No. 126795

IN THE SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR RESPONDENTS-APPELLANTS CONSTELLATION NEWENERGY, INC., CNE GAS SUPPLY, LLC, CONSTELLATION ENERGY GAS CHOICE, LLC, and CONSTELLATION GAS DIVISION, LLC

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS
& HOLLISTER LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
teaton@taftlaw.com
jamarilio@taftlaw.com

Counsel for Respondents-Appellants Constellation NewEnergy, Inc., CNE Gas Supply, LLC, Constellation Energy Gas Choice, LLC, and Constellation New Energy—Gas Division, LLC

ORAL ARGUMENT REQUESTED

E-FILED
7/28/2021 3:39 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

INTRODUCTION

The response of the RLD Parties (Richard Dent and RLD Resources, Ltd., collectively) does not dispute that pre-suit discovery under Rule 224 is unnecessary, and therefore improper, when a would-be plaintiff already knows the identity of one potential defendant, and thus can file a complaint and use the regular discovery process to identify other potential defendants. *See* Constellation Br. 25-33; *Roth v. St. Elizabeth's Hosp.*, 241 Ill App. 3d 407, 412-13 (5th Dist. 1993); *Low Cost Movers v. Craigslist, Inc.*, 2015 IL App (1st) 143955, ¶ 17. And the RLD Parties do not dispute actually knowing the identity of Person C—one of the parties they wish to sue for alleged defamation. Instead, the RLD Parties argue that their Petition did not plead facts demonstrating knowledge of the identity of "Person C." That is incorrect. Both the Petition itself and Attachment B to the Petition, which is a letter from Constellation to counsel for the RLD Parties, establish that Constellation's investigators—which the Petition describes as "Person C"—met with Dent, and both the Petition and Attachment B identify those investigators by name. To the extent either the Petition or Exhibit B are ambiguous or unclear on that point, Constellation has now confirmed that fact several times, on the record. The Rule 224 Petition is, therefore, no longer necessary as a matter of law.

The RLD Parties also do not dispute that a qualified privilege exists to protect employer investigations of sexual harassment, Constellation Br. 16-19; *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393 (1st Dist. 1999), or that when a Rule 224 petition pleads facts establishing the existence of a qualified privilege, it also must plead facts to overcome it in order to survive a Section 2-615 motion to dismiss.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

Constellation Br. 12-16. By failing to contest the latter point, they implicitly confess that the Appellate Court's decision—which was based on the notion that a qualified privilege cannot be raised under Section 2-615, A18-A19—was error.

Instead, the RLD Parties advance a number of arguments that the Appellate Court did not address or adopt. First, they argue that Person B's statements to Constellation's investigators were unprotected by the privilege because the Rule 224 petition makes no allegation that Person B was an employee. This argument is meritless. The qualified privilege protects statements made in the context of a workplace sexual harassment investigation, regardless of whether the statements are made by an employee or by a non-employee witness. All parties—including the party accused—have an interest in ensuring that an employer can conduct a thorough and complete investigation, and witnesses would be discouraged from sharing information if they faced defamation liability for doing so. The public policy rationale for the privilege fully applies regardless of whether the witness is an employee.

Second, the RLD Parties argue that Person B was not a "witness" because Person B did not witness the improper touching. Instead, Person B witnessed Dent intoxicated on the day of one of the events at a downtown hotel. That does not make Person B any less a witness. Constellation's investigators needed to assess the credibility of the victim's statements as against Dent's denials. Under well-established principles, information suggesting that Dent was inebriated on the day in question bears on the credibility of his denials. Because Person B had relevant information to share with investigators, Person B was a witness, and Person B's statements are protected by the qualified privilege.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

Finally, the RLD Parties argue that, having pleaded into the qualified privilege, they can escape it through the conclusory allegation that the statements by Persons A, B, and C were all false. But that is not the law. Moreover, if that were enough, it would be impossible for employers to protect the confidentiality of the victims and witnesses who participate in sexual harassment investigations, as anybody can make a boilerplate, conclusory allegation of falsity. This would have devastating implications for employers' ability to promote harassment-free workplaces and a devastating chilling effect on victims' reporting harassment. Accordingly, more than a conclusory allegation of bad faith is needed to overcome the privilege. That is particularly so when the employer has already conducted a good faith, thorough investigation—which the RLD Parties do not dispute that Constellation did here. For this reason, Illinois law requires the putative defamation plaintiff to allege facts—not just conclusions—demonstrating knowing falsity or reckless disregard for the truth.

Accordingly, the Appellate Court's opinion should be reversed, and the matter remanded to the circuit court for the Rule 224 Petition to be dismissed.

ARGUMENT

I. The Purpose of Rule 224 Has Been Served Because the RLD Parties Know the Identity of One of the Parties They Allege Is Potentially Liable in Damages.

The RLD Parties do not dispute that a Rule 224 petition has served its purpose once a would-be plaintiff knows one party that is potentially responsible in damages. Rule 224 does not allow a would-be plaintiff to continue pre-suit discovery to uncover

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

the names of every potential defendant. Instead, the would-be plaintiff must use the post-complaint discovery process to do so. *See, e.g.*, 735 ILCS 5/2-402.

As Constellation explained in its opening brief, this is clear from the text of Rule 224, which allows a party to engage in pre-suit 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) (emphasis added). It is also clear from the purpose of Rule 224, which was intended only "to *supplement* Section 2-402 of the Code," *Roth*, 241 Ill. App. 3d at 416 (emphasis added), not replace it altogether. The RLD Parties do not contest the numerous decisions of the Appellate Court holding that once the identity of a party who is potentially responsible in damages is known to the would-be plaintiff, "the purpose of the rule has been accomplished and the action should be dismissed." *Id.* at 412-13; *see also, e.g.*, *Low Cost Movers v. Craigslist*, 2015 IL App (1st) 143955. A Rule 224 petitioner is not entitled to continue conducting pre-suit discovery until it obtains the identity of all potential defendants.

That principle compels the dismissal of the Rule 224 Petition in this case. As Constellation pointed out, the Petition itself identifies by name two individuals representing Constellation who met with Dent as part of the investigation, A23-24, ¶ 7 (stating that Ms. Grace Speights and Mr. Theos McKinney III, two attorneys representing [Constellation], visited Mr. Dent" and "told him that certain allegations had been made against him" and that "Mr. Dent told Ms. Speights and Mr. McKinney that all of these allegations were completely false"). Thus, even as the Petition professes ignorance as to the identity of the "third party" hired "to investigate [the]

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

claims against Mr. Dent," whom it describes as Person C, A25, ¶¶ 12-13, it names those two individuals and describes an aspect of their investigation.

Exhibit B to the Petition likewise named the same two individuals who met with Dent, and made clear that the meeting was part of Constellation's investigation:

> 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…. As you note…, 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.

A35.

Thus, Exhibit B also discloses the identity of Constellation's investigators—"Person(s) C." The RLD Parties' accusation that Constellation is making "improper new fact allegation[s]" outside of the Petition and its Exhibits, RLD Br. 5, 10, is refuted by examining those documents. The RLD Parties cannot maintain their Rule 224 petition by professing ignorance about the very facts that their own Petition and its Exhibits establish.

What is more, even if there were some ambiguity on the point, Constellation has since repeatedly made clear—in the Circuit Court, again on appeal, and once again in this Court—that "Person C" are the lawyers named in the Petition and its Exhibits.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

Thus even if the RLD Parties were unable to connect the dots in their own filings, Constellation has since done so for them.

The RLD Parties assert that in doing so, Constellation has somehow acted improperly. RLD Br. 10. That is absurd. By confirming the identity of Person C, Constellation has given the RLD Parties all that they are entitled to receive under Rule 224: the identity of a potential defendant. As the Appellate Court has correctly held, "a petition may be dismissed if a petitioner identifies one potential defendant." *Low Cost Movers*, 2015 IL App (1st) 143955, ¶ 13. That has happened here.

The case law applying Rule 224 provides for dismissal even when the identity of a potential defendant becomes known to the petitioner *after* the petition is filed. For example, in *Low Cost Movers*, the petitioner had posted advertisements on the Craigslist website which were then removed. The petitioner filed a Rule 224 petition to obtain from Craigslist the names of the individuals who had flagged the ads for removal, suspecting that a competitor was responsible. After the petition was filed, Craigslist informed the petitioner that Craigslist had removed the petitioner's ads on its own initiative. Because the petitioner now knew one potential defendant—namely, Craigslist—the Rule 224 petition was properly dismissed. *Low Cost Movers*, 2015 IL App (1st) 143955, ¶¶ 1-7, 17.

The RLD Parties contend that the Court must ignore Constellation's judicial admissions regarding the identity of Person C, and instead take the Petition's allegation as true that the RLD Parties remain ignorant. RLD Br. 10-12. That approach is not mandated by Section 2-615, *see K. Miller Const. Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010) ("In ruling on a section 2–615 motion, … judicial admissions in

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

the record may be considered."), and makes no practical sense. The purpose of a Rule 224 petition is to allow a would-be plaintiff to gain actual knowledge of a potential defendant's identity. Once the petitioner has that knowledge, the Rule 224 petition is no longer necessary, regardless of the source of that knowledge. Consider, for example, what would happen if this case were remanded: Constellation would be required to do no more than what has already been done. The RLD Parties know the identity of one of the potentially responsible parties described in the Petition, and that is all that they could ever obtain under Rule 224. As the Rule 224 Petition serves no further purpose, it should be dismissed.

The RLD Parties contend that their Rule 224 Petition is nevertheless still needed because a complaint against Constellation's investigators may not withstand a motion to dismiss, and thus may not lead to further discovery of the identities of other parties under Section 2-402. RLD Br. 13. But the Appellate Court has correctly "reject[ed] the notion that [pre-suit] discovery may continue until the identity of the party that engaged in the 'wrongdoing' coincides with petitioner's causes of action." *Low Cost Movers*, 2015 IL App (1st) 143955, ¶ 17. Rule 224 does not enable a would-be plaintiff to continue conducting pre-suit discovery until it has identified the optimal defendant. To hold otherwise would "permit a party to engage in a wide-ranging, vague, and speculative quest to determine whether a cause of action actually exists." *Id.* Instead, the purpose of Rule 224 is to enable a would-be plaintiff "to identify a party that *may be* responsible—not to establish actual liability." *Id.* Here, the Petition has "served its purpose." *Id.* The RLD Parties indisputably know the

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

identity of Person C, whom the Petition alleges may be liable in damages, and they can file a complaint.[1]

The RLD Parties also argue that it is "absurd" to be told to file a complaint and use Section 2-402 to discover the identities of other potential defendants, while Constellation is at the same time arguing that the identity of the other potential defendants should not be disclosed due to the public policy against workplace sexual harassment. There is nothing absurd about this position. As argued below and before this Court, Constellation asserts that the Rule 224 Petition should also be denied because the RLD Defendants cannot state a claim for defamation against any party at issue. If Constellation is right, then the RLD Defendants will not and should not ever learn the identities of Person A and B, whether under Rule 224 or otherwise, and the public policy in favor of protecting victims and employer investigations of workplace sexual harassment (as discussed below) will be met. But if this Court disagrees with Constellation, then the RLD Defendants do have a means at the discovery they seek—via a lawsuit against Person C or Constellation.

[1] Indeed, the RLD Parties know the identity of another party they could sue as well: Constellation itself. The RLD Parties assert in their brief that "no action lies against Constellation for either defamation or breach of contract," RLD Br. 13, but in statements to the press, counsel for the RLD Parties has said that he and his client believe "that both the woman complainant [Person A] and the gentleman at the J.W. Marriott [Person B] exist only in the imaginations of the Constellation executives who made up the allegations." Counsel for the RLD Parties continued, "We believe that Constellation fabricated the allegations as a pretext to terminate its contracts with Dent, an NFL Hall of Famer." Bears Hall of Famer Richard Dent tries to protect his business and reputation – Fred Mitchell | Journalist/Writer (fredmitchellwriter.com), https://fredmitchellwriter.com/bears-hall-of-famer-richard-dent-tries-to-protect-his-business-and-reputation/ (attached as Exhibit A). There is no truth to the RLD Parties' statements. However, if that is indeed what the RLD Parties and its counsel believe, and they were not wantonly defaming Constellation in the press, then they should bring a claim against Constellation.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

II. Rule 224 Discovery Is Not "Necessary" Because the Underlying Defamation Claim Is Subject to Dismissal Due to the Qualified Privilege That Applies to Workplace Sexual Harassment Investigations.

The RLD Parties do not dispute that a qualified privilege exists to protect victims, witnesses, and investigators from being subjected to defamation liability for statements they make in the course of a workplace sexual harassment investigation. The RLD Parties also do not dispute that, when a Rule 224 petition pleads facts establishing a qualified privilege, it then must plead facts to overcome it, or face dismissal under Section 2-615. By failing to dispute this point, the RLD Parties concede that the basis for the Appellate Court's holding—namely, that a qualified privilege cannot be raised under Section 2-615 at all because it is an affirmative defense, A18-A19—was error.

Rather than embracing the Appellate Court's own flawed reasoning, the RLD Parties instead advance three equally flawed arguments of their own that the Appellate Court did not adopt. First, they argue that the qualified privilege cannot protect Person B's statements because the Petition does not allege that Person B was an employee. Second, they argue that Person B was not a "witness" because he did not see Dent touch Person A. Third, they argue that the Petition adequately pleads "bad faith" by Persons A, B, and C because the Petition conclusorily alleges that their statements were false. Each of these arguments is meritless.

A. The Qualified Privilege Protects Witnesses Regardless Whether They Are Employees.

The qualified privilege protects witnesses who participate in workplace sexual harassment investigations, regardless whether the witnesses are employees. The

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

RLD Parties cite no case for the notion that the qualified privilege is limited to statements by employees, and such a limitation would make no sense.

The purpose of the qualified privilege is to "facilitat[e] a free flow of information so that the correct information may ultimately be attained." *Vickers*, 308 Ill. App. 3d at 401. As the Appellate Court has explained, without a qualified privilege, people with relevant information would be afraid to come forward with that information. *Id.* at 402. That is true whether or not a person with relevant information is also an employee.

Indeed, artificially limiting the qualified privilege so that it can be enjoyed only by employee-witnesses, rather than witnesses generally, would work against the rationale for the qualified privilege in the first place, since it would prevent employers from gaining relevant information needed to accurately assess whether workplace harassment took place. Ultimately, that would be to everyone's detriment: victims, employers, and those accused of harassment all share an interest in ensuring that "the correct information" is "ultimately … attained." *Id.* at 401. Thus, it is irrelevant that Person B is not described as a Constellation employee in the Petition.

B. Person B Was a Witness.

The RLD Parties accuse Constellation of "perpetrat[ing] a fraud on this Court" by claiming that Person B was a witness. RLD Br. 15. Those are strong words. Constellation does not take such an accusation lightly—and neither should this Court.

That strident accusation, however, is baseless. A "witness" is simply "someone who sees, knows, or vouches for something," WITNESS, Black's Law Dictionary (11th ed. 2019)—here, "something" that bears on Constellation's workplace sexual

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

harassment investigation. Thus, Person B did not need to witness Dent's hand inappropriately touch Person A in order for Person B to be a witness who possesses relevant information. Tellingly, the RLD Parties can cite no law to the contrary.

Here, Person B saw Dent at the Marriott Hotel collecting golf materials and observed that Dent was drunk and disorderly at that time. A3. Whether Dent was inebriated while collecting his materials for the event is relevant, for one, to the credibility of his own denials, which were given to Constellation's lawyers when they visited him in September 2018 to discuss the allegations that had been made against him. A2-A3. As this Court has held, "[e]vidence that a witness was drinking near the time of an event about which [he] testifies is probative of the witness's sensory capacity … and affects the weight to be given [his] testimony." *People v. Gray*, 2017 IL 120958, ¶ 40 (citing *People v. Di Maso*, 100 Ill. App. 3d 338, 343 (1981); *People v. McGuire*, 18 Ill. 2d 257, 259 (1960)); *see also, e.g.*, *People v. Jakes*, 207 Ill. App. 3d 762, 771 (1990) (holding that evidence that a witness was drunk "create[s] a reasonable doubt as to the credibility" of the testimony). Indeed, this Court has held that "[t]he intoxication of a witness," *i.e.,* in this case, Dent, "at the time of an event about which he testifies may always be proved, because it affects the weight to be given to his testimony." *McGuire*, 18 Ill. 2d at 259. Because Person B saw, knew, and vouched for something relevant to Constellation's investigation, Person B was a witness, and public policy favors protecting Person B's statements to the investigators from defamation liability.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

C. The Petition Does Not Plead Facts Sufficient to Overcome the Qualified Privilege.

Once the qualified privilege has been established—as the facts alleged in the Petition and included in the Exhibits do here—the would-be plaintiff must demonstrate that the would-be defamation defendants abused the privilege. The would-be plaintiff can do so by pleading facts showing that would-be defendants "either intentionally published the material while knowing the matter was false, or displayed a reckless disregard as to the matter's falseness." *Kuwik v. Starmark Star Mktg. & Admin., Inc.*, 156 Ill. 2d 16, 30 (1993).

The RLD Parties claim that they meet this burden by their conclusory allegation that the statements made by Persons A, B, and C were false. That is not sufficient. As an initial matter, the Petition only alleges that the statements were false—not that they were knowingly false or made in reckless disregard of the truth. *See* A25, ¶ 16(b). So even if a conclusory allegation were sufficient, the RLD Parties did not allege enough to overcome the qualified privilege.

But even if the Petition had conclusorily alleged that the statements were knowingly false or made with reckless disregard of their falsity, that still would be insufficient. If that kind of barebones allegation were enough to overcome the qualified privilege, anyone could plead around it with ease, and participants in a workplace sexual harassment investigation could no longer have any confidence that their participation would remain confidential. As Constellation's opening brief and the amicus brief of Women Employed and thirty other organizations both explain, an effective workplace sexual harassment policy depends upon a confidential reporting and investigation mechanism. *See* Constellation Br. 22-25; Women Employed Amicus

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

Br. 8-14, 16-21. Without that, victims and witnesses will not feel comfortable coming forward to report harassment and provide relevant information to employers, and employers will be stymied in their ability to eradicate harassment from the workplace. *See Vickers*, 308 Ill. App. 3d at 402.

This Court should hold that a would-be defamation plaintiff must allege *facts* demonstrating knowing falsity or reckless disregard in order to overcome the qualified privilege—mere conclusions do not suffice. In *Vickers*, for example, the plaintiff had denied "making comments of a sexual nature to female coworkers and having verbally abused coworkers," but those denials were insufficient to establish an abuse of the privilege; the court emphasized that the plaintiff "does not provide any concrete evidence to support the notion that … employees fabricated stories about him." *Vickers*, 308 Ill. App. 3d at 404. At this stage of the case, of course, the RLD Parties need not produce actual evidence, but they still need to allege concrete facts that they will later introduce evidence to prove. Mere conclusory allegations are not enough. *See also, e.g. Colson v. Steig*, 86 Ill. App. 3d 993, 998 (2d Dist. 1980) (bare allegations of knowledge of falsity are insufficient to show actual malice, absent supporting facts); *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 56 (conclusory allegations that defendant knew alleged defamatory statements were false held insufficient) (both cited at Constellation Br. 20). The RLD Parties have no answer to these cases.

The insufficiency of a barebones allegation of falsity is particularly clear in a case where, as here, the employer has conducted a good-faith investigation. In deciding whether to allow discovery of the identity of a victim, witness, or

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

investigator, a court must balance "the potential plaintiff's right to redress for unprotected defamatory language against the danger of setting a standard for disclosure that is so low that it effectively chills or eliminates the right to speak anonymously." *Hadley v. Doe*, 2015 IL 118000, ¶ 27. When a victim's allegations have already been thoroughly investigated by the employer and determined to be credible, a would-be defamation plaintiff's conclusory allegation of falsity is even less plausible than it otherwise would be, and the balance of interests tips strongly in favor of the protection of victims, witnesses, and investigators against retaliatory defamation suits.

Thus, the RLD Parties are wrong in contending that Constellation's investigation is "irrelevant." RLD Br. 19. Rather, when evaluating defamation claims arising from statements made during an employer's investigation, courts have focused on whether there is any allegation that the investigation was irregular, shoddy, or conducted in bad faith. For example, in *Vickers*, the court found no abuse of the privilege, despite allegations of falsity, when the employees and employer "followed the dictates of the [company's] personnel policies" and conducted an investigation. *Vickers*, 308 Ill. App. 3d at 406. The court explained that this "demonstrates that [the company] *and its employees* did not recklessly reach a conclusion about plaintiff's conduct in complete disregard of his rights." *Id.* (emphasis added). By contrast, in *Kuwik*, this Court held that there was a question of fact regarding abuse of the privilege when the evidence showed that the company failed "to properly investigate the truth of the matter, limit the scope of the material, or send the material to only the proper parties." *Kuwik*, 156 Ill. 2d at 30.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

Here, the Petition pleads that Constellation retained a third party to conduct an investigation. A25. An exhibit to the Petition describes that investigation, which included an interview of Dent as well as of the victim and witnesses, and confirms that the company did not disclose its findings, other than in privileged communications. A35. The Petition makes no allegation that the investigation was in any way irregular, contrary to written policy, or carried out in bad faith, nor that information about the investigation was improperly disseminated. On these facts in particular, a bare assertion of falsity is wholly inadequate to overcome the qualified privilege.

The irony of Dent's defamation claim is that Dent himself is the only one who publicized the reason for Constellation's termination of his at-will contracts by filing the Rule 224 petition and speaking to the press about it. The RLD Parties assert that Constellation could have avoided the Rule 224 petition if it had simply terminated its at-will contracts without explanation. RLD Br. 20. By giving Dent the opportunity to tell his side of the story so that "the correct information may ultimately be attained," *Vickers*, 308 Ill. App. 3d at 401, the RLD Parties assert that Constellation willfully placed Persons A, B, and C at risk of a retaliatory defamation suit. This argument turns reason on its head and is cause to reject the RLD Parties' position, not a basis for supporting it. The Court should not penalize employers—let alone victims, witnesses, and investigators—for being forthright, careful and honest with all parties involved in an incident of alleged harassment.

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

CONCLUSION

For the foregoing reasons, the Appellate Court's judgment should be reversed, and the matter remanded to the Circuit Court for the dismissal of the Rule 224 petition.

Dated: July 28, 2021

Respectfully submitted,

CONSTELLATION NEWENERGY, INC., CNE GAS SUPPLY, LLC, CONSTELLATION ENERGY GAS CHOICE, LLC, AND CONSTELLATION GAS DIVISION, LLC

By: */s/ J. Timothy Eaton*
One of its Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS
& HOLLISTER LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
teaton@taftlaw.com
jamarilio@taftlaw.com

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

CERTIFICATE OF COMPLIANCE

I, J. Timothy Eaton, an attorney, hereby certify that the foregoing Reply Brief conforms to the requirements of Illinois Supreme Court Rule Rules 341(a) and (b). This reply brief contains 4,384words, excluding the pages contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, those matters to be appended under Rule 315(c)(6), and the certificate of service.

Dated: 7/28/2021

/s/ J. Timothy Eaton

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

EXHIBIT

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

Famer Richard Dent tries to protect his business and reputation

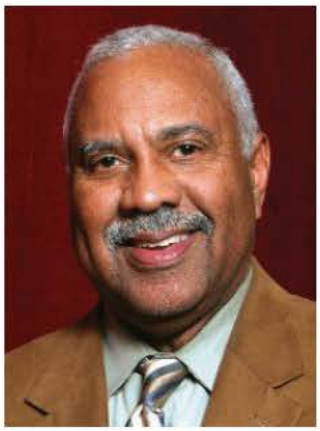
Richard Dent made a name for himself as a dominant pass-rusher while becoming the Chicago Bears' all-time leader in quarterback sacks.

The 2011 inductee into the Pro Football Hall of Fame was a member of the Super Bowl XX champion Bears, placing himself on a pedestal in Chicago sports annals. But Dent, the Super Bowl XX MVP, now finds himself in a more precarious situation than a double-team block as his current livelihood and reputation are being threatened because of allegations of inappropriate behavior at business/social functions.

I wrote Dent's biography with Richard in 2012. We may need to add another chapter detailing this current legal matter.

Dent's company, RLD Resources, has had various energy supply and brokering agreements with Constellation NewEnergy and certain of its affiliates. Constellation is a subsidiary of Exelon Corp. All of the contracts with Dent's company were considered "at-will" so Constellation could terminate them for any reason or no reason. These contracts had been in place for five to six years without any disputes. But in September of 2018, two Constellation attorneys visited Dent's Michigan Avenue office in Chicago and told him that certain allegations had been made against him. An unnamed woman employee of Constellation said that Dent sexually harassed her on two occasions, once at a Constellation-sponsored golf

FRED MITCHELL



Fred Mitchell is an award-winning sportswriter who spent over 41 years with the Chicago Tribune and is now an adjunct professor of journalism at DePaul University's College of Communication.

Privacy - Terms

event in 2016 in the Philadelphia area. And once again at a similar event in the Chicago area in 2018. In addition, an unnamed man said that he observed Dent being "drunk and disorderly" at the JW Marriott Hotel on Adams Street in downtown Chicago in 2018, where Constellation was distributing golfing items to its guests.

Dent denied all of these allegations while Constellation's attorneys have refused to name the individuals who made the allegations.

Mark Huston, a Constellation executive, sent Dent a letter terminating all of Constellation's contracts with him in October 2018. Three months later, Huston announced Constellation's new marketing campaign in which it would be the official energy supplier to the Johnson Controls Pro Football Hall of Fame and Hall of Fame Village in Canton, Ohio.

Dent's attorney, Paul Neilan, says the allegations made against his client are not just false and defamatory. "We believe that both the woman complainant and the gentleman at the J.W. Marriott exist only in the imaginations of the Constellation executives who made up the allegations," Neilan said in a statement. "Both Constellation's initial allegations and its later attempts at embellishment make the kids' game of 52 Pick-up look coherent. We believe that Constellation fabricated the allegations as a pretext to terminate its contracts with Dent, an NFL Hall of Famer. "

When Constellation refused to name the individuals who had made the allegations, Neilan filed a case under Illinois Supreme Court Rule 224, which provides a pre-suit discovery of the identities of persons who may be liable for damages. The Circuit Court ruled against Dent and dismissed the case with prejudice. The decision was appealed and last fall a three-judge panel of the First District Appellate Court reversed the Circuit Court's decision. In March of 2021, in an order signed by Chief Justice Anne Burke, the Illinois Supreme Court granted Constellation's petition for leave to appeal.

Neilan added that "people should compare Chief Justice Burke's willingness to hear Constellation's appeal in Dent's case with her Court's refusal to hear the appeal of 3,800,000 customers of Constellation's affiliate ComEd in 2015. [Hawkins v. ComEd, 32 N.E.3d 673 (Ill. 2015).] ComEd admitted in 2012 that its violation of an ICC order cost ratepayerscost $182 million, but Chief Justice Burke's Supreme Court denied fundamental due process rights to all those ratepayers by ruling that their claim against ComEd could not be heard in any court, regardless of its merits. Now Chief Justice Burke rides to the rescue of another Exelon subsidiary to protect it from the consequences of its own actions. Voters in the State of Illinois should take note of how the Illinois Supreme Court's

MORE ABOUT MITCHELL

Search...

Recent Posts

- Bears Hall of Famer Richard Dent tries to protect his business and reputation
- Former Bears great Steve McMichael says he is "feeling the love" as he battles ALS
- Toni Ginnetti, Dan Roan and Cooper Rollow honored with Ring Lardner Awards
- Nothing will replace the written word
- Dick Barnett scoring points off the court

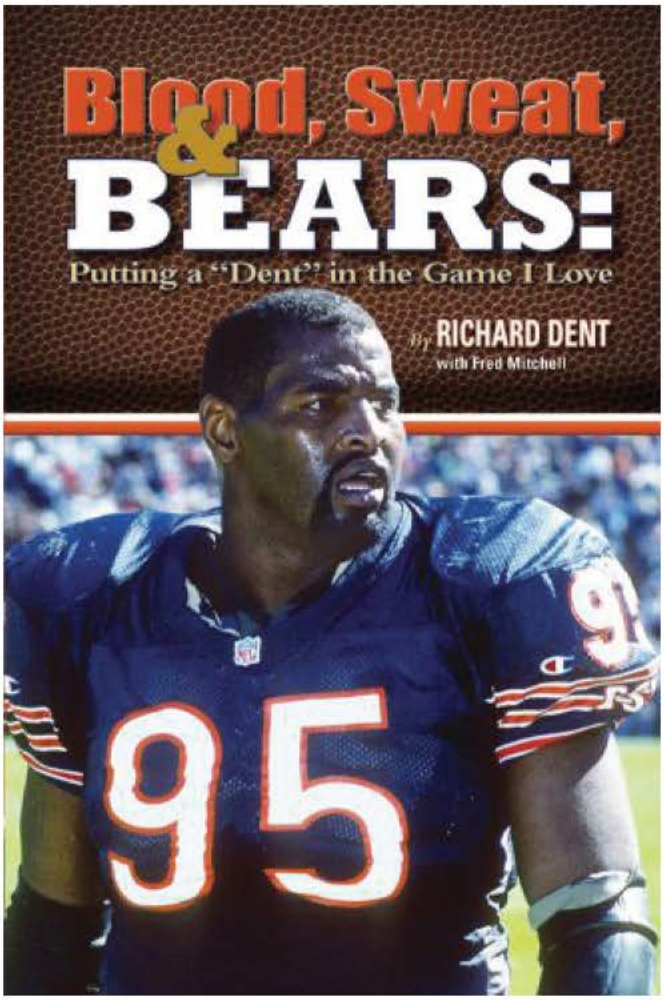
Recent Comments

- Kathy Pueppke on Stand for something or you might fall for anything
- Julius L Brumfield on Stand for someth

Privacy - Terms

discretionary selection of the cases it will hear aligns in such perfect congruity with Exelon's priorities."

Meanwhile, Dent's business future and personal reputation remain in limbo.



By Fred Mitchell | July 5th, 2021 | Chicago Bears, NFL

Share This Story!

or you might fall for anything

- Timm Boyle on Stand for something or you might fall for anything
- Kathy Pueppke on NFL picks to (maybe) click
- Kevin OKeefe on NFL picks to (maybe) click

Archives

- July 2021
- June 2021
- May 2021
- January 2021
- November 2020
- October 2020
- May 2017
- March 2017
- December 2016
- November 2016
- October 2016
- September 2016
- August 2016

Privacy - Terms

ABOUT FRED MITCHELL

Fred Mitchell is an award-winning sportswriter who spent over 41 years with the *Chicago Tribune* and s now an adjunct professor of ournalism at DePaul University's College of Communication.

SEARCH SITE

Search...

CONTACT FRED MITCHELL

CONTACT PAGE

Copyright © 2021 Fred Mitchell, All Rights Reserved | Website by Right Eye Graphics

Privacy - Terms

No. 126795

IN THE SUPREME COURT OF ILLINOIS

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

NOTICE OF FILING

TO: *All Parties on the Attached Service List*

PLEASE TAKE NOTICE that on 28th day of July, 2021, we caused to be filed (electronically submitted), with the Supreme Court of Illinois, **Reply Brief of Constellation NewEnergy Inc., CNE Gas Supply, LLC, Constellation Energy Gas Choice, LLC, and Constellation Gas Division, LLC**, a copy of which is hereby served upon you..

Dated: July 28, 2021

Respectfully submitted,

CONSTELLATION NEWENERGY, INC., CNE GAS SUPPLY, LLC, CONSTELLATION ENERGY GAS CHOICE, LLC, AND CONSTELLATION GAS DIVISION, LLC

By: */s/J. Timothy Eaton*
One of Its Attorneys

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
teaton@taftlaw.com
jamarilio@taftlaw.com

Counsel for Respondents-Appellants Constellation NewEnergy, Inc., CNE Gas Supply, LLC, Constellation Energy Gas Choice, LLC, and Constellation New Energy—Gas Division, LLC

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM

CERTIFICATE OF SERVICE

The undersigned, pursuant to the provisions of 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be and that he caused the foregoing **Notice of Filing** and **Reply Brief for Respondents-Appellants Constellation Newenergy, Inc., CNE Gas Supply, LLC, Constellation Energy Gas Choice, LLC, and Constellation Gas Division, LLC**, to be sent to the party listed below on this 28th day of July 2021, by *electronic mail* and *electronically through the Odyssey Electronic Service*, from the offices of Taft Stettinius & Hollister LLP before the hour of 5:00 p.m.:

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

/s/ J. Timothy Eaton

70741201v1

SUBMITTED - 14223704 - Patricia Braun - 7/28/2021 3:39 PM