

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>RAYMOND E. CRONKITE, et al.,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 91-285-P-C</b>
	)	
<b>FEDERAL DEPOSIT INSURANCE</b>	)	
<b>CORPORATION, et al.,</b>	)	
	)	
<b>Defendants</b>	)	

**RECOMMENDED DECISION ON**  
**DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

The plaintiff, Raymond Cronkite,<sup>1</sup> asserts claims for breach of contract, tortious interference with business and negligent and intentional infliction of emotional distress against the Federal Deposit Insurance Corporation ("FDIC"), as receiver of Maine National Bank ("Bank"), and two of the Bank's employees. He seeks compensatory and punitive damages. All three defendants have moved for summary judgment on all claims. For the reasons articulated below, I recommend that the motions be granted.

**I. SUMMARY JUDGMENT STANDARDS**

Fed. R. Civ. P. 56(b) provides that "[a] party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Such motions must be granted if

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<sup>1</sup> A second plaintiff, Maine Aquarium, Inc., has been dismissed from the case.

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 a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). "Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id.* at 73 (citations omitted); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). A fact is "material" if it may affect the outcome of the case; a dispute is "genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

## II. FACTS

The facts relevant to a disposition of this matter may be briefly summarized. In July 1982 the plaintiff executed and delivered to Josephine Chapin a secured promissory note in the amount of \$110,000 in connection with his purchase from her of 46 acres of land in Saco, Maine on which is now located a portion of the plaintiff's Maine Aquarium. Following Chapin's death, the Bank was appointed personal representative of her estate and trustee of the testamentary trust created by her will. Sometime in 1984 the plaintiff defaulted under the terms of the note. In April 1985 the plaintiff and the Bank, in its capacity as trustee and personal representative of the Chapin estate, entered into a settlement agreement by the terms of which the plaintiff agreed to bring the note current in accordance

with a specific schedule and to further secure the note by giving the Bank a blanket mortgage deed covering all of his individually owned real estate in York County. This was in fact done. The agreement went on to provide that the bank would "release" parcels included in the new blanket mortgage at the plaintiff's request under certain conditions.<sup>2</sup> The agreement nowhere contained the term "subordinate." Both parties were represented by counsel in connection with the negotiation and execution of the agreement.

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<sup>2</sup> Paragraph 3 of the agreement obligated the Bank to release blanket mortgage parcels at the plaintiff's request provided he met certain conditions, sought the release to complete a fair market value sale and provided the Bank with a copy of the sales contract and a good faith estimate of the proposed distribution of the sales proceeds. Paragraph 4 obligated the Bank to release the blanket mortgage altogether after the October 1985 payment due under the note was made provided the plaintiff satisfied certain other conditions. *See* Exh. 1 to Index to Exhibit Supporting Defendant Maxwell's Statement of Material Facts Not in Dispute.

In January 1986, and perhaps earlier in December 1985, the plaintiff requested the Bank to subordinate its interest in one of the parcels covered by the blanket mortgage, referred to as lot 136, to Saco and Biddeford Savings Bank ("SBSB") as the quid pro quo for SBSB's release of a mortgage it held on parcel 8, another of the blanket mortgage properties, which the plaintiff wished to sell in order to raise funds for a proposed dolphin exhibit at the Maine Aquarium which the plaintiff characterized as essential to the survival of that enterprise. The plaintiff claims that defendant Wentworth, a Bank assistant vice-president and trust officer,<sup>3</sup> orally agreed to his subordination request and that, in reliance thereon, he pursued SBSB to release its interest in parcel 8 and continued negotiations with Disney's Epcot Center concerning the proposed dolphin exhibit. Wentworth denies having agreed to the request. In any event, the alleged agreement was never reduced to writing. In January 1986 the Bank, acting through defendant Maxwell, another vice-president and defendant Wentworth's supervisor, refused to subordinate its interest in lot 136, although it did release its interest therein in the fall of 1986. The plaintiff claims that he suffered losses as a result of the Bank's refusal, including loss of the dolphin exhibit.

### III. LEGAL ANALYSIS

The plaintiff claims that the Bank breached the settlement agreement by refusing to accede to his request that it subordinate its interest in lot 136.<sup>4</sup> I first consider whether, by agreeing, under

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<sup>3</sup> In this capacity Wentworth executed the settlement agreement on behalf of the Bank.

<sup>4</sup> The plaintiff conceded at oral argument held on September 25, 1992 that, based on the papers filed, he has not supported his breach of contract claim against the individual defendants and that they

certain conditions, to "release" parcels included in the blanket mortgage given by the plaintiff, the Bank obligated itself to subordinate its interest in those parcels as well.

As noted earlier, the settlement agreement does not specifically obligate the Bank to subordinate its interest in any of the blanket mortgage properties. The plaintiff nevertheless asserts that the agreement is ambiguous in this regard, inasmuch as the term "release" contained in the agreement can be read to include not only a total termination of a security interest but a partial termination as well, and that extrinsic evidence demonstrates the intent of the parties that it be so interpreted. The defendants argue that the term "release" is unambiguous and does not include subordinations, and that the parole evidence rule forecloses consideration of any extrinsic evidence.

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are entitled to summary judgment thereon.

The parole evidence rule prohibits the introduction of extrinsic evidence to alter or vary unambiguous language contained in an integrated contract.<sup>5</sup> *Astor v. Boulos Co.*, 451 A.2d 903, 905 (Me. 1982). Whether contract language is ambiguous is an issue of law for the court. *American Policyholders' Ins. Co. v. Kyes*, 483 A.2d 337, 340 (Me. 1984). Contract language is ambiguous when it is reasonably susceptible of different interpretations. *Id.* However, unambiguous language must be given its plain and generally accepted meaning. *Aroostook Valley R.R. v. Bangor & Aroostook R.R.*, 455 A.2d 431, 433 (Me. 1983).

The verb "release" is defined in Black's Law Dictionary in part as follows: "To discharge a claim one has against another." *Black's Law Dictionary* 1159 (5th ed. 1979). The noun is defined as "[t]he relinquishment, concession or giving up of a right, claim, or privilege, by the person in whom it exists . . . to the person against whom it might have been demanded or enforced." *Id.* See also *Webster's Third Int'l Dictionary* (1981) at 1917 (v. "to give up (a claim, title, right) in favor of another;" n. "discharge from obligation or responsibility (as a . . . claim);" "an act or instrument by which a legal right is discharged").

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<sup>5</sup> The plaintiff does not suggest that the settlement agreement is other than a completely integrated agreement. Indeed, in his statement of facts he asserts only that, proceeding under the logical and reasonable assumption that 'release' included full release or the lesser included partial release of the security interest in a parcel, he understood the Settlement Agreement to call for a release of *full or partial* security interest in a parcel, not just a full release of the security interest in the parcel." Statement of Facts in Opposition to Defendants' Motion for Summary Judgment & 10 (emphasis in original).

“Subordinate,” by contrast, is defined as follows: “Placed in a lower order, class or rank; occupying a lower position in a regular descending series.” *Black’s* at 1278. “Subordination,” is defined as: “The act or process by which a person’s rights are ranked below the rights of others. A second mortgagee’s rights are subordinate to those of the first mortgagee.” *Id.* at 1279. *See also Webster’s* at 2277 (v. “to place in a lower order or class;” n. “the act of subordinating (as by making secondary or subject)”).

These words, when used in legal documents, are terms of art. The plain and generally accepted meaning of “release” assumes a complete discharge of an obligation, claim or interest; it does not contemplate anything less, such as the act of placing one’s claim or interest below or behind that of another and then retaining it in that posture. There is nothing in the settlement agreement that suggests the term “release” was intended to have any other meaning. Indeed, an examination of the document in its entirety indicates just the opposite. Paragraph 3, under which the plaintiff was apparently proceeding in making his subordination request,<sup>6</sup> conditioned the Bank’s obligation to release a given blanket mortgage parcel on, among other things, the plaintiff’s intent to complete a fair market sale of that parcel, an event which typically requires a conveyance of unencumbered title and therefore a complete discharge of any encumbering interests. Likewise, since the agreement made clear that the Bank was prepared to discharge its entire interest in qualifying parcels, it strains logic to imply an undertaking to do something else even though amounting to less than that. In sum, the settlement agreement, negotiated by the parties with the assistance of counsel, lends itself to only one interpretation of the term “release,” that which is suggested by its plain meaning. Stated otherwise, the contract language in question is not reasonably susceptible of the interpretation offered by the

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<sup>6</sup> Paragraph 3 provided the mechanism for securing the release of individual parcels from the operation of the blanket mortgage. Paragraph 4 established requirements for accomplishing a

plaintiff. Because the Bank obligated itself only to discharge its interest in qualifying parcels, it was under no obligation to subordinate. The plaintiff's breach of contract claim, based as it is on the Bank's refusal to subordinate its interest in lot 136 to another bank, fails as a matter of law.<sup>7</sup>

The plaintiff's claim of tortious interference with business is grounded on the assertion that the defendants failed and refused to perform their obligation under the settlement agreement to cause the Bank to subordinate for the sole purpose of intentionally injuring his Maine Aquarium business. Complaint & 38. Since I have concluded that the Bank had no such obligation under the agreement, this claim must also fail, as must the remaining claims for negligent and intentional infliction of emotional distress and punitive damages, as the plaintiff conceded at oral argument.

#### IV. CONCLUSION

For the foregoing reasons, I recommend that the defendants' motions for summary judgment be *GRANTED* in their entirety.

#### NOTICE

***A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

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discharge of the entire blanket mortgage.

<sup>7</sup> This conclusion necessarily applies as well to the breach of contract claim asserted against the individual defendants as to whom the plaintiff has in any event conceded summary judgment. *See supra* n.4.

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.***

***Dated at Portland, Maine this 15th day of October, 1992.***

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***David M. Cohen***  
***United States Magistrate Judge***