



IT IS ORDERED as set forth below:

Date: May 18, 2015

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	CASE NUMBER: 11-79079-PWB
	:	
CDC CORPORATION,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
MARCUS A. WATSON, as Liquidation	:	
Trustee under the Confirmed Chapter 11	:	
Plan of CDC Corporation,	:	CONTESTED MATTER
	:	
Movant,	:	JUDGE BONAPFEL
	:	
v.	:	
	:	
RAJAN VAZ (Claim No. 27 and No. 128),	:	
	:	
Claimant.	:	

**SUPPLEMENTAL MEMORANDUM OPINION ON TRUSTEE'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AND ORDER ON RAJAN VAZ'S MOTION TO
WITHDRAW OPPOSITION**

On January 15, 2015, the Court entered its “Memorandum Opinion With Regard to Trustee’s Motions for Summary Judgment on Objections to Proof of Claim and Proof of Interest of Rajan Vaz” (the “Opinion”). [Docket No. 916]. The Opinion contains an extensive discussion of the Court’s analysis of undisputed material facts, the legal principles applicable thereto, the Court’s conclusions with regard to the issues that the Trustee’s motion presents, and the extent to which the Court determined that the Trustee was entitled to summary judgment.

This Supplemental Opinion assumes familiarity with the Opinion. It addresses issues that the Opinion left open and then sets forth the Court’s ruling on the Trustee’s motion.

With regard to Mr. Vaz’s claims arising out of the Convertible Promissory Note (the “Note”) and the Stock Purchase Agreement (the “SPA”), the Court concluded that the Trustee was entitled to summary judgment on the ground that the applicable statute of limitations barred the claims but reserved ruling on two issues relating to alternative defenses that the Trustee asserts.

First, the Court reserved ruling on whether CDC Corporation (the “Debtor”) is obligated on the Note, which it did not execute, or under the SPA to pay for stock it did not purchase, based on non-contractual theories of liability that Mr. Vaz had asserted. (Opinion at 25).

Second, the Court reserved ruling on whether the Debtor’s delivery of shares of its stock to Mr. Vaz complied with a condition of the Settlement Agreement executed in 2003. If so, a release contained in the Settlement Agreement became effective and bars any claims on the Note or the SPA. (Opinion at 30). With regard to the second issue, the material factual question is whether the Debtor delivered shares to Mr. Vaz that did not contain a restrictive legend.

The Court permitted Mr. Vaz to supplement the record with regard to both of these issues to show the existence of any disputed material fact that would preclude the grant of summary judgment to the Trustee on his alternative defenses.

After Mr. Vaz filed a Supplemental Brief [Docket No. 931] and additional exhibits [Docket No. 932], he filed a motion to withdraw his opposition to the Trustee's summary judgment motion with regard to the Debtor's liability on the Note and the SPA (the "Withdrawal Motion") [Docket No. 943]. The Withdrawal Motion states, "Vaz and his counsel have concluded that certain factual statements made to the Court must be corrected and that it is no longer viable for Vaz to continue to pursue his claims under the Note and the Stock Purchase Agreement or alternative non-contractual theories of liability." (Withdrawal Motion at 5). The Withdrawal Motion also seeks leave to file an amended proof of claim reflecting the withdrawal.

In reserving its ruling on non-contractual liability theories, the Court referred to theories of successor liability, alter ego, constructive trust, unjust enrichment, and/or conversion. (Opinion at 12). The Supplemental Brief does not address these issues at all. Instead, the Supplemental Brief complains that the Court applied an incorrect legal standard in its consideration of the summary judgment motion and revisits issues that the Opinion resolved. Nothing in the Supplemental Brief causes the Court to change its rulings, for reasons that the Court summarizes below.

Mr. Vaz in his Supplemental Brief argues that the Debtor expressly assumed obligations under the Note in writing. The Brief adds new arguments on this issue by pointing to a Form F-3 Registration Statement filed by the Debtor with the Securities and Exchange Commission on

October 3, 2000 (Supplemental Brief at 5-6) and internal memoranda that indicate that the Settlement Agreement was not separately approved by the Debtor's subsidiary that executed the Note, China.com Corporation, Ltd. ("CDCL"). This evidence, Vaz asserts, demonstrates CDC's intent to assume the Note and the SPA or an acknowledgment of liability. (Supplemental Brief at 7-8).

The additional evidence that Mr. Vaz identifies fails to establish a material issue of fact as to whether CDC acknowledged or assumed obligations on a Note that it did not execute or whether it must pay for stock it did not purchase. The Court in the Opinion construed the language of the documents that the parties executed and concluded that they did not give rise to any liability of the Debtor on the Note or under the SPA. The Court again rejects the proposition that collective references to the Debtor and its subsidiary provide a basis for determining the obligations of the parties when they have executed specific documents that do not provide for liability of the Debtor.

The Supplemental Brief next reargues the proposition that the Debtor assumed liability on the Note and the obligation under the SPA to pay for the SGI stock when it acquired the SGI stock. (Supplemental Brief at 8-14). The Court did not invite Mr. Vaz to reargue this point, which the Court decided adversely to Mr. Vaz in its Opinion. (Opinion at 15-23.) Mr. Vaz has not presented anything that raises a dispute of material fact or that causes the Court to come to a different legal conclusion. In particular, the comments in the testimony of the Debtor's general counsel (Joseph D. Stutz, who was not involved in any of the transactions when they took place) about the meaning of the contractual language at issue is immaterial to the Court's construction of its meaning and effect.

The Supplemental Brief also argues that the Debtor acknowledged or assumed liability on the Note with an elaboration on evidence of negotiations between the Debtor and Mr. Vaz. (Supplemental Brief at 14-20). The Opinion found nothing in the evidence that could support a legal conclusion that the Debtor assumed or acknowledged liability on the Note. The Supplemental Brief does not identify any such evidence, either.

The Court rejects the proposition that an internal memo executed by the Board of Directors is sufficient to establish such an assumption or acknowledgement. The memo was executed prior to approval of the Settlement Agreement. The fact that it recites that the Settlement Agreement settles all of the Debtor's liabilities does not constitute an acknowledgement or assumption of any liability, only that all issues are being resolved.

The Court concludes, therefore, that the Trustee is entitled to summary judgment on his defenses that the Debtor is not liable on the Note that it did not execute and that the Debtor is not obligated under the SPA to pay for stock it did not purchase or agree to pay for. Mr. Vaz has not produced evidence to establish a dispute of material fact with regard to the Debtor's assumption or acknowledgement of liability on the Note or SPA, and his evidence does not establish that the Debtor is obligated under any non-contractual theory of liability.

The Court also reserved ruling on whether the Debtor's delivery of its stock to Mr. Vaz met the condition of the Settlement Agreement for the effectiveness of a release that, if effective, provides a complete defense to CDC's liability on the Note and the SPA. With regard to whether the release in the Settlement Agreement precluded Mr. Vaz's claims on the Note and the SPA, the Court concluded (Opinion at 34):

[T]he only possible material issue of fact with regard to the effectiveness of the Settlement Agreement between the parties and the occurrence of all conditions precedent to the effectiveness of the release is whether the restrictive legend on shares of the Debtor was removed. The Court concludes as a matter of law that all other conditions to the effectiveness of the release in ¶ 9 of the Settlement Agreement of Mr. Vaz's claims against the Debtor on the Note or the SPA occurred.

The Supplemental Brief does not address this issue at all. Because Mr. Vaz has not supplemented the record on this issue, the Trustee is entitled to summary judgment that all claims on the Note and the Stock Purchase Agreement have been released.

Based on the foregoing, the Court concludes that the Trustee is entitled to summary judgment on all of his defenses to the Debtor's liability on the Note and the Stock Purchase Agreement.

Alternatively, the Trustee is entitled to summary judgment on these issues in view of Mr. Vaz's motion to withdraw his opposition to the grant of summary judgment. To the extent that the Court's leave is required for Mr. Vaz to withdraw his opposition, the Court hereby grants it. Similarly, the Court grants leave, if required, for Mr. Vaz to amend his proof of claim to eliminate the affected claims. Such leave will have no effect on the Court's ability and authority to impose sanctions, including sanctions addressed in the Trustee's Motion for Sanctions [Docket No. 944] and Brief [Docket No. 946].

Based on the Opinion and this Supplemental Memorandum Opinion, the Court concludes that the Trustee is entitled to summary judgment on Mr. Vaz's claims on the Note for each of the following alternative reasons:

1. The applicable statute of limitations barred enforcement of any claims Mr. Vaz had on the Note at the time of the filing of the Debtor's Chapter 11 case. (Opinion Part I(D), at 35-37).

2. The Debtor is not obligated on the Note that it did not execute. The Debtor did not acknowledge or assume liability on the Note, did not exercise complete dominion and control over CDCL that would make it liable on the Note, did not become liable on the Note as a result of its execution of the Settlement Agreement or due to its acquisition of SGI shares, and is not liable for the debts of CDCL under any non-contractual theory of liability, i.e., theories of successor liability, alter ego, fraud, constructive trust, unjust enrichment, or conversion. (Opinion Part I(B) at 10-26).

3. Mr. Vaz released any claims on the Note in the Settlement Agreement executed in 2003. All conditions to the effectiveness of the release were met. (Opinion Part I(C) at 26-35).

For the same reasons, the Trustee is entitled to summary judgment on Mr. Vaz's claims under the Stock Purchase Agreement. (Opinion Part II at 37-39).

The Trustee is not entitled to summary judgment on claims of Mr. Vaz for an unpaid bonus (Opinion Part III at 39-40) and for wrongful termination of employment (Opinion Part IV at 40-50).

The Court will enter a separate Order resolving the Trustee's motion for partial summary judgment.

This Supplemental Memorandum Opinion and Order has not been prepared for publication and is not intended for publication.

[End of Order]

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