IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

MICHAEL T. FLYNN, Plaintiff, **v.** **JIM STEWARTSON, et al.**, Defendants.	Case No.: 2023 CA 004264 NC Division C Circuit

PLAINTIFF'S OPPOSITION TO DEFENDANT RICK WILSON'S MOTION FOR SANCTIONS

Before the Court is Defendant, Rick Wilson's, motion for sanctions pursuant to Fla. Stat. § 57.105. Defendant presents no basis in support of finding an entitlement to sanctions pursuant to this statute other than the misplaced belief that a successful anti-SLAPP motion merits sanctions. As demonstrated by the record and herein, Plaintiff, General Michael T. Flynn, presented justiciable issues of fact and law, and at no point were his claims completely untenable. Accordingly, sanctions are not warranted. Plaintiff, and undersigned counsel, respectfully request that this Court deny Defendant's motion for sanctions.

BACKGROUND

General Flynn dedicated his life to protecting the United States, serving in the United States Army for more than thirty-three years and rising to the rank of Lieutenant General. 2d Am. Compl. at ¶ 18. General Flynn then served as

Assistant Director of National Intelligence in the Office of the Director of National Intelligence and as the 18th Director of the Defense Intelligence Agency. *Id.*

On February 24, 2022, Defendant Wilson posted on social media, calling General Flynn a "Putin employee." *Id.* at ¶ 67. Defendant Wilson compounded his attacks against General Flynn on May 14, 2023 by further saying "Mike Flynn is 'Q'". *Id.* at ¶ 87. Both of these statements were blatantly false. *Id.* at ¶ 134. Accordingly, on July 13, 2023, General Flynn filed an Amended Complaint, adding Defendant Wilson as a party in this case. DIN 23. Defendant Wilson filed his motion to dismiss/for summary judgment on October 25, 2023. DIN 34. Defendant Wilson included four court pleadings and fourteen articles. DIN 35. Defendant filed his motion for sanctions on December 7, 2023. DIN 51.

Ultimately, General Flynn filed a Second Amended Complaint on December 26, 2023, leaving the allegations as to Defendant Wilson substantively the same. DIN 59. On January 3, 2024, Defendant Wilson filed another motion to dismiss/for summary judgment. DIN 63. This time, Defendant added additional articles and included an affidavit claiming to have relied on these articles in making his statements. *Id.* Defendant Wilson did not file a new or amended motion for sanctions in tandem with his second motion to dismiss/for summary judgment.

On January 30, 2024, this Court granted Defendant Wilson's motion for summary judgment. The Court concluded that General Flynn failed to rebut "the numerous media stories from which Mr. Wilson was able to make the statements." DIN 75 at 7. The Court came to this determination utilizing the

burden-shifting framework contained within Florida's anti-SLAPP statute. *Id.* Of the articles Defendant Wilson provided, only a handful touched on the subject matter of this case. Regarding Defendant Wilson's "Putin employee" statement, he provided Exhibits 4, 14, and 15, which are articles about General Flynn making a paid speaking appearance in Moscow in 2015 for Russia Today ("RT"), a Russian state-sponsored media company. Regarding Defendant Wilson's statement that General Flynn is "Q," he provided Exhibits 23, 24, and 26, which are articles that speculate about General Flynn embracing the so-called "QAnon" movement and note that General Flynn had used the slogan "where we go one, we go all" that some affiliate with members of "QAnon." The Court further found that calling General Flynn a "Putin employee" was substantially true because, seven to eight years prior to the alleged defamatory statements, General Flynn "did receive payment from a Russian Federation-controlled entity." *Id.* at 9. It further found that calling General Flynn "Q" is rhetorical hyperbole. *Id.*

ARGUMENT

While Defendant does not clarify in his motion for sanctions whether he is moving pursuant to Fla. Stat. § 57.105(1)(a) or (1)(b), the emphasis in his motion indicates it is brought under (1)(a). DIN 51 at 2. Sanctions are only appropriate if "the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense … was not supported by the material facts necessary to establish the claim or defense." Fla. Stat. § 57.105(1)(a). Here, Defendant is unable to show that the § 57.105 applies.

"A finding that a party is entitled to recover attorney's fees under section 57.105 *must be based upon substantial, competent evidence* presented at the hearing on attorney's fees or otherwise before the court and in the record." *Mason v. Highlands County Bd. of County Com'rs*, 817 So.2d 922, 923 (Fla. 2d DCA 2002) (emphasis added). There must be "a complete absence of a justiciable issue of law or fact." *Id.* Obtaining dismissal or summary judgment is not enough to warrant sanctions. *Wendy's of N.E. Florida, Inc. v. Vandergriff*, 865 So.2d 520, 523 (Fla. 4th DCA 2003). To warrant sanctions, a claim must be "wholly unsupported." *Id.* The case must be "*completely* without merit or contradicted by *overwhelming* evidence." *Asinmaz v. Semrau*, 42 So.3d 955, 959 (Fla. 4th DCA 2010) (emphasis added). In sum, "the trial court *must* find the action to be frivolous or so devoid of merit both on the facts and the law *as to be completely untenable.*" *Murphy v. WISU Properties, Ltd.*, 895 So.2d 1088, 1094 (Fla. 3d DCA 2004) (emphasis added). A claim is frivolous if it "raises arguments a reasonable lawyer would either know are not well grounded in fact, or would know are not warranted either by existing law or by a reasonable argument for the extension, modification, or reversal of existing law." *Visoly v. Sec. Pacific Credit Corp.*, 768 So.2d 482, 491 (Fla. 3d DCA 2000).

In defamation cases, courts have recognized additional hurdles to issuing sanctions. *See Scott v. Busch*, 907 So.2d 662 (Fla. 5th DCA 2005). In *Scott*, the trial court dismissed the plaintiff's complaint for defamation and imposed sanctions, finding "the defamation claim was 'devoid of even arguable substance.'" *Id.* at 664. The Fifth District Court of Appeal disagreed, reversing

the trial court's sanctions. *Id.* The court emphasized the difficulty plaintiffs face in bringing defamation cases, noting:

> The law of slander and defamation is so ancient it contains numerous illogical twists and refinements stemming from ecclesiastical law, as well as the common law. Currently it is overlaid with statutory and constitutional requirements and limitations. It is confusing, unclear, illogical, and somewhat in conflict. Courts and judges frequently disagree with one another as to whether an actionable defamation has been established, as a matter of law.

Id. at 665–66. Ultimately, the court reversed not only the dismissal, but also the sanctions orders, finding the plaintiff successfully pled a cause of action. *Id.* at 666. Likewise, in *Shulmister v. Yaffe*, the Fourth District Court of Appeal reversed the trial court's imposition of sanctions in a defamation case, finding "there was not a complete absence of a justiciable issue of either law or fact." 912 So.2d 53, 54 (Fla. 4th DCA 2005).

Here, while the Second District Court of Appeal did not reverse this Court's dismissal, the same general logic from *Scott* applies. Courts tend to disagree "as to whether an actionable defamation has been established." *Id.* In this case alone, this Court came to a different conclusion than that of the Second District Court of Appeal as to the reasoning for granting summary judgment on General Flynn's defamation claim regarding Defendant Wilson's "Putin employee" statement. This Court dismissed the statement on substantial truth grounds. DIN 75 at 9. The Second District Court of Appeal affirmed dismissal; however, noted it should have been dismissed on rhetorical hyperbole grounds, not on the basis of substantial truth. DIN 127 at 10. This illustrates the difficulty in bringing a defamation case, particularly when the law is subject to varying

interpretations, and litigants do not enjoy the convenience of having a “one-size-fits-all" standard. The fact that there was judicial disagreement about the grounds on which to base judgment, which prompted a thirteen-page opinion from this Court, and an eighteen-page opinion from the Second District Court of Appeal, also demonstrates that General Flynn’s claims were not remotely meritless on their face, a necessary condition precedent to warrant sanctions. Rather, there were justiciable issues of fact and law notwithstanding this Court’s summary judgment ruling being upheld. If winning a motion for summary judgment conclusively proved a section 57.105 claim, “then every award of summary judgment would be followed by a section 57.105 motion.” *Good v. Neal*, 2021 WL 9839810, at *1 (Fla. Manatee Cir. Ct. Oct. 8, 2021).

Taking in turn the stages of this litigation, first, when General Flynn filed his Amended Complaint, his claims were not wholly unsupported. General Flynn presented reasonable and good faith arguments for meeting each of the elements for his claims. Defendant Wilson stated, as though it were a matter of provable fact, that General Flynn is a “Putin employee” and is “Q”. Both of these statements were, and remain, emphatically and provably, false. Furthermore, there was a good faith basis for believing that because Defendant Wilson made his statements as assertions of fact, without disclosing the articles on which he would later claim reliance, this removed his statements from the realm of opinion. *See Stembridge v. Mintz*, 652 So. 2d 444, 446 (Fla. 3d DCA 1995) (holding that an opinion is not protected if it implies the existence of undisclosed defamatory facts); *Zambrano v. Devanesan*, 484 So. 2d 603, 607 (Fla. 4th DCA

1986) (holding that where the defendant did not disclose the facts forming the basis of his opinion, and there is nothing to suggest the viewers would be aware of underlying facts, it cannot be classified as "rhetorical hyperbole."). And Defendant Wilson asserted, in no uncertain terms, that General Flynn is something that he is provably not, and has never been.

Additionally, General Flynn met his actual malice burden at the pleading stage. In *Gangelhoff v. Lokey Motors Co.*, 270 So. 2d 58, 58–59 (Fla. 2d DCA 1972), this Court held it was reversible error to grant a motion to dismiss "for the reason that the element of malice was not sufficiently pleaded" where the "complaint alleged among other things the following: The prosecution, by the Defendant against the Plaintiff, was without probable cause and was commenced and continued by said Defendant from malice towards Plaintiff; that certain acts were committed by the defendant and these actions were taken with actual malice." *Id.* at 59. In this case, General Flynn's actual malice allegations were far more specific and detailed than the general allegations found to be acceptable in *Gangelhoff*. General Flynn specifically alleged that:

> Stewartson published his defamatory statements knowing that they were false or with reckless disregard for the truth. Wilson did the same. Defendants were fully aware that their accusations against General Flynn were not true, however, they went forward with them, publishing the lies, because of their political animus against General Flynn and the opportunity to increase their own revenue streams through these lies.

2d Am. Compl. at ¶ 141. Further, as the Florida Supreme Court has found, a general pleading that the defamatory statement was false and known to be false at the time it was said is sufficient to avoid dismissal. *Caldwell v. Personal*

Finance Co. of St. Petersburg, 46 So. 2d 726, 727 (Fla. 1950) (en banc). And, while "a showing of ill will, alone, cannot establish actual malice . . . ill will or motive, when combined with other evidence, may amount to actual malice." *Don King Prods., Inc. v. Walt Disney Co.*, 40 So. 3d 40, 44 (Fla. 4th DCA 2010). General Flynn pled countless examples of Defendant Wilson's pattern of malice toward him, 2d Am. Compl. at ¶ 109, and Defendant Wilson's motivation to defame General Flynn, *id.* at ¶¶ 34–35.

Finally, as to damages, General Flynn presented a good faith argument that Defendant Wilson's statements were defamatory per se, something Defendant Wilson never even argued against. "[A] publication is libellous [sic] per se, or actionable per se, if, when considered alone without innuendo: (1) it charges that a person has committed an infamous crime; (2) it charges a person with having an infectious disease; (3) it tends to subject one to hatred, distrust, ridicule, contempt, or disgrace; or (4) it tends to injure one in his trade or profession." *Richard v. Gray*, 62 So. 2d 597, 598 (Fla. 1953). Defendant accused General Flynn of being an employee of Russian President, Vladimir Putin, subjecting General Flynn to hatred, distrust, ridicule, contempt, or disgrace, and injuring General Flynn's reputational business opportunities. It also implies that General Flynn has committed treason. Furthermore, "QAnon" has been designated by the Federal Bureau of Investigation ("FBI") and Department of Homeland Security (DHS) as a "domestic violence extremist" ("DVE") group and a "domestic terrorism threat." Therefore, it was more than reasonable for General Flynn to have proceeded under the good faith basis that damages were

presumed. *See Leavitt v. Cole*, 291 F. Supp. 2d 1338, 1342 (M.D. Fla. 2003) (holding that damages are presumed in defamation per se cases). Accordingly, General Flynn brought this case in good faith, with existing support in law and fact.

Second, these allegations and issues did not change with either of Defendant Wilson's motions to dismiss/for summary judgment. The bulk of Defendant Wilson's "evidence" for his statement that General Flynn is a "Putin employee" came from an article discussing that a Russian television network paid General Flynn to give a speech *in 2015,* seven to eight years prior to each of the defamatory statements. Def's Ex. 14. General Flynn, and undersigned counsel, had a good faith basis for believing that a single payment from nearly a decade ago for a speaking engagement, not even directly made by Vladimir Putin, does not support Defendant Wilson's statement. General Flynn relied on the same objective evidence which showed that Defendant Wilson lied in publishing his statement.

As for Defendant Wilson's statement that General Flynn is "Q," even assuming Defendant Wilson's cited articles may have indicated a connection between General Flynn and "QAnon," none of them went so far as to affirmatively state that General Flynn *is "*Q." Defendant Wilson did not merely claim that General Flynn has a close link to "QAnon." He affirmatively stated, as though it were provable fact, that General Flynn *is "*Q," despite having no supporting evidence. Again, General Flynn relied not only on this same absence of "evidence"

that he *is "*Q," but also on the fact that he knows it to be false better than anyone else.

Thus, it remained a justiciable issue as to whether these articles provided defensible coverage for Defendant Wilson's statements when they neither stated, nor even came close to stating, what Defendant Wilson subsequently alleged. Likewise, given Defendant Wilson's pattern of malice toward General Flynn, and the fact that there was more than a mere basis for believing Defendant Wilson fabricated his statements, this necessarily provided a good faith basis for actual malice. *See St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) ("Professions of good faith will be unlikely to prove persuasive, for example, *where a story is fabricated* by the defendant [or] is the product of his imagination.") (emphasis added). In sum, General Flynn's legal theories were neither, at any point, completely untenable, nor were they completely unsupported. This is not the type of matter involving "baseless claims" that the § 57.105 seeks to discourage or punish. *Vasquez v. Provincial South, Inc.*, 795 So.2d 216, 218 (Fla. 4th DCA 2001).

Furthermore, that General Flynn did not present additional evidence on summary judgment is not grounds for sanctions. Defendant Wilson asked the Court to find that he wins on both dismissal and summary judgment grounds. DIN 76 at 72–73. The Court declined to do so in its Order, instead resolving the claims on the basis of summary judgment, which was materially different than when Defendant Wilson served the sanctions letter and motion. DIN 75 at 11. The grounds for granting summary judgment were that "Mr. Wilson came

forward with evidence demonstrating a factual basis from which he made the 'Putin employee' and 'Q' comments"; that his evidence attacked the defamation "acting on the falsity element"; and that General Flynn failed to rebut that evidence from a summary judgment standpoint. DIN 75 at 9. None of this was true when Defendant Wilson served the safe harbor letter or his sanctions motion. Indeed, the first iteration of Defendant Wilson's dispositive motion, which was on file when the sanctions motion was served, had a fatal flaw. The first motion merely attached a smattering of sixteen exhibits, consisting largely of news reports and opinion articles, and there was no evidence that Defendant Wilson was aware of those things when he made the alleged defamatory statements. DIN 34. This deficiency would have caused Defendant Wilson to lose the first summary judgment motion. By contrast, in his second motion, which was filed weeks after the sanctions motion was served, Defendant Wilson included additional exhibits and, critically, an affidavit in an attempt to retroactively remedy his fatal flaw and establish that he knew about the contents of those materials when he made the allegedly defamatory posts and otherwise had personal knowledge in support of his statements. DIN 63.

On balance, the circumstances were materially different from when Defendant issued his sanctions motion to when the Court dismissed General Flynn's Second Amended Complaint. General Flynn's supposed failure to rebut the summary judgment evidence did not exist when Defendant Wilson served the sanctions motion. Regardless, in *Good*, the court found that sanctions were inappropriate wherein dismissal was premised on the plaintiff's "failure to

produce sufficient summary judgment evidence." *Good*, 2021 WL 9839810, at *1. The same rings true here. Moreover, as discussed, the evidence Defendant Wilson presented was the same in which General Flynn had a good faith basis for believing would prove his claims.

Defendant Wilson's argument that he is entitled to sanctions rests solely upon the dismissal of claims pursuant to Florida's anti-SLAPP statute; therefore, the claim is General Flynn brought a frivolous case. This cannot be the standard. A defendant is not entitled to sanctions merely because they were successful in obtaining dismissal. *Wendy's of N.E. Florida, Inc.*, 865 So.2d at 523. The imposition of sanctions every time a case is dismissed pursuant to Florida's anti-SLAPP statute would lead to an absurd result. *See MacAlister v. Bevis Const., Inc.*, 164 So.3d 773, 776 (Fla. 2d DCA 2015) ("Section 57.105 must be applied with restraint to ensure that it serves its intended purpose of discouraging baseless claims without casting 'a chilling effect on use of the courts.'"); *Vasquez*, 795 So.2d at 218 ("Florida favors access to the courts and has interpreted section 57.105 to provide a remedy only where the plaintiff's complaint is completely untenable."). This is especially true here, where, as illustrated, there were justiciable issues of fact and law, and General Flynn's claims were not completely untenable.

CONCLUSION

General Flynn brought this case in good faith, seeking redress for Defendant Wilson's malicious lies. He presented justiciable issues of fact and law, and at no point were his claims completely untenable. Accordingly, Plaintiff,

Michael T. Flynn, and undersigned counsel, respectfully request that this Court deny Defendant, Rick Wilson's, motion for sanctions.

Dated: April 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2025, I have caused a true and accurate copy of the foregoing to be delivered to counsel of record via e-filing.

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