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

JOSEPH LA MARGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 004136
	)	
VILLAGE OF ORLAND PARK, et al.,	)	
	)	Cal. I
	)	
Defendants.	)	

OPINION AND ORDER

THIS MATTER coming before the Court on the Cross Motions for Summary Judgment, the Court having considered all the pleadings and briefs and having heard argument, and the Court being fully advised in the premises, states as follows:

OPINION

Background and Status of Proceedings

Plaintiff Joseph La Margo ("La Margo") is a former Village Manager for Defendant Village of Orland Park ("Village"). In 2020, La Margo filed a complaint against the Village and Defendants Keith Pekau ("Pekau"), William R. Healy ("Healy"), and Keith Pekau for Mayor ("KPFM"). La Margo's claims against the Village in his Second Amended Complaint ("SAC"), the pleading which now controls this matter, include claims of breach of contract, defamation per se, and intentional infliction of emotional distress ("IIED"). Also in the SAC, La Margo charges Pekau, Healy, and KPFM with defamation per se and IIED. In responding to the SAC, the Village filed counterclaims, which include breach of employment agreement, breach of resignation agreement, breach of fiduciary duty, breach of duty of loyalty, and conversion. All of the parties

have filed motions for summary judgment seeking to have all claims against them dismissed. The Village additionally moves to have summary judgment entered in its favor on each of its counterclaims against La Margo.

La Margo was employed as the Village Manager of the Village of Orland Park. By ordinance, the Village Manager is the senior non-elected administrative official for the Village and is accorded broad authority by ordinance to take executive action on behalf of the Village. As is typical throughout all Chicago metropolitan suburban municipalities matching or exceeding the Village's size, the village manager is an important, visible municipal official who is accorded broad decision-making power and authority to administer the business of the municipality and enforce its laws. Indeed, in many circumstances, the village manager is as much the face of the village as is the mayor or village president, and citizens will as likely deal with the village manager as with the mayor on a broad range, if not the entire range, of municipal management, administration, licensing, permitting, regulations and other administrative matters. The Village operated under the "managerial" form of government authorized by 65 ILCS 5/1 et seq. Therefore, even though the Village Manager's power and authority was broad, the legislative authority in the Village resides with the Village Trustees, not with the Village Manager. Only the Trustees can enact ordinances. The Mayor presides over all sessions of the Board of Trustees. The Mayor, of course, is an elected official of the Village and is its paramount authority, superior to that of the Village Manager.

In late 2018, when Pekau was Mayor of the Village, La Margo claims he had concerns regarding two contractors which had done business with the Village in 2012. He was concerned about whether the contractors were in violation of Village ordinances governing bids for Village business and was involved in bid-rigging and collusion in obtaining Village business. Pekau had

been the owner of one of the contractors at the time. La Margo decided to commence an investigation of Pekau and the contractors subsequent to several discussions he had with various persons in the Village. SAC, ¶¶ 12-15. These persons included some trustees and village attorneys and were apparently not politically affiliated with Pekau. In commencing the investigation, La Margo did not disclose his concerns or his decision to commence an investigation with Pekau or any person immediately affiliated with him. In January 2019, La Margo engaged the Chicago law firm of Jones Day to conduct the investigation of Pekau and the contractor on the bid-rigging concern. Jones Day generated a preliminary report on the investigation, dated March 25, 2019, which was provided to La Margo. Apparently, this report was not provided to any other person in the Village. The report stated that the "record is insufficient to conclusively establish that there were any clear violations of existing law or policy in … the bidding processes involving those contractors." Pekau MSJ, Ex. 9 at p. 10. It further stated that the firm's conclusions were "due in part to [the firm's] incomplete knowledge [of the facts], but … also result[ ] from gaps in the Village's own ethics and purchasing policies." Id.

La Margo's January authorization of the Jones Day investigation coincided with the early days of the municipal campaign for Village offices to be elected on April 2, 2019. Pekau had formed the "People over Politics" Party, which was backing three candidates for three Village Trustee positions. On April 2nd, these three candidates won office, giving Pekau's Party a working majority on the Village Board. (Pekau, in the midst of his term as mayor, was not on the ballot.) Presumably fueled by this election result, Pekau, according to La Margo, "called" La Margo into his office on April 4, 2019 and "forced" him to resign. SAC, ¶¶ 23-24. La Margo did indeed resign and an agreement, entitled "Full and Final Resignation and Severence and Release Agreement" ("Resignation Agreement") was signed by La Margo on April 29, 2019 and

apparently rendered effective May 6, 2019. La Margo actually concluded his service as Village Manager in April 2019. The Resignation Agreement provided, in pertinent part, that the "Village agrees that its Mayor and Board, as a Mayor and Board, shall not make any public statement during a meeting that is disparaging to Employee."

From January 2019 on, La Margo did not disclose any aspect of the Jones Day services, including its billing and its March report, to Pekau or any person affiliated with him. The firm's billing only came to the attention of the Interim Village Manager, Tom Dubelbeis, when he assumed office succeeding La Margo in April 2019. The Jones Day bill or invoice charged a "discounted" total fee of $34,474.75. Thereafter, the billing and the report came to the attention of Pekau and the Village Board of Trustees.

The Jones Day investigation was a subject discussed by the Mayor and the Village Board of Trustees ("Board") during their executive (non-public) session of a Board Meeting on May 20, 2019. On the same day, Pekau gave a "Mayoral" press conference, in the course of which he allegedly stated that La Margo had "violated the law". Later, on May 29, 2019, Pekau held another "Mayoral" press conference, and allegedly stated that La Margo had conducted a "clandestine investigation…for political purposes", had committed criminal acts through improper dissemination of information and official misconduct, and had "questionable judgment" and "nefarious political intentions." In the press conference, Pekau allegedly stated that La Margo committed "an obvious abuse of power that wasted $46,000 of taxpayer money on a politically motivated fishing expedition against a duly elected mayor." Pekau also allegedly stated in the press conference that La Margo violated the law, including the Open Meetings Act. Also on that day, Pekau transmitted emails to the media, which stated that the investigation was a "fabrication",

constituting a commission of criminal acts of official misconduct and inappropriate dissemination of information, abuse of power, and use of public funds for political attacks.

It is also alleged that on or about May 29, 2019, Pekau also included the same statements referenced above in his "official mayoral blog". On May 29, 2019, Trustee Healy shared said on line post on his social media. Later, at a Village Board Meeting on June 3, 2019, Healy stated, among other things, that he would not vote to approve payment of the Jones Day invoice for the investigation work, because to him the expense was incurred in excess of the limit on the village manager's spending authority. He also said that approval of the payment would signal approval of use of public funds to finance opposition research against incumbent elected officials. On June 15, 2019, a local publication issued a report on these matters and included statements made by Healy. It reported Healy as saying that Pekau deserved an apology for having his name "dragged through the mud" and that the citizens deserved an apology for "the amount of money" spent on the investigation. Healy was further quoted as saying he could not "imagine what may have driven La Margo" and that he could not "speak to motivation", but that "I think that the people opposed to [Pekau] hoped to benefit from this."

La Margo alleges that on various occasions through April 2, 2021, Pekau repeated the foregoing statements, or parts thereof, to others and further stated that La Margo had been in collusion with others to run a clandestine investigation for political purposes and without legal authority. It is alleged that Pekau further stated that La Margo improperly accessed private records and violated Pekau's due process rights. He allegedly further stated that La Margo had unethically exceeded his spending authority (and was "misspending" and otherwise "wasting" public funds), was hired to obstruct Pekau, slandered him, and filed frivolous lawsuits. He also alleged that

Pekau filed false claims against him to La Margo's professional association. Spurred by the alleged statements made by Pekau and Healy in 2019, the instant litigation ensued.

Defendants all bring motions for summary judgment ("MSJ's") against La Margo. The Village additionally seeks summary judgment in its favor and against La Margo on its counterclaims. La Margo seeks summary judgment in his favor on the Village's counterclaims in his cross motion against the Village.

Analysis and Opinion

I. Tort Immunity Act Defense

The Village, Pekau (the mayor), and Healy (the village trustee) all contend that the tort claims against them (defamation and intentional infliction of emotional distress) cannot survive their defense of immunity under the Illinois Tort Immunity Act ("Act"), 745 ILCS 10/1-101 et seq. The Act broadly provides an immunity to local governments and public officials on a wide array of claims. The Village, as an Illinois municipal corporation, enjoys the protection of the Act. Pekau and Healy, as the elected mayor and trustee, also enjoy the protection of the Act, as established by the Act's definitions provisions. 745 ILCS 10/1-202; Brooks v. Daley, 2015 IL App (1st) 140392, ¶ 18. The scope of the immunity for such protected persons and entities will depend upon the application of specific provisions of the Act.

A. Tort Immunity Act Defense – Pekau, Healy and KPSM

Pekau and Healy argue that they are immune to the subject claims by operation of 745 ILCS 10/2-201, which provides, in pertinent part:

> Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his

act or omission in determining policy when acting in the exercise of such discretion even though abused.

KPSM argues that if Pekau is immune by operation of statute, KPSM has no liability.

In brief, La Margo alleges that he was injured as a result of Pekau and Healy publicly stating that he violated the law in authorizing expenditures in excess of his legal authority, improperly and illegally conducted, with impermissible use of public funds, a secret and "bogus" investigation against the mayor for political purposes, engaged in collusion to conduct the investigation, abused his power, illegally accessed the mayor's private communications, and "committed criminal acts of official misconduct". However, there is no genuine issue of material fact that these statements, made both orally and in writing, were first made in a village board meeting and then in a press conference on May 20, 2019 and thereafter in other village meetings, in press conferences and interviews, and on social media used by Pekau and Healy to promote their actions as elected public officials.

The Court also finds that there is no genuine issue of material fact that the aforementioned statements were in the context of Pekau and Healy's views on the expenditure of public funds (including the authorization, or not, of legal bills incurred in excess of authority), the nature and conduct of municipal officer investigations, the use of village funds or resources for political purposes, the scope of a village manager's power and authority, and the propriety of actions take by a village manager. All of the foregoing matters were matters of the determination of public policy, which this Court finds as a matter of law. Reyes v. Board of Educ., 2019 IL App (1st) 180593, ¶¶50-51. Indeed, all of the statements constituted the Defendants' opinions and views on these matters. All of the foregoing relate to public policy and are proper subjects for consideration by municipal officials. La Margo has not identified one statement by any Defendant

that fails to meet this description. The fact that many of the statements included personal references to him as acting in a horrendous manner (i.e., "criminal", "illegal", "nefarious", "unethical", "secretive", "clandestine", "unauthorized", "political", fomenting or fabricating a "bogus investigation", making "false statements", making "misleading statements", not "ethical", abusing power, "leaking" confidential investigation material, facilitating wrongful access to email, violating the Open Meetings Act) does not disqualify any of the statements as Pekau and Healy's views on public policy matters as described above. (For more detailed descriptions of the alleged defamatory and tortious statements made by Pekau and Healy, see pp. 4-5 above, SAC, ¶¶ 28-63; Pekau's MSJ, pp. iii-iv; Healy's MSJ, pp. 2-3.) Moreover, Pekau and Healy were entitled to comment on the actions, power, and authority of the Village's village manager, both in formal village meetings and in public, via social media and press conferences and interviews, and could exercise discretion to do so. They had the discretion to take action (or not) in respect of La Margo's past actions and decisions, including approval (or not) of the legal bills incurred in excess of authority and the setting of any policy regarding village manager authority and conduct. See Strauss v. City of Chicago, 2022 IL App 127149, ¶¶ 65-77.

Even if the statements were made with malign intent and intended to harm La Margo, those intentions do not strip the statements of their nature as being acts related to the determination of public policy and/or the exercise of public official discretion. Strauss, supra, ¶68, ¶75. Pekau and Healy, as Mayor and Trustee respectively, had the authority to comment on the aforementioned issues, underscored at p. 7 above, as well as the discretion to comment and take action (or decline to take action) on them. Brooks v. Daley, 2015 IL App (1st) 140392, ¶18; see also id. Thus, 745 ILCS 10/2-201 grants immunity to Pekau and Healy for all of their alleged acts and statements alleged in the SAC to comprise defamation and tortious acts. Strauss, supra, at ¶¶60-75. For these

reasons, La Margo may not bring claims of defamation and intentional infliction of emotional distress against Pekau and Healy due to their immunity under § 2-201 of the Act, and Pekau and Healy's MSJ's as to Counts II and III of the SAC are granted accordingly.

KPSM argues that because Pekau is immune by operation of statute, as found herein, it too cannot be held liable on Counts II and III. It does not cite any case law for the proposition. However, La Margo presented no response to KPSM's MSJ, and therefore did not bring to the Court's attention any authority for holding KPSM liable on these tort claims in the event Pekau enjoys a statutory immunity. Regardless, the campaign organization's liability is wholly dependent on the nature of Pekau's liability. As Pekau enjoys a statutory immunity, it is not clear that there is any theory of liability that would suggest that the claim against the organization should survive. Stated otherwise, if an immunity shields Pekau from liability, even if it is statutory, there is no reasonable theory that would support advancing the same claims, based solely on some theory (here unarticulated by La Margo) of respondeat superior against KPSM. Therefore, the Court finds and holds that Pekau's statutory immunity negates the tort liability claims against KPSM, and KPSM's motion for summary judgment is granted.

B. Tort Immunity Act Defense – Village

In view of the foregoing, the Village is immune under the Act by virtue of § 2-109, which states that if the Village's employee is not liable, the Village itself cannot be liable on the same claim. As this Court has determined that Pekau and Healy enjoy immunity under § 2-201, they cannot be held liable for the claims set forth in Counts II and III. As they cannot be held liable, the Village in turn cannot be held liable for the same claims. 745 ILCS 10/2-109. Moreover, the Village cannot be held liable on the defamation claim (Count II) under any circumstances (and at least under the undisputed facts shown by the submissions) by virtue of § 2-107. In addition, even

if sections 107 and 109 were not considered (as they must be), La Margo fails to make out any persuasive case that the Village is liable for the torts alleged in Counts II and III committed by the other Defendants. There is no law cited by La Margo that establishes liability for these torts under any theory of respondeat superior. See Townsel v. City of Chicago, 2020 IL App (1st) 191124; Marlowe v. Wauconda, 91 Ill.App.3d 874, 882-83 (1980); see also Monell v. Department of Social Services, 436 U.S. 658, 691 (1978); Village's Sur-Response, filed Feb. 21, 2023, p. 5. For all the foregoing reasons, the Village's MSJ on Counts II and III is granted.

II. Absolute Privilege

A. Pekau and KPFM

Pekau, Healy, and KPFM also argue that they are entitled to summary judgment on the ground of absolute privilege. An executive officer enjoys an absolute privilege against defamation claims when the officer is acting within the scope of his official duties when making the defamatory statement or communication. See Blair v Walker, 64 Ill.2d 1, 10 (1976). This rule of law applies to Pekau, the mayor (and per its argument, KPSM, as discussed below). Geick v. Kay, 236 Ill.App.3d 868, 876 (2d Dist. 1992).

Pekau was a mayor, so the issue to be addressed is whether he was "acting within the scope of his official duties" or not. The applicable standard is whether the alleged communication was "reasonably related" to the mayor's official duties. Geick, supra, 236 Ill.App.3d at 876-78. As mayor, the chief executive officer of the village, Pekau's duties included supervision of village managers, the actions and authority of village managers, approval of village expenses, village expenses and budget, village investigations, political activity related to village employees and representatives, all matters regarding the Village Code, and the policy related to and administration of all of the foregoing matters. One could alternatively describe these duties as set forth at page 7

above. There are no genuine issues of material fact that the foregoing are included in the mayor's duties, and the Court so finds. All of the alleged defamatory statements, described above, fell within one or more of these subjects. The fact that many, if not all, of the alleged defamatory communications included personal attacks on the conduct and character of La Margo does not detract from their nature as subjects of the type described above. For example, when Pekau, on May 29, 2019 stated in a press conference, and later on social media, that La Margo had "violated the law" and had engaged in criminal acts in starting the "politically motivated fishing expedition [the ethics investigation]" against him, he was making statements related to expenditure of village funds, the nature of village investigations, the village manager's spending authority governed by the Village Code, and other subjects noted above. Accordingly, the statements were reasonably related to the mayor's duties. See id. This is so even if the content of the statements were uncivil and offensive to La Margo. See id.; Loniello v. Fitzgerald, 42 Ill.App.3d 900, 901-02 (1st Dist. 1976). Moreover, it is also so, even though some or all of the alleged statements can be characterized as "political" or part of a political campaign. See Geick, supra, 236 Ill.App.3d at 877-79. The making of these communications at a political event or in a political campaign or for political purposes does not change their nature as subjects related to mayoral duties. In other words, Pekau can address matters of public interest related to his duties in the course of making a political statement and still be covered by the privilege. (Although one can interpret the comments as advancing Pekau's profile while attacking the actions of his political opponents, it is not clear exactly how the communications made through October 2019 were political in nature, other than as statements made by a politician, because there was no election campaign pending when the remarks were made.) Therefore, all of the alleged defamatory statements, were reasonably related to Pekau's duties, and the absolute privilege is implicated.

An issue raised by the parties is the context and manner of the communications and whether they bar application of the absolute privilege because they are beyond the scope of the duties of the office holder. La Margo claims that none of the alleged defamatory statements are covered by the privilege. Clearly, however, statements made by Pekau in the course of village board meetings in May, June, and October 2019, which were all of the meetings identified in the SAC, were related to his duties, as they addressed some or all of the appropriate subject matters described above. Those statements were plainly protected by the absolute privilege. See Blair, supra.; Meyer v McKeown, 266 Ill.App.3d 324, 325 (3rd Dist. 1994). The authorities are also clear in holding that statements made in press conferences, press and media releases, and media interviews and inquiries fall within the scope of the absolute privilege. See Geick, supra, 236 Ill.App.3d at 871-72, 876-78; Springer v. Harwig, 94 Ill.App.3d 281, 281-84 (1st Dist. 1981); Dolatowski v. Life Printing and Pub. Co., 197 Ill.App.3d 23, 29 (1st Dist. 1990). Accordingly, all the alleged defamatory statements made by Pekau in press conferences, press interviews, and the provision of statements directly to the press are absolutely privileged.

La Margo challenges the applicability of the privilege with respect to a "blast" email sent to hundreds of people through Pekau's political account and postings on Pekau's or KPSM's political website and social media. Again, simply because these methods of communication may have clear political objectives or stand as pure political fora, they do not alter the character of Pekau's statements as reasonably related to his duties as described above. The can jointly stand as communications related to his duties and as communications eliciting political support or inducing political action. See Geick, supra, 236 Ill.App.3d at 877-78. In addition, with respect to the modality of these communications (emails, internet, and social media), the Court takes guidance from a recent local federal case. In Logan v. City of Evanston, the plaintiff brought a

claim against a city police chief for posting alleged defamatory information about him when publicizing an on-going criminal investigation on the chief's personal social media. 2022 U.S. Dist. LEXIS 113928 (N.D. Ill. June 28, 2022). The district court held that even though the chief used his own personal social media to make the statements, because they were statements reasonably related to his duties to promote criminal investigations in the city, they were immunized by the privilege. Id. at *10-*11. This Court sees no reason to come to a difference conclusion here. Therefore, the fact that campaign or personal internet, email, or social media was used to make the alleged defamatory statements, it did not denude them of their nature as within subjects reasonably related to the duties of the mayor.

For all the foregoing reasons, the Court finds that there is no genuine issue of material fact which bars the Court from holding that Pekau enjoyed an absolute privilege in making all of the alleged defamatory statements, as they bore upon subjects reasonably related to his duties as mayor. The public interest counsels that this holding be made. Accordingly, summary judgment is granted to Pekau on this ground. Because judgment is found in is favor on this ground, and he is found to have no liability on Count II accordingly, KPSM cannot be held liable on the same claims of defamation. The discussion regarding imputed liability for KPSM set forth above applies to it here in equal measure. Accordingly, KPSM's motion for summary judgment on Count II is granted on this ground as well.

B. Healy

Healy also argues that he is immunized by absolute privilege and cannot be held liable for defamation. Absolute immunity also applies to legislators when acting within the scope of their official duties, which would include the village trustees of Orland Park. See Meyer v McKeown, 266 Ill.App.3d 324, 326-29 (3rd Dist. 1994); Larson v Doner, 32 Ill.App.2d 471, 474 (2nd Dist.

1961). However, the rule pertaining to legislators differs from that applying to executive officers, like mayors. Meyer, supra, 266 Ill.App.3d at 326-29. In Illinois, the privilege as to legislators is not as broad as that accorded to executive officers and is instead restricted to statements made by the legislator in the course of legislative proceedings. Id. However, defamatory statements made by a legislator during legislative proceedings which are not related to a distinct legislative matter may not be covered by the immunity. See id.; Krueger v. Lewis, 342 Ill.App.3d 567, 474 (2003).

La Margo alleges that Healy defamed him by his remarks in the course of a Board of Trustees Meeting conducted on June 3, 2019. All of those proceedings were official and are of public record. Notably, La Margo fails to identify with specificity in either his complaint or in his response to the motion for summary judgment what the alleged defamatory statements were. The best evidence of the remarks specifically entered into the record of this case is Healy's summary of his remarks set forth at page 3 of his motion. The evidence shows that Healy was given the opportunity to comment on certain bills submitted to the Board for approval, one of which was the Jones Day invoice tendered for the Pekau investigation. Healy stated that he was not going to vote approval and payment of the invoice. Healy specifically criticized Jones Day for submitting the invoice, which was not pre-authorized by the Board, as required by ordinance (and was in an amount exceeding the authority of La Margo to individually authorize). He further stated that payment of the invoice would amount to tacit approval of use of village funds for "opposition research against a mayor and his candidates". He stated that the public would not benefit from this payment, but that only a political action committee would benefit. He further stated that the person responsible for the unauthorized spending should be responsible for the bills payment. He also stated that there should be no "secret investigations", and that if village officials wish to investigate another official, it should be brought to the attention of the Board publicly.

Healy's comments were directly related to his decision on whether to vote to approve the Jones Day invoice. The comments, including those which only broadly suggested that La Margo improperly participated in a secret investigation and allowed attorneys to provide services at a cost in excess of his authority to authorize, conveyed his opinion on the broader meaning upon payment of the invoice and the adverse precedent it would set. Such statements, since they were connected to his vote on the matter, clearly come within the ambit of his legislative duties as he is charged with carrying them out in an official public meeting of the Board. As such, they are protected by the absolute immunity discussed above. There is no genuine issue of material fact that there can be no liability for those statements in the Board meeting on June 3, 2019.

Regardless, it should be noted that Healy's statements in the course of the June 3, 2019 Board meeting do not even meet the threshold of defamation per se. Healy did not make any false statements that La Margo (1) had committed a criminal offense; (2) was incapable of performing his employment duties or lacked integrity in performing those duties; or (3) prejudiced him in his profession. Moreover, Healy's statements constituted only opinion, for which there is no liability under a claim of defamation per se.

III. Statements of Fact

Regardless of the application of the various immunities discussed above, to the extent that La Margo has shown that either Healy or La Margo stated to any third person that La Margo had violated an ordinance and exceeded his authority to authorize the Village to make payments in excess of $20,000.00 by allowing Jones Day to perform legal services in connection with the bidding process investigation, those statements are not actionable because the statements were true. There is no genuine issue of material fact that La Margo was not authorized to engage a law firm, Jones Day, to perform work in excess of $20,000.00 in charges. There is also no genuine

issue of material fact that Jones Day charged more than that amount for its services. In addition, there is no genuine issue of material fact that under the Village's Director Payout Policy, a resigning employee who did not participate in the IMRF Early Retirement Program does not qualify for accrued sick time payout upon resignation. There is no genuine issue of material fact that in March 2019 resigning employee Karie Friling did not qualify for a payout of accrued sick time under the policy. There is no genuine issue of material fact that La Margo authorized the accrued sick time payout to Friling despite that fact that it was contrary to the Policy. Therefore, any alleged statement that La Margo violated Village ordinance with respect to the Jones Day investigation work and violated Village Policy with respect to authorizing sick time payout would not be defamatory because the statements were not false. There can be no liability on the part of the Defendants for any such statements.

The Court wishes to address two arguments raised by La Margo in relation to his actions as Village Manager. First, he claims that he never had Jones Day engage in work that exceeded the $20,000 cost limit. He argues, as he argued at the time, that Jones Day's invoice reflected three separate legal tasks, each amounting to less than $20,000 in charges, and that he had authorized each task separately. Subsequent to the objections to the invoice raised by Pekau, it appears that Jones Day supported this interpretation of the assignment and the invoices. However, there is only one engagement letter for one general matter of an investigation into Pekau's company's practices in the bidding process, with no indication that there are three distinct matters of engagement. In addition, Jones Day issued only one set of invoices for the engagement, prior to June 3, 2019, with no break down in the invoice for three separately billed matters. The documents reflect only one purpose for the engagement, the bidding process investigation, only one file created by Jones Day for the matter, and only one invoice issued for their work, which of course exceeded the $20,000

limit. Moreover, the majority of the village officials who reviewed this matter in 2019 concluded that there was only one discrete legal assignment for which Jones Day was engaged, and that its invoice was for all of the work for that one assignment. They rejected the contention that it was the aggregate of three separate engagements. There is no genuine issue of fact that the documents disclosed the foregoing, rendering Defendants statements that the spending threshold was exceeded as true.

Likewise, the argument that the added payout allowed to Friling was similar to prior instances of such payouts given to other resigning employees does not render the decision any less violative of the payout Policy. La Margo claims that he was privileged to have Jones Day do the legal work at a cost in excess of the limit set by ordinance and to authorize the Friling sick time payout because he had done so before without any later objection from the Board of Trustees and without any consequential legal jeopardy. However, this argument flies in the face of the settled law in this state that doctrine of estoppel against public bodies is not favored. Morgan Place of Chicago v. City of Chicago, 2012 IL App (1st) 091240, ¶ 33. If a municipality is held bound through equitable estoppel by the unauthorized acts of governmental employees, the municipality would remain helpless to remedy errors and forced to permit violations to remain in perpetuity. Id. at ¶ 40. La Margo has not raised any genuine issue of material fact which allows the Court to draw the conclusion that he was permitted, due to prior acts in response to which there was no objection, to violate the ordinance and the policy in 2018 and 2019. Likewise, village officials were free to draw the conclusion, based on the record and the documents, that La Margo failed to comply with the ordinance limiting his independent expenditure of public funds and with the policy limiting the authorization of sick time payouts. The Court's foregoing findings are made in light of these considerations.

IV. Opinion

Moreover, the facts show that the alleged statements amounted to what is construed as statements of opinion under the law of defamation. A statement of opinion is not actionable defamation. Rose v. Hollinger Int'l, Inc., 383 Ill.App.3d 8, 13-14 (1st Dist. 2008). Words constituting merely subjective characterizations lacking precise and readily understood meaning amount to statements of opinion which are not actionable. Id. at 13. Although all opinions imply facts, the question of whether a statement of opinion is actionable is one of degree; the vaguer and more generalized the opinion, the more likely the opinion is non-actionable as a matter of law. Id. at 14. If a statement does not have a precise and readily understood meaning because of its broad scope and lack of detail, it will be construed as non-actionable opinion. Id. at 15. It is notable that broad and conclusionary epithets made in a public and political context usually do not constitute actionable defamation. See, e.g. Brennan v. Kadner, 352 Ill.App.3d 963, 970 (1st Dist. 2004). Indeed, the literary, public, or social context of a statement is a major determinant as to whether it is actionable defamation or not. Id.

There is no genuine issue of material fact that La Margo authorized the Jones Day investigation of Pekau, without disclosing it to Pekau, mere months before a trustees election in which Pekau backed certain candidates, one of which was Healy. After the election, which was successful for Pekau and Healy, and after La Margo ended his employment as Village Manager, Pekau and Healy first learned of the investigation, the costly bill for it, and the fact that La Margo allowed that cost to accrue despite its amount in excess of his authorization to spend. As a consequence of these revelations, Pekau and Healy went to the press and went on social media to make the statements about La Margo described in the SAC and at pages 4 and 5 above. Pekau alleged that La Margo was guilty of "official misconduct", "criminal offense", "abuse of power",

and "violation of the law", based on the foregoing. The statements are broad, generalized, and non-specific. Further, the statements by the Defendants have to be viewed in context, that being the making of statements concerning public, governmental, and political matters by public officials about another public official. La Margo had acted without informing either Pekau or Healy (albeit Healy did not become a trustee until early 2019) and, as stated and found above, he had acted contrary to village ordinance and policy. Moreover, as also stated above, Mayor Pekau and Manager La Margo were not compatible, and Pekau wanted La Margo out as soon as he achieved majority support on the Village Board. In making the statements alleged, the Defendants were acknowledging that an investigation had been conducted against Pekau, and upon hearing or reading the statements, the public would be conscious of the fact that the Defendants were making the statements as much for the purpose of a political defense to the investigation as for the purpose of making accusations against La Margo. Given all of the undisputed facts and circumstances, it is clear to the Court that the alleged defamatory statements, that is, those statements not already shown to have been true, were protected statements of opinion and therefore not actionable.

V. Intentional Infliction of Emotional Distress Claim

La Margo also alleged that the Defendants are liable to him on a claim of intentional infliction of emotional distress ("IIED"). This is based on the fact that Pekau and Healy wrote and made the statements described at pages 4 and 5 above. As stated, the Defendants are immune from this claim by operation of statute. Regardless, the Court addresses the substance of the claim.

A necessary element of an IIED claim is that the tortious conduct alleged must be "extreme and outrageous". Public Fin. Corp. v. Davis, 60 Ill.2d 85, 89 (1976). As the Supreme Court has observed, IIED liability "does not extend to mere insults, threats, annoyances…". Id. Further, "[l]iability has been found only where the conduct has been so outrageous in character, and so

extreme in degree, as to go beyond all possible bounds of decency." Id. at 90. In recent years, the Supreme Court has observed that IIED "[l]iability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Schweihs v. Chase Home Fin., LLC, 2016 IL 120041, ¶ 51. Although a variety of factors have been suggested by the courts to consider in determining whether the alleged actions meets the requisite degree of outrageousness, the outrageousness of the defendant's conduct must be determined in view of all the facts and circumstances pled and proved in a particular case. Id. at ¶ 52. Depending on the facts presented to the court, a court may make a determination as to whether the conduct alleged rises to the level of outrageousness necessary to sustain an IIED cause of action as a matter of law and in summary judgment proceedings. Id. at ¶¶ 48, 51-52, 60-61.

As stated above, La Margo violated the ordinance limiting his authority to authorize costs at a $20,000 ceiling. The purpose of the engagement of Jones Day was to conduct a confidential investigation into Pekau's company's practices in past bids for village contracts. The investigation concluded in a written report that no wrongdoing by Pekau's company could be found. Pekau learned about the investigation and its concluding report after La Margo tendered his resignation as Village Manager, a resignation which Pekau desired. As a consequence, Pekau reacted strongly to the investigation and the manner in which La Margo engaged in it, including the consequence of the law firm's charge of $34,474.75 in fees. His reaction was based on the instigation of the investigation, the secrecy of its conduct, its conclusion absolving him of wrongdoing, the use of Village funds to obtain the investigation, and La Margo's approval of the expense of the investigation despite its cost in excess of his authority to spend without Board approval. La Margo provided no evidence that any of the foregoing was not a fact or occurrence. Pekau clearly

perceived La Margo to be aligned with his political adversaries. Pekau concluded that if the investigation revealed any wrongdoing on Pekau's company's part during bidding, that the conclusion would be communicated to the electorate to the detriment of Pekau's party, which was promoting trustee candidates in the spring 2019 election, including Healy.

Pekau's reaction was to publicly denounce the investigation, its secrecy, and its purpose. He also denounced La Margo's authorization of the investigation despite its cost exceeding La Margo's authority. In so doing, he made the claims that La Margo's actions were criminal, an abuse of power, official misconduct, unethical, and the like, as described at pages 4 and 5 above. Pekau claimed that the investigation was politically motivated. Healy agreed with this assessment and publicly made his own statements denouncing the secret investigation, as set forth on pages 2 and 3 of his MSJ. Under the facts and circumstances, it is clear that Pekau and Healy wanted to garner public support for the cessation of "secret" investigations of Village officials, for the ending of public funding of the same, and to shed light on the conduct of their political adversaries, i.e., the instigation and promotion of the "secret investigation" against Pekau and his party. There is no proof that the foregoing was not the case, and that the exclusive or primary purpose of the statements was to harm La Margo. There is also no proof that Defendants did not believe these concerns to be legitimate, and these objectives are reasonable under the circumstances. It is indisputable that the method of funding and conducting internal investigations at the Village is a proper matter of public concern. Thus, Defendants' objective in making the subject statements, particularly any objective other than an intent to harm La Margo, was reasonably legitimate. This is a proper factor to consider in determining the level of outrageousness of the alleged conduct. Schweihs, supra, at ¶ 52. As such, it significantly detracts from La Margo's claim that the conduct was actionably outrageous.

It should be noted that La Margo has emphasized that his position was Village Manager was non-partisan and that he was an appointed civil servant, not an elected official. That fact is of little consequence in this dispute, as the Village Manager was a public official nonetheless, and it can be expected that the acts of such an official may be the subject of public comment by elected officials, even in a political or partisan context. Moreover, an issue need not be partisan in order to be political. Thus, the distinction made by La Margo between the Village Manager's position and that of elected officials is of no legal significance in this matter.

In addition, the Defendants' accusations that, essentially, La Margo had engaged in public corruption and had acted, accordingly, criminally, unethically, and unprofessionally, while severe, offensive, and distasteful, were not uncommon ones to be heard in the context of local government and politics. Elected public officials are known to accuse their adversaries of bad conduct, including criminal conduct. Although likely jarring to all concerned including the residents of the Village, the extreme statements cannot be considered so singularly outrageous, "atrocious and utterly intolerable in a civilized community". Sadly, such statements are commonplace in contemporary political discourse. And in Cook County, Illinois, where numerous local officials have been convicted of crimes of public corruption over the years, and in a state where several governors were likewise convicted, the accusations cannot have been received as so extraordinary and unprecedented. Also notable is the fact that despite the alleged damaging nature of the statements to one's professional career, La Margo easily found re-employment as a village manager shortly after his termination at a higher salary and is currently employed as the Village Manager of Niles, Illinois at his highest salary yet. La Margo has failed to cite a case where the circumstances presented in this case have given rise to an IIED claim. Given the facts and circumstances of this case, the Court finds that the conduct alleged to have been committed by

Pekau and Healy, and shown by the record, does not rise to the level of extremity and outrageousness necessary to sustain an IIED cause of action. Defendants are entitled to summary judgment on the IIED claim, Count III.

VI. La Margo's Breach of Contract Claim

Count I of the SAC alleges that the Village breached its contract with La Margo (the subject contract being the Resignation Agreement) because Pekau and Healy made public statements during a meeting which were disparaging.

At the outset, the Court finds that the statements made by Pekau during the May 20, 2019 executive session, which was a closed meeting of the Board of Trustees, did not constitute a violation of the non-disparagement provision, because the statements were not "public statements", which is a requirement of the provision. The later release of the record of that meeting publicly does not constitute a violation of the provision, as the provision does not make any allowance for later publication of private statements. The provision cannot be reasonably interpreted as including the later release to the public of private statements made in closed meetings.

But the most serious problem with Count I stems from the Villages argument that La Margo cannot establish any contract damages arising out of the alleged breaches. Damages are an essential element of a breach of contract action. In Re Illinois Bell Tel. Link-Up II, 2013 IL App (1st) 113349, ¶ 19. Failure to establish the existence of calculable contract damages in response to a Celotex- type MSJ merits a finding that the defendant is entitled to judgment as a matter of law. See id., at ¶¶ 24-25, 29-30. It was La Margo's burden to establish a genuine issue of material fact

regarding the existence of recoverable damages by some proof in response to the MSJ. Kimbrough v. Jewel Cos., Inc., 92 Ill.App.3d 813, 816, 819 (1st Dist. 1981).

It is indisputable that La Margo was entitled to nine months severance pay, at an increased salary rate, from the date of his resignation from Village employment. It is also indisputable that without a lapse in such income, La Margo went on to work in two village manager positions for two municipalities, each awarding him a higher salary than the one he was paid at the Village. The fact that the first of those two positions was located in the State of Michigan and necessitated La Margo's out of state transportation is of no consequence, as those costs would not be the natural result of the alleged breach, and he cites no authority to the contrary. His self-serving, unsupported testimony that "no one" in Illinois "was touching him" is unavailing without some proof of the same. Moreover, the claimed increased costs incurred by La Margo to keep his extended family in circumstances commensurate to those to which they were accustomed due to his work in Michigan is also not an element of damages, as they too would not be a natural result of the alleged breach, and he cites no authority to the contrary. They cannot be considered damages because they are not the consequences of the alleged breach of the Resignation Agreement. Finally, the alleged resulting "emotional damage, embarrassment, immense stress" and family disruption are not valid elements of recoverable contractual damages, at least under the facts and circumstances of this casee. See Hanumadass v. Coffield, Ungaretti & Harris, 311 Ill.App.3d 94, 100 (1999); Doe v. Roe, 289 Ill.App.3d 116, 130 (1997). La Margo fails to provide any proof of the possibility of any recoverable contract damages suffered by him. As a result, the Village is entitled to summary judgment on Count I.

VII. The Village's Motion for Summary Judgment on the Counterclaim

The Village moves for summary judgment on its seven-count counterclaim against La Margo. These seven claims are (1) breach of employment agreement, (2) breach of fiduciary duty – Jones Day expenditure, (3) breach of duty of loyalty – Jones Day expenditure, (4) breach of fiduciary duty – sick time pay out, (5) breach of duty of loyalty – sick time pay out, (6) conversion, and (7) breach of the Resignation Agreement. The Village alleges that La Margo's wrongful retention of Jones Day for the investigation which cost more than his authority to spend and his authorization of impermissible sick time pay triggers liability for Counts I through VI. The Village also alleges that La Margo disparaged Pekau in violation of the Resignation Agreement. In short, there are multiple genuine issues of material fact which bear on each of these claims. Due to these extent issues of fact, the Village cannot now establish that it is entitled to judgment as a matter of law on any of these claims. For this reason, the Village's MSJ on its Counterclaim is denied without prejudice.

VIII. La Margo's Motion for Summary Judgment on the Village's Counterclaim

In his cross motion for summary judgment, La Margo claims that he is entitled to judgment as a matter of law on the Village's counterclaim, the seven counts thereof summarized above.

La Margo argues that he is entitled to dismissal of the Counterclaim due to the Citizen Participation Act, 735 ILCS 110/1. The Village's claims are not based on any action of La Margo's which is a product of his right to petition, speak, associate, or participate in government. Nor are the claims intended to retaliate on the basis of such exercises, which in fact did not occur. The Citizen Participation Act is inapplicable to this claim, and La Margo is not entitled to judgment on this basis.

La Margo argues that he is immunized by the Tort Immunity Act by operation of Section 2-201. The Village claims that La Margo did not have the discretion to authorize the either of the expenditures at issue. La Margo has not proven the contrary. As such, as he has not shown that he had that discretion, the Act does not apply to these claims. La Margo is not entitled to judgment on this basis.

La Margo argues that his statements about Pekau are privileged, having been made only in the course of this litigation. However, the Village has shown that it has proof that La Margo disparaged Pekau at other times and outside the ambit of this litigation. The litigation privilege does not apply. La Margo is not entitled to summary judgment based on this argument.

La Margo argues that the Resignation Agreement bars the Counterclaims. The Village clearly shows that the Agreement's terms do not bar the claims against La Margo. The indemnification provisions do not apply to these claims. The Agreement does not contain a release for the actions alleged in the Counterclaim. La Margo is not entitled to summary judgment based on this argument.

The Village has shown the existence of proof that La Margo both breached his fiduciary duties and converted funds. Due to the existence of a genuine issue of material fact on these points, La Margo is not entitled to summary judgment on these claims.

La Margo emphasizes in his submissions that in commencing the investigation, he was adhering to his duties and obligations as village manager in policing the bidding process and uncovering possible malfeasance. But La Margo cites no law supporting the conclusion that he therefore had the right to breach the law that limited his spending authority. Moreover, his objective could have been accomplished by means other than the path he took. He could have left

the matter entirely at the hands of the village attorney, or he could have raised the concerns before the Board of Trustees, or he could have reported the matter to state or federal prosecutors. He did none of those things.

For all the foregoing reasons, La Margo's MSJ is denied without prejudice.

IX. Conclusion

For all the reasons set forth above, the Village, Pekau, KPFM, and Healy have established that they are entitled to judgment as a matter of law. Their motions for summary judgment on Plaintiff's claims are granted. Judgment is entered in their favor and against Plaintiff on the Second Amended Complaint.

In addition, the Village's motion for summary judgment on its Counterclaim is denied without prejudice. Likewise, La Margo's motion for summary judgment on the Counterclaim is denied without prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Court finds that there is no genuine issue of material fact which would bar the entry of summary judgment on the Second Amended Complaint in favor of the moving Defendants, and that the moving Defendants have established through the record entitlement to judgment in their favor as a matter of law;
2. Defendants' Motions for Summary Judgment on the Second Amended Complaint are GRANTED, and judgment is entered in favor of Defendants and against Plaintiff on the Second Amended Complaint;

3. Defendant/Counterplaintiff Village of Orland Park's Motion for Summary Judgment against Plaintiff on the Counterclaim is DENIED without prejudice, and Plaintiff/Counterdefendant Joseph La Margo's Motion for Summary Judgment on the Counterclaim is DENIED without prejudice.

4. This matter is set for further status on June 13, 2023 at 9:30 a.m.

Date: June 12, 2023

ENTER:

Hon. John J. Curry, Circuit Judge

Order of Court

Judge John J. Curry, Jr.
JUN 12 2023
Circuit Court-2126