

ORDERED.

Dated: June 28, 2022


Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:19-bk-05580-FMD
Chapter 7

Louis Alan Maier,

Debtor.

David Christa and
Christa Construction, LLC,

Plaintiffs,

v.

Adv. Pro. No. 2:20-ap-318-FMD

Louis Alan Maier,

Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR REHEARING

THIS PROCEEDING came before the Court to consider *Plaintiffs' Motion for Rehearing, Reconsideration and/or Clarification of and to Alter or Amend Order*

Granting Debtor's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment and the Final Judgment (the "Motion for Rehearing"),¹ Debtor's Response,² and Plaintiffs' Supplement.³

Plaintiffs filed the Motion for Rehearing under Fed. R. Civ. P. 59, as made applicable to this proceeding by Fed. R. Bankr. P. 9023. In the Eleventh Circuit, the only grounds for granting a motion for rehearing under Rule 59(e) are newly discovered evidence or manifest errors of law or fact.⁴

For the reasons explained in this Order, the Court determines that issues of fact exist regarding whether Plaintiffs and Debtor entered a binding agreement for indemnification. Therefore, the Court grants the Motion for Rehearing as set forth in this Order and will schedule a trial on the limited issue of whether Plaintiffs hold a claim against Debtor for breach of an indemnity agreement.

I. BACKGROUND

Debtor worked as an electrician through his contracting company, EastCoast Electric, LLC ("EastCoast"). QBE Insurance Corporation ("QBE")

¹ Doc. No. 49.

² Doc. No. 54.

³ Doc. No. 57.

⁴ *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)).

provided surety bonds for Debtor and EastCoast. In 2017, EastCoast entered into a contract to perform work on a school (the "School 16 Project"). As a condition to issuing a bond for the School 16 Project (the "QBE Bond"), QBE asked Debtor to obtain an additional indemnitor.

In September 2017, Debtor and Plaintiff David Christa signed a letter written by Mr. Christa (the "Letter Agreement") regarding Plaintiffs' agreement to serve as additional indemnitors on the QBE Bond. The Letter Agreement states in its entirety:

Louie,

Congratulations on the project. I want to get you our agreement to issue payment/performance bonds. Please see below:

\$100,000 fee to Dave Christa, payable as follows:

\$25,000 – September 30th

\$25,000 – December 15th

\$25,000 – January 15th

\$25,000 – March 15th

\$100,000 – Total

In addition, I will need you to indemnify myself as well as Christa Construction, LLC.⁵

⁵ Doc. No. 31-2 (emphasis added).

Two days after Debtor signed the Letter Agreement, Plaintiffs, Debtor, and EastCoast, as co-indemnitors, signed a *General Agreement for Indemnity (Bond Specific)* (the “QBE Indemnity Agreement”) in which they agreed to indemnify QBE for any loss that QBE incurred on the QBE Bond.⁶ Thereafter, EastCoast defaulted on the School 16 Project, and QBE incurred losses in completing the project. QBE thereafter demanded payment from Debtor, EastCoast, and Plaintiffs. Thus far, Plaintiffs have paid \$475,000.00 to QBE.⁷

In June 2019, Debtor filed a Chapter 7 bankruptcy case. Plaintiffs timely filed a *Complaint to Determine Debtor’s Discharge and Dischargeability of a Debt* (the “Complaint”).⁸ Generally, Plaintiffs alleged in the Complaint that Debtor owed them \$1.5 million under an indemnity agreement, that Debtor had fraudulently induced them to enter the indemnity agreement, that the debt was nondischargeable in Debtor’s bankruptcy case under 11 U.S.C. § 523,⁹ and that Debtor’s discharge should be denied under § 727 because he had fraudulently transferred property before and after filing his bankruptcy case.

⁶ Doc. No. 31-3.

⁷ Doc. No. 28-4; Doc. No. 32, ¶ 26; and Claim No. 4-1, p. 4.

⁸ Doc. No. 1.

⁹ Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.

Debtor answered the Complaint, and the parties filed summary judgment motions, responses, and replies.¹⁰

On January 20, 2022, the Court entered an *Order (1) Granting Debtor's Motion for Summary Judgment and (2) Denying Plaintiffs' Motion for Summary Judgment* (the "SJ Order").¹¹ In the SJ Order, the Court determined (1) that Plaintiffs did not establish their claim for fraudulent inducement because the alleged false representations related to an act to be performed in the future; (2) that Plaintiffs did not establish their claim for breach of an indemnity agreement because the Letter Agreement was a nonbinding preliminary agreement that was superseded by the QBE Indemnity Agreement as the only agreement between the parties, and (3) that Plaintiffs do not hold a claim against Debtor for contribution under New York law or § 502(e)(1)(B).

And, because Plaintiffs lack an underlying claim against Debtor, the Court determined that Plaintiffs lack standing to prosecute their claims to deny Debtor's discharge.

¹⁰ Doc. Nos. 5, 28, 31, 36, 39, 41, 42.

¹¹ Doc. No. 44.

II. PLAINTIFFS' MOTION FOR REHEARING

In their Motion for Rehearing, Plaintiffs assert that the Court erroneously concluded that they do not hold a claim against Debtor for breach of his agreement to indemnify them. Specifically, Plaintiffs challenge the Court's findings on page twenty-eight of the SJ Order that the Letter Agreement was a nonbinding preliminary agreement, that the Letter Agreement did not constitute an independent agreement for Debtor to indemnify Plaintiffs, and that the Letter Agreement was instead superseded by the QBE Indemnity Agreement as the only agreement between Debtor and Plaintiffs.

Plaintiffs contend that these findings are erroneous because (a) Debtor orally agreed to indemnify them in consideration of their agreement to serve as indemnitors under the QBE Indemnity Agreement; (b) the Letter Agreement was confirmation of Debtor's prior oral agreement; (c) the Letter Agreement—signed by Debtor and Mr. Christa—is a separate agreement from the QBE Indemnification Agreement, which was between QBE, on the one hand, and Debtor, EastCoast, and Plaintiffs, on the other hand; and (d) the Letter Agreement contains all of the required terms of the agreement between Debtor and Plaintiffs and is therefore binding under New York law.

To support their assertion that Plaintiffs and Debtor entered into a valid oral agreement for indemnification, Plaintiffs refer to Mr. Christa's deposition testimony¹² and to Mr. Christa's Affidavit in support of Plaintiffs' motion for summary judgment.¹³ Generally, Mr. Christa attested that he and Debtor discussed Debtor's request for Plaintiffs to act as additional indemnitors on the QBE Bond, that he informed Debtor that Plaintiffs would only act as additional indemnitors if Debtor agreed to indemnify them for any liability that they might incur, and that Debtor agreed to his conditions.

In addition, Plaintiffs assert that the Letter Agreement contains "all of the essential terms and conditions" of the indemnification agreement between Debtor and Plaintiffs.¹⁴ Specifically, Plaintiffs contend that the totality of their "very simple" agreement is set out in the Letter Agreement, *i.e.*, that Plaintiffs' obligations were to lend their credit by serving as additional indemnitors on the QBE Bond, and that Debtor's two obligations were to pay Plaintiffs \$100,000 and to indemnify Plaintiffs if any claims were made on the bonds.¹⁵

¹² Doc. No. 35-1, pp. 53-58.

¹³ Doc. No. 32, ¶¶ 17, 21.

¹⁴ Doc. No. 57, p. 4, ¶ 8.

¹⁵ Doc. No. 57, p. 4, ¶ 7C.

Finally, relying on *Teachers Insurance and Annuity Association of America v. Tribune Company*,¹⁶ Plaintiffs assert that the Letter Agreement is enforceable under New York law.¹⁷ Although the court in *Teachers Insurance* addressed whether a bank's loan commitment letter may be a binding preliminary agreement, Plaintiffs cite the decision for the legal principle that, under New York law, a contract is binding as long as the parties have reached complete agreement on all of the issues that needed to be negotiated, even if they intended to memorialize the agreement later in a formal document.¹⁸ Plaintiffs contend that the Letter Agreement satisfies these requirements for a binding agreement.

The Motion for Rehearing also impacts upon the Court's ruling that Plaintiffs lack standing to prosecute their claims to deny Debtor's discharge: if Plaintiffs are the holders of a claim against Debtor, they would have standing to pursue the § 727 claims.

¹⁶ 670 F. Supp. 491 (S.D.N.Y. 1987).

¹⁷ Doc. No. 57, p. 5, ¶ 9.

¹⁸ *Teachers Ins.*, 670 F. Supp. at 498.

III. DEBTOR'S RESPONSE

In his Response, Debtor appears to acknowledge that Debtor and Plaintiffs reached an oral agreement and that the oral agreement was documented in the Letter Agreement. Debtor states:

It was not until Christa's deposition that it was discovered that the parties negotiated an oral agreement, which Christa then embodied in the Letter Agreement written by Christa, which reflected the agreement of the parties.¹⁹

Debtor contends that under New York law, the parties' oral negotiations were superseded by the written Letter Agreement.²⁰ And because Mr. Christa included "*I want to get you our agreement*" and "*I will need you to indemnify myself*" in the Letter Agreement, Debtor contends that the Letter Agreement contemplated further documentation,²¹ that the contemplated documentation was the QBE Indemnity Agreement, and that no binding indemnity agreement existed when Mr. Christa wrote the Letter Agreement.²²

¹⁹ Doc. No. 54, p. 6.

²⁰ Doc. No. 54, p. 11.

²¹ Doc. No. 54, p. 6.

²² Doc. No. 54, p. 12.

Finally, Debtor argues that the QBE Indemnity Agreement was the complete, ultimate agreement between the parties, and that the QBE Indemnity Agreement does not provide for Debtor to indemnify Plaintiffs.²³

IV. ANALYSIS

In the SJ Order, the Court relied on Mr. Christa's deposition testimony in determining that the Letter Agreement contemplated further documentation and that the QBE Indemnity Agreement was the final agreement between Debtor and Plaintiffs.²⁴ However, after carefully considering the Motion for Rehearing and Debtor's Response, the Court finds that issues of fact exist regarding whether Debtor and Plaintiffs entered an oral indemnification agreement and whether the parties then signed the Letter Agreement as a confirmation of their oral agreement that is enforceable under New York law.

The issues of fact include (a) whether Debtor orally agreed to indemnify Plaintiffs in exchange for Plaintiffs' agreement to serve as additional indemnitors under the QBE Indemnity Agreement; (b) whether the Letter Agreement confirmed the material terms of an oral agreement between Debtor and Plaintiffs; and (c) whether the parties intended to be bound by the Letter

²³ Doc. No. 54, p. 11.

²⁴ Doc. No. 44, pp. 26-28.

Agreement, or whether they intended the Letter Agreement to be followed by the QBE Indemnity Agreement as the formal document memorializing their agreement.²⁵

Because of these factual issues, the Court finds that it erroneously determined as a matter of law that Plaintiffs do not hold a claim against Debtor for breach of his agreement to indemnify them and thus lack standing to prosecute their objection to Debtor's discharge. Therefore, the Court will schedule trials on two issues: (a) whether Plaintiffs hold a claim against Debtor for breach of the alleged indemnity agreement; and (b), if so, Plaintiffs' objection to Debtor's discharge under U.S.C. § 727.

Accordingly, it is

ORDERED:

1. Plaintiffs' Motion for Rehearing (Doc. No. 49) is **GRANTED** as set forth in this Order.

²⁵ Courts look to evidence of the parties' intent to be bound in determining whether a "preliminary" agreement is binding. See *Teachers Ins. and Annuity Ass'n of Am. v. Tribune Co.*, 670 F. Supp. 491, 499 (S.D.N.Y. 1987); *In re Lyondell Chemical Co.*, 491 B.R. 41, 56 (Bankr. S.D.N.Y. 2013); *In re 50 Pine Co., LLC*, 317 B.R. 276, 282 (Bankr. S.D.N.Y. 2004).

2. The Court will conduct a status conference on June 30, 2022, at 11:00 a.m., in Courtroom 9A, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, Florida, to consider scheduling a trial.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.