The Rapid Evolution of Illinois's Anti-SLAPP Statute

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In the wake of the recent implementation of anti-SLAPP legislation in several states and Washington, D.C., Illinois provides an interesting—and at times cautionary—case study for judicial interpretation of such laws.

In 2007, Illinois enacted anti-SLAPP legislation titled the Illinois Citizen Participation Act (CPA).[1] At its inception, the CPA appeared to provide a swift recourse for victims of SLAPP suits by allowing them to quickly dismiss a case upon showing that the defendant was engaged in a broad variety of First Amendment-protected speech and petitioning activity related to government. Early analysis of the CPA suggested that "based on the language of the CPA itself, and the few decisions to date, the CPA could be one of the strongest anti-SLAPP laws in the country."[2]

Beginning in 2011, however, Illinois courts essentially rewrote part of the CPA so that it has become increasingly difficult for defendants to file a speedy motion to dismiss and freeze costly discovery, as the Illinois General Assembly intended. But the CPA remains a powerful tool to dispose of meritless lawsuits targeting First Amendment activity—not necessarily with a motion to dismiss, but through discovery, a motion for summary judgment, and a motion for recovery of mandatory attorney fees.

Key Provisions of the CPA

The CPA contains several key provisions that shed light on the Illinois legislature's intent for the statute. Section 110/5, the public policy introduction, states that "the threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights."[3] That provision further provides that "information, reports, opinions, claims, arguments and other expressions" are vital to democracy and that there must be the "utmost protection for the free exercise of these rights of petition, speech, association and government participation."[4]

To implement this expansive language, section 110/15 states that the CPA applies to any motion against a claim that is "based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government."[5]

Section 110/20 sets forth the procedure for filing a motion under the CPA, requiring the parties to suspend discovery once a party files a CPA motion, requiring the court to rule on the CPA motion within ninety days, and allocating significant burden to the plaintiff. Specifically, the CPA requires that a court "shall" grant a CPA motion unless the court finds that the plaintiff has produced "clear and convincing" evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized by, the CPA.[6]

Many of the CPA's terms are very broad, with implications for the media. For example, *government* includes the "electorate." Accordingly, a media defendant that publishes op-ed pieces or investigative news stories about government officials could be covered by the CPA on the grounds that their publications are efforts seeking action by government officials or the electorate or both.[7] In addition to providing a speedy method for dismissing lawsuits, section 110/25 provides for attorney fees to a prevailing moving party, and section 110/30 states that the act "shall be construed liberally to effectuate its purposes and intent fully."[8]

With its broad language, the CPA initially appeared to be one of the most expansive anti-SLAPP laws in the country. In essence, it appeared that once a defendant could show it was sued for engaging in a wide variety of First Amendment-protected activities under the CPA, the court would be required to grant a dispositive motion under the CPA unless the plaintiff could satisfy a significant burden to disprove that the defendant was genuinely engaged in any such First Amendment protected activity.

A First Look: Illinois Courts Apply the Statute Broadly

The Illinois Supreme Court initially applied the CPA broadly. In *Wright Development Group v. Walsh*, the plaintiff sued for defamation, claiming that statements the defendant made to a reporter immediately after a meeting with government officials were false.[9] On appeal from denial of a motion to dismiss under the CPA, the Illinois Supreme Court began by analyzing the plain language of the CPA and stated that for the plaintiff to overcome the CPA's immunity, it must "produce 'clear and convincing' evidence demonstrating that the 'act or acts' at issue were 'not immunized from, or are not in furtherance of acts immunized from, liability by'" the CPA.[10] The court further noted that "the legislature provided the '[CPA] shall be construed liberally to effectuate its purposes and intent fully.'" Applying this language, the court held that statements to a reporter about a statement made at a

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public meeting were "clearly immunized activity."[11]

In response to this and other rulings, the plaintiffs argued that if the courts were to continue applying the CPA as broadly as written, the CPA essentially would create an absolute immunity in many cases. For example, in *Hytel Group, Inc. v. Butler*, Butler, a former employee of Hytel, filed a wage claim after being fired.[12] In response, Hytel filed a complaint against Butler alleging breach of fiduciary duty and fraud.[13] Butler moved to dismiss Hytel's complaint under the CPA, arguing that the suit was in retaliation for her wage claim.[14] The trial court granted Butler's motion under the CPA, holding that filing a claim for unpaid wages was a protected activity under the CPA.[15]

On appeal, the *Hytel* court began by reviewing the language of the CPA and then explained that although the "archetypal SLAPP" involves a situation where a citizen objects to a project by a real estate developer and then the developer sues for defamation, the CPA "is written broadly enough to apply to the exercise of the constitutional rights of speech and petition outside of the archetypal scenario."[16] The appellate court then rejected the plaintiff's argument that the legislature did not intend for the CPA to apply to private claims like the wage claim at issue, but only to matters of public concern.[17]

The appellate court in *Hytel* next rejected the plaintiff's argument that the defendant's activities did not fit within section 15 of the CPA. To the contrary, the court noted, section 15 provides that the CPA applies to any motion that is "based on, relates to, or is *in response to* any act or acts of the moving party."[18] The plaintiff had argued that such a broad interpretation of the CPA would immunize many types of actions because the "[CPA] contains no language restricting its scope to petitions regarding a matter of public concern, [so] any counterclaim brought after an initial claim is filed would be considered a claim brought 'in response to' protected petitioning activity and would therefore be barred by the [CPA]."[19] The appellate court rejected this argument because "it ignores the court's role in determining which claims were filed 'in response to' a protected first amendment activity and are therefore subject to motions to dismiss under the [CPA]."[20] Instead, the appellate court favored broad application of the CPA, holding that

> the language of the [CPA] does not restrict its application to those situations in which the person seeking its shelter exercised his or her rights of free speech and petition to advance some issue of public policy. To the contrary, the scope of the [CPA] is expressed in broad terms.[21]

Sandholm v. Kuecker: The Illinois Supreme Court Turns the Tide

Despite its earlier broad application of the CPA, the Illinois Supreme Court appears to have been persuaded by the plaintiffs' claims, like those made and rejected in *Hytel*, that the courts should not apply the CPA literally because doing so would essentially create an absolute immunity for many types of conduct. In 2011, the Illinois Supreme Court greatly scaled back the CPA's application in the landmark case of *Sandholm v. Kuecker*.[22]

In *Sandholm*, a former high school basketball coach sued parents of the players and a local radio station for defamation after the parents publicly objected to the coach's techniques online and in the media. The defendants successfully moved to dismiss on the ground that their statements were protected under the CPA. The coach appealed the dismissal, but the appellate court affirmed. In reaching its holding, the appellate court held that the CPA provides a new qualified immunity to defamatory statements, even if made with actual malice, that were communicated in furtherance of one's First Amendment rights.[23] In the words of the appellate court, the broad language of the CPA "chang[ed] the landscape of defamation law" in Illinois.[24]

The Illinois Supreme Court agreed to hear the coach's petition and reversed the appellate and trial courts. The court held that a claim is subject to dismissal under the CPA only if the plaintiff filed suit solely in retaliation against the acts of the moving party in furtherance of that party's rights of speech, association, petition, or participation in government.

In reaching this conclusion, the Illinois Supreme Court again examined the language of the statute, but this time it held that

> in light of the clear legislative intent expressed in the statute to subject only meritless, retaliatory SLAPP suits to dismissal, we construe the phrase "based on, relates to, or is in response to" on section 15 to mean solely based on, relating to, or in response to "any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government."[25]

The court further explained that "where a plaintiff files suit genuinely seeking relief for damages for the alleged defamation or intentionally tortious acts of defendants, the lawsuit is not solely based on defendant's rights of petition, speech, association, or participation in government."[26] The court also appeared to address the claims raised by the plaintiffs, like those in *Hytel*, regarding the CPA's breadth leading to a new immunity, holding that

> [i]t is clear from the express language of the [CPA] that it was not intended to protect those who commit tortious acts and then seek refuge in the immunity conferred by the statute . . . [and that] the legislature . . . did not intend to establish a new absolute or qualified privilege for defamation.[27]

Finally, the court explained that "had the legislature intended to radically alter the common law by imposing a qualified privilege on defamation within the process of petitioning the government, it would have explicitly stated its intent to do so."[28]

By interpreting the purpose of the CPA in this fashion, the Illinois Supreme Court effectively added new language to the CPA (as subsequent courts would note). According to the court's decision in *Sandholm*, the CPA only exists to protect parties from "meritless, retaliatory suits," and defendants must additionally prove that the plaintiff filed suit solely in retaliation.[29] These extrastatutory additions have led to difficulties for courts trying to apply this new language.

Further Restrictions on the CPA

In response to the Illinois Supreme Court's new interpretation of the CPA in *Sandholm*, lower courts began requiring defendants to prove that a suit was filed "solely" in retaliation for protected speech. Because defendants are required to make this showing with limited evidence as a result of the CPA's limited discovery, this requirement has proved to be quite burdensome. In practice, the courts are basically limited to reviewing the pleadings to determine what motivated the plaintiff to file the suit—an issue that is not often addressed in the complaint.

August v. Hanlon demonstrates the effect of the *Sandholm* decision on the courts. In *August*, the plaintiff brought suit against the defendant for slander and false light invasion of privacy after the defendant filed a complaint stating that the plaintiff had improperly retained charitable donations.[30] The trial court granted the defendant's motion for summary judgment on the basis that the CPA immunized the defendant's actions against the plaintiff. While the appeal was pending, the Illinois Supreme Court decided *Sandholm*. As a result, the appellate court reversed *August*, explaining that the plaintiff's objective in filing the suit was not solely retaliatory. In making this decision, the appellate court found that "the allegations in plaintiff's complaint, which were supported by concrete examples, were at least, in part, undertaken to protect plaintiff's reputation and goodwill in the community."[31]

Similarly, in *Cartwright v. Cooney*, Cooney made disparaging remarks about Cartwright in a newspaper publication.[32] Cartwright sued for defamation, among other torts. Cooney moved to dismiss under the CPA.[33] In light of *Sandholm*, the district court denied the motion on the ground that Cartwright's claims were not solely in retaliation for Cooney's otherwise CPA-protected speech.[34] According to the court, Cartwright's objective was not to chill speech "but to seek damages for . . . personal harm to her reputation."[35] In reaching this conclusion, the court looked only to the allegations in the plaintiff's complaint.[36] Interestingly, the court noted that prior to the *Sandholm* decision, this case presented a close question, but "given the unequivocal language in *Sandholm*, it is clear that Defendant cannot seek shelter under the" CPA.[37]

As demonstrated by these cases, in attempting to follow *Sandholm*, courts have shifted the focus of CPA motions from the defendants' actions (i.e., whether the defendants were genuinely engaging in protected activity) to the plaintiff's intent in filing the lawsuit. This is problematic because, among other things, once a defendant initiates a CPA motion, the court expedites and restricts discovery, leaving the defendant with only the pleadings and limited evidence to support the CPA motion. Accordingly, plaintiffs have successfully defeated CPA motions by merely alleging harm to reputation in the pleadings, and courts have found this sufficient to deny CPA motions.

"Retaliatory" and "Meritless": Additional Burdens for Defendants

Although the early opinions after *Sandholm* focused on the *Sandholm* court's statements concerning *solely*, later opinions began to focus on additional language in the decision regarding whether the SLAPP suit was "retaliatory" and "meritless." In *Sandholm*, the Illinois Supreme Court revisited its statement in *Wright* that the purpose of the CPA was to "give relief, including monetary relief, to citizens who have been victimized by meritless, retaliatory SLAPP lawsuits."[38] The *Sandholm* court took this explanatory language and morphed it into a new requirement for courts applying the CPA: "The legislative history of the [CPA] supports our conclusion that the legislature intended to target only meritless, retaliatory SLAPPs."[39] Although the *Sandholm* court identified these new requirements, it failed to provide any guidance for lower courts on how to apply them.

The first case to apply the "retaliatory" and "meritless" requirements set forth in *Sandholm* was *Ryan v. Fox Television Stations*. In *Ryan*, a judge sued for defamation after the defendants aired footage of four Cook County criminal court judges leaving work early, including the plaintiff judge.[40] The defendants moved to dismiss under the CPA, arguing that their conduct was protected. The trial court denied the motion, and the defendants appealed.

The appellate court affirmed the lower court's decision. First, the appellate court held that it was "indisputable that defendants' actions in this case satisfy the first prong of the [CPA] test" because their investigative reporting about "questionable activity by members of the judiciary in the performance of their official duties" was "communicated . . . to the public" and local and state government officials, which is protected conduct in furtherance of the defendants' right to petition, speak, associate, or otherwise participate in government.[41] "Such activity is well within the scope of the [CPA], and in fact the investigatory report at issue here is an excellent example of the kind of activity that the legislature sought to protect, as shown by the [CPA]'s own language."[42] However, the appellate court then examined whether the defendants met their two-part burden under the CPA to: (1) establish that the plaintiff's claim is meritless, and (2) establish that the plaintiff's claim was retaliatory.[43] "To satisfy its burden . . . a movant must affirmatively demonstrate that . . . the [nonmovant's] claim is . . . meritless and was filed in retaliation against the movant's protected activities in order to deter the movant from further engaging in those activities."[44]

The "Retaliatory" Requirement

In determining whether the suit was filed based on retaliation, the *Ryan* appellate court looked to the pre-*Sandholm* case of *Hytel v. Butler* for guidance on the issue of whether a suit was retaliatory within the

meaning of the CPA.[45] The *Hytel* factors are as follows: "(1) the proximity in time between the protected activity and the filing of the complaint[;] and (2) whether the damages requested are reasonably related to the facts alleged in the complaint and are a 'good-faith estimate of the extent of the injury sustained.'"[46] Applying these factors, the *Ryan* appellate court found that

> [g]iven the timing of the complaint and the speed with which it was filed [three days after the allegedly defamatory first segment and before the final segment aired], the high damages demand [of $28 million], and the type of relief requested, we must conclude that defendants have shown evidence of retaliatory intent.[47]

Although courts in other cases also have looked to the *Hytel* factors for guidance on whether a suit is retaliatory, these factors have not been uniformly applied and have led to results that are sometimes contradictory. For example, in *Chicago Regional Council of Carpenters v. Jursich*, the defendant filed a third-party claim alleging defamation for statements made during a disciplinary hearing.[48] The third-party defendants moved to dismiss under the CPA, but the trial court denied the motion.[49] The appellate court determined that the complained-of activity was in furtherance of the third-party defendants' constitutional rights, but that was not enough for dismissal—they also had to show that the lawsuit was solely based on their protected acts.[50] The appellate court turned to *Hytel* for guidance in determining whether the suit was retaliatory.[51] Applying these factors, the appellate court found that the suit was not retaliatory. The defendant did not file a defamation suit until long after the allegedly defamatory statements, which led the court to believe that the suit was not filed in retaliation. The defendant also alleged an unspecified amount of damages instead of a high damage request.[52]

In contrast, the court in *Stein v. Krislov* applied the same *Hytel* factors to a situation with similar facts regarding timeline and damages and decided the case differently.[53] In *Stein*, the plaintiff sued for defamation and wages owed to him and filed his complaint right before the statute of limitations on the defamation claim expired.[54] The appellate court concluded that based on these facts, it was "apparent that plaintiff preserved his libel claim in an effort to make defendants 'pay.'"[55] Further, the plaintiff only pleaded an amount of $50,000 for reputational damage, well below the amount of $28 million present in *Ryan*, but the appellate court still concluded that it was retaliatory because of the plaintiff's "minimal loss and speculative damages."[56]

These decisions suggest that a lawsuit that is filed too quickly or after too much time passes could be deemed retaliatory under the CPA. If a party files suit right after the defamatory action, this could be deemed retaliatory, as in *Ryan*. However, if a party waits until the last possible moment to file suit just before the expiration of the statute of limitations, this, too, may be deemed retaliatory, as in *Stein*. The same rule of extremes also applies to analyzing damages and retaliatory intent. If a party seeks a high amount of damages, like the $28 million in damages sought by the plaintiff in *Ryan*, a court may find retaliation. If a party seeks a low amount that is too speculative, this, too, could be retaliatory, as in *Stein*.

The "Meritless" Requirement

The "meritless" component of the CPA has slowly been taking shape. In *Ryan*, the appellate court held that the defendants fell short of proving that the plaintiff's claim was meritless. But the appellate court accepted for the sake of argument the defendants' assertion that they could establish that the defamation claim was meritless by establishing that their news reports were "substantially true." The appellate court noted that the Illinois Supreme Court held in *Wright* that the plaintiff's defamation claim was meritless because it was true and therefore not false, and "falsity is an essential element in a defamation claim."[57] The appellate court noted that "[h]ad defendants offered undisputed evidence that the report's claims that plaintiff was neglecting his duties by going home during working hours were *actually* true, then this might be a different case. Unlike substantial truth, which is an affirmative defense, falsity is an essential element in a defamation claim," and disproving falsity would have demonstrated that the plaintiff's claim was meritless.[58] The appellate court thus left the door open for the defendants to delve into discovery, file a motion for summary judgment under the CPA, and establish that the claim was meritless by showing that the news reports were not false because they are "substantially true."[59]

Subsequent courts have imposed a similarly high burden with respect to the "meritless" requirement. In *Garrido v. Arena*, "[h]ow to prove that a claim is 'meritless' and 'retaliatory' for the purposes of the" CPA was "the central question."[60] The court noted that the CPA "itself does not expressly contain this requirement, and the second prong of the test originated in *Sandholm*, which did not define the terms."[61] The *Garrido* court spent some time grappling with how to apply the "meritless" requirement, stating that "[t]he term 'meritless' is often used loosely to describe any unsuccessful legal claim or theory, but in the context of a SLAPP it is a term of art and means something more."[62] The court further noted that the CPA is designed to stop claims that prevent people from exercising their constitutional speech rights while permitting people to sue who have suffered legitimate injuries.[63]

The appellate court in *Garrido* focused on the difficulties facing defendants navigating these requirements due to peculiarities of Illinois civil procedure, specifically that a motion to dismiss under the CPA must be brought under section 2-619(a)(9) rather than section 2-615.[64] In Illinois, a 2-615 motion to dismiss is similar to a 12(b)(6) motion under the Federal Rules of Civil Procedure: the court must consider only allegations made in the complaint, and the court must accept as true all well-pled allegations.[65] A 2-619 motion for involuntary dismissal, on the other hand, admits the legal sufficiency of the complaint but asserts affirmative matter to avoid or defeat the claim.[66] According to the *Garrido* court, when defendants bring a CPA motion to

dismiss under 2-619, "defendants have conceded that plaintiff's complaint is legally sufficient."[67] Defendants are then put in a conundrum as they have ostensibly conceded that the complaint is legally sufficient and, therefore, must find another way to prove that the claim is meritless. There is at least one scenario where this would be possible: a claim concededly may be facially sufficient but barred by the statute of limitations.

As discussed in more detail below, the *Garrido* court then identified one potential avenue of proving that a defamation claim is meritless, i.e., proving that the statement at issue was actually true.[68] That option was not available to the defendants in *Garrido*, however. Instead, they argued that they were entitled to CPA protection because their statements were protected by several affirmative defenses, including that the statements were substantially true.[69] Noting that this was an issue of first impression, the court held that "an affirmative defense does not prove that a plaintiff's claim is meritless, but instead merely allows a defendant to avoid the legal consequences of a real injury to the plaintiff."[70] The *Garrido* court held that its analysis

> must remain focused only on the validity of the plaintiff's claim, not whether a defendant can escape liability for an otherwise meritorious claim by proving an affirmative defense. . . . Thus, even if defendants can prove that the allegedly defamatory statements at issue in this case are substantially true or are constitutionally privileged, they still cannot carry their burden of showing that plaintiff's claim is meritless.[71]

Accordingly, the "only remaining way for defendants to prove that plaintiff's claim is meritless within the meaning of the [CPA] is by disproving some essential element of plaintiff's *prima facie* case."[72]

This analysis appears to conflict with the Illinois Supreme Court's holding in *Wright*, which held that the defamation claim was meritless because it was proven to be true. Indeed, it is impossible for a defamation plaintiff to succeed if the disputed statements are proven to be true or substantially true for the simple reason that a statement that is true cannot be false. Because falsity is an element of a defamation claim, a defamation claim must fail—and thus be deemed meritless—if the disputed statements are not false because they are true. Although substantial truth is an affirmative defense, its procedural status does not render it any less effective because the end result is the same, i.e., the statement is not false and therefore not an actionable defamation claim.

In *Capeheart v. Terrell*, the plaintiff, a tenured college professor, sued for defamation and free speech retaliation based upon statements that the defendant, the college's provost, made at a faculty council meeting.[73] The defendant stated that a student had filed a stalking complaint against the plaintiff professor.[74] The defendant moved to dismiss under the CPA; the trial court granted the defendant's motion and awarded attorney fees.[75] The appellate court reversed because the defendant did not meet his burdens under *Sandholm*, holding among other things that the defendant "failed to demonstrate that the plaintiff's suit [was] meritless or retaliatory" because the defendant "[did] not refute any essential element of [the] defamation claims."[76] The appellate court noted that the complaint alleged that, contrary to the defendant's statement, no stalking complaint had been filed and thus that accusation could be false.[77] The appellate court did not discuss any other ways the defendant might have demonstrated that the plaintiff's claim was meritless.

Based upon these cases, it appears that motions to dismiss under the CPA may be of limited value in many circumstances, and defendants may be best off moving into discovery and gathering evidence to fulfill the "meritless" burden by disproving an essential element of the plaintiff's prima facie case. Because many CPA cases involve defamation claims brought by government officials, defendants can prevail by proving substantial truth or no actual malice, thus establishing that the defamation claim is meritless.

Where the CPA Stands Now

In light of the decisions over the past two years, the CPA now appears to do precious little for defendants hoping to invoke its protection with a speedy motion to dismiss and a stay on costly discovery, as expressly intended by the Illinois General Assembly—and as available under many other states' anti-SLAPP statutes.

But all is not lost. Even with the restricted application of the CPA, courts have made it clear that it is still possible for defendants to prevail, perhaps most likely with a motion for summary judgment. Depending on the specifics of the case, defendants may want to consider skipping the CPA motion to dismiss and stay discovery and instead file a motion for summary judgment under the CPA. Although it may be difficult in some circumstances, it is not impossible for defendants to meet the new three-part test to win their CPA motion for summary judgment. Under this test, the defendants must: (1) prove that they were sued for engaging in First Amendment conduct such as petitioning or speech related to government; (2) prove that the plaintiff's suit was retaliatory under the *Hytel* factors; and (3) disprove an element of the plaintiff's claim, thereby showing that the claim was meritless.

At this point, it appears that there is only one clear avenue for satisfying the "meritless" prong. Every court evaluating the "meritless" component of the CPA since *Wright* has referenced the *Wright* decision as an example of what would constitute a successful CPA motion.[78] To prevail in a defamation action, the defendant would have to come forward with evidence that the statement was actually true or that there was no injury to the plaintiff's reputation.[79] It appears that no party has successfully dismissed a case under the CPA when evaluated under the new requirements found in *Sandholm*. Courts applying the new requirements have repeatedly stated, however, that a defendant can prevail on a CPA claim if the defendant can disprove an element of the plaintiff's claim, which would render the claim meritless for CPA purposes.

As for critics of the CPA, it should be noted that the statute does not inhibit plaintiffs who file legitimate

claims because they will be able to defeat a CPA motion if their claims are found to have merit. On the other hand, the CPA is—and should be—of concern to plaintiffs who file meritless claims, including defamation claims based on true or substantially true (and therefore not false) statements, statements that are nonfactual opinion protected by the First Amendment, statements protected by the Illinois innocent construction rule, statements protected by the fair report privilege, statements barred by the statute of limitations, and statements about public officials or public figures that are published without actual malice, to name a few.

Although Illinois courts have scaled back the application of the CPA, the CPA does provide benefits to defendants who can disprove an element of a claim against them. Defendants may not need a specific statute to file a motion for summary judgment to win dismissal of a meritless defamation claim, but the CPA has one key advantage for defendants: the statute contains a mandatory attorney fees provision for the prevailing defendant, which may provide a significant leverage tool to persuade the plaintiff to dismiss the case rather than face the potential of a substantial fee award.

Despite the remaining benefits, it would appear that the Illinois legislature envisioned a more robust application of the CPA when it initially passed the law. In order to add back some of the protections that were originally envisioned, the Illinois General Assembly should amend the CPA to place the burden of proving merit on plaintiffs instead of defendants by requiring plaintiffs to provide admissible evidence to show a "reasonable probability of prevailing," which would be more in line with the intent and language of the CPA, as California and Minnesota have done.[80]

Nevertheless, in its current state, restricted as it has been by some courts, the Illinois CPA still remains a powerful tool for defendants.

Endnotes

1. 735 Ill. Comp. Stat. 110/1 et seq. (2013).

2. Debbie L. Berman & Wade A. Thomson, *Illinois' Anti-SLAPP Statute: A Potentially Powerful New Weapon for Media Defendants*, 26 Comm. Law. 1 (2009).

3. 735 Ill. Comp. Stat. 110/5.

4. *Id.*

5. *Id.*

6. *Id*. at 110/20.

7. Indeed, in 2008, CBS moved to dismiss under the CPA, arguing that its investigative reporting on alleged Chicago Police Department misconduct should be protected under the statute from a defamation claim. *See* Doubek v. CBS Broad., Inc., No. 08-L-4627 (Cook County, Ill. 2008). Following briefing of the CPA motion, plaintiff dismissed her lawsuit with prejudice so there was no ruling on the motion. *See also* Ryan v. Fox Television Stations, Inc., 979 N.E.2d 954 (Ill. App. Ct. 2012) (holding that investigative reporting about government could be protected under the CPA), *infra*.

8. 735 Ill. Comp. Stat. 110/30.

9. Wright Dev. Group v. Walsh, 939 N.E.2d 389, 391–92 (Ill. 2010).

10. *Id.* at 397.

11. *Id.*

12. Hytel Group, Inc. v. Butler, 938 N.E.2d 542, 546 (Ill. App. Ct. 2010).

13. *Id.* at 547.

14. *Id.* at 548.

15. *Id.*

16. *Id.* at 550.

17. *Id.* at 550–51.

18. *Id.* at 553 (emphasis in original).

19. *Id.* at 555.

20. *Id.*

21. *Id.* at 551.

22. 962 N.E.2d 418 (Ill. 2012).

23. *Id.* at 426.

24. *Id.*

25. *Id.* at 430.

26. *Id.*

27. *Id.* at 430–31.

28. *Id.* at 431.

29. *Id.*

30. August v. Hanlon, 975 N.E.2d 1234 (Ill. App. Ct. 2012).

31. *Id.* at 1246.

32. 2012 WL 1021816 (N.D. Ill. Mar. 26, 2012).

33. *Id.* at *2.

34. *Id.* at *6.

35. *Id.* at *7.

36. *Id.*

37. *Id.*

38. Wright Dev. Group v. Walsh, 939 N.E.2d 389, 396 (Ill. 2010).

39. Sandholm v. Kuecker, 962 N.E.2d 418, 431 (Ill. 2012).

40. Ryan v. Fox Television Stations, Inc., 979 N.E.2d 954 (Ill. App. Ct. 2012).

41. *Id*. at 961.

42. *Id.*

43. *Id.* at 962.

44. *Id.*

45. *See id.* at 962–63. The court, however, rejected *Hytel*'s reasoning with respect to whether a claim is meritless.

46. *Id.* (citing Hytel Group, Inc. v. Butler, 938 N.E.2d 542, 546 (Ill. App. Ct. 2010)).

47. *Id.* at 963. The appellate court nevertheless held that dismissal under the CPA was not warranted because the defendants, who had not yet had the benefit of discovery because it had been stayed, had not shown that the claim was also meritless. *Id.*

48. Chi. Reg'l Council of Carpenters v. Jursich, 986 N.E.2d 197 (Ill. App. Ct. 2013).

49. *Id.* at 199.

50. *Id.* at 201.

51. *Id.*

52. *Id.* at 203.

53. 2013 Ill. App. 113806 (Ill. App. Ct. 2013).

54. *Id.* ¶ 5.

55. *Id.* ¶ 27.

56. *Id.*

57. Ryan v. Fox Television Stations, Inc., 979 N.E.2d 965 (Ill. App. Ct. 2012) (citing Wright Dev. Group v. Walsh, 939 N.E.2d 389, 399 (Ill. 2010)).

58. *Id.* at 965 (emphasis in original).

59. *Id.*

60. 993 N.E.2d 488, 496 (Ill. App. Ct. 2013).

61. *Id.*

62. *Id.* at 496–97.

63. *Id.*

64. *See* 735 Ill. Comp. Stat. 5/2-615, 2-619 (2013).

65. *Id.* at 5/2-615.

66. *Id.* at 5/2-619.

67. *Garrido*, 993 N.E.2d at 497.

68. *Id.* at 500.

69. *Id.* at 498.

70. *Id.*

71. *Id.*

72. *Id.* (emphasis in original).

73. 2013 Ill. App. 122517, at ¶ 3 (Ill. App. Ct. 2013).

74. *Id.*

75. *Id.* ¶¶ 8–9.

76. *Id.*

77. *Id.* ¶ 17.

78. *See, e.g.*, *Garrido*, 993 N.E.2d at 497–98; *Capeheart*, 213 Ill. App. 122517, at ¶ 15 (citing *Garrido*); Stein v. Krislov, 2013 Ill. App. 113806, at ¶ 28 (Ill. App. Ct. 2013) (citing *Garrido*).

79. *Garrido*, 993 N.E.2d at 498.

80. *See, e.g.*, Cal. Civ. Proc. Code § 425.16(b)(1) (2011); Wilcox v. Superior Court, 33 Cal. Rptr. 2d 446, 454–55 (Cal. Ct. App. 1994), *overruled on other grounds*, Equilon Enters. v. Consumer Cause, Inc., 52 P.3d 685, 694 (Cal. 2002); Minn. Stat. § 554.03 (2013); Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim, 84 N.W.2d 834, 839 (Minn. 2010) (holding that there were not enough facts on the record to overturn the district court's dismissal of the SLAPP lawsuit, but broadly applying the language of the statute).