statements were completely false, were made as statements of fact, and were not privileged; and the statements caused Constellation to terminate several contracts with petitioners, who suffered damages as a result. Petitioners also argue that, in the context of a section 2-615 motion to dismiss, the issue of the existence of a qualified privilege for the defamatory statements must be determined based on the facts alleged in their Rule 224 petition and the court must interpret the allegations in the light most favorable to petitioners and accept as true all well-pleaded facts and reasonable inferences that can be drawn from those facts.

¶ 37 Constellation does not challenge petitioners' allegations on the bases that either the alleged defamatory statements did not harm Dent's reputation or that the harm was not obvious and apparent on the face of the statements or that Dent admitted committing the acts alleged in the

statements or that the statements were reasonably capable of an innocent construction or the statements were merely expressions of opinion.

¶ 38 Instead, Constellation argues that the discovery petitioners seek is not necessary because the petition does not state a claim for defamation. Specifically, Constellation argues that the alleged defamatory statements were all qualifiedly privileged and that petitioners failed to overcome that privilege by pleading sufficient facts to demonstrate that the privilege was abused. Constellation asserts that (1) Person A's statements were qualifiedly privileged as statements by a victim of sexual harassment to an investigator engaged by her employer, (2) Person B's statements were qualifiedly privileged because he was a witness who related to the investigator observations of Dent at an event during the same July 2018 golf outing where one of the alleged incidents of harassment occurred, and (3) the statements by Person C, the investigator hired by Constellation, relating the findings of that investigation to Constellation were also qualifiedly privileged.

¶ 39 Constellation argues that petitioners' conclusory allegation that the statements were false does not meet their burden to allege specific facts showing abuse of the privilege. According to Constellation, the facts alleged in the petition tended to show that Constellation and the alleged speakers did not recklessly disregard the truth or falsity of the statements because Constellation retained an outside investigator to investigate the allegations of sexual harassment, the investigator interviewed the victim and witness and then met with Dent and gave him the opportunity to explain his side of the story, Dent's denial of the allegations was found not credible, and Constellation kept the findings of the investigation confidential, disclosing them only in privileged communications with its lawyers.

¶ 40 Although the issue of whether a qualified privilege exists is a question of law for the court, the issue of whether the privilege was abused is a question of fact for the jury. See *Kuwik v. Starmark Star Marketing & Administration, Inc.*, 156 Ill. 2d 16, 25 (1993). Statements covered by a qualified privilege may still be actionable if the privilege is abused. *Gibson v. Philip Morris, Inc.*, 292 Ill. App. 3d 267, 275 (1997). An abuse of a qualified privilege may consist of any reckless act that shows a disregard for the defamed party's rights, including the failure to properly investigate the truth of the matter, to limit the scope of the material, or to send the material to only the proper parties. *Kuwik*, 156 Ill. 2d at 31-32.

¶ 41 Rule 224 requires petitioners to demonstrate that discovery of the identity of the individuals designated as Persons A, B, and C was necessary. See *Hadley v. Subscriber Doe*, 2015 IL 118000, ¶ 25. To ascertain whether petitioners satisfied Rule 224's necessity requirement, the court must evaluate whether they presented sufficient allegations of a defamation claim to withstand a section 2-615 motion to dismiss. See *id.* at 27. In the context of a Rule 224 petition, a section 2-615 motion to dismiss tests the legal sufficiency of a petition by asking whether the allegations of that petition, when viewed in the light most favorable to the petitioner, state sufficient facts to establish a cause of action upon which relief may be granted. See *id.* ¶ 29.

> "All facts apparent from the face of the [petition], including any attached exhibits, must be considered. A circuit court should not dismiss a [petition] under section 2-615 unless it is clearly apparent no set of facts can be proved that would entitle the [petitioner] to recovery. [Citation.] The standard of review is *de novo*. [Citation.]
>
> To state a cause of action for defamation, a [petitioner] must present facts showing the [potential] defendant made a false statement about the [petitioner], the

> [potential] defendant made an unprivileged publication of that statement to a third party, and the publication caused damages. [Citation.] A defamatory statement is one that harms a person's reputation because it lowers the person in the eyes of others or deters others from associating with her or him. [Citation.]" *Id.* ¶¶ 29-30.

¶ 42 Constellation brought its motion to dismiss pursuant to section 2-615 of the Code, but its arguments rest on its contention that the alleged defamatory statements are protected by a qualified privilege for statements made in the reporting and investigation of sexual harassment in the workplace. Constellation argues this privilege should bar disclosure of the identity of Persons A, B, and C because petitioners failed to overcome this privilege by alleging facts showing an abuse of that privilege. We disagree.

¶ 43 Facts not alleged in or attached to the complaint cannot support a section 2-615 motion. *Gilmore v. Stanmar, Inc.*, 261 Ill. App. 3d 651, 654 (1994). In essence, Constellation's argument raises an affirmative defense and improperly attempts to introduce at this presuit stage new facts to support its affirmative defense of a qualified privilege. If allowed, such a maneuver would prejudice petitioners, whose response to the affirmative defense would be hindered based on their inability to conduct any discovery without knowing the identity of Persons A, B, and C.

¶ 44 Privilege is an affirmative defense that may be susceptible to resolution by a motion for summary judgment or a motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2018)) (see *Johnson v. Johnson & Bell, Ltd.*, 2014 IL App (1st) 122677, ¶ 15), but privilege should not be considered when resolving a section 2-615 motion to dismiss (see *Becker v. Zellner*, 292 Ill. App. 3d 116, 122 (1997) (generally, "affirmative defenses may not be raised in a section 2-615 motion"); *Maxon*, 402 Ill. App. 3d at 712 (an affirmative defense is not considered under a

section 2-615 analysis)). We will confine our review to the standards for reviewing section 2-615 motions and not consider alleged facts not shown on the face of the petition or in its attached exhibits. See *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007).

¶ 45 "[A] court must take as true all well-pled allegations of fact contained in the complaint and construe all reasonable inferences therefrom in favor of the plaintiff." *Vernon v. Schuster*, 179 Ill. 2d 338, 341 (1997). In ruling on a motion to dismiss, the court will construe pleadings liberally. *Pfendler v. Anshe Emet Day School*, 81 Ill. App. 3d 818, 821 (1980). However, the court will not admit conclusions of law and conclusory allegations not supported by specific facts. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 930-31 (2004). "A plaintiff is not required to prove his case in the pleading stage; rather, he must merely allege sufficient facts to state all the elements which are necessary to constitute his cause of action." *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 123 (1986).

¶ 46 Defamation can be either defamation *per se* or defamation *per quod. Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, ¶ 24. A statement is defamatory *per se* if its harm is obvious and apparent on its face. *Id.* ¶ 25. When a statement is defamatory *per se*, a plaintiff need not plead actual damage to his or her reputation because the statement is deemed to be so obviously and materially harmful that injury to the plaintiff's reputation is presumed. *Id.* However, because a claim of defamation *per se* relieves a plaintiff of the obligation to prove actual damages, it must be pled with a heightened level of precision and particularity. *Id.* Illinois recognizes five categories of statements that are defamatory *per se:* (1) words imputing the commission of a criminal offense, (2) words imputing an infection with a loathsome communicable disease, (3) words imputing an individual's inability to perform his employment duties or a lack of integrity in performing those

duties, (4) words imputing a lack of ability in an individual's profession or prejudicing an individual in his or her profession, and (5) words imputing an individual's engagement in fornication or adultery. *Id.* The third and fourth categories are generally relevant here: words prejudicing Dent in his profession and imputing a lack of integrity based on his alleged drunk and disorderly condition at an event sponsored by Constellation, a party engaged in several contracts with Dent and his firm, and his alleged sexual harassment of a Constellation employee at that event.

¶ 47 Petitioners alleged that Person A falsely stated that Dent verbally and physically sexually harassed her at two events sponsored by her employer, Constellation. Additionally, petitioners alleged that Person B falsely stated that Dent was drunk and disorderly at the Constellation-sponsored event in Chicago. Persons A and B then reported these false statements to Person C, an unknown investigator, who then reported this information to Constellation, which decided to terminate its contracts with petitioners based on its investigation regarding the false statements. These allegations are sufficient to withstand dismissal under a section 2-615 analysis, which does not consider affirmative defenses like the alleged existence of a qualified privilege.

¶ 48 III. CONCLUSION

¶ 49 For the foregoing reasons, we reverse the judgment of the circuit court that dismissed with prejudice petitioners' Rule 224 presuit discovery petition and remand this cause for further proceedings consistent with this order.

¶ 50 Reversed and remanded.

No. 1-19-1652

Cite as:	*Dent v. Constellation NewEnergy, Inc.*, 2020 IL App (1st) 191652
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 19-L-2910; the Hon. Patricia O'Brien Sheahan, Judge, presiding.
Attorneys for Appellant:	Paul G. Neilan, of Law Offices of Paul G. Neilan, P.C., of Highland Park, for appellants.
Attorneys for Appellee:	Terri L. Mascherin and Christian L. Plummer, of Jenner & Block LLP, of Chicago, for appellees.

No. 126795

IN THE SUPREME COURT OF ILLINOIS

RICHARD L. DENT and RLD RESOURCES, LLC, Respondents-Petitioners v. CONSTELLATION NEWENERGY, INC.; CNE GAS SUPPLY, LLC; CONSTELLATION ENERGY GAS CHOICE, LLC; and CONSTELLATION GAS DIVISION, LLC, Petitioners and Respondents In Discovery	)	On Petition for Leave to Appeal from the Appellate Court of Illinois First Judicial District No. 1-19-1652 There on Appeal from the Circuit Court of Cook County, No. 19 L 2910 Hon. Patricia O'Brien-Sheahan, Presiding

NOTICE OF FILING
OF
ANSWER TO PETITION FOR LEAVE TO APPEAL

TO: J. Timothy Eaton teaton@taftlaw.com
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PLEASE TAKE NOTICE that on January 20, 2021 Respondents-Petitioners Richard L. Dent and RLD Resources, LLC filed with the Illinois Supreme Court, through its e-File system, **Respondents-Petitioners' Answer to Petition for Leave to Appeal of Constellation NewEnergy, Inc. et al., including the Appendix thereto**, a copy of which is hereby served upon you.

Dated this 20th day of January, 2021

/s/ ***Paul G. Neilan***
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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

I, Paul G. Neilan, an attorney, hereby certify that on January 20, 2021, I served (1) this **Notice of Filing of Answer to Petition for Leave to Appeal of Constellation NewEnergy, Inc. et al.**, **including the Appendix thereto** and (2) a copy of the **Answer to Petition for Leave to Appeal of Constellation NewEnergy, Inc. et al.**, **including the Appendix thereto** (1) through the Court's eFile system, and (2) by e-mail to the persons on the Service List below.

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