

No. 126795

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 IN THE SUPREME COURT OF ILLINOIS
 

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

**BRIEF OF APPELLEES**  
**RLD RESOURCES, LLC AND RICHARD L. DENT**  
**INCLUDING SUPPORTING APPENDIX THERETO**

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*Non loqueris contra proximum tuum falsum testimonium.*<sup>1</sup>  
Exodus 20:16 (Vulg.)

Petitioners-Appellees Richard L. Dent (“Dent”) and RLD Resources, LLC (“RLD Resources”) (collectively, the “RLD Parties”) for their Response to the Brief (the “Constellation Brief”) of Respondents-Appellants Constellation NewEnergy, Inc., CNE Gas Supply, LLC, Constellation Energy Gas Choice, LLC and Constellation Gas Division, LLC (collectively, “Constellation”), state as follows:

## **I. ISSUE PRESENTED FOR REVIEW.**

Whether the Circuit Court abused its discretion by accepting facts neither stated in nor inferable from the RLD Parties’ 224 Petition (as defined below) as grounds for its dismissal of that petition on Constellation’s motion under 735 ILCS 5/2-615 (“2-615”).

## **II. SUMMARY OF ARGUMENT.**

The RLD Parties’ 224 Petition seeks the identities of three individuals, Persons A, B and C, who published or republished defamatory statements about Dent. The record shows that Person C is not known to the RLD Parties, that no qualified privilege to report workplace sex harassment applies to Person B, and the 224 Petition alleges facts sufficient to show that all three of them abused that privilege.

Instead of properly responding to discovery, Constellation tried to short-circuit the 224 Petition by inserting in its 2-615 Motion (as defined below) its new fact allegation that the RLD Parties knew the identity of Person C. Constellation uses this new

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<sup>1</sup> Thou shalt not bear false witness against thy neighbor.

fact to argue that the 224 Petition is not necessary under S. Ct. R. 224 ("Rule 224") because the RLD Parties already know a possible defendant. Constellation continues to use this extra-record fact in its Brief.

Recognizing that its Rule 224 necessity argument fails because the record shows that Person C's identity is not known to the RLD Parties, Constellation tries Plan B. It asserts that because the statements published by Persons A, B and C were part of an investigation of alleged sex harassment, they're covered by the qualified privilege to report such harassment to an employer.

But that leaves Constellation with two problems. First, Person B is not a Constellation employee, nor is he a witness to nor a reporter of any sex harassment. Person B has no qualified privilege. Second, Constellation's investigation leaves unanswered the factual question of whether the publishers of the defamatory statements abused the qualified privilege. Constellation dodges this question by making a Bob Beamonesque leap to the conclusion that because it conducted an investigation Persons A, B and C could not possibly have lied or made statements with reckless disregard of their truth or falsity. Constellation then demands that the 224 Petition be dismissed unless the RLD Parties can allege knowing falsity or reckless disregard for truth by Constellation.

Constellation's argument makes no sense because it isn't the publisher of the statements. The factual question of whether the publisher of a statement abused a qualified privilege turns on the actions and state of mind of the statement publisher, not the party to whom the statement was published. The 224 Petition sufficiently alleges that

statements were made by Person A, B and C with either knowledge of their falsity or reckless disregard of whether their statements were true or false.

This Court should deny Constellation’s appeal and affirm the judgment of the First District Appellate Court (the “Appellate Court”). The Circuit Court abused its discretion by acquiescing in Constellation’s improper motion practice and dismissing the 224 Petition with prejudice based on Constellation’s new facts.

### **III. STATEMENT OF FACTS.**

#### **A. CONSTELLATION’S TERMINATION OF ITS CONTRACTS WITH THE RLD PARTIES.**

Prior to October 2018, Dent and the RLD parties were party to several energy supply and marketing contracts with Constellation. (224 Petition, par. 5, C10; A002).<sup>2</sup> Under all of these contracts the RLD Parties were independent contractors, and all of the contracts were terminable at will.

On September 14, 2018, Grace Speight (“Speight”) and Theos McKinney (“McKinney”), two attorneys representing Constellation, visited RLD’s offices in Chicago. (224 Petition, pars. 6-7, C10-C11; A002-A003). Speight and McKinney informed Dent that the following allegations had been made against him:

- (a) a woman who was a Constellation employee and whom Speight and McKinney refused to identify (“Person A”) had alleged that at a Constellation-sponsored golfing event in the Philadelphia area in June 2016 Dent had said to her that “she had a butt like a sister”;

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<sup>2</sup> “C” refers to pages of the Common Law Record, and “R” to pages of the Report of Proceedings; “A” refers to pages of the Appendix hereto.

- (b) Person A also alleged that at a similar Constellation-sponsored pre-golf party held on the patio of the Shedd Aquarium in Chicago in July 2018 Dent had groped her; and
- (c) at the Marriott Hotel on Adams Street in Chicago, where Constellation had arranged to distribute passes and similar items to the guests at its July 2018 Chicago area golf outing, a gentleman whom Speight and McKinney refused to identify (“Person B”) had told Constellation that Dent was “drunk and disorderly” at that place and time.

(224 Petition, pars. 6-8, C10-C11; A002-A003). Speight and McKinney did not identify themselves as Constellation’s “investigator.” Neither the 224 Petition nor any of its exhibits alleges that they are Person C. At this meeting, Dent told Speight and McKinney that these allegations were completely false. (224 Petition, par. 8, C11; A003).

On or about October 1, 2018, RLD received a notice from Constellation, attached as Exhibit A to the 224 Petition, terminating all contracts between the parties. (224 Petition, C18-C21; A010-A013).

**B. PROCEEDINGS IN COOK COUNTY CIRCUIT COURT.**

On March 18, 2019, the RLD Parties filed in the Circuit Court of Cook County (the “Circuit Court”) their Verified Petition (the “224 Petition”) under Supreme Court Rule 224 for Discovery Before Suit to Identify Responsible Parties. (C9-C23; A001-A015). “The discovery sought by [the RLD Parties] is necessary because [Constellation has] refused, and continues to refuse, to provide to [the RLD Parties] the identities and addresses of Persons A, B and C.” (224 Petition, par. 22, C13, A005). On April 29, 2019,

Constellation filed its Motion to Dismiss (Constellation’s “2-615 Motion”) the 224 Petition under 2-615. (C38-C53; A016-A031).

On June 21, 2019 the Circuit Court ruled *sua sponte* that *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, required dismissal of the 224 Petition with prejudice because “Rule 224 is satisfied when a petitioner has identified someone who may be sued. In this case, [the RLD Parties] already know the identities of the Constellation respondents and their attorneys. Accordingly, the Constellation respondents may be liable under Low Cost Movers, and a 224 petition is an inappropriate vehicle for petitioners to attempt to learn the names of the unidentified individuals.” (R7, lines 6-14; 038).

On July 9, 2019, the RLD Parties filed a motion for reconsideration of the Circuit Court’s order. (C86-C94; A043-A051). The Circuit Court heard argument on July 19, 2019 (R13-R36), and on July 31, 2019, it issued its Memorandum Opinion and Order denying the RLD Parties’ motion for reconsideration. (C105-C107; A052-A054). The Circuit Court stated that “Rule 224 has a specific, narrow purpose that allows a petitioner to obtain the identity of a potential defendant when the petitioner lacks knowledge of anyone who *may* be liable in damages.” (C107; A054; emphasis in original). The Circuit Court declined to reconsider its dismissal because the 224 Petition had already identified Constellation and its attorneys as potential defendants. (C107; A054). The RLD Parties filed an appeal of the Circuit Court’s order on August 12, 2019. (C108-C111).

### **C. THE APPELLATE COURT’S DECISION.**

On November 25, 2020, the Appellate Court issued its opinion in *Dent et al. v. Constellation NewEnergy Inc. et al.*, 2020 IL App (1st) 191652 (the “Appellate

Decision”). The Appellate Court reversed the Circuit Court, holding that it had abused its discretion when it *sua sponte* dismissed with prejudice the 224 Petition on grounds that the RLD Parties already knew the identity of Constellation and its attorneys. (Appellate Decision, par. 28). “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.” (*Id.*) The Appellate Court stated that *Low Cost Movers*, 2015 IL App (1st) 143955, did not support the Circuit Court’s determination that use of Rule 224 was not necessary because “[u]nlike *Low Cost Movers, Inc.*, in the instant case *no potential defendant has been identified.*” (*Id.*, pars. 30, 32; emphasis added).

The Appellate Court also rejected Constellation’s argument that the 224 Petition did not allege facts sufficient to overcome its claimed qualified privilege. (*Id.*, par. 42). The Appellate Court found that the 224 Petition alleged that Persons A and B made false statements about Dent, and that Person C, “an unknown investigator,” then reported these false statements to Constellation. The Appellate Court held that these allegations were sufficient to withstand a motion to dismiss under 2-615. (*Id.* at par. 47).

#### **IV. ARGUMENT.**

##### **A. STANDARDS APPLICABLE TO A 2-615 MOTION.**

A motion to dismiss brought under 2-615 challenges only the legal sufficiency of the complaint by alleging defects on the face of the complaint. *E.g., Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶20, (Ill. S. Ct. 2021). In ruling on a 2-615 motion to dismiss, a court must determine whether the facts alleged in the complaint, viewed in the light most favorable to the non-movant and taking all well-pleaded facts as true, are sufficient to state a cause of action upon which relief may be granted. *Id.* A court should not

dismiss a complaint pursuant to 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Id.* In ruling on a 2-615 motion, a court will consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Better Gov't. Ass'n. v. Office of the Special Prosecutor (In re Appointment of Special Prosecutor)*, 2019 IL 122949, ¶52 (Ill. S. Ct. 2019). “In ruling upon a 2--615 motion, a trial court may consider only the allegations of the complaint [citations omitted] and may not consider other supporting material.” *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77, 91 (1996). A 2-615 motion to dismiss does not assess the underlying facts. *Heastie v. Roberts*, 226 Ill. 2d 515, 538 (2007). Any other evidence presented is therefore irrelevant to the determination of whether a defendant’s motion to dismiss was properly granted. *Id.*

**1. The Circuit Court Abused Its Discretion by Acquiescing in Constellation’s Injection of New Facts in Its 2-615 Motion.**

Constellation’s insertion of new factual allegations in its 2-615 Motion was legally improper. The Circuit Court not only acquiesced in Constellation’s improper motion practice, it also adopted as the basis for its dismissal of the 224 Petition Constellation’s improper new fact allegation that the RLD Parties knew the identity of Person C. (Report of Proceedings, June 21, 2019, R5 line 23 - R6 line3; R6 lines 5-6; R7 lines 7-9; Memorandum Opinion and Order dated July 31, 2019, C106-C107; A053-A054).

**B. CONSTELLATION MISREPRESENTS TO THIS COURT THAT THE RLD PARTIES KNEW THE IDENTITY OF PERSON C.**

Constellation includes extra-record facts about Person C in its Brief, namely, that the RLD Parties already knew the identity of Person C. (Constellation Brief, pgs. 4, 9 and 31-32).

**1. Constellation Improperly Added New Fact Allegations About Person C in Its 2-615 Motion.**

The 224 Petition specifically alleges that Person C is not known to the RLD Parties: “Respondents [i.e., Constellation] *refused to identify this third party who is referred to in this Petition as ‘Person C.’*” (224 Petition, par. 13; C12; A004; emphasis added). “The discovery sought by [the RLD Parties] is necessary *because Respondents [i.e., Constellation] have refused, and continue to refuse, to provide to Petitioners the identities and addresses of Persons A, B and C.*” (224 Petition, par. 22; C13; A005; emphasis added). Nothing in the 224 Petition, including the December 19, 2018, letter attached to it as Exhibit B, alleges either that Person C is an attorney, or that at the September 2018 meeting at RLD’s offices Speight and McKinney identified themselves to Dent as the “investigator” (singular) allegedly hired by Constellation. (224 Petition, Exh. B; C22-23; A014-A015).

Constellation first asserted that Person C is an attorney in its 2-615 Motion filed on April 29, 2019 (emphasis added): “Constellation retained *outside employment counsel* to conduct an investigation into allegations” against Dent (2-615 Motion, C38; A016); “[The RLD Parties] now seek pre-complaint discovery to determine *the identities of ... the lawyers retained by Constellation*, so that [they] can sue them for defamation...” (2-615 Motion, C38-C39; A016-A017); “...statements made by *Person C, the attorneys*



*retained by Constellation to investigate Person A’s allegations...*” (2-615 Motion, C42; A020); “statements of the *investigator/lawyer (Person C)...*” (2-615 Motion, C43; A021); “[a]s the [224] *Petition recounts*, Constellation retained *third-party counsel* to conduct an independent, *attorney-client privileged investigation* of the allegations....” (2-615 Motion, C45-46; A023-A024).

Constellation misrepresents the record to this Court when it states that “[the December 2019 letter attached as Exhibit B to the 224 Petition] identified the investigators by name...[and] noted that Dent met with them on September 14, 2018....” (Constellation Brief, pg. 6). The 224 Petition states none of these things, nor does it state anything from which they can reasonably be inferred. Furthermore, any inference drawn from the 224 Petition must be drawn against Constellation and in favor of the RLD Parties as the non-movants. *Rehfield v. Diocese of Joliet, supra*, 2021 IL 125656, par. 20.

## **2. Rule 224 Would Still be Necessary Even If Person C Were Known to be Constellation’s Attorney.**

Constellation argues that because the RLD Parties already know Person C’s identity the 224 Petition is unnecessary and should be dismissed, and that they should file a defamation action against Constellation’s attorneys and discover the identities of Persons A and B under 735 ILCS 5/2-402 (“2-402”). (Constellation Brief, pgs. 8, 11, 26-27, 29 and 32).

But even if the RLD Parties did know that Person C were Constellation’s attorney, the 224 Petition would still be necessary. 2-402 provides, in relevant part, as follows (emphasis added):

Sec. 2-402. Respondents in discovery. The plaintiff in any civil action may designate as respondents in discovery in his or her pleading those individuals or other entities, *other than the named defendants*, believed by the plaintiff to have

information essential to the determination of who should properly be named as *additional defendants* in the action.

2-402 still requires the naming of a defendant in the new action in which it is to be used.

The 224 Petition makes clear, and the Appellate Court found, that no action lies against Constellation for either defamation or breach of contract. (Appellate Decision, par. 28).

Likewise, no action for defamation lies against Constellation's attorneys because of attorney-client privilege. (Constellation Brief, pg. 21). Constellation tells us that Person C conducted "...an independent *attorney-client privileged* investigation of the allegations [against Dent]." (Constellation 2-615 Motion, pgs. 8-9, C45-C46; A023-A024; emphasis added). There is no person against whom the RLD Parties can file an action in which they could use 2-402 to discover the identities of Persons A and B. Even if Person C were known, the RLD Parties would still need to file a petition under Rule 224.

Constellation's 2-402 argument is also absurd. In order to protect the confidentiality of harassment reporters, Constellation argues that the RLD Parties must be prohibited from discovering their identities under Rule 224. Constellation then tells the RLD Parties to sue its attorneys and use 2-402 to obtain the identities of Persons A and B. (Constellation Brief, pgs. 8, 11, 26-27, 29 and 32). Constellation thus tells this Court in one breath that identifying harassment reporters under Rule 224 undermines public policy against workplace sex harassment, yet it admits in the next that revealing those same identities under 2-402 is no cause for concern. That is nothing less than a willful abandonment of coherence.

**C. NO QUALIFIED PRIVILEGE APPLIES TO PERSON B’S STATEMENTS.**

The 224 Petition alleges that Person B is a gentleman whom Constellation refused to name, that this unnamed person claimed he witnessed Dent being “drunk and disorderly” at the Marriott Hotel on Adams Street in Chicago, and that he subsequently made a first-hand report of this to Person C. (224 Petition, par. 7(c), C11; A003).

The 224 Petition does not allege that Person B is a Constellation employee. It does not allege that either Speight or McKinney told Dent that Person B was a Constellation employee. It does not allege that Person B witnessed anything other than Dent being “drunk and disorderly” at the Marriott Hotel. It does not allege that Person B was at the Constellation golf outing in the Philadelphia area in 2016, nor that he was on the patio of the Shedd Aquarium during Constellation’s 2018 pre-golf party, nor that he witnessed any alleged sexual harassment of Person A by Dent, nor that he was himself a victim of sexual harassment by Dent. Constellation’s December 19, 2018, letter, Exhibit B to the 224 Petition, refers to Person A only (“...the inappropriate touching of a Constellation employee and ... unwelcome comments of a sexual nature to a Constellation employee” (224 Petition, Exh. B, C22-C23; A014-A015)) and mentions Person B not at all. No qualified privilege of an employee to report sexual harassment to his employer attaches to any statement by Person B.

**1. Constellation Knowingly Misrepresents Person B as a Constellation Employee and a Witness of Alleged Harassment of Person A.**

To avoid responding to the RLD Parties’ Rule 224 discovery, Constellation tries to bring Person B within the qualified privilege of an employee to report harassment. In both the 2-615 Motion and its Brief Constellation falsely claims Person B is its employee and a “witness,” though it omits to say what Person B allegedly witnessed. Constellation

tries to mislead this Court into believing that Person B witnessed the alleged harassment of Person A (emphasis added): “...the employee who reported the harassment, *a witness* and the [Constellation] lawyers....” (Constellation 2-615 Motion, C38; A016); “...another individual, *also employed by Constellation, Person B...*” (Constellation 2-615 Motion, C39; A017); “...statements made by Person B, *in the course of Constellation's investigation of Person A's allegations, describing Person B's observations of Dent on the day in question....*” (Const. 2-615 Motion, C42; A020); “...statements made by a *victim* of sexual harassment...*and statements made by witnesses* to the investigators....” (Const. 2-615 Motion, C43; A021); “statements made to the employer *by a witness (Person B) as part of Constellation's investigation....*” (Const. 2-615 Motion, C44; A022). Constellation refers to Person B no fewer than fifteen times as a “witness” in the phrases “victims and witnesses,” “victims, witnesses, and alleged harassers,” and “victim, witness and investigator.” (Constellation Brief, pgs. 1, 3, 16, 17, 19, 21-24 and 25). One might reasonably ask of Constellation if argumentation has ended and incantation has begun.

Constellation continually wedges Person B the “witness” between the “victim” and either the investigator or the alleged “harasser” to mislead this Court into believing that Person B, from his location inside the Marriott Hotel on West Adams Street in Chicago (224 Petition, par. 7(c), C11, A003) witnessed Dent groping Person A on the patio of the Shedd Aquarium at 1200 South Lake Shore Drive -- a distance of about 1.6 miles across downtown Chicago. (224 Petition, par. 7(e), C11, A003). The 224 Petition says no such thing. Constellation's creation of its own preferred narrative about Person B violates 2-615 and perpetrates a fraud on this Court.

**2. Constellation's Own Claims About Person B Overcome Any Qualified Privilege of Person C.**

In *Kuwik v. Starmark Star Marketing*, 156 Ill. 2d 16 (1993) (discussed further below), an insurer's bungled investigation of a chiropractor's licensure led this Court to question the good faith of the insurer's statements about the chiropractor. 156 Ill. 2d, 21-22.

Person C was Constellation's investigator and reported Person B's allegations to Constellation. (224 Petition, pars. 12-15, C12; A004). Accepting the claim that Person B witnessed Dent's alleged groping of Person A means that Person C made his statements with reckless disregard as to their truth or falsity. For Person C to tell Constellation that Person B witnessed Dent groping Person A, Person C, in reckless disregard of truth or falsity, accepted Person B's story that he could see, from his location inside the Marriott Hotel on Adams Street, through 1.6 miles of brick walls, office buildings and other obstacles to vision across downtown Chicago, all the way to the patio of the Shedd Aquarium at 1200 South Lake Shore Drive. By accepting Person B's statements, Person C made the shamolic *Kuwik* investigators look like Sherlock Holmes.

**D. THE 224 PETITION ALLEGES FACTS SUFFICIENT TO OVERCOME ANY CLAIM OF QUALIFIED PRIVILEGE BY PERSONS A AND B.**

The 224 Petition states facts sufficient to show the actual malice of Persons A and B under *Kuwik v. Starmark Star Marketing*, 156 Ill. 2d 16 (1993), and overcome any qualified privilege pertaining to them. The 224 Petition alleges that Persons A and B's statements were completely false (224 Petition, par. 8, C11; A003). That Persons A and B had knowledge of the falsity of their statements about Dent is obvious and incontrovertible on the face of the 224 Petition.

**1. *Kuwik v. Starmark* and Illinois Law on Qualified Privilege.**

*Kuwik v. Starmark Star Marketing, Inc.*, 156 Ill. 2d 16 (1993), concerned an insurer's denial of coverage for a chiropractor's charges on grounds that "the services rendered were 'outside the scope of the ...physician's license.'" *Kuwik*, 156 Ill. 2d at 18. The chiropractor sued the insurer for defamation, *id.* at 20, and the insurer moved for summary judgment on the affirmative defense that its statements were qualifiedly privileged as a matter of law, and that no material fact existed to show that the qualified privilege had been abused. *Id.* at 23. The trial court agreed and granted summary judgment for the defendant insurer. *Id.*

The appellate court stated that discovery raised the question of whether the insurer had properly investigated the chiropractor's license, which in turn raised a question about the insurer's good faith in making statements about her. *Id.* at 31. It reversed the circuit court, holding that this potential abuse of the qualified privilege was an issue for the trier of fact. *Id.* *Kuwik* also shows the need for discovery to answer the fact question on abuse of the qualified privilege.

**2. This Court's Adoption of the *Restatement (Second) Torts* Position on Qualified Privilege.**

On appeal to this Court, the *Kuwik* Court was troubled by the inclusion within the legal question of whether the qualified privilege existed the factual inquiry of whether the defendant had acted in good faith in making the statement. *Kuwik*, 156 Ill. 2d at 25-26. To address this overlap of the factual inquiry into the question of law, the *Kuwik* Court adopted the qualified privilege analysis of the *Restatement (Second) of Torts* (the "*Restatement*"): "One who publishes defamatory matter concerning another is not liable for the publication if (a) the matter is published upon an occasion that makes it

conditionally privileged *and (b) the privilege is not abused.*” *Restatement*, Sec. 593 (emphasis added); *Kuwik*, 156 Ill. 2d at 26-28. Both *Kuwik* and the *Restatement* make clear that knowledge of the falsity of the statement is an abuse of the privilege. *Kuwik*, 156 Ill. 2d at 24; *Restatement*, Sec. 600.

**3. The 224 Petition Shows That Persons A and B’s Statements Were Made with Knowledge of Their Falsity.**

Person A alleged that in 2016 Dent told her that she had a “butt like a sister” (224 Petition, par. 7(e), C11; A003), and that Dent groped her on the patio of the Shedd Aquarium in 2018 (224 Petition, par. 7(a), C10; A002). Person A made a first-hand report of these matters to Person C. (224 Petition, pars. 12-15, C12; A004). Person B alleged that he saw Dent being “drunk and disorderly” at the Marriott Hotel on Adams Street in Chicago (224 Petition, par. 7(c); C11; A003), and he likewise made a first-hand report of his observation to Person C (224 Petition, pars. 12-15, C12; A004).

All of Persons A and B’s statements were completely false. (224 Petition, pars. 8, 16(b), C11-C12; A003-A004). Constellation must accept as true for purposes of its 2-615 Motion all well-pleaded facts in the 224 Petition, and all reasonable inferences must be drawn in favor of the RLD Parties as the non-movants. *Rehfield, supra*, 2021 IL 125656, par. 20. Neither Person A nor Person B could have made their false statements about what they heard Dent say, felt Dent groping, and saw Dent doing without knowing that their statements were false. The 224 Petition pleads sufficient facts to show that Persons A and B made their statements with knowing falsity.

In desperation, Constellation says that alleging that Persons A and B’s statements are false is conclusory. (Constellation Brief, pgs. 2, 20). Constellation’s argument is absurd. A cause of action in defamation requires, among other things, an allegation *that*

the defamatory statement is false. *See, e.g., Green v. Rogers*, 234 Ill. 2d 478, 491 (2009); Illinois law does not require, and Constellation cites no case requiring, an allegation of *why* the defamatory statement is false. Claiming that falsity is a conclusory allegation is Constellation's attempt to introduce the affirmative defense of substantial truth in its 2-615 Motion.

**E. CONSTELLATION'S INVESTIGATION IS IRRELEVANT TO THE QUESTION OF ABUSE OF THE QUALIFIED PRIVILEGE BY PERSONS A, B AND C.**

Constellation tries to short-circuit the inquiry into whether Persons A, B and C abused the qualified privilege by making the fact of its investigation conclusive on the question of whether there was any abuse of the privilege by the statement publishers in this case. It takes out of context language in cases such as *Kuwik v. Starmark Star Mktg. & Admin., Inc.*, 156 Ill. 2d 16 (1993), in which an employer's harassment investigation was relevant, to create the impression that performance of such an investigation by itself eliminates any possibility of abuse of the privilege. "...[T]o overcome the privilege," says Constellation, "a plaintiff must allege...that the employer conducted *an investigation that was reckless in its disregard for truth....*" (Constellation Brief, pg. 20, citing *Kuwik*, 156 Ill. 2d at 30; emphasis added). (*See also* Constellation Brief, pgs. 2, 8, 9, 12-13, 16-24, 31-32). Constellation wants the 224 Petition dismissed just because it conducted an investigation.

But Constellation's investigation is irrelevant. Its position here is far different from that of the *Kuwik* insurer, whose investigation was relevant because that insurer was at once the incompetent investigator, the publisher of the defamatory statements, and the defendant in the defamation action. Constellation is none of these. Both the legal question



of whether a qualified privilege exists for a statement and, if so, the factual question of whether the statement publisher abused that privilege turn on the actions and state of mind of the statement publisher, not the party to whom the statement was published. Here those publishers are Persons A, B and C, not Constellation.

**F. CONSTELLATION’S PROFESSED CONCERN FOR COUNTERING WORKPLACE SEX HARASSMENT IS A SELF-SERVING FACADE.**

Constellation warns that if the names of reporters are not kept confidential, they won’t report workplace sexual harassment for fear of retaliation. (Constellation Brief, pgs. 3, 21-25). But Constellation’s actions repudiate its own warning.

The contracts with the RLD Parties were all at will. Constellation could have terminated them for no reason at all. *Alderman Drugs, Inc. v. Metropolitan Life Ins. Co.*, 161 Ill. App. 3d 783, 790-91 (1<sup>st</sup> Dist. 1987). Had Constellation only manifested before September 2018 its concern for the confidentiality of harassment reporters, it could have ended those contracts without a word about any alleged harassment or insobriety and preserved forever inviolate the anonymity of Persons A, B and C. On this record, though, the offense to confidentiality against which Constellation rails must be laid to its own account.

**WHEREFORE**, for the reasons above-stated, Petitioners-Appellees Richard L. Dent and RLD Resources, LLC request that this Court affirm the decision of the Illinois Appellate Court for the First District and remand this case to the Circuit Court of Cook

County with instructions that Constellation properly respond in discovery under S. Ct R. 224 and provide the identities of Persons A, B and C.

Dated: June 30, 2021

Respectfully submitted on behalf of

**RICHARD L. DENT**  
**RLD RESOURCES, LLC**

By: /s/ *Paul G. Neilan*

Their Attorney  
Law Offices of Paul G. Neilan, P.C.  
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No. 126795

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 IN THE SUPREME COURT OF ILLINOIS
 

---

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

**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this Appellees' Response Brief and Appendix conforms to the requirements of Ill. S. Ct. 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 4,710 words.

Dated: June 30, 2021

/s/ **Paul G. Neilan**  
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 1954 First Street, #390  
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Counsel for Respondents-Petitioners  
 Richard L. Dent and RLD Resources, LLC

No. 126795

---

 IN THE SUPREME COURT OF ILLINOIS
 

---

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

**NOTICE OF FILING****TO:**

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PLEASE TAKE NOTICE that on June 30, 2021 Petitioners-Appellees Richard L. Dent and RLD Resources, LLC filed with the Illinois Supreme Court, through its e-File system, the

**Brief Of Appellees RLD Resources, LLC and Richard L. Dent, Including Supporting Appendix Thereto**

a copy of which is hereby served upon you.

Dated this 30th day of June, 2021

/s/ **Paul G. Neilan**  
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Counsel for Respondents-Petitioners  
 Richard L. Dent and RLD Resources, LLC

**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 June 30, 2021, I served

(1) this **Notice of Filing of Brief Of Appellees RLD Resources, LLC and Richard L. Dent, Including Supporting Appendix Thereto**, and

(2) a copy of the **Brief of Appellees RLD Resources, LLC and Richard L. Dent, Including Supporting Appendix Thereto**

(a) through the Court's eFile system, and (b) by e-mail to the persons on the Service List below.

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Dated this 30th day of June, 2021

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Counsel for Petitioners-Appellants

Richard L. Dent and RLD Resources, LLC

No. 126795

---

 IN THE SUPREME COURT OF ILLINOIS
 

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

**SUPPORTING APPENDIX**  
**TO**  
**BRIEF OF APPELLEES**  
**RLD RESOURCES, LLC AND RICHARD L. DENT**

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Counsel for Respondents-Petitioners  
 Richard L. Dent and RLD Resources, LLC



**SUPPORTING APPENDIX TO RESPONSE BRIEF OF PETITIONERS-APPELLEES  
RLD RESOURCES, LLC AND RICHARD L. DENT**

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DOROTHY BROWN

CIRCUIT CLERK

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

COOK COUNTY, IL

2019L002910

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.<sup>1</sup>

12. In correspondence dated December 19, 2019 from Respondents' 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

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<sup>1</sup>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 identities 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

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3/18/2019 2:33 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL

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

2019L002910

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

Verification of Petition



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** **March** day of ~~February~~, 2019

By :



Richard L. Dent

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

Verification of Petition

**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. \_\_\_\_\_

FILED  
3/18/2019 2:33 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019L002910

**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: \_\_\_\_\_

**DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

## EXHIBIT A TO S. CT. RULE 224 PETITION



1310 Point Street – 9<sup>th</sup> Floor  
 Baltimore, MD 21231  
[www.constellation.com](http://www.constellation.com)  
 3/18/2019 2:33 PM  
 DOROTHY BROWN  
 CIRCUIT CLERK  
 COOK COUNTY, IL

October 1, 2018

**TERMINATION NOTICE**

2019L002910

**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.



**EXHIBIT A TO S. CT. RULE 224 PETITION**

RLD Resources, LLC

October 1, 2018

Page 2

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.

**EXHIBIT A TO S. CT. RULE 224 PETITION**

RLD Resources, LLC

October 1, 2018

Page 3

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)

**EXHIBIT A TO S. CT. RULE 224 PETITION**

RLD Resources, LLC

October 1, 2018

Page 4

Customer Agreements

<b>Customer</b>	<b>RLD Product</b>	<b>End Date</b>
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

## EXHIBIT B TO S. CT. RULE 224 PETITION

3/18/2019 2:33 PM

DOROTHY BROWN



1221 Lamar St., Suite 750  
Houston, TX 77010  
[www.constellation.com](http://www.constellation.com)

CIRCUIT CLERK

COOK COUNTY, IL

December 19, 2018

2019L002910

**VIA E-MAIL**

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



## EXHIBIT B TO S. CT. RULE 224 PETITION

Paul G. Neilan, Esq.

December 19, 2018

Page 2

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



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

FILED  
4/29/2019 1:59 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019L002910

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

)

4856647

Petitioners, )

)

v. )

No. 2019 L 002910  
Calendar D

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

)

)

)

Respondents in Discovery. )

)

**MEMORANDUM IN SUPPORT OF CONSTELLATION'S  
MOTION TO DISMISS VERIFIED PETITION UNDER  
SUPREME COURT RULE 224 FOR DISCOVERY  
BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS**

Under well-established law, a victim of sexual harassment can report the harassment to his or her employer, and the employer can investigate the allegations and take appropriate action, without risking liability for defamation. Otherwise, “victims of harassment and companies with a goal of preventing harassment would be ‘handcuffed’ by a fear of defamation liability,” *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 402 (1st Dist. 1999), and the important public policy goal of combating harassment would be frustrated.

The Petition defies this law. Petitioner Richard Dent (“Dent”) is the Chief Executive Officer of RLD Resources, Ltd. (“RLD”) (collectively, “Petitioners”), which was a vendor of Respondents (collectively, “Constellation”). Constellation retained outside employment counsel to conduct an investigation into allegations that Dent inappropriately touched a Constellation employee at an event sponsored by Constellation for its employees and contractors. Petitioners now seek pre-complaint discovery to determine the identities of the employee who reported

harassment, a witness, and the lawyers retained by Constellation, so that Petitioners can sue them for defamation.

That is exactly the kind of lawsuit the law does not allow. A qualified privilege protects against defamation liability when an employee reports harassment to her employer, and when the employer undertakes an investigation. *See Vickers*, 308 Ill. App. 3d at 401-02. That qualified privilege can be overcome at the motion-to-dismiss stage only if the petitioner alleges facts that, if true, would suffice to demonstrate a direct intent to injure petitioners or a reckless disregard for their rights. *Id.* at 404. The Petition does not and cannot allege any such facts. Accordingly, Petitioners establish no basis for discovery before suit. The Petition does not set forth allegations sufficient to withstand a motion to dismiss, and should be dismissed with prejudice. *See Hadley v. Doe*, 2015 IL 118000, ¶ 27.

### **FACTUAL BACKGROUND**

Dent, as Chief Executive Officer of RLD, contracted with Constellation to provide electricity and natural gas sales, marketing and consulting services. Petition ¶ 5. On September 14, 2018, attorneys representing Constellation met with Dent to advise him that certain allegations had been made against him. Petition ¶ 6. Dent alleges in his Petition that the allegations included the following: (1) that a Constellation employee, Person A, alleged that in July 2018, Dent inappropriately touched her at a Constellation-sponsored pre-golf tournament party held at the Shedd Aquarium; (2) that Person A also alleged that in June 2016, Dent had told her that “she had a butt like a sister”; (3) that during the course of Constellation’s investigation of these harassment allegations, another individual, also employed by Constellation, Person B, had allegedly stated that Dent was drunk and disorderly; and (4) that a third party retained by Constellation to investigate the claims against Dent, Person C, had published to Constellation the statements of Persons A and

B regarding Dent when relaying the findings of the investigation. Petition ¶¶ 7, 12-14. After Constellation completed its investigation, which included the September 14, 2018 interview with Dent (the purpose of which was to give Dent “an opportunity to provide his recollection of the events” described above, Ex. B at 1), Constellation notified Dent that it was terminating its consulting agreements with RLD. Petition ¶¶ 6, 8, 10-11, 14 & Exhs. A, B.

The Petition, filed under Illinois Supreme Court Rule 224, seeks pre-suit discovery to uncover the identity of Persons A, B, and C, so that Dent and RLD can file a defamation lawsuit against them. It alleges that Persons A, B, and C published statements “input[ing] to Dent acts of moral turpitude and impugned his character, reputation and good name,” Petition ¶ 17, and that Dent and RLD were damaged as a consequence. Petition ¶ 18.

### **LEGAL STANDARD**

#### **A. A Petition Under Rule 224 Must State a Viable Claim for Relief.**

Under Illinois Supreme Court Rule 224, a party may engage in discovery “for the sole purpose of ascertaining the identity of one who may be responsible in damages...” Ill. Sup. Ct. R. 224(a)(1)(i). However, Rule 224 “requires a petitioner to demonstrate the reason why the proposed discovery seeking the individual’s identity is ‘necessary.’” *Stone v. Paddock Pubs., Inc.*, 2011 IL App (1st) 093386, ¶ 14 (quoting Ill. S. Ct. Rule 224(a)(1)(ii)).

Accordingly, the Illinois Supreme Court has held that “to ascertain whether a petitioner has satisfied Rule 224’s necessity requirement, the court must evaluate a defamation complaint to determine whether it will withstand a section 2-615 motion to dismiss.” *Hadley*, 2015 IL 118000, ¶ 27; *Stone*, 2011 IL App (1st) 093386, ¶18 (“[I]f a petitioner cannot satisfy the section 2-615 standard, it is clear that the unidentified individual is not responsible for damages and the proposed discovery is not ‘necessary.’”).



“In considering whether to grant or deny a motion to dismiss, the court must determine whether the complaint standing alone has stated sufficient facts to demonstrate a cause of action pursuant to which relief may be granted.” *Stone*, 2011 IL App (1st) 093386, ¶ 17. To satisfy this standard, a complaint must “allege facts, rather than mere conclusions.” *Id.* ¶ 21. Indeed, “the plaintiff must allege specific facts supporting *each element of his cause of action* and the trial court will not admit conclusory allegations and conclusions of law that are not supported by specific facts.” *Id.* (emphasis in original).

**B. To State a Defamation Claim Concerning a Privileged Communication, A Plaintiff Must Allege Facts Showing Intent to Injure or Reckless Disregard of the Truth.**

To state a cause of action for defamation, the plaintiff must allege facts showing “that the defendant [1] made a false statement about him, [2] that there was an unprivileged publication to a third party with fault by the defendant, and [3] that the publication damaged plaintiff.” *Vickers*, 308 Ill. App. 3d at 400.

Certain communications are protected by a qualified privilege, which “effectuates the policy of facilitating a free flow of information so that correct information may ultimately be attained.” *Id.* at 401; *Kuwik v. Starmark Star Marketing and Admin., Inc.*, 156 Ill. 2d 16, 24 (1993). Courts have in general recognized three classes of communications as qualifiedly privileged: “(1) those involving some interest of the person who published the [allegedly] defamatory matter; (2) those involving some interest of the person to whom the matter is published . . . ; and (3) those involving a recognized public interest.” *Vickers*, 308 Ill. App. 3d at 401.

If the allegations of the complaint establish that the communications are qualifiedly privileged, then the plaintiff, to survive a motion to dismiss, must allege facts sufficient to show that the privileged was “abused,” *id.* at 404—specifically, that “the defendant either intentionally

published the material in question and knew the matter was false, or displayed a reckless disregard as to the falsity of the matter.” *Id.* at 401. Again, “conclusory assertion[s]” and “bare allegation[s]” do not suffice to meet the plaintiff’s pleading burden. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 65.

### **ARGUMENT**

The Petition should be dismissed because Dent and RLD have failed to allege facts stating a claim for defamation. The allegations establish, as a matter of law, that the communications at issue were qualifiedly privileged. *See Vickers*, 308 Ill. App. 3d at 401-02. Thus, Dent and RLD bear the burden of alleging specific facts showing that the privilege was abused. The Petition alleges no such facts and thus fails to satisfy that burden.

#### **I. The Petition Identifies No Allegedly Defamatory Statement Concerning RLD.**

As an initial matter, the Court should dismiss the Petition as it relates to RLD, because the Petition identifies no allegedly defamatory statement concerning RLD. Accordingly, RLD cannot state a claim for defamation. *See id.* at 400 (defamation plaintiff must allege “a false statement *about him*”) (emphasis added).

#### **II. The Petition Should Be Dismissed in its Entirety Because the Statements in Question Were Privileged and Petitioners Have Not Alleged Facts Showing That the Privilege Was Abused.**

##### **A. The Alleged Communications Were Privileged as a Matter of Law.**

The Petition identifies three sets of allegedly defamatory statements: (1) statements made by Person A reporting alleged sexual harassment to her employer; (2) statements made by Person B, in the course of Constellation’s investigation of Person A’s allegations, describing Person B’s observations of Dent on the day in question; and (3) statements made by Person C, the attorneys retained by Constellation to investigate Person A’s allegations, in reporting to Constellation on the

investigation's findings. Petition ¶¶ 7, 14-15. All of these communications were qualifiedly privileged, as a matter of law.

This case is controlled by *Vickers*. There, the First District rejected a defamation claim based on statements made by a victim of sexual harassment reporting the harassment to her employer, and statements made by witnesses to the investigator retained by the employer to investigate the victim's allegations. *Vickers*, 308 Ill. App. 3d at 397, 401. The court reasoned that "these communications are privileged because all three interests" justifying a qualified privilege "arise in the case at bar." *Id.* at 402. The court elaborated: "First, it is clear that the [victim] had an interest in stopping harassment and abuse by plaintiff. Second, [the employer] had an interest in investigating [its] employees' concerns and taking action to prevent further harassment. And third, there is a definite general public interest in eradicating sexual harassment in the workplace." *Id.*

As the court further explained, the United States Supreme Court has recognized "a compelling interest in ridding workplaces of sexual harassment," and employers have an affirmative obligation to "take all steps necessary to prevent sexual harassment from occurring" and "to establish a complaint procedure designed to encourage victims of harassment to come forward." *Id.* at 402 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 806 (1998)). As the court recognized, a qualified privilege "promotes this social policy and provides protection for the victims, witnesses and investigators of sexual harassment." *Id.* Indeed, in the absence of a privilege, "victims of harassment and companies with a goal of preventing harassment would be 'handcuffed' by a fear of defamation liability." *Id.*

The statements alleged in the Petition are exactly the kind of statements that fall squarely within the holding of *Vickers*: they are 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 investigator/lawyer (Person C) relating its findings to Constellation. The law protects statements such as these from potential defamation liability, in order to ensure that employees can report sexual harassment and employers are able to investigate it without fear of retaliatory litigation. *See* Ex. B to Pet. (letter from Constellation to Dent's counsel, noting that "the law requires Constellation to investigate reports of such behavior and the EEOC directs employers to conduct effective investigations."); *Vickers*, 308 Ill. App. 3d at 402; *see also Wexler v. Morrison Knudsen Corp.*, No. 99 C 6522, 2000 WL 1720344, at \*7 (N.D. Ill. Nov. 15, 2000) (applying *Vickers* to hold that a qualified privilege protected statements made in the course of an employer's investigation of racial harassment in the workplace); *Scherer v. Rockwell Intern. Corp.*, 766 F. Supp. 593, 607 (N.D. Ill. 1991) (statements made during employer's investigation of sexual harassment, including affidavits and investigator's communication of its findings to employer, are protected by the qualified privilege); *Achanzar v. Ravenswood Hospital*, 326 Ill. App. 3d 944, 948-49 (1st Dist. 2001) (qualified privilege covered statement made by hospital employee to supervisor that another employee threatened to kill someone at the hospital); *Gibson v. Phillip Morris, Inc.*, 292 Ill. App. 3d 267, 276 (5th Dist. 1997) (qualified privilege covered statements made by coworkers during course of employer's investigation into misconduct by an employee).

**B. Petitioners Have Failed to Allege Any Abuse of the Privilege.**

"Once a qualified privilege is established, as it has been in this case" based on the allegations in the complaint, "a communication is only actionable if the plaintiff" can allege facts that would establish an "abuse[ of] the privilege." *Vickers*, 308 Ill. App. 3d at 404. Specifically, Petitioners must allege not only that the statements were false, but that they were made with

knowledge of falsity or “reckless disregard” for the truth. *Id.* at 401. Moreover, the allegation of such knowledge or reckless disregard cannot be conclusory, but instead must be supported with specific factual allegations. For example, in *Coghlan*, the First District affirmed the dismissal of a defamation claim where the plaintiff had conclusorily alleged that the defendants knew that statements they had made were false. The court held that “the bare conclusory allegation” was insufficient, because the plaintiffs “have alleged *no facts* from which actual malice may be inferred, *i.e.* ... [that the statement was made] with a high degree of awareness of its probable falsity or that [the defendant] had serious doubts as to its truth.” *Coghlan*, 2013 IL App (1st) 120891, ¶ 56; *see also Kurwik*, 156 Ill. 2d at 24.

This case is even easier than *Coghlan*, because the Petition does not even allege facts supporting an abuse of the privilege—it only alleges (conclusorily) that the statements at issue were false. That falls far short of what is needed to plead an abuse of the privilege. *Coghlan*, 2013 IL App (1st) 120891, ¶ 56; *Vickers*, 308 Ill. App. 3d at 401; *see also Muthuswamy v. Burke*, 269 Ill. App. 3d 728, 732 (1993) (“In order to overcome privilege knowledge or reckless disregard as to falsity *must be sufficiently pled* and proven.” (emphasis added)); *Quinn v. Jewel Food Stores, Inc.*, 276 Ill. App. 3d 861, 872 (1st Dist. 1995) (affirming dismissal of defamation action because plaintiff failed to allege that the defendant had abused the qualified privilege).<sup>1</sup> Accordingly, the Petition must be dismissed.

The Court, moreover, should dismiss the Petition with prejudice and not allow Petitioners leave to replead. The Petition and attached exhibits definitively refute any allegation that the privilege was abused, so that amendment would be futile. As the Petition recounts, Constellation retained third-party counsel to conduct an independent, attorney-client privileged investigation of

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<sup>1</sup> Indeed, rather than attempt to establish any abuse of privilege, the Petition instead simply alleges, conclusorily and incorrectly for the reasons given above, that the statements in question were “not privileged.” Petition ¶ 16(c).



the allegations, and that investigation included meeting with Dent to inform him of the allegations against him and to obtain his side of the story. Petition ¶¶ 7-8, 12-14; Ex. B at 1 (letter from Constellation to Dent's counsel explaining that the purpose of meeting with Dent was "to allow Mr. Dent an opportunity to provide his recollection of the events described above").

The Petition's exhibits further state that Constellation and its investigators considered Dent's denials in light of the other evidence that the investigation uncovered and concluded that the denials were "not credible." Ex. B at 1. Constellation was entitled to weigh evidence it had gathered and decide in good faith to credit its employees' version of events; there is no basis for inferring any knowledge of falsity or reckless disregard for the truth.

Furthermore, Constellation emphasized that "neither Exelon [Constellation's parent company] nor Constellation has disclosed the findings of the investigation to any third-party, other than in privileged communications with its lawyers." *Id.* Constellation's efforts to preserve the confidentiality of its findings further confirms its good faith use of the privilege. *See Vickers*, 308 Ill. App. 3d at 404-05 (no abuse of the privilege where there is no "concrete evidence to support the notion that [the company's] employees fabricated stories," and where "employees deliberately followed company personnel policies in accordance with federal law and investigated allegations into plaintiff's conduct before taking action"); *Kiwik*, 156 Ill. 2d at 30 (suggesting that, to find an abuse of privilege, plaintiff would need to demonstrate a reckless investigation or improper dissemination of the findings).<sup>2</sup>

In light of the allegations presented in the Petition and the exhibits accompanying it, Dent could not amend the Petition so as to survive a motion to dismiss. Thus, the Petition should be

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<sup>2</sup> Ironically, by filing this Petition, Dent is the one responsible for publicly disseminating the allegations against him. As Constellation explained in its letter, it did not disclose the findings of its investigation to any third party, except in attorney-client privileged communications. Pet. Ex. B at 1.

dismissed with prejudice. *See, e.g., Bruss v. Przybylo*, 385 Ill. App. 3d 399, 405 (2d Dist. 2008) (a complaint should be dismissed with prejudice if a plaintiff can prove no set of facts that will entitle the plaintiff to recovery).

### **CONCLUSION**

For the foregoing reasons, the Petition should be dismissed with prejudice.

Respectfully submitted,

**CONSTELLATION NEW ENERGY, INC, CNE  
GAS SUPPLY, LLC, CONSTELLATION ENERGY  
GAS CHOICE, LLC, and CONSTELLATION NEW  
ENERGY-GAS DIVISION, LLC**

By: Terri L. Mascherin  
One of Their Attorneys

Dated: April 29, 2019

Terri L. Mascherin  
Christian L. Plummer  
JENNER & BLOCK LLP (#05003)  
353 N. Clark Street  
Chicago, IL 60654-3456  
(312) 222-9350  
TMascherin@jenner.com

4856647

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.

No. 2019 L 002910  
Calendar D

As set forth in more detail in the accompanying Memorandum in Support of Constellation's Motion to Dismiss, the Petition is substantially insufficient in law because it seeks discovery in aid of a prospective lawsuit for defamation, but the allegedly defamatory statements are, as a matter of law, protected by a qualified privilege, and Petitioners do not and cannot allege facts sufficient to overcome that privilege. Accordingly, the discovery that Petitioners seek is not "necessary" to pursue a cognizable claim, as required under Rule 224.

WHEREFORE Constellation requests that this Court dismiss the Petition, with prejudice, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

**CONSTELLATION NEW ENERGY, INC, CNE  
GAS SUPPLY, LLC, CONSTELLATION ENERGY  
GAS CHOICE, LLC, and CONSTELLATION NEW  
ENERGY-GAS DIVISION, LLC**

Dated: April 29, 2019

By: Terri L. Mascherin  
One of Their Attorneys

Terri L. Mascherin  
Christian L. Plummer  
JENNER & BLOCK LLP (#05003)  
353 N. Clark Street  
Chicago, IL 60654-3456  
(312) 222-9350  
TMascherin@jenner.com



**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on April 29, 2019, she caused the foregoing Motion and accompanying Memorandum In Support of Motion to Dismiss to be served on the following via electronic mail:

Paul G. Neilan  
Law Offices of Paul G. Neilan, P.C.  
1954 First Street, #390  
Highland Park, IL 60035  
Telephone: (847) 266-0464  
Fax: (312) 674-7350  
pgneilan@energy.law.pro

Dated: April 29, 2019

By: Terri L. Mascherin  
One of Their Attorneys

Terri L. Mascherin  
Christian L. Plummer  
JENNER & BLOCK LLP (#05003)  
353 N. Clark Street  
Chicago, IL 60654-3456  
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4863987

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.

Constellation NewEnergy, Inc.; CNE Gas Supply, LLC; Constellation Energy Gas Choice, LLC; and Constellation NewEnergy – Gas Division, LLC, Respondents in Discovery.

SUBMITTED - 13876539 - Paul Neilan - 6/30/2021 11:00 AM

Terri L. Mascherin  
Christian Plummer  
JENNER & BLOCK LLP (#05003)  
353 N. Clark Street  
Chicago, IL 60654-3456  
(312) 222-9350  
TMascherin@jenner.com

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on April 29, 2019, she caused the foregoing NOTICE OF FILING to be served on the following via electronic mail:

Paul G. Neilan  
Law Offices of Paul G. Neilan, P.C.  
1954 First Street, #390  
Highland Park, IL 60035  
Telephone: (847) 266-0464  
Fax: (312) 674-7350  
pgneilan@energy.law.pro

By: /s/ Terri L. Mascherin  
One of Their Attorneys

Terri L. Mascherin  
Christian L. Plummer  
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## Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
COOK COUNTY, ILLINOIS

RICHARD L. DENT, AND RLD RESOURCES,  
LLC. ET AL.

Plaintiff/Petitioner

Reviewing Court No: 1-19-1652

Circuit Court No: 2019L002910

Trial Judge: PATRICIA O'BRIEN SHEAHAN

v.

CONSTELLATION NEWENERGY, INC. ET  
AL.

Defendant/Respondent

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**Date of**

**Proceeding**

**Title/Description**

**Page No.**

06/21/2019

HEARING 02 15 PM

R 2-R 11

07/19/2019

HEARING 10 00 PM

R 12-R 36

E-FILED  
Transaction ID: 1-19-1652  
File Date: 10/29/2019 2:15 PM  
Thomas D. Palella  
Clerk of the Appellate Court  
APPELLATE COURT 1ST DISTRICT

FILED  
8/16/2019 3:28 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019L002910

6218864

**Exhibit 1**

**To**

**Stipulation Re Transcripts Of Proceedings**

**Transcript of Proceedings of June 21, 2019**

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF C O O K )

5 RICHARD L. DENT and RLD RESOURCES, )  
L.L.C., )

-VS-

No. 2019 L 002910

8 CNE GAS SUPPLY, LLC; CONSTELLATION)

9 CONSTELLATION NEWENERGY - GAS )

0 )

# 1

13 of the above-entitled cause before the Honorable

14 Patricia O'Brien Sheahan, Judge of said Court, taken

15 before Liza M. Perez, CSR within and for the County of

16 Cook and State of Illinois, at the Daley Center,

17 Room 2207, Chicago, Illinois, at 2:15 p.m. on the

18 21st day of June, 2019.

19

20

21

22

23

24

U.S. Legal Support, Inc.  
(312) 236-8352

**A034**

## 1     A P P E A R A N C E S:

2           LAW OFFICES OF PAUL G. NEILAN, P.C.  
3           MR. PAUL G. NEILAN  
4           1954 First Street  
5           Suite 309  
6           Highland Park, Illinois   60035  
7           312.266.0464  
8           pgneilan@energy.law.pro

9                   On behalf of the Petitioners;

10           JENNER & BLOCK, LLP  
11           MS. TERRI L. MASCHERIN  
12           MR. CHRISTIAN L. PLUMMER  
13           353 North Clark Street  
14           Chicago, Illinois   60654  
15           312.222.9350  
16           tmascherin@jenner.com

17                   On behalf of the Respondents.

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1 THE COURT: This is Dent vs. Constellation.

2 MR. NEILAN: Good afternoon, your Honor.

3 Paul Neilan for Richard Dent and RLD Resources.

4 MS. MASCHERIN: Good afternoon, your Honor.

5 Terri Mascherin and Christian Plummer for the  
6 respondents.

7 THE COURT: All right. Before the Court is a  
8 motion to dismiss petitioners' verified 224 petition  
9 brought by respondents, Constellation NewEnergy, Inc.;  
10 CNE Gas Supply, LLC; Constellation Energy Gas Choice,  
11 LLC, and Constellation NewEnergy - Gas Division, LLC.

12 The motion is fully briefed and the Court has  
13 reviewed all submitted materials. I do not need oral  
14 argument on this motion.

15 MS. MASCHERIN: All right.

16 THE COURT: This is a petition for discovery  
17 pursuant to Supreme Court Rule 224 where petitioners,  
18 Richard L. Dent and RLD Resources, LLC, seek discovery  
19 to obtain the names of three unidentified individuals.

20 Petitioner, Richard Dent, is the chief  
21 executive officer of RLD Resources, Ltd., which was a  
22 vendor of respondents, Constellation.

23 Constellation retained outside employment  
24 counsel to conduct an investigation into allegations



1 that Dent inappropriately touched a Constellation  
2 employee at an event sponsored by Constellation for  
3 its employees and contractors. Petitioners now seek  
4 precomplaint discovery to determine the identities of  
5 the employees who reported harassment, a witness, and  
6 the lawyers retained by Constellation. Petitioners  
7 seek this information so that petitioners can sue them  
8 for defamation, presumably.

9 Respondents argue that the statements made  
10 were subject to a qualified privilege. Generally, a  
11 qualified privilege protects against defamation  
12 liability when an employee reports harassment to her  
13 employer and the employer then undertakes an  
14 investigation. And that's Vickers vs. Abbott  
15 Laboratories.

16 An Illinois Supreme Court Rule 224 petition  
17 allows discovery of the identity of a potential  
18 defendant whose identity is not already known. Once  
19 the identity of such a person or entity has been  
20 ascertained, the purpose of Rule 224 has been achieved  
21 and the actions should have been dismissed.  
22 Involvement of the trial court protects against abuses  
23 of the discovery process and guards against fishing  
24 expeditions, Low Cost Movers, Inc. vs. Craigslist,

1 Inc., 2015 IL App (1st) 143955.

2 In this case, while respondents do not raise  
3 this argument, the Court takes the initiative to do so  
4 sua sponte to dispose of the petition for failure to  
5 comply with Rule 224.

6 Rule 224 is satisfied when a petitioner has  
7 identified someone who may be sued. In this case,  
8 petitioners already know the identities of the  
9 Constellation respondents and their attorneys.  
10 Accordingly, the Constellation respondents may be  
11 liable for damages under Low Cost Movers, and a 224  
12 petition is an inappropriate vehicle for petitioners  
13 to attempt to learn the names of the unidentified  
14 individuals.

15 Accordingly, the motion to dismiss is  
16 granted, and petitioners' 224 petition is dismissed  
17 with prejudice.

18 Thank you.

19 MS. MASCHERIN: Thank you, your Honor.

20 MR. PLUMMER: Thank you, your Honor.

21 MR. NEILAN: Thank you, your Honor.

22 THE COURT: And we'll need a separate written  
23 order just incorporating the transcript.

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1 (Which were all the proceedings had  
2 in the above-entitled cause on  
3 this date.)  
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1     STATE OF ILLINOIS     )  
                                   )     SS:  
2     COUNTY OF C O O K     )

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Liza M. Perez, being first duly sworn on oath  
says that she is a court reporter doing business in  
the City of Chicago; that she reported in shorthand  
the proceedings given at the taking of said hearing  
and that the foregoing is a true and correct  
transcript of her shorthand notes so taken as  
aforesaid and contains all the proceedings given at  
said hearing.

13

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Witness my official signature, in and for  
Cook County, Illinois, on this 24th day of June, A.D.,  
2019.

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Liza M. Perez, CSR  
200 West Jackson Boulevard  
Suite 600  
Chicago, Illinois 60606  
License No.: 084-004686

<b>1</b>	<b>comply</b> 5:5	<b>expeditions</b> 4:24	<b>Involvement</b> 4:22	<b>petitioner</b> 3:20 5:6
<b>143955</b> 5:1	<b>conduct</b> 3:24	<b>F</b>	<b>L</b>	<b>petitioners</b> 3:17 4:3,6,7 5:8,12
<b>1st</b> 5:1	<b>Constellation</b> 3:1, 9,10,11,22,23 4:1,2, 6 5:9,10	<b>failure</b> 5:4	<b>Laboratories</b> 4:15	<b>petitioners'</b> 3:8 5:16
<b>2</b>	<b>contractors</b> 4:3	<b>fishing</b> 4:23	<b>lawyers</b> 4:6	<b>Plummer</b> 3:5 5:20
<b>2015</b> 5:1	<b>Cost</b> 4:24 5:11	<b>fully</b> 3:12	<b>learn</b> 5:13	<b>potential</b> 4:17
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<b>Abbott</b> 4:14	<b>Craigslist</b> 4:24	<b>Generally</b> 4:10	<b>LLC</b> 3:10,11,18	<b>privilege</b> 4:10,11
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<b>abuses</b> 4:22	<b>damages</b> 5:11	<b>granted</b> 5:16	<b>M</b>	<b>process</b> 4:23
<b>achieved</b> 4:20	<b>date</b> 6:3	<b>guards</b> 4:23	<b>made</b> 4:9	<b>protects</b> 4:11,22
<b>actions</b> 4:21	<b>defamation</b> 4:8,11	<b>H</b>	<b>Mascherin</b> 3:4,5, 15 5:19	<b>purpose</b> 4:20
<b>afternoon</b> 3:2,4	<b>defendant</b> 4:18	<b>harassment</b> 4:5, 12	<b>materials</b> 3:13	<b>pursuant</b> 3:17
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<b>App</b> 5:1	<b>determine</b> 4:4	<b>I</b>	<b>Movers</b> 4:24 5:11	<b>R</b>
<b>argue</b> 4:9	<b>discovery</b> 3:16,18 4:4,17,23	<b>identified</b> 5:7	<b>N</b>	<b>raise</b> 5:2
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<b>ascertained</b> 4:20	<b>dismissed</b> 4:21 5:16	<b>identity</b> 4:17,18,19	<b>Neilan</b> 3:2,3 5:21	<b>reports</b> 4:12
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<b>B</b>	<b>E</b>	<b>inappropriate</b> 5:12	<b>obtain</b> 3:19	<b>retained</b> 3:23 4:6
<b>briefed</b> 3:12	<b>employee</b> 4:2,12	<b>inappropriately</b> 4:1	<b>officer</b> 3:21	<b>reviewed</b> 3:13
<b>brought</b> 3:9	<b>employees</b> 4:3,5	<b>incorporating</b> 5:23	<b>oral</b> 3:13	<b>Richard</b> 3:3,18,20
<b>C</b>	<b>employer</b> 4:13	<b>individuals</b> 3:19 5:14	<b>order</b> 5:23	<b>RLD</b> 3:3,18,21
<b>case</b> 5:2,7	<b>employment</b> 3:23	<b>information</b> 4:7	<b>P</b>	<b>Rule</b> 3:17 4:16,20 5:5,6
<b>chief</b> 3:20	<b>Energy</b> 3:10	<b>initiative</b> 5:3	<b>Paul</b> 3:3	<b>S</b>
<b>Choice</b> 3:10	<b>entity</b> 4:19	<b>investigation</b> 3:24 4:14	<b>person</b> 4:19	<b>satisfied</b> 5:6
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<b>CNE</b> 3:10	<b>executive</b> 3:21			

**separate** 5:22  
**sponsored** 4:2  
**sponte** 5:4  
**statements** 4:9  
**sua** 5:4  
**subject** 4:10  
**submitted** 3:13  
**sue** 4:7  
**sued** 5:7  
**Supply** 3:10  
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**T**

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**takes** 5:3  
**Terri** 3:5  
**touched** 4:1  
**transcript** 5:23  
**trial** 4:22

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**U**

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**undertakes** 4:13  
**unidentified** 3:19  
5:13

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**V**

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**vehicle** 5:12  
**vendor** 3:22  
**verified** 3:8  
**Vickers** 4:14

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**W**

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**written** 5:22

FILED  
7/9/2019 10:46 AM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019L002910

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

5690290

Richard L. Dent and RLD Resources, LLC )

Petitioners, )

v. )

2019L002910

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

Respondents. )

**MOTION FOR RECONSIDERATION  
OF ORDER DISMISSING RULE 224 PETITION**

Pursuant to Illinois Code of Civil Procedure Section 2-1203(a) (735 ILCS 5/2-1203(a) ),

Petitioners Richard L. Dent and RLD Resources, LLC ("RLD") (RLD and Mr. Dent being hereinafter collectively referred to as the "Petitioners") hereby move this Court to reconsider its order of June 21, 2019 dismissing Petitioners' Verified Petition under Supreme Court Rule 224 for Discovery Before Suit to Identify Responsible Persons (the "Rule 224 Petition"). In support of this Motion, Petitioners state as follows:

On June 21, 2019 this Court made an oral bench ruling that the Illinois Appellate Court's decision in *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1<sup>st</sup>) 143955, required dismissal of the Rule 224 Petition because Petitioners had already identified Constellation as a defendant, and therefore the Rule 224 Petition was improper in this case. This Court also characterized the Rule 224 Petition as a "fishing expedition" akin that criticized in *Low Cost Movers*. This Court did not provide a written ruling to the parties. A copy of the minute order



entered on June 21, 2019 is attached as Exhibit A to this Motion.

**1. This Court Erred in Ruling that *Low Cost Movers* Controls This Case Because the Respondent in Discovery in *Low Cost Movers* Identified Itself as a Defendant for the Wrongful Conduct There Complained Of.**

*Low Cost Movers* ("Low Cost") was a business that placed ads on the Craigslist website. (*Low Cost Movers*, par. 1). Craigslist allowed users of its site to anonymously "flag" advertisements considered inappropriate, and if an ad received too many flags Craigslist could remove it. (*Low Cost Movers*, par. 4). Because Low Cost's ads were being flagged and deleted from Craigslist almost immediately after they were posted, Low Cost "speculated" that this was "the dirty work of one or more of its competitors." (*Low Cost Movers*, pars. 1, 4). Low Cost filed a Rule 224 petition against Craigslist to obtain the identities of the persons who Low Cost thought were improperly flagging its ads. (*Low Cost Movers*, par. 1).

During the Rule 224 proceeding, Craigslist identified itself as a party who had removed Low Cost's ads during 2014 because those ads violated Craigslist's terms of use. (*Low Cost Movers*, pars. 5, 7), and Craigslist also disclosed that "there was every reason to believe that [Craigslist itself] removed [Low Cost's] ads..." during an earlier period that Low Cost wanted investigated. (*Low Cost Movers*, par. 7). The Illinois Appellate Court affirmed the lower court's dismissal of Low Cost's Rule 224 petition because once Craigslist identified itself as a party that had engaged in the conduct complained of, namely, the allegedly improper removal of ads, the purpose of Rule 224 was served. (*Low Cost Movers*, par. 16). The court characterized as an impermissible "fishing expedition" Low Cost's effort to use Rule 224 to find out if there might be other persons it could sue for causing removal of its ads. (*Low Cost Movers*, pars. 10, 12).

*Low Cost Movers* is clearly distinguishable from the Rule 224 Petition in the instant case. In *Low Cost Movers* the respondent in discovery, Craigslist, identified itself as a party who had committed the wrongful conduct complained of, namely, the allegedly improper removal of Low Cost's ads. (*Low Cost Movers*, pars. 5, 7). Low Cost's Rule 224 petition thus succeeded in identifying one potential defendant for the questioned conduct. In the instant case, however, the respondents in discovery, Constellation NewEnergy, Inc. and its affiliates (collectively,

"Constellation"), have identified neither themselves nor anyone else as a party who engaged in the wrongful conduct complained of, namely, the defamation of Mr. Dent.

**2. This Court Erred in Dismissing the Rule 224 Petition on Grounds that Constellation is Already a Known Defendant.**

The cases cited in *Low Cost Movers* confirm that that case does not control the instant Rule 224 Petition. In *Malmberg v. Smith*, 241 Ill. App. 3d 428 (5<sup>th</sup> Dist. 1993), a Rule 224 petition that alleged defamation but sought discovery of the content of the defamatory statement was dismissed because the petitioner already knew who published the statement, 241 Ill. App. 3d at 432, and at 435 (*part. dissent*). In *Guertin v. Guertin*, 204 Ill. App. 3d 527 (3<sup>rd</sup> Dist. 1990), the plaintiffs filed an "equitable bill of discovery" before filing an undue influence suit in order to depose a person regarding their undue influence over a decedent; the court stated that Rule 224 would not apply because the plaintiffs already knew the identity of the person they believed had exercised undue influence, 204 Ill. App. 3d at 531. In *Beale v. Edgemark Financial Corp.*, 279 Ill. App. 3d 242 (1<sup>st</sup> Dist. 1996), although the plaintiff knew the identity of one defendant to claims of securities fraud and breach of fiduciary duty, the court, relying on the "who may be responsible" language used in Rule 224, allowed use of the rule to narrow the list of persons from numerous securities market participants to those who had access to inside information that could be grounds for the same claims. 279 Ill. App. 3d at 250-52. These cases show only that if a Rule 224 petitioner has identified a party who engaged in the wrongful conduct complained of, Rule 224 is inapplicable because its purposes have already been served.

In Petitioners' Rule 224 Petition the wrongful conduct complained of is the defamation of Mr. Dent. That defamation was perpetrated by certain unnamed persons, referred to as Persons A, B and C, through their publication or republication of false and defamatory statements about Mr. Dent to a third party, namely, Constellation. (Rule 224 Petition, pars. 6-7, 15-17). Under Illinois law, a cause of action for defamation requires publication of the defamatory statement to a third party. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). The facts alleged in the Rule 224 Petition are plain and unequivocal: Constellation is not the publisher of the defamatory statements about Mr.



Dent. Rather, it's the third party to whom Persons A, B and C published their defamatory statements about him. (Rule 224 Petition, pars. 7, 15-17). Furthermore, unlike Craigslist in *Low Cost Movers*, Constellation has not admitted to engaging in the wrongful conduct complained of in the Rule 224 Petition.

*Low Cost Movers* is instructive for the proposition that where the respondent in a Rule 224 petition either admits to engaging, or is found to have engaged in the wrongful conduct complained of in the petition, the purpose of Rule 224 has been served. But *Low Cost Movers* is irrelevant to a case where, as here, the respondent in discovery has neither admitted to engaging, nor is found to have engaged in the wrongful conduct complained of in the Rule 224 Petition.

### **3. This Court Erred in Ruling that a Cause of Action Lies Against Constellation.**

The Rule 224 Petition makes clear that the contracts terminated by Constellation were terminable at will, subject to applicable notice provisions. (Rule 224 Petition, pars. 10, 11, and Exhibit A). 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 (1<sup>st</sup> Dist. 1987).

As the dissent in *Malmberg v. Smith* noted, in order for an attorney to comply with the obligations imposed under Ill. S. Ct. Rule 137, any complaint signed by that attorney must, among other things, be based on a reasonable investigation by the attorney of the grounds for the action and must be filed in good faith. 241 Ill. App. 3d 428, at 434-35.

Under the facts stated in the Rule 224 Petition, no cause of action for defamation lies against Constellation because Constellation did not publish any defamatory statement about Mr. Dent to any third party, and no cause of action lies against Constellation for breach of contract because under Illinois law Constellation can terminate at-will contracts for a good reason, a bad reason or no reason at all.

This Court's ruling that Petitioners can name Constellation as a defendant for either defamation or breach of contract would "[prevent] a conscientious attorney from discharging his

professional obligations pursuant to supreme court rule," *Malmberg v. Smith*, 24 Ill. App. 3d at 435 (*part. dissent*).

**4. This Court Erred in Ruling that Petitioners' Rule 224 Petition Was a "Fishing Expedition" Akin to that in *Low Cost Movers*.**

The *Low Cost Movers* court viewed the Rule 224 petition in that case as a "fishing expedition" because the petitioner didn't know if there even existed any defendant other than Craigslist.

In this case, if Constellation had issued its Termination Notice (Rule 224 Petition, Exh. A) without explanation, as it could have done consistent with Illinois Law, then Petitioners' use of Rule 224 to find out if there existed anyone who might have defamed them would be a "fishing expedition" similar Low Cost's.

But that's not what happened. Rather than providing no explanation for terminating its contracts with Petitioners, Constellation sent two of its attorneys, Ms. Speights and Mr. McKinney, to visit RLD's offices in Chicago on September 14, 2018, and at that meeting Ms. Speights and Mr. McKinney told Mr. Dent in near-forensic detail that specific persons had made specific discreditable statements about him to Constellation. (Rule 224 Petition, pars. 7 and 12-15). Ms. Speights and Mr. McKinney told Mr. Dent that Person A was a specific woman who was physically present at two Constellation-sponsored golf parties two years apart, the first in the Philadelphia area in or about June 2016, and the second on the outdoor patio of the Shedd Aquarium in Chicago in or about July 2018. (Rule 224 Petition, pars. 6-9). Ms. Speights and Mr. McKinney also told Mr. Dent that Person B was a specific gentleman who was physically present at the Marriott Hotel on Adams Street in Chicago on the same evening as Constellation's Shedd Aquarium golf party, and that Person B published to Constellation his statement that Mr. Dent was drunk and disorderly at that specific place and time. (Rule 224 Petition, par. 7.c-7.d). Likewise, Ms. Speights and Mr. McKinney told Mr. Dent that Person C was the hired investigator who republished those statements to Constellation. (Rule 224 Petition, pars. 12-15).

Consequently, the Petitioners know everything they need to know to bring a defamation

action against Persons A, B and C except their identities.

**5. Request for Relief.**

Three specific but unnamed persons made known, specific defamatory statements about Mr. Dent to a known, specific third party. That third party, Constellation, the respondent in discovery, has not admitted any wrongdoing. The Petitioners have neither alleged any cause of action against Constellation, nor does any cause of action against it appear in the Rule 224 Petition.

Rule 224 addresses precisely this situation, and the case made in the Rule 224 Petition bears no resemblance whatsoever to *Low Cost Movers* and its "fishing expedition." Accordingly, Petitioners respectfully request that this Court reconsider and vacate its June 21, 2019 Order dismissing Petitioners' Rule 224 Petition same.

In the alternative, if this Court declines to reconsider and vacate its June 21, 2019 order dismissing Petitioners' Rule 224 Petition, Petitioners respectfully request that this Court provide a written ruling explaining why *Low Cost Movers* controls the Rule 224 Petition, why this Court concluded that Petitioners can name Constellation as a defendant for the wrongful conduct complained of in the Rule 224 Petition, and why this Court held that the Rule 224 Petition is a "fishing expedition" akin to that criticized in *Low Cost Movers*.

Dated this 9<sup>th</sup> day of July, 2019

By : /s/ **Paul G. Neilan**

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Atty. No. 49710



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

RICHARD L. DENT AND  
RED RESOURCES, LLC

Plaintiff(s)

-v-

CONSTELLATION NEW ENERGY  
ETAL

Defendant(s)

**EXHIBIT A TO MOTION FOR RECONSIDERATION**

NO: 2019 L 002610

Motion Call: 1

ORDER

This cause coming before the court for administrative status, the court being fully advised in the premises and having jurisdiction of the parties and/or the subject matter,

IT IS HEREBY ORDERED AS FOLLOWS:

(4010)



Supreme Court Rule 224 Petition dismissed by order of court, the Court finding that Supreme Court Rule 224 is not applicable in the instant case;

(4099)



Case previously disposed of on \_\_\_\_\_;

(4010)



Case dismissed by order of court, based on no activity since \_\_\_\_\_;

(4005)



Case dismissed for want of prosecution, based on no activity since \_\_\_\_\_;

(4282)



Case is transferred *instante* to Room 2005 for reassignment to a commercial calendar, pursuant to Law Division Administrative Order 92-2;

(1505)

(4282)



Case is transferred *instante* to Room 2005 for reassignment to a motion calendar, pursuant to Law Division Administrative Order 17-1, pertaining to refiled actions assigned to prior judicial calendar;

(1505)

( )



Other:

*FOR REASONS STATED IN OPEN COURT and*  
*for this proceedings. In presence*

Attorney No.:

PAUL G NEILAN

Name

LAW OFFICES OF PAUL G. NEILAN

Atty. for

954 FIRST ST #340 P.E.

Address

HIGHLAND PARK, IL 60035

City/State/Zip:

847 266 0464 #49710

JUN 21 2019

Judge Patricia O'Brien Sheahan

JUN 21 2019

Circuit Court - 2136

NO.

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

FILED  
7/9/2019 1:36 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019L002910

Richard L. Dent and RLD Resources, LLC, )

)

5695549

Petitioners, )

)

Case No. 2019L002910

v. )

Constellation NewEnergy, Inc.; CNE Gas )

Supply, LLC; Constellation Energy Gas )

Choice, LLC; and Constellation New )

Energy Gas Division, LLC )

)

Respondents. )

)

**NOTICE OF MOTION**

TO: Terri L. Mascherin  
Christian L. Plummer  
Jenner & Block LLP  
353 N. Clark St., Chicago, IL 60654-3456

[Tmascherin@jenner.com](mailto:Tmascherin@jenner.com)

[Cplummer@jenner.com](mailto:Cplummer@jenner.com)

**PLEASE TAKE NOTICE** that on July 19, 2019 at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Patricia O'Brien Sheahan in Room 2207 of the Richard J. Daley Center and shall then and there move the Court as set forth in Petitioners' **Motion for Reconsideration of Order Dismissing Rule 224 Petition**, a copy of which is attached hereto and herewith served upon you.

Dated: July 9, 2019

**RLD RESOURCES, LLC  
RICHARD L. DENT**

By: /s/ Paul G. Neilan  
Their Attorney

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1954 First Street #390  
Highland Park, IL 60035  
847.266.0464 Tel.  
312.580.5483 Cell  
312.674.7350 Fax  
[pgneilan@energy.law.pro](mailto:pgneilan@energy.law.pro)  
Atty. No. 49710

**CERTIFICATE OF SERVICE**

I, Paul G. Neilan, an attorney, hereby certify that on July 9, 2019, I served a true and correct copy (1) the **Notice of Motion**, and (2) Petitioners' **Motion for Reconsideration of Order Dismissing Rule 224 Petition** by e-mailing a copy thereof to:

Terri L. Mascherin ([Tmascherin@jenner.com](mailto:Tmascherin@jenner.com)); and  
 Christian L. Plummer ([Cplummer@jenner.com](mailto:Cplummer@jenner.com)),  
 Jenner & Block, LLP  
 353 N. Clark St.  
 Chicago, IL 60654-3456

at the above e-mail addresses, at or before 5:00 p.m. on July 9, 2019.

**RICHARD L. DENT and  
 RLD RESOURCES, LLC,**  
 Petitioners

*/s/ Paul G. Neilan*

By: \_\_\_\_\_  
 Their Attorney

Paul G. Neilan,  
 Law Offices of Paul G. Neilan  
 1954 First St. #390  
 Highland Park, IL 60035  
 847.266.0464 Tel.  
 312.580.5483 Cell  
 312.674.7350 Fax  
[pgneilan@energy.law.pro](mailto:pgneilan@energy.law.pro)  
 Atty. No. 49710



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

Richard L. Dent and RLD Resources, LLC,

Petitioners,

v.

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

Respondents.

Case No. 19 L 2910



**MEMORANDUM OPINION AND ORDER**

Before the Court is a motion to reconsider the dismissal of a Rule 224 petition brought by petitioners Richard L. Dent and RLD Resources, LLC. The motion has been briefed with a response. Oral argument was had at the presentation of the motion. The Court has considered the arguments and reviewed all submitted materials, including the cited case law, as well as the transcripts of proceedings from June 21, 2019 and July 19, 2019.

The purpose of a motion to reconsider is to bring to the trial court's attention a change in the law, an error in the trial court's previous application of existing law, or newly discovered evidence that was not available at the time of the prior hearing or decision. *Horlacher v. Cohen*, 2017 IL App (1st) 162712, ¶ 79. The decision of whether to grant a motion to reconsider is within the sound discretion of the trial court. *Cable Am., Inc. v. Pace Elecs., Inc.*, 396 Ill. App. 3d 15, 24 (2009). Petitioners assert in their motion that the Court misapplied the law in its June 19, 2019 ruling.

On June 21, 2019, this Court issued an oral ruling on respondents' motion to dismiss the

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underlying Rule 224 petition. The Court held that the petition failed to comply with the Rule and dismissed it on the grounds that the purpose of Rule 224 is satisfied where a petitioner has already identified someone who *may* be sued. *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1<sup>st</sup>) 143955.

The court in *Low Cost Movers* articulated the standard for evaluating Rule 224 petitions, holding as follows:

The purpose of Rule 224 is to ascertain "the identity of one who *may* be responsible in damages." The purpose of Rule 224 has been served despite Low Cost having no basis to sue Craigslist for tortious interference with prospective economic advantage or a violation of the Illinois Consumer Fraud Act. The *Beale* court observed that the trial judge determines the extent of inquiry on a case-by-case basis, and that a petition which sought to establish actual liability, rather than the potential for liability, should be denied. Rule 224 is not intended to permit a party to engage in a wide-ranging, vague, and speculative quest to determine whether a cause of action actually exists. *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, ¶ 17 (internal citations omitted).

This case closely mirrors *Low Cost Movers*. "According to Low Cost, identity alone does not suffice as a basis to dismiss a Rule 224 petition where the individual identified cannot be a defendant under the petitioner's espoused causes of action." *Id.* at ¶ 13. Petitioners already know the identities of entities which *may* be sued: Constellation and its attorneys. Petitioners' motion to reconsider asserts that "*Low Cost Movers* is irrelevant to a case where, as here, the respondent in discovery has neither admitted to engaging, nor is found to have engaged in the wrongful conduct complained of in the Rule 224 Petition." Motion, p. 4. Respondents' response to the motion, however, notes that "Petitioners already know the identity of a party involved in the events giving rise to the termination of Constellation's at-will contracts with Petitioner RLD Resources, Ltd.: namely, Constellation." Response, p. 2.

The crux of petitioners' argument is that they lack a viable legal claim against Constellation and that a Rule 224 petition is therefore the only vehicle available to obtain the

identities of the unnamed individuals who allegedly defamed Mr. Dent. It may be that Mr. Dent does not have a viable claim against Constellation for defamation, or a desire to name Constellation as a defendant, but the *Low Cost Movers* case is again analogous on this issue. "The purpose of Rule 224 has been served despite Low Cost having no basis to use Craigslist for tortious interference with prospective economic advantage or a violation of the Illinois Consumer Fraud Act." *Low Cost Movers*, 2015 IL App (1st) 143955, ¶ 17. The test for a 224 petition is whether the petitioner knows of anyone who *may* be liable in damages. Constellation's response admits that it *may* be liable in damages – indeed, that is their primary argument.

Claims against Constellation are not limited to those elaborated in the underlying petition. The damages that Mr. Dent and RLD Resources, LLC appear to allege in their petition are based upon the termination of contracts. The issue before this Court is whether petitioners have yet identified any of the persons or entities who *may* be the cause of those terminations. Rule 224 has a specific, narrow purpose that allows a petitioner to obtain the identity of a potential defendant when the petitioner lacks knowledge of *anyone* who *may* be liable in damages.

The issue before the Court is thus whether Mr. Dent and RLD have knowledge of any individual or entity that *may* be liable in damages to them. Based upon the record before the Court, they do. Whether petitioners pursue claims for defamation or otherwise, claims are available. Accordingly, petitioners' motion to reconsider is DENIED.

ENTERED:



Judge Patricia O'Brien Sheahan  
Circuit Court of Cook County

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JUL 31 2018  
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