

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SNEE, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
CARTER-WALLACE, INC. :  
Defendant : NO. 00-1317

MEMORANDUM AND ORDER

McLaughlin, J.

July 2, 2001

The plaintiff, Michael Snee, has sued his former employer, Carter-Wallace, Inc., for breach of contract, libel/slander, negligence, and negligent infliction of emotional distress. All of Mr. Snee's claims arise out of the termination of his employment by Carter-Wallace after an investigation of missing computer hard drives. Mr. Snee had purchased the equipment on behalf of the company and lied to the company's investigator about its location. The defendant has moved for summary judgment; the Court will grant the motion.

The plaintiff claims that two Carter-Wallace employees lied to his employer about his involvement with the equipment and that, as a result, he was improperly investigated and terminated. He claims that his termination violated Carter-Wallace's employee

handbook that gave him certain contract rights. Because the handbook contained a conspicuous disclaimer and because it did not contain a detailed disciplinary procedure, the Court finds that it did not provide any contract rights to the plaintiff, who concedes that he was an at will employee. Mr. Snee also claims that Carter-Wallace defamed him when it repeated false and misleading statements made by two co-workers to other Carter-Wallace employees and prospective employers. The Court finds that plaintiff has not presented sufficient evidence to sustain these claims. Lastly plaintiff alleges two negligence claims that are barred by the New Jersey Workers Compensation Act and are alternatively invalid because they are factually grounded in the same conduct as the unsubstantiated defamation claims.

## **I. FACTS**

Plaintiff, Michael Snee, was hired by Carter-Wallace in October 1988 as a Systems Programmer in its Cranbury, New Jersey office. Plaintiff eventually assumed the title and responsibilities of Group Manager of Data Center and Tech Services in 1998. Mr. Snee concedes that he was an at-will employee, and at no time did he have a written employment contract with Carter-Wallace. Snee Affidavit at ¶¶ 3, Plf. Ex.

A; Plf. Responses to Request To Admit at ¶¶ 33, 34, Def. Ex. A.<sup>1</sup>

On or about October 23, 1998, as part of his routine job duties, Mr. Snee filled out a Purchase Order Form requisitioning various items including three hard drives and a computer switch. On or about November 3, 1998 he was interviewed by Mr. H. Lee Rochelle, a Carter-Wallace employee who worked in the audit department. When Mr. Rochelle asked Mr. Snee where the equipment had been installed, Mr. Snee responded that he did not have the time to show Mr. Rochelle the location of the equipment. Later that same day, Mr. Snee showed Mr. Rochelle where the hard drives and computer switch had purportedly been installed. At a later interview, Mr. Snee admitted that he had lied to Mr. Rochelle about the location of the equipment. Plf. Resp. to Requests to Admit at ¶¶ 4, 9-14, 27.

Carter-Wallace suspended Mr. Snee with pay on November 3, 1998. On November 4, 1998, plaintiff's counsel wrote Carter-Wallace's legal department asking that all facts, communications, findings, and reports concerning Carter-Wallace's investigation of Mr. Snee be directed to counsel. Carter-Wallace responded on November 6, 1998 stating that Snee had the choice of either

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<sup>1</sup>All citations to exhibits refer to exhibits in the defendant's motion for summary judgment or to exhibits in the plaintiff's response to the defendant's motion for summary judgment, unless otherwise specified.

resigning or being terminated immediately. Mr. Snee was terminated on November 6, 1998. Snee Affidavit at ¶¶ 16-18.

Mr. Snee filed a complaint in the Court of Common Pleas of Bucks County on February 1, 2000. The action was removed from state court on March 10, 2000. Carter-Wallace subsequently filed a motion for summary judgment; oral argument was heard on November 16, 2000.

In Mr. Snee's brief and affidavit, he offers the theory that two Carter-Wallace employees lied about his having stolen company property. The theory begins with Carter-Wallace's creation of a Tech Services Supervisor position in 1995. Another Carter-Wallace employee, Anthony Hall, sought this position. As a member of the selection committee for the new job, Mr. Snee opposed Mr. Hall's promotion to the position because he felt Mr. Hall failed to observe confidentiality in business matters. Snee Affidavit at ¶ 5.

During the same time period, another individual named Carl Ingraham was hired from outside the company to fill the position of Manager of Micro Computers. Mr. Snee was also involved with the selection committee for this position and opposed hiring Mr. Ingraham because he believed Mr. Ingraham was unqualified for the job. Snee Affidavit at ¶ 6.

Over the next two years, disagreements between Mr.

Ingraham and Mr. Snee concerning how projects were conducted and managed ensued. Mr. Snee alleges that Mr. Ingraham, with the intent to injure Mr. Snee and further his own position, fabricated a lie that Mr. Snee had misappropriated and stolen corporate property. Mr. Snee further alleges that Mr. Ingraham and Mr. Hall recited, published, and disseminated these false accusations to other employees of Carter-Wallace. Snee Affidavit at ¶¶ 7-8.

## II. DISCUSSION

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party has the initial burden of demonstrating that no genuine issues of material fact exists. Once the moving party has satisfied this requirement, the non-moving party must present evidence that there is a genuine issue of material fact. The non-moving party may not simply rest on the pleadings, but must go beyond the pleadings in presenting evidence of a dispute of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). In deciding a motion for summary judgment, the Court must view the

facts in the light most favorable to the non-moving party. Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 637 (3d Cir. 1993).

A. BREACH OF CONTRACT

Mr. Snee concedes that he was an at-will employee and had no written employment contract with Carter-Wallace. He relies on Carter-Wallace's Human Resources Policies and Procedures Handbook ("the handbook") for his breach of contract claim. The Court holds that the handbook does not create any express or implied contractual rights because it contains a conspicuous disclaimer prohibiting the creation of implied contractual rights, and because it does not contain a disciplinary procedure establishing detailed termination procedures.

Under New Jersey law, which the parties agree applies, an employment manual may constitute a valid contract of employment. The seminal case is Wooley v. Hoffman-LaRoche, Inc., 99 N.J. 284, 491 A.2d 1257, modified, 101 N.J. 10, 499 A.2d 515 (N.J.1985). In Wooley, the plaintiff argued that the express and implied promises in the defendant's employment manual created a contract under which the plaintiff could be fired only for cause, and only after compliance with the termination procedures

outlined in the manual. The New Jersey Supreme Court held that "absent a clear and prominent disclaimer, an implied promise contained in an employment manual that an employee will be fired for cause may be enforceable against the employer even when the employment is for an indefinite term and would otherwise be terminable at will." Id. at 285-286, 491 A.2d at 1258.

The Wooley court acknowledged an employer's right to avoid contractual obligations by disclaiming any intention to make any promises through its handbook:

if the employer for whatever reason, does not want the manual to be capable of being construed by the court as a binding contract, there are simple ways to attain that goal. All that need be done is the inclusion in a very prominent position of an appropriate statement: that there is no promise of any kind by the employer contained in the manual; that regardless of what the manual says or provides, the employer promises nothing.

Id., at 309, 491 A.2d at 1271.

The New Jersey Supreme Court revisited the disclaimer issue in Nicosia v. Wakefern Food Corp., 136 N.J. 401, 643 A.2d 554 (N.J.1994). The Nicosia court held that "[c]onspicuousness will always be a matter of law," and that the disclaimer in that case was ineffective because it did not use straightforward terms, and was not prominently displayed. Id. at 414-16, 643 A.2d at 560-61.

Carter-Wallace's handbook has the following disclaimer in boldface on page two of the handbook:

**Introduction**

The Human Resources Policies described in this booklet represent a summary of policies that apply to non-bargaining unit employees throughout the Company. Your supervisor will inform you of any variation which applies at your location.

You are encouraged to read the material in this booklet carefully so that you may achieve a better understanding of the Company policies and wide range of benefits offered to **you**. This booklet should be used as a reference guide.

Carter-Wallace, Inc. reserves the right to change, suspend, or terminate the Plans and Programs described herein at any time, for any reason or for no reason. The Plans and Programs described herein are not a condition of employment. The statements in this booklet are not intended to create, nor are they to be interpreted to constitute a contract between Carter-Wallace, Inc. and any one or all of its employees. Your employment with Carter-Wallace, Inc. is as an "Employee-At-Will." Accordingly, the Company may, in its sole discretion, terminate the employment relationship. The terms of the "At Will" employment relationship cannot be orally

**modified or changed.**

Plf. Ex. C, 2.

In accordance with Woolley, Carter-Wallace's disclaimer makes clear that the employer maintains the right to fire employees with or without cause. An employee could not reasonably infer an employment contract out of a policy manual that declares that "these statements are not intended to create ... a contract between Carter-Wallace, Inc. and any one or all of its employees."

In Nicosia, the defendant's disclaimer failed the prominence test because it was not "highlighted, underscored, capitalized, or presented in any other way to make it likely that it would come to the attention of an employee reviewing it." Nicosia, 136 N.J. at 415-16, 643 A.2d at 561. Unlike the disclaimer in Nicosia, Carter-Wallace placed its disclaimer on the first page of its handbook in bold type. See Vanderhoof v. Life Extension Institute, 988 F. Supp 507, 518 (D.N.J. 1997) (holding that a disclaimer set off by bold print on the first page of the relevant policy and procedure portions of an employer's manual was adequate to bar the implication of a Woolley contract). The Court finds that the Carter-Wallace disclaimer serves as an effective bar to claims of implied contract.

Even if there had not been an adequate disclaimer, the handbook would not give the plaintiff any contractual rights because it does not contain a detailed termination procedure. The Third Circuit held that, under New Jersey law, an employee handbook is unenforceable as a contract if the handbook does not contain a "'fairly detailed procedure to be used before an employee may be fired for cause.'" Radwan v. Beecham Laboratories, A Division of Beecham, Inc., 850 F.2d 147, 151 (3d Cir. 1988) (quoting Woolley, 99 N.J. at 287 n. 2, 491 A.2d at 1259 n. 2). See Maletta v. United Parcel Service, 749 F.Supp. 1344, 1361 (D.N.J. 1990) (holding that an employer's "Policy Book" did not create Woolley rights because it contained a cursory and non-exhaustive discussion of misconduct and discipline).

Mr. Snee points to the handbook section, entitled "Open Door Policy" as the source of Carter-Wallace's mandatory termination procedures. Although the "Open Door Policy" states that Carter-Wallace "has a procedure that encourages employees and supervisors alike to resolve problems promptly and fairly," the procedure is not specifically discussed. Rather the section encourages employees to speak with supervisors concerning employment problems. The only procedural aspect to the "Open Door Policy" section is a provision that suggests:

If a problem or misunderstanding develops, you should feel free to talk to your supervisor promptly. ... If the nature of the problem is such that you do not wish to **discuss** it with your **supervisor**, you should contact the Human Resources Department.

If the situation has not been resolved to your satisfaction after talking with your supervisor, the second step should be to contact the next higher level of management (if one exists) or the Human Resources Department.

Your situation will be reviewed and researched as appropriate and a decision will be made by the appropriate Manager and relayed to you in a prompt manner.

Plf. Ex. C, 11. Contrary to Mr. Snee's assertions, this section does not provide a fairly detailed termination procedure. The vague reference to a two-step process by which an employee should resolve his or her problems "does not as a matter of law limit [the defendant's] right to terminate an employee for just cause only." Maietta, 749 F.Supp. at 1362.

Due to the existence of a "clear and conspicuous" disclaimer relieving Carter-Wallace from all explicit and implicit contractual duties as an employer, and the absence of a fairly detailed termination procedure, a Woolley contract cannot be inferred from the defendant's Policy Handbook.

B. LIBEL AND SLANDER

Mr. Snee originally alleged three categories of defamatory statements: (1) statements made by co-workers Hall and Ingraham to Mr. Snee's supervisors that Mr. Snee had stolen three computer hard drives; (2) statements made to employees not legitimately part of the company's investigation that Mr. Snee had stolen company property and was terminated for it; and (3) information given to Mr. Snee's prospective employers "intended to insinuate that plaintiff's dishonesty was the reason for his termination.'" Mr. Snee appeared to abandon the first category in his brief in opposition to the defendant's motion for summary judgment. Plf. Opp. at 10. At oral argument, however, counsel for the plaintiff relied on statements made by Mr. Hall and Mr. Ingraham to Mr. Snee's supervisors to support his defamation claim. The court will, therefore, consider the three categories of statements.

As an initial matter, the plaintiff has not presented sufficient evidence even to begin the defamation analysis. "To prove defamation, a plaintiff must establish, in addition to damages, that the defendant (1) made a defamatory statement of fact (2) concerning the plaintiff (3) which was false, and (4) which was communicated to a person or persons other than the

plaintiff." Beck v. Tribert, 312 N.J. Super. 335, 349, 711 A.2d 951, 958-59 (N.J. Super. Ct. App. Div. 1998). Complaints alleging defamation require plaintiffs to plead "facts sufficient to identify the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough." Zoneraich v. Overlook Hospital, 212 N.J. Super. 83, 101, 514 A.2d 53, 63 (N.J. Super. Ct. App. Div. 1986) (citations omitted). This complaint might pass muster with respect to alleged defamatory statements in category 1, but not those in categories 2 or 3.

With respect to category 1, the plaintiff does allege that Mr. Hall and Mr. Ingraham told Mr. Snee's supervisors that he stole three computer hard drives. With respect to category 2, Snee does not allege what was said; who made the statements; to whom they were made; or when and where the communications took place. With respect to category 3, Mr. Snee does not name the prospective employers who received the defamatory statements, nor has he identified what statements Carter-Wallace made, or who at Carter-Wallace made the statements. See Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 767-68, 563 A.2d 31, 45-46 (N.J. 1989) (holding that the complaint did not support a claim of defamation because it bore no indication of who made the statements, where they were made, or to whom they were communicated).

The plaintiff's evidence on the defamation claim is not much better at the summary judgment stage. In support of his claims, Mr. Snee submitted his own affidavit attached to his brief in opposition to summary judgment. Mr. Snee's affidavit states that "[i]t is my understanding, as related by various former co-workers of mine," that defamatory statements were made by Mr. Ingraham, Mr. Hall, and various other Carter-Wallace employees. Snee Affidavit at ¶¶ 12-14.

It is not enough for a plaintiff to say that it was his understanding that defamatory statements were made. Mr. Snee is offering his affidavit as proof that someone made a defamatory statement without providing the name of the speaker, the nature of the speaker's comments, or a witness who heard the statements being made. Mr. Snee has provided no evidence or testimony to support his allegations. His affidavit is a mere extension of the allegations listed in his complaint and at the summary judgment stage, he cannot rest on pleadings to sustain his claims.

When plaintiff's counsel was asked for additional evidence of defamation at oral argument, he stated that: (1) his client would not disclose the names of witnesses to the defamatory statements for fear of retaliation by Carter-Wallace against those witnesses, and (2) he hoped to gather further

evidence during discovery.<sup>2</sup> With respect to the first reason, a plaintiff cannot bring a defamation claim and then refuse to tell the Court the basic facts with respect to the claim. Secondly, when the Court pointed out that discovery should already have been taken, counsel stated that the parties agreed to put off depositions. The parties did not agree, however, to put off a summary judgment motion. Nor has the plaintiff filed a Rule 56(f) motion, asking the Court to deny summary judgment or order a continuance to permit affidavits to be obtained or depositions to be taken. The plaintiff cannot now rely on his failure to take depositions to defeat a summary judgment motion. When the Court asked plaintiff's counsel at oral argument if he had sought affidavits from prospective employers to whom the plaintiff contends defamatory statements were made, counsel responded no. November 16, Hearing Transcript 21-27

Because of a lack of evidence with respect to the basic requirements of defamation, I will grant the defendant's motion

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<sup>2</sup> Plaintiff's counsel also directed the Court's attention to Mr. Snee's Answers to Defendant's Interrogatories as evidence of defamation. In particular, counsel noted that plaintiff's answer seven listed the names of prospective employers to whom Carter-Wallace allegedly repeated its defamatory statements. When asked by the Court which Carter-Wallace employee made the statements, counsel replied that unknown individuals in Carter-Wallace's personnel department were responsible. This proffer of evidence is similarly insufficient at the summary judgment stage.

for summary judgment.

The defendant makes two additional arguments in support of its motion for summary judgment. First, Carter-Wallace argues that it cannot be held liable for the alleged statements in category 1 because they were not published and because Mr. Hall and Mr. Ingraham were not acting as Carter-Wallace's agents when they allegedly defamed Mr. Snee. Second, assuming that the defamatory statements in categories 2 and 3 were made, the statements are subject to a qualified privilege. Although it is difficult to evaluate the defendant's arguments in the absence of specifics from the plaintiff about the statements, the defendant's arguments appear to have merit.

With respect to category 1 -- statements made by Mr. Hall and Mr. Ingraham to Mr. Snee's supervisors that Mr. Snee stole computer equipment -- a corporation is liable for defamatory statements made by an employee if that employee is acting within the scope of his employment. Neigel v. Seaboard Finance Co., 68 N.J. Super. 542, 556-57, 173 A.2d 300, 308-09 (N.J. Super. Ct. App. Div. 1961). If Mr. Hall and Mr. Ingraham were unauthorized to make false statements about Mr. Snee, Carter-Wallace cannot be held liable. Alternatively, if Mr. Hall and Mr. Ingraham were authorized, there is still no liability because the statements fall under the umbrella of qualified

privilege. "A communication 'made Bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains criminary matter which, without this privilege would be slanderous and actionable.'" Sokolay v. Edlin, 65 N.J. Super. 112, 123, 167 A.2d 211, 217 (N.J. Super. Ct. App. Div. 1961) (quoting Coleman v. Newark Morning Ledger Co., 29 N.J. 357, 375-76, 149 A.2d 193, 203 (N.J. 1959)). Because Mr. Hall, Mr. Ingraham, and Mr. Snee's supervisors share a corresponding interest/duty in investigating and reporting employee theft, the statements come within a qualified privilege.

Statements in category 2 -- statements made to employees not part of the company's investigation that Mr. Snee had stolen company property and was terminated for it -- may also be protected by a qualified privilege. New Jersey courts have recognized a qualified privilege with respect to a variety of statements made by employers and/or employees, based on the fact that the employees and employer shared a common interest in the statements made. See Govito v. West Jersey Health Sys., Inc., 310-11, 753 A.2d 716, 725 (N.J. Super. Ct. App. Div. 2000) (finding statements made by a doctor telling supervisors that an anesthesiologist was responsible for the death of a patient

privileged); Sokolay, 65 N.J. Super. at 124-25, 167 A.2d at 217-18 (finding a qualified privilege in statements made by an employer to employees regarding an employer's investigation into a theft); and Ramsdell v. Pennsylvania R. Co., 79 N.J.L. 379, 381, 75 A. 444, 445 (N.J. 1910) (holding that employees should be properly informed of the severance of relations between the company and its conductors).

With respect to category 3 -- information given to Mr. Snee's prospective employers -- "a qualified privilege extends to an employer who responds in good faith to the specific inquiries of a third party regarding the qualifications of an employee." Erickson v. Marsh & McLennan Co., 117 N.J. 539, 562, 569 A.2d 793, 805 (N.J. 1990). Mr. Snee has not demonstrated that the defendant abused the qualified privilege with respect to any of the categories of defamatory statements by acting in reckless disregard of the statements' truth or falsity. Dairy Stores, Inc. v. Sentinel Publ'g Co., Inc., 104 N.J. 125, 151, 516 A.2d 220, 223 (N.J. 1986). For all of these reasons, the defendant's motion for summary judgment on the defamation claims will be granted

C. NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Mr. Snee claims that Carter-Wallace negligently investigated the theft of the computer equipment and that the defendant inflicted emotional distress on him during the company's negligent investigation. Carter-Wallace contends that the New Jersey Workers compensation Act ("the Act") bars these negligence claims and that, in any event, New Jersey does not recognize a tort of negligent investigation or negligent infliction of emotional distress derived from such a tort. Mr. Snee disputes that these claims are barred by the Act and also argues that Carter-Wallace waived the right to make this argument because it did not list the Act as an affirmative defense. He further asserts that there is a tort for negligent investigation. The Court agrees with the defendant on all points.

The Act provides that "compensation for personal injuries to, or for the death of, such employee by accident arising out of and in the course of employment shall be made by the employer." N.J.S.A. § 34:15-7. The statute is considered remedial legislation and is liberally construed by courts. Prettyman v. New Jersey, 298 N.J. Super. 580, 591, 689 A.2d 1365, 1370 (N.J. Super. Ct. App. Div. 1997).

Courts have consistently held that the Act bars an employee's actions in negligence against his employer. Silvestre v. Bell Atlantic Corp., 973 F. Supp. 475, 486 (D.N.J.1997), affirmed, 156 F.3d 1225 (3d Cir. 1998) (holding that a former employee cannot assert negligent hiring and negligent supervision claims against an employer); Ditzel v. University of Medicine & Dentistry of New Jersey, 962 F.Supp. 595, 608 (D.N.J.1997) (disallowing plaintiff's claims of negligence and negligent infliction of emotional distress under the Workers Compensation Act"); Fresara v. Jet Aviation Bus. Jets., 764 F.Supp. 940, 954 n.8 (D.N.J.1991) (noting that "plaintiff cannot pursue any cause of action based on negligence due to the exclusive remedy provision set forth in the New Jersey Workers' Compensation Act"); Cremen v. Harrah's Marina Hotel Casino, 680 F. Supp. 150, 155-56 (D.N.J.1988) (dismissing plaintiff's claims of negligent hiring in a sexual harassment case brought against an employer); Wellenheider v. Rader, 49 N.J. 1, 9, 227 A.2d 329, 333 (N.J. 1967) (holding that a defendant's claims for contribution or indemnification was precluded by the rule that an employee covered by workmen's compensation cannot sue his employer in negligence).

Mr. Snee claims that Carter-Wallace waived this argument because it did not plead the Act as an affirmative

defense in its answer. The failure to raise an affirmative defense by responsive pleading or by appropriate motion may result in a waiver of that defense. The Third Circuit, has held that a "defendant does not waive an affirmative defense if '[h]e raised the issue at a pragmatically sufficient time, and [the plaintiff] was not prejudiced in its ability to respond.'" 'Charpentier v. Godsill, 937 F.2d 859, 864 (3d Cir. 1991) (quoting Lucas v. United States, 807 F.2d 414, 418 (5th Cir. 1986), quoting Allied Chemical Corp. v. McKay, 695 F.2d 854, 855-56 (5th Cir. 1983)).

In Pro v. Donatucci, 81 F.3d 1283, 1286 n.2 (3d Cir. 1996), a public employee argued that her employer waived his right to assert a qualified immunity defense by failing to include it in his answer or an amended answer. The district court permitted the defense on the ground that the defendant generally asserted all available defenses in his answer, and later raised a qualified immunity defense in a summary judgment motion. The Third Circuit affirmed, finding plaintiff suffered no prejudice.

In Kleinknecht v. Gettysburg College, 989 F.2d 1360, 1373-74 (3d Cir. 1993), the defendant first asserted the defense of immunity under Pennsylvania's Good Samaritan Law in its motion

for summary judgment. The Third Circuit stated that because the plaintiffs did not claim that they were prejudiced by the defendant's act of raising the defense in its summary judgment motion rather than in its answer, the Court would consider the merits of the defense.

Like the plaintiffs in Charpentier, Pro, and Kleinknecht, Mr. Snee has not alleged, let alone shown, prejudice as a result of Carter-Wallace's use of the defense. The Court will therefore allow the defense to be raised at the summary judgment stage.<sup>3</sup>

Even if the Court did not apply the Act, summary judgment is still appropriate because negligence claims predicated on the same facts alleged in a defamation claim can survive only if the defamation claim survives. If a negligence claim parallels a defamation claim that is dismissed at the

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<sup>3</sup>Mr. Snee also argues that the Act is inapplicable because its remedies are limited to bodily injury. He contends that his damages constitute more of a financial loss which falls outside the scope of workers compensation. In his submissions to the Court, Mr. Snee refers to having suffered a "[mini] stroke and psychological disorders requiring professional therapy as a direct result of the stress and anxiety brought about by the false allegations of theft, the aforementioned defamation, and termination." Plf. Resp. at 4; Snee Affidavit ¶ 22-23. It would appear to the Court that a stroke or psychological injury constitutes a form of bodily injury. As such, plaintiff's argument that his negligence claims are not barred by workers compensation on the grounds that they allege mere financial loss is without merit.

summary judgment stage, then the negligence claim should also be dismissed. See Salek v. Passaic Collegiate School, 255 N.J. Super. 355, 361, 605 A.2d 276, 279 (N.J. Super. Ct. App. Div. 1992) (dismissing claims of intentional infliction of emotional distress and negligent supervision because the claims paralleled a false publication claim that did not constitute defamation). Cf. Fortenbaush v. New Jersey Press, Inc., 317 N.J. Super. 439, 457, 722 A.2d 568, 577 (N.J. Super. Ct. App. Div. 1999) (holding that because a defamation action survived summary judgment, related negligence claims grounded in the same conduct alleged in the defamation count would remain as well).

The facts supporting the negligence claims are parallel to facts supporting Mr. Snee's defamation claim. Both the negligence and negligent infliction of emotional distress claims focus on the injuries stemming from defamatory statements allegedly made by Carter-Wallace employees. Defendant's alleged conduct is identical for all three counts. Based on the holdings in Fortenbaush, and Salek, and because the Court **has** ruled that the defamation claims cannot survive, the derivative claims of negligence and negligent infliction of emotional distress also fail.

An appropriate order follows.

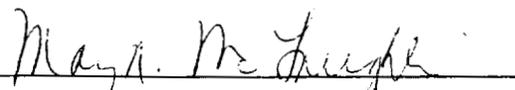
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SNEE, : CIVIL ACTION  
Plaintiff, :  
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v. :  
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CARTER-WALLACE, INC. :  
Defendants . NO. 00-1317

ORDER

AND NOW, this 28 day of July, 2001, upon  
consideration of the Defendant's Motion for Summary Judgment  
(Docket # 8), the responses and replies thereto, and after oral  
argument, IT IS HEREBY ORDERED that the defendant's motion is  
GRANTED for the reasons stated in a memorandum of today's date.

BY THE COURT:

  
Mary A. McLaughlin, J.