2019 IL App (2d) 190015-U
No. 2-19-0015
Order filed August 1, 2019

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).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SHAHID RASHID, Plaintiff-Appellant, v. IQBAL ZAFAR HAMID, MANSOOR ALAM, AKHTAR HAMIDI, NADEEM KAZI, MUHAMMED NASAR QURESHI, Defendants-Appellees (Association of Physicians of Pakistani-Descent of North America, Jamil Azam Farooqui, Defendants).	)	Appeal from the Circuit Court of Du Page County. No. 17-L-991 Honorable Brian R. McKillip, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed plaintiff's amended complaint, alleging defamation, false light, and conspiracy to defame. Affirmed.

¶ 2 Plaintiff, Shahid Rashid, sued defendants, Iqbal Zafar Hamid, Mansoor Alam, Akhtar Hamidi, Nadeem Kazi, Muhammed Nasar Qureshi, Jamil Azam Farooqui, and the Association of Physicians of Pakistani-Descent of North America (APPNA), for defamation, false light, and

conspiracy to defame. On December 5, 2018, the trial court dismissed with prejudice plaintiff's amended complaint. Plaintiff appeals. For the following reasons, we affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 According to the amended complaint, APPNA is a not-for-profit organization comprised of physicians of Pakistani descent. Its headquarters and central office are located in Westmont, Illinois. On September 13, 2016, an election commenced for positions on APPNA's executive committee. The election was run by a third-party service provider, Survey Ballot Systems (SBS), and APPNA members were directed to vote by email using a secure log-in process hosted by SBS. Plaintiff, who lives in McAllen, Texas, was running for the position of president-elect and was the only candidate running from "South Texas." On September 15, 2016, however, the election was suspended by APPNA's nominating and election committee, of which defendant Qureshi was a member. Thereafter, the committee, along with APPNA's existing executive committee and board of trustees, decided to stop the election process and cancel any votes that had been cast.

¶ 5 The complaint alleged that the purported reason for stopping the election and cancelling votes was an alleged security issue with the voting process, in that different internet protocol addresses (IP addresses) utilized a function on the election website at "what SBS considered an abnormal rate." However, plaintiff alleged, no breach of the election process had occurred, all cast ballots were safe and secure, and APPNA's election committee, executive committee, and board of trustees knew that the election was safe and secure when they cancelled the votes. The complaint alleged that certain communications about the election process were disseminated to

[1] On appeal, we granted plaintiff's motion to dismiss certain defendants. As such, this appeal concerns only defendants Kazi and Qureshi.

the entire APPNA membership, stating that "activity associated with South Texas was involved in an attempt to interfere with the election process," and that "the dissemination of only the IP addresses originating out of South Texas was a deliberate plan by the defendants to besmirch [plaintiff's] name in the community and affect his standing in the 2016 APPNA election." Plaintiff specified 11 allegedly-inappropriate communications in the complaint, and attached copies of them to the complaint. We recount below those relevant to the sole remaining defendants.

¶ 6 As to Qureshi, plaintiff alleged that a communication from the election committee (of which Qureshi was a member) to APPNA's membership explained that the election had been suspended due to unusual activity on the election website and, according to plaintiff, it listed "[four] IP addresses from Harlingen, Weslaco, Brownsville and Port Arthur, Texas and insinuated that these four IP addresses were the cause of the 'unusual activity.'" However, setting aside plaintiff's characterization of the letter, the letter itself, attached to the complaint, states only that "there was unusual activity noted on the [e]lection [w]ebsite. On more than one instance someone requested to be sent election ID and Pass code on a voter's behalf and it was done at mass scale. *Click here to read the email from SBS for details*." (Emphasis added.) The SBS email, in turn, also attached to the complaint, explained that APPNA's membership election database totaled 2506 members, and the election website allowed the members to request log-on access through an "email me my login information" function. However, according to SBS, that function was used at an abnormal rate by four IP addresses. SBS's report specified the four IP addresses and the number of times each used the function, but it did *not* connect a geographic location to any of the addresses. Specifically, SBS's report to APPNA reflected IP addresses: (1)

173.173.26.78; (2) 24.162.170.60; (3) 57.78.120.26; and (4) 68.206.39.96 used the "email me my login information" function 1118 times, 500 times, 144 times, and 547 times, respectively.

¶ 7 Next, as to defendant Kazi, plaintiff alleged two defamatory statements. Specifically, in a September 18, 2016, email to Qureshi, along with Jennifer Wozniak, Asif Mohiuddin, and Jalil Khan,[2] Kazi wrote that APPNA's compliance and implementation committee met concerning election irregularities and the "cyber attack." The email continued that investigation should commence. Further, the following italicized statements in Kazi's email are the subject of plaintiff's complaint against him:

> "2. The election process should be hold [*sic*] until this investigation is completed. *We feel if there is a person running for the election involve[d] in this cyber crime [ ] should be forever debar [sic] from APPNA election.* After the election results[,] it will be very difficult to reverse the election and it will become a political issue.
>
> 3. The committee strongly believe[s] the election process need[s] to be revisited. *The committee notice[s] some candidates spend tremendous amount of money for this volunteer organization leaving capable people who don't think spending this much money just for the election of the volunteer organization. This cause[s] this volunteer organization to miss [out] on the some [sic] of the very good leaders to the organization who can bring more ideas and govern better than some of the candidates*

[2] The email reflects in its signature line that it was written on behalf of Kazi, as the chair of APPNA's compliance and implementation committee, and Khan and Mouhiuddin, as committee members. Kazi's affidavit attached to his motion to dismiss attests that Wozniak was included in her capacity as APPNA's director of operations.

> *who just emerge not knowing the organization and become leaders base[d] on the money they spent on the election*. There are rules regarding advertisement in APPNA chapter and alumni journals for two years and still one candidate placed advertisement on [*sic*] an alumni journal." (Emphases added.)

¶ 8 *Other persons*, including defendants no longer party to this appeal, issued communications noting that the four IP addresses listed above were associated with Harlingen, Weslaco, Brownsville, and Port Arthur, Texas. However, *no* communications by anyone referenced plaintiff by name.

¶ 9 Plaintiff alleged that, in total, the "clear import and purpose of the substance and inferences of the dissemination and communications was that improper activity occurring in South Texas was an attempt to interfere with the APPNA election process." Plaintiff attached to the amended complaint affidavits from six members of APPNA (all identical and un-notarized), stating that they saw Qureshi's email to membership noting "unusual activity" that threatened the integrity of the election and that linked to SBS's article listing "only four" IP addresses. The affidavits specified that the affiants had seen 5 of the 11 communications identified in the complaint, one pertaining to Kazi. The affiants attested that they were aware that plaintiff was the only candidate in the election from "South Texas," that they understood that the four IP addresses originated from "South Texas," and that the statements were "clearly intended" to identify plaintiff as the person purportedly illegally interfering in the election process via "cybercrimes."

¶ 10 Plaintiff alleged that the communications constituted defamation *per se* and *per quod*, placed him in a false light, and that defendants acted in conspiracy to defame him. He asserted that, when they issued the communications, defendants knew that no breach of the election

process had occurred. Further, plaintiff alleged damages in decreased numbers of new patients, follow-up patients, and revenue in his medical practice. Plaintiff asserted that, after the statements were issued, defendants caused APPNA to process complaints with the FBI and various police departments "for a crime that never took place." He attached to his complaint a letter to him from APPNA's board of trustees, written in May 2018, two years after the election, which noted that the complaints to the FBI and other law-enforcement agencies were filed without following proper due process and due diligence of discovery, that the complaints had been retracted, and that the board expressed "regret for any harm or inconveniences this may have caused you." The letter further recognized plaintiff's past services as APPNA's treasurer and secretary, his commitment to APPNA's Texas chapter, his efforts to help APPNA members, and his support of numerous APPNA projects in the United States and Pakistan. In sum, plaintiff alleged that defendants knew that the statements were untrue when made, that they constituted defamation *per se* and *per quod*, that they placed him in a false light, and that defendants conspired to commit the acts.

¶ 11 Defendant Kazi moved pursuant to sections 2-301 (735 ILCS 5/2-301(a) (West 2016)) and 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)) to dismiss plaintiff's amended complaint. In his combined motion to dismiss, Kazi argued, in sum, that: (1) he is an Arizona resident and that Illinois courts lack personal jurisdiction over him; (2) plaintiff's claims were deficient because the statements attributable to Kazi did not reference plaintiff, specific IP addresses, or Texas, nor would a reasonable reader understand the statements to be of and concerning plaintiff; and (3) an affirmative matter barred plaintiff's claims, namely, that Kazi's statements were subject to innocent construction and constituted opinion. Defendant Qureshi moved to dismiss the amended complaint pursuant to section 2-615

of the Code (735 ILCS 5/2-615 (West 2016)), arguing that the complaint failed to properly allege that the statements attributable to him (APPNA's letter to the membership) were false statements of fact about plaintiff.

¶ 12 After hearing oral argument, the trial court issued a written decision granting the motions with prejudice, although not reaching Kazi's jurisdictional, innocent-construction, or opinion arguments. Rather, the court held, as to all defendants, that the claims failed because none of the statements set forth in the complaint or documents attached thereto name plaintiff, nor contain allegations of fact from which persons other than parties to the suit would reasonably understand that the statements and publications referred to plaintiff. The court found that the communications concerning IP addresses would not lead a reasonable person to conclude that the statements concerned plaintiff:

> "The connection is far too tenuous and requires research (tracing IP addresses), knowledge that the plaintiff is from the same general geographic area of those IP addresses, that the plaintiff was the only candidate for office from that general area and finally, and most importantly, it assumes, without any factual allegation or basis, that it must be a candidate for election who would engage [in] this 'unusual activity' in connection with the election. This is far too convoluted a path to walk to meet the heightened pleading requirement set by *Bryson [v. New America Publications Inc.*, 174 Ill. 2d 77, 96-97 (1996)]."

¶ 13 The court further found that the deficiencies were not cured by the affidavits attached to the complaint, which were "entirely conclusory," identical, and failed to set forth the factual basis upon which the affiants could have come to the conclusion that the statements must have

referred to the plaintiff "rather than some other member of the association or even an interested person or persons from that general geographic area without membership in the association."

¶ 14 The court found that, even when viewed in a light most favorable to plaintiff, the statements could not reasonably be interpreted as "of and concerning him." The May 2018 letter from APPNA to plaintiff, sent "well after" the lawsuit was filed, also failed to tie the allegedly-defamatory statements to him, as the letter discussed complaints filed with certain law-enforcement agencies concerning the election; it did not serve as an acknowledgment that any defamatory statements had been made. The court found that the civil conspiracy count also failed, not only because there was no valid cause of action for defamation and, therefore, there could be no conspiracy to defame, but because the complaint did not allege facts that the defendants had a joint purpose or acted jointly. The court acknowledged that conspiracy actions are difficult to prove and must often be established by circumstantial evidence and inferences. Nevertheless, it found that the complaint lacked facts from which one could infer an agreement amongst any of the defendants to work together to accomplish a common purpose. "Indeed, to the contrary, a fair reading of the complaint seems to indicate a number of individuals acting on their own, drawing their own conclusions, and making their own comments on the election process." In conclusion, the court found that the amended complaint required dismissal with prejudice based on plaintiff's "inability to plead—indeed the total absence of—facts to identify the plaintiff [ ], as the subject of the statements and publications[.]" Plaintiff appeals.

¶ 15 II. ANALYSIS

¶ 16 On appeal, plaintiff argues that the trial court erred as a matter of law in finding that the defamatory statements were not "of and concerning" him. He asserts that, although he was not mentioned by name in the communications, he sufficiently pleaded that a reasonable person

could infer that he was the subject of the statements, given the six signed affidavits attached to the amended complaint. Plaintiff argues that the court misapplied *Bryson* and, further, that it did not take all well-pleaded facts as true, instead making a judgment as to the conclusory nature of the affidavits. Plaintiff further argues that he properly pleaded conspiracy to defame. Noting that conspiracy is rarely susceptible to direct proof, he asserts that he sufficiently pleaded that defendants conspired to issue defamatory statements against him in an effort to discredit him as a candidate. At this stage, plaintiff argues, the specific facts of the conspiracy were not susceptible to direct proofs and the court erred in granting the motion to dismiss.

¶ 17 Although the trial court did not specify under which section of the Code it was dismissing the complaint, the reasons it gave for dismissal fall under section 2-615, *i.e.*, failure to plead facts to establish a valid claim. See *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 6 (if facts are insufficient to state a cause of action upon which relief may be granted, section 2-615 dismissal is appropriate). In ruling on a section 2-615 motion to dismiss, the court must accept as true all well-pleaded facts in the complaint and all reasonable inferences which can be drawn therefrom, and it interprets complaint allegations in the light most favorable to plaintiff. *Bryson*, 174 Ill. 2d at 86. The court does not, however, accept as true conclusions that are unsupported by specific facts. See *Doe ex rel. Doe v. Catholic Diocese of Rockford*, 2015 IL App (2d) 140618, ¶ 24. We note that, whether viewed as dismissal pursuant to section 2-619.1, 2-615 or 2-619 of the Code, our review of the dismissal is *de novo.* See *Gatreaux*, 2011 IL App (1st) 103482, ¶ 6. Further, we may affirm the trial court on any basis in the record. *Mutual Management Services, Inc. v. Swalve*, 2011 IL App (2d) 100778, ¶ 11.

¶ 18 A. Personal Jurisdiction: Kazi

¶ 19 Preliminarily, we address Kazi's argument that the court lacked personal jurisdiction over him. He argues on appeal, as he did below, that he is an Arizona resident, plaintiff is a Texas resident, and his single email at issue in this case was internal only, sent from Arizona and directed to Qureshi, Khan, and Mohiuddin, residents of New Jersey, Texas, and Florida, respectively. Kazi acknowledges that the email was also sent to Wozniak, but he argues that plaintiff has asserted only that Wozniak was an Illinois resident "upon information and belief," which he contends is inadequate to satisfy the minimum contacts required to sustain Illinois jurisdiction.

¶ 20 We note first that the trial court erred in failing to address Kazi's section 2-301 argument for dismissal based on personal jurisdiction. Indeed, when a party files a motion to dismiss combining an objection to personal jurisdiction with an argument that the complaint fails to state a claim, the trial court must first address the jurisdictional argument. *Ryburn v. People*, 349 Ill. App. 3d 990, 994 (2004). The rationale for this rule, in part, and as explained in *Ryburn*, is that the basis of dismissal affects the plaintiff's ability to pursue the cause of action in another jurisdiction. In other words, "[t]o decide the case on the merits instead of on jurisdictional grounds *** may prevent the plaintiff from refiling the cause of action in another forum." *Id.*

¶ 21 Nevertheless, although the trial court did not address jurisdiction, the record sufficiently allows us to do so here. We decline to find jurisdiction lacking. The purpose of the principle that allows personal jurisdiction over a nonresident defendant only when the defendant has certain minimum contacts with the state is to not offend traditional notions of fair play and substantial justice. See, *e.g.*, *Russell v. SNFA*, 2013 IL 113909, ¶ 34. Kazi asserts that he did not direct activities at Illinois, nor did plaintiff's alleged injury arise out of Illinois-related activities, so as to have the minimum contacts with Illinois to establish specific jurisdiction (see, *e.g.*, *id.* at

¶ 40; see also, *Robertsson v. Misetic*, 2018 IL App (1st) 171674, ¶ 23). Under these facts, we disagree. It is undisputed that APPNA's headquarters and central office are in Illinois. As noted in his affidavit, Kazi has been a member of APPNA since approximately 1998 (*i.e.*, almost 20 years of membership when the events at issue occurred), and he presumably derives some benefit from his membership in this Illinois organization. Plaintiff's lawsuit is based entirely on APPNA-related communications and an APPNA-related election. Kazi's challenged communication was concerning that election, and he sent the email acting as the chair of APPNA's compliance and implementation committee. Although Kazi sent the email from Arizona to persons physically located in New Jersey, Texas, and Florida, he tries to minimize the fact that he also sent it to Wozniak. Wozniak received the email *not* as a committee member but, rather, as APPNA's director of operations. Indeed, for purposes of the email, she was, effectively, "APPNA," which is based in Illinois.

¶ 22 In sum, specific jurisdiction over a nonresident defendant may exist based on single or occasional acts concerning this state. See *Russell*, 2013 IL 113909, ¶ 40. Given the foregoing, Kazi should have reasonably anticipated that he might one day be haled into an Illinois court concerning APPNA membership and related activities, and we disagree that personal jurisdiction over him here offends traditional notions of fair play and substantial justice. See *id.*, at ¶ 42.

¶ 23 B. Dismissal Appropriate

¶ 24 We turn now to the merits of the trial court's dismissal. Again, plaintiff argues that the court erred in finding that he did not adequately plead that the communications were of and concerning him, misapplied *Bryson*, did not view the facts in his favor, and that he inadequately pleaded conspiracy. We disagree and affirm.

¶ 25 "A statement is considered defamatory if it tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with [him or] her." *Bryson*, 174 Ill. 2d at 87. To plead a defamation claim, a plaintiff must allege facts demonstrating: (1) that the defendant made a false statement *about the plaintiff*; (2) that the defendant made an unprivileged publication of the subject statement to a third party; and (3) that the publication caused damages to the plaintiff. *Catholic Diocese of Rockford*, 2015 IL App (2d) 140618, at ¶ 18. Statements may be defamatory *per se* or *per quod*. As to the first category, *per se* defamatory statements are so inherently harmful that damage to the plaintiff's reputation is presumed and he or she need not plead special damages. Specifically:

> "A statement is defamatory *per se* if its harm is apparent and obvious on its face. When a statement is defamatory *per se*, a plaintiff need not plead actual damage to his or her reputation, because the statement is deemed to be so obviously and materially harmful that injury to the plaintiff's reputation is presumed. However, because a claim of defamation *per se* relieves a plaintiff of the obligation to prove actual damages, it must be pleaded with a heightened level of precision and particularity. Illinois recognizes five categories of statements that are defamatory *per se*: (1) words imputing the commission of a criminal offense; (2) words imputing an infection with a loathsome communicable disease; (3) words imputing an individual's inability to perform his [or her] employment duties or a lack of integrity in performing those duties; (4) words imputing a lack of ability in an individual's profession or prejudicing an individual in his or her profession; and (5) words imputing an individual's engagement in fornication or adultery." (Citations omitted.) *Id.* at ¶ 19.

¶ 26 In contrast, defamation *per quod* concerns statements where either: (1) the statement's defamatory character is not apparent on its face, such that examining extrinsic circumstances is necessary to show its injurious meaning; or (2) the statement is defamatory on its face, but does not fall within the enumerated categories of *per se* actions. *Stone v. Paddock Publications, Inc*., 2011 IL App (1st) 093386, ¶ 32. As prejudice is not presumed, the plaintiff must plead special damages. *Id.*

¶ 27 Here, plaintiff alternatively pleaded both defamation *per se* and *per quod.* In addition, he pleaded a false-light claim, which requires pleadings establishing that: "(1) [the] plaintiff was placed in a false light before the public as a result of [the] defendant's actions; (2) the false light would be highly offensive to a reasonable person; and (3) the defendant acted with actual malice, with knowledge of or reckless disregard for the falsity of the statements." *Kainrath v. Grider*, 2018 IL App (1st) 172270, ¶ 50.

¶ 28 The preliminary construction of an allegedly defamatory statement is a question of law, and our review is *de novo*. *Green v. Rogers*, 234 Ill. 2d 478, 492 (2009). Although our review is *de novo*, we happen to agree with the trial court that all three causes of action fail because plaintiff simply failed to adequately plead that the challenged statements concerned *him*. We reiterate that, at this juncture, we consider whether the court's dismissal was proper as to only defendants Kazi and Qureshi and the communications that plaintiff attributes to them. Without question, none of defendants' statements reference plaintiff by name. As to Qureshi, he was involved in a communication to APPNA membership that explained that the election had been suspended due to "unusual activity" on the election website and linking to a report from SBS, which had detected the unusual activity. We note that Qureshi did not list IP addresses, SBS did. Moreover, SBS's list did not connect the addresses to any location. As such, these statements on

their own cannot reasonably be read by a third party as concerning plaintiff. Only upon a third party performing research to determine where the IP addresses originated, and only with knowledge that plaintiff was running in the election and lived in the same overall geographic area as those addresses, would a third party be able to at all link plaintiff to the statements. Even then, for a defamatory context to be surmised, a third party would need to make another leap and infer that, instead of possible computer malfunctions or glitches, the unusual use of those IP addresses was deliberate and performed at plaintiff's direction or with his knowledge and with his intent to affect the election.

¶ 29 As to Kazi, plaintiff challenges his statements that, "[w]e feel *if* there is a person running for the election involve[d] in this cyber crime [ ] should be forever debar [*sic*] from APPNA election" (emphasis added); and "[t]he committee notice[s] some candidates spend tremendous amount of money for this volunteer organization leaving capable people who don't think spending this much money just for the election of the volunteer organization. This cause[s] this volunteer organization to miss [out] on the some [*sic*] of the very good leaders to the organization who can bring more ideas and govern better than some of the candidates who just emerge not knowing the organization and become leaders base[d] on the money they spent on the election." Again, these statements on their own cannot reasonably be read as concerning plaintiff. Kazi's statements speak only hypothetically about "if" someone running for election is involved and generically about the money "some candidates" spend to run for election. No third party could reasonably read these statements as concerning plaintiff. We agree with the trial court that, even viewed in his favor, the complaint allegations fail to adequately plead false statements about plaintiff, and the connection between plaintiff and the statements, if any, is too tenuous to establish his claims.

¶ 30 Plaintiff's reliance on the six complaint affidavits and *Bryson* does not save the claims. In *Bryson*, our supreme court considered a *per quod* case, where a statement may be innocent on its face, but extrinsic facts make the statement defamatory. *Bryson*, 174 Ill. 2d at 103. In doing so, the court held that, when an article does not refer to the plaintiff by name, it should appear from the face of the complaint that persons other than the parties must have "reasonably understood" that the article was about the plaintiff. *Id.* at 96-97. According to plaintiff here, the affidavits attached to the complaint satisfied this requirement because they stated that the affiants understood that the statements listed in the complaint concerned plaintiff. But, as the trial court noted, the affidavits did not state facts establishing *how* the affiants reasonably understood that the statements from Kazi and Qureshi, the only defendants remaining, concerned plaintiff. Specifically, they did not explain why Kazi's statements—that "if" someone running for election was involved and that "some candidates" spend a lot of money on the election—concerned plaintiff. Nor did they explain *how* they reasonably understood Qureshi's email noting unusual activity, not listing any IP addresses, and connecting to a third-party report, which lacked location details of the IP addresses, concerned plaintiff. Setting aside that the affidavits were identical (and un-notarized), they are entirely too conclusory and self-serving to cure the complaint defects. See, *e.g.*, *Berke v. Manilow*, 2016 IL App (1st) 150397, ¶ 21 (affidavits must contain facts, not just conclusions).

¶ 31 We could end our analysis here. As plaintiff fails to adequately allege that Kazi and Qureshi made false statements of and concerning *him*, both defamation claims and the false-light claim fail. See *Aroonsakul v. Shannon*, 279 Ill. App. 3d 345, 350 (1996) (restrictions on defamation claims, including the "of and concerning" requirement, equally applicable to false-light claims). Further, as there is no existing underlying tort, the conspiracy claim also fails.

See, *e.g.*, *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 60. We choose to note, however, that plaintiff's claims also fail because the complaint fails to adequately plead facts establishing that the statements, allegedly about him, are *false*. Plaintiff broadly asserts that the statements are "untrue," "false," and, with respect to the claim of defamation *per quod*, he clarifies that the statements were "untrue when made as they [*i.e.*, defendants] were aware that the election was secure and that no breach occurred." The complaint fails to allege, however, that the statements *these defendants* allegedly made about *him* were false; *i.e.*, that it was false that there was unusual activity on the election website, that it was false that he spent a lot of money on the election (assuming that statement concerned him), or that it was false that he was involved in any of these occurrences (again, assuming that Kazi's statement concerned him). Moreover, the claims further fail because, to the extent that they constitute defamation *per se* (a stretch), they are capable of innocent construction (see *Moriarty v. Greene*, 315 Ill. App. 3d 225, 232 (2000) (not actionable if the statement, viewed in context, is more capable of an innocent construction than a defamatory one)), and, as to both of Kazi's statements, statements of non-defamatory opinion (see, *id.* at 233-34 (whether a statement is an opinion or fact is a question of law, viewed by considering all circumstances, and only statements capable of being proven true or false are actionable; opinions are not)).

¶ 32 In sum, we affirm the trial court's dismissal of the complaint with prejudice.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 35 Affirmed.