2013 IL App (2d)120997-U
No. 2-12-0997
Order filed April 25, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CONSTANTINE P. XINOS, Plaintiff-Appellant, v. SUZANNE O'BRIEN and DENNIS O'BRIEN, Defendants-Appellees (Mike Stewart, Defendant).	)))))))))))	Appeal from the Circuit Court of Du Page County. No. 10-L-1003 Honorable Dorothy French Mallen, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment for defendants in this defamation case, as the statement at issue was a nonactionable opinion. Alternatively, the statement was subject to a qualified privilege, and there was no genuine issue of material fact that defendants did not abuse the privilege. Therefore, we affirmed the trial court's ruling.

¶ 2 Plaintiff, Constantine P. Xinos, brought an action alleging defamation *per se* against defendants, Suzanne and Dennis O'Brien.[1] The suit was based upon statements defendants made

[1]According to plaintiff, defendant Mike Stewart passed away after plaintiff filed the

about plaintiff in a letter dated August 13, 2009, that defendants sent to the Board of Directors and residents of Briarwood Lakes Community, located in Oak Brook. In particular, the letter stated: "As was well stated last evening by some of your neighbors, [plaintiff] does not have the right to choose to abide by the Covenants only when it's profitable for him to do so!"

¶ 3 The trial court granted defendants' motion for summary judgment. On appeal, plaintiff argues that the trial court erred in finding that the aforementioned statement was not defamatory because it expressed only an opinion. Plaintiff also argues that the trial court erred in granting summary judgment, because there is a genuine issue of fact as to whether the statement was conditionally privileged. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2009, defendants submitted a bid to Washington Mutual for the purchase of a foreclosed residential property in Briarwood Lakes (Briarwood Property). At that time, the Briarwood Property had been for sale for almost one year.

¶ 6 Plaintiff was the president and managing broker of the Briarwood Lakes Community Association (Association). In June 2009, plaintiff also submitted a bid to Washington Mutual for the purchase of the Briarwood Property on behalf of his clients, Richard and Linda Mullens.

¶ 7 Washington Mutual accepted defendants' bid over plaintiff's bid, and defendants and Washington Mutual entered into a contract for the purchase of the Briarwood Property on July 24, 2009. The contract set the closing date for August 31, 2009. Defendants and Washington Mutual later agreed to advance the closing date to August 11, 2009.

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complaint, and Stewart was never served. Therefore, in this order, we use the term "defendants" to refer only to the O'Briens.

¶ 8 The Briarwood Property was subject to the Association's covenants and bylaws. Under these rules, the Association had an assignable right of first refusal to purchase property within the community. Lot owners were required to provide the Association with notice of any proposed sale, and the Association then had 15 days to exercise its assignable right of first refusal to purchase the property on the same terms and conditions that the lot owner was proposing to sell. If the Association did not approve or disapprove of the sale within the 15-day period, the sale would be deemed approved. Therefore, in order to close on the sale of the Briarwood Property, Washington Mutual required a waiver of the Association's right of first refusal, as well as an assessment status letter.

¶ 9 According to defendants, e-mails obtained in discovery and included in the record show that plaintiff learned of the contract around July 28, 2009, and informed the Mullens that he would delay defendants in their efforts to close by withholding the waiver and assessment letter. Defendants maintain that the e-mails further show that plaintiff negotiated with the Mullens as early as July 30 to purchase the Association's right of refusal for $10,0000.

¶ 10 According to plaintiff, as Association president, he wished to assign the right of first refusal on the Briarwood Property to a third party for additional consideration to the Association. Plaintiff maintains that he took this action to further the Association's economic interests.

¶ 11 On August 12, 2009, plaintiff presided over an Association meeting that was held to discuss the Briarwood Property. Defendants attended the meeting. Only four of the six members of the Board of Governors of the Association (Board) were present. Plaintiff proposed that the Association sell its right of first refusal on the property to the highest bidder. As all Board members were not

present at the meeting, the Board decided to reconvene on August 18, 2009, for the Board to vote on whether to assign the right of first refusal to the highest bidder.

¶ 12 According to defendants, e-mails in the record show that plaintiff and the Mullens intended to use the August 18 meeting to stall defendants and intended to convince Washington Mutual to cancel its contract with defendants.

¶ 13 On August 13, 2009, defendants drafted a letter they sought to distribute to the Association's members. The August 13 letter contains the alleged defamatory statement that is the subject of this appeal. We summarize the letter's contents. The defendants' bid for the Briarwood Property was accepted by Washington Mutual on July 24. They won this bid in an open, fair, and direct manner. Washington Mutual e-mailed plaintiff on July 29, asking for the "sign off" documents. However, plaintiff conveniently claimed that this notice was never given and that he received only the mailed version on August 6. On August 10, defendants were notified by Washington Mutual that plaintiff refused to sign the necessary papers for the closing to occur. "Further inquiry disclosed" that plaintiff wanted to assign the right of first refusal to a third party for the same price, but the third party would pay an additional $10,000 to the Association. It was unfair and unethical to wait until the bank accepted the advertised price in a fair bidding process and then circumvent the process with a third party proposal. Defendants did not believe that this was the intent of the bylaws, and plaintiff's actions had cost them many thousands of dollars in additional legal expenses. Plaintiff presented his proposal at the August 12 meeting, and "[m]any of the residents present, [*sic*] voiced enough concern over the propriety, ethics and morality of doing this, that the Board decided to reconvene later in the week ***." Plaintiff has stated that the Association had not exercised its right of first refusal in over 20 years, and that the last time it was exercised, a realtor had taken advantage

of an elderly owner. This situation was dramatically different, as a fair bid was accepted in a foreclosure situation, and plaintiff wanted to sell the Association's right of first refusal rather than use it to protect a community member.

¶ 14 The defendants' letter continued:

> "Please do not let [plaintiff] convince you that he is trying to preserve property values. You need to be aware that [plaintiff], himself, bid on this property for an amount far below what the bank was asking. His bid was denied by the bank. As such, he needs to recuse himself. His behavior is unethical, and immoral.
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> Please do not let [plaintiff] convince you that he has the right to basically steal this contract from us. The Covenants clearly state that the only reason to disapprove a contract is to maintain a ratio of 85% of the community's residents who are over 55 years old. *As was well stated last evening by some of your neighbors, [plaintiff] does not have the right to choose to abide by the Covenants only when it's profitable for him to do so!*
>
> Residents, please help us. Allowing [plaintiff] to interfere and kill this contract by the arbitrary exercise of the right of first refusal, because he lost the bidding[,] sets a dangerous precedent." (Emphasis added.)

¶ 15 Also on August 13, defendants gave copies of their letter to Mike Stewart, who arranged to have them distributed to the Board and Briarwood Lakes residents.

¶ 16 At the August 18 meeting, plaintiff again proposed that the Association assign the right of first refusal to the highest bidder. The Board voted four to two in favor of this proposal. The Mullens, the only party choosing to bid, submitted a $10,000 bid for the assignment. The Board accepted the bid. Consequently, Washington Mutual canceled its contract with defendants.

¶ 17 Plaintiff filed his complaint against defendants almost one year later, on August 12, 2010. In count I, plaintiff alleged that various statements in the August 13, 2009, letter were false, that they constituted defamation *per se*, and that defendants enjoyed no privilege to publish the false information. Plaintiff alleged that the statements: harmed his reputation in the community; would deter the community from associating with him; imputed that he was unable to perform or lacked integrity in performing his employment and duties as an attorney and as the Association's president, managing agent, and managing broker; and imputed that he lacked moral character, integrity and honesty, and, as such, prejudiced him in his profession as an attorney. Plaintiff alleged that at the time defendants made the statements, they knew that the statements were false or made the statements with reckless disregard for their falsity. Plaintiff alleged that he suffered damage to his good name and reputation. Count II was directed at only defendant Stewart and is not at issue on appeal.

¶ 18 Defendants filed a motion for summary judgment as to count I on October 14, 2011. The trial court granted the motion on May 2, 2012, reasoning in relevant part as follows. There was nothing in the letter regarding plaintiff's lack of ability in his profession as either a licensed realtor or an attorney. That left only want of integrity in the discharge of the duties of his office as the Board's president, and the statement about choosing to abide by the covenants only when it was profitable could fit into defamation *per se* in that respect. The next inquiry was whether the statements were true, capable of an innocent construction, or opinions. The statement about choosing to abide by the covenants was restating what the neighbors thought, and that was an opinion. Also, it was "not saying that he did not abide by the covenants; [it was] just saying that he

doesn't have the right to [not] abide by the covenants." Therefore, the statement did not fall within defamation *per se*.

¶ 19 The trial court continued by saying that even if the statements were actionable, there was no genuine issue of material fact that there was a qualified privilege. Defendants had a contractual interest in the property and therefore had an interest in presenting their case to the Board and hopefully getting Association members to persuade the Board in their favor. The Board and Association members had an interest in what defendants had to say because the issue affected the entire Association. Its members had to consider the extra funds versus the deterrence of potential buyers of property in the community by the Association's exercise of its right of first refusal.

¶ 20 The trial court further found that there was no genuine issue of material fact that defendants limited their letter to appropriate individuals who had an interest in the issue. Defendants had Stewart deliver copies to the community's guard to put into the "Association slots." Defendants' realtor, who was also their daughter, saw the letter, but she had an interest in knowing what was going on with the property. Also, defendants did not abuse their qualified privilege because they had a reasonable belief or opinion in the things that they said; it was reasonable to believe that plaintiff had an interest in the property and that a realtor would take a commission.

¶ 21 The trial court concluded that while two statements potentially fit within defamation *per se*, the statements were either "true opinion or innocent construction," and even otherwise, there was "a qualified privilege which was not abused to allow [defendants] to present their case before the Board and the Association."

¶ 22 On May 15, 2012, the trial court voluntarily dismissed with prejudice count II, which was directed only at Stewart. The same day, plaintiff filed a motion to reconsider the grant of summary

judgment. The trial court denied the motion to reconsider on August 15, 2012. Plaintiff timely appealed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, plaintiff challenges the trial court's grant of summary judgment in defendants' favor. Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010). A genuine issue of material fact exists where the material facts are disputed or reasonable people could draw different inferences from undisputed facts. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. We review *de novo* a grant of summary judgment. *Lazenby*, 236 Ill. 2d at 93.

¶ 25 Plaintiff argues that defendants committed defamation in stating, "[a]s was well stated last evening by some of your neighbors, [plaintiff] does not have the right to choose to abide by the Covenants only when it's profitable for him to do so!" A statement is defamatory if it tends to cause such harm to another's reputation that it lowers that person in the community's eyes or deters third persons from associating with him or her. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 87 (1996). For a claim of defamation, the plaintiff must present facts showing: that the defendant made a false statement about the plaintiff; that the defendant made an unprivileged publication of the statement to a third party; and, that as a result, the plaintiff suffered damages. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). The preliminary construction of an allegedly defamatory statement is a question of law subject to *de novo* review. *Id.* at 492.

¶ 26 Defamatory statements may be actionable *per se* or *per quod*. *Myers v. Levy*, 348 Ill. App. 3d 906, 914 (2004). Defamatory statements that are actionable *per se* are considered so obviously and materially harmful to the plaintiff that injury to reputation is presumed. *Bryson*, 174 Ill. 2d at 87. That is, the statement's harm is obvious and apparent on its face. *Green*, 234 Ill. 2d at 491. Thus, in such situations, the plaintiff need not plead or prove actual damage to his or her reputation to recover. *Bryson*, 174 Ill. 2d at 87. In contrast, in a claim of defamation *per quod*, the plaintiff must allege extrinsic facts to establish that the statement is defamatory and must allege special damages with particularity. *Myers*, 348 Ill. App. 3d at 914.

¶ 27 Here, plaintiff alleged defamation *per se.* Five categories of statements are considered defamatory *per se* under Illinois law: (1) words that impute the commission of a criminal offense; (2) words that impute infection with a loathsome communicable disease; (3) words that impute an inability to perform or want of integrity in the discharge of duties of office or employment; (4) words that impute a lack of ability in a person's trade, profession, or business; and (5) words that impute adultery or fornication. *Green*, 234 Ill. 2d at 492.

¶ 28 Here, we agree with the trial court that the statement at issue fits within category three, in that it could be interpreted as a lack of integrity in plaintiff's discharge of his duties in his role as Association president and managing broker.

¶ 29 A statement that is defamatory *per se* is still not actionable if it is reasonably capable of an innocent construction, or if it expresses an opinion. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 580-81 (2006). The parties do not discuss whether the statement is capable of an innocent construction, but rather whether it constitutes an opinion. We therefore advance to that subject. A "defamatory statement is constitutionally protected only if it cannot be reasonably

interpreted as stating actual fact." *Id.* at 581. In other words, statements that are capable of being proven true or false are actionable while opinions are not. *Seitz-Partridge v. Loyola University of Chicago*, 2013 IL App (1st) 113409, ¶ 29. However, a false factual assertion can be defamatory even if couched within an apparent opinion or rhetorical hyperbole. *Solaia Technology*, 221 Ill. 2d at 581. All opinions arguably imply facts, but the issue is one of degree, as the more vague and generalized the opinion, the more likely it is not actionable as a matter of law. *Seitz-Partridge*, 2013 IL App (1st) 113409, ¶ 29. As an aid in determining whether a statement is an opinion, we consider: (1) whether the statement has a precise and readily understood meaning; (2) whether the statement is verifiable; and (3) whether the statement's literary or social context signals that it has factual content. *Solaia Technology*, 221 Ill. 2d at 581. Whether a statement is an opinion or factual assertion is a question of law. *Seitz-Partridge*, 2013 IL App (1st) 113409, ¶ 29.

¶ 30 Plaintiff argues that the statement at issue is not an opinion but rather actionable defamation. Plaintiff notes that in the same paragraph of their letter, defendants stated that plaintiff was trying to "steal" the contract from them. Plaintiff maintains that the clear implication of the statement in question is that he, as the Association's president, managing agent, and managing broker, was wrongfully asserting the Association's right of first refusal in order to reap an illegitimate, private financial gain. According to plaintiff, it is difficult to read the statement as having any other meaning. Plaintiff also argues that the statement claims that defendants possessed objectively verifiable facts that he selectively enforces the covenants for his financial gain, or at the very least, implies the existence of such undisclosed facts. Plaintiff argues that the statement is also precise, verifiable, and made in a social context (a commentary to interested persons regarding the

performance of his duties for the Association and as a lawyer), which signals the statement's status as factual.

¶ 31 Plaintiff analogizes this case to an unpublished federal case, *Brenner v. Greenberg*, No. 08-C-826, 2009 WL 1759596 (N. D. Ill. June 18, 2009). There, the speaker stated, " 'Brenner is the one who caused the project to implode! Brenner *purposely* misled me and my partner, just to butter his own bread!' " (Emphasis in original.) *Id.* at *1. The district court stated that the statement was made in a specific business context, but the speaker did not provide a sufficient statement of facts to qualify the statement as one of pure opinion. *Id.* at *4. "If he had, the Court could separate the statements of facts from the opinion and judge them on their own merit." *Id.* However, the speaker made a statement of mixed opinion, implying an underlying set of facts on which he was basing his opinion, making the statement actionable. *Id.*

¶ 32 Plaintiff argues that, as in *Brenner*, the few facts in defendants' statement implied that he was rigging the sale for his own financial gain and had engaged in similar conduct in the past.

¶ 33 Defendants argue that the statement does not contain a specific allegation of wrongdoing. Rather, they argue, it was only a recitation by the defendants of opinions held by other Association members, and with which they implicitly agreed, that plaintiff was required to abide by the Association's covenants just like everybody else. Defendants maintain that plaintiff's reading of the statement is extraordinarily broad and completely unsupported.

¶ 34 We agree with the trial court that the statement, "As was well stated last evening by some of your neighbors, [plaintiff] does not have the right to choose to abide by the Covenants only when it's profitable for him to do so!", constitutes an opinion. We initially note that, as defendants recognize, they purported to be restating comments made by Association members at the initial

meeting regarding the Briarwood Property and implicitly agreeing with the sentiment, rather than making the statement in the first instance. Still, the republisher of a defamatory statement is also potentially liable for defamation. *Brennan v. Kadner*, 351 Ill. App. 3d 963, 970 (2004).

¶ 35 In looking at the factors in analyzing whether a statement is an opinion (see *Solaia Technology*, 221 Ill. 2d at 581), we disagree with plaintiff that the statement here has a precise and readily understood meaning. Plaintiff interprets "profitable" as personal, illicit financial gain to him, but the statement could just as easily imply: a legal financial gain to plaintiff; a financial benefit to the Association, of which he was president; or some other intangible benefit to him. See Webster's Third New International Dictionary 1811 (1986) (defining "profitable" as, among other things, "bringing or yielding benefits or gains"). If attributed the third meaning, the statement is not verifiable, the second factor. See *Solaia Technology*, 221 Ill. 2d at 581.

¶ 36 The third factor is whether the literary or social context signals that it has factual content. See *id.* While plaintiff argues that the statement claims that defendants had objectively verifiable facts revealing that he selectively enforces Association covenants for personal financial gain, no such meaning is apparent on the face of the statement or in context. Plaintiff alternatively argues that the statement implies the existence of such undisclosed facts. However, the statement comes only after a detailed recitation of facts regarding the Briarwood Property. That is, in contrast to *Brenner*,[2] rather than implying undisclosed facts, the statement is most reasonably viewed as being based exclusively on the prior information set forth in the letter.

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[2]We further note that federal court decisions are not binding on this court and provide, at most, only persuasive authority. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 328 (2009).

¶ 37 In sum, the statement that plaintiff did not have the right to enforce Association covenants only when it was profitable for him to do so is a generalized statement that cannot be reasonably interpreted as stating actual fact. Therefore, the statement constitutes an opinion. Compare *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 47 (statement that the plaintiff doctor had negligently cut a patient's artery was factual and not an opinion) with *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 48 (statement that the plaintiff engaged in a classic conflict of interest was nonactionable opinion); see also *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 72 (2010) (statement referring to the plaintiff's "continued acts of cruelty" toward animals did not impute her with criminal behavior or allege a lack of dog-training abilities, but rather was a statement about how neighbors felt that she was treating the dogs in her care and their responses to such treatment).

¶ 38 Even if, *arguendo*, the statement was factual rather than opinion and incapable of an innocent construction, we agree with the trial court that the statement was subject to a qualified privilege. A defamatory statement is not actionable if it is privileged. *Solaia Technology*, 221 Ill. 2d at 581. Whether a statement is privileged is a question of law. *Id.*

¶ 39 The defense of privilege is grounded in the concept " 'that conduct which otherwise would be actionable is to escape liability because the defendant is acting in furtherance of some interest of social importance, which is entitled to protection even at the expense of uncompensated harm to the plaintiff's reputation.' " *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003) (quoting W. Keeton, Prosser & Keeton on Torts §114, at 816 (5th ed. 1984)). The defense serves to protect honest communications of misinformation in certain circumstances "in order to facilitate the availability of correct information." *Kuwik v. Starmark Star Marketing & Administration, Inc.*, 156 Ill. 2d 16, 24 (1993).

¶ 40 Privileged statements fall into one of two categories—those subject to an absolute privilege and those subject to a conditional or qualified privilege. *Solaia Technology*, 221 Ill. 2d at 585. The category of absolutely privileged defamatory statements is narrow, and it is generally limited to legislative, judicial, and some quasi-judicial proceedings. *Zych v. Tucker*, 363 Ill. App. 3d 831, 834 (2006). As no such proceedings were involved here, the statement would not qualify for absolute privilege.

¶ 41 In determining whether a qualified privilege exists, our supreme court adopted the approach taken by the Restatement (Second) of Torts. *Kuwik*, 156 Ill. 2d at 27. A court looks to the occasion for the communication and determines whether, as a matter of law and general policy, the occasion created an interest or duty that makes the communication privileged. *Id.* Conditionally privileged occasions are recognized in the following three situations: (1) an interest of the individual publishing the defamatory material is involved; (2) an interest of the person to whom the matter is published or of another third person is involved; and (3) a recognized public interest is involved. *Id.* at 29.

¶ 42 We conclude that defendants' statement was conditionally privileged under the first two categories. Defendants had a contractual interest in whether plaintiff was fairly advocating the application of the right of first refusal, as defendants' bid for the Briarwood Property had otherwise been accepted by Washington Mutual over plaintiff's bid on behalf of the Mullens. See *Carollo v. Irwin*, 2011 IL App (1st) 102765, ¶ 23 (condition precedent does not prevent the formation of a valid contract if the condition goes solely to the obligation of the parties to perform); see also *Kuwik*, 156 Ill. 2d at 29 (conditional privilege exists if the circumstances correctly or reasonably cause the publisher to believe that his or her interest is involved). As for the second category, defendants limited their publication to just individuals with an interest in the issue, as Association and Board

members had an interest in the Association president, in how their covenants were being applied, and in the vote on the right of first refusal. The only other person to see the letter was defendants' daughter, who, as defendants' realtor, had an interest in being apprised of the status of defendants' attempt to purchase the Briarwood Property. As such, the statement was made during an occasion that afforded the statement a qualified privilege as a matter of law.

¶ 43 Once a defendant establishes that a qualified privilege exists, the burden shifts to the plaintiff to show that the defendant abused the privilege. *Kuwik*, 156 Ill. 2d at 24. The plaintiff must prove that the defendant either knew that the material was false or displayed a reckless disregard as to the matter's falseness. *Coghlan*, 2013 IL App (1st) 120891, ¶ 43. Reckless disregard is a high degree of awareness of probable falsity or seriously doubting the statement's truth. *Id.* Also, an "abuse of a qualified privilege may consist of any reckless act which shows a disregard for the defamed party's rights, including the failure to properly investigate the truth of the matter, limit the scope of the material, or send the material to only the proper parties." *Kuwik*, 156 Ill. 2d at 30.

¶ 44 Plaintiff argues that there is no evidence in the record suggesting that defendants conducted any investigation as to whether he chooses to enforce the covenants only when it is profitable to him. Plaintiff cites *Gibson v. Philip Morris, Inc.*, 292 Ill. App. 3d 267 (1997). There, the plaintiff's coworkers told his supervisor that the plaintiff included some of the company's incentive items in his yard sale. *Id.* at 269. The court held that the company had a qualified privilege regarding the statement but abused that privilege by failing to investigate the statement's truth before discharging the plaintiff. *Id.* at 276.

¶ 45 Plaintiff further argues that even if there was some evidence that defendants conducted some investigation here, the issue of whether defendants abused the qualified privilege is one of fact, precluding summary judgment.

¶ 46 We agree with plaintiff that, typically, the issue of whether a qualified privilege was abused is a question of fact for the jury. *Kuwik*, 156 Ill. 2d at 25. "However, once a defendant has established a qualified privilege, the plaintiff must come forward with actual evidence creating an issue of fact." *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 404 (1999); see also *Turner v. Fletcher*, 302 Ill. App. 3d 1051, 1057 (1999) (if the pleadings and the attached exhibits present no genuine issue of material fact regarding the abuse of the privilege, the defendant is entitled to judgment as a matter of law). Even after viewing the evidence in the light most favorable to plaintiff, we conclude that there is no genuine issue of material fact in this case on the issue of whether defendants abused the qualified privilege. There is no evidence that defendants knew that their statement was false. The facts also do not indicate reckless disregard of the statement's falseness, for, as the trial court pointed out, it was reasonable to assume that as the Mullens' agent or broker for the purchase of the Briarwood Property, plaintiff would receive a commission.

¶ 47 Plaintiff focuses on an alleged lack of investigation, but unlike *Gibson*, where the company accepted the coworkers' statement without any investigation, here defendants were directly involved in the dispute regarding the Briarwood Property. Moreover, they partially based the statement at issue on the undisputed fact that plaintiff submitted a competing bid for the property, which Washington Mutual refused. Defendants also attended the Association meeting where plaintiff proposed selling the Association's right of first refusal, and defendants' letter references learning from the meeting the history of the limited exercise of that right. Further, as discussed, defendants

properly limited their disclosure to only individuals with an interest in the matter. Therefore, there is no genuine issue of material fact that defendants did not abuse their qualified privilege.

¶ 48 III. CONCLUSION

¶ 49 While the statement at issue can arguably be labeled as defamatory *per se*, it is not actionable because, as a matter of law, it constitutes an opinion rather than a factual assertion. Even if, *arguendo*, the statement is a factual assertion, it is subject to a qualified privilege as a matter of law, and there is no genuine issue of material fact that defendants did not abuse the privilege. Therefore, the trial court properly granted summary judgment for defendants.

¶ 50 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 51 Affirmed.