Illinois Official Reports

Appellate Court

Glorioso v. Sun-Times Media Holdings, LLC, 2023 IL App (1st) 211526

Appellate Court Caption	MAURO GLORIOSO, Plaintiff-Appellee, v. SUN-TIMES MEDIA HOLDINGS, LLC, and TIM NOVAK, Defendants-Appellants.
District & No.	First District, First Division No. 1-21-1526
Filed	May 8, 2023
Modified upon denial of rehearing	September 18, 2023
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 2021-L-00090; the Hon. Patricia O'Brien Sheahan, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Damon E. Dunn and Neil M. Rosenbaum, of Clark Hill PLC, of Chicago, for appellants. Phillip J. Zisook and William R. Klein, of Schoenberg Finkel Beederman Bell Glazer, LLC, of Chicago, for appellee.

Panel JUSTICE PUCINSKI delivered the judgment of the court, with opinion.
Justice Coghlan concurred in the judgment and opinion.
Justice Hyman dissented, with opinion.

OPINION

¶ 1 Since this court filed its opinion in this matter on May 8, 2023, defendants-appellants Sun-Times Media Holdings, LLC, filed a petition for rehearing, plaintiff-appellee Glorioso filed a response, and defendants-appellants Sun-Times Media Holdings, LLC, filed a reply. We find both parties to have presented strong arguments, and it is based on those new pleadings that this court now modifies its prior opinion. We have significantly modified this opinion based on our reading of defendants-appellants' petition, which basically restates its arguments before the circuit court in not one, but two, motions to dismiss, both of which were denied and neither of which was appealed. The only issue before this court is the circuit court's denial of defendants-appellants' motion to dismiss pursuant to the Citizen Participation Act (Act) (735 ILCS 110/1 *et seq.* (West 2022)), in which Sun-Times Media Holdings, LLC, argued that the plaintiff-appellee's complaint was a "Strategic Lawsuit Against Public Participation," or "SLAPP," and should have been dismissed.

¶ 2 Plaintiff-appellee Mauro Glorioso filed a complaint alleging defamation *per quod*, defamation *per se*, false light invasion of privacy, and intentional infliction of emotional distress arising from two sets of articles published in print and online in the *Chicago Sun-Times* and written by Tim Novak. First, defendants-appellants, Sun-Times Media Holdings, LLC, and Tim Novak (collectively, Sun-Times), filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2022)). The circuit court dismissed Glorioso's count of intentional infliction of emotional distress and denied the rest of the motion. Then, Sun-Times filed a combined motion to reconsider the denial of their original 2-619.1 motion to dismiss, or in the alternative, a 2-619(a)(1) motion to dismiss pursuant to the Code. See *id.* § 2-619(a)(1).

¶ 3 The circuit court denied the motion for reconsideration of its denial of the original 2-619.1 motion to dismiss. The circuit court also denied the alternative 2-619(a)(1) motion to dismiss pursuant to the Code.

¶ 4 On appeal, Sun-Times seeks review only of the circuit court's denial of its alternative request to dismiss the suit as a SLAPP pursuant to the Act.

¶ 5 For the reasons that follow, we affirm the circuit court's October 29, 2021, order denying the motion to dismiss the lawsuit under the Act and find that the underlying suit is not a SLAPP.

¶ 6 Because the circuit court relied, in part, on its prior orders denying Sun-Times's motions to dismiss the defamation claims, we will refer to those issues only as they are pertinent to our analysis of the SLAPP issue appealed.

¶ 7 ### I. BACKGROUND

¶ 8 The underlying matter arises from a January 5, 2021, defamation suit filed by Glorioso against Sun-Times, alleging counts of defamation *per quod*, defamation *per se*, false light

invasion of privacy, and intentional infliction of emotional distress over articles published by the *Chicago Sun-Times* on their website and print newspaper on February 7, 2020; February 9, 2020; October 9, 2020; and October 11, 2020. The articles reported on an investigation by the Illinois Office of Executive Inspector General (OEIG) into the Illinois Property Tax Appeal Board (PTAB or Board) and its handling of the 2011 property tax appeal of the Trump International Hotel and Tower (Trump Tower) in Cook County, Illinois. On November 13, 2019, an anonymous whistleblower filed a complaint with the OEIG (Anonymous Complaint), naming several individuals at PTAB and alleging that the Trump Tower tax assessment was severely reduced for politically motivated reasons.

¶ 9 A. The Anonymous Complaint

¶ 10 The November 13, 2019, Anonymous Complaint lists five individuals against whom the complaint was brought: Steven Waggoner, Mauro Glorioso, Katherine Patti, Simeon Nockov, and Jennifer Vesely. At the time of the activities alleged in the Anonymous Complaint, Waggoner was the acting executive director of PTAB and its chief administrative law judge (ALJ). Glorioso was the chairman of the PTAB Board but became the executive director of PTAB on March 27, 2019. The executive director oversees the day-to-day operations of PTAB, including its ALJs, and may review appeals and recommend decisions. Patti, Nockov, and Vesely were PTAB ALJs. ALJs conduct hearings and prepare written decisions on property tax assessment appeals, but the Board makes the final determination based on a majority vote of its members.

¶ 11 The Anonymous Complaint alleges that (1) ALJs Patti, Nockov, and Vesely worked together handling the Trump Tower property tax appeal between 2017 and 2018, (2) Nockov, with the help of Patti and Vesely, wrote a decision finding that the property did not warrant a property tax reduction, (3) on January 31, 2018, he entered the decision into PTAB's database, which meant that the decision was ready for presentation to the appointed members of the Board for approval, (4) Nockov told various PTAB employees that shortly after he entered his decision on the Trump Tower appeal, Glorioso told Waggoner he wanted a large reduction in the assessment of Trump Tower because the owner of the property was the president of the United States, (5) Waggoner then told Nockov to withdraw his decision and rewrite it to grant a large assessment reduction because the president was the owner and to "Make America Great Again,"[1] (6) Nockov withdrew his decision and, again with the assistance of Patti and Vesely, rewrote the decision so that it granted a reduction in the property tax assessment, (7) Nockov entered the new decision into PTAB's database on June 29, 2018, (8) Waggoner had the decision withdrawn later the same day, (9) Waggoner then took over handling the appeal himself, entering a third draft of the decision into the PTAB database on April 29, 2019, (10) the new draft granted a reduction of several million dollars on the Trump Tower property tax assessment, (11) the new draft was more in line with what Glorioso sought from Waggoner, (12) Nockov confirmed that Glorioso had Waggoner pull this draft as well because he felt it was not the right time to publish the decision, and (13) the decision was pulled from the database on May 7, 2019.

[1]It is unclear from the Anonymous Complaint whether it was Waggoner or Glorioso who wanted the reduction because it was for the president and "to Make America Great Again."

¶ 12 The Anonymous Complaint concludes by stating that, as of the time of filing the complaint, no written decision on the Trump Tower property tax assessment had been issued.

¶ 13 The allegations specific to Glorioso make the following accusations: (1) Glorioso told Chief ALJ Waggoner that he wanted a large reduction in the Trump Tower assessment because the owner was the president, (2) Waggoner's draft was more in line with what Glorioso wanted, and (3) Glorioso decided to pull the decision granting the reduction because he felt the timing was not right.

¶ 14 Sun-Times learned of the Anonymous Complaint when an anonymous source delivered a copy of the complaint to *Chicago Sun-Times* investigative reporter Tim Novak on or around December 23, 2019. Novak served PTAB with a request, pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)), to obtain all communications between PTAB and OEIG relating to the 2011 Trump Tower property tax appeal. The request was denied on January 21, 2020. Glorioso was named in the response from PTAB as one of the individuals who determined that the documents requested were exempt from FOIA; he was identified as the PTAB executive director and general counsel.

¶ 15 B. The OEIG Investigation Finds Complaint Against Glorioso Unfounded

¶ 16 OEIG opened an investigation based on the allegations of the Anonymous Complaint in 2019, captioned "In re: Mauro Glorioso, Case No. 19-02400." While he was unable to receive confirmation of the investigation from his FOIA request, on January 29, 2020, Novak received an e-mail statement from Emily Bittner, the communications director for the governor of Illinois, which stated the following:

> "The administration is determined to get to the bottom of what happened in this situation, and will ensure that a thorough investigation is conducted. PTAB should take no action until an investigation is complete. In general, it would be entirely inappropriate for a legal decision on a property tax appeal to be impacted by any of the conduct alleged in this complaint, including the allegations of political motivations improperly driving the decision making."

¶ 17 On June 8, 2021, the Board issued a unanimous Final Administrative Decision on the 2011 Trump Tower appeal, finding that a reduction of $2,167,996 in the valuation of the property was warranted. The Executive Ethics Commission of the State of Illinois published a redacted version of the OEIG final report in "In re: Mauro Glorioso" (OEIG Final Report) on September 23, 2021. The OEIG final report confirmed that Glorioso had been under investigation, but redacted all information relating to the Anonymous Complaint on the basis that OEIG found the allegations to be unfounded.

¶ 18 C. The Second OEIG Investigation Into Deleted E-mails

¶ 19 The OEIG Final Report also included information about a second complaint, received on October 15, 2020, which alleged that on October 5, 2020, Glorioso improperly deleted all of his e-mails relating to the 2011 Trump Tower property tax appeal, as well as additional related files on his PTAB computer and from office-wide computer systems. OEIG found that Glorioso had been notified through various means in February of 2020 about a document hold requiring him to retain all documents and electronically stored information relating to the 2011 Trump Tower appeal until instructed that the document hold was over.

¶ 20 Based on the investigation, the OEIG Final Report found that Glorioso violated PTAB policy, directives, and state law relating to the maintenance of records by deleting PTAB files and e-mails. On September 23, 2020, Glorioso received notice that he would be terminated from his position. On October 5, 2020, PTAB announced internally that Glorioso would leave the agency on October 23, 2020. However, that date was moved up to October 14, 2020. As Glorioso was no longer employed by the State, OEIG recommended that a copy of its report be placed in his employment file and that he not be rehired by the State.

¶ 21 D. *The Chicago Sun-Times*'s Reporting on Glorioso

¶ 22 On February 7, 2020, *the Chicago Sun-Times* published an article on its website, written by Novak, titled "President's Chicago Tax Appeal on Trump Tower Is Under Investigation." The subheading was "State inspector general, Pritzker administration are looking into allegation a Republican state agency head pressured staff to slash by $1M the $2.5M in property taxes Donald Trump paid in 2012." Tim Novak, *President's Chicago Tax Appeal on Trump Tower Is Under Investigation*, Chi. Sun-Times (Feb. 7, 2020), https://chicago.suntimes.com/2020/2/7/21126855/donald-trump-tower-chicago-property-tax-appeal-investigation [https://perma.cc/5VEN-YCLQ] (hereinafter, Novak, Tax Appeal Investigation). The article stated that (1) OEIG was investigating Glorioso based on an anonymous complaint, (2) Glorioso pressured his staff to rule in Trump's favor on his 2012 Trump Tower tax appeal, (3) Glorioso rejected his staff's decision to deny Trump any refund, (4) Glorioso and Waggoner declined to comment, (5) OEIG would not confirm whether it had received a complaint regarding Glorioso and Trump's appeal, (6) the *Chicago Sun-Times* filed a public records request with PTAB for "correspondence among the inspector general, Glorioso, chief PTAB administrative law judge Steven Waggoner and hearing officer Simeon Nockov," (7) Governor Pritzker's staff would not confirm that a complaint had been filed "against Glorioso and four members of Glorioso's staff," and (8) PTAB rejected the *Chicago Sun-Times*'s FOIA request. *Id.*

¶ 23 The article also (1) describes Glorioso as a "Republican attorney from Westchester" and (2) quotes Bittner's statement to Novak. *Id.* On February 9, 2020, the *Chicago Sun-Times* republished the article in its print edition.

¶ 24 On October 9, 2020, Sun-Times published another article on its website by Novak regarding Glorioso, this one titled "Pritzker Dumps Official Who Pushed for Trump to Get $1 Million Refund on Chicago Tower's Taxes." Tim Novak, *Pritzker Dumps Official Who Pushed for Trump to Get $1 Million Refund on Chicago Tower's Taxes*, Chi. Sun-Times (Oct. 9, 2020) https://chicago.suntimes.com/2020/10/9/21509933/trump-tower-chicago-property-tax-dispute-pritzker-mauro-glorioso-illinois-property-tax-appeal-board [https://perma.cc/MSV5-UZ3M] (hereinafter, Novak, Pritzker Dumps Official). The subheading reads, "Mauro Glorioso, a Westchester Republican the governor appointed to head the Illinois Property Tax Appeal Board, is under a state investigation over his Trump Tower recommendation." *Id.* The article states that (1) Glorioso was under investigation for "trying to force a state agency to give President Donald J. Trump a refund of more than $1 million on the property taxes he paid on his Chicago skyscraper," (2) the investigation was based on an anonymous complaint claiming that Glorioso "ordered the agency to approve the $1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund," (3) "[a]ny tax refund for Trump would come out of property taxes to the city of Chicago and eight other government

agencies, the Chicago Public Schools losing the biggest chunk of money: more than $540,000 if the president gets what Glorioso wants," (4) referring to Glorioso, "[t]he 64-year-old Westchester resident and staunch Republican rejected a report from hearing officer Simeon Nockov, who found that Trump didn't merit a refund," (5) Waggoner found Trump to be entitled to a refund because the Trump Tower property had been over-assessed in 2011, and (6) Waggoner recommended a reduced valuation of the property, which would result in a reduction in property taxes from $2.5 million to $1,031,350. *Id.* The *Chicago Sun-Times* republished the article in its print edition on October 11, 2020.

¶ 25 E. Glorioso's Defamation Complaint

¶ 26 Glorioso filed his defamation suit against Sun-Times Media Holdings, LLC, and Novak on January 5, 2021, alleging, across nine counts against both parties, defamation *per quod*, defamation *per se*¸ false light invasion of privacy, and intentional infliction of emotional distress. The two counts of defamation *per quod* relate specifically to the February 7 and 9, 2020, articles, while the two counts of defamation *per se* relate specifically to the October 9 and 11, 2020, articles. The remaining causes of action relate to all of the articles.

¶ 27 Regarding the defamation *per quod* counts, Glorioso claimed that Novak, having received a copy of the Anonymous Complaint, wrote the February 7, 2020, article, knowing that it was materially false, specifically because the Anonymous Complaint did not state that Glorioso "pressured his staff to cut the president a break"; "pressured his staff to rule in the president's favor" or "reject[ ] the [PTAB] staff's [and hearing officer's] decision to deny Trump any refund"; or directed that the adjudication of the Trump Tower property tax appeal be driven by political motivations, rather than the merits of the case. See Novak, Tax Appeal Investigation, *supra*. Glorioso also claimed that (1) Novak knew that in 2018, when he allegedly told Waggoner that he wanted the president to be awarded a refund, Glorioso had not yet been appointed executive director and general counsel of PTAB, and (2) as then-chairman of the PTAB Board, he had no direct authority over PTAB hearing officers. Glorioso further claimed that Novak knowingly and falsely depicted Glorioso as:

> "(i) taking wrongful action and using his authority solely for political purposes, unrelated to the merits of the Trump Tower real estate tax appeal; (ii) preventing a hearing officer's decision from becoming finalized and published pursuant to those unethical motives; and (iii) demanding a politically-based result in the PTAB appeal, unrelated to the merits of the case."

Glorioso further alleged that Novak knowingly and falsely depicted him as a corrupt political official, lacking integrity in his profession. Glorioso denied having directed that the initial decision submitted by ALJ Nockov on January 31, 2018, be rejected or that a finding in favor of Trump Tower and refunding more than $1 million be substituted in its place. Glorioso claimed that, as a result of the publication of these false statements, he suffered special damages in the form of the loss of his employment as executive director and general counsel of PTAB—and the salary and benefits that came with the position—as well as damage to his reputation, humiliation, anxiety, and other mental distress.

¶ 28 Regarding the October 2020 articles, Glorioso alleged that they constitute defamation *per se* because the statements contained in the online article and its reprint were published with actual malice and portray Glorioso as lacking integrity in his profession. He cited specifically to the articles' stating that he "pushed for" and "tr[ied] to force a state agency to give" then-

President Trump a $1 million refund on the Trump Tower property tax and that he was under state investigation for his Trump Tower recommendation (see Novak, Pritzker Dumps Official, *supra*), both of which Glorioso denied in his complaint. He further claimed that the articles falsely characterize the Anonymous Complaint as having alleged that Glorioso ordered PTAB to "approve the $1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund on the tax bill for the Trump International Hotel & Tower's hotel and commercial space" (*id.*) and that Sun-Times Media Holdings, LLC, and Novak knew that the Anonymous Complaint did not make such allegations. Glorioso repeated the claims from counts I and II that defendants were aware that Glorioso did not have the authority to direct any result in the Trump Tower appeal at the time of the alleged conduct and that defendants distorted the contents of the Anonymous Complaint in order to falsely depict Glorioso as having directed a result in a property tax appeal "solely for corrupt and political purposes, unrelated to the merit of the case." He similarly contended that defendants used his anticipated termination and unrelated statements that he was a "staunch Republican" to distort the actions alleged in the Anonymous Complaint as having been politically motivated and corrupt. Additionally, Glorioso claimed that the articles' false statements that the money Glorioso wanted to save then-President Trump "would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of the money" implied that his actions jeopardized much-needed funding for Chicago's public schools, when no involved taxing district objected to the tax reduction.

¶ 29 Glorioso next alleged four counts of false light invasion of privacy, for both online articles and their reprints, on the basis that they falsely accused him of conduct showing a lack of integrity as executive director and general counsel of PTAB, which publicly depicted him in a false light.

¶ 30 Finally, he alleged a count of intentional infliction of emotional distress, claiming that the statements defendants published about him were extreme and outrageous, that defendants knew there was a high probability of him suffering extreme emotional distress over their publication, and that he did in fact suffer such distress. The circuit court dismissed this count.

¶ 31 II. THE PRESENT APPEAL

¶ 32 Sun-Times now appeals only from the denial of its motion to dismiss the suit as a SLAPP, pursuant to the Act.

¶ 33 In this alternative motion, raised for the first time in combination with a motion to reconsider the circuit court's earlier denial of its motion to dismiss, Sun-Times argues that the articles satisfy the criteria required for immunity under the Act and Glorioso's suit should be dismissed as a SLAPP.

¶ 34 III. ANALYSIS

¶ 35 A. Standard of Review

¶ 36 A motion to dismiss a suit as a SLAPP under the Act is raised as a motion pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2022)), which seeks dismissal where the claim is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." (Internal quotation marks omitted.) *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54; see also *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). At issue on appeal is

the question of " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Sandholm*, 2012 IL 111443, ¶ 55 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). The dismissal of a section 2-619 motion to dismiss is reviewed *de novo*. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008).

¶ 37 The question of whether the suit should have been dismissed pursuant to the Act is a question of statutory construction; as such, we review the circuit court's interpretation of the statute *de novo*. *Sandholm*, 2012 IL 111443, ¶ 41; *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 31.

¶ 38 The legislature enacted the Act to combat the rise of meritless lawsuits used to retaliate against the defendants' attempt to participate in government through exercising their first amendment rights. *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶ 12; *Sandholm*, 2012 IL 111443, ¶¶ 33-34. In the Act, the guiding public policy is articulated as an interest in "strik[ing] a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government" and "protect[ing] and encourag[ing] public participation in government to the maximum extent permitted by law." 735 ILCS 110/5 (West 2022). The Act provides a defense against such "Strategic Lawsuits Against Public Participation," or SLAPPs, where a defendant engages in " '[a]cts in furtherance of the constitutional rights to petition, speech, association, and participation in government ***, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.' " *Goral*, 2014 IL App (1st) 133236, ¶ 32 (quoting 735 ILCS 110/15 (West 2010)). The legislature intended that the Act "shall be construed liberally to effectuate its purposes and intent fully." 735 ILCS 110/30(b) (West 2022). In deciding whether a lawsuit should be dismissed pursuant to the Act, a court must first determine whether the suit is the type of suit the Act was intended to address. *Sandholm*, 2012 IL 111443, ¶ 43.

¶ 39 The circuit court, after noting that Sun-Times should have raised this argument in its initial section 2-619.1 motion to dismiss, determined that defendants had failed to meet their burden of showing that the suit should be dismissed as a SLAPP. We agree with the circuit court.

¶ 40 B. SLAPP Elements and Analysis

¶ 41 In *Sandholm*, our supreme court limited the Act's application to SLAPPs, which it defined as lawsuits "*solely* based on, relating to, or in response to 'any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government.' " (Emphasis in original.) *Id.* ¶ 45 (quoting 735 ILCS 110/15 (West 2008)); see also *Goral*, 2014 IL App (1st) 133236, ¶ 33. If the plaintiff genuinely seeks "relief for damages for the alleged defamation or intentionally tortious acts of defendants," it is not a SLAPP and not subject to dismissal under the Act. *Sandholm*, 2012 IL 111443, ¶ 45.

¶ 42 A court considers three elements in determining whether a suit is subject to dismissal under the Act. The defendants have the burden of showing both of the first two elements: (1) that the defendants' acts were " 'in furtherance of their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action' " and (2) that the plaintiff's claims are solely based on the aforementioned acts, which requires the defendants to show that the suit was (a) meritless and (b) retaliatory. See *Goral*, 2014 IL App (1st) 133236, ¶ 38.

¶ 43 If the defendants prove that their acts were in furtherance of their right to participate in government and that the suit is meritless and retaliatory, the burden then shifts onto the plaintiff to establish, by clear and convincing evidence, the third element—" 'that the defendants' acts were not genuinely aimed at solely procuring favorable government action.' " *Id.* ¶ 34 (quoting *Hammons v. Society of Permanent Cosmetic Professionals*, 2012 IL App (1st) 102644, ¶ 18).

¶ 44 C. Glorioso's Argument

¶ 45 Glorioso distinguishes the *Goral* and *Ryan* cases, arguing that the statements at issue in *Goral* merely questioned the plaintiff's eligibility and qualifications. It is true that we found in *Goral* that the defendant's statements were reasonably capable of an innocent construction because they were conditioned on the existence of other facts and did not actually accuse the plaintiff of committing a crime, thus holding that his statements were not defamatory *per se*. *Id.* ¶ 48. However, here, that is in question due to Glorioso's argument, with which the circuit court agreed, that defendants' statements could be reasonably construed as going beyond any innocent reporting on the investigation to defaming Glorioso because the articles are written around him, specifically, rather than about the investigation more broadly.

¶ 46 Glorioso next distinguishes *Ryan* on the basis that, in that case, we held that the reports communicated the findings of the investigation to the public and to the local government and sought comment and action from the Illinois Supreme Court and the chief judge of the circuit court. *Ryan*, 2012 IL App (1st) 120005, ¶ 19.

¶ 47 The circuit court did not substantively address whether the articles in question are the kind protected by the Act, whether the articles constitute acts in furtherance of Sun-Times's participation in government to procure favorable government action.

¶ 48 D. Sun-Times's Argument

¶ 49 Sun-Times equates its articles about Glorioso to the critical comments made in the blog posts in *Goral*, which we found to be protected political speech that would have been aimed at procuring favorable government action, even if the action sought was to encourage the electorate not to elect the plaintiff. *Goral*, 2014 IL App (1st) 133236, ¶ 63.

¶ 50 Sun-Times also relies on *Ryan*. In *Ryan*, we found that it was "indisputable" that the defendants' investigatory reporting fell within protected activity under the Act. *Ryan*, 2012 IL App (1st) 120005, ¶ 19. In that case, defendants aired a four-part investigative series accusing several Cook County circuit court judges, including the plaintiff, of leaving work early and generally shirking their judicial duties. *Id.* ¶¶ 2-8. Sun-Times compares its reporting on an official investigation into the acts of PTAB executive director and general counsel Glorioso and administrative law judges like Waggoner to the reporting on the behavior of judges in *Ryan*.

¶ 51 i. Whether Defendants' Reporting Was Solely in Furtherance of Government Participation

¶ 52 The first factor the court considers in analyzing whether a lawsuit is a SLAPP is whether the actions alleged in the complaint are of the kind protected by the Act. This is the most straightforward prong. See *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 17. However, the

parties here dispute whether Sun-Times's articles constitute acts in furtherance of government participation, seeking to procure favorable government action.

¶ 53 There is support in *Ryan* for the premise that reporting on the actions of a government agency in order to inform the voting public has value in maintaining a functioning democracy and operational government. However, the present matter is distinguishable, given the existence of a genuine question of fact as to whether the articles solely alert the public to the investigation into PTAB. The articles were published as news articles—factual reporting on the events of the investigation, the alleged PTAB scheme, and Glorioso's firing—as they occurred, rather than editorial or opinion pieces that present the thoughts and stance of the writer. While news reporting could include the goal of favorable government action, as we found in *Ryan*, the facts of this case do not unquestionably lead us to the same finding. There is, for example, no way for voters to remove Glorioso, since he was already fired and the head of PTAB is not an elected position. We cannot conclude that Sun-Times has sufficiently established that the articles were solely in furtherance of their right to participate in government to obtain favorable government action, and we find that there are issues of fact still unsettled at this pleading stage.

¶ 54 ii. Whether Glorioso's Claims Are Based Solely on Sun-Times's Protected Speech

¶ 55 Turning to the second prong, we must establish whether Sun-Times has met its burden of showing that Glorioso's suit was solely based on their exercise of political rights. *Goral*, 2014 IL App (1st) 133236, ¶ 38. In order to do so, defendants must show that the suit was " 'meritless and was filed in retaliation against the [defendants'] protected activities in order to deter the [defendants] from further engaging in those activities.' " *Garrido*, 2013 IL App (1st) 120466, ¶ 18 (quoting *Ryan*, 2012 IL App (1st) 120005, ¶ 21).

¶ 56 As our supreme court explained in *Sandholm*, where it originated the "meritless and retaliatory" standard, SLAPPs are by definition meritless, as the plaintiffs' goal is to chill the defendants' speech and "discourage opposition by others through delay, expense, and distraction." *Sandholm*, 2012 IL 111443, ¶ 34. In *Garrido*, we articulated how to determine whether a suit is meritless or not, stating that a claim is not meritless if, for example, it was subject to dismissal under section 2-615, as immunity based on the Act is an affirmative defense that is properly brought under a section 2-619 motion to dismiss. *Garrido*, 2013 IL App (1st) 120466, ¶ 19; see also *Ryan*, 2012 IL App (1st) 120005, ¶ 26 (rejecting defendants' argument that the claims were meritless because plaintiff failed to sufficiently plead a cause of action under the standard of section 2-615); *Hammons*, 2012 IL App (1st) 102644, ¶ 21. However, a suit *is* meritless if the defendant can disprove some element of the plaintiff's claim. *Garrido*, 2013 IL App (1st) 120466, ¶ 19; see also *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 638 (2010) (plaintiff's defamation claim was meritless because defendant showed that allegedly defamatory statement was actually true). We further explained that a SLAPP does not seek to make the plaintiff whole but, rather, only serves to punish or deter the defendant's legitimate exercise of first amendment rights. *Garrido*, 2013 IL App (1st) 120466, ¶ 20. Because we cannot determine whether a lawsuit is a SLAPP based solely on the pleadings, we must accept all well-pled facts as true and analyze whether Sun-Times has affirmatively disproven some essential element of Glorioso's complaint, which it attempts to do by arguing that the articles only contain statements that are substantially true and fair

reporting or figurative speech that is nonactionable as defamatory content. See *id.* ¶ 23.

¶ 57 a. Whether Sun-Times Has Established the Suit Is Meritless

¶ 58 Sun-Times challenges the merits of Glorioso's complaint by arguing that the articles were substantially true, an innocent construction of the articles precludes judgment, and the articles are privileged as fair reports. The circuit court relied on its prior denial of Sun-Times's first motion to dismiss, based on the same arguments but not invoking the Act, as well as its findings that Novak, through a combination of omissions (of mentions in the Anonymous Complaint of others' alleged involvement in the scheme to reduce the property tax assessment) and additions (of statements assuming Glorioso's personal involvement and culpability) left it a question of fact whether the articles were substantially true or whether they overstated Glorioso's role and motivations in the alleged scheme beyond the actual allegations made by the whistleblower.

¶ 59 We find that Sun-Times's reporting could reasonably be read as not fair, accurate, or truthful by creating the implication that Glorioso was more culpable in the alleged activity than the anonymous complaint claimed, both in terms of his supposed actions and his supposed authority over PTAB employees. These are questions of fact that allow Glorioso's complaint to survive the pleading stage. Defendants have failed to meet their burden of proving that his lawsuit was meritless.

¶ 60 b. Whether Sun-Times Has Established the Suit Is Retaliatory

¶ 61 The next question is whether Glorioso's lawsuit was filed with the goal of seeking damages for the harm that Sun-Times's articles caused to his reputation and character or whether it was "solely based on, related to, or in response to the acts of defendants in furtherance of the rights of petition and speech," intended to chill Sun-Times's "participation in government or to stifle political expression." *Sandholm*, 2012 IL 111443, ¶ 57. The courts look to two factors to conduct this analysis: "(1) the proximity in time between the protected activity and the filing of the complaint, and (2) whether the damages requested are reasonably related to the facts alleged in the complaint and are a 'good-faith estimate of the extent of the injury sustained.' " *Ryan*, 2012 IL App (1st) 120005, ¶ 23 (quoting *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2010)). These factors are not exclusive "and there may well be other factors that are relevant." *Id.* It is the defendants' burden to show that the lawsuit was retaliatory. *Sandholm*, 2012 IL 111443, ¶ 57.

¶ 62 Regarding the timing of the lawsuit, Glorioso sued for defamation approximately 11 months after the publication of the first of the articles at issue. Glorioso argues that the length of time between publication and his suit supports a finding that the suit was not retaliatory, as it did not stifle defendants' rights to petition, to speak, or to participate in government. See *Ryan*, 2012 IL App (1st) 120005, ¶ 23 (plaintiff filed complaint less than three days after the first segment of defendant's reporting aired; proximity in time was "not necessarily dispositive evidence of retaliatory intent," but was "a probative fact," made more plausible by the fact that plaintiff filed suit before the last segment aired). It is true that waiting until shortly before the running of the statute of limitations on the first set of articles does not indicate an attempt to silence Sun-Times's future reporting on Glorioso or PTAB. The approximately three months between the lawsuit and the October articles also does not suggest retaliation. Similarly, unlike instances where plaintiffs attempted to sue for punitively and disproportionally large sums of money, Glorioso seeks $50,000; regardless of his intentions in suing, this does not provide

evidence that the lawsuit was retaliatory. See *id.* ¶ 24 (damages of $7 million in addition to punitive damages suggested retaliation; "[d]emanding damages in the millions for alleged defamation is a classic SLAPP scenario"); see also *Hytel*, 405 Ill. App. 3d at 126 (evidence of retaliation where extraordinarily high damages sought were not supported by the facts pled). We agree with the circuit court that it is a question of fact whether the timing and amount of damages sought indicate retaliatory behavior. However, these are not the only factors to consider, as we may also look to other relevant matters specific to the facts of this case. We will address the other points raised in defendants' petition below.

¶ 63 Sun-Times points to the e-mails it received through a FOIA request to PTAB that reveal that Glorioso was aware of the allegations of the anonymous complaint prior to filing his defamation suit, and, more notably, he acknowledged that the complaint accused him of having directed a particular result in the Trump Tower appeal based on his political bias rather than the merits of the appeal. In his complaint against Sun-Times and Novak, Glorioso takes issue with the articles' characterization of the anonymous complaint allegations as accusing him of precisely that. We emphasize that the defamation suit is not based on the existence of an investigation, which Glorioso concedes. Rather, he argues that the portrayal of the investigation unfairly centers on and inflates his actions and malintent. Furthermore, if he discussed the allegations against him, none of the e-mails Sun-Times obtained amount to an admission to the whistleblower's claims. Therefore, Glorioso's knowledge of the Anonymous Complaint's allegations does not indicate that his suit was retaliatory.

¶ 64 In determining whether the defendants have sufficiently shown that a purported SLAPP was retaliatory, the court applies the Act on a case-by-case basis. See *Hytel*, 405 Ill. App. 3d at 126. Considering the timing of the lawsuit and the amount of damages sought, as well as other factors raised by defendants, we cannot conclude that defendants have met their burden of proving that Glorioso's defamation suit was retaliatory in nature.

¶ 65 IV. SLAPP DETERMINATION

¶ 66 Sun-Times has not established that its articles were solely in furtherance of its right to participate in government to obtain favorable government action. Furthermore, there is sufficient evidence that a reasonable finder of fact could read Sun-Times's articles and determine that they do not constitute fair, accurate, and truthful reporting, for the reasons articulated by the circuit court. We find that Sun-Times has not sufficiently established that Glorioso's suit was meritless. Finally, Sun-Times has failed to meet its burden of showing that the suit was retaliatory, based on the facts and circumstances in this matter, including the timing of the suit and amount of damages sought. Because Sun-Times has not met its burdens, we need not consider the third element of a SLAPP, *i.e.*, the plaintiff's burden of proving by clear and convincing evidence that the acts of Sun-Times were not in furtherance of acts immunized by the Act. See 735 ILCS 110/20(c) (West 2022).

¶ 67 V. CONCLUSION

¶ 68 For the reasons stated above, we affirm the judgment of the circuit court, denying defendants' motion to dismiss pursuant to section 2-619 and the Act, and find that plaintiff's lawsuit is not a SLAPP.

¶ 69 Affirmed.

¶ 70 JUSTICE HYMAN, dissenting:

¶ 71 From the inception of our democracy, one of the most vital roles fulfilled by the press has been as the people's lantern into the darkness of government affairs. Given this institutional distinction, anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes protect socially beneficial speech, especially a free and inquisitive press. At least 32 states and the District of Columbia have adopted anti-SLAPP statutes, with varying protections. The General Assembly intended Illinois's anti-SLAPP statute, the Citizen's Participation Act, to subject meritless SLAPPs to summary, expedited dismissal and attorney fees. *Sandholm v. Kuecker*, 2012 IL 111443, ¶¶ 35-36.

¶ 72 By definition, SLAPPs are abusive, retaliatory lawsuits " 'aimed at preventing citizens from exercising their political rights or punishing those who have done so.' " *Id.* ¶ 33 (quoting *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 630 (2010)). "Plaintiffs in SLAPP suits do not intend to win but rather to chill a defendant's speech or protest activity and discourage opposition by others through delay, expense, and distraction." *Id.* ¶ 34. "SLAPPs use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation." *Wright Development Group, LLC*, 238 Ill. 2d at 630.

¶ 73 In ruling that the Sun-Times must establish that Glorioso's claims are both meritless and retaliatory, the majority adheres to a decade of appellate court decisions considering the "meritless and retaliatory" standard. According to the appellate caselaw, the supreme court's *Sandholm* opinion originated the "meritless and retaliatory" standard. I submit that a careful reading of *Sandholm* reveals that the appellate decisions stray from the reasoning underlying *Sandholm* and the legislature's intent. In my view, *Sandholm* does not create or imply the "meritless and retaliatory" standard, which has essentially weakened a potent deterrent to groundless lawsuits that target those who protest or raise concerns on matters of public interest. At the same time, the appellate decisions have repeatedly fallen short of carrying out the Act's mandate to construe it liberally "to effectuate its purposes and intent fully." 735 ILCS 110/30(b) (West 2022).

¶ 74 With the benefit of the briefing on the petition to reconsider and reevaluation of the underlying caselaw, I respectfully dissent. Based on the record before us, restoring the supreme court's actual holding in *Sandholm* and the legislature's intent justifies the reversal of the circuit court's order.

¶ 75 How the Illinois Appellate Court Went Astray

¶ 76 To assess how we got here, we must closely examine *Sandholm* and the subsequent appellate court cases. In explaining the rationale and the type of lawsuit the Act was intended to thwart, our supreme court uses the words "only meritless, retaliatory" before SLAPPs (twice), SLAPP lawsuits (once) and SLAPP suits (once). First, notice that "retaliatory" comes before SLAPP in each instance, creating a consistent phrase. Second, there is a comma before every retaliatory" and not an "and." This indicates "retaliatory" serves as an adjective describing SLAPP actions and is unrelated to "meritless." Moreover, no variation or other sense of "retaliatory" appears in the opinion.

¶ 77 In addition, nowhere does *Sandholm* discuss, refer to, or hint at a two-prong meritless and retaliatory test, let alone require a movant to demonstrate the lawsuit as retaliatory. For example, the court said the Act is "aimed at discouraging and eliminating meritless, retaliatory SLAPPs, as they traditionally have been defined." *Sandholm*, 2012 IL 111443, ¶ 42. The "purpose of the Act is to give relief, including monetary relief, to citizens who have been victimized by meritless, retaliatory SLAPP lawsuits." (Emphasis and internal quotation marks omitted.) *Id.* ¶ 44. Thus, "retaliatory" describes the nature of SLAPP lawsuits—they are inherently retaliatory.

¶ 78 Besides, a meritless case is meritless whether retaliatory or not. Why would the supreme court indulge any meritless case, least of all a SLAPP suit?

¶ 79 Further support that retaliatory is descriptive rather than an element of a motion under the Act is *Sandholm*'s favorable reference to the Massachusetts Supreme Judicial Court opinion in *Duracraft Corp. v. Holmes Products Corp.*, 691 N.E.2d 935 (Mass. 1998). The *Duracraft* court does not even bring up in any way "retaliation."

¶ 80 More tellingly, the *Sandholm* court noted that *Duracraft* held " '[t]he special movant who "asserts" protection for its petitioning activities would have to make a threshold showing through the pleadings and affidavits that the claims against it are "based on" the petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.' " *Sandholm*, 2012 IL 111443, ¶ 47 (quoting *Duracraft*, 691 N.E.2d at 943). This requirement, according to our court, " 'serve[s] to distinguish meritless from meritorious claims, as was intended by the Legislature.' " *Id.* (quoting *Duracraft*, 691 N.E.2d at 943). Thus, in assessing whether a claim hinges on "petitioning activities alone," the *Duracraft* court focused on the complaint's merit or lack of merit, nothing else.

¶ 81 As in *Duracraft*, our supreme court concludes that if the suit was "solely" based on a defendant exercising rights to petition, speak, associate, or participate in government, then by definition, it is meritless and subject to dismissal. Our supreme court does not mention that the defendant must also show the suit was retaliatory. "[W]here a plaintiff files suit genuinely seeking relief for damages for the alleged defamation or intentionally tortious acts of defendants, the lawsuit is not *solely* based on defendants' rights of petition, speech, association, or participation in government. In that case, the suit would not be dismissed under the Act." (Emphasis added.) *Id.* ¶ 45.

¶ 82 So, where did the meritless *and* retaliatory standard, which the appellate court now routinely employs, originate? The appellate court decision in *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, issued shortly after *Sandholm*. Specifically, the *Ryan* court said that "a movant[ ] must affirmatively demonstrate that the nonmovant's claim is a SLAPP within the meaning of the Act, that is, that the claim is meritless and was filed in retaliation against the movant's protected activities in order to deter the movant from further engaging in those activities." *Id.* ¶ 21. For support, *Ryan* cites paragraph 57 of the *Sandholm* case, which importantly does not contain the word "retaliatory" or include anything about retaliation.

¶ 83 The *Ryan* court also claims that paragraphs 33 and 34 of *Sandholm* define SLAPPs as "meritless and retaliatory"; but again, "retaliatory" does not appear in those paragraphs of *Sandholm*. To repeat, nowhere in *Sandholm* does the supreme court say a defendant must show that a plaintiff's complaint is meritless *and* retaliatory. I believe *Ryan* misread *Sandholm*, placing a burden on a defendant to show that a plaintiff's claims are both meritless and retaliatory, despite no support in the Act's language or supreme court precedent.

¶ 84 Like the majority, numerous appellate courts have followed *Ryan*. In some cases, such as *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 19, the court admitted that "[t]he Act itself does not expressly contain this requirement, and the second prong of the test originated in *Sandholm*, which did not define these terms." Having said that, the court nevertheless followed *Ryan*. In other cases, such as *Samoylovich v. Montesdeoca*, 2014 IL App (1st) 121545, ¶ 27, the court refers to the "*Sandholm* standard" that "where a defendant fails to show that a plaintiff's suit is meritless and retaliatory, the defendant is not entitled to have the suit dismissed under the Act," though the court did not create that standard. In still other cases, the appellate court has followed *Ryan* with little examination of the source of this so-called retaliatory requirement. See, *e.g.*, *Stein v. Krislov*, 2013 IL App (1st) 113806, ¶ 17 (citing *Ryan* and *Garrido* to conclude "defendants must affirmatively demonstrate that plaintiff's suit was retaliatory and meritless"). But see *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶ 17 (finding defendant did not demonstrate plaintiff's suit was "meritless or retaliatory").

¶ 85 Apart from having no basis, requiring that a defendant show a complaint is retaliatory and meritless makes no sense. A meritless claim has no possibility of success, and allowing a plaintiff to proceed anyhow undermines judicial economy and annuls the Act's aim to dispose of facially invalid cases quickly. Further, allowing meritless claims to proceed permits a plaintiff to engage in the abuse the Act sought to avoid.

¶ 86 Moreover, the so-called retaliatory test the appellate court has employed is more likely to encourage than discourage SLAPPs. As the majority notes, courts have generally assessed retaliation by looking at " '(1) the proximity in time between the protected activity and the filing of the complaint, and (2) whether the damages requested are reasonably related to the facts alleged in the complaint and are a "good-faith estimate of the extent of the injury sustained." ' " *Supra* ¶ 61 (quoting *Ryan*, 2012 IL App (1st) 120005, ¶ 23, quoting *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2010)). The first factor appears unworkable in practice. For example, in *Ryan*, the court found that filing a complaint quickly—three days after a news segment aired—was evidence of retaliation. In contrast, the *Stein* court concluded that waiting more than 11 months and filing shortly before the statute of limitations ran was evidence of retaliation.

¶ 87 Similarly, the appellate court has been inconsistent regarding the consequences of the amount of damages sought. On the one hand, the *Ryan* court found a damages request of $7 million indicated retaliation, and, on the other, the *Stein* court found a damages request of $50,000 and punitive damages did too. Moreover, as noted, plaintiffs in SLAPPs whose claims are meritless are using the prospect of the cost, time, and stress of defending against the suits to intimidate and censor. And, to get around the caselaw, a plaintiff simply needs to ask for reasonable damages.

¶ 88 By requiring defendants to show that a complaint is both meritless *and* retaliatory, *Ryan* and its progeny have improperly narrowed the Act contrary to its purpose.

¶ 89 Reporting Was Solely in Furtherance of Government Participation

¶ 90 Under the plain language of *Sandholm*, a defendant's motion to dismiss under the Act should be granted if (i) the defendant's conduct was solely to further their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action and (ii) the plaintiff's claim is meritless. Based on the record, the Sun-Times has satisfied the

actual test set out in *Sandholm*, so I would reverse the trial court and grant the motion to dismiss under the Act.

¶ 91 The majority finds that the Sun-Times did not sufficiently establish that its reporting on the Glorioso investigation was solely to further their right to participate in government to obtain favorable government action. I do not see it this way.

¶ 92 The Sun-Times relies on *Ryan*, 2012 IL App (1st) 120005, to support its argument that its reporting on the investigation was speech the Act protects. In *Ryan*, the defendants aired a four-part investigative series accusing several Cook County circuit court judges, including the plaintiff, of leaving work early and shirking their judicial duties. The *Ryan* court found it "indisputable that defendants' actions in this case satisfy the first prong of the test." *Id.* ¶ 19. The court concluded, "Such activity is well within the scope of the Act, and in fact the investigatory report at issue here is an excellent example of the kind of activity that the legislature sought to protect, as shown by the Act's own language." *Id.* The court also cited the Act's public policy, which states, "[t]he information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy." 735 ILCS 110/5 (West 2010).

¶ 93 The majority acknowledges that "*Ryan* [supports] the premise that reporting on the actions of a government agency in order to inform the voting public has value in maintaining a functioning democracy and operational government." *Supra* ¶ 53. The majority, however, finds *Ryan* distinguishable, concluding that a genuine question of fact exists "as to whether the articles solely alert the public to the investigation into PTAB" because (i) PTAB no longer employed Glorioso and (ii) the head of the PTAB is not an elected position, so voters could not remove him from his position. *Supra* ¶ 53.

¶ 94 Glorioso's employment status is meaningless. Nothing in the Act limits it to speech about either current or former government employees. Indeed, reporting on alleged government malfeasance could lead to reform, irrespective of an employee's status or position. For instance, in *Ryan*, the court found the investigative reporting on the judges satisfied this first prong because it urged the supreme court and chief judge to take action, which they did. Incidentally, the majority has incorrectly stated Glorioso's employment at the PTAB. His last day was October 14, 2020, after the Sun-Times published the articles in February 2020 and October 7 and 9, 2020.

¶ 95 Similarly, the Sun-Times's reporting on the OEIG's investigation into Glorioso, the executive director of the board deciding real estate tax appeals, was undeniably newsworthy and of interest to the public, regardless of his employment status and how he secured his position. Letting the public know about the OEIG investigation could pressure the PTAB to assess its operations and make reforms if needed. As in *Ryan*, the Sun-Times wholly satisfied the first prong.

¶ 96 Complaint Was Meritless

¶ 97 A claim is "meritless" under the Act if the defendant "disproves some essential element of the [plaintiff's] claim." *Garrido*, 2013 IL App (1st) 120466, ¶ 19. By contrast, the existence of an affirmative defense does not establish that a plaintiff's claim is "meritless" under the second prong. *Id.* ¶ 27. We must examine Glorioso's defamation claims to determine whether they have any merit.

¶ 98 To qualify as defamatory, a statement must "harm[ ] a person's reputation to the extent it lowers the person in the eyes of the community or deters the community from associating with her or him." *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). To state a defamation claim, a plaintiff has to plead facts demonstrating (i) the defendant made a false statement about the plaintiff, (ii) the defendant made an unprivileged publication of that statement to a third party, and (iii) publication caused damages. *Id.*

¶ 99 There are two types of defamation: (i) *per se* and (ii) *per quod*. *Tuite v. Corbitt*, 224 Ill. 2d 490, 501 (2006). Defamatory *per se* occurs when the defamatory character is apparent on its face. *Id.*; *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 87 (1996). In Illinois, five categories of statements constitute defamatory *per se*, including words that impute a person (i) has committed a crime, (ii) has been infected with a loathsome communicable disease, (iii) is unable to perform or lacks integrity in performing her or his employment duties, (iv) lacks ability or otherwise prejudices that person in her or his profession, and (v) has engaged in adultery or fornication. *Green*, 234 Ill. 2d at 491-92; *Tuite*, 224 Ill. 2d at 501. A plaintiff must plead defamation *per se* with a heightened level of precision and particularity because it relieves the plaintiff from having to prove actual damages to his or her reputation to recover. *Green*, 234 Ill. 2d at 495; *Bryson*, 174 Ill. 2d at 87.

¶ 100 If a statement is not defamation *per se*, a plaintiff may pursue a defamation *per quod* claim. An action for defamation *per quod* may exist where the statement's defamatory character is not apparent on its face but extrinsic circumstances may demonstrate an injurious meaning or where the statement is defamatory on its face but not a category actionable *per se*. *Bryson*, 174 Ill. 2d at 103. To prevail, the plaintiff has to plead and prove actual damages of a pecuniary nature known as special damages. *Hill v. Schmidt*, 2012 IL App (5th) 110324, ¶ 25.

¶ 101 The fair report privilege protects the news media from defamation actions when it reports information obtained from governmental and public proceedings on matters of public interest. *Harrison v. Chicago Sun-Times, Inc.*, 341 Ill. App. 3d 555, 572 (2003). The privilege also protects news accounts that are not complete reports but a fair abridgment of a proceeding. *Id.* In determining whether the privilege applies, a trial court compares the "gist" or "sting" of the alleged defamation in the official report or proceedings with the gist or sting in the news account. *Id.* If it is the same, the news item is a fair abridgment of the proceedings, and the reporting privilege applies. *Id.* When determining the gist or sting of the allegedly defamatory statements, the trial court " 'look[s] at the highlight of the article, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement.' " *Gist v. Macon County Sheriff's Department*, 284 Ill. App. 3d 367, 371 (1996) (quoting *Vachet v. Central Newspapers, Inc.*, 816 F.2d 313, 316 (7th Cir. 1987)). A statement need not be "technically accurate in every detail" to be substantially true and nonactionable as defamatory content. *Id.* While substantial truth normally presents a question of fact for the jury, it may properly be decided as a matter of law when a reasonable jury would find that the statements were substantially true. *Id.*

¶ 102 As the Sun-Times notes, the articles do not deviate from fair and accurate reporting on the accusations. In the OEIG complaint, (i) Glorioso told Waggoner he wanted a reduction in the Trump Tower appeal because the property owner was the president, (ii) Waggoner complied with Glorioso's directive, (iii) Glorioso's ALJs followed his orders, and (iv) Glorioso's staff and Waggoner authored a revised report granting the reduction. In refusing to dismiss the defamation claims, the circuit court noted, "the implication to be drawn from defendants'

articles—specifically, that plaintiff was the architect of the scheme or the primary target of the investigation." But, in the absence of a false statement in the reporting, and there are none, the Sun-Times cannot be held legally accountable for negative implications that might result. *Andrews v. At World Properties, LLC*, 2023 IL App (1st) 1220950, ¶ 24 (plaintiff's employer not accountable for negative implications that might have arisen from its social media post terminating plaintiff who admitted to "storming the capital" on January 6). Thus, as a matter of law, Glorioso's complaint fails to state claims for defamation.

¶ 103 Like the trial court, the majority concludes the Sun-Times has not shown Glorioso's claim is meritless because its "reporting could reasonably be read as not fair, accurate, or truthful by creating the implication that Glorioso was more culpable in the alleged activity than the Anonymous Complaint claimed, both in terms of his supposed actions and his supposed authority over PTAB employees." *Supra* ¶ 59.

¶ 104 As noted, to state a claim for defamation, a plaintiff must plead facts demonstrating the defendant made a false statement about the plaintiff. The majority considers what implications a reader or listener might draw from the reporting. But the law does not. The law focuses on whether the reporting is factual and accurate. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 590 (2006) (accuracy is " 'benchmark of the [fair report] privilege' " (quoting *Gist*, 284 Ill. App. 3d at 376)).

¶ 105 The Sun-Times reported accurately that the OEIG was investigating Glorioso. When determining the "gist" or "sting" of the allegedly defamatory statements, the trial court " 'look[s] at the highlight of the article, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement.' " *Gist*, 284 Ill. App 3d at 371 (quoting *Vachet*, 816 F. 2d at 316). Just because the anonymous complaint that launched the investigation named other individuals who took part in the alleged misconduct (but conspicuously were not the subject of the OEIG investigation), the Sun-Times's reporting on the investigation into Glorioso was neither false nor misleading. Further, the Sun-Times asserts that Glorioso's e-mails show he knew he was the focus of the investigation. Also, the anonymous complaint alleged he sought a specific result on the tax appeal based on political bias, which further supports that his complaint lacks merit.

¶ 106 Conclusion

¶ 107 Allowing this non-meritorious suit to continue accomplishes what the Act was designed to prevent—the wasting of time, resources, and effort by the parties and the courts on unjustifiable and unsustainable claims. I believe the law in this area needs clarification and correction by our supreme court.

¶ 108 I would reverse the trial court and grant the motion to dismiss.