

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

CONSTANTINE P. XINOS,)	
)	
Plaintiff,)	
)	
v.)	No. 2010 L 001003
)	
SUZANNE O'BRIEN, DENNIS)	
O'BRIEN and MIKE STEWART,)	
)	The Hon. Dorothy F. French
Defendants.)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

NOW COME DEFENDANTS DENNIS and SUZANNE O'BRIEN, (the "O'Briens") by their counsel, Mudd Law Offices, and pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005, move this Court for entry of summary judgment in their favor and against Plaintiff CONSTANTINE P. XINOS (the "Plaintiff"). In support of their motion, the O'Briens submit their Memorandum in Support of Motion for Summary Judgment ("Memorandum") and Statement of Undisputed Material Facts ("Statement") with attached supporting affidavits and exhibits, and state the following:

The Plaintiff filed his Complaint for defamation *per se* seeking to recover damages arising from certain statements made by the O'Briens in a letter ("Letter") addressed to the Briarwood Lakes Community Association ("Association").¹ As discussed in greater detail in the O'Briens' Memorandum, which is filed herewith and hereby incorporated by reference herein, this Court must grant summary judgment in favor of the O'Briens and against the Plaintiff. The

¹ The Plaintiff's Complaint contains two counts of defamation *per se*. *Id.* Only the first count has been filed against the O'Briens. Compl. ¶¶ 1-23. The second count is against the O'Briens' deceased friend who, allegedly, distributed the O'Briens' letter. *Id.* ¶¶ 24-28. Although not at issue here, the Plaintiff actually prevented the distribution of the O'Briens' letter.

statements contained in the O'Briens Letter are subject to a qualified privilege. The O'Briens made the statements in an effort to protect their contractual interest in purchasing a property within the Association's boundaries (the "Briarwood Property") by arguing against exercising the Association's right of first refusal for the benefit of the Plaintiff's clients. Defs.' Mem. Supp. Mot. Summ. J. ("Defs.' Mem."), Sec. II. Additionally, the O'Briens directed the letter to the Association's members and Board of Governors who also had an interest in the outcome of the vote on whether to exercise the Association's right of first refusal. Id. These circumstances give rise to a qualified privilege. See Naeemullah v. Citicorp Servs., 78 F. Supp. 2d 783, 792 (N.D. Ill 1999).

Further, each of the statements is substantially true, opinion, or capable of innocent construction that precludes liability. Defs.' Mem, Sec. III. As such, the statements made by the O'Briens about which the Plaintiff complains do not constitute defamation *per se*. Id.; see also Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc., 227 Ill. 2d 381, 402 (Ill. 2008) (statements that are substantially true cannot be defamatory); Moriarty v. Greene, 315 Ill. App. 3d 225, 234 (1st Dist. 2000) (statements that constitute protectable opinion cannot give rise to a claim for defamation); Green v. Rogers, 234 Ill. 2d 478, 499 (Ill. 2009) (statements subject to an innocent construction cannot give rise to a claim for defamation *per se*). Indeed, some of the words about which Plaintiff complains, such as unethical, immoral, and recalcitrant, constitute broad terms that constitute constitutionally protectable opinions incapable of underlying specific facts necessary to support a claim for defamation. See Manjarres v. Nalco Co., 2010 U.S. Dist. LEXIS 21970, *11, (N.D. Ill 2010). Thus, none of the statements about which the Plaintiff complains can in these circumstances (if ever) support a claim for defamation, and the Plaintiff's claim for defamation *per se* against the O'Briens must fail.

Given the foregoing, there exist no genuine issues of material fact. See supra; see generally Defs.' Mem. Indeed, the Plaintiff cannot present any factual basis arguably entitling him to judgment in his favor. Id. Consequently, the case can be decided as a matter of law, and summary judgment is proper. See 735 ILCS 5/2-1005; Horwitz v. Holabird & Root, 212 Ill. 2d 1, 8 (Ill. 2004).

WHEREFORE, for the foregoing reasons and those in their Memorandum, Defendants Dennis and Suzanne O'Brien move this Court to enter an Order granting summary judgment in their favor and against the Plaintiff pursuant to Section 2-1005 of the Illinois Rules of Civil Procedure as well as for such other and further relief as this Court deems fair and just.

Dated: October 14, 2011
Chicago, Illinois

Respectfully submitted,
DEFENDANTS,
DENNIS and SUZANNE O'BRIEN

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