

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Fruehauf Trailer Corporation, et al.	)	Case No. 96-01563 (PJW)
	)	
Debtor.	)	
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	)	
CHRISS W. STREET, as Former Trustee of the End of the Road Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 08-50295 (PJW)
	)	
DANIEL W. HARROW, as Successor Trustee of the End of the Road Trust,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION**

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as Successor Trustee of The End of the Road Trust

December 22, 2014

**WALSH, J.** 

This opinion is with respect to defendant Daniel Harrow's motion for summary judgment. (Doc. #58.) For the reasons discussed below, I will grant the motion.

#### **BACKGROUND**

Fruehauf Trailer Corporation and related entities filed for bankruptcy protection on October 7, 1996. The Court confirmed a Plan of Reorganization on September 17, 1998. The Plan of Reorganization adopted a Liquidating Trust Agreement (the "Trust Agreement") and provided all assets of the debtors to be conveyed to the End of the Road Trust (the "Trust") for liquidation on behalf of the Trust beneficiaries. Chriss Street was confirmed as the trustee and served in that capacity until August 2005, when Street resigned and Daniel Harrow succeeded him ("Harrow" or "Successor Trustee").

On July 12, 2007, Street filed a complaint against Harrow and Does 1 - 25 in the Orange County Superior Court of California. The Complaint concerns Arch Specialty Insurance Company's ("Arch") refusal to provide insurance coverage to Street in connection with a subpoena the Department of Labor served on Street in August 2005. When Street resigned, he tendered the defense of that subpoena to the Successor Trustee. The Successor Trustee informed Street that his defense costs were not covered, and Street was left to defend the Department of Labor subpoena on his own. Street alleges that

the Department of Labor subpoena would have been covered by Arch but the Defendants caused Arch to deny coverage. Street asserted five causes of action against the Defendants: (1) breach of contract, (2) fraud, (3) intentional interference with an economic relationship, (4) negligent interference with an economic relationship, and (5) civil conspiracy.

The case was removed to federal court, where Harrow filed an answer denying all material allegations. In late 2007, the case was transferred to the District Court for the District of Delaware and then referred to this Court as a core proceeding on November 20, 2008. The adversary proceeding lay dormant for over two years, during which time Harrow, as Successor Trustee, successfully sued Street in the Bankruptcy Court for the Central District of California (the "California Bankruptcy Court"). The California Bankruptcy Court awarded \$7 million to the Trust and found that Street was not entitled to further compensation or indemnification from the Trust. (Memorandum of Decision after Trial, p. 18, Adv. No. 08-01865RN, Case No. 96-1563 through 96-1572, Bankr. C.D. Ca., March 5, 2010 (affirmed by Case No. 10-cv-02312-DDP, Doc. #25, C.D. Ca. May 23, 2011)).

The California Bankruptcy Court's examination of Street's conduct as trustee included the Department of Labor subpoena. The Department of Labor subpoena was part of an investigation into Street's acquisition of Dorsey Trailer Corporation ("Dorsey").

Street caused the Trust's special purpose entity that was created to administer the Fruehauf Trailer Corporation Employee's pension plan (the "Pension Plan") to purchase Dorsey Trailer Corporation ("Dorsey"). Street further caused the Trust to transfer funds to Dorsey. The Department of Labor investigated this transaction to determine whether to bring charges against Street under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 et seq. Ultimately, the Department of Labor declined to pursue action against Street.

Although the California Bankruptcy Court did not specifically address Street's claim for indemnification related to the Department of Labor subpoena, it did make findings of fact regarding Street's administration of the Pension Plan:

Contrary to the express limitations of the Trust, Defendant **[Street]** also caused FdM and ATII to engage in **unauthorized business dealings with an entity called Dorsey Trailer Corporation ("Dorsey")**, a bankrupt trailer manufacturer in Alabama which Street caused the Pension Plan to purchase in 2001. The Pension Plan acquired Dorsey as a vehicle to enhance the sales and purchasing power of ATII as Street was increasing the operations of the Trust's assets rather than liquidating them.

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This Court finds Defendant's justification for engaging in business with these entities, to create a business presence in the United States for Fruehauf de Mexico, **contradictory to the express purpose of the Trust to liquidate Trust assets for its beneficiaries.** The length of time Street managed the Trust (7 years) and caused these companies to engage in business in the United States is evidence of the Defendant's apparent intent not to liquidate the Trust assets but to create a new trailer conglomerate that conducted business from Mexico to the

United States and vice versa. **Such vision did not result in profit but rather depleted Trust funds to which Trust Beneficiaries would have been entitled. The Trust did not contemplate such activity; rather, it expressly prohibited it.**

(emphasis added) (Memorandum of Decision after Trial, pp. 7-9, Adv. No. 08-01865RN, Case No. 96-1563 through 96-1572, Bankr. C.D. Ca., March 5, 2010).

The California Bankruptcy Court concluded that Street was not entitled to indemnification related to his administration of the Pension Plan and the purchase of Dorsey. It examined the indemnification provisions of the Trust Agreement:

The Trust Agreement permits indemnification of Defendant unless he engaged in acts of gross negligence or willful misconduct . . . . **This Court finds Defendant's conduct described above falls within the gross negligence and willful misconduct exceptions contained in the indemnification provision.**

(emphasis added) (Harrow v. Street (In re Fruehauf Trailer Corp.), Ch. 11 Case No. 96-1563, Adv. No. 08-01865RN, slip op. at 18 (Bankr. C.D. Cal. March 5, 2010) (affirmed by Case No. 10-cv-02312-DDP, C.D. Ca. May 23, 2011)).

Because Street's administration of the Pension Plan, including the purchase of Dorsey Trailer, involved gross negligence and willful misconduct, the California Bankruptcy Court determined Street was not entitled to indemnification under the Trust Agreement.

### STANDARD OF REVIEW

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Bankr. P. 7056; Fed. R. Civ. P. 56; see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); IT Litigation Trust v. Alpla Analytical Labs, et al. (In re IT Group, Inc.), 331 B.R. 597, 600 (Bankr. D. Del. 2005). The Court must view all factual inferences "in the light most favorable to the nonmoving party." In re IT Group, 331 B.R. at 600 (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-588 (1986)).

Movants bear the burden of showing there are no genuine issues of material fact that would preclude summary judgment. See Celotex, 477 U.S. at 323. Once movants have met this burden, the burden shifts to the Successor Trustee to show that a genuine issue of material fact exists. See In re IT Group, 331 B.R. at 600.

### DISCUSSION

As an initial matter, the Successor Trustee is entitled to summary judgment on Street's claim for negligent interference with an economic relationship, as Delaware does not recognize such a cause of action. Insur. Co. of N. America v. Waterhouse, 424 A.2d 675, 678 (Del. Super. Ct. 1980) (citing Restatement (Second) Torts, § 766(c) (1979)).

Second, in order to state a claim for breach of contract, fraud, intentional interference with an economic relationship, and conspiracy, Street would need to establish causation and damages. See VLIW Tech., LLC v. Hewlett Packard Co., 840 A.2d 606, 612 (Del. 2003) (breach of contract claim requires plaintiff to demonstrate damages as a result of the breach); H-M Wexford LLC v. Encorp, Inc., 832 A.2d 129, 144 (Del. Ch. 2003) (common law fraud requires plaintiff to demonstrate damages suffered in reliance on the fraud); Lipson v. Anesthesia Servs., P.A., 790 A.2d 1261, 1285 (Del. Super. 2001) (intentional interference with an economic relationship requires plaintiff to demonstrate causation and damages); NACCO Indus., Inc. v. Applicia Inc., 997 A.2d 1, 35 (Del. Ch. 2009) (claim for civil conspiracy under Delaware law requires actual damages).

Since each of Street's claims against Harrow are based on Arch's refusal to provide coverage to Street, in order to demonstrate damages Street would have to show that Harrow in some way prevented Street from obtaining coverage from Arch. In other words, but for some action by Harrow, the Arch insurance policy would have covered Street's claims.

Street, however, is precluded from making such a showing in this Court, as the California Bankruptcy Court has already determined that Street was not entitled to indemnification due to his gross negligence and willful misconduct.

The Third Circuit determined, “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” Jean Alexander Cosmetics, Inc. v. L’Oreal USA, Inc., 458 F.3d 244, 249 (3d Cir. 2006) (internal quotation marks omitted).

Since Street’s right to indemnification was already litigated in the California Bankruptcy Court action, and that court made a final determination that Street was not entitled to indemnification, there is nothing further to litigate on that issue in this proceeding. Accordingly, Street is precluded from re-litigating this issue in this Court.

Because there has already been a valid and final judgment determining that Street was not entitled to indemnification, Street cannot then turn to this Court and state a claim for breach of contract, fraud, intentional interference with an economic relationship, or conspiracy based on the same indemnification claim. Accordingly, Harrow is entitled to summary judgment.

#### **CONCLUSION**

For the reasons detailed above, the Court will grant defendant Harrow’s motion for summary judgment.

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DANIEL W. HARROW, as Successor	)	
Trustee of the End of the Road	)	
Trust,	)	
	)	
Defendant.	)	

**ORDER**

For the reasons set forth in the Court's memorandum opinion of this date, the motion of defendant Daniel W. Harrow for summary judgment (Doc. # 58) is **granted**.



Peter J. Walsh  
United States Bankruptcy Judge

December 22, 2014