

in his Recommended Decision, and determine that no further proceeding is necessary.

I add only the following. The Fund argues that it should be treated like a holder in due course and should be able to rely on the signed document in its possession, since it is upon just such documents that it must make actuarial assumptions concerning amounts that it will have to pay and thus amounts that it must collect as premiums. Mem. Supp. of Objections at 4 (Docket No. 55). That argument has some appeal, because Fund trustees have no good way to determine whether the agreements presented to them have been properly entered into. As a result, the cases have routinely denied employers certain fraud defenses, specifically so-called fraud in the inducement defenses, where the employer knew what it was signing but relied perhaps on a union's statements that it would enforce the document differently than written. See, e.g., Agathos v. Starlite Motel, 977 F.2d 1500, 1505-06 (3d Cir. 1992); Central States, Southeast and Southwest Areas Pension Fund v. Gerber Truck Serv., Inc., 870 F.2d 1148, 1153-55 (7th Cir. 1989); Southwest Adm'rs, Inc. v. Rozay's Transfer, 791 F.2d 769, 774-75 (9th Cir. 1986), cert. denied, 479 U.S. 1065 (1987). Capozza, however, is arguing fraud not in the inducement, but in the execution. It says that the document the Fund has and is suing on (a collective bargaining agreement) is not a document that its president signed. (The president says that he was given only a signature page and was told that it dealt only with pension benefits for four employees. A jury may ultimately disbelieve him, but his statement creates a genuine issue of material fact.) Even a holder in due course cannot overcome that kind of defense. U.C.C.

§ 3-305(b) (1998). The policy arguments the Fund trustees advance still seem to apply (reliance upon the document for actuarial purposes and the difficulties they confront in testing the validity of the collective bargaining agreements they are given), but the common law distinction is recognized in the cases; the courts are willing to enforce a document that a party signed under a misapprehension of what its effect would be, but balk at enforcing a document that the party signed on the misapprehension that it was something different than it actually was. Compare Agathos, 977 F.2d at 1505-06, Gerber, 870 F.2d at 1153-55, and Rozay's Transfer, 791 F.2d at 774-75, with Connors v. Fawn Mining Corp., 30 F.3d 483, 492 (3d Cir. 1992), and Operating Eng's Pension Trust v. Gilliam, 737 F.2d 1501, 1504-05 (9th Cir. 1984). Neither ERISA nor the caselaw supports summary judgment for the Fund trustees if I take the factual assertions most favorably to Capozza.

Finally, there is no necessary inconsistency in recognizing personal immunity for the union official while leaving open the preemption issue. The policies at stake in preemption and immunity are not identical.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The motion of the Fund plaintiffs for summary judgment is **DENIED**. The motion of defendants Richard N. Joy and Local 1 for summary judgment is **GRANTED** as to all claims asserted against Joy and otherwise **DENIED**.

So ORDERED.

DATED: SEPTEMBER 30, 2002.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 01-CV-108

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