

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

WILL McRANEY

PLAINTIFF

v.

No. 1:17cv080-GHD-DAS

**THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.**

DEFENDANT

**MEMORANDUM IN SUPPORT OF
THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.’S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. Introduction – Why This Early Motion for Partial Summary Judgment

This case has been before this Court previously on the North American Mission Board’s [“NAMB”] Motion to Dismiss [doc 8]; thus, in the interest of brevity we will not re-summarize the allegations of the Complaint, as the Court is already familiar. Suffice it to say that the Court denied NAMB’s previous Motion to Dismiss, making two essential conclusions: 1) Because NAMB was not Plaintiff’s employer, the ministerial exception does not apply to his claims against NAMB; 2) The Court could not rule “at this juncture” that resolving these claims will require the Court to decide matters of religious doctrine or internal governance of the church.

In accordance with the Court’s ruling, this case moved forward. Counsel conducted the required Attorney Conference that precedes the Case Management Conference. A Case Management Conference was conducted by U.S. Magistrate Judge David Sanders on September 5, 2018, marking the start of the discovery period.¹

On September 11, 2018, NAMB issued a subpoena *duces tecum* to Plaintiff’s former employer, BCMD [doc 30], asking for production of various categories of pertinent information.

¹ The Case Management Order was entered September 17, 2018 [doc 31].

BCMD responded to service of NAMB's subpoena *duces tecum* by filing a Motion to Quash the subpoena in its entirety. [doc 37]. BCMD produced as an exhibit to its Motion a "Separation Agreement and Release" executed by Plaintiff and BCMD in July 2015. [doc 37-1, page ID# 188-196]. In its Motion to Quash, BCMD confirms beyond dispute that NAMB was a released "supporting organization," and BCMD expressly asks the Court to dismiss this suit based on the Separation Agreement and Release.²

The Court will recall that Plaintiff's Complaint refers generally to his signing a "severance agreement" with BCMD (see par. XII). Plaintiff did not attach the referenced "severance agreement" to the Complaint or otherwise produce it, and Plaintiff has yet to file his Initial Disclosures or respond to Defendant's written discovery requests. The executed Separation Agreement and Release was produced when BCMD attached it to its Motion to Quash, and it is now properly before the Court.

II. Summary Judgment Based on the Separation Agreement and Release

A. Undisputed Material Facts

BCMD's Motion to Quash [doc 37], Affidavit of Tom Stolle, Associate Executive Director of BCMD [doc 37-1, page ID# 185-86], and supporting Memorandum [doc 38] present well the pertinent undisputed material facts regarding Plaintiff's execution of the Separation Agreement. There is no reason to dispute that BCMD has produced a true and correct copy of the Agreement and that the signatures are authentic. Indeed, in par. XII of the Complaint, Plaintiff acknowledged signing a "severance agreement." And in his later Response to NAMB's

² Par. 15 of the Separation Agreement contains a forum selection clause: "All suits, proceedings and other actions relating to, arising out of or in connection with this Agreement shall be brought exclusively in the Circuit Court for Howard County, or as applicable, in the federal courts in the State of Maryland." Because the Separation Agreement has been properly placed before the Court by BCMD's Motion to Quash, NAMB contends that it is in the interest of judicial economy for this Court to resolve these issues and for the parties to avoid a second, parallel suit in Maryland.

Notice of Intent to issue the subpoena *duces tecum* to BCMD [doc 30], Plaintiff acknowledged “execution of his Separation Agreement.” [doc 40, par. II].

The Court will see that the Separation Agreement runs in favor not only of BCMD but its “supporting organizations” as well. The Affidavits of Mr. Stolle and NAMB’s Executive Vice President, Carlos Ferrer, firmly establish that NAMB was and remains a major “supporting organization” of BCMD both financially and otherwise, and that NAMB was an “intended beneficiary of Dr. McRaney’s release.” Mr. Stolle’s Affidavit confirms that NAMB annually contributes 15-20 percent of BCMD’s annual budget. *See* Stolle Aff. [Doc. 37-1] at 1. Mr. Ferrer’s Affidavit corroborates the level of NAMB’s annual financial contributions to BCMD as well as NAMB’s nonmonetary support.

B. Law and Argument

This Court is well familiar with the standard for granting and denying summary judgment, and repetition of the well-known standards is unnecessary. As a matter of law, this Court can and should find that the express language of the Separation Agreement bars Counts I and II of the Complaint and related punitive damage and intentional infliction of emotional distress claims stated in Count VI.

Count I alleges that NAMB tortiously interfered with Plaintiff’s employment with BCMD and wrongfully caused his termination as BCMD’s Executive Director in June 2015. However, these claims were expressly released by paragraph 5 of the Separation Agreement:

5. General Release.

In exchange for the Severance Pay and the other Separation Benefits, Dr. McRaney hereby releases and forever discharges the Convention and its past, present and future affiliates, agencies, supporting organizations . . . (collectively, “Released Parties”), from any and all actions, causes of action, suits, claims, debts, liabilities, obligations, covenants, contracts and demands whatsoever, administratively, at law or in equity, which Dr. McRaney ever had, now has or may have, whether known or unknown, foreseen or unforeseen, actual or potential, from the beginning of time to the date hereof and including the date on which Dr. McRaney executes this Agreement, arising from or related to, directly or indirectly, Dr. McRaney’s employment with the Convention, or the termination thereof, whether the same are brought under any federal, state or local law or regulation, including, but not limited to the following:

. . . .

(c) any claim concerning disciplinary action or termination, including any claim of unjust, wrongful, discriminatory, retaliatory or tortious discharge or other adverse employment action

Count II of the Complaint alleges that NAMB defamed Plaintiff while he was employed by BCMD and thereby caused the termination of his employment. However, this claim and Plaintiff’s assertions of “intentional infliction of emotional distress” in Count VI were expressly released by the above-quoted language as well as the following subparagraph of par. 5:

(e) any rights or claims for any tort that Dr. McRaney may allege, including any claim of negligence . . . and any claim of intentional tort (including libel, slander, assault, battery, and intentional infliction of emotional distress)

Pursuant to the “Governing Law” provisions of the Separation Agreement and ordinary choice of law principles, there seems to be no question that Maryland law governs interpretation of this instrument. Yet we find that Maryland law is virtually identical to Mississippi law. “A release is a contract subject to ordinary contract principles,” and is “construed according to the intent of the parties and the object and purpose of the instrument.” *Shutter v. CSX Transp., Inc.*,

226 Md. App. 623, 635 (2016). “Where a contract is plain and unambiguous, there is no room for construction, and it must be presumed that the parties meant what they expressed.” *Id.* at 635.

This Separation Agreement unambiguously released BCMD, and NAMB as a supporting organization, with respect to Plaintiff’s claims of tortious interference, defamation and intentional infliction of emotional distress arising from the termination of his employment with BCMD. Moreover, in the Separation Agreement, Plaintiff made, and by his lawsuit breached, the following covenant:

6. Covenant Not to Sue. Dr. McRaney agrees not to file or participate in any civil action, law suit, claim, grievance, complaint or charge with any court or any state or federal or local agency, concerning or relating to any claim or matter released in this Agreement. . . .

This Court, other courts in the Fifth Circuit, and Maryland’s courts have dismissed claims which were released in a binding “separation” or “severance” agreement like the one signed by Plaintiff. *See, e.g., Cotten v. Cimline, Inc.*, No. 3:17-cv-296-CWR-FKB, 2017 WL 2625149, at *2-3 (N.D. Miss. June 16, 2017) (although parties to separation agreement were Cotten and Plymouth, terms of agreement extended to “all subsidiaries and affiliated entities of the Company,” thus Cimline, a subsidiary, was released); *Young v. Domtar Paper Co., LLC*, No. 1:11-cv-236-SA-DAS, 2012 WL 2160442, at *2-3 (N.D. Miss. June 13, 2012) (granting defendant’s summary judgment because plaintiff could not refute that he knowingly and voluntarily executed a separation agreement releasing all claims against former employer); *Kennedy v. BAE Sys. Info. Tech., Inc.*, 2011 WL 6211171, at *1-7 (S.D. Miss. Dec. 14, 2011) (granting defendant’s motion for summary judgment where settlement agreement contained a release of all actions related to plaintiff’s employment and a covenant not to sue); *Smith v. Amedisys Inc.*, 293 F.3d 434, 445-46 (5th Cir. 2002) (affirming summary judgment for

defendant, separation agreement covered plaintiff's claims under Louisiana employment discrimination statutes); *International Assoc. of Machinists & Aerospace Workers, AFL-CIO v. Compania Mexicana de Aviacion, S.A. de C.V.*, 199 F.3d 796, 799 (5th Cir. 2000) (affirming summary judgment for defendant, separation agreement covered all claims pertaining to union member layoffs); *Shutter*, 226 Md. App. at 640-41 (affirming dismissal of FELA claim, which was released in prior agreement); *Jarallah v. Thompson*, 123 F. Supp. 3d 719, 725-27 (D. Md. 2015) (granting defendants' motion for summary judgment because the plain meaning of the release's terms barred plaintiff's claims against defendants).

Based on the foregoing, NAMB respectfully moves for summary judgment on Counts I and II of the Complaint, as well as Count VI to the extent it seeks punitive and emotional distress damages related to Counts I and II.

III. BCMD's Invocation of the First Amendment and NAMB's Request for Partial Summary Judgment

Although this Court denied NAMB's previous Motion to Dismiss [doc 8], it also referred to the particular "juncture" of the case at the time, i.e., a pre-discovery Rule 12 Motion to Dismiss. NAMB respectfully contends that the case is now at a different juncture. BCMD has expressly asked the Court to dismiss this case in order to protect its rights under the First Amendment. The Plaintiff's employer is now invoking the ministerial exception. Further, BCMD has persuasively shown through its Motion to Quash that this suit poses an unconstitutional intrusion into BCMD's "choice of minister" and its internal governance and policy. Therefore, based on BCMD's filings and for the reasons further set forth in NAMB's response thereto, NAMB respectfully requests that the Court re-evaluate the applicable First Amendment principles and dismiss Counts I and II.

CONCLUSION

For the foregoing reasons, NAMB respectfully asks this Court to grant its Motion for Partial Summary Judgment and dismiss Counts I and II of Plaintiff's Complaint, as well as Count VI to the extent it seeks punitive damages related to Counts I and II and for intentional infliction of emotional distress.³

NAMB requests all other and further relief which the Court may deem appropriate.

This the 5th day of November, 2018.

Respectfully submitted,

THE NORTH AMERICAN MISSION BOARD OF THE
SOUTHERN BAPTIST CONVENTION, INC.

By: *s/ Joshua J. Wiener*

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³ NAMB does not seek dismissal of Count III and Count V, both of which involve events that allegedly took place after Plaintiff's termination by BCMD and after Plaintiff's execution of the Separation Agreement. BCMD was not involved in these alleged post-termination events.

CERTIFICATE OF SERVICE

I, Joshua J. Wiener, one of the attorneys for Defendant, certify that I electronically filed the foregoing “The North American Mission Board Of The Southern Baptist Convention, Inc.’s Memorandum in Support of Motion for Partial Summary Judgment” with the Clerk of the Court using the using the Court’s ECF system, which sent notification of such filing to all counsel of record.

This the 5th day of November, 2018.

s/ Joshua J. Wiener

JOSHUA J. WIENER