FILED
DES MOINES, IOWA
00 MAR 14 AM 10:08
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

RONALD K. SMITH,	*	
	*	4-98-CV-90368
Plaintiff	*	
	*	
v.	*	
	*	
DES MOINES PUBLIC SCHOOL SYSTEM,	*	ORDER ON MOTION FOR SUMMARY JUDGMENT
	*	
Defendant.	*	

Before the Court is Defendant's Motion for Summary Judgment filed November 8, 1999. Plaintiff filed a Resistance on November 22, 1999 and a supplemental brief on January 3, 2000. Defendant filed a Reply January 31, 2000, to which Plaintiff further responded on February 7, 2000. The Court held a hearing on this matter in the United States Courthouse in Des Moines, Iowa on March 2, 2000. The matter is fully submitted. After having read the papers filed in this case, the Court grants Defendant's Motion for Summary Judgment.

I. Facts

On September 1, 1999, Plaintiff Ronald K. Smith ("Smith") filed a ten count Complaint against his former employer, Defendant Des Moines Public School System ("the District"): Count I (wrongful discharge); Count II (retaliatory discharge based on 42 U.S.C. § 1981); Count III (breach of contract); Count IV (slander per se); Count V (injury to personal reputation); Count VI (compelled self-publication); Count VII (false arrest and imprisonment); Count VIII (intentional infliction of emotional distress); Count IX (abuse of process); and Count X (respondeat superior). Plaintiff is a citizen of Missouri; Defendant is a public school district

NOTICE TO COUNSEL

operated in Des Moines, Iowa. Smith premises jurisdiction on diversity of citizenship, 28 U.S.C. § 1332,[1] and 28 U.S.C. §§ 1331, 1343(3),(4) by virtue of the federal claim in Count II.

The events giving rise to this lawsuit occurred from July 1995 (when Smith was hired by the District) to August 1996 (when Smith ended his employment with the District). The Court will highlight the facts of the case, in a light most favorable to Smith as the non-movant, *Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir.1994), to provide a context for the legal issues raised by the parties.

Smith was hired by the District on July 3, 1995 to serve as its technology director. He was to oversee implementation of the district's computer plan and make recommendations regarding what type of computers and software the district should purchase.

The allegations in the Complaint paint a picture of discord and mistrust between Smith and those who worked with him, including his own secretary Linda Dinsdale and various district supervisors. The facts suggest that Smith's style of leadership and vision for technology were not shared or well-received by others in the district. The facts also suggest corruption within the district that Smith wanted to stamp out. Finally, there is evidence of "secret files" that were kept on Smith and his associate, Jacquelyn Seymour, who is African-American.

Relations between Smith and his colleagues continued to fester. On July 2, 1996, the situation came to a head. With emotions running high, Smith and his secretary, Dinsdale, had a

---

[1] The Court is satisfied it can properly assert jurisdiction over the District -- a governmental subdivision -- under the diversity statute, 28 U.S.C. § 1332; *see also Illinois v. City of Milwaukee*, 406 U.S. 91, 97 (1972) ("well settled that for purposes of diversity of citizenship, political subdivisions are citizens of their respective States . . . .").

Additionally, sovereign immunity issues will not affect the Court's jurisdiction. The settlement agreement at issue in this case operates as a limited waiver of the District's sovereign immunity. *Cf.* Iowa Code § 670.9; *Fettkether v. City of Readlyn*, 595 N.W.2d 807, 813 (Iowa Ct. App. 1999) ("Municipalities waive section 670.4 governmental immunities when they purchase liability insurance, but only to the extent stated in such policy.") (citations omitted).

physical confrontation in the office as Smith attempted to retrieve files that were contained in a cabinet near Dinsdale's desk. Although exact details of that melee are in dispute, on July 4, 1996, Dinsdale filed a complaint with the Des Moines Police Department alleging Smith had assaulted her. On July 9, 1996, Plaintiff was charged with assault and a warrant was issued for his arrest. He was arrested a few days later, jailed, and released on bond.

The Court will lay out the facts following Plaintiff's arrest and release from jail in greater detail since they are more germane to the instant Motion. These facts are drawn almost directly from Plaintiff's resistance brief. *See* docket no. 35.

While the criminal charges against Smith were pending, the district demanded through its attorney Peter Pashler that Smith either resign his position or face immediate termination. If Smith did not resign, it is alleged, the district would seek further criminal charges in connection with a technology audit, which was begun after Dinsdale went to the police. In late August 1996, Smith, the sole financial provider for his family, "agreed to resign his position rather than risk financial ruin, criminal prosecution, and further tainting of his once-reputable name amid a media frenzy." Pl.'s Br. in Supp. of Resistance to Def.'s Mot. for Summ. J. at 5 (hereinafter "Plaintiff's Resistance"). Dinsdale decided not to press charges against Smith. The criminal assault charges were dismissed without prejudice on August 23, 1996.

On August 26, 1996, Smith was given a six-page document to sign entitled "General Release and Separation Agreement" ("Agreement"). If he did not sign the Agreement, Smith believed he would be terminated at a special board meeting the next day. On August 26, 1996, both Smith and his attorney at the time, Joseph Gunderson, signed the document; his resignation was approved by the school board on August 27, 1996. At this board meeting, then-district superintendent Gary Wegenke stated: "The incident that took place in early July in the

technology office is regrettable. As I said to an assembly of central office staff following the incident: 'I will not tolerate an unsafe workplace for our employees.' . . . . the settlement with Smith was motivated 'on the district's side of employee safety in the workplace.'" Plaintiff's Resistance at 6.

After Wegenke made these remarks, Smith moved to revoke the Agreement, which was his right pursuant to paragraph 13 of the Agreement.[2] Smith retained attorney, Guy Cook, to draft the Notice of Revocation ("Revocation"). Cook faxed it to Pashler. Shortly after the Revocation was faxed, Pashler met with Cook at Pashler's office. During this meeting, Pashler produce a photograph he claimed was of Dinsdale's bruised arm. Pashler requested that Cook not show the picture to Smith and said that "if Smith revoked the Agreement, the District would hold a full, public hearing regarding Mr. Smith's termination." Plaintiff's Resistance at 7.

Smith viewed the picture allegedly of Dinsdale's bruised arm. Smith believed that Pashler produced the picture with the sole intent of threatening to reinstate the previously dismissed assault charge. "Rather than face further criminal prosecution, Mr. Smith agreed to leave the [Agreement] intact." *Id.* at 7.

In November 1996, internal auditor Reba Job announced her findings in her audit of the technology department. Job's summary was broadcast on Channel 11 to the entire city of Des Moines. Job's findings implied that Smith had engaged in financial wrongdoing.

In July 1998, Smith filed the present action pro se. In September 1999, an amended

---

[2] Paragraph 13 of the Agreement provided: "The parties agree that in order to comply with the Older Workers Benefit Protection Act, Smith shall be given seven days subsequent to his execution of this Agreement to revoke his execution. Proof of execution shall be provided to the District's counsel by FAX of said revocation within twenty-four (24) hours of such revocation. In the event Smith revokes execution pursuant to this paragraph, the District shall have no obligation to comply with the terms of paragraphs 1, 2, and 3." Para. 13 of Agreement at 5.

Complaint was filed by current counsel. This Motion for Summary Judgment soon followed.

II. Standard for Summary Judgment

The purpose of summary judgment is to "pierce the boilerplate of the pleading and assay the parties' proof in order to determine whether trial is actually required." 11 *Moore's Federal Practice* 3d, § 56.02 at 56-20 (Matthew Bender 3d ed. 1997)(citing *Wynne v. Tufts Univ. School of Medicine*, 976 F.2d 791, 794 (1st Cir.1992), *cert denied*, 507 U.S. 1030 (1993)).

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Handeen v. Lemaire*, 112 F.3d 1339, 1345 (8th Cir. 1997) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 317 (1986)). Thus, summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Harlston*, 37 F.3d at 382. In a motion for summary judgement, the court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253-54 (1986). An issue is "genuine" if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248. "As to materiality, the substantive law will identify which facts are material." *Id.*

III. Discussion

A. Language of the Agreement

Before passing on the validity of the Agreement, it is best to begin with its relevant

language, which the Court believes is clear, comprehensive, and straight-forward.

First, by its terms, Smith released all claims against the District for any action on or prior to August 26, 1996:

> 5. With respect to all actions taken by the District on or before the date Smith executed this Agreement, Smith fully and forever releases and discharges the District and its directors, officers, employees, agents . . . from any and all claims . . . whether now known or unknown or which have ever existed or now exist . . . including, but not limited to, claims . . . relating to or arising out of Smith's recruitment, hiring, employment, or separation from employment with the District[.] . . . Smith . . . agrees that this release and the covenant not to sue set forth in paragraphs 5 and 6 are essential and material terms of this Agreement [without which] no agreement would have been reached by the parties.

Smith, in paragraph 6, promised not to sue the District for any District action taken on or before August 26, 1996:

> 6. Smith covenants not to sue or to institute or cause to be instituted any kind of claim or action (except to enforce this Agreement) in any federal, state, or local agency or court against any of the Released Parties arising out of or attributable to all actions taken by the District on or before the date Smith executed this Agreement, relating to Smith's employment, or separation from employment with the District, or any other action or cause of action released under paragraph 5. . . .

Likewise, the District released its claims against Smith (paragraph 7) and also promised not to sue Smith (paragraph 8). (The Court omits those portions of the Agreement).

Smith promised, in paragraph 12, that if he did file an action, then the District was entitled to dismissal:

> 12. The parties agree . . . that the signing of this Agreement constitutes legal withdrawal and termination of any and all charges and complaints filed, threatened or contemplated by Smith . . . . Smith agrees that if any such action is taken the District shall be entitled to a dismissal, and that Smith shall not be entitled to any remedies sought by such action. . . .

Finally, Smith acknowledged, in paragraph 16, that his consent to the Agreement was knowing and voluntary:

> 16. Smith acknowledges that he has read this Agreement, that he fully understands and appreciates the meaning of this Agreement, that it fully reflects the entirety of the agreement between the parties, that no representation, inducement, or warranty has been made to him by or on behalf of the District except as set forth herein, that he has consulted competent legal counsel of his selection, and that he KNOWINGLY and VOLUNTARILY enters into this Agreement and agrees to comply with its terms and conditions.

Assuming the validity of the Agreement, these cited provisions clearly and accurately govern the disposition of the instant Motion.

B. Validity of the Agreement

The parties agree that the validity of the Agreement turns on whether, under Iowa contract law, the Agreement is void for duress or undue influence.

Iowa follows the rule of the Restatement (Second) concerning the effect of duress on the enforceability of a contract. "If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim." *In re marriage of Spiegel*, 553 N.W.2d 309, 318 (Iowa 1996) (en banc) (quoting Restatement (Second) of Contracts § 175(1) at 475 (1981)) (citation and internal quotes omitted). An "essential element of duress is the victim had no reasonable alternative to entering into the contract." *Id.* Iowa law also recognizes economic duress – a sub-species of duress in which the wrongdoer preys on the weak financial condition of the victim. In order for economic duress to void a contract, three elements have to be present: (1) plaintiff involuntarily accepted the terms of another; (2) plaintiff must show he had no reasonable alternative under the circumstances; and (3) and plaintiff's financial troubles were the result of the defendant's wrongful or coercive acts. *Fees v. Mutual Fire and Automobile Ins. Co*, 490 N.W.2d 55, 59-60 (Iowa 1992).

A close cousin to duress is undue influence, which Iowa law also recognizes. Undue

influence is "improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an action which he would not do or would do if left to act freely." *Stetzel v. Dickenson*, 174 N.W.2d 438, 443 (Iowa 1970) (quoting Black's Law Dictionary). Undue influence "deprives one person of his freedom of choice and ... substitute[s] the will of another in its place." *Id.*

It is clear from the facts of this case that Smith cannot avoid the unambiguous language of the Agreement under either a duress or undue influence theory.

Under *Spiegel*, Smith cannot show duress. The Court will assume that conduct by the District, through its attorney, Pashler, (of brandishing an alleged photo of the victim's bruised arm and threatening further prosecution and public scrutiny of Smith) was an "improper threat." That said, Smith had a reasonable alternative – not sign the Agreement and sue the District under the same claims he now brings. Smith asserts this was not a reasonable alternative because it would have placed him under an embarrassing public spotlight. Litigation would have triggered, he asserts, both a potential criminal prosecution and further public investigation into his department.

The Court does not find litigation an unreasonable option. Clearly litigation had the potential to be costly, embarrassing, and time-consuming. But lawsuits are like that. This one is a perfect example. Smith's concerns, however, that a lawsuit would have triggered a public spectacle are hard to fathom. A full public accounting of district mischief was something he was after from the beginning. If his secretary and the District were in collusion, that could have been revealed at a public trial. Under the circumstances at the time, therefore, a lawsuit was a reasonable alternative for Smith.

Likewise, under *Fees*, economic duress is unavailable to Smith. With his lawyer present

and also signing off on the Agreement, plaintiff knowingly and voluntarily acceded to its terms. As to any reasonable alternative that was available to Smith, it is clear, as noted above, that he could have sued the district rather than sign the Agreement. And finally, the record shows that the district was not responsible for conditions that made Smith economically vulnerable.

Finally, the court notes the absence of any undue influence, as defined in *Stetzel*, which could allow Smith to avoid the clear language of the Agreement. Smith presents himself as a smart guy, a holder of an MBA. He retained counsel for the critical task of engaging the District regarding the terms of his separation. In addition to a letter of reference and a statement that plaintiff engaged in no wrong-doing, Smith negotiated from the District six months of paid administrative leave and 20 days of paid vacation. From these facts, there is no doubt that Smith "knew the purpose of the instrument, read it, understood it, and realized its consequences before signing. . . . Under these circumstances, [Smith] did not prove undue influence." *Spiegel*, 553 N.W.2d at 319 (citation and quotes omitted).

For the price of foregoing litigation against the District regarding his employment, Smith was spared further public scrutiny into his professional and private life. The Agreement embodies this trade-off. To now declare that that document does not mean what it says would be at odds with the virtues of settlement agreements, including the resolution of uncertain claims and defenses, and avoiding the need for further legal proceedings. *See Wright v. Scott*, 410 N.W.2d 247, 249 (Iowa 1987) (citations omitted). Smith had, but then waived, his opportunity to pursue this litigation against the District. Nothing in the record or in the law changes this conclusion.

For the foregoing reasons, no reasonable jury could find duress or undue influence. The Agreement is valid. This aspect of the District's Motion for Summary Judgment is granted.

C. Claims not precluded by the Agreement

By its terms, the Agreement only precludes Smith from bringing claims with regard to actions of the District that occurred "on or before the date Smith executed the Agreement." Para. 6 of Agreement at 2-3. He executed it on August 26, 1996. Therefore, events that took place after August 26, 1996 are not barred by the Agreement nor the District's Motion for Summary Judgment.

Smith asserts that claims contained in Count IV (slander per se), Count V (injury to personal reputation), Count VI (compelled self-publication), and Count VIII (intentional infliction of emotional distress) are based on events that occurred after August 26, 1996 and can therefore proceed to trial. After reviewing the Complaint, as amended, the Court finds that Count VI is based on events within the scope of the Agreement. Counts IV, V, and VIII are outside the scope of the Agreement. Because the District has not filed a dispositive motion as to any of the individual counts, the Court holds that Smith may proceed to trial on these counts as scheduled.

IV. Conclusion

To summarize the Court's holding:

(1) The District's Motion for Summary Judgment regarding the validity of the Agreement is **granted**;

(2) Counts IV, V, and VIII fall outside the scope of the Agreement and may therefore proceed to trial as scheduled.

IT IS SO ORDERED.

Dated this 14th day of March 2000.

ROBERT W. PRATT
U.S. DISTRICT JUDGE