

Finally, as defendants correctly point out, plaintiffs' complaint seeks relief only for the deprivation of William Benson's First Amendment rights, not the Fourth Amendment rights of Jerrald, Mark and Lorraine Benson. Accordingly, the Court will dismiss Jerrald, Mark and Lorraine's claims against the defendants. n9

n8 Because neither party has submitted evidence outside of the pleadings on this particular issue and because the flaw in plaintiff's claim appears in the complaint itself, we will treat defendants' motion as a motion to dismiss. [**13]

n9 The Court also notes, however, that the harassment of William Benson's family, as alleged, can be viewed as part of defendants' attempt to punish William Benson for his exercise of First Amendment rights. Inasmuch as such harassment was effectively directed against William Benson, these acts are not irrelevant to William Benson's conspiracy claim under the First Amendment.

III. Defendants' Motion for Summary Judgment on Count II in 77 C 3713

Count II of plaintiffs' complaint alleges that defendant Allphin discharged William Benson from employment with the Department of Revenue in retaliation for Benson's [*470] disclosure of improprieties in the Department to representatives of the Hammond Times, the Chicago Tribune, the Illinois Department of Law Enforcement, the Illinois State Police and the Illinois Attorney General's Office. Benson alleges further that his discharge was in retaliation for his disclosure of certain improprieties involving Chicago police officers to representatives of the Chicago Police Department. Defendants have moved for summary judgment on this Count on the [**14] grounds that Benson has no evidence sufficient to support these allegations and that, in fact, Benson was terminated from employment because he attempted to extort a Department of Revenue job from Allphin. In support of this motion, defendants have submitted various affidavits asserting that Allphin, at the time he decided to terminate Benson, did not know of and thus could not have been motivated by Benson's disclosures to the press and various law enforcement officials. Defendants have also produced allegedly contemporaneous notes of Benson's attempts to extort a permanent position with the Department of Revenue.

The principle is well established that summary judgment is generally inappropriate in cases involving questions of motive or intent. *Conrad v. Delta Air Lines*,

Inc., 494 F.2d 914, 919 (7th Cir. 1974). Disposition by summary judgment is particularly inappropriate where, as here, the complaint involves delicate constitutional rights, complex fact situations, disputed testimony and questionable credibilities. *Porter v. Califano*, 592 F.2d 770, 778 (5th Cir. 1979). Because the motive behind Allphin's decision to terminate Benson is critical to resolution of this [**15] case, *Mount Healthy City School District v. Doyle*, 429 U.S. 274, 287, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977), and because the affidavits submitted by each side are directly contradictory on the extent of Benson's pre-discharge disclosures and Allphin's knowledge of those disclosures, the Court finds that there remain genuine issues of material fact which cannot be resolved properly on a motion for summary judgment.

Plaintiff has submitted competent evidence that challenges the authenticity and/or the credibility of the evidence offered by defendants to support their claim that Benson was discharged because he attempted to extort a job from Allphin. Plaintiff has also submitted competent evidence, the substance of which is contradicted by affidavits submitted by defendants, that he did in fact make disclosures of improprieties prior to his discharge to members of the news media and law enforcement officials. The representations in Allphin's affidavit that he did not know of these disclosures is not sufficient at this stage to remove all potential issues of fact regarding Allphin's motive, particularly in the possible absence of any credible alternative explanation for Benson's [**16] discharge. Benson is not required to win his case in defending against a motion for summary judgment; it is sufficient that he offer some competent evidence of a genuine issue of material fact. Having submitted such evidence in response to defendants' motion, plaintiff is entitled to the opportunity to prove his case.

Conclusion

For the foregoing reasons, defendants' motions to strike certain allegations of Count I and for summary judgment on Count II are denied. Defendants' motion for summary judgment on Count I is granted as to the liability of the named defendants for acts perpetrated against the Bensons by unknown defendants. Defendants' motion for summary judgment on Count I is also granted as to the liability of the named defendants on those claims of plaintiffs other than William Benson identified in this opinion as derivative to the deprivation alleged by William Benson. The non-derivative claims of plaintiffs other than William Benson are dismissed. The balance of defendants' motion for summary judgment on Count I is denied. It is so ordered.