2012 IL App (2d) 110880-U
No. 2-11-0880
Order filed July 25, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TARA TESCHKY, Plaintiff-Appellant, v. BUSCHMAN RESIDENTIAL MANAGEMENT LLC and GARY D. BUSCHMAN, Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 10-L-939 Honorable Margaret J. Mullen, Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in granting summary judgment for defendants.

¶ 1 Plaintiff, Tara Teschky, brought whistleblower and common law retaliatory discharge claims against defendants, Buschman Residential Management LLC and Gary D. Buschman, after she was fired for allegedly refusing to participate in insurance fraud. She appeals from the trial court's grant of summary judgment in defendants' favor. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant Buschman Residential Management (BRM) manages a 164-apartment complex called the Sanctuary of Lake Villa (Sanctuary). Defendant Gary Buschman and his brother Mark Buschman are managing members of BRM. BRM hired plaintiff as a leasing agent in November 2004. She was promoted to property manager in May 2005.

¶ 4 On February 5, 2009, apartment 306B, rented by tenant Nick Semitka, flooded. Semitka had turned off the heat before going out of town, causing the pipes to freeze and burst. Semitka's apartment was damaged, as well as apartments 206B and 106B below. Plaintiff was primarily responsible for handling the claim with Semitka's insurance company, Amica. Plaintiff collected receipts from vendors that did repairs, tracked the amount of time Sanctuary employees spent on repairs, and prepared an invoice detailing the costs.

¶ 5 Plaintiff arranged for Amica's adjuster Timothy Buhe to inspect the damage to all three apartments on February 13, 2009. Plaintiff was not present during that inspection; she alleges BRM prohibited her from meeting with Buhe when he visited the property. In Buhe's work notes dated March 2, 2009, he stated that coverage was being afforded to the two units below Semitka's unit, but not to Semitka's apartment. Buhe estimated repairs to the two apartments to be "in the amount of $6,728.49," not including "water mitigation," and wrote that the Sanctuary would be forwarding supporting documentation for repairs. On March 3, 2009, Buhe wrote a letter to the Sanctuary stating that coverage was being afforded under Semitka's policy for damages to the apartments below his apartment, though not for the damage to Semitka's apartment due to a policy exclusion. He requested supporting documents for the repairs for units 106B and 206B. On April 12, 2009, Buhe wrote in his work notes that plaintiff said that she would be sending supporting documents in the near future. He also wrote that his previous estimate was "$6,728.49 for the repairs to each unit."

¶ 6 According to plaintiff, she sent an invoice and receipts to Amica after obtaining approval of the documents from Gary and Mark. The two-page invoice was dated April 16, 2009. The first page listed the damages for all three apartments, which totaled $5,151.68. This included charges for staff time of $527.50. The line items below the staff time indicated which apartment numbers each repair covered. The second page of the invoice was a breakdown of the staff time, already included on the first page, which BRM had asked plaintiff to itemize in more detail. Plaintiff agreed in her deposition that no one told her to inflate any receipts or submit anything that was inaccurate. According to plaintiff, defendants directly billed Semitka for the damage done to his unit.

¶ 7 Buhe's work notes dated May 11 and June 22, 2009, indicated that he had not received the documentation. His June 22 notes further stated that he spoke to plaintiff about settling the claims for the two apartments and had offered $2,800 for each unit, including water mitigation. He wrote that "[t]hey" accepted, and he would be sending a check.

¶ 8 On June 22, 2009, Buhe sent a letter to the Sanctuary stating:

> "Enclosed please find our check in the amount of $5,600 for the settlement of the liability claim in relation to the claim against our policyholder, Nick Semitka.
>
> As you are aware, he is responsible for the structural damage to his own unit of 306B.
>
> This concludes our handling of this claim."

¶ 9 Buhe averred in an affidavit the following. Shortly after receiving notice of the claim, he viewed the premises. Based on his training and experience, he made a calculation of the cost to repair the apartments below Semitka's. On June 22, 2009, he had a telephone conversation with plaintiff in which he offered to settle the claims for damage to the two properties for $2,800 each. Plaintiff accepted his offer, and he then sent a settlement check and cover letter for the agreed

amount. However, in an affidavit, plaintiff denied that Buhe communicated a $5,600 settlement offer to her.

¶ 10 Buhe averred as follows in another affidavit. Generally, the purpose of a payment to a claimant for property damage is to reimburse the claimant for the reasonable expense of the necessary repairs to damaged property. Even after appraising the damages and making an estimate, it is customary to request supporting documentation of the repair work. If such costs are less than Buhe's own estimates, Amica is likely to pay the actual amount of damages. "Occasionally" in the past, Amica claimants returned overpaid amounts to Amica, and Amica accepted the funds. Amica also periodically audited some of its paid claims, and if it determined that it had overpaid a policy holder, it requested a return of the overpayment from the policy holder.

¶ 11 Plaintiff received the $5,600 check on about June 24, 2009. She noticed that the amount was higher than the total value of the repair work done on the three apartments. Plaintiff called Gary and asked if she should contact Amica and tell it about the overage so that it could reissue a check. Gary told plaintiff not to contact Amica and to scan the check so that it could be electronically submitted for deposit that day. According to plaintiff, he also told her to create miscellaneous charges on Semitka's account to justify the amount received from Amica. Plaintiff allegedly told Gary that she would not do so because she felt it would be fraudulent if they were not going to return the difference. He allegedly became very angry and said that it was the least Amica could do because of all the damage that Semitka had done. Gary allegedly told plaintiff that Amica and Semitka did not need to know about the overage, and that she should keep quiet.

¶ 12 According to Maura O'Malley, BMR's controller, plaintiff or a leasing agent would generally scan checks that came into the Sanctuary's office through a "MICR reader that would show up on

their computer, and then they were to transmit it to the bank for deposit via electronically [*sic*]." The person scanning would then get a report and "apply the deposit to the resident's account or the applicant's account." O'Malley testified that in June 2009, Jennifer Fergus would have been responsible for applying the amounts to the resident's account.

¶ 13 Plaintiff voiced her objection about depositing the check to Brittany Jenkins, a leasing agent present during the conversation. Plaintiff called O'Malley and left a voicemail. Plaintiff testified in her deposition that she told O'Malley that she would not create additional charges. According to O'Malley, plaintiff said in her message that she did not have "enough charges" and did not "know how to apply the check." O'Malley averred that plaintiff did not claim that she believed that handling the check would be illegal, immoral, or unethical. O'Malley stated in her deposition that she did not have prior knowledge of the situation, and when she asked Gary, he said to tell plaintiff to just scan it and that they would look into it in the main office. O'Malley sent plaintiff an e-mail on June 25 stating that she should scan the check and "[p]ut the known charges of $5,151.68 out on his account." When the funds were received, she would "explain how to apply." Based on the e-mail, plaintiff scanned the check. O'Malley stated in her deposition that the office later took the difference between the actual charges for the two units and the amount of the check and put it in a "contingent liability account" for any unknown future work that resulted from the initial flooding.

¶ 14 According to plaintiff, the same day she objected to depositing the insurance check, Gary asked her for access to her computer so he could check her work e-mail account. The next day, June 25, he sent her an e-mail stating that he was disappointed in the way that she had solicited some businesses for the Sanctuary's resident VIP card discount program. Gary testified in his deposition

that he first saw the e-mails at issue in May 2009, but he did not express his disappointment to plaintiff until June 25.

¶ 15 Plaintiff was responsible for administering the VIP discount card, which was provided to the Sanctuary's residents and staff to receive discounts from local businesses. On May 6, 2009, plaintiff contacted HK Salon by e-mail, asking if the salon would like to take part in the VIP card. Plaintiff stated that as part of the program, the salon would be required to give Sanctuary staff a larger discount than residents and also give plaintiff, as the property manager, one free service per month. On May 14, plaintiff sent an e-mail to Jimano's Pizza to solicit its participation in the VIP card. Plaintiff stated that as part of the program, the restaurant would have to provide a larger discount to staff than residents as well as provide plaintiff, as the property manager, $100 in free food of her choice per month. Plaintiff did not discuss her vendor requirements with Gary before sending the e-mails.

¶ 16 BRM's handbook, as revised February 1, 2009, stated:

> "Employees are expected to avoid interactions with customers, residents of Company properties and Company vendors on a personal level, that reflect poorly on the Company as they are seen as representatives of the Company. Prior written approval from the Vice President of Administration should be obtained if using the services, expertise, or products of a resident, customer or Company vendor for any business of a personal nature.
>
> Company employees should not accept gifts, favors or other forms of gratuities, with an aggregate value in excess of One Hundred Fifty Dollar ($150.00) in any twelve month period, from any person, firm or corporation doing business with the Company or that

intends to do business with the Company, resident or customer without specific written authorization from the Vice President of Administration."

¶ 17 Plaintiff testified in her deposition that part of the job when she was assigned the task of the VIP card was to use a free service to make sure the business was worth endorsing; the Sanctuary did not allocate a portion of the budget to pay for such services. Vendors had provided free services and products in the past with Gary's knowledge, such as an ice cream party for the residents and free carpet cleaning for plaintiff. Vendors never complained to the Sanctuary about providing free services. Plaintiff testified in her deposition that vendors were not required to provide a free service and would not have been denied participation for not providing a free service.

¶ 18 Gary stated in his affidavit that he and Mark became dissatisfied with plaintiff's performance as a property manager "[o]ver time," and they decided to look for a replacement. In September 2008 BRM employed a search firm to conduct a search for a new property manager,[1] but the firm did not produce a suitable candidate by January 2009. Gary averred that BRM therefore offered the position to an internal candidate, Jennifer Fergus, who accepted the position on February 3. According to Gary, Fergus was working on a changeover in BRM's accounting and bookkeeping software, so the Buschmans decided not to replace plaintiff until Fergus completed the software conversion and was trained as the new property manager. Gary stated in his affidavit that Fergus began training as the new property manager in March 2009, while still working on the software conversion.

¶ 19 On June 30, 2009, plaintiff had just been released from the hospital for food poisoning when she received a phone call from Gary. He said that she was being terminated for the way she had solicited businesses for the VIP card. Gary insisted that she turn in her work keys and phone

[1]Defendants provided a copy of the contract with the search firm.

immediately, which she did. Gary did not previously issue plaintiff any written warning or tell her that if she did not improve her performance, her job would be in jeopardy. Gary testified that Fergus took over as property manager after plaintiff, though originally he had not planned to move her to that position for another six months or so.

¶ 20 In response to plaintiff's unemployment claim, defendants stated that plaintiff was discharged for the vendor solicitation requesting personal perks and for not stating that she had solicited the pizza place when asked what businesses she had solicited, thereby violating the employee handbook. In interrogatory answers in this case, defendants stated that plaintiff was fired for a variety of reasons, including plaintiff's poor performance in completing accurate financial reports on a timely basis, plaintiff's attitude, and plaintiff's violations of the employee handbook.

¶ 21 Plaintiff filed a two-count complaint against defendants on October 13, 2010. Count I alleged violations of the Whistleblower Act (Act) (740 ILCS 174/1 *et seq.* (West 2008)), specifically that defendants terminated her in retaliation for opposing and refusing to engage in insurance fraud and conspiracy to commit insurance fraud. Count II alleged common law retaliatory discharge. Plaintiff alleged that she was discharged in retaliation for opposing and refusing to engage in conduct that she reasonably believed would violate the law.

¶ 22 Defendants moved for summary judgment on February 28, 2011, which the trial court granted on August 4, 2011. Regarding count I, the trial court found that there was no genuine issue of material fact as to whether any crime was committed, and therefore the Whistleblower Act was not violated. As for count II, the trial court found that there was no material issue of whether plaintiff could have had a good faith belief that any of the defendants' acts were criminal, and the allegations

did not establish a violation of clearly mandated public policy. The trial court also referenced the "reasons stated in the Defendants' brief." Plaintiff timely appealed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, plaintiff challenges the trial court's grant of summary judgment for defendants. Summary judgment is appropriate only where the pleadings, affidavits, depositions, admissions, and exhibits 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. *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399 (2010). The purpose of summary judgment is to determine whether a question of fact exists, not to make factual findings, and summary judgment should be granted only where the movant's right to it is clear. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). While the nonmoving party is not required to prove his entire case at the summary judgment stage, he must present a factual basis that could arguably entitle him to a judgment in his favor. *Lamb-Rosenfeldt v. Burke Medical Group, Ltd.*, 2012 IL App (1st) 101558, ¶ 23. We review *de novo* a grant of summary judgment. *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, ¶ 22. We may affirm the trial court's grant of summary judgment on any basis supported by the record. *Sardiga v. Northern Trust Co.*, 409 Ill. App. 3d 56, 61 (2011).

¶ 25 Plaintiff first argues that the trial court erred in ruling that there was no genuine issue of material fact as to whether any crime was committed, so as to give rise to a claim under the Whistleblower Act. Plaintiff cites section 20 of the Act, which provides that an employer may not retaliate against an employee "for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation." 740 ILCS 174/20 (West 2008). Plaintiff argues that

a reasonable jury could find that defendant terminated her for refusing to participate in insurance fraud.

¶ 26 Plaintiff cites the criminal insurance fraud statute, which states that a person commits insurance fraud when he "knowingly obtains, attempts to obtain, or causes to be obtained, by deception, control over the property of an insurance company *** by the making of a false claim or by causing a false claim to be made on any policy of insurance *** intending to deprive an insurance company *** permanently of the use and benefit of that property." 720 ILCS 5/46-1(a) (West 2008). "False claim" includes any statement in support of a claim for payment that "contains any false, incomplete, or misleading information concerning any fact or thing material to the claim." 720 ILCS 5/46-1(d)(5) (West 2008). "Deception" is defined in relevant part as (1) creating or confirming another's false impression, which the offender does not believe to be true; or (2) failing to correct a false impression which the offender previously has created or confirmed. 720 ILCS 5/15-4(a), (b), 46-1(d)(3) (West 2008). Insurance fraud essentially requires proof that the offender obtained or caused to be obtained money by making false or fraudulent loss representations to an insurer. *People v. Parks*, 403 Ill. App. 3d 451, 460 (2010).

¶ 27 Plaintiff also references common-law fraud. Defendants argue that whether their actions might give rise to a civil tort is irrelevant, as section 20 requires that a party refuse to participate in conduct that is "a violation of State or federal law" (740 ILCS 174/20 (West 2008)), which defendants interpret as meaning a statute. Section 20 does not define the term "law." The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent, which is best indicated by the statute's language when given its plain and ordinary meaning. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11. Where the statute's language is clear and

unambiguous, we must apply it without resorting to other statutory construction aids. *Id.* We will not depart from the statute's plain language by reading in exceptions, limitations, or conditions that conflict with the legislature's intent. *Brame v. City of North Chicago*, 2011 IL App (2d) 100760, ¶ 5.

¶ 28 Here, the legislature did not state that the activity must be the violation of a state or federal "statute," but rather chose to use the word "law." The statute itself does not define the term "law." Where terms are not defined, courts "will look at a dictionary to give the terms their ordinary and popularly understood meaning." *LeCompte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 29. The definition of "law" includes common law. Black's Law Dictionary 889 (7th ed. 1999); Webster's Third New International Dictionary 1279 (1986). Thus, we agree with plaintiff that section 20 includes a party's refusal to participate in an activity that would result in a violation of Illinois common law.

¶ 29 Common-law fraud requires: (1) a false statement of material fact; (2) the defendant knew the statement was false; (3) the defendant intended that the statement induce the other party to act; (4) the other party relied upon the statement's truth; and (5) the other party suffered damages as a result of his reliance on the statement. *Aasonn, LLC v. Delaney*, 2011 IL App (2d) 101125, ¶ 28. Common-law fraud requires actual reliance on the misrepresentations by the allegedly deceived party. See *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 489 (2009). Plaintiff cites *St. Joseph Hospital v. Corbetta Construction Co.*, 21 Ill. App. 3d 925, 952-53 (1974), for the propositions that: (1) a statement which is technically true may be fraudulent where it is misleading, and (2) even if the defendant makes a statement that is true at the time, he must disclose any new information showing that the original statement was false or misleading.

¶ 30 Plaintiff argues as follows. A jury could infer that Amica paid $5,600 in settlement of the insurance claim because the Sanctuary's invoice gave it the false impression, that defendants intentionally declined to correct, that the total amount of the repairs covered under the insurance policy was $5,679.18. However, this total not only included the value of repair work done to all three damaged apartments ($5,151.68), rather than just the two covered by the insurance policy, but also included a double-charge for staff time ($527.50) in that it listed this figure on the first page of the invoice and also in the breakdown of staff charges on the second page. Thus, the invoice itself was misleading. Amica sent a check for $5,600, which was an overpayment. Although it was not established how Amica arrived at this erroneous amount, it is approximately the same as the amount of the two invoices added together. This suggests that Buhe did not realize that the first page included repair costs for Semitka's apartment and that the second page was simply a more detailed breakdown of the cost of staff time accounted for in the first page. Circumstantial evidence calls into question any assertion that the $5,600 payment was based solely on Amica's own inspection of the damages, in that: the $5,600 payment occurred months after Buhe visited the apartments, which occurred before the Sanctuary had made repairs and calculated damages; Amica's records show that it asked for supporting documents for the repairs several times; and Buhe's "estimate of the repair costs was nowhere near the $5,600 amount." Further, although defendants argue that Amica never received the documentation and therefore could not have been deceived by it, defendants admitted that they instructed plaintiff to send the invoices, and she unequivocally testified that she did.

¶ 31 Plaintiff further argues that Gary's reaction to her question of whether to inform Amica that the check was more than the repair costs shows that he had a fraudulent intent in that he knew BRM had "overcharged" Amica at the time. She argues that BRM's subsequent actions confirm this, in

that defendants admit the amount exceeded the cost of repairs, accepted payment for repair costs to Semitka's uncovered unit, and still subsequently harassed Semitka to pay the repair costs for his unit. Plaintiff argues that the fraud consisted of defendants knowing that Amica was overpaying for the claim and instructing her not to correct Amica's false impression of the amount of damages, but rather to take affirmative steps to hide the fact of the overpayment by making additional charges on Semitka's account. Plaintiff maintains that defendants intended to permanently deprive Amica of the excess money in that the overpayment remains in the account to this day.

¶ 32 Defendants argue that plaintiff cannot prevail under the Act because she failed to demonstrate that she "refused to participate" in the complained-of activity. See *Sardiga*, 409 Ill. App. 3d at 62 (" 'refusing' " to participate means refusing, not complaining or questioning). Defendants note that it is undisputed that plaintiff prepared the invoice and scanned the insurance check. Defendants state that it is unclear from plaintiff's testimony what, if anything, she refused to do, other than create miscellaneous charges on Semitka's account so that the check would ultimately balance to his ledger. Defendants point out that O'Malley testified that Fergus was in charge of check assignments, and they argue that, even otherwise, the task that plaintiff failed to do was an internal accounting measure that had nothing to do with the alleged fraud on Amica. See *Sardiga*, 409 Ill. App. 3d at 64 (refusal to participate in a poor business practice that is not illegal does not satisfy the Act's requirements).

¶ 33 Viewing the evidence in the light most favorable to plaintiff, we conclude that summary judgment would be inappropriate on count I on just the issue of refusal to participate. While it is clear that plaintiff scanned the check, it is not clear from the evidence whether plaintiff transmitted it for deposit. Furthermore, the alleged fraud was not just in depositing the money but also in not

returning the difference, and any false internal accounting could arguably be interpreted as a means and evidence of intent to improperly retain the excess funds.

¶ 34 Defendants further argue that there is no genuine issue of material fact that their actions did not constitute criminal insurance fraud, as that statute requires "making of a false claim or by causing a false claim to be made on any policy of insurance" (720 ILCS 5/46-1(a) (West 2008)), which did not take place here. We agree. "False claim" is defined as "any statement made to any insurer *** and made part of, or in support of, a claim for payment or other benefit under a policy of insurance *** when the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim." 720 ILCS 5/46-1(d)(5) (West 2008). " 'Statement' " means any assertion, oral, written, or otherwise." 720 ILCS 5/46-1(d)(6) (West 2008).

¶ 35 Here, the only false claim or statement that defendants allegedly provided to Amica in support of their insurance claim was the invoice. Plaintiff argues that the invoice was "misleading," but she undisputedly prepared the invoice herself and allegedly sent it to Amica. The first page clearly lists which apartments each line item of repairs covers. Moreover, although plaintiff argues that BRM instructed her to detail the staff time on the second page, anything beyond a cursory review reveals that the staff time listed on the second page, totaling $527.50, is a breakdown of the first page's line item for staff time, identically totaling $527.50. Plaintiff herself admitted in her deposition that "the concept was [to] include all the charges" and no one told her to inflate any receipts, submit any inaccurate information, or withhold information when she submitted the documentation in support of the claim. See *Steiner Electric Co. v. NuLine Technologies, Inc.*, 364 Ill. App. 3d 876, 882 (2006) (unequivocal assertions a party makes in deposition testimony become binding judicial admissions that cannot be controverted on appeal or used to create a question of fact

on summary judgment). For these reasons, there is no genuine issue of material fact that the invoice could not reasonably be interpreted as misleading.

¶ 36 Plaintiff argues that under the statute, "failing to correct a false impression which the offender previously has created or confirmed" (720 ILCS 5/15-4(a), (b), 46-1(d)(3) (West 2008)) is illegal. Plaintiff argues that although the invoice "did not contain false or inaccurate information" and "was not necessarily created with the intent to mislead," failing to correct Amica's error in calculating the damage award satisfies the definition of fraud. However, the language plaintiff cites is one of the definitions of "deception" as used in the statute, and it does not eliminate the element of "making of a false claim or ** causing a false claim to be made." 720 ILCS 5/15-46-1(d)(3) (West 2008); see also *Parks*, 403 Ill. App. 3d at 460 (insurance fraud essentially requires proof that the offender obtained or caused to be obtained money by making false or fraudulent loss representations to an insurer).

¶ 37 In any event, the invoice itself is ultimately immaterial to this argument because Buhe clearly averred in his affidavit that he did not receive the invoice and its accompanying receipts. He averred that he had made an independent estimate of repairs after his site visit based on his training and experience, and that he offered to settle the claim with BRM for a lesser amount after he did not receive the supporting documentation for repairs. Based on the lack of a counteraffidavit, these facts must be taken as true. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 14 (if not contradicted by counteraffidavit, facts in an affidavit supporting a motion for summary judgment are admitted and must be taken as true for purposes of the motion). "If the party moving for summary judgment supplies facts that, if not contradicted, would warrant judgment in its favor as a matter of law, the opposing party cannot rest on its pleadings to create a genuine issue of material

fact." *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004). Plaintiff attempts to create a question of fact by pointing out that she testified that she mailed the documentation, but even accepting that she sent it, it does not automatically translate into Buhe receiving it and is not a contradiction of his statement. Based on Buhe's lack of receipt of the invoice, defendants clearly cannot be said to have made a "false claim" to Amica, as required by the criminal insurance fraud statute.

¶ 38 For similar reasons, there is no genuine issue of material fact regarding common law insurance fraud. As stated, common-law fraud requires that the allegedly deceived party rely on a misrepresentation. *Village of Bensenville*, 389 Ill. App. 3d at 489. The only false or misleading statement defendants could have been said to have made is the invoice, but as discussed, we must accept as fact that Buhe did not receive the invoice. Moreover, Buhe averred that he offered the settlement of $5,600 based on his independent inspection of the apartments. As such, defendants cannot be said to have engaged in common law insurance fraud, and the trial court correctly granted summary judgment for them on plaintiff's whistleblower claim.

¶ 39 We now turn to plaintiff's claim of retaliatory discharge. In general, noncontracted employees are at-will employees who may be discharged for any reason or even for no reason. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 500 (2009). However, retaliatory discharge is a limited and narrow exception to the general rule of at-will employment. *Id.* For a retaliatory discharge claim, an employee must show that (1) the employer discharged the employee (2) in retaliation for the employee's activities, and (3) the discharge violates a clear mandate of public policy. *Id.*

¶ 40 "A broad, general statement of policy is inadequate to justify finding an exception to the general rule of at-will employment." *Id.* at 502. Examples of insufficient allegations of public

policy include the right to marry a co-worker, product safety, promoting quality health care, and the Hippocratic Oath. *Id.* at 503-04. Instead, the employee must identify a specific expression of public policy. *Id.* at 503. Public policy can be found in a state's constitutions and statutes, and when those are silent, in its judicial decisions. *Id.* at 500. The public policy must " 'strike at the heart of a citizen's social rights, duties, and responsibilities.' " *Id.* at 501, quoting *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 130 (1981). Whether a particular public policy exists, as well as whether that policy is undermined by the employee's discharge, presents a question of law. *Id.* at 501-02.

¶ 41 Plaintiff argues that she objected to participating in fraud, as defined by sections 46-1 (insurance fraud) and 46-3 (conspiracy to commit insurance fraud) of the Criminal Code (720 ILCS 5/46-1, 46-3 (West 2008)). Public policy concerns include an employer's criminal violations, as "[t]here is no public policy more basic, nothing more implicit in the concept of ordered liberty [citations] than the enforcement of a State's criminal code." *Palmateer*, 85 Ill. 2d at 132; see also *Stebbings v. University of Chicago*, 312 Ill. App. 3d 360, 366 (2000) (retaliatory discharge also applies in a situation where a worker was fired for refusing to engage in conduct that violates public policy).

¶ 42 We have already determined that there is no genuine issue of material fact that Amica's $5,600 settlement check was not based on any fraudulent actions by defendants. However, plaintiff points out that a plaintiff needs only a good faith belief that the defendant was violating the law and need not conclusively show that the law was broken. *Mackie v. Vaughan Chapter-Paralyzed Veterans of America, Inc.*, 354 Ill. App. 3d 731, 740 (2004). This is because public policy favors exposing apparently criminal activity. *Id.*

¶ 43 In *Mackie,* the plaintiff alleged that he was fired after reporting what he believed was theft of the organization's property, namely that a director was downloading mailing lists to use for his and his wife's personal businesses. *Id.* at 732-33. The appellate court stated that theft can consist of confidential information and that the plaintiff had argued in the trial court that the list could be worth between $500 and $1,000. *Id.* at 742. The appellate court stated that the plaintiff believed in good faith that the use of the mailing list amounted to theft, and his complaint was sufficient to state a cause of action for retaliatory discharge. *Id.* at 743.

¶ 44 Plaintiff argues that she also objected to engaging in what she reasonably believed was fraudulent activity, that being depositing an amount of money that she knew the company did not have a right or claim to. Plaintiff argues that she believed that Amica intended to base its payment on her own personal computation of the charges, and that BRM's intentional deposit of the overage would constitute overt acts in furtherance of fraud. She maintains that her belief that some type of fraud was at hand was only reinforced by Gary's rigid insistence that she not inform Amica about the overage. Plaintiff also argues that the purpose of Amica's payment was to reimburse defendants for the costs expended to repair the units, and she cites Buhe's affidavit in stating that Amica would have accepted the return of an overpayment.

¶ 45 Defendants cite *Rabin v. Karlin & Fleisher, LLC,* 409 Ill. App. 3d 182 (2011). There, the plaintiff was employed as an investigator for a law firm. *Id.* at 183. The firm allegedly billed its clients $40 per hour for plaintiff's work, even though his actual wages were far less than that, and instructed him to create invoices that made it look like he was not a employee. *Id.* The plaintiff alleged that the defendants' conduct amounted to fraud because they falsely characterized the expenses. *Id.* at 183-84. The plaintiff complained and refused to provide the requested " 'bogus'

" invoices, and he was later fired. *Id.* at 183. The plaintiff argued that he had a reasonable belief that the defendants' actions violated criminal statutes and the Rules of Professional Conduct, and that he was fired for reporting this belief. *Id.* at 184.

¶ 46 The appellate court held that it was not "patently improper or illegal for the Firm to bill its clients a prevailing rate for plaintiff's investigation services or fail to voluntarily disclose to the clients plaintiff's employment status and/or the actual costs of his services." *Id.* at 188. It further held that the firm's actions of having plaintiff create invoices for his services that disguised that he was a firm employee was distasteful but not illegal. *Id.* In response to the plaintiff's argument that he had a good-faith belief that the defendants were violating the law, the court stated that a reasonable person could not conclude on account of the plaintiff's pleadings that the defendants' conduct was criminal. *Id.* at 188-89.

¶ 47 Defendants argue that as in *Rabin*, no reasonable person could conclude that their conduct was criminal. Defendants argue as follows. Plaintiff herself was responsible for preparing the materials to be sent to Amica and knew that Buhe personally conducted a site visit to view the damage. As of June 22, 2009, Amica was willing to settle the claim for $2,800 per unit (a total of $5,600), and Buhe averred that plaintiff approved the settlement on behalf of BRM. Even if plaintiff's testimony that she never had such a conversation with Buhe creates an issue of material fact, her concern about criminal fraud was fanciful. Plaintiff believed that the documents she sent to Amica justified a payment of $5,151.68, and Amica paid about $500 more than that. However, plaintiff jumped to the conclusion that Amica had overpaid without a solid basis in facts, as she did not attend Buhe's site visit and did not know the basis for Amica's decision to pay $5,600. Even a person unfamiliar with insurance claims should have recognized that (1) the settlement amount might

exceed the repair estimate because it covered yet-unknown damage, and (2) an experienced insurance adjuster is unlikely to make a mistake in determining the settlement amount. Even if Amica had "overpaid," plaintiff had no reasonable basis to conclude that BRM's decision to keep the money constituted criminal fraud, as *Rabin* teaches us that business decisions can be distasteful without being criminal. Plaintiff conceded that nothing she sent to Amica was fraudulent and that she was not aware of any false representations by defendant. Thus, her conclusion that BRM committed fraud by depositing the check was objectively unreasonable.

¶ 48 Viewing the evidence in the light most favorable to plaintiff, we take as true her testimony that she did not know that Buhe did not receive her invoice and that she did not have a conversation with him about settling the claim. Still, we conclude that the trial court correctly granted summary judgment in defendant's favor, albeit on a different basis than that argued by defendants.

¶ 49 Plaintiff cites a legitimate public policy interest in the criminal insurance fraud statutes, but as our supreme court has stated:

> "the mere citation of a constitutional or statutory provision in a complaint will not, by itself, be sufficient to state a cause of action for retaliatory discharge. Rather, an employee must show that the discharge violated the public policy that the cited provision clearly mandates." *Turner*, 233 Ill. 2d at 505.

An essential element of criminal insurance fraud is that the wrongdoer makes "a false claim" or causes "a false claim" to be made. 720 ILCS 5/46-1(a) (West 2008). As stated, "false claim" is defined as a "statement contain[ing] any false, incomplete, or misleading information concerning any fact or thing material to the claim." 720 ILCS 5/46-1(d)(5) (West 2008). Based on the language of the statute, it is clear that the public policy that the insurance fraud statute embodies is a deterrent

of making false or misleading insurance claims and the punishment of those who do. See also *Parks*, 403 Ill. App. 3d at 460 (insurance fraud essentially requires proof that the offender obtained or caused to be obtained money by making false or fraudulent loss representations to an insurer).

¶ 50 As discussed, there is no genuine issue of material fact that the invoice was not false or misleading. Moreover, plaintiff prepared the invoice herself and admitted that no one told her to submit inaccurate information or withhold information, so plaintiff could not reasonably have a good faith belief that the invoice was false or misleading. Accordingly, her discharge cannot be said to violate the public policy behind the insurance fraud statute, which is preventing and punishing false or misleading insurance claims. Accordingly, the trial court correctly granted summary judgment for defendants on plaintiff's retaliatory discharge claim. *Cf. Jandeska v. Prairie International Trucks, Inc.*, 383 Ill. App. 3d 396, 398-99 (2008) (termination of employee who told customer that he thought the repair shop did not properly repair his vehicle did not violate a clear mandate of public policy); *Engstrom v. Provena Hospitals*, 353 Ill. App. 3d 646, 652 (2004) (employee's discharge, allegedly based on reporting that nurses had recorded incorrect triage times on patients' medical records, did not violate a clearly mandated public policy). Based on our resolution of this claim, we do not address the parties' arguments regarding whether there was a genuine issue of material fact about whether plaintiff's termination was a consequence of her complaints about the alleged insurance fraud.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 53 Affirmed.