2015 IL App (1st) 143094-U
No. 1-14-3094
September 29, 2015
Modified Upon Denial of Rehearing April 19, 2016

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ANDREW U.D. STRAW, Plaintiff-Appellant, v. STREAMWOOD CHAMBER OF COMMERCE, INC., an Illinois not-for-profit Corporation, PADDOCK PUBLICATIONS, INC., and DONNA M. LENHARDT, Defendants-Appellees.	)	Appeal from the Circuit Court Of Cook County. No. 13 L 063066 The Honorable Martin S. Agran, Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: When a plaintiff's complaint alleges violations of Articles 1 & 6 of the Illinois Human Rights Act, he must first exhaust administrative remedies before seeking judicial review in the circuit court. When a statement alleged to be defamatory, is reasonably capable of a nondefamatory interpretation, it should be given that interpretation under the "innocent construction" rule. Finally, a plaintiff who predicates his case on the Human Rights Act must first exhaust his administrative remedies before seeking declaratory relief in the circuit court.

¶ 2 The plaintiff, Andrew Straw (Straw), a disabled attorney with a license to practice law in both Indiana and Virginia, filed a complaint against the defendants, (1) Streamwood Chamber of Commerce (the Chamber), an Illinois not-for profit corporation in the city of Streamwood, Illinois; (2) Donna Lenhardt (Lenhardt), the Chamber's Executive Director; (3) Paddock Publications, Inc. (Paddock), d/b/a "Daily Herald" newspaper; and (4) Louis Bowers (Bowers)[1]. Straw's complaint alleged violations of the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq*.) (the Act), alleged that Straw was defamed, and sought a declaratory judgment. The Chamber and Lenhardt jointly filed a section 2-619 motion to dismiss predicated on section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)), and Paddock filed a section 2-615 motion to dismiss based on section 2-619 of the Code. 735 ILCS 5/2-615 (West 2012). The circuit court granted both motions with prejudice and Straw appealed.

¶ 3 We find that the circuit court did not err when it granted the defendants' motions and dismissed Straw's second amended complaint with prejudice. Accordingly, we affirm the decision of the circuit court.

¶ 4 BACKGROUND

¶ 5 Straw is a disabled attorney who is licensed to practice law in Indiana and Virginia. Straw is also a public figure who works on disability rights issues. Straw is a resident of Streamwood, a suburb of Chicago, Illinois. Straw alleged that between January 2013 and August 2013, he became aware that a number of handicap parking spaces were missing from parking lots located in Streamwood. Straw contacted the Village of Streamwood and offered

[1] Bowers settled with Straw prior to this appeal and is no longer a party.

to help the president enforce federal handicapped access laws which governed Streamwood's parking lots. See 42 U.S.C.A. § 12101 *et seq*. The president declined Straw's invitation and advised Straw that the village's enforcement mechanisms were sufficient and provided better due process.

¶ 6 After visiting three different shopping centers in Streamwood on August 27, 2013, and after observing that the parking lots were missing handicap parking spaces, Straw sent demand letters to thirteen local businesses, including the Chamber. Straw's letter to the Chamber demanded that the Chamber comply with federal standards prescribed by the Americans with Disabilities Act (42 U.S.C.A. § 12101 *et seq*.) regarding the number of handicap parking spaces that were required to be available in parking lots, and it demanded that the Chamber make a payment of $5,000 to Straw's bank account by October 27, 2013, to avoid a lawsuit.

¶ 7 Lenhardt received Straw's letter, contacted the Streamwood Police Department, and requested an investigation, believing that the letter was a scam. A Streamwood police officer interviewed Straw in his home, documented the incident, and closed the case.

¶ 8 Paddock, the publisher of the Daily Herald newspaper, published a front-page story in the Daily Herald on August 30, 2013 about Straw's letter to the Chamber and about Lenhardt's response to the letter. The August 30, 2013 article quoted Lenhardt as saying, "If other businesses are receiving the letters, I would urge them to consult their attorneys and not to act until they have legal advice."

¶ 9 On September 4, 2013, Straw visited the Chamber's parking lot with two reporters from the Daily Herald to film an investigative report regarding the Chamber's alleged lack of

accessibility. The film documents Straw's conversation with Lenhardt. Straw alleged that during the filming, Lenhardt walked back inside the Chamber and shouted, "this is extortion!" However, Lenhardt's comment does not appear in the edited footage of the film, which is the only version in the record.

¶ 10 Paddock published a letter to the editor from Bowers regarding Straw's demand letters on September 6, 2013. Bowers' letter states:

> "Lawyer's motives for suit are obvious
>
> The Friday, Aug. 30, edition of the Daily Herald had an article saying a lawyer, Andrew Straw, was demanding $5,000 each from businesses for failing to provide handicapped parking.
>
> It strikes me that the motive for the letters he sent out is greed, the method is extortion, and the rationalization is his concern for civil rights. If the issue were purely civil rights, he would have demanded that access parking be provided by a given date or face court action.
>
> The demand for money shows his real motive. And as to extortion, that can be legal or illegal. In his case, it may be legal, but it is still extortion. Of course, sadly, this sort of thing happens far too often in our culture, in our litigious society.

> Greed and extortion (legal) with some sort of rationalization (no one ever acknowledges greed as a motive; the person bringing the lawsuit always "just want to make things right").
>
> Louis Bowers
>
> Mount Prospect" (emphasis in original).

Paddock also published Straw's response to Bowers' letter on October 21, 2013, in which Straw asserted that he was "standing up for disabled people."

¶ 11 On October 4, 2013, Paddock published another article which appeared on its website, entitled "Streamwood man's letters to businesses target ADA compliance." Straw alleged that the Daily Herald's article prompted several harmful and retaliatory comments from third party users, including the following comments from Lenhardt:

> "Interesting. Suddenly [sic] a private citizen's concern that a threatening letter might be a scam is twisted into a retaliation attempt. That's unfortunate. It would appear that my best intentions AS AN UNPAID VOLUNTEER OF A NOT-FOR-PROFIT organization is [sic] being posited as a deliberate, knowledgeable, [sic] act. *** There has NEVER been a thought that the issue Mr. Straw brought to my attention wasn't a valid one. I agree completely. I just don't think "The Chamber" should be vilified *** Best of intentions have been deliberately misrepresented as being vengeful.
>
> ***

> Not proud of the fact that I get tongue-tied when I feel like I am being bullied and words come out wrong. Mr. Straw, you are absolutely right that the parking lot needs to be painted correctly. I'm personally apologizing if you thought any of my actions were vengeful. I am not educated in any aspect of the law and had no idea at the time that your demand letter was a legitimate way to address someone you had never had contact with. I deeply apologize and hope you can understand that the Chamber and it's [sic] members do not condone non-compliance.
>
> * * *
>
> The complaint wasn't for harassment. *** The concern was that there might be a scam. *** [sic] You have [a] beef against the way I reacted when I thought someone was sending an extortion-type letter."

¶ 12 Straw filed his first complaint on December 4, 2013. All defendants moved to dismiss the complaint on February 6, 2014. On May 1, 2014, instead of responding to the defendants' motions to dismiss, Straw filed an amended complaint. On May 30, 2014, the circuit court granted the motions to dismiss without prejudice and denied Straw leave to file a first amended complaint, determining that the pleading was insufficient. That same day, the court granted Straw leave to file a second amended complaint by June 27, 2014.

¶ 13 On June 10, 2014, Straw filed a second amended complaint in which he alleged that he received two letters from Paddock's counsel, one on February 13, 2014 and the other on February 19, 2014. The February 13, 2014 letter requested personal information for Medicare reporting purposes, which Straw alleged was in retaliation for his human rights demand

letter. The February 19, 2014 letter requested that Straw communicate through Paddock's counsel and not directly with Paddock, which Straw also alleged was in retaliation for his human rights demand letters and for filing his lawsuit. Straw also alleged (1) violations of Article 1, section 1-102 (Declaration of Policy) and Article 6, section 6-101 of the (Additional Civil Rights Violations) of the Act (775 ILCS 5/1-102, 6-101 (West 2012)), (2) defamation, and (3) sought a declaratory judgment against the defendants. On July 25, 2014, Streamwood and Lenhardt filed a section 2-619(a)(9) motion to dismiss and Paddock filed a section 2-615 motion to dismiss. The parties filed briefs and on October 6, 2014, the circuit court granted the defendants' motions to dismiss with prejudice. Straw timely appealed on October 10, 2014.

¶ 14 ANALYSIS

¶ 15 This appeal involves three different defendants who filed two motions to dismiss, a section 2-619(a)(9) motion to dismiss (the Chamber and Lenhardt) and a section 2-615 motion to dismiss (Paddock). Further, the counts against the defendants in Straw's complaint are unique to each defendant; therefore, we will address Straw's counts against the Chamber and Lenhardt separately from Straw's counts against Paddock.

¶ 16 I. Streamwood Chamber of Commerce and Director Donna Lenhardt

¶ 17 The Chamber and Lenhardt filed a section 2-619 motion to dismiss Straw's complaint. "A motion to dismiss under section 2–619(a) (735 ILCS 5/2–619(a) (West 2000)) admits the legal sufficiency of the plaintiff's claim, but asserts certain defects or defenses outside the pleading that defeat the claim." *Solaia Technology, LLC v. Specialty Publishing Company,*

221 Ill. 2d 558, 579 (2006). The standard of review for an order granting a section 2-619 motion to dismiss is *de novo*. *Solaia Technology, LLC*, 221 Ill. 2d at 579.

¶ 18 A. Counts I-V: Failure to Exhaust Administrative Remedies

¶ 19 Straw argues that counts I-V of his second amended complaint, which alleged violations under sections 1-102 and 6-101 of the Act, should not have been dismissed because Straw did not need to exhaust his administrative remedies as the counts were brought pursuant to Articles 3 and 10 of the Act. Straw also argues that the Chamber and Lenhardt's failure to comply with the law and provide a sufficient number of handicap parking spaces was akin to having a sign which says "no cripples" and, consequently, interferes with all of his rights, including his real estate transaction rights under Article 3 of the Act, because parking is a real estate transaction. Straw further argues that parking is a temporary lease of a parking space and when "a public accommodation does not provide any handicapped parking spaces, it is *** real estate-based discrimination, refusal to provide the same privilege as non-disabled people."

¶ 20 Straw's complaint was predicated on violations of sections 1-102 and 6-101 of the Act. First, we note that section 1-102 of the Act is part of Article 1, which sets forth the public policy and definitions for the Act. 775 ILCS 5/1-101 *et seq.* (West 2012). Article 1 is not an Article that a party can violate or that can be used to base a cause of action on for discrimination. 775 ILCS 5/1-101 *et seq.* (West 2012). Second, we note that section 6-101 of the Act is incorporated in Article 6, which provides for additional civil rights violations like retaliation and for violations of other Acts, like the Military Leave of Absence Act. 775 ILCs 5/6-101 *et seq.* (West 2012). Litigants cannot predicate a cause of action for

discrimination on Article 1, but those, like Straw, who predicate their actions for discrimination on Article 6 of the Act must first exhaust all administrative remedies by first filing a charge with the Illinois Department of Human Rights (the Department) before any action is commenced in circuit court. See *Blount v. Stroud*, 232 Ill. 2d 302, 310 (2009); *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 308 (1989); 775 ILCS 5/7A-102(A) (West 2012).

¶ 21 Therefore, because Straw predicated the alleged acts of discrimination in counts I-V of his complaint on Articles 1 and 6, he was required to first exhaust his administrative remedies. *Blount*, 232 Ill. 2d at 310; *Castaneda*, 132 Ill. 2d at 308; 775 ILCS 5/7A-102(A) (West 2012).

¶ 22 In order to cure the deficiency of failing to reference or cite Article 3 in his second amended complaint, Straw attempted to allege a violation of Article 3 in his brief. Article 3 of the Act addresses civil rights violations in real estate transactions. 775 ILCS 5/3-101 *et seq.* (West 2012). The Act defines a real estate transaction as "the sale, exchange, rental or lease of real property." 775 ILCS 5/3-101(B) (West 2012). A violation occurs when an owner or any other person engaged in real estate transactions refuses to engage in a real estate transaction with a person or discriminates in making available such a transaction. 775 ILCS 5/3-102(A) (West 2012).

¶ 23 While Straw correctly asserts in his brief that a civil action under Article 3 of the Act may be commenced without first exhausting administrative remedies (775 ILCS 5/10-102 (1); (3) (West 2012)), we note that Illinois is a fact-pleading state and that a party must allege facts which give rise to a cause of action. *Simpkins v. CSX Transp., Inc*., 2012 IL 110662, ¶

26; *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009) (Illinois is a fact-pleading jurisdiction, so a plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action asserted); *In re Beatty*, 118 Ill. 2d 489, 500 (1987) (" 'This court has repeatedly held that a complaint which does not allege facts, the existence of which are necessary to enable a plaintiff to recover, does not state a cause of action and that such deficiency may not be cured by liberal construction or argument.' ")

¶ 24 Straw attempted to allege an Article 3 violation in his brief, but failed to do so in his complaint. Specifically, Straw failed to allege in his second amended complaint that counts I-V were predicated on Article 3, that he was engaged in a real estate transaction or that he was purchasing or renting a parking space from the Chamber or Lenhardt. Because of the second amended complaint's Article 3 pleading deficiencies, Straw failed to allege a set of facts which gives rise to a cause of action for discrimination in a real estate transaction under Article 3.

¶ 25 In this case, because counts I-V of Straw's complaint only alleged acts of discrimination under Article 1, section 1-102 and Article 6, section 6-101 of the Act and did not allege acts of discrimination under Article 3 or even cite Article 3 of the Act, Straw was required, but failed to first exhaust his administrative remedies before commencing an action in the circuit court. *Blount*, 232 Ill. 2d at 310; *Castaneda*, 132 Ill. 2d at 308. Therefore, the circuit court lacked jurisdiction to consider counts I-V against the Chamber and Lenhardt because Straw failed to first file a charge with the Commission. *Castaneda*, 132 Ill. 2d at 308, 322; 775 ILCS 5/7A-102(A) (West 2012). Accordingly, we find that the circuit court did not err when it found that Straw did not exhaust his administrative remedies and we affirm the circuit

court's order dismissing counts I-V of Straw's second amended complaint against the Chamber and Lenhardt.

¶ 26 B. Count XII: Defamation Against Lenhardt

¶ 27 1. Innocent Construction

¶ 28 Next, Straw argues that Lenhardt's comments, that Straw's demand letter was "extortion" and a "scam" (which he alleged continued after the police closed the case), were malicious as a matter of law, and therefore, the court erred in dismissing count XII.

¶ 29 The Illinois Supreme Court has held that in order to establish a cause of action for defamation, the plaintiff must "present facts showing that the defendant made a false statement about the plaintiff, that the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages." *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009).

¶ 30 A defamatory statement is defined as one that "harms 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*, 234 Ill. 2d at 491 (*citing Kolegas v. Heftel Broadcasting Corporation*, 154 Ill. 2d 1, 10 (1992)). A statement is defamatory *per se* if the harm is "obvious and apparent on its face." *Green*, 234 Ill. 2d at 491 (*citing Owen v. Carr*, 113 Ill. 2d 273, 277 (1986)). There are five categories of statements that are considered defamatory *per se* in Illinois: "(1) words that impute a person has committed a crime; (2) words that impute a person is infected with a loathsome communicable disease; (3) words that impute a person is unable to perform or lacks integrity in performing her or his employment duties; (4) words that impute a person lacks ability or otherwise prejudices that person in her or his profession;

and (5) words that impute a person has engaged in adultery or fornication." *Green*, 234 Ill. 2d at 491-92. We are concerned with two categories of defamation *per se* in this case, words that impute a person has committed a crime, and words that impute a person lacks ability or otherwise prejudices that person in her or his profession.

¶ 31 Statements that are considered defamatory *per se* are not actionable if they are reasonably capable of innocent construction. *Green*, 234 Ill. 2d at 499. If a statement, taken in context is reasonably capable of a nondefamatory interpretation, it should be given that interpretation. *Green*, 234 Ill. 2d at 500. Further, opinions without factual support (opinions that are not verifiable) are protected from defamation claims if they cannot reasonably be interpreted as stating actual facts from the perspective of an ordinary reader. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 398 (2008). The preliminary question, whether an alleged defamatory statement is entitled to an innocent construction in an action for defamation *per se*, is a question of law, which we review *de novo*. *Tuite v. Corbitt*, 224 Ill. 2d 490, 503 (2006).

¶ 32 Here, Straw argues that Lenhardt's comments that Straw's demand letter was a "scam" and was "extortion" were defamatory and malicious as a matter of law. However, based on our view of the record, we find that these words, taken in context, were capable of an innocent construction. *Green*, 234 Ill. 2d at 500.

¶ 33 First, the police report reflects that Lenhardt "thought" the letter was a scam, not that Lenhardt said the letter actually was a scam as Straw maintains. Second, Lenhardt's comments in response to the August 30, 2013 letter also expressed her opinion saying that she "apologiz[es] if [Straw] thought any of [her] actions were vengeful" and that she "thought

someone was sending an extortion-type letter." The record reflects that Lenhardt merely expressed her feelings and opinions surrounding the circumstances of the situation, not that she was trying to defame Straw. Given the social and literary context (*Hopewell v. Vitullo*, 299 Ill. App. 3d 513, 520 (1998)), and given the clear expression of an opinion without factual support, we find that Lenhardt's comments were capable of an innocent construction. *Imperial Apparel, Ltd.*, 227 Ill. 2d at 398.

¶ 34 2. Malice

¶ 35 Assuming arguendo that Lenhardt's comments were not capable of an innocent construction, we would still reach the same result. Because Straw has admitted he is a limited public figure, he must establish actual malice in order to prove a cause of action for defamation. To prove a cause of action for defamation, Straw must establish that: (1) the utterance was false, and (2) that it was made with knowledge of its falsity or with a reckless disregard for whether it was true or false. *Piersall v. SportsVision of Chicago*, 230 Ill. App. 3d 503, 507 (1992).

¶ 36 Straw argues that because he used the words "malice" and "actual malice" in his second amended complaint, he successfully established that Lenhardt's comments proved that she acted with actual malice. However, the burden of proving malice is on the party claiming the injury (*Piersall*, 230 Ill. App. 3d at 507), and it is not established by that party's bare allegation that the defendant acted maliciously and with knowledge of the falsity of the statement, but the plaintiff must also allege facts in the complaint from which malice may be inferred. *Mittelman v. Witous*, 135 Ill. 2d 220, 238 (1989).

¶ 37 Here, the fact that Lenhardt apologized if "[Straw] thought any of [her] actions were vengeful," the fact that she believed the demand letter was a scam, and the fact that she "thought someone was sending an extortion-type letter" are all comments and beliefs that do not constitute malice because Lenhardt used the words "scam" and "extortion." Straw fails to allege facts which establish that Lenhardt had knowledge of the falsity of the words or had a reckless disregard for their falsity because Lenhardt's personal views reflect opinions and beliefs without factual support that do not rise to the level of malice. Accordingly, we affirm the circuit court's order dismissing count XII of Straw's second amended complaint and we find that the circuit court did not err when it granted the Chamber and Lenhardt's section 2-619 motion to dismiss with prejudice.

¶ 38 II. Paddock Publications

¶ 39 Paddock predicated its motion to dismiss Straw's second amended complaint on section 2-615 of the Code. 735 ILCS 5/2–615(a) (West 2012). A motion to dismiss under section 2–615(a) of the Code tests the legal sufficiency of a plaintiff's claim and an order granting a section 2-615 motion to dismiss is reviewed *de novo*. *Solaia Technology, LLC*, 221 Ill. 2d at 578-79.

¶ 40 A. Counts VII-XI: Failure to Exhaust Administrative Remedies

¶ 41 Straw makes the same argument with respect to the circuit court's dismissal of counts VII-XI as with counts I-V. Paddock's motion to dismiss was based on section 2-615 of the Code. Straw argues that the circuit court assumed that his claims under the Act were based on provisions other than Article 3. We note that Straw's second amended complaint alleged acts of discrimination that violated Article 1, section 1-102 and Article 6, section 6-101, but

never referred to Article 3 anywhere in counts VII-XI. It is the responsibility of the complainant (Straw) to plead facts that give rise to a cause of action. *Simpkins*, 2012 IL 110662, ¶ 26. The complaint includes references or citations to Articles 1, 6, and 10 of the Act, but there was no reference or citation to Article 3 or a reference to any fact which gives rise to a cause of action under Article 3. Therefore, based on the allegations and citations in counts VII-XI of Straw's second amended complaint, the circuit court made no assumptions when it found that Straw's second amended complaint was not based on Article 3.

¶ 42 Illinois law required Straw to first exhaust his administrative remedies prior to commencing an action in the circuit court because counts VII-XI of his second amended complaint were predicated on Article 6, section 6-101 of the Act, a section that provided a remedy for acts of discrimination that violated the Act. 775 ILCS 5/7A-102(A) (West 2012). See *Blount*, 232 Ill. 2d at 310; *Castaneda*, 132 Ill. 2d at 308-09. While Article 3 does not require that Straw exhaust administrative remedies prior to commencing an action in the circuit court, Straw does not allege any facts in counts VII-XI which give rise to a cause of action under Article 3, nor does he cite to Article 3 of the Act. Therefore, we find that Straw was required to first exhaust his administrative remedies before commencing an action in the circuit court because the facts he alleged in counts VII-XI fall under Article 6 of the Act and Article 6 requires a party to first exhaust his administrative remedies. See *Blount*, 232 Ill. 2d at 310; *Castaneda*, 132 Ill. 2d at 308; 775 ILCS 5/7A-102(A) (West 2012).

¶ 43 Here, because Straw failed to exhaust his administrative remedies before commencing an action in the circuit court, the circuit court lacked jurisdiction to consider counts VII-XI because jurisdiction lies first with the Commission. See *Blount*, 232 Ill. 2d at 310;

Castaneda, 132 Ill. 2d at 322. Accordingly, we find that the circuit court did not err when it found that the Straw did not exhaust his administrative remedies, and therefore, we affirm the circuit court's order granting Paddock's motion to dismiss counts VII-XI of Straw's complaint.

¶ 44 B. Count XIV: Failure to State a Claim for Defamation

¶ 45 Straw argues that Bowers' letter which Paddock published on its website described Straw's method of issuing the demand letters as "extortion" and maintains that Bowers' letter was malicious and defamatory as a matter of law. Straw also argues that the newspaper is responsible for the things it prints and that it bears responsibility for Bowers' allegedly defamatory letter. Finally, Straw argues that Bowers' words are not protected by the innocent construction rule and therefore, this court erred when it dismissed Count XIV.

¶ 46 The Illinois Supreme Court has held that in order to establish a cause of action for defamation, the plaintiff must "present facts showing that the defendant made a false statement about the plaintiff, that the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages." *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). A statement is defamatory *per se* if the harm is "obvious and apparent on its face." *Green*, 234 Ill. 2d at 491 (*citing Owen v. Carr*, 113 Ill. 2d 273, 277 (1986)). There are five categories of statements that are considered defamatory *per se* in Illinois, however, because Straw maintains that Bowers' letter suggested that Straw committed a crime, we are only concerned with the first category: "(1) words that impute a person has committed a crime." *Green*, 234 Ill. 2d at 491-92.

¶ 47 Statements that are considered defamatory *per se* are not actionable if they are reasonably capable of an innocent construction. *Green*, 234 Ill. 2d at 499. If words, taken in context, are reasonably capable of a non-defamatory interpretation, it should be given that interpretation. *Green*, 234 Ill. 2d at 499. Opinions without factual support are protected from defamation claims if they cannot reasonably be interpreted as stating actual facts from the perspective of an ordinary reader. *Imperial Apparel, Ltd.*, 227 Ill. 2d at 398. As previously noted, we review the question of whether the statement which Straw alleged is defamatory is entitled to an innocent construction *de novo*. *Tuite*, 224 Ill. 2d at 503.

¶ 48 In *Garber-Pierre Food Products, Inc. v. Crooks*, 78 Ill. App. 3d 356, 360 (1979), this court found the words "blackmail" and "extortion" in a letter to have an innocent construction:

> "[W]e believe that the words “blackmail” and “extortion” are capable of innocent construction. When read within the context of the entire letter, these words do not impute the commission of a crime, but rather reflect defendant's belief that plaintiff's negotiating position concerning the payment for goods was unreasonable. The primary thrust of the letter was that plaintiff was charging higher prices than its competitors and that it was overreaching Hamlin by requiring payment on delivery. Following the statement that Hamlin 'refused to be blackmailed, extorted or gouged', defendant discusses plaintiff's refusal to make deliveries on credit. This description of plaintiff's policy qualifies the offending language and demonstrates that defendant was criticising plaintiff's business

decision rather than accusing it of criminal activity." *Crooks*, 78 Ill. App. 3d at 360.

¶ 49 Bowers' letter clearly expressed his opinion about the unreasonableness of Straw's demand letter. Bowers qualified the offending word "extortion" with non-factual language and with the words "can be legal" and "may be legal." *Garber-Pierre*, 78 Ill. App. 3d at 360. In light of the fact that Bowers' letter was found on Paddock's website, we believe readers would find the letter an expression of an opinion without factual support. *Hopewell*, 299 Ill app. 3d at 520. Therefore, we find, based on our review of Bowers' letter, that the word "extortion," when taken in context, is capable of an innocent construction. *Green*, 234 Ill. 2d at 499. Accordingly, we affirm the circuit court's order dismissing count XIV of Straw's second amended complaint.

¶ 50 III. Count XV: Declaratory Judgment

¶ 51 In count XV of the second amended complaint, Straw requests that the circuit court issue a declaratory judgment regarding his human rights demand letters so that human rights advocates know what the law is in Illinois. He also requests that the circuit court answer ten questions about the handicap parking rights of persons with disabilities under the Human Rights Act of 1978.

¶ 52 This court has already held that counts I-V and VII- XI of the second amended complaint are barred because Straw predicated the aforementioned counts on the Article 1, section 1-102 and Article 6, section 6-101 of the Human Rights Act but failed to exhaust his administrative remedies. In count XV, Straw is asking the circuit court to make binding

declarations regarding the rights of physically handicap persons under the Human Rights Act.

¶ 53 In *Beahringer v. Page*, 204 Ill. 2d 363, 375 (2003), the Illinois Supreme Court explained how the exhaustion doctrine applies to claims cognizable in the first instance by an administrative agency:

> "The exhaustion doctrine applies where a claim is cognizable in the first instance by an administrative agency. If the agency is vested by the legislature with the authority to administer the statute, declaratory relief is not available; judicial interference must be withheld until the administrative process has run its course. [Citations.] Among the policy considerations underlying the exhaustion doctrine are that it allows the agency to fully develop and consider the facts of the cause and to utilize its expertise; it protects the agency processes from impairment by avoidable interruptions; it gives the aggrieved party the opportunity to succeed before the agency; and it allows the agency to correct its own errors, thus conserving valuable judicial resources." *Page*, 204 Ill. 2d at 375.

¶ 54 Straw's second amended complaint was predicated on the Human Rights Act so he was required to first file a charge with the Commission before proceeding with the case in the circuit court. See *Blount*, 232 Ill. 2d at 310; *Castaneda*, 132 Ill. 2d at 308, 322. Based on *Page*, the doctrine of exhaustion of administrative remedies applies to count XV of Straw's second amended complaint. Therefore, since Straw failed to first exhaust his administrative

remedies, declaratory relief from the circuit court was not available, so the circuit court did not err by dismissing count XV of Straws' second amended complaint. *Page*, 204 Ill. 2d at 375.

¶ 55 CONCLUSION

¶ 56 A plaintiff cannot predicate acts of discrimination on Article 1 of the Illinois Human Rights Act. When a plaintiff predicates acts of discrimination on Article 6 of the Act, he must first exhaust administrative remedies before commencing an action in the circuit court. Moreover, when a potentially defamatory statement is reasonably capable of a nondefamatory interpretation, it should be given that interpretation under the "innocent construction" rule, and when the plaintiff is a limited public figure, he must allege facts from which malice can be inferred. Human Rights Act claims are cognizable in the first instance by the Human Rights Commission, an administrative agency, and therefore, a plaintiff who predicates his claims on the Act must first exhaust his administrative remedies before filing a declaratory judgment action. *Page*, 204 Ill. 2d at 375. Accordingly, we affirm the circuit court's order dismissing Straw's second amended complaint with prejudice.

¶ 57 Affirmed.