

IN THE CIRCUIT COURT COOK COUNTY, ILLINOIS
LAW DIVISION


CHRISTOPHER S. CYNOWA,)
Plaintiff)
v.) Case No.: 08 L 403
)
)
CSSS, INC.)
(CLIENT SERVER SOFTWARE SOLUTIONS))
LISA WOLFORD,)
BILL SLATER.)
Defendants.)

NOTICE OF FILING

Mr. Kevin Duff
Mr. John Murphy
Rachlis Durham Duff & Adler
542 South Dearborn, Suite 900
Chicago, IL 60605
Tel.: (312) 733-3950
Fax: (312) 733-3952

Mr. Haythman Faraj
1800 Diagonal Road
Suite 210
Alexandria, VA 22314
Fax: (202) 280-1039


PLEASE TAKE NOTICE that on March 15, 2011, the attached **PLAINTIFF'S ERRATA AND ADDENDUM FOR PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was filed with the Clerk of Cook County Court, a copy of which is hereby served upon you.



Theresa V. Johnson, One of Plaintiff's Attorneys

PROOF OF SERVICE

Under penalties of perjury as provided by law, pursuant to section 1-109 of the Code of Civil Procedure, Theresa Johnson certifies that she caused to be served via e-mail X and/or _____ Fascimile and/or _____ email, a true and correct copy of the **NOTICE OF FILING** and **PLAINTIFF'S ERRATA AND ADDENDUM FOR RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on March 15, 2011.



Theresa V. Johnson, One of Plaintiff's Attorneys

Theresa V. Johnson
Attorney at Law
Law Office of Theresa V. Johnson
200 E. Chicago Avenue, Suite 200
Westmont, Illinois 60559
Tel: (630) 321-1330
Fax: (630) 321-1185
Cook County Attorney No. 37363

Peter V. Bustamante
150 North Michigan Avenue
Suite 690
Chicago, Illinois 60601
Tel: (312) 346-2072
Fax: (312) 346-2074
Cook County Attorney No. 70292

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

CHRISTOPHER S. CYNOWA,)
Plaintiff)
v.) No. 08 L 403
CSSS, INC., et al.,)
Defendants.)

**PLAINTIFF'S ADDENDUM AND ERRATA FOR RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Addendum/Errata Description

1. Attached is a revised Plaintiff's Exhibit s list which corrects dates for Exhibits 2 and 8, minor formats changes to dates for consistency.
2. Attached are hand-corrected pages for Response Brief pages 1, 5, and 12 reflecting the following errata corrections:
 - a) P. 1, footnote "(see Pltf's Ex. 7)" should read (Pltf's Ex. 9).
 - b) P. 5, Citation after "Plaintiff obtained and Affidavit of Noel Flanagan. (**Pltf's Ex 7:** Affidavit of Noel Flanagan)" should read (**Pltf's Ex 6:** Affidavit of Noel Flanagan).
 - c) P. 5, Citation after "Mr. Flanagan never observed Chris as violent or threatening. (*Id.*)" should read (*Id.*; **Pltf's Ex. 7:** Deposition of Noel Flanagan p. 63, lines 1-16. and pp. 17-18).
 - d) P. 5, Citation after "Chris never told Flanagan Chris had a gun (*Id.*)." should read (*Id.*; Flanagan dep. pp.17-18)."
 - e) P. 5, Citation after "Several days after Chris was fired, defendant Slater, at the direction of Wolford, prepared a report to document the action (**Pltf's Ex. 7:** Slater memo...)" should read (**Pltf's Ex. 8:** Slater memo...).
 - f) P. 12, Citation after "Instead Slater wrote an email lamenting the fact that Chris left hastily without returning his cell phone." is missing the citation which should be (Slater memo - Jan. 18, 2007 email to Scott, et. al).
3. Addendum – inadvertently omitted Pltf's Ex.8, p.8 (Defs' Bates No.CSSS 0007).

Theresa V. Johnson
Attorney at Law
Law Office of Theresa V. Johnson
200 E. Chicago Ave. Suite 200
Westmont, IL 60559
Tel: 630-321-1330 Fax: 630-321-1185
Cook County Attorney I.D.: 37363


Theresa V. Johnson, One of Plaintiff's Attorneys Date

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

CHRISTOPHER S. CYNOWA,)	
	Plaintiff)	
)	
v.)	No. 08 L 403
)	
CSSS, INC., et al.,)	
	Defendants.)	

**PLAINTIFF’S EXHIBITS TO RESPONSE TO
 DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

<u>Exhibit No.</u>	<u>Description</u>	<u>Dated/Filed</u>
1	Deposition of Larry Carver	07/31/2009
2	Officer Adrowski Police Report (Time of Offense: Jan. 18, 2007)	01/26/2011
3	CSSS.NET Confidential Company Memo	01/18/2007
4	Deposition of Christopher Cynowa	08/31/2010
5	Deposition of Lisa Wolford	08/10/2010
6	Affidavit of Noel Flanagan	11/09/2010
7	Deposition of Noel Flanagan	12/06/2010
8	Slater Memo (group of communications from Slater)	01/18/2007 & 01/24/2007
9	Plaintiff’s Response to Defendant’s Combined 2-615 & 2-619 Motion to Dismiss Plaintiff’s Complaint	07/31/2008

Theresa V. Johnson
 Attorney at Law
 Law Office of Theresa V. Johnson
 200 E. Chicago Ave. Suite 200
 Westmont, IL 60559
 Tel: 630-321-1330
 Fax: 630-321-1185
 Cook County Attorney I.D.: 37363

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

FILED 11-11-12
11 MAR -2 PM 4:12
CLERK OF THE CIRCUIT COURT
COUNTY DEPARTMENT

CHRISTOPHER S. CYNOWA,)
)
 Plaintiff,)
)
 v.) No. 08 L 403
)
 CSSS, INC., et al.,)
)
 Defendants.)

RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Christopher S. Cynowa, by his attorneys, for his response to defendants' motion for summary judgment, states:

INTRODUCTION

Defendant Bill Slater said: "Mr. Cynowa has a temper and has had a few verbal confrontations with the staff, and, Mr. Cynowa mentioned having an AK-47 assault rifle." These statements were made in the workplace. These statements were false. They were made knowingly and maliciously. Defendants CSSS, Inc. and Lisa Wolford knew that the statements were false, but they ordered or allowed Slater to repeat those statements.

As discussed below, the defendants cannot hide behind alleged privileges in order to avoid liability in this case. As a matter of fact, this Court has already heard the defendants' motion to dismiss on the basis of privilege. That motion was denied.¹ In effect, this motion for summary judgment is simply a motion to reconsider the denial of the motion to dismiss. Yet, the defendants have not added anything new to their arguments. The defendants do not present any new law or claim any error by the Court in its prior decision.

¹ The motion was denied without prejudice, but in their motion for summary judgment the defendants do not bring any different facts than were brought in their motion to dismiss and the result should be the same. (See Plt's Ex. 7)

9

Defendant Slater blamed Noel Flanagan for spreading the rumor that Chris had an AK-47 and was going to go postal. (Slater decl. p. 3, para. 11). Based on Slater's declaration, the plaintiff added Flanagan as a defendant. (Defs' Ex. 6: Pltf's Ver. Amd. Cmpl., adding Noel Flanagan as a defendant). Plaintiff obtained an Affidavit from Noel Flanagan. (Pltf's Ex. ⁶7: Flanagan Affidavit). Mr. Flanagan denied that he told Slater that Chris was dangerous or that Chris had a gun or weapon of any type. (*Id.* pp. 3-4, para. 6). Mr. Flanagan also denied telling anyone that Chris had a gun or that Chris was dangerous. (*Id.*).

Mr. Flanagan never observed Plaintiff as violent or threatening. (*Id.* ^{Pltf's Ex. 7; Deposition of Noel Flanagan p. 63, lines 1-16, and pp. 17-18.} ~~7~~ Chris never told Flanagan that Chris owned a gun. (*Id.* ^{Flanagan dep., pp 17-18} ~~7~~ It became apparent that Slater had wrongly blamed Mr. Flanagan and the plaintiff dismissed Mr. Flanagan as a defendant. (Defs' MSJ Memorandum p. 4). It also became apparent that defendants could not succeed on their counterclaim against plaintiff and defendants voluntarily dismissed their claims against plaintiff.

Several days after Chris was fired, defendant Slater, at the direction of Wolford, prepared a report to document the action. (Pltf's Ex. ⁸7: Slater memo dated Jan 24, 2007 ("Slater Memo"). The purpose of the report was to do "damage control" and explain to the VA customer why Chris was fired. (Carver dep pp. 52-56, lines 5-19). In his report, defendant Slater makes no mention of the AK-47 or other weapon or of how defendant Slater obtained that information. (*Id.*). Neither defendant Slater nor defendant Wolford ever pressed charges against Chris for having an unauthorized weapon in VA property. (Wolford ^{dep} pp. 51, 56, 93; Slater's decl. in general). Neither defendant Slater nor defendant Wolford ever asked the VA police to investigate whether or not Chris had an unauthorized weapon in VA property (*Id.*). (Carver dep. p. 40: Slater's decl., and Slater Memo do not have this info).

Here, the defamatory meaning was clearly intended and conveyed: That Chris is a not head with bad temper, with a history of confrontations with the staff and AK-47 assault rifle while working at CSSS. Defendant Slater's comments are about killing people, *i.e.*, that Chris could go "postal" and kill or maim his co-workers.

II. The Court Should Deny Summary Judgment on the False Light Claim

A. Defendant Slater's Statements placed Chris in a False Light

To make a claim for false light, a plaintiff must allege 1) that he was placed in false light before the public as a result of the defendants' actions, 2) that the false light in which the plaintiff was placed would be highly offensive to a reasonable person, and 3) the defendants acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false. *See Kolegas v. Heftel Broadcasting Corp.* 154 Ill.2d 1, 21 (1992). Courts have found that for false light cases the "public" can be a plaintiff's fellow employees. *Kurczaba v. Pollock*, 318 Ill.App.3d 686, 697-698 (1st Dist. 2000), quoting *Miller v. Motorola*, 202 Ill.App.3d 976 (1st Dist. 1990).

Here, defendant Slater (1) published the statements to the public, including Wolford, Carver, Theobald, Slatton, and Chris' co-workers, Mike Nikoforis and Tushar Engregi, (2) a reasonable person would find Slater's allegations that he or she had an AK-47 to be highly offensive, and (3) the evidence shows that Slater acted with malice or recklessness because knew his statements were false.

After Chris was terminated, defendant Slater never mentioned the AK-47. In his January 24, 2007 report on Chris termination, he never mentioned an AK-47 or any weapon. Instead defendant Slater wrote an email lamenting the fact that Chris left hastily without returning his cell phone. ^(Slater Memo - Jan. 18, 2007 email to Scott et. al.) Moreover, when Carver stated that hat Defendants should test the veracity of Slater's

Manager) within 30 minutes of the termination meeting's scheduled beginning. It was decided that in light of everything, that it was in the overall interest of the VA's mission at the Hines VA OIFO, as well as the Team esprit de corps, that Mr. Cynowa's immediate termination today was the most expedient course of action. And the most serious concern in the termination decision was a serious workplace safety consideration due to possible violence, and because of that, Gary Knippel made arrangements to obtain a Hines VA Security Guard, to ensure that everyone would be sufficiently guarded in case something unexpected occurred.

The Termination Meeting

The meeting occurred about 10:30 AM, January 18, 2007, in Room 209, Building 20, at the Hines VHA OIFO, Hines, IL. Mr. Slater entered the room and dialed up those that needed to be present.

Physically Present in the room were:

Rober Adrowski (VA Security Guard)
Christopher Cynowa (Sr. System Engineer, CSSS.NET)
William F. Slater, III (Program Manager, CSSS.NET)
Anthony Slatton (Sr. System Engineer, CSSS.NET)

Present On Conference Call:

Larry Carver (VP, Business Development, CSSS.NET)
McIntosh Ewell (Business Development Manager, CSSS.NET)
Scott Theobald (HR Director and Sr. Recruiter, CSSS.NET)
Lisa Wolford (President, CSSS.NET)

Once the door was closed and the meeting started, Mr. Cynowa inquired about the purpose of the meeting. Mr. Slater explained that the purpose of the meeting was to terminate Mr. Cynowa's employment with the VA and then he proceeded to read the first paragraph from the termination letter he had prepared. That letter is shown below:

To: Christopher Cynowa, Senior System Engineer
From: William F. Slater, III, Program Manager
CC: Anthony Slatton, Senior Systems Engineer
Scott Theobald, HR Director
Lisa Wolford, President
Date: January 18, 2007
Subject: Termination of Your Employment with CSSS.NET at the VA Hines OIFO
Chris:

At the request of Ms. Lisa Wolford, President of CSSS.NET, your employment with CSSS.NET at the VA Hines OIFO is hereby terminated effective immediately. You are being terminated for the causes of insubordination and for being a disruptive influence in the workplace by engaging in several negative workplace behaviors. These are in violation of your Employment Agreement, and so your employment at CSSS.NET is being terminated.

CSSS 0007

**PLAINTIFF'S
EXHIBIT**

8 p. 8