IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MICHAEL ANTHONY STAMATHIS,	)	
	)	**Civil Action No. 7:01cv00838**
Plaintiff,	)	
	)	
v.	)	**Memorandum Opinion**
	)	
FLYING J, INC., and	)	
DAVID L. HANSEN	)	**By: Samuel G. Wilson**
	)	**Chief United States District Judge**
Defendants.	)	

This action is brought by Michael Anthony Stamathis ("Stamathis") against Flying J, Inc. ("Flying J") and David L. Hansen ("Hansen"), an employee of Flying J. This court has jurisdiction under 28 U.S.C. § 1332. Stamathis alleges defamation, malicious prosecution, tortious interference with employment, and claims punitive damages. This matter is before the court on defendants' motion for summary judgment. Since the court finds that there are genuine issues of material fact as to each of Stamathis' claims, the court will deny defendants' motion for summary judgment.

I.

In December 2000, Stamathis was a truck driver and had been employed by J-Mar Trucking, Inc. ("J-Mar") for the past three years. As his employer, J-Mar paid for Stamathis' diesel fuel and provided him with a T-Chek fuel card ("Chek card") to transact fuel purchases. J-Mar designated certain fuel stops for its truck drivers, many of which are operated by Flying J. Due to his numerous stops at Flying J truck stops, Stamathis enrolled in Flying J's Frequent Fueler Program, a loyalty incentive program, and Flying J issued him a Frequent Fueler card with his name on it.

On December 18, 2000, a particularly cold Monday night, Stamathis was driving his truck south on I-81 en route to Atlanta, Georgia. Around 8:00 p.m. Stamathis exited the interstate and pulled into the Flying J Travel Plaza in Wytheville, Virginia. The Wytheville Flying J is a busy truck stop, and Mondays close to Christmas are particularly heavy days for traffic. After waiting in line for fifteen minutes, Stamathis pulled his tractor trailer up to a fuel pump. Stamathis inserted his company-issued Chek card into the card reader on the fuel pump and entered all of the information prompted by the card reader's visual readout, including his tractor number, trip number, mileage, and driver identification number. Next, he inserted his Flying J Frequent Fueler card into the card reader. The card reader's visual readout indicated that Stamathis' Chek card had been accepted and prompted him to begin fueling; however, no fuel would come out. Using the courtesy phone by the fuel pump, Stamathis contacted the fuel desk for help. At the fuel desk clerk's request, Stamathis identified his company name, his tractor number, and his driver identification number. When the clerk asked for his mileage, however, Stamathis told her he could not remember it. Stamathis told her to wait while he retrieved his mileage from the truck cab, but the clerk told him not to bother and to bring it when he entered the store. The pump then began operating, and Stamathis starting fueling his truck.

As the pump filled his tanks, Stamathis entered the store carrying with him a notebook on which he had written his mileage. As Stamathis approached the fuel clerk, Kristy Bowman, to provide her with his mileage information, she picked up the fuel desk phone to respond to a call from another customer and told Stamathis to bring his mileage back later. Next, Stamathis asked the other fuel desk clerk, Christopher Coleman, to write down his mileage or hold his notebook until he was finished fueling. Coleman also told Stamathis to bring the information back later.

Stamathis exited the store and cleaned his windshield and mirrors. He added fuel additive to his tanks while his truck was still fueling because other truckers were lined up behind him waiting. Once his tanks were full, Stamathis pulled his truck forward one truck length to clear the pump for the next driver, as Flying J requests that its customers do before handling business in the store.

Stamathis then entered the store a second time. After washing his hands to clean off fuel additive, Stamathis approached the fuel desk. Relief Fuel Desk Manager and defendant in this action, David Hansen, was "standing behind Bowman" and saw Hansen "come in to pay for his fuel." (Hansen Dep., Vol. I, at 66.) Stamathis again identified himself to Bowman, giving her his company name, tractor number, Chek card and Frequent Fueler Card. Bowman ran his cards through her computer and told him that she still needed his mileage. Stamathis, however, did not have his notebook with him and he could only remember the first three digits of his mileage. Hansen observed Stamathis "roll his eyes back in his head, and . . . walk[] out the door." (Hansen, Dep., Vol. I., at 67.) Hansen left the fuel desk, figuring that Stamathis was "going out to get his mileage." (Hansen, Dep., Vol. I, at 68.)

When he reached his truck, Stamathis saw that the driver behind him had finished fueling and was impatiently waiting for him to move his truck. Flying J had paged Stamathis twice over its intercom and told him to move his truck because he was blocking the fuel pumps. Stamathis pulled way from the fuel pumps to find a place to park in the Flying J parking lot, as Flying J permits its customers to do before completing their fuel transactions. The parking lot, however, was full, and other truck drivers were circling the parking lot searching for an empty space. Since there were no available parking spaces, Stamathis pulled onto the service road in front of the

Flying J, passed the entrance ramps to I-81, and pulled his truck into the adjacent Citgo truck stop to park.

Hansen saw Stamathis leave the Flying J parking lot, bypass the entrance ramps to the interstate, and make a left-hand turn into the Citgo lot. Hansen instructed Bowman to call the police, and Hansen called his boss, Ronald Hicks, at home. Hansen told Hicks that Stamathis had stolen fuel and gone over to the Citgo, but he did not tell Hicks about Hansen repeatedly trying to pay for his fuel. Hicks told Hansen to talk to Stamathis and try to work it out, but if he gave Hansen a hard time, have him arrested.

Before talking to Stamathis, Hansen called J-Mar, identified Stamathis by name and truck number, and reported to the dispatcher that Stamathis had stolen fuel. The dispatcher confirmed that Stamathis was a J-Mar driver and told Hansen that they would contact Stamathis and take care of it. According to the dispatcher, Hansen told her that he would not call the police. However, according to Hansen, he told her that he had already called the police.

Meanwhile, Stamathis parked his truck at the Citgo and entered the Citgo to use the bathroom and buy a case of Pepsi. Stamathis walked back to his truck to retrieve his shower bag because he was planning on going back to the Flying J for his free shower. Before Stamathis could return to the Flying J, however, a Wytheville Sheriff's Deputy appeared.

Deputy Hall called to Stamathis and told him that the Flying J had reported that he refused to give them his mileage and had stolen fuel. While Stamathis was explaining to Deputy Hall what had happened, Hansen approached "with a big grin on his face . . . like he enjoyed seeing that sheriff out there giving [Stamathis] a hard way to go." (Stamathis Dep. at 123.) Stamathis asked Hansen, "What the heck do you think you're doing telling this sheriff that I'm trying to

steal your fuel?" (Stamathis Dep. at 124). According to Deputy Hall, Stamathis' statements agitated Hansen. Hansen remembers that Stamathis complained about how he was treated by the Flying J employees. Not wanting to argue with Stamathis, Hansen told Deputy Hall that he wanted Stamathis arrested. Deputy Hall then talked to Hansen alone. Stamathis retrieved his notebook with his mileage from the cab and offered it to Hansen, but Hansen said nothing in response. After Hansen talked to Deputy Hall for three or four minutes, Deputy Hall told Hansen that if he wanted to press charges, he would have to travel to the Wytheville Sheriff's Office and file a complaint. Hansen agreed and told Deputy Hall to arrest Stamathis.

Deputy Hall took Stamathis into custody at 9:00 p.m. Deputy Hall handcuffed Stamthis, placed him in the patrol car, and transported him to the Sheriff's Office. At 9:34 p.m. Stamathis was booked for petit larceny in violation of Virginia Code § 18.2-96. Stamathis appeared before the magistrate, posted a $1,000 bond and was released around 10:00 p.m.

Upon being released, Stamathis called a cab and returned to the Citgo where he called J-Mar. Following the advice of the J-Mar dispatcher, Stamathis returned to the Flying J to make sure that his transaction was completed. Afraid that Hansen would see him and try to start a fight or have him arrested again, Stamathis purchased a phone card at a nearby CB shop so he could contact his family in case something happened.

Around 11:00 p.m., Stamathis entered the Flying J and asked the restaurant cashier if a manager could go with him to the fuel desk to avoid a confrontation with Hansen, but the cashier said that the restaurant manager had nothing to do with the fuel desk. When Stamathis reached the fuel desk, Hansen approached him and by the look in Hansen's eyes, Stamathis thought that Hansen would "try to start a fight or come flying over the counter." (Stamathis Dep. at 164).

Stamathis once again provided his Chek card and Frequent Fueler card to Bowman. She carried the cards to Hansen, who made an imprint of the card on a credit card receipt. Bowman gave Stamathis two documents as receipts of the transaction. During this last trip to the fuel desk, no one asked Stamathis for his mileage. Documentation from T-Chek, the fuel card company, indicates that Stamathis' fuel transaction was processed at 10:16 p.m., well before Stamathis' last trip to the Flying J at 11:00 p.m.

On March 21, 2001, Stamathis appeared in Wythe County General District Court for his criminal trial on the larceny charge. Hansen, Bowman, Coleman, and Hicks appeared in court that day, intending to pursue the prosecution. The prosecutor, however, moved that the case be nolle prosequied, and the judge dismissed the charges against Stamathis. Stamathis no longer works for J-Mar. Defendants argue that Stamathis voluntarily quit his job. Stamathis, however, argues that defendants' statements to J-Mar and prosecution of the larceny charge resulted in his constructive discharge from J-Mar.

On October 23, 2001, Stamathis filed this complaint against defendants Flying J and Hansen claiming defamation, malicious prosecution, tortious interference with employment and punitive damages. On June 13, 2002, the defendants filed their motion for summary judgment.

II.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). A genuine issue of fact exists "if the evidence is such that a reasonable jury could return a verdict for

the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). On a motion for summary judgment, the court must view the facts, and the inferences to be drawn from those facts, in the light most favorable to the non-moving party. Ross v. Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985).

III.

Defendants argue that since Hansen had probable cause to believe that Stamathis shoplifted fuel, Virginia Code § 18.2-105 bars Stamathis' claims of defamation and malicious prosecution. This code section provides:

> A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of . . . § 18.2-96 [petit larceny] ... , shall not be held civilly liable for . . . slander, malicious prosecution, false imprisonment, false arrest, . . . provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise.

Va. Code § 18.2-105.

Although the statute does not specifically mention defamation, the Virginia Supreme Court "construed this statute in F.B.C. Stores, Inc. v. Duncan, 214 Va. 246, 198 S.E.2d 595 (1973), as encompassing 'virtually all of the intentional torts to person recognized at common law.'" Jury v. Giant of Maryland, Inc., 491 S.E.2d 718, 720 (Va. 1997). Therefore, if Hansen had, at the time of Stamathis' arrest, probable cause to believe that Stamathis shoplifted, then Hansen and Flying J cannot be held civilly liable for defamation or malicious prosecution.[1]

The Virginia Supreme Court defines probable cause, in the context of a malicious

[1] Stamathis argued in his summary judgment brief that § 18.2-105 did not apply because although Hansen alleged that Stamathis "stole" fuel, he did not allege that Hansen "shoplifted" anything. The court, however, finds no distinction between stealing fuel and shoplifting fuel.

prosecution claim, as "knowledge of such a state of facts and circumstances as excite the belief in a reasonable mind, acting on such facts and circumstances, that the plaintiff is guilty of the crime of which he is suspected," Bain v. Phillips, 228 S.E.2d 576, 581 (Va. 1976). Black's Law Dictionary describes probable cause as "more than mere suspicion but less than the quantum of evidence required for conviction." Black's Law Dictionary 1201 (6th ed. 1990). The existence of probable cause depends upon "whether the circumstances disclosed by the evidence were such as to justify an ordinarily prudent person in acting as defendants acted here." F.B.C. Stores, 198 S.E.2d at 599. The defendant bears the burden of proving probable cause as an affirmative defense under § 18.2-105.

To determine whether there was probable cause to believe that Stamathis shoplifted, the court must examine the definition of "shoplift." In another code section, the Virginia General Assembly defines "shoplift" to mean: "without the consent of the merchant and with the purpose or intent of appropriating merchandise to that person's own use without payment, . . . (i) removing any merchandise from the premises of the merchant's establishment . . ." Va. Code § 8.01-44.4. Similarly, Black's Law Dictionary defines shoplifting as "(1) willfully taking possession of merchandise offered for sale in mercantile establishment, (2) with intention of converting merchandise to taker's own use without paying purchase price thereof." Black's Law Dictionary 1378 (6th ed. 1990). Thus, Hansen must have had probable cause to believe that Stamathis removed fuel from the Flying J premises, without the consent of Flying J and with the purpose or intent of not paying the purchase price of the fuel.

Defendants cite Brandau v. J.C. Penny Co., 646 F.2d 128 (4th Cir. 1981) for the proposition that the immunity defense does not require "proof that the merchant . . . had probable

cause to believe that the suspect intended wrongfully to deprive the merchant of the merchandise." Id. at 132. Unlike this case, Brandau involved the willful concealment of merchandise under Va. Code 18.2-103, which specifically provides that the "willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of intent to convert and defraud the owner thereof out of the value of the goods or merchandise." Va. Code 18.2-103; see also Brandau, 646 F.2d at 129 n.1. In this case, however, Stamathis was not arrested for wilful concealment nor is there any evidence that he willfully concealed any merchandise. The court does not read Brandau so broadly as to eliminate the mens rea element for shoplifting or remove it from the probable cause calculus. Since probable cause that a person shoplifted necessarily requires probable cause that the person intended not to pay for the merchandise, the court finds that in order to receive the immunity of § 18.2-105, Hansen must have had probable cause to believe that Stamathis did not intend to pay for the fuel when he left the Flying J premises.

Viewing the facts in the light most favorable to Stamathis, the court finds that there is evidence from which a jury could conclude that Hansen did not have probable cause to believe that Stamathis shoplifted–that is that Stamathis did not intend to pay for the fuel when he left the Flying J. Hansen knew that Stamathis repeatedly tried to complete the fuel transaction and provide his mileage, but the desk clerks kept telling him to come back later. Hansen knew that on several occasions Stamathis provided the desk clerks with his name, employer, truck number, Chek card and Frequent Fueler Card–everything necessary to complete the transaction. In short, there is no evidence of stealth–the hallmark of thievery. These facts are inconsistent with any reasonable belief that Stamathis was shoplifting.

Moreover, there is evidence that Hansen knew or should have known that there was high traffic at the Flying J, that other truckers were waiting for Stamathis to move his truck, and that a Flying J employee told Stamathis over the intercom to move his truck out of the way. When Stamathis left the Flying J parking lot, Hansen saw him bypass the exit onto I-81 and turn into the Citgo, within walking distance of the Flying J.

Additionally, Hansen's own deposition testimony casts doubt on whether he actually believed that Stamathis was intending to drive off without paying for the fuel. Hansen testified that he saw Stamathis "come in to pay for fuel," (Hansen, Vol. I, at 71.) Furthermore, Hansen admitted that although he "wasn't really sure what was going on," he insisted that Stamathis be arrested because Stamathis was giving Hansen a hard time about the Flying J employees and because Hansen did not want to argue with Stamathis (Hansen Dep., Vol. II at 11-12, 27-28.)[2]

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[2] The following exchange occurred at Hansen's deposition:

> Q: At that point [after the phone calls to the police and J-Mar], Mr. Hansen, did you really think [Stamathis] was stealing the fuel or were you just not sure what was going on?
>
> A: Well, I wasn't really sure what was going on at that time.
>
> Q: Well, why is that?
>
> A: All I know is he had left. I called my boss to get – let him know. He told me to talk to him and see if we could get him to pay for the fuel. He said if he gives you a hard time, have him arrested. And that's what I did. I was just – I knew he had come in to try to pay for the fuel and he got mad and left and left the lot without paying for his fuel, so I assumed that there was a chance it wasn't going to get worked out.

(Hansen, Dep., Vol. II, at 11-12.)

> Q: And at that point [during Hansen's conversation with Stamathis and Deputy Hall] why did you have [Stamathis] arrested?

In summary, the court finds that there is evidence from which a jury could reasonably find that at the time of Stamathis' detention and arrest, Hansen neither believed nor had probable cause to believe that Stamathis had shoplifted fuel. Therefore, § 18.2-105 does not provide defendants with immunity as a matter of law, and the court will deny defendant's motion for summary judgment.

IV.

Alternatively, defendants argue that the evidence fails to establish, as a matter of law, that Hansen's allegedly defamatory statements were false. Viewing the evidence in the light most favorable to Stamathis, Hansen told the Wytheville Sheriff's Department and J-Mar that Stamathis had stolen fuel. There is evidence from which a jury could reasonably find that this statement "was false, and that the defendant either knew it to be false, or believing it to be true, lacked reasonable grounds for such belief, or acted negligently in failing to ascertain the facts on which the publication was based." Great Coastal Express, Inc., 334 S.E.2d 846, 852 (Va. 1985). Therefore, the court will deny defendants' motion for summary judgment as to the defamation claim.[3]

V.

> A: I was trying to get him to pay for the fuel, and he just wanted to stand down there are argue and argue about it and I felt I wasn't getting anywhere to resolve the issue, so I just had him arrested.

(Hansen, Dep., Vol. II, at 27-28.)

[3] In his complaint, Stamathis claimed that Hansen falsely stated to the Wytheville Sheriff's Department and J-Mar that Stamathis was intoxicated or on drugs. Defendants argued on summary judgment that the only evidence of these statements that Stamathis can produce is inadmissible hearsay. Counsel for Stamathis conceded the point in oral arguments and indicated that Stamathis was not going to pursue the "drug" issue at trial.

Defendants also argue that there is insufficient evidence of malice to support a malicious prosecution claim and an award for punitive damages. In suits for malicious prosecution in Virginia, "legal malice inferred from circumstances is sufficient to support an award of compensatory damages, but an award of punitive damages can be supported only by proof of actual malice." F.B.C. Stores, 198 S.E.2d at 600. Actual malice is "conduct which is in conscious disregard of the rights of others and is wanton and oppressive." Nat'l Carloading Corp. v. Astro Van Lines, Inc., 593 F.2d 559, 565 (4th Cir. 1979).

Viewing the facts in the light most favorable to Stamathis, the court finds that there is sufficient evidence from which a reasonable jury could find actual malice. First, there is evidence of a lack of probable cause. Second, there is evidence that Hansen had Stamathis arrested not because he actually thought that Stamathis had stolen fuel, but because Hansen was angry at Stamathis for complaining and Hansen was tired of arguing with him. Stamathis testified that Hansen was visibly angry when he instructed Deputy Hall to place Stamathis under arrest, and Deputy Hall testified that Hansen was agitated and upset at Stamathis' complaints. Therefore, the court will deny defendants' motion for summary judgment as to the malicious prosecution and punitive damages claims.

VI.

Lastly, defendants argue that the evidence fails to establish the necessary elements for Stamathis' tortious interference claim. The parties agree that Stamathis' contract with J-Mar was terminable at will. "[W]hen a contract is terminable at will, a plaintiff in order to present a prima facie case of tortious interference, must allege and prove not only an intentional interference that caused the termination of the at-will contract, but also that the defendant employed improper

methods." Duggin v. Adams, 360 S.E.2d 832, 836 (Va. 1987) (citations omitted) (emphasis in original). "Methods of interference considered improper are those means that are illegal or independently tortious, such as violations of statutes, regulations, or recognized common-law rules. Improper methods may include violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of a fiduciary relationship." Id. (citations omitted) (emphasis added).

Viewing the facts in the light most favorable to Stamathis, there is evidence from which a jury could conclude that defendants used improper methods–defamation, malicious prosecution, and misrepresentations that might not rise to the level of defamation–to interfere with Stamathis' employment. Also, there is a material factual dispute as to whether defendants' alleged defamatory statements and unfounded litigation ended Stamathis' employment relationship with J-Mar. Therefore, the court will deny defendants' motion for summary judgment with regard to the tortious interference with employment claim.

VII.

In conclusion, the court finds that there are genuine issues of material fact regarding each of Stamathis' claims. Accordingly, the court will deny the defendant's motion for summary judgment. An appropriate order will be entered this day.

ENTER: This ____ day of July, 2002.

_____

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MICHAEL ANTHONY STAMATHIS,	)	
	)	**Civil Action No. 7:01cv00838**
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
FLYING J, INC., and	)	
DAVID L. HANSEN	)	**By: Samuel G. Wilson**
	)	**Chief United States District Judge**
Defendants.	)	

For the reasons stated in the court's accompanying Memorandum Opinion, it is

ORDERED and **ADJUDGED** that Defendants' Motion for Summary Judgment is **DENIED**.

ENTER: This ____ day of July, 2002.

_____
CHIEF UNITED STATES DISTRICT JUDGE