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FOURTH DIVISION
December 5, 2013

No. 1-13-1065

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARILOU MCGIRR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County, Illinois,
)	County Department,
v.)	Law Division.
)	
CONTINENTAL CASUALTY COMPANY,)	No. 11-L-4206
SHELLY S. LIAPES, DIAHANNA FOSTER,)	
MARGARET SPRADAU, and RYAN KELLY,)	Honorable
)	Kathy M. Flanagan
Defendants-Appellees.)	Judge Presiding

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly entered judgment in favor of the defendants in a defamation claim against a former employee. The record unequivocally established that the allegedly defamatory statements accusing the former employee of discriminatory conduct toward her subordinate were "substantially true." In the alternative, those statements were made and "passed on" as part of an internal corporate investigation into employee misconduct and were thus protected by qualified privilege.

¶ 2 This is an appeal from an order of the circuit court granting summary judgment in favor of the defendants, Continental Casualty Company (hereinafter CNA), Shelly S. Liapes (hereinafter Liapes), Diahanna Foster (hereinafter Foster), Margaret Spradau (hereinafter

Spradau) and Ryan Kelly (hereinafter Kelly), and against the plaintiff Marilou McGirr, in an action for defamation and tortious interference with prospective economic advantage and business relationship. The plaintiff argues that the circuit court erred when it found that as a matter of law the defendant could not proceed with her defamation claim against the defendants because the allegedly defamatory statements: (1) were not "substantially true" and (2) were not "merely passed" on and "republished" as part of an internal company investigation into an employee's misconduct so as to be protected by qualified privilege. The plaintiff further contends that the trial court erred when it found that as a matter of law her claim of tortious interference with prospective economic advantage and business relationship against the defendant Kelly must fail. She contends that there remains an issue of material fact as to whether Kelly was "justified" in reporting the plaintiff's comments and conduct to CNA or whether his decision to report her was "solely" motivated by personal gain and/or malice toward the plaintiff. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The record reveals the following undisputed facts and procedural history. The plaintiff is a 58-year-old woman, and former assistant treasurer and vice president of investments and treasury for CNA. She holds both a bachelors and a masters degree in business administration. The plaintiff worked for CNA for over 20 years. It is undisputed that up until February 2011, she received only satisfactory performance ratings and was promoted, acquiring greater job responsibilities. At the time of her termination, the plaintiff supervised 20 employees in her capacity as vice president of investments and treasury.

¶ 5 The defendant CNA is a Fortune 500 insurance company headquartered in Chicago, with over 8000 employees and an annual revenue of over 9 billions dollars. The defendant Liapes is CNA's vice president of employee relations. The defendant Foster is the consulting director of CNA's Human Resources (hereinafter HR). The defendant Spradau is CNA's senior corporate investigator of internal audits. The defendant Kelly is a former employee of CNA; he holds a masters degree in business administration and worked for CNA for five years as a money desk trader under the supervision of the plaintiff.

¶ 6 It is undisputed that on February 14, 2011, CNA received two anonymous letters reporting that on February 9, 2011, the plaintiff engaged in racist conduct against Vikas Jhangiani (hereinafter Jhangiani), one of her subordinates who is of Indian origin, in contravention of CNA's anti-discrimination and anti-harassment policies. The first letter was sent to: (1) Thomas Motamed (hereinafter Motamed), CNA's chairman and chief executive officer (CEO); (2) Thomas Pontarelli (hereinafter Pontarelli), CNA's executive vice president (EVP) and chief administrative officer (CAO); (3) D. Craig Mense (hereinafter Mense), CNA's EVP and chief financial officer (CFO); and (4) Dennis Hemme (hereinafter Hemme), CNA's senior vice president and treasurer. The letter stated in full:

"I am writing anonymously to let you know about a very serious issue in the Investments & Treasury area at CNA.

On February 9, 2011, Marilou McGirr [the plaintiff] verbally harassed Vikas Jhangiani in the trading room. She verbally attacked his race, ethnicity, and culture. Comments were made referring to 'your people' and 'what have you and your people done

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for this country', amongst other comments. She criticized his lunch and the 'smell.' The trading room was full and MANY other employees heard her. How embarrassing for him.

This behavior should not be tolerated. I am frustrated and embarrassed for Vikas. He is not comfortable discussing this with HR for fear of further abuse and retribution. Management in the division continues to tolerate her abusive behavior.

Please help!!!"

The second letter was addressed to Kendrick Cox (hereinafter Cox), formerly employed in CNA's HR, and it was carbon copied to Hemme. It stated in full:

"I am writing this anonymously for fear of retaliation if I personally came forward. It pains me to have to report a fellow co-worker, but Marilou's [the plaintiff's] inappropriate and racist behavior on Wednesday February 9th, in front of 8 or 9 people in the trading room, is the proverbial straw that broke the camel's back. There have been many unreported cases in the past, but Marilou went too far this time, and I would like to report two separate incidents that showed both ignorance and racism toward the Indian Ethnic Heritage.

Incident #1

Not as bad as the incident to follow, but important because it displays a pattern of inappropriate behavior. On Wednesday Marilou insulted a team member who happens to be of Indian decent. Marilou came into the trading room and made a huge scene about how horrible Indian food smells, and that it is just permeating a foul smell. This was

embarrassing toward the person she directed her comments, because she wouldn't let it go, and it was in front of 8 or 9 people who were all brought into the conversation. The person of Indian decent gracefully ignored her rude comments about the food and proceeded to eat and ignore her. Marilou has never made any disparaging comments toward any other food in the past, but apparently she doesn't care for Indian food and wanted everyone to know.

Incident #2 (Occurred around 3 hours after the previous incident)

Marilou entered the trading room to pick up a print job. On the way she interrupted a conversation between treasury team members and a person from another business unit. **What proceeded was embarrassing and disgusting behavior.**

Marilou McGirr: 'What are you guys trying to figure out?'

Person from other business unit: 'We are trying to figure out how to pronounce this name.'

Marilou McGirr: 'That is an Indian name. Probably one of Vikas's cousins.'

'Vikas, how do you pronounce this name?'

Vikas: No answer.

Marilou: 'What is it with YOU PEOPLE and your names?' 'You always expect us to be able to figure out your names and you want us to pronounce them correctly too.'

'YOU PEOPLE should have to change your names to more normal names.' 'Vikas why don't you change your names?'

Vikas: 'I don't know what you are talking about.'

Marilou: 'WHY shouldn't YOU PEOPLE have to change your NAME to something more NORMAL?'

Vikas: 'My parents chose to give me an Indian name and I am proud of it. I would never change it.'

Marilou: 'My grandparents were Italians and came to this country in the early 1900's. They felt like they had to change their Italian names to more normal names in order to fit it and not be persecuted.' 'And then they went on to fight in WWI and they made this country what it is today. If they had to change their names, you should have to change yours.' 'Vikas, WHAT HAVE YOU DONE FOR THIS COUNTRY?'

Vikas: 'I don't know what you are talking about.'

Marilou: 'yeah...You should HAVE to change your name out of respect for those people who built this country.' 'Watch...Hey Johnny, What is your Greek name?'

Johnny: Replies with Greek name.

Marilou: Gets right in front of Vikas and starts making continual hand gestures. Saying 'SEE...SEE...SEE. He changed his name.'

This conversation was offensive and extremely inappropriate. It would have been inappropriate if it was done in a one on one setting, but it was even more inappropriate done at one persons' expense in front of 8 or 9 other people in the room, all of whom report directly to her, and are in no position to stand up against this type of behavior. To top it off, it is also known now that at the same time this was going on Craig Mense was on the floor and could have potentially walked in on this disgusting display by a senior

member on the investments and treasury team. Proving that Marilou is not capable of acting professional.

Marilou's behavior makes for an intolerable work environment.

Signed,

A concerned, disgusted and offended employee."

¶ 7 It is further undisputed that CNA maintains an anti-discrimination and anti-harassment policy. That policy states that CNA adheres to all applicable federal, state and local employment laws, and has a "commitment to equal opportunity, affirmative action and diversity." The policy "prohibits any form of discrimination or harassment by its managers or employees based on race, color *** national origin *** or any other characteristic protected by applicable federal, state or local law." CNA's policy further mandates that any employee who "suspect[s] misconduct" or believes to be a victim of "discrimination, sexual harassment or other inappropriate behavior," "is required" to report the misconduct. The policy specifically states: "reporting misconduct is your obligation as an employee." Under the policy, employees are also asked to "cooperate fully with any internal investigations." The policy further explicitly states that "CNA *** investigate[s] information that is provided anonymously," and that "every effort will be made to protect" the reporter's confidentiality. The policy states that "[a]ny employee that acts contrary to the CNA standards of professionalism is subject to discipline, up to and including termination."

¶ 8 It is further undisputed that after receiving the two anonymous letters accusing the plaintiff of misconduct, CNA immediately launched an investigation. The defendants Spradau, Liapes and Foster conducted that investigation, which included interviewing several employees

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as well as the plaintiff. As a result, on February 18, 2011, the plaintiff was terminated from her employment at CNA.

¶ 9 On April 22, 2011,¹ the plaintiff filed a six-count complaint against various defendants.² Count I asserted a claim for defamation against CNA, Foster, Spradau and Liapes. Count II asserted a claim for negligent infliction of emotional distress against CNA, Foster, Spradau and Liapes. Counts III, IV and V asserted claims for tortious interference with prospective economic advantage or businesses relationship against Liapes, Foster and Spradau. Count VI asserted the same claim against Kelly.

¶ 10 After the circuit court granted the defendants' motion to dismiss Counts III, IV and V of the plaintiff's complaint, the cause proceeded to discovery on the remaining counts. The following relevant evidence was adduced through affidavits, interrogatories and deposition testimony.

¶ 11 A. The Plaintiff

¶ 12 In her deposition, the plaintiff testified that in February 2011, as CNA's vice president of investments and treasury her responsibilities include, among other things, managing the money desk, the short-term portfolio, an equity portfolio and all securities lending. The

¹The complaint was amended twice, with the plaintiff's second and final amended complaint filed on April 9, 2012

²On May 12, 2012, the defendants removed the case to federal court, but on June 21, 2011, the case was remanded back to the circuit court of Cook County. It was reinstated in the circuit court on July 2, 2012.

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plaintiff's direct supervisor and manager was Hemme.

¶ 13 The plaintiff acknowledged that she was aware of CNA's anti-harassment and anti-discrimination policies. She averred that she understood her duties and responsibilities to include "performing in a professional conduct," and treating all of her employees with respect "at all times." She acknowledged that this included supervising and interacting with employees in a manner that "did not harass them" on the basis of their, *inter alia*, national origin. The plaintiff also admitted to having received training at CNA on diversity, *i.e.*, on how to treat all her employees fairly and honestly without taking into account their, *inter alia*, national origin or religion.

¶ 14 The plaintiff next acknowledged that she was present for two incidents in 2007 where derogatory comments were made in the trading room regarding individuals of Indian-American origin. She admitted that sometime in 2007, when Jhangiani got a goatee, an employee, Ryan Lee (hereinafter Lee), stood up in the trading room and asked everyone to vote on whether Jhangiani looked like a "terrorist." The plaintiff testified that she told Lee to stop and that she later talked to him and his manager about this incident. The plaintiff also admitted that sometime in 2007, another employee, Meghan Johnson (hereinafter Johnson), answered the plaintiff's telephone in the trading room, and made loud comments to the plaintiff's sister about an impending Indian-American wedding in her family. According to the plaintiff, the plaintiff's sister was going to an Indian-American wedding and Johnson told her on the telephone that she "need[ed] to bring Dunkin Donut cups and wear a dot on [her] head to her nephew's wedding." The plaintiff acknowledged that Jhangiani was present during this conversation. She averred,

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however, that she told Johnson "to stop talking like that" and that she alerted the manager of the trading floor that the employees should "stop being outspoken, rude and disrespectful to Vikas."

The plaintiff acknowledged in her deposition testimony that she did not report either of these incidents to HR until the investigation into her misconduct began in February 2011.

¶ 15 During her deposition, the plaintiff next testified regarding the events of February 2011 that precipitated her termination. According to the plaintiff, in the last week of January 2011, her team was assigned an important bond deal. Although such deals generally take six weeks to complete, this one was to be finished within three weeks and before CNA's finances were made public. Accordingly, at a meeting with Mense and Hemme it was decided that there was a "tight time line" and that "there was going to be extra hours put in to get this accomplished."

¶ 16 The plaintiff stated that on February 9, 2011, at about 7 a.m. she brought donuts and rolls to the trading room because that was a tradition for "kicking off a bond deal." After making telephone calls with the investment bankers from her own private office at about 8 or 9 a.m., she returned to the trading room. As she was walking in, Jhangiani was having a very loud conversation on the telephone, and she saw him hang up the telephone "very hard." The plaintiff asked Jhangiani if everything was ok, and he responded that it was. The plaintiff averred that at 11:45 a.m., she was standing at Jhangiani's desk waiting to go to lunch with Patricia Reidy (hereinafter Reidy). The plaintiff admitted that she said "wow I smell zucchini," to which Jhangiani responded that it was potatoes. The plaintiff then said, "boy it smells like zucchini," and Jhangiani explained that "it was the spices." The plaintiff acknowledged that she then commented that it was "interesting" that you could make "spices smell differently than the item

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you [were] eating." Jhangiani then told the plaintiff he would offer her some but that he knew she could not eat it. The plaintiff acknowledged that at that point she said "you're right," pointed to her throat and said "it would kill me."

¶ 17 The plaintiff testified, however, that she was not making a derogatory comment about Jhangiani' food, because she likes zucchini, and that rather she was referring to her inability to eat spicy food (of any nationality) because she suffers from acid reflux disease. She also testified that she has never made any derogatory comments regarding Jhangiani's food in the past. She did, however, state that other employees in the trading room often made such comments. Particularly, according to the plaintiff, Kelly and Lee would walk by Jhangiani's desk and say "it smells in here; Vikas it's you." According to the plaintiff, Jhangiani then started nicknaming Kelly, "Kelly Smelly."

¶ 18 The plaintiff admitted that she never reported this behavior to HR. She explained, however, that she did not report to HR because she had attempted to report a similar problem³ to them in 2007, but was told that it was not HR's function to resolve such issues and that she, as the manager was responsible for her own team.

¶ 19 The plaintiff next testified in her deposition that at about 4 p.m. on February 9, 2011, she walked to the printer in the trading room, when Reidy called out to her that there was "a

³Specifically, the plaintiff reported to Cox of HR that Lee stood up in the trading room and stated that an African-American employee, Kelvin Slater, who was very methodical, was stupid, and a "total idiot." Lee said he would "not tolerate it any longer," and then went around the room banging at filing cabinet drawers before stomping out.

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problem" with the security operation system (SOS). Reidy told the plaintiff that she did not know who to call because the person in charge before, Leo Peters, was no longer responsible for the SOS. Reidy then said, "we have to call this other person, but we cannot pronounce his name." The plaintiff admitted that she then asked Jhangiani if he could help them pronounce the name. Jhangiani pronounced the name.

¶ 20 The plaintiff admitted during her deposition that she then told Jhangiani that "life would be easier if we had nicknames." She told Jhangiani that her grandfather had served in World War I, and that he could not speak English at all, and that they gave him a nickname. The plaintiff also admitted that she then asked another employee, John Tsokolas (hereinafter Tsokolas), who was Greek, whether Johnny was his real name. When Tsokolas said that it was not, the plaintiff asked him for his real name and Tsokolas wrote it down. The plaintiff admitted that she then said, "See, see, even Johnny has a nickname."

¶ 21 The plaintiff admitted that Jhangiani then told her that he was "proud of his name." The plaintiff retorted, "I go get my nails done, the young ladies are Vietnamese, they go by Wendy and Sue because their names are so difficult to pronounce, but they have beautiful names. The names are beautiful names, we have difficulty saying them."

¶ 22 The plaintiff admitted in her deposition that "at the time" she was "stressed" and "had a mental physical breakdown." The plaintiff told her employees that she could not "solve all the problems of the world," and that they should call that particular individual with a hard-to-pronounce name, before walking out of the trading room.

¶ 23 The plaintiff averred that Jhangiani did not seem to her to be upset about this

conversation, and that no one came to complain to her about it afterwards. The plaintiff acknowledged, however, that later that afternoon, she wrote Jhangiani an email stating, "You may have been in a bad mood today. I hope I didn't make it worse."

¶ 24 The plaintiff next testified that on February 14, 2011, Hemme called her into his office and asked her if something had happened, and she admitted that it did. She told Hemme what had happened and stated that "it was not her finest moment." Hemme told the plaintiff that he needed to talk to Jhangiani and that he would "get back to her." After Hemme talked to the plaintiff, he told her that "Vikas said very nice things about you." The plaintiff then wrote Jhangiani an email thanking him.

¶ 25 In her deposition, the plaintiff denied referring to Jhangiani as "you people," and asking Jhangiani "what his people [*i.e.*, Indians] had done for this country?" She also denied ever making statements about "Dunkin Donuts cups" and "dots on foreheads." She further testified that she never told Jhangiani that her ancestors had changed their names when they came to this country.

¶ 26 In addition, in her deposition, the plaintiff testified that she did not believe she did anything wrong on February 9, 2011. She specifically testified that none of the statements she made to Jhangiani on that day were made in contravention of CNA's anti-discrimination or anti-harassment policies. In fact, the plaintiff explained that she did not think anything was wrong until February 17, 2011, when she was called into a meeting with Foster, Liapes and Spradau and told that a complaint had been filed against her.

¶ 27 The plaintiff testified that her interview with Foster, Liapes and Spradau lasted only about

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40 minutes. According to the plaintiff, the three CNA investigators continued to accuse her of making statements she had not made and she continued to deny them. When the plaintiff asked the investigators where these statements came from and whether she could see the anonymous letters accusing her of the statements, she was not allowed to see the letters. The plaintiff testified that she specifically told the investigators that she had hired Jhangiani and that she bore absolutely no ill will toward either him or the Indian culture, but that they did not seem interested in her side of the events. The investigators told the plaintiff that she would be contacted that night, and asked her not to speak with anyone, including Hemme, regarding the investigation. The plaintiff was never contacted that evening. Rather, the next day, she was terminated from CNA.

¶ 28 Specifically, the plaintiff testified that on February 18, 2011, she was called into the office of Kivin Jones (hereinafter Jones), CNA's associate VP of HR, and given a document informing her of her termination. When the plaintiff asked if there was a process by which she could have been disciplined or given a leave of absence, or in the alternative an opportunity to resign, Jones responded in the negative. Jones then suggested that he would walk the plaintiff to her office, but she refused stating that everyone on the floor would know what had happened. Jones then suggested the plaintiff's friend, Hemme, walk the plaintiff out and Hemme obliged.

¶ 29 During her deposition, the plaintiff was asked whether she believed any of the individual defendants fostered ill will toward her, and she responded in the affirmative. When asked to elaborate, she stated that the investigation into her misconduct was very brief, that only three witnesses aside from Jhangiani were interviewed, and that she was not allowed to read the

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anonymous letters while she was defending herself. The plaintiff was told by one of her employees, Chris Samiec (hereinafter Samiec) that the interviews of all of the witnesses were very brief (for example, Bernice Cail's interview was about 45 minutes and Kelly's was about 1.5 hours). The plaintiff did not believe that the investigation in its entirety took more than 10 hours. In addition, the plaintiff stated that all three investigators (Foster, Liapes and Spradau) were in possession of email exchanges between Lee, Kelly and Jhangiani, revealing ill will toward the plaintiff, but that they did nothing regarding those emails.

¶ 30 The plaintiff specifically referred to the following emails, which are attached as part of the record. First, an exchange of emails on February 10, 2011 between Kelly and Lee, in the following order.

Kelly: "Your girl flew off the handle again yesterday."

Lee: "We know. I am making arrangements to have her whacked."

Kelly: "never seen Vikas so down. Don't blame him though."

Lee: "She is off the reservation and I predict a huge downward spiral soon."

Kelly: "think this incident might do her in. It was in front of so many people including Monica Daley (SP)."

Lee: "The thing about this situation is Viking needs to be the guy who goes to HR and complains. Poetic justice."

Kelly: "don't think he will. Boy doesn't have the balls."

Lee: "I think he is scared, but that is why you must nudge him. If not, NOW is the time for anonymous letters to heavy D. Strike while the iron is hot and get her."

Kelly: "I'm trying to nudge him."

¶ 31 In addition, the following day, February 11, 2011, Lee sent Jhangiani, Kelly and Tsokolas an email with a wikipedia link about India in World War II, stating, "Oh look, India fought for the Allies in WWII. Too bad the troll's family were probably licking Mussolini's foot. I hate her." Jhangiani replied that same day with the following email:

"Thanks. ;-) The other thing is that currently the most powerful political figure in Indian politics is a lady of Italian decent--her name is Sonia Gandhi nee Mino ***. If India can be tolerant and let a woman of Italian decent become so powerful it's a shame that in her 'frog in the well' mentality everyone should change to adapt to her norms. Anyways, I have kind of made my peace with the situation but will surely say something if am personally attacked again."

¶ 32 Finally, on February 14, 2011, Jhangiani wrote an email to Tsokolas and Kelly, stating:

"Hey, just as an FYI...heavy D just stopped by and asked me what time I was leaving. It appeared that he wanted to talk to me about something. While I'm not sure what it is, I have a suspicion that some of the events from last week, may have gotten on his ears. Therefore, just be careful lets avoid some of these accent etc. jokes for at least a few days. Not sure how things may have/will be spun. Can't be careful enough."

¶ 33 During her deposition, the plaintiff also testified that she did not know that Kelly harbored ill will against her until she read the emails referring to her as a "troll." She testified that after being terminated, several of her former coworkers informed her that between February 9 and February 14, Kelly met Jhangiani and Cail in the front lobby of the CNA building before

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work to "have discussions," and that "some people thought they would get promotions" when she was terminated. The plaintiff was aware that Kelly came to Hemme's office on February 22, 2011, and asked to manage one of the plaintiff's most important accounts. In addition, the plaintiff was told by Samiec that "Kelly and Vikas were out to hurt [her]" and that she should not trust either one of them.

¶ 34 The plaintiff acknowledged, however, that she does not have any information that Liapes, Foster or Spradau shared the anonymous letters with anyone. She also admitted that she has no first-hand knowledge about what was said during the February 16, 2011, interviews of the employees conducted as part of CNA's investigation into her misconduct. Other than her attorney's public filing of the anonymous complains as exhibits to her complaint, the plaintiff is not aware of any dissemination of the information in those letters to anyone who was not involved in the investigation and CNA's decision to terminate her employment.

¶ 35 B. Shelly Liapes

¶ 36 The defendant Shelly Liapes testified in her deposition that she has acted as CNA's vice president of employee relations since 1996 and has investigated over a hundred employee misconduct complaints. She testified that on February 14, 2011, CNA's HR received two anonymous letters alleging that the plaintiff had acted in an inappropriate, harassing and discriminatory manner toward an Indian-American employee. Liapes testified that on the following day, February 15, 2011, she met with Spradau, Foster and Hemme to discuss the letters and decide on a further cause of action. After the meeting, a consensus was reached that an investigation was necessary. According to Liapes, Spradau, as senior corporate investigator led

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the investigation, which was supported by Liapes and Foster.

¶ 37 Liapes acknowledged that the investigators were aware that there were about six to eight employees in the trading room at the time of the alleged incident on February 9, 2011, but that they chose to interview only five. Liapes explained that the investigators chose to interview the individuals named in the letters (Jhangiani, the plaintiff, and Tsokolas), as well as Kelly, who was in the room at the time the two incidents alleged in the letters occurred. She also explained that the investigators agreed to interview Bernice Cail (hereinafter Cail) because they believed that, as a minority, she could provide an insightful perspective considering that the complaints alleged racial and ethnic harassment against the plaintiff.

¶ 38 Liapes stated that the investigators would have interviewed more individuals had they considered it necessary. However, after the investigators spoke to the plaintiff, they felt that "what was brought forward" in the letters "had been substantiated" so there was no "need to continue to interview and bring this to [the attention] of other people."

¶ 39 Liapes testified that on February 16, 2011, the investigators interviewed Jhangiani, Kelly, Tsokolas and Cail. On the following day, February 17, 2011, they interviewed the plaintiff. Liapes attended only three of those five interviews (with Jhangiani, Kelly and with the plaintiff). She was physically present for the interviews with Jhangiani and the plaintiff, and on a conference telephone call during the interview with Kelly, which was conducted by Spradau and Foster. Liapes stated that she took notes during all three interviews.

¶ 40 Liapes next testified regarding the interview with Jhangiani. She stated that Spradau took the lead in asking questions to all the interviewees, including Jhangiani. Spradau began by

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asking Jhangiani what transpired on February 9, 2011. Jhangiani stated that he was heating up his lunch when the plaintiff made a comment inquiring "what's that awful smell?" Jhangiani told the investigators that he does not heat up his lunch in the trading room on purpose to avoid comments like the ones made by the plaintiff. He said he felt insulted by what the plaintiff said and that she was "making what he would consider a scene in front of the others about his food and signaling him out in the trading room."

¶ 41 According to Liapes, Jhangiani also told the investigators that later that afternoon the plaintiff walked into the trading room while a fax was coming through with an Indian name that apparently she or the other individual she was speaking to could not pronounce. According to Jhangiani, the plaintiff spoke loudly to the entire room, stating, "This must be one of Vikas's cousins. Vikas, why don't you change your name when you come to this country?" Liapes stated that Jhangiani told the investigators that the plaintiff went on to talk about how her grandparents changed their names and were in World War I, before turning to Jhangiani and asking "what have you people done for this country?" Jhangiani stated that he felt insulted because his father, who had just passed away, had given him his name. Although he was hurt, Jhangiani just continued to look down onto his computer. However, the plaintiff "would not let it go," and turned to Tsokolas, who is Greek, to ask him his real name and whether he changed it when he came to America. The plaintiff then went up very close to Jhangiani's face and said in a loud voice, "see, see, see, even Johnny changed his name. I don't understand why you people don't change your name." According to Jhangiani, the plaintiff was very hostile.

¶ 42 During her deposition, Liapes admitted that her notes from Jhangiani's interviews were

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very short and that she did not reduce them to a typed form. She averred, however, that she did not have a practice of formalizing her notes in this way. Liapes also stated that she does not write down everything that is spoken in the interview in her notes.

¶ 43 Liapes next testified regarding the interview with Kelly. She could not remember all the details of that interview, but recalled that Kelly discussed the incident with the food in the microwave and the smell being described as awful by the plaintiff. She also recalled that Kelly described the incident with the document coming off a fax machine and the plaintiff making comments to Jhangiani and Tsokolas regarding their names.

¶ 44 During her deposition, Liapes also acknowledged that during the investigation she did not try to find out who wrote the anonymous letters. She explained, however, that this was not the focus of the investigation; rather the substances of the letters was. Liapes further stated that had the investigation focused on finding out the identify of that author, the company's "open door" policy permitting anonymous reporting would completely be destroyed. In addition, according to Liapes, once the investigators interviewed the plaintiff, and discovered that "the substance of the letters was not in question," it became apparent that the author's identity "was not relevant."

¶ 45 Liapes finally acknowledged that during her investigation, she became aware of emails written between Kelly, Jhangiani and Liapes, wherein they called the plaintiff "a troll" and threatened to "whack her," but stated that she did not believe they evidenced prejudice.

¶ 46 Liapes also testified that after conducting the interviews with the plaintiff and the four employees, she, Foster and Spradau believed that they had enough information to substantiated the allegations raised in the anonymous letters. Accordingly, on February 18, 2011, Liapes met

with Jones, Mense, and Hemme to discuss the investigation. A consensus was reached that the plaintiff's conduct justified immediate termination. Liapes explained in her deposition that the decision was based on "the plaintiff's inappropriate conduct, her hostile behavior toward Jhangiani in the trading room, her level within the organization, [and] her inability to recover from that due to the fact that there were so many people present in the trading room."

¶ 47 In her deposition, Liapes also averred that during the investigation she revealed the contents of the anonymous letters only to her immediate superior, Cox, and to her fellow investigators Spradau, Foster, Jones, Mense and Hemme, each of whom needed to know about the investigation as part of their job responsibilities at CNA.

¶ 48 C. Margaret (Peggy) Spradau

¶ 49 In her deposition, the defendant Margaret Spradau testified consistently with Liapes. She added that she became involved in the investigation on February 14, 2011, when Joe Soldano (hereinafter Soldano), a manger in CNA's compliance department, handed her an envelope containing the anonymous letters. After the February 15, 2011, meeting with Liapes, Hemme, and Foster it was agreed that an investigation was to be launched, and that Spradau would take the lead because she was the senior investigator in the corporate investigations department.⁴

¶ 50 Spradau further testified that she, Foster, and Liapes agreed to interview Jhangiani first and see where the investigation would lead them from there. She also agreed with Liapes that after the interview with the plaintiff, who admitted to the allegations in the incident, she believed that there was no need to "involve anyone else," or to interview any other witnesses.

⁴The record reveals that Spradau worked for CNA since 1987.

¶ 51 In her deposition, Spradau further averred that during the investigation into the plaintiff's misconduct, neither she, nor Liapes, nor Foster communicated the contents of the anonymous letters to any of the interviewees. According to Spradau, none of the investigators told any of the employees interviewed anything about the specifics of the incidents alleged in those letters; nor did they distribute or show copies of those letters to anyone. Rather, Spradau explained that her method was to ask open-ended questions and to let each witness speak freely about what he or she observed on February 9, 2011.

¶ 52 Spradau admitted that the notes she took during the interviews were not elaborate, and consisted of only a few pages of handwritten notes. She averred, however, that during the interviews, she focused on the interviewee's behavior and reactions and consistent with her standard practice, prepared notes only in such detail as to later refresh her memory, if necessary. Spradau further testified that although she, Liapes and Foster all took notes during the interviews, none of them distributed or showed copies of those notes to anyone at CNA.

¶ 53 Spradau also averred that after the interview process was complete, consistent with her usual practice, she prepared a written summary of the investigation and conclusion of that investigation in a document titled, "Corporate Investigation Report." Spradau gave this document only to her immediate supervisor, Thomas Corcoran (hereinafter Corcoran), as well as to: (1) Deborah Nutley (hereinafter Nutley), senior VP and senior HR officer; (2) Robert Keith (hereinafter Keith), senior VP of employee relations; and (3) Pontarelli. She averred that it was standard practice at CNA that each of these individuals receive corporate investigation reports for any and all employee-related investigations.

¶ 54 Spradau admitted that she verbally communicated some of the contents of the anonymous letters to Liapes and Foster, but averred that she did so only in the course of their investigation into the plaintiff's conduct. Spradau also admitted that she verbally revealed some of the content of the anonymous letters to her immediate superior, Corcoran, in order to explain to him her decision to investigate the complaint, but stated that this is something that she routinely does when participating in any HR investigation.

¶ 55 D. Diahanna Foster

¶ 56 Foster, who is an HR generalist at CNA, testified in her deposition consistently with the testimony of Spradau and Liapes. She reiterated that after the interview with the plaintiff, she believed that the plaintiff had admitted to the substance of the anonymous letters. Foster pointed out that during her interview with the investigators, the plaintiff admitted that she "lashed out," that she had no idea why she did so and that it had nothing to do with Jhangiani. The plaintiff also gave the investigators an example of when one lashes out at one's children. Foster further averred that when she asked the plaintiff whether she thought about apologizing to her team, the plaintiff admitted to her that she had intended to schedule a staff meeting to do so.

¶ 57 In her deposition, Foster admitted that prior to February 2011, HR had not received any complaints that the plaintiff was discriminating against others. She also acknowledged that during the investigation no one attempted to find out who the author of the anonymous letters was. Finally, Foster admitted that Reidy, was among those not interviewed, even though she is the direct supervisor of everyone in the trading room.

¶ 58 Foster further testified that at Liapes' direction, she prepare a written summary of the

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investigation, and provided that summary to Liapes, as well as to her supervisor, Jones.

According to Foster, Jones was required to be kept informed of all employee investigations as part of his job responsibilities. Foster admitted that she also verbally communicated some of the contents of the anonymous letters to Jones during the investigation.

¶ 59 E. Vikas Jhangiani

¶ 60 Jhangiani testified in his deposition that he is a cash operations manager at CNA.

Jhangiani averred that he neither authored the anonymous letters nor has ever read them.

Jhangiani confirmed that on February 9, 2011, the plaintiff made two separate derogatory remarks about his Indian heritage. First, around noon that day, after Jhangiani brought his heated lunch to his desk, the plaintiff made a sniffing gesture and remarked to the entire trading room, "What is that smell?" Jhangiani told the plaintiff that it was his food and he apologetically informed her that he does not warm up his food that often, but she retorted "No, no, it's your food."

¶ 61 Jhangiani further averred that later that afternoon at about 4 p.m., he and a group of other employees were involved in an international wire transfer that included a name that was difficult to pronounce. At that point, the plaintiff walked into the trading room and said "Is that another one of Vikas's cousins?" The plaintiff then looked at Jhangiani and asked, "How come you guys don't change your names *** like the Chinese and the Vietnamese do when they come to this country? You have such difficult names and you expect us to pronounce the entire name. How do you expect us to remember these names?" Jhangiani told the plaintiff that this was the name his parents had given him and that he was very proud of it, but the plaintiff retorted that even her

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grandparents who "came to this country and fought during the World War" changed their names. She said, "whenever I ask my grandfather why they changed their name, he always tells me when you are in a country that you live in, adapt to the norms of that county." The plaintiff then asked Jhangiani, "And what have you guys done for this country?" Jhangiani testified that he was taken aback and insulted by these comments, but that he just chose to sit down at his computer and ignore the plaintiff. Jhangiani averred that there was silence in the trading room, but that before the plaintiff walked out, she passed by Tsokolas's desk and asked him what his "Greek name" was. When Tsokolas replied, she turned around to Jhangiani and said loudly, "see, see, see, even Johnny changed his name."

¶ 62 In his deposition, Jhangiani admitted that he did not report the February 9, 2011, incident to HR, but stated that he was "thinking about it." Jhangiani testified that a few days after the incident, he was approached by Hemme who called him to his office. Hemme told Jhangiani that he was aware of an incident on February 9, 2011 and asked Jhangiani to tell him what had happened. When Jhangiani asked Hemme "what he had heard happened," Hemme stated that he heard there was an altercation between the plaintiff and Jhangiani. Jhangiani then told him what happened, but downplayed how he felt about it, saying "the plaintiff probably didn't meant it that way." Jhangiani did not downplay the incident when he spoke to the HR investigators later that week.

¶ 63 Jhangiani also testified that this was not the first time the plaintiff had made derogatory comments to him. According to Jhangiani, a few years before, when he had grown a goatee, the plaintiff told him he looked like a "terrorist" both in front of a group of people in the trading

room and again in the hallway as she passed him by. Jhangiani admitted that he did not report this incident to HR either but explained that it was for "fear of retribution." He averred that the plaintiff had told the trading room that "HR's job was to do the investigation" but that they then turned it over to senior management who could then decide how they wanted to proceed forward.

¶ 64

F. John Tsokolas

¶ 65 In his deposition, John Tsokolas confirmed Jhangiani's version of events on February 9, 2011. Tsokolas explained that the plaintiff told Jhangiani that her family came from Italy, and that they fought in a world war for the United States, before asking him "what have your people done for this country?" According to Tsokolas, the plaintiff also made a comment as to the "typical Indian name, which has so many syllables and vowels" and asked Jhangiani "why do your names need to be so difficult, so long?" Tsokolas also confirmed that the plaintiff then came over to his desk because he is of Greek-American descent, and asked him to spell his Greek name on a piece of paper. When Tsokolas did, the plaintiff took the piece of paper and presented it to Jhangiani saying, "see, even he changed his name." Tsokolas described plaintiff's conduct toward Jhangiani as "racist" "very aggressive" and "very demeaning."

¶ 66 Tsokolas, however, admitted that he did not report the incident to HR, but explained that he did not want to put Jhangiani in an awkward position, so he left it up to Jhangiani to decide if he wanted to report it himself.

¶ 67

G. Ryan Kelly

¶ 68 In his deposition, Kelly, admitted to authoring the second anonymous letter. Kelly also corroborated Jhangiani's version of the February 9, 2011, events. According to Kelly, the

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plaintiff told Jhangiani that his Indian food "smelled bad" and said "I can't believe how bad [Indian food] smells. How can you eat that?" Kelly also confirmed that the plaintiff criticized Jhangiani because Indian names were difficult to pronounce and told Jhangiani "Indian people should have to change their names to names that were more normal, more easy to pronounce." In addition, Kelly testified that the plaintiff involved Tsokolas in the conversation, by asking for his "Greek" name and then telling Jhangiani "see, see, Johnny did it [changed his name.] Why shouldn't you?" Kelly said he believed the plaintiff's conduct on February 9, 2011, was racist and offensive.

¶ 69 When questioned about the second anonymous letter, Kelly explained that his purpose in writing it was to stop the plaintiff from engaging in similar conduct in the future. He testified that the plaintiff generally responded to negative feedback from her own managers. According to Kelly, when in the past employee surveys came out, and the plaintiff received "horrible marks," she would be nice and would refrain from verbally abusing anyone for months.

¶ 70 Kelly averred that he did not reveal the contents of his letter to anyone, and that he mailed it first class to Cox at CNA's HR. He testified that after CNA began the investigation, he spoke to the investigators about the February 9, 2011, incident and told them what he had observed.

¶ 71 H. Bernice Cail

¶ 72 Bernice Cail, an African-American woman, testified in her deposition that she is a senior operations analyst at CNA and that she has worked for the company for over 15 years. Cail testified that she has never been offended by the plaintiff and has never observed her acting in a racist or discriminatory manner. As to the events of February 9, 2011, Cail testified that she was

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on a conference call with IT at the time of the afternoon incident, but that she heard the end of the plaintiff's conversation with Jhangiani. Cail confirmed that the plaintiff asked Tsokolas about his "Greek" name and told Jhangiani, "see, this is John's name." Cail also confirmed that the plaintiff's discussion was "loud" and that she could see the "depression" on Jhangiani's face after the plaintiff finished with him. Cail spoke to Jhangiani the next day, and he told her that he was "very saddened" by what the plaintiff said to him on February 9, 2011.

¶ 73

I. Dennis Hemme

¶ 74 The plaintiff's direct supervisor, and close friend, Dennis Hemme, testified in his deposition that he was CNA's treasurer until April 4, 2011, when he resigned. Hemme worked for CNA for over 30 years and with the plaintiff for over 20. Hemme testified that on February 14, 2011, his supervisor, Mense, gave him an anonymous letter accusing the plaintiff of racist conduct toward Jhangiani. To Hemme, the anonymous letters seemed somewhat, if not entirely, exaggerated. Hemme stated, however, that he was "very concerned" because it was hard for him to believe that anyone in his staff, "least of all" the plaintiff, could have said any of the things alleged in the letter. Hemme asked Jhangiani to come to his office so that they could talk privately and asked him what happened. Jhangiani told Hemme that the plaintiff had made two comments, one during a discussion about the smell of his lunch, and the second about the pronunciation of his name. Jhangiani, however, also told Hemme that he did not consider what the plaintiff said to be so offensive that it "devastated" him as described in the anonymous letter. Jhangiani said the plaintiff was "just having a bad day," and that he was "surprised that this was taking on a life of its own."

¶ 75 Hemme testified that on the following morning he received a telephone call from HR and was reprimanded for not delivering the letter to HR before speaking with Jhangiani. Hemme was ordered not to communicate with Jhangiani, the plaintiff, or anyone else on this matter, in the future, and he was told that HR would launch a "proper investigation" into the matter.

¶ 76 Hemme testified that he believed that it was important to determine who authored the anonymous letters so as to rule out that they were not merely a "character assassination," or a coordinated attempt to smear the plaintiff's name. He also believed that the investigation should have included interviews of everyone who might have been a witness.

¶ 77 Hemme averred in his deposition, that he was surprised that the plaintiff was terminated because she was a long-standing employee with a good track record. When he was told by HR personnel that the plaintiff admitted to saying the things alleged in the anonymous letters, he was "shocked." He explained that he knew the plaintiff to be "passionate about things" but that he could not believe that she would make "racist or derogatory remarks directed at [any] individual."

¶ 78 J. Lynne Guggenheim

¶ 79 Lynne Guggenheim (hereinafter Guggenheim), a CNA attorney, testified that she worked with the plaintiff for over 20 years and that she has never known the plaintiff to be racist or abusive.

¶ 80 K. Brian Qualizza

¶ 81 Brian Qualizza (hereinafter Qualizza) testified in his deposition that he worked for CNA for three 3 years. He testified that in that period, the plaintiff was his direct supervisor and he interacted with her on a daily basis for more than eight hours a day. Qualizza stated that he could

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not recall a single incidence in which the plaintiff engaged in racist, derogatory or discriminatory behavior.

¶ 82 L. Patricia Reidy

¶ 83 Reidy testified that she worked with the plaintiff on a daily basis for three years, and that she never saw the plaintiff expressing any negative opinions about race, ethnicity or religion. Reidy admitted being in the trading room on February 9, 2011, but could not recall any of the events described in the anonymous letters.

¶ 84 M. Monica Daily

¶ 85 Monica Daily testified that she worked with the plaintiff at CNA for about five years and that she never observed the plaintiff engaging in racist or discriminatory behavior. She testified that months after the plaintiff was terminated she heard that it happened because the plaintiff had "an altercation with Vikas." Daily never learned the details of this altercation. She also testified that the plaintiff "was a nice person, and that the whole unit seemed to get along with her and like her."

¶ 86 N. Christine Samiec

¶ 87 Samiec testified that she worked on a daily basis with the plaintiff for over seven years and that she never saw her engage in racist behavior. Samiec also testified that when she started working in the trading room, she had problems with some of her coworkers, and especially Jhangiani, because she was the only woman in that team.

¶ 88 Samiec also testified that many of the coworkers in the trading room, including Kelly, Lee and Johnson called the plaintiff a "troll" and made fun of her when she was not around.

Samiec learned of the anonymous letters only after the plaintiff was terminated. She explained, however, that prior to that she had overheard the defendant Kelly and Johnson talking about the possibility of getting promoted if the plaintiff was gone.

¶ 89 After the close of discovery, on January 18, 2013, the defendants filed a motion for summary judgment on the three remaining counts of the plaintiff's complaint, *i.e.*, Count I (defamation against CNA, Foster, Spradau and Liapes), Count II (negligent infliction of emotional distress against CNA, Foster, Spradau and Liapes) and Count VI (tortious interference with prospective economic advantage or business relationship against Kelly). On March 25, 2013, the circuit court granted the defendants motions for summary judgment. In a written order explaining its findings, the court held that the plaintiff's defamation claim against all of the defendants must fail as a matter of law because the record unequivocally established that there was no "republishing" of the defamatory remarks, but rather a mere "passing along" of what had been reported in the context of a corporate investigation. The court further stated that the statements were protected by qualified privilege, and that the plaintiff failed to show that they were made with malice. The court also explicitly found that the defamation claim failed as a matter of law because the plaintiff admitted that the allegations in the allegedly defamatory anonymous letters were "substantially true."

¶ 90 With respect to the plaintiff's claim for tortious interference with prospective business advantage against Kelly, the court found that because at all times Kelly acted as an agent of CNA the defendant was required to establish that he acted without justification or with actual malice. The court concluded that the defendant failed in that burden and that the record rebutted both.

¶ 91 The plaintiff now appeals, challenging only the circuit court's findings with respect to Count I (defamation) and Count VI (tortious interference with prospective economic advantage or business relationship against the defendant Kelly).

¶ 92 II. ANALYSIS

¶ 93 We begin by noting the well-established principles regarding grants of summary judgment. Summary judgment is proper when " 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ' " *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 28 (quoting 735 ILCS 5/2-1005(c) (West 2008)); see also *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399 (2010). In determining whether the moving party is entitled to summary judgment, the court must construe the pleadings and evidentiary material in the record strictly against the moving party. *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186 (2002). Although the burden is on the moving party to establish that summary judgment is appropriate, the nonmoving party must present a *bona fide* factual issue and not merely general conclusions of law. *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 670 (1992). A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts. *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 724 (2010); see also *In re Estate of Ciesiolkiewicz*, 243 Ill. App. 3d 506, 510 (1993); *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114 (1995). We review the circuit court's decision to grant or deny a motion for summary judgment *de novo*. *Palm*, 2013 IL 110505, ¶ 28; see also *Kajima Construction*

Services, Inc. v. St. Paul Fire & Marine Insurance Co., 227 Ill. 2d 102, 106 (2007). In doing so, we may affirm on any basis found in the record regardless of whether the trial court relied on those grounds or whether its reasoning was correct. *Illinois State Bar Association Mutual v. Coregis Insurance Co.*, 355 Ill. App. 3d 156, 163 (2004); see also *Pepper Construction Co. v. Transcontinental Insurance Co.*, 285 Ill. App.3d 573, 576 (1996).

¶ 94

A. Defamation

¶ 95 The plaintiff first contends that the circuit court erred in granting summary judgment on her defamation claim against the defendants because there remain genuine issues of material fact as to: (1) whether the plaintiff admitted that the defamatory allegations in the anonymous letters were substantially true and (2) whether the defendants merely "passed on" what had been reported to them as part of an internal investigation into company misconduct, so as to avail themselves of qualified privilege. The plaintiff asserts that she never admitted that the statements attributed to her were true, and that instead of participating in an appropriate investigation into what transpired on February 9, 2011, CNA was involved in a "sham investigation" that resulted in "forwarding" information from the anonymous letters to other employees in the company, that were neither involved nor authorized to participate in the investigation. The plaintiff specifically complains of the brevity of the investigator's notes regarding their interviews of witnesses to the alleged incident. She also contends that the investigation was improperly conducted as it failed to: (1) interview everyone present in the trading room on February 9, 2011, and (2) attempt to determine the identity of the author of the anonymous letters. After a review of the record and for the reasons that follow, we disagree with

the plaintiff.

¶ 96 We begin by noting that to establish defamation, a plaintiff must present facts showing that: (1) the defendant made a defamatory statement about the plaintiff; (2) the defendant made an unprivileged publication of that statement to a third party; and (3) the publication caused damages. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009); see also *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). "A defamatory statement is a statement 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; *Solaia*, 221 Ill.2d at 579.

¶ 97 There are two types of defamatory statements: defamation *per se* and defamation *per quod*. *Mauvaix-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 68 (citing *Brennan v. Kadner*, 351 Ill. App. 3d 963, 968 (2004)). In an action for defamation *per quod*, the plaintiff must plead and prove actual damages in order to recover. *Mauvaix-Jarvis*, 2013 IL App (1st) 120070, ¶ 68 (citing *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill.2d 381, 390 (2008)). On the other hand, if a defamatory statement is actionable *per se*, the plaintiff need not plead or prove actual damage to his or her reputation to recover. *Mauvaix-Jarvis*, 2013 IL App (1st) 120070, ¶ 68 (citing *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77, 87 (1996)). "Rather, statements that fall within these actionable *per se* categories are thought to be so obviously and materially harmful to [the plaintiff] that injury to the plaintiff's reputation may be presumed." [Citation.]. *Mauvaix-Jarvis*, 2013 IL App (1st) 120070, ¶ 68.

¶ 98 The Illinois Supreme Court recognizes only five such categories of statements that are

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defamatory *per se*: (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. See *Solaia*, 221 Ill.2d at 579-80.

¶ 99 Nevertheless, even statements that are defamatory *per se*, can be unactionable where they are "substantially true." *Harrison v. Chicago Sun–Times, Inc.*, 341 Ill. App. 3d 555, 563 (2003). See *Hnilica v. Rizza Chevrolet, Inc.*, 384 Ill. App. 3d 94, 97 (2008) ("Truth is an absolute defense to defamation; true statements cannot support a claim of defamation"). This rule derives from the "recognition that 'falsehoods which do no incremental damage to the plaintiff's reputation do not injure the only interest the law of defamation protects.' " *Republic Tobacco Co. v. North Atlantic Trading Co., Inc.*, 381 F.3d 717, 727 (7th Cir. 2004) (applying Illinois law) (quoting *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222 (7th Cir. 1993)). In determining whether a statement is "substantially true," the court must consider whether the "gist" or "sting" of the statement is true; the "gist" or "sting" of a statement is true if it produces the same effect on the mind of the recipient which the precise truth would have produced. *Myers v. Levy*, 348 Ill. App. 3d 906, 920 (2004); see also *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 71 (2010) ("Substantial truth refers to the fact that a defendant need prove only the 'gist' or the 'sting' of the statement."); *Lemons v. Chronicle Publishing Co.*, 253 Ill. App. 3d 888, 890 (1993)). "While determining 'substantial truth' is normally a question for the jury, the

question is one of law where no reasonable jury could find that substantial truth had not been established." *Moore*, 402 Ill. App. 3d at 71 (quoting *Wynne v. Loyola University of Chicago*, 318 Ill. App. 3d 443, 451-52 (2000)), *appeal denied*, 237 Ill. 2d 560 (2010); see also *J. Maki Construction Co. v. Chicago Regional Council of Carpenters*, 379 Ill. App. 3d 189, 203 (2008) ("The question is one of law where no reasonable jury could find that substantial truth had not been established.").

¶ 100 In the present case, the record unequivocally establishes that during her deposition, the plaintiff admitted to the substance of the allegedly defamatory statements attributed to her by the anonymous letters, which were corroborated by all of the employees who were interviewed about the February 9, 2011, incident. Specifically, the plaintiff admitted that on the morning of February 9, 2011, she commented on Jhangiani's food by stating that it "smelled like zucchini" and asking him how it was possible to make a food item taste differently from what it was just with the use of spices. The plaintiff also admitted that she then indicated that she could not eat such food and that it would "kill her" by pointing to her throat. What is more, the plaintiff further admitted in her deposition that later that afternoon, she asked that Jhangiani pronounce the name of a person of Indian origin. She told Jhangiani that "we can't say them [Indian names.]" The plaintiff admitted that Jhangiani told her that he was proud of his name, but that she told him "life would be easier if we had nicknames" and made a reference to her grandfather who served in World War I, but was given a nickname because he spoke no English. The plaintiff also admitted that she then loudly asked another employee in the trading room, Tsokolas, about his "Greek" name, requesting that he write it down in front of Jhangiani. The

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plaintiff acknowledged that she then proceeded to loudly tell Jhangiani, "see, see, even Johnny has a nickname." The plaintiff further admitted during her deposition that when she talked to her direct supervisor and friend, Hemme about this incident, she admitted that February 9, 2011, was "not one of [her] finer moment," and that she was under a lot of stress and "lost [her] composure that day." She also admitted in her deposition and to the CNA investigators that she had "an emotional break down" and "people saw their manager break down." The plaintiff also admitted to writing a letter apologizing to Jhangiani on the night of the incident. In addition, she told Foster that she intended to hold a staff meeting in the coming week to apologize to everyone in the trading room for her behavior.

¶ 101 Taking these statements by the plaintiff in context, we fail to see how the plaintiff can viably contend that the "gist" or "sting" of the allegations in the anonymous letters accusing her of violating CNA's anti-discriminatory and anti-harassment policies, by ridiculing Jhangiani's Indian heritage, is untrue. The plaintiff's own admissions, taken at face value, produce the same effect as the "gist" of the anonymous letters, *i.e.*, that the plaintiff singled out Jhangiani for ridicule based on his Indian heritage, commenting on, *inter alia*, his food, his lack of contribution to this country, and the difficulty of pronouncing Indian names. In addition, the plaintiff explicitly admitted to using Tsokolas' Greek name to prove that anyone who comes to this country should change their name to adapt. "[W]here plaintiff's own characterization is not substantially different from the allegedly defamatory language," such language is "substantially true" and therefore not subject to a defamation claim. *Harrison*, 341 Ill. App. 3d at 563.

¶ 102 Accordingly under this record, we find that summary judgment is proper on the basis of

"substantial truth." See *e.g.*, *Cianci v. Pettibone Corp.*, 298 Ill. App. 3d 419, 424 (1998) (holding that summary judgment was proper in action for defamation by former employee for statements made by employer in termination letter accusing the employee of misusing company property, where the employee admitted in her deposition, albeit with qualification and giving her actions a favorable interpretation, to having used the company courier service for personal business without reimbursing the company); see also *Wynne*, 318 Ill. App. 3d at 452 (affirming summary judgment on the basis of "substantial truth" where a professor "admitted certain facts" that she alleged were defamatory in a memorandum authored by another university employee attempting to prevent her from becoming a department chair.)

¶ 103 What is more, even if we were to find that the allegations in the anonymous letters were not "substantially true," the plaintiff's claim would nevertheless fail under the doctrine of qualified privilege. "A qualified privilege protects communications that would normally be defamatory and actionable, in order to effect the policy of protecting honest communication of misinformation in certain favored circumstances and thus facilitate the availability of correct information." *Naleway v. Agnich*, 386 Ill. App. 3d 635, 639 (2008) (citing *Solaia*, 221 Ill.2d at 585). To determine whether a qualified privilege exists, a court "looks only to the occasion itself for the communication and determines as a matter of law and general policy whether the occasion created some recognized duty or interest to make the communication so as to make it privileged." *Kuwik v. Starmark Star Marketing & Administration, Inc.*, 156 Ill.2d 16, 27 (1993).

¶ 104 Our courts have repeatedly recognized, and the plaintiff does not appear to dispute, that one such occasion includes "a corporate employer investigating certain [mis]conduct by its

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employees." *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 264 (2005). As our courts have explained:

"A corporation has an unquestionable interest in investigating and correcting a situation where one of its employees may be engaged in suspicious conduct within the company.

[Citation.] Thus, a qualified privilege exists for communication made concerning such investigation." *Popko*, 355 Ill. App. 3d at 264.

Indeed, our courts have recognized that "[i]f no privilege existed, then victims of harassment and companies with a goal to preventing harassment would be 'handcuffed' by a fear of defamation liability." *Vickers v. Abbott Labs*, 308 Ill. App. 3d 393, 402 (1999).

¶ 105 The only way a plaintiff can overcome qualified privilege within an employee-employer context, is to plead and prove that the defamatory statements were made with "actual malice," *i.e.*, either (1) that the defendant knew the statement was false, or (2) that the defendant made the statement with "reckless disregard" as to its truth. *Kuwik*, 156 Ill. 2d at 24. A defendant acts with "reckless disregard" when he or she publishes the defamatory matter " 'despite a high degree of awareness of probable falsity or entertaining serious doubts as to its truth.' " *Kuwik*, 156 Ill.2d at 24-25 (quoting *Mittelman v. Witous*, 135 Ill. 2d 220, 237-38 (1989)). The focus is on the defendant's subjective state of mind when he or she made the statement, not the background investigation made by the defendant. *Larson v. Decatur Memorial Hosp.*, 236 Ill. App. 3d 796, 804 (1992). "If the defendant subjectively believed the statement was not false, actual malice does not exist." *Larson* 236 Ill. App. 3d at 804. The plaintiff's burden "is not satisfied by the bare allegation that a defendant acted maliciously and with knowledge of the falsity of the statement;

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the plaintiff must allege facts from which actual malice may be inferred." *Davis v. John Crane, Inc.*, 261 Ill. App. 3d 419, 431 (1994).

¶ 106 In the present case, the record reveals that the plaintiff has produced no evidence of "actual malice" by any of the defendants. First, with respect to the three CNA investigators (Spradau, Fisher and Liapes), as already discussed above, during her interview with the investigators, the plaintiff admitted to the "gist" of the allegedly defamatory statements in the anonymous letters, so as to justify their conclusion that those accusations were true. The plaintiff presents no facts by which to establish that despite her admission to those accusations, the investigators had reason to subjectively believe that the accusations were false. What is more, the record establishes that three other employees corroborated to the investigators the exact allegations against the plaintiff that Kelly described in his anonymous letters to CNA.

¶ 107 For these same reason, the plaintiff has failed to establish that the defendant Kelly acted maliciously. Although the plaintiff is correct that Kelly authored emails in which he called the plaintiff a "troll," she does not explain how this fact alone contradicts her own essential admission to the events that transpired on February 9, 2011, so as to establish that Kelly acted "maliciously" in reporting them. In fact, Kelly's emails do not negate the incident, but rather refer to it, noting that it might prove to be the plaintiff's downfall. For all of these reasons, we find that the plaintiff's defamation claim fails as the statements made during the CNA investigation were protected by qualified privilege. See *Larson* 236 Ill. App. 3d at 804.

¶ 108 B. Tortious Interference

¶ 109 For these same reasons, we reject the plaintiff's argument that the trial court improperly

dismissed her claim for interference against prospective economic advantage against Kelly. The elements of that tort are: (1) the plaintiff's reasonable expectation of entering a valid business relationship; (2) the defendant's knowledge of the plaintiff's expectancy; (3) the purposeful or intentional interference by the defendant that prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) the damages to the plaintiff resulting from such interference. *Jim Mullen Charitable Foundation v. World Ability Federation, NFP*, 395 Ill. App. 3d 746, 761 (2009). *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 374 (2007); *Soderlund Brothers, Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606, 615 (1995).

¶ 110 Although ordinarily "employees acting on behalf of an employer cannot interfere with a plaintiff's business relationship" (see *Vickers*, 308 Ill. App. 3d at 411; see also *Harrison v. Addington*, 2011 IL App (3d) 100810, ¶ 52 ("a corporate officer cannot interfere with the continued employment of an employee of the corporation because the officer acts on behalf of the corporation")), this privilege does not apply where an employee "acts solely for [his] own gain or solely for the purpose of harming [the] plaintiff, since such conduct is not undertaken to further the corporation's interest." *Harrison*, 2011 IL App (3d) 100810, ¶ 52. Accordingly, to be tortious, an employee's action "must be done without justification or maliciously." *Harrison*, 2011 IL App (3d) 100810, ¶ 52.

¶ 111 In the present case, as already articulated above, in light of the plaintiff's admissions to the substance of the allegations contained in the anonymous letters, accusing the plaintiff of violating CNA's anti-discrimination and anti-harassment policies, and the testimony of four witnesses corroborating those allegations, we fail to see how the plaintiff can argue that Kelly

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had no justification for reporting the plaintiff's misconduct, and rather acted solely for his own benefit. *Harrison*, 2011 IL App (3d) 100810, ¶ 52. In that respect, we find critical that CNA's policies explicitly mandate reporting of misconduct by all CNA employees, which Kelly was, at the time he authored the second anonymous letter.

¶ 112

III. CONCLUSION

¶ 113 Accordingly, for all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 114 Affirmed