

12-Person Jury

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020L004136

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

JOSEPH LA MARGO,

Plaintiff,

v.

VILLAGE OF ORLAND PARK; KEITH
PEKAU FOR MAYOR; WILLIAM R.
HEALY, in his individual capacity; and
KEITH PEKAU, in his individual capacity.

Defendants.

Case No. 2020L004136

Plaintiff Demands Trial By Jury

COMPLAINT

Plaintiff JOSEPH LA MARGO, through his counsel, KURTZ, SLEPER & EXLINE, LLC, seeks redress against Defendants, VILLAGE OF ORLAND PARK; KEITH PEKAU FOR MAYOR; WILLIAM R. HEALY, in his individual capacity; and KEITH PEKAU, in his individual capacity, and in support, states as follows:

Introduction

1. Plaintiff JOSEPH LA MARGO seeks redress against Defendants for violations of Illinois law for breach of contract (Count I), defamation per se (Count II), and intentional infliction of emotional distress, (Count III), against Defendants, as set forth herein.

Jurisdiction

2. The court has jurisdiction over this matter pursuant to 735 ILCS § 5/2-209 in that Plaintiff and the individual Defendants are citizens of the State of Illinois, and Defendant has its principal place of business in the State of Illinois.

3. Venue is proper in this court pursuant to 735 ILCS § 5/2-101 in that Defendants' primary place of business is Cook County, and all or a substantial part of the events giving rise to the cause of action occurred within Cook County.

The Parties

1. Plaintiff JOSEPH LAMARGO was a resident of Cook County, Illinois during all relevant times herein and maintains a residence in Cook County, Illinois.

2. At all relevant times, Plaintiff was an employee of the Village of Orland Park holding the position of Village Manager. Plaintiff was not an elected or public official.

3. Defendant VILLAGE OF ORLAND PARK, is a municipal body organized under the laws of Illinois.

4. Defendant KEITH PEKAU FOR MAYOR, is a political campaign committee organized for the purpose of getting Keith Pekau elected as mayor.

5. At all relevant times, Defendant KEITH PEKAU, was the Village President of Orland Park. Pekau is sued in his individual capacity.

6. At all relevant times, Defendant WILLIAM R. HEALY (“Bill Healy”) was a Trustee for the Village of Orland Park. Healy is sued in his individual capacity.

FACTS UPON WHICH ALL CLAIMS ARE BASED

7. In November 2018 Plaintiff was informed by an employee in the Orland Park Public Works Department that a co-worker of theirs had approached them expressing concern about irregularities in billing and bidding practices of two landscape companies with whom the Village did regular business.

8. One of those companies, Groundskeeper Landscape Care, LLC, was owned by Village President Keith Pekau. The concerns were that those two companies were bid rigging and/or price-fixing – possibly with the assistance of a former village employee.

9. Plaintiff, the staff of the Village Manager, and the Village Attorney conducted a preliminary investigation to determine the possible validity of the concerns. After the preliminary investigation, the Village Attorney advised Plaintiff to hire outside counsel to investigate the matter in order to avoid any conflict of interest.

10. Plaintiff polled the six non-involved elected officials individually. Trustees Carole Ruzich, Michael F. Carroll, and Pat Gira approved hiring outside counsel, and the remaining three Trustees Jim Dodge, Kathy Fenton, and Dan Calandriello instructed Plaintiff to follow whatever advice the inside counsel gave him.

11. Plaintiff also informed Chief of Police, Tim McCarthy of the preliminary investigation.

12. In December 2018 Plaintiff met with Dennis Walsh from Klein, Thorpe, and Jenkins Ltd., corporate counsel for the Village. Plaintiff informed Mr. Walsh of the preliminary investigation and Village Counsel's suggestion to employ outside counsel to avoid any conflict of interest. Mr. Walsh stated that he understood having Village Counsel conduct the preliminary investigation and agreed with hiring outside counsel for the full investigation.

13. By ordinance, the Village Manager has contractual authority up to \$20,000 without prior Board approval.

14. Orland Park also regularly permits its managers to hire attorneys as needed, including when it hired counsel to help with bringing gaming to Orland Park and in some arbitration cases. Those contracts exceeded the threshold. Village managers also are permitted to authorize spending that exceeds the threshold in emergency cases.

15. Practice at the Village had been to pay attorney invoices for work for the Village without needing prior Board approval.

16. Plaintiff engaged the Jones Day Law Firm to conduct the investigation and instructed Jones Day in the engagement letter to inform him if fees and expenses reached \$15,000.

17. On or about December 27, 2018, Klein, Thorpe, and Jenkins reviewed the contract with Jones Day and made suggestions for modification.

18. The Jones Day investigation, in its first phase, was not specifically about President Pekau, but about Village process in two departments (Public Works and Finance). Plaintiff had an ethical obligation, as Village Manager, to investigate reports of bid rigging. During the investigation, ethical questions were raised about President Pekau that were necessary to be addressed as well.

19. In March 2018, John Keating, Assistant Village Manager, reported to Plaintiff that another issue occurred in a meeting with the Public Works Director, a couple of members of the Public Works Department, and the Mayor. Plaintiff and Mr. Keating met with Ken Friker from Klein, Thorpe, and Jenkins. Mr. Friker advised that this issue should be added to the Jones Day investigation.

20. Two days after the municipal election, on April 4, 2019 Plaintiff was called into Defendant Pekau's office and forced to resign.

21. Defendant Pekau's requirement that Plaintiff resign caused him to be unable to participate in the Village's early retirement program. Plaintiff was one year from retirement when he was forced to resign.

22. On May 6, 2019, Plaintiff entered into a Full and Final Resignation and Severance and Release Agreement with Defendants. (Exhibit A)

23. The Agreement contains the following provision:

Employee agree that he will not make any disparaging comments about the Village or its employees or agents. The Village agrees that its Mayor and Board, as a Mayor and Board, shall not make any public statement during a meeting that is disparaging to Employee. (See Exhibit A, ¶18.)

24. After Plaintiff left his employment, the Jones Day investigation was stopped. At that time, the Jones Day Report concluded that there was insufficient evidence to support violations on the part of Pekau or the companies being investigated but wanted to see further investigation into the alleged conduct. The Report also noted that there were gaps in the Village's ethics and purchasing policies.

25. On May 20, 2019, Defendant Pekau made disparaging statements in the Board of Trustee Meeting Executive Session relating to Plaintiff alleging that he leaked information from the investigation. Verbatim minutes of those comments were later released to the public, against longstanding precedent to release only summary minutes.

26. Defendant Pekau made the accusations against Plaintiff that he inappropriately accessed Pekau's email. Defendant Pekau made these accusations in a press conference, public meetings and social media/blog posts despite knowing that the accusations were not true.

27. Shortly after the Board meeting, Defendant Pekau called a press conference and released the draft Jones Day report, with accusations that Plaintiff violated the law.

28. Dennis Walsh from Klein, Thorpe, and Jenkins was standing with the Mayor during the press conference.

29. On May 29, 2019, Defendant Pekau held a press conference falsely accusing Plaintiff of conducting a “clandestine investigation” about him.

30. During the May 29, 2019 press conference, Defendant Pekau accused Plaintiff of starting an investigation for political purposes. Despite the fact that there was no evidence in Plaintiff’s communications of a connection between the investigation and any political materials or politicians and Defendant Pekau admitted he was speculating.

31. During the May 29, 2019 press conference, Defendant Pekau accused Plaintiff of committing criminal acts of official misconduct and “dissemination of information.”

32. During the May 29, 2019 press conference, Defendant Pekau called the investigation “unethical, potentially illegal.”

33. During the May 29, 2019 press conference, Defendant Pekau accused Plaintiff of having “questionable judgment” and “nefarious political intentions.”

34. During the press conference Defendant Pekau stated, “The people of Orland Park should be appalled.” “We have an obvious abuse of power that wasted \$46,000 of taxpayer money on a politically motivated fishing expedition against a duly elected mayor.”

35. Defendant Pekau also accused Plaintiff of “violating the law” and violating the Open Meetings Act.

36. Defendant Pekau also published the same comments on his KEITH PEKAU FOR MAYOR blog encouraging public comment defaming and attacking Plaintiff.

37. On May 29, 2019, Defendant Healy reposted Defendant Pekau’s blog post on his personal Facebook page.

38. On May 29, 2019, Defendant Pekau emailed statements from his g-mail account to media outlets that the complaint Plaintiff had investigated was a “fabrication.” Defendant Pekau accused Plaintiff of committing criminal acts of official misconduct and dissemination of information. Defendant Pekau accused Plaintiff of an abuse of power and leveraging public funds for political attacks.

39. Defendant Pekau admitted that there was no evidence of any links between the investigation and any politicians.

40. Defendant Pekau also made the same and similar accusations and comments against Plaintiff at the Village board meetings throughout the months of May and June despite being informed and knowing that Plaintiff did not act illegally or unethically.

41. At the June 3, 2019 Board of Trustees Meeting, Defendant Pekau made statements that a couple of trustees and the Village Manager colluded to run a

clandestine investigation on a sitting mayor for the political purpose of influencing a campaign in an attempt to overturn a mayoral election. Defendant Pekau referred to it as a “bogus investigation” that should “frighten all the people of Orland Park.”

42. At the June 3, 2019 Board of Trustees Meeting, Defendant Pekau stated, regarding Plaintiff, that it is clear he didn’t have the legal authority or legal right to take this action and that Plaintiff also likely violated the Open Meetings Act if there was a vote and that Plaintiff accessed records without a FOIA and did not afford him with due process.

43. At the June 3, 2019 Board of Trustees Meeting, Defendant Healy made statements disparaging Plaintiff including that Plaintiff initiated an investigation of a political nature in order to do opposition research using Orland Park as a piggy bank.

44. At the June 17, 2019 Board of Trustees meeting discussions were held about revising the Village bidding process to correct issues revealed in the Jones Day report. Defendant Pekau stated that the bidding process was broken and that the staff had taken steps to fix it.

45. At the June 17, 2019 Board of Trustees meeting Trustee Fenton questioned why the Village planned to make public the verbatim executive session minutes from May 20, 2019 where the investigation was discussed and Defendant Pekau made false statements about Plaintiff. Verbatim executive session minutes were not normally released to the public.

46. Plaintiff was advised by Trustees Dodge and Ruzich that Defendant Pekau had (on several occasions after his election) made comments that he would do his best to make sure Plaintiff would be unable to obtain future employment after leaving the Village.

47. The investigation was not conducted in secret. Attorneys James Roche, Dennis Walsh and Kenneth Friker; trustees Carole Ruzich, Patricia Gira, Michael Carroll, Jim Dodge, Kathleen Fenton and Daniel Calandriello; former Assistant Village Manager John Keating; and the seven employees interviewed as part of the investigation, were all informed of and had knowledge of the investigation.

48. It would have been an ethics violation for Plaintiff to have contacted the subject of the investigation during the course of the investigation.

49. As Village Manager, Plaintiff was ethically bound to look into allegations of wrongdoing.

50. Orland Park's village code does not require a village manger to use FOIA to access email or other records when conducting investigations.

51. Paragraph 18 of Plaintiff's Full and Final Resignation and Severance and Release Agreement contains the following provision:

Employee agree that he will not make any disparaging comments about the Village or its employees or agents. The Village agrees that its Mayor and Board, as a Mayor and Board, shall not make any public statement during a meeting that is disparaging to Employee.

(Exhibit A, attached hereto).

52. On or about June 10, 2019 Defendant Pekau filed a false complaint against Plaintiff with Plaintiff's professional association. The ethics complaint alleged Plaintiff unethically exceeded his spending authority in hiring Jones Day to investigate an internal matter and inappropriately accessed elected official's emails. The complaint was determined to be unfounded.

53. On Monday, October 21, 2019 at the Board of Trustees meeting, Defendant Pekau disparaged Plaintiff and accused him of sweeping issues under the rug. Defendant Pekau also published these comments on his Pekau for Mayor social media blog.

54. Defendants' public comments encouraged citizens to repeat the comments and attempt to interfere with Plaintiff's ability to gain subsequent employment. On or about November 3, 2019, an Orland Park resident sent a letter to Plaintiff's subsequent employer repeating the false statements published by Defendants claiming that Plaintiff "CANNOT be trusted" and claiming "he was asked to [leave] Orland Park because of his unethical conduct."

55. Defendants' conduct not only caused Plaintiff to lose his employment in Orland Park, but also caused permanent damage for any subsequent employment causing Plaintiff to lose future employment contracts.

56. Plaintiff was unable to find comparable employment in Illinois as a result of the false statements made about him and has had to accept employment out of Illinois.

57. Defendants' conduct resulted in emotional damage, embarrassment, immense stress and caused Plaintiff's family being torn apart in that Plaintiff's step-son was prohibited by his custody arrangement to move out of state where Plaintiff had to accept employment.

COUNT I

**(Breach of Contract
Against Defendant Village of Orland Park, Keith Pekau, Bill Healy)**

58. Plaintiff realleges, adopts, and incorporates paragraphs 1 through 57 as though fully set forth herein.

59. On May 6, 2019, Plaintiff entered into a Full and Final Resignation and Severance and Release Agreement with Defendants. (Exhibit A)

60. The Agreement contains the following provision:

Employee agree that he will not make any disparaging comments about the Village or its employees or agents. The Village agrees that its Mayor and Board, as a Mayor and Board, shall not make any public statement during a meeting that is disparaging to Employee. (See Exhibit A, ¶18.)

61. Throughout May and June, Defendant Pekau and Defendant Healy made public statements during board meetings that were disparaging to Plaintiff.

62. On May 20, 2019, Defendant Pekau made disparaging statements in the Board of Trustee Meeting Executive Session relating to Plaintiff. Verbatim minutes of those comments were later released to the public, against longstanding precedent to release only summary minutes.

63. At the June 3, 2019 Board of Trustees Meeting, Defendant Pekau made statements that a couple of trustees and the Village Manager colluded to run a clandestine investigation on a sitting mayor for political purposes of influencing a campaign in an attempt to overturn a mayoral election. Defendant Pekau referred to it as a “bogus investigation” that should “frighten all the people of Orland Park.”

64. At the June 3, 2019 Board of Trustees Meeting, Defendant Pekau stated regarding Plaintiff that it is clear he didn’t have the legal authority or legal right to take this action and that Plaintiff also likely violated the open meetings act if there was a vote and that Plaintiff accessed records without a FOIA and did not afford him with due process.

65. At the June 3, 2019 Board of Trustees Meeting, Defendant Healy made statements disparaging Plaintiff including that Plaintiff initiated an investigation of a political nature in order to do opposition research using Orland Park as a piggy bank.

66. Defendant Pekau and Defendant Healy’s statements during the Board meetings violated the Full and Final Resignation and Severance and Release Agreement with Defendants. (*See* Exhibit A, ¶18.)

67. Defendants' acts as described herein constitute willful and wanton misconduct in that it was intended to cause harm or shows an utter indifference or conscious disregard for the safety of others or their property.

68. As a direct and proximate result of Defendants' actions, Plaintiff has incurred damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000 and such other relief as the Court may deem just or equitable, including but not limited to compensatory damages, back pay, front pay, pre-judgment interest, lost future wages, future pecuniary damages, reasonable attorneys' fees, costs, and litigation expenses as a result of Defendants' unlawful conduct.

COUNT II

**(Defamation *per se*
Against Defendants Village of Orland Park, Keith Pekau, Keith Pekau for Mayor,
Bill Healy)**

69. Plaintiff realleges, adopts, and incorporates paragraphs 1 through 57 as though fully set forth herein.

70. Defendants knowingly and willfully caused or participated in the publication of statements that were false and without any foundation or basis as there is no evidence to substantiate the statements.

71. Defendants made these defamatory and slanderous statements regarding Plaintiff to third parties with malicious intent and for the purpose of attacking Plaintiff's character and credibility.

72. The statements made by Defendants were not privileged or protected in any manner whatsoever.

73. The nature and substance of the false statements imputed to Plaintiff the commission of a criminal offense.

74. The nature and substance of the false statements imputed to Plaintiff an inability to perform or a lack of integrity in the discharge of his duties as Village Manager.

75. The nature and substance of the false statements prejudiced Plaintiff and imputed to Plaintiff a lack of ability in his profession.

76. Defendants made the false statements with the direct intent to injure Plaintiff or in reckless disregard of the Plaintiff's rights and the resulting consequences.

77. Defendants made the false statements with actual malice, with knowledge that it was false or with reckless disregard of its truth.

78. As a result of the false statements made by Defendants, Plaintiff has suffered economic loss, mental suffering, personal humiliation, impairment of personal and professional reputation and standing in the community.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000 and such other relief as the Court may deem just or equitable, including but not limited to compensatory damages, back pay, front pay, pre-judgment interest, lost future wages, future pecuniary damages, reasonable attorneys' fees, punitive damages, and costs and litigation expenses as a result of Defendants' unlawful conduct.

COUNT III

**(Intentional Infliction of Emotional Distress
Against Defendants Village of Orland Park, Keith Pekau, Keith Pekau for Mayor,
Bill Healy)**

79. Plaintiff realleges, adopts, and incorporates paragraphs 1 through 57 as though fully set forth herein.

80. Defendants' conduct of making false statements about Plaintiff in a press conference, in a public meeting, releasing private minutes to the public, and publishing the comments on social media in order to publish to a wider audience is extreme and outrageous.

81. Defendant Pekau's conduct of filing an unfounded complaint against Plaintiff's professional association, knowing it could have a negative impact on Plaintiff's reputation, and his ability to obtain and retain employment, is also extreme and outrageous.

82. The false statements were made with the intention that Plaintiff suffer extreme emotional distress or were made with the knowledge that such distress was substantially likely to result.

83. As a result of Defendants' conduct, Plaintiff suffered and continues to suffer extreme emotional distress including humiliation, embarrassment, anger, and worry.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of \$75,000 and such other relief as the Court may deem just or equitable, including but not limited to compensatory damages, back pay, front pay, pre-judgment interest, lost future wages, future pecuniary damages, reasonable attorneys' fees, punitive damages, and costs and litigation expenses as a result of Defendants' unlawful conduct.

JURY DEMAND

Plaintiff demands trial by jury on all issues for which a jury trial is allowed.

Respectfully Submitted,



Attorney for Plaintiff

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