UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

	)	CASE NO. 05-50241
	)	
	)	CHAPTER 13
IN RE:	)	
	)	
JOHN WAYNE SONEDECKER,	)	
	)	JUDGE MARILYN SHEA-STONUM
DEBTOR(S)	)	
	)	
	)	**MEMORANDUM OPINION AND ORDER**
	)	**SUSTAINING DEBTOR'S OBJECTION TO**
	)	**CREDITOR'S PROOF OF CLAIM NO. 25**
	)	
	)	

John W. Sonedecker ("Debtor") objected to Proof of Claim No. 25(docket #28) ("Objection") filed by Three Village Central School District in East Setauket, New York ("Creditor"). Creditor filed a Response to Debtor's Objection (docket #30) ("Response"). After adjournments requested by the Creditor, the matter was heard on March 23, 2006. On March 23, 2006, Debtor, Debtor's counsel, and Creditor's counsel were present. In addition to the Joint Stipulations (docket #45), the parties offered into evidence the telephonic trial deposition of Robert DiPasquale, CPA ("DiPasquale") taken on

March 17, 2006.[1] Debtor was the only witness called to testify in person. On March 29, 2006, Debtor filed a post-hearing memorandum (docket #47), and on April 14, 2006, Creditor filed its brief in response (docket #48). The matter was then taken under advisement by the Court.

The issues presented in this matter are: (1) whether under New York law the hold harmless provision of the Agreement (defined *infra*) between Debtor and Creditor is enforceable with respect to future assertion of claims; and (2) whether Debtor committed fraud in the execution of the Agreement.

II. STIPULATED FACTS

The following facts are not in dispute and are the subject of Joint Stipulations filed by the parties:

1. On or about January 18, 2005, Debtor filed his voluntary petition seeking relief under Chapter 13 of the United States Bankruptcy Code. Jerome L. Holub is the duly appointed, qualified, and acting trustee for Debtor's bankruptcy estate.
2. Creditor is a school district located in Suffolk County, New York. Beginning in April 1999, Debtor was employed by Creditor as a Superintendent of Schools. The terms of said employment were reduced to a written agreement.
3. By virtue of his employment, Debtor had a fiduciary relationship with Creditor.

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[1] DiPasquale's deposition, labeled as Creditor's Exhibit A, was admitted into evidence jointly by the parties for the limited purpose of authenticating the forensic audit ("Audit") conducted by DiPasquale's firm, J.H. Cohn, LLP., an accounting and financial consulting firm. The parties had not been able to otherwise agree and/or stipulate as to the authenticity of the Audit. DiPasquale, whose specialty is forensic accounting and fraud investigations, was retained by Creditor in either May or June 2004 to conduct the Audit, which consisted of a review of Debtor's expense account for the fiscal years June 2001, June 2002, June 2003, and June 2004. The Audit was completed in either October or November 2004, and is labeled as Exhibit 1 ("Creditor's Exhibit 1").

4. On or about August 6, 2003, Debtor executed a separation agreement ("Agreement") with Creditor's Board of Education ("Board").

5. On or about June 30, 2004, Debtor officially resigned from his employment with Creditor.[2]

6. On February 3, 2005, a Felony Complaint in the criminal matter captioned *People of the State of New York v. John W. Sonedecker*, District Court of Suffolk County, New York, Case No. S-350-2005, CC# 04-990322, was filed alleging that Debtor committed the offense of Grand Larceny in the Third Degree by "steal[ing] $43,880.05 from the Three Village Central School District."

7. On April 7, 2005, Debtor pled guilty and was convicted of the offense of grand larceny in the fourth degree.

8. On April 7, 2005, the court in the criminal matter issued a Restitution Judgment Order ("Restitution Order") requiring Debtor to pay restitution in the amount of $43,880 for the benefit of Creditor.

9. On April 13, 2005, the Suffolk County Department of Probation ("SCDP") issued a letter to Debtor advising him that the total amount of restitution, including a 5% mandatory surcharge, totaled $46,074.00.

10. On July 18, 2005 Debtor filed POC No. 24 in this matter in the amount of $43,306.04.[3]

11. On July 20, 2005, Creditor filed POC No. 25 in this matter in the amount of $53,793.[4]

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[2] Pursuant to paragraph 1 of the Agreement, the parties agreed that Debtor would resign on this date.

[3] This claim was filed by Debtor on behalf of the SCDP as a reflection of the amount owed pursuant to the Restitution Order, less payments received.

[4] Creditor supported this claim with the results of the Audit as purportedly revealing fraudulent, unreimbursed personal charges and "non-professional" days dating from June 2001 through June 2004. This amount consists of the $43,880

12. This Court should apply the laws of the State of New York concerning any dispute over the terms, obligations, and/or enforceability of the Agreement.

III. FINDINGS OF FACT

The Court makes the following additional findings of fact based on the evidence presented during the March 23, 2006 hearing and the record of the pleadings:

13. During the course of his employment with Creditor, Debtor was one of several administrators authorized to use a credit card provided by the Board. There were no specific guidelines pertaining to the use of the credit card.

14. During his employment with Creditor, Debtor met monthly with Creditor's Treasurer ("Treasurer") to reconcile his credit card statement in order to identify and reimburse Creditor for any personal charges. This procedure took place with Creditor's authorization and in accordance with the established protocol.

15. The local auditor's annual report raised questions about Debtor's credit card use for the last two years of his employment with Creditor, but also acknowledged that Debtor regularly reimbursed Creditor for personal charges. This information was reported to Creditor.

16. Debtor was notified by a representative of the Board in the spring of 2003 that Creditor did not intend to renew his contract for the term beginning July 1, 2003. The Board representative offered several reasons, including disapproval of certain personnel decisions, a dispute over the addition of a second high school, Debtor's participation in the CSLR network,[5] and the use of his cell phone and credit card. Debtor did not have any further personal contact with Creditor

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owed as restitution plus $9,913.

[5] Presumably a professional organization pertaining to Debtor's responsibilities as a superintendent.

after this discussion.

17. Sometime after June 30, 2003, Creditor's counsel proposed that the parties enter into a separation agreement. Creditor's counsel was responsible for drafting the Agreement. All subsequent negotiations and discussions pertaining to the Agreement were handled by and between respective counsel, and the terms of the final Agreement were a product of those interactions.

18. Debtor was not involved in the drafting and negotiation of the Agreement, nor did he have knowledge of the specific terms until it was presented to him by his counsel. He signed the Agreement based solely on his counsel's advice.

19. At the time of the Agreement, Debtor was not aware that Creditor's concerns pertaining to the personal use of his credit card were the subject of ongoing inquiry by the Creditor.

20. The only time any sum was ever demanded of Debtor was in the course of the criminal proceedings. The Suffolk County District Attorney, on behalf of Creditor, then sought restitution of $43,880.

21. The amount in dispute in this proceeding had never been discussed by the parties or their representatives until after this chapter 13 case was filed.

22. The Agreement contains both a general release ("Release") and a merger clause ("Merger") which read as follows in pertinent part:

> **Waiver and Release**. The parties hereby waive and release each other from any and all liability, legal claims or causes of action that they may now have against each other, in both their official capacities and individually in existence on the date of this Agreement.....***The parties intend for this waiver and release to preclude any further lawsuits or administrative proceedings between the parties and other persons or entities covered by this waiver and release***.....Each party hereby agrees to ***indemnify and hold the other party or releasees harmless*** from and against any and all losses, costs, judgments, damages, or expenses, including, without limitation, ***attorneys fees***, costs,

> expenses, and/or expert fees or expert witness fees incurred by it or them in defense, ***should any of them assert against any other party or releasee any liability, legal claims or causes of action which has been waived or released by virtue of this clause....***. (Emphasis added) (Joint Stipulations, Exhibit 2 at ¶9.)
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> **Merger Clause**. The parties agree that this written Agreement represents the full, final and complete resolution of all disputes between the parties, and is not and cannot be supplemented or modified by any verbal or implied promises, but only by a written agreement, executed and approved in the same manner as this Agreement...(Joint Stipulations, Exhibit 2 at ¶12.)

23. In addition to the Release and Merger, the Agreement contains the following introductory recitals which set forth the parties' intentions in entering into the Agreement:

> WHEREAS, the Board has serious concerns regarding the propriety of the Superintendent's continued employment for the balance of the term of said contract; and
> WHEREAS, said concerns have caused the Board to consider the initiation of a proceeding against the Superintendent pursuant to paragraph 16 E. ("Hearing Procedures") of said contract; and
> WHEREAS, the Superintendent has rejected the concerns expressed by the Board of Education as unfounded and has expressed his intention to defend any proceeding initiated pursuant to paragraph 16.E. of said contract; and
> WHEREAS ***the parties have expressed their mutual desire to resolve their differences in a manner that avoid the necessity of the aforesaid proceeding.*** (Emphasis added) (Joint Stipulations, Exhibit 2, p.1)

24. Debtor incurred attorney's fees in the amount of $3,718.75 in his defense of Creditor's Objection. (Docket #47, Exhibit 1)

25. The Audit is not relevant to this Court's decision because the information contained therein was available to Creditor prior to the time that Debtor's judgment of conviction and Restitution Order were entered. Creditor has advanced no explanation as to why the disputed $9,913 was not included in the Restitution Order following the investigation into Debtor's alleged criminal activity.

IV. APPLICABLE LAW

A. Hold Harmless Provision

It is well-settled in New York that where the language is clear, a release must be construed to give force and effect to the intention of the parties. *Maddaloni Jewelers, Inc. v. Rolex Watch U.S.A., Inc.* 354 F. Supp. 2d 293, 299 (S.D.N.Y. 2004), *citing Pinto v. Allstate Ins. Co.*, 221 F.3d 394, 404 (2d Cir.2000); *Metz v. Metz*, 175 A.D. 2d 938, 939 (1991); *see also Mangini v. McClurg*, 24 N.Y. 2d 556, 562-63 (1969). "[T]he meaning and coverage of a general release necessarily depends upon the controversy being settled and upon the purpose for which the release was given." *Kaminsky v. Gamache*, 298 A.D. 2d 361, 362 (2002), *citing Gale v. Citicorp*, 278 A.D. 2d 197 (2000).

It is likewise well-settled New York law that "[i]n the absence of fraud, duress, illegality or mistake, a general release bars an action on any cause of action arising prior to its execution." *Mergler v. Crystal Props. Assoc*, 179 A.D. 2d 177, 178 (1992); *Hack v.United Capital Corp.*, 247 A.D. 2d 300, 301(1998); *Metz*, 175 A.D. 2d at 939. However, "[a] release that employs general terms will not bar claims outside the parties' contemplation at the time the release was executed." *Maddaloni*, 354 F. Supp. 2d at 299; *see also Estes v. New York State Saddle Horse Ass'n Inc.* 188 A.D. 2d 857, 859 (1992). "A release may not be read to cover matters which the parties did not intend to cover." *Kaminsky*, 298 A.D. 2d at 362. Furthermore, "the releasor need not be subjectively aware of the precise claim he or she is releasing..." *Mergler*, 179 A.D. 2d at 180. It is sufficient that all the of the facts giving rise to the releasor's present claims were in existence at the time of signing the release, and that there was no fraud, duress, illegality or mistake. *Id.* at 182**.**

It is also well-established in New York that parol evidence is only admissible to help explain

an ambiguity in a written instrument, and that extrinsic evidence may not be used to vary, contradict, or supplement the terms of a fully integrated agreement. *In re Metromedia Fiber Network, Inc*. 335 B.R. 41, 52,(S.D.N.Y. 2005), *citing Fireman's Fund Ins. Co. v. Siemens Energy & Automation, Inc*. 948 F. Supp. 1227, 1223 (S.D.N.Y. 1996); *Holloway v. King*, 361 F. Supp. 2d 351, 358 (S.D.N.Y. 2005). Absent fraud, the presence of an integration or merger clause triggers the parol evidence rule. *Holloway,* 361 F. Supp. 2d at 358; *Marine Midland Bank-Southern v. Thurlow*, 53 N.Y. 2d 381, 387 (1981).

B. New York Law Regarding Fraud

Under New York law, to establish a claim of fraud, Creditor must show that: (1) Debtor misrepresented a material fact; (2) Debtor knew he was making a false misrepresentation; (3) Creditor justifiably relied on such misrepresentation; and (4) Creditor suffered harm as a result. *Colavito v. New York Organ Donor Network, Inc*. 438 F. 3d 214, 222 (2d Cir. 2006), *citing Cohen v. Houseconnect Realty Corp.*, 289 A.D. 2d 277, 278 (2001); *Owners Corp. V. Gertz,* 123 A.D. 2d 850, 851 (1986); C*hannel Master Corp. V. Aluminium Ltd. Sales,* 4 N.Y. 2d 403, 407 (1958).

"[I]n order to avoid a release on the grounds of fraud, a party must allege every material element of that cause of action with specific and detailed evidence in the record sufficient to establish a prima facie case." *Matter of O'Hara,* 85 A.D. 2d 669, 672 (1981); *Cohen,* 438 F.3d at 277. Mere conclusory and bare allegations of fraud are not adequate to sustain a cause of action for fraud. *Marine Midland Bank v. Grant Thornton LLP*, 260 A.D. 2d 318 (1999); *Edison Stone Corp. v. 42nd Street Development Corp*. 145 A.D. 2d 249 (1989); *New York University v. Continental Ins. Co.*, 87 N.Y. 2d 308 (1995).

V. CONCLUSIONS OF LAW

Based on the foregoing, this Court finds and concludes as follows:

1. The outcome of this proceeding is controlled by the Agreement, which represents the full and

complete settlement of all matters pertaining to the termination of Debtor's employment. The Agreement contemplated the resolution of any and all disputes or controversies rising from Debtor's employment, and demonstrates the parties' unequivocal mutual desire to absolve one another from any further claims and causes of action arising therefrom. The parties intended to completely sever ties with one another without further legal proceedings.

2. The facts and circumstances surrounding Debtor's alleged misuse of his credit card preexisted the Agreement and were certainly within the scope of the parties' contemplation at the time of the Agreement. Therefore, any issues pertaining to those activities fall within the purview of the Release. There is no support in the record that Creditor intended to preclude the specific claim at issue from the Release. If Creditor wished to reserve the right to pursue any future claims against Debtor, it would have been a simple matter to include the necessary limiting language. However, Creditor has not articulated any reason or explanation as to why it did not do so.

3. Pursuant to the parol evidence rule as applied to contracts controlled by New York law, the Agreement is immune from any future modification unless agreed by both parties in writing. No parol or extrinsic evidence is admissible to vary the terms of the Agreement absent a showing of fraud.

4. Creditor did not adduce any evidence of specific facts, statements of record, or omissions attributed to Debtor personally that would support its claim that Debtor committed fraud in the making of the Agreement.

5. Creditor's attempt to support its fraud allegation with the results of the Audit and the Summary of Charges is not persuasive. Standing alone, those charges on their face mean nothing more than they were, at best, personal and unreimbursed, not that they were incurred with the intent

not to repay and that Debtor concealed such plan at the time of the Agreement. Creditor has asked the Court to assess Debtor's state of mind based solely on numerical data without adequate supporting evidence.

6. Creditor did not carry its burden of proving that Debtor fraudulently concealed certain material facts relative to his wrongful use of the credit card at the time the Agreement was executed. Creditor's contention that it only discovered those facts when it began investigating and obtained the Audit subsequent to signing the Agreement is contradicted by the record. This Court is without sufficient basis to conclude that Debtor executed the Agreement by fraudulent concealment, intentional wrongdoing, deception, or any other illegality that prohibits application of the Release to the claims at issue.

7. Creditor's allegation of fraud also fails from the standpoint of its supposed reliance on any misrepresentation by Debtor. Assuming, *arguendo*, that Debtor did in fact make misrepresentations or omissions as to material facts surrounding his use of the credit card, and that he knowingly did so at the time of the Agreement, any reliance thereupon by Creditor would have been unjustifiable under the circumstances since Creditor cited its concerns about Debtor's credit card use as one of the reasons that led it not to renew his contract.

VI. CONCLUSION

For the reasons set forth above, the hold harmless provision in the Agreement with respect to future assertion of claims between Creditor and Debtor is enforceable under New York law. Creditor's filing of POC No. 25 violated that hold harmless provision. Creditor is estopped by the parole evidence rule and New York Law governing contracts from pursuing additional payment. POC No. 24 accurately reflects the amount of restitution Debtor was ordered to pay pursuant to the Restitution Order, less the payments which he made directly to the SCDP prior to the filing of POC

No. 24.

Debtor's Objection to POC No. 25 is hereby sustained. Creditor's POC No. 25 in the amount of $53,793 is disallowed in its entirety, and Debtor's POC No. 24 in the amount of $43,306.04 will be allowed without modification.

Further, Debtor carried his burden of proving that he was damaged by Creditor's violation of the hold harmless provision in the amount of $3,718.75 in attorney's fees incurred by his counsel in opposing Creditor's POC No. 25.

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cc: Michael V. Demczyk (via electronic mail)
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