

No. 1-16-3079

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MATHEW CALABRO,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 2016 L 007825
	)	
NORTHERN TRUST CORPORATION,	)	Honorable
	)	Kathy M. Flanagan,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* Affirming judgment of the circuit court of Cook County dismissing Illinois Supreme Court Rule 224 petition with prejudice.
- ¶ 2     Petitioner Mathew Calabro (Calabro) filed a petition for pre-suit discovery pursuant to Illinois Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)) against respondent Northern Trust Corporation (Northern Trust). He sought to discover the identity of a party who conveyed information to Northern Trust which led to the termination of his employment. Calabro appeals from an order of the circuit court of Cook County dismissing his Rule 224 petition with prejudice. For the reasons discussed herein, we affirm the dismissal.

¶ 3

## BACKGROUND

¶ 4 Calabro's verified Rule 224 petition alleged as follows. Northern Trust began recruiting Calabro to leave his then-employer, Delaware Investments (Delaware), in April 2015. After multiple interviews, Northern Trust offered Calabro a position as Chief Compliance Officer (CCO) of Northern Trust Investments. Calabro accepted the offer, resigned from Delaware, relocated from Pennsylvania to Illinois, and commenced employment with Northern Trust on September 30, 2015.

¶ 5 On October 12, 2015, his immediate supervisor Richard Bartholomew (Bartholomew) and a member of Northern Trust's legal team, Pamela Peters (Peters), met with Calabro. Bartholomew and Peters stated they had been informed that Calabro had been removed from his role as the CCO of the Optimum Fund Trust (Optimum) during his employment with Delaware. They inquired why Calabro had not disclosed such information during the interview process.

¶ 6 Calabro responded that his role with Optimum was "just a small part" of his responsibilities as the deputy CCO for Delaware and that he was never asked questions during his interviews which would have elicited such information. Calabro further explained that he had not been disciplined or demoted as a result of his removal from Optimum and had continued working for Delaware "quite successfully" until his resignation to join Northern Trust. On October 26, 2015, Northern Trust terminated Calabro because he had failed to disclose his role with Optimum on his résumé or at any time during the interview process.

¶ 7 In the Rule 224 petition, Calabro alleged that one or more individuals intentionally interfered with his employment by contacting Northern Trust to provide "adverse information." He requested the entry of an order permitting discovery from Northern Trust so as to obtain the identity of the individual(s) who provided the information. The petition noted that Calabro had

sought and reviewed his personnel records maintained by Northern Trust, which did not contain the name of such individual(s). Northern Trust refused his request to supplement his personnel records with any documents pertaining to “how they learned of his removal.”

¶ 8 Northern Trust<sup>1</sup> advanced two primary contentions in opposition to the Rule 224 petition. Invoking section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)), Northern Trust argued that the petition was barred by the plain terms of its Employment Separation Agreement and General Release (the Release Agreement) with Calabro. Northern Trust also sought dismissal pursuant to 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), contending that the petition failed to state a cause of action for intentional interference against the anonymous individual who accurately informed the company that Calabro was removed from his former CCO position. It argued that “the provision of accurate information to an employer regarding its employee that leads to that employee’s termination” does not give rise to a cognizable cause of action. Northern Trust subsequently argued that Calabro’s claim of intentional interference is a “speech-based claim” which raises constitutional concerns, *e.g.*, a chilling effect on “the right to engage in truthful discourse.”

¶ 9 In a memorandum opinion and order, the circuit court rejected Northern Trust’s contentions regarding the effect of the Release Agreement as to the Rule 224 petition. The circuit court noted that the release contained language which broadly barred all claims and causes of action against Northern Trust and related entities. The circuit court concluded, however, that the release did not specifically apply to requests for discovery and thus did not bar the Rule 224 petition. The circuit court concluded, however, that the petition was deficient

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<sup>1</sup> “Northern Trust Investments, Inc.” contended that it was erroneously named in the Rule 224 petition as “Northern Trust Corporation.” We further note that the “Release Agreement” (described below) was executed by “Northern Trust Investments, Inc.” For clarity and simplicity purposes, we refer generically herein to “Northern Trust.”

because “the allegations with regard to the claim of intentional interference are conclusory.” Specifically, the circuit court held that Calabro failed to set forth specific facts which allege intentional interference and damage – two of the elements of a claim for intentional interference with employment. The circuit court further stated that a party is not liable for interference with a prospective contractual relation as a result of merely providing truthful information. After the circuit court dismissed the Rule 224 petition with prejudice, Calabro timely filed the instant appeal.

¶ 10

#### ANALYSIS

¶ 11 Calabro raises three primary contentions on appeal. First, he argues that the circuit court erred in finding that he failed to set forth specific facts alleging a claim of intentional interference with employment. Second, he contends that the circuit court erred in finding that he conceded that the statement of the interfering party to Northern Trust was truthful. Third, Calabro asserts that even if he had conceded the truthfulness of the interfering statement, the circuit court incorrectly held that such concession would bar his intentional interference claim. Northern Trust challenges the foregoing contentions and also argues that dismissal of the Rule 224 petition was warranted based on the Release Agreement. For the reasons discussed below, we conclude that dismissal of the petition with prejudice was proper pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)).

¶ 12 This court generally reviews the circuit court’s ruling pursuant to Rule 224 for an abuse of discretion. *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, ¶ 12. Calabro and Northern Trust agree, however, that the standard of review herein is *de novo* because the circuit court’s exercise of discretion relied on a conclusion of law. See, e.g., *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 710 (2010).

¶ 13 “Rule 224 is designed as a tool to assist a plaintiff in discovering the identity of an unidentified individual who may be liable to him.” *Hadley v. Doe*, 2015 IL 118000, ¶ 25.

Rule 224(a)(1) provides, in part:

“(i) A person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery.

(ii) The action for discovery shall be initiated by the filing of a verified petition in the circuit court of the county in which the action or proceeding might be brought or in which one or more of the persons or entities from whom discovery is sought resides. The petition shall be brought in the name of the petitioner and shall name as respondents the persons or entities from whom discovery is sought and shall set forth: (A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought and shall ask for an order authorizing the petitioner to obtain such discovery. The order allowing the petition will limit discovery to the identification of responsible persons and entities and where a deposition is sought will specify the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify each person and the time and place of the deposition.” Ill. S. Ct. R. 224 (eff. May 30, 2008).

The plain language of the rule requires the petition to set forth “the reason the proposed discovery is necessary.” *Id.* The Illinois Supreme Court has held that, in order to satisfy this necessity requirement, a petitioner must present sufficient allegations to overcome a section 2-615 motion. *Hadley*, 2015 IL 118000, ¶ 27 (addressing defamation claim). See also *Stone*, 2011 IL App (1st) 093386, ¶ 18 (stating that “requiring a Rule 224 petitioner to provide allegations

sufficient to overcome a section 2-615 motion to dismiss adequately balances the rights of a petitioner and the unidentified individual”).

¶ 14 A motion to dismiss under section 2-615 of the Code tests the legal sufficiency of a complaint. *Hadley*, 2015 IL 118000, ¶ 29. “The question to be answered is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, state sufficient facts to establish a cause of action upon which relief may be granted.” *Id.* A circuit court should not dismiss a complaint under section 2-615 unless it is clearly apparent that no set of facts can be proved which would entitle the plaintiff to recovery. *Id.*

¶ 15 As an initial matter, Calabro contends that the circuit court erred in finding that he conceded that the interfering party’s statement to Northern Trust was truthful. This contention, however, conflicts with Calabro’s repeated statements in his verified petition that he was removed from the CCO position with Optimum. For example, the petition provides that Calabro explained to Bartholomew and Peters that “he had not been disciplined or demoted or received any negative counseling *as a result of being removed from Optimum.*” (Emphasis added.) The petition also alleges that the individual who informed Northern Trust that he “had been removed from his role” as CCO of Optimum intentionally interfered with his employment. Calabro further states in the petition that he is unaware of who informed Northern Trust “of his removal from” Optimum. We reject Calabro’s suggestion that any concession or acknowledgement of truthfulness was merely the result of inartful wording in his petition, particularly given that Calabro possesses knowledge regarding whether he was, in fact, removed.

¶ 16 Calabro further contends on appeal that he “is unable to concede the truthfulness of the interfering party’s statements where the specific nature of those statements is unknown to him.” The language of Rule 224, however, “limits discovery under it to the *identity* of those who may

be responsible in damages.” (Emphasis added.) *Gaynor v. Burlington Northern and Santa Fe Railway*, 322 Ill. App. 3d 288, 291 (2001). The rule is “not intended to permit a party to engage in a wide-ranging, vague, and speculative quest to determine whether a cause of action actually exists.” *Low Cost Movers, Inc. v. Craigslist*, 2015 IL App (1st) 143955, ¶ 17. See also *Shutes v. Fowler*, 223 Ill. App. 3d 342, 346 (1991) (noting that trial courts should “refuse to permit ‘fishing expeditions’ and other abuses”). By acknowledging that he does not know what the individual stated, Calabro implicitly concedes that he does not know whether he had an actionable claim for intentional interference.

¶ 17 Even assuming *arguendo* that Rule 224 is a proper tool for Calabro’s discovery efforts, his underlying claim is fatally deficient. Citing *Marczak v. Drexel National Bank*, 186 Ill. App. 3d 640, 645 (1989), Calabro asserts that the elements of intentional interference with employment relationship are: (1) reasonable expectation of continued employment; (2) knowledge of the business relationship by the interferer; (3) intentional interference; and (4) resultant damage. According to Calabro, the “falsity of an interfering statement is not one of those elements.” Unlike the petition herein, however, the complaint in *Marczak* specifically alleged that the defendants knew or should have known that the statements at issue were false. *Id.* at 647. The *Marczak* appellate court found that “the allegations of *falsity*, knowledge and malice” in the operative complaint were sufficient and thus dismissal of the complaint was improper. (Emphasis added.) *Id.*

¶ 18 Illinois courts in employment and other contexts have consistently held that an intentional interference claim requires the provision of *false* information. See, e.g., *Voyles v. Sandia Mortgage Corp.*, 196 Ill. 2d 288, 301 (2001) (holding that the transmission of “accurate and proper” reports to credit agencies could not represent an unjustified interference with the

plaintiff's prospective business expectancy); *Atanus v. American Airlines, Inc.*, 403 Ill. App. 3d 549, 556 (2010) (concluding that the trial court did not err in requiring the employee to establish that his employer's intentional interference consist of providing his second employer with false – as opposed to truthful – information); *Soderlund Brothers, Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606, 620 (1995) (noting that “[t]here is no liability for interference with a prospective contractual relation on the part of one who merely gives truthful information to another”). See also *Delloma v. Consolidation Coal Co.*, 996 F.2d 168, 172 (7th Cir. 1993) (applying Illinois law; observing that “permitting recovery for tortious interference based on truthful statements would seem to raise significant First Amendment problems”).

¶ 19 Section 772 of the Restatement (Second) of Torts, provides additional insight on this issue. Restatement (Second) of Torts § 772. The section provides that “[o]ne who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person \*\*\* truthful information.” *Id.* Comment (b) to section 772 states, in part, that “[t]here is of course no liability for interference with a contract or with a prospective contractual relation on the part of one who merely gives truthful information to another.” *Id.*, cmt. b. As noted in *Atanus*, 403 Ill. App. 3d at 554, “[w]hile our supreme court has not explicitly adopted section 772 of the Restatement, it continues to look to the Restatement for guidance in outlining the contours of tortious interference actions.” See also *Soderlund Brothers*, 278 Ill. App. 3d at 620 (favorably citing section 772).

¶ 20 In conclusion, Calabro's Rule 224 petition cannot overcome Northern Trust's challenge pursuant to section 2-615 of the Code. As we may affirm the circuit court's dismissal on any proper basis found in the record (*CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶



47), we need not address the remaining arguments raised in the appellate briefs, including Northern Trust's contention that the broad release language of the Release Agreement mandates dismissal of the petition pursuant to section 2-619 of the Code.

¶ 21

CONCLUSION

¶ 22 The judgment of the circuit court of Cook County dismissing with prejudice Calabro's Rule 224 petition is affirmed.

¶ 23 Affirmed.