

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CARL L. NICOLET,

Plaintiff-Appellant,

v

BRINKS, INC., and JOHN BEDNARSKI,

Defendants-Appellees.

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UNPUBLISHED

August 13, 2009

No. 284861

Wayne Circuit Court

LC No. 06-620467-CD

Before: Stephens, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) and dismissing plaintiff's claims for defamation, tortious interference with a business relationship, and intentional infliction of emotional distress. We affirm.

Plaintiff was employed for approximately seven years by defendant Brinks, Inc., and was responsible for maintaining control over shipments of valuables delivered to and received from customers. Plaintiff's responsibilities included servicing automated teller machines (ATMs) by replenishing the cash, removing deposits, and removing "residual cash." In a letter dated December 6, 2005, plaintiff's manager, defendant John Bednarski, notified plaintiff that he was being terminated from his employment because of a series of cash "shortages/overages" associated with ATMs that plaintiff had serviced. The letter stated:

As previously reviewed with you, we have been investigating a series of shortages/overages that have occurred with ATMs you have serviced in your role as Messenger. Included among these are shortages, including a number of shortages that occurred on machine NB2126, amounting to approximately \$2080.

At that time, we removed the responsibility for servicing ATMs from you. Since then, we have not experienced the frequency of shortages with the ATMs you serviced, particularly those that had the most frequent and largest of these shortages. Further, in reviewing this matter with, [sic] you could provide no explanation for these shortages.

As a result of all of the above, I have lost confidence in your ability and/or willingness to perform the critical duties of a Brink's employee in the manner

required. Therefore, your employment with Brink's is hereby terminated effective immediately.

Please arrange the return of any Brink's property that may be in your possession.

Plaintiff filed this action for defamation, alleging that defendant Bednarski's termination letter was defamatory because it falsely accused him of theft. Plaintiff also alleged that the letter supported claims for tortious interference with a business relationship and intentional infliction of emotional distress. The trial court determined that there was no genuine issue of material fact that the statements in the letter were factually accurate and granted defendants' motion for summary disposition under MCR 2.116(C)(10).

This Court reviews a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *MacDonald v PKT, Inc.*, 464 Mich 322, 332; 628 NW2d 33 (2001). The court must consider the affidavits, depositions, admissions, and other documentary evidence filed by the parties. MCR 2.116(G)(5). A party opposing a motion under MCR 2.116(C)(10) may not rest on the allegations in the pleadings, but is "required to present evidentiary proofs creating a genuine issue of material fact for trial." MCR 2.116(G)(4)." *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *MacDonald, supra* at 332.

The elements of defamation are "(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication." *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005). "The question whether or not the meaning of a particular communication is defamatory is one for the court." *Fisher v Detroit Free Press, Inc.*, 158 Mich App 409, 412; 404 NW2d 765 (1987).

The trial court determined that Bednarski's termination letter did not support a claim for defamation because it was factually accurate. Plaintiff does not argue that the statements in the letter were false, but contends that the letter implies that he is a thief and, therefore, supports a claim for defamation by implication. We disagree. A cause of action exists for defamation by implication where a plaintiff can prove that defamatory implications are materially false. *Hawkins v Mercy Health Services, Inc.*, 230 Mich App 315, 330; 583 NW2d 725 (1998). However, "if the gist of an article or the sting of the charge is 'substantially accurate,' a defendant cannot be liable." *Id.* at 333.

Bednarski's letter contains the following factual statements: (1) that there had been "a series of shortages/overages that have occurred with ATMs" that plaintiff had serviced as a messenger; (2) that there had been a number of shortages on machine NB2126, amounting to approximately \$2,080; (3) that Brinks had not experienced the frequency of shortages since plaintiff's removal from those routes; and (4) that plaintiff could not provide an explanation for the shortages. Although plaintiff contends that the letter implies that he is a thief, the "gist" or

“sting” of the letter is to explain that Bednarski had lost confidence in plaintiff’s ability and/or willingness to perform his employment duties because of the unexplained shortages/overages, without specifying a reason for the shortages. As the trial court observed, “[s]hortages can occur for a whole multitude of reasons, in addition to the fact that they may occur because of theft.” Unlike in *Hawkins, supra*, the letter did not omit any material facts that rendered the “gist” or “sting” of the letter materially false. Further, plaintiff’s mere belief that the letter is defamatory is insufficient to avoid summary disposition because a “plaintiff’s honest belief that he has been defamed is not determinative.” *Fisher, supra* at 415.

Accordingly, the trial court did not err in finding that there was no genuine issue of material fact that the statements in the letter were factually true and that the statements did not support a claim for defamation as a matter of law. Because the letter was not defamatory, it is unnecessary to consider plaintiff’s arguments regarding publication.

Although plaintiff also challenges the trial court’s dismissal of his tortious interference with a business relationship and intentional infliction of emotional distress claims, he does not contend that these claims are viable independent of the allegedly defamatory letter. He merely argues that if this Court reverses the dismissal of his defamation claim, it should necessarily reverse the dismissal of these latter two claims as well. Having found no error in the dismissal of plaintiff’s defamation claim, we likewise affirm the dismissal of plaintiff’s remaining claims for tortious interference with a business relationship and intentional infliction of emotional distress claims.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder