IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Medley LLC,	Case No. 21-10526 (KBO)
Debtor.	
Medley LLC Liquidating Trust,	
Plaintiff,	Adv. Proc. No. 23-50121 (KBO)
v.	**Related to Adv. D.I. 26**
Eversheds Sutherland (US) LLP,	
Defendant.	

MEMORANDUM ORDER DENYING MOTION FOR SUMMARY JUDGMENT DISMISSING THE COMPLAINT

Before the Court is the *Motion of Defendant Eversheds Sutherland (US) LLP for Summary Judgment Dismissing the Complaint* ("Motion for Summary Judgment").[1] For the reasons set forth herein, the Court will deny the request for summary judgment and in doing so, **HEREBY FINDS AND CONCLUDES** as follows:

I. JURISDICTION AND VENUE

The Court has subject matter jurisdiction over the claims in this proceeding under 28 U.S.C. § 1334(b), 28 U.S.C. § 157, and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware. Venue is proper under 28 U.S.C. § 1409(a).

II. SUMMARY OF UNDISPUTED MATERIAL FACTS

A. Events Leading to the Settlement Agreement

Plaintiff Medley LLC Liquidating Trust (the "Trust") is the successor in interest to the debtor Medley LLC (the "Debtor"). On March 3, 2023, the Trust filed this adversary proceeding against the defendant Eversheds Sutherland (US) LLP ("Eversheds"), a law firm.[2] Before the

[1] Eversheds' Mot. for Summ. J., Adv. D.I. 26.

[2] Trust's Compl., Adv. D.I. 1 (the "Compl.").

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Debtor's chapter 11 bankruptcy case in 2021, the Securities and Exchange Commission ("SEC") began investigating the Debtor, its parent Medley Management Inc. ("MDLY"), and controllers Seth and Brook Taube (the "Taubes") for violating federal securities law.[3] These entities retained Eversheds to represent them in the SEC's investigation.[4]

The Debtor retained Eversheds as special counsel during the bankruptcy to advise on securities law and the SEC's investigation.[5] In connection with its retention application, Eversheds disclosed that within the 90 days of the bankruptcy, the Debtor's insurers paid Eversheds over $1 million.[6] Later, Eversheds filed a supplemental declaration further explaining that, prepetition, Eversheds represented the "Medley complex" – meaning, the Debtor, MDLY, certain directors and officers, and the Taubes.[7]

In October 2021, the Debtor's confirmed plan went effective, creating the Trust.[8] Shortly thereafter, Eversheds filed its final fee application, seeking $2.08 million.[9] The Court entered an order approving the application.[10] The order granted final allowance of compensation and reimbursement of reasonable and necessary expenses in the amount requested by Eversheds (the "Section 503 Claim").[11]

In February 2022, the SEC informed the Trust that it would not recommend an enforcement action against the Debtor but found that MDLY and the Taubes violated securities law.[12] That led to a settlement agreement between the SEC, MDLY, and Taubes.[13] Around the same time, the Trust was also investigating potential claims against MDLY and the Taubes and believed it found several causes of action under chapter 5 of the Bankruptcy Code and under state law for breach of fiduciary duty.[14] In March 2022, the Trust, MDLY, certain directors and officers, the Taubes, and the Taubes' trust entered a settlement agreement (the "Settlement Agreement").[15] Under that

[3] *Id.* ¶ 15.

[4] *Id.*

[5] Order Granting Eversheds' Employment Appl. D.I. 167.

[6] Eversheds' Employment Appl., D.I. 87, Ex. B ¶¶ 9, 14.

[7] Eversheds' Decl. for Employment Appl., D.I. 119 ¶ 8.

[8] Notice of Effective Date, D.I. 449.

[9] Eversheds' Final Fee Appl., D.I. 515; *see also* D.I. 561 ¶¶ 12-15 (Eversheds' declaration correcting oversight, reducing total amount requested to $2.08 million).

[10] Am. Order Awarding Eversheds' Final Fee Appl., D.I. 569.

[11] *Id.*

[12] Trust's Counsel Decl., Adv. D.I. 50, Ex. 2 (Email from Eversheds to Trustee explaining that the SEC settled).

[13] Trust's Resp., Adv. D.I. 49, Ex. A (the "Trust's Resp.") ¶ 12 (citing *Medley Mgmt. Inc.*, Exchange Act Release No. 94819, 2022 WL 1288228 (April 28, 2022)).

[14] Liquidating Trustee Decl., Adv. D.I. 51, Ex. A ¶ 3.

[15] Eversheds' Partner Decl., Adv. D.I. 28, Ex. 1.

agreement, MDLY and the Taubes paid the Trust approximately $13.2 million.[16] In exchange, the Trust released its claims against the parties.[17]

B. The Settlement Agreement

The Settlement Agreement includes two release provisions – sections 6.1 and 6.2. Section 6.1 releases the Trust's claims against the "Taube Released Parties" (the "Section 6.1 Release"):

> On the Release Date, the Liquidating Trust, the Liquidating Trustee and the Debtor (the "Liquidating Trust Releasing Parties") hereby release, waive, relinquish, disavow and forever discharge Medley, the Taubes, [the Taubes' trust], and the Executives and all of their respective affiliates, subsidiaries, family members, former spouses, trusts, former trusts (including, but not limited to, any trust that has been revoked or terminated), successors, heirs, and assigns, and other entities owned or controlled by them and their officers, directors and financial and legal advisors, and all employees, representatives, agents, vendors, and attorneys of each of the foregoing (collectively, the "Taube Released Parties"), of and from any and all Released Claims[.][18]

The "Taube Released Parties" term includes the parties' respective legal advisors and attorneys. The Settlement Agreement defines "Released Claims" as any Cause of Action that is not a Preserved Claim, including claims under chapter 5 of the Bankruptcy Code.[19] "Cause of Action" is defined broadly as "any claims, . . . causes of action, . . . liabilities . . ., whether known or unknown, . . . liquidated or unliquidated . . ., in contract, tort, law, equity, or otherwise against any party . . . ."[20]

Section 6.2 provides a reciprocal release (the "Section 6.2 Release"), releasing certain claims of the Taube Released Parties against the Liquidating Trust Releasing Parties, including those arising under section 503 of the Bankruptcy Code:

> On the Release Date, the Taube Released Parties hereby release, waive, relinquish, disavow and forever discharge the Debtor, the Liquidating Trust and the Liquidating Trustee of and from any and all claims, actions, or causes of action arising under or related to sections 502(h) or 503 of the Bankruptcy Code.[21]

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[16] Settlement Agreement § II.3.

[17] *Id.* § II.6.1.

[18] *Id.* § II.6.1.

[19] *Id.*, Recital J.

[20] *Id.*, Schedule I.

[21] *Id.* § II.6.2.

The Settlement Agreement conditions the "Release Date" on several events, including the execution and delivery of a letter agreement between the Trust and Eversheds ("Eversheds Letter") and a forbearance agreement between Eversheds, MDLY, the Taubes, and certain directors and officers ("Forbearance Agreement").[22] Under the Eversheds Letter, Eversheds agreed to first seek payment of the Section 503 Claim from applicable insurance and to forbear on seeking payment of any remaining amounts from the estate until the Trust received sufficient funds to make distributions to certain creditors, including those in classes 3 and 4 of the Debtors' chapter 11 plan.[23] Under the Forbearance Agreement, Eversheds agreed to forbear seeking reimbursement for the Section 503 Claim from available insurance until:

> the earlier of (a) five (5) business days after payment of insurance proceeds to the Liquidating Trust to consummate a settlement reached with the Liquidating Trust resolving its alleged Preserved Claims, (b) if the Settlement Agreement is voided or terminated for any reason, the date of such voiding or termination, and (c) June 30, 2022.[24]

The Trust negotiated these agreements to maximize the value of the Settlement Agreement and another settlement it reached on the Preserved Claims.[25]

After the Settlement Agreement, the Trust discovered during its investigation of additional estate causes of action certain discrepancies in Eversheds' retention application and supporting declarations.[26] Rather than receiving approximately $1 million during the preference period from insurance as had been disclosed, the Debtor's records showed that Eversheds received over $2 million directly from the Debtor.[27] The Trust informed Eversheds of this material discrepancy, and Eversheds filed a second supplemental declaration.[28] The Trust then filed a motion to vacate the final fee order approving the Section 503 Claim (the "Motion to Vacate").[29] During discovery, the Trust learned that Eversheds allocated only a portion of its approximate $2 million Section 503 Claim to work that it performed for the Debtor.[30] The remainder of the claim was on account of work performed for non-debtors MDLY and the Taubes. The parties ultimately settled the Motion to Vacate, reducing Eversheds' Section 503 Claim to approximately $436,000.[31]

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[22] Settlement Agreement § II.5.

[23] Eversheds' Letter, Adv. D.I. 28, Ex. 2 ¶¶ 1-2.

[24] Forbearance Agreement, Adv. D.I. 28, Ex. 3 ¶ 5.

[25] *See* Eversheds' Letter and Forbearance Agreement.

[26] Trust's Mot. to Vacate, D.I. 610.

[27] Trust's Resp. ¶ 25.

[28] Eversheds' 3d Suppl. Decl. for Eversheds' Employment Appl., D.I. 609.

[29] Trust's Mot. to Vacate, D.I. 610.

[30] Trust's Suppl. Decl., D.I. 672.

[31] Order Approving Mot. to Vacate Settlement, D.I. 686.

During its investigation, the Trust alleges that it also discovered that, between April 2017 and the Debtor's petition date, the Debtor transferred over $5.3 million to Eversheds. This amount includes the $2 million received during the 90-day preference period and another $3.3 million before the preference period.[32] The Trust filed this proceeding to avoid and recover the transfers.[33] Eversheds filed its answer, affirmative defenses, and counterclaims.[34] At this time, Eversheds did not raise the Section 6.1 Release as an affirmative defense. Almost two years later, however – after discovery and mediation – Eversheds filed an amended answer, raising this defense.[35]

III. RELEVANT PROCEDURAL HISTORY

On May 2, 2025, Eversheds filed its Motion for Summary Judgment.[36] The motion requests entry of summary judgment dismissing the Complaint on the basis that the Trust's claims have been fully released by the Section 6.1 Release.[37] The Trust opposes summary judgment, arguing for a variety of reasons that the release does not apply to Eversheds.[38] The Court held oral argument on the Motion for Summary Judgment, and the matter is ripe for adjudication.

IV. APPLICABLE LEGAL STANDARD

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure, a court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[39] If a reasonable jury could find there is a genuine dispute of material fact, the movant has failed to meet its burden.[40] A fact is material if it "'bears on an essential element of the plaintiff's claim.'"[41]

V. DISCUSSION

For Eversheds to obtain summary judgment on the Complaint, it must show that, among other things, the parties intended to include Eversheds as part of the Taube Released Parties under

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[32] Compl. ¶¶ 25, 32.

[33] *See generally* Compl.

[34] Eversheds' Answer, Adv. D.I. 4.

[35] Eversheds' Am. Answer, Adv. D.I. 25.

[36] Eversheds' Mot. for Summ. J., Adv. D.I. 26.

[37] *See generally* Eversheds' Br. for Mot. for Summ. J., Adv. D.I. 27.

[38] *See generally* Trust's Resp.

[39] Fed. R. Civ. P. 56(a).

[40] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 n.10 (1986) (citing Fed. R. Civ. P. 56(c)).

[41] *Fakete v. Aetna, Inc.*, 308 F.3d 335, 337 (3d Cir. 2002) (quoting *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 298 F.3d 201, 210 (3d Cir. 2002)).

the Settlement Agreement. The Settlement Agreement is governed by New York law.[42] Under New York law, releases are governed by contract law.[43] Courts interpret a contract according to the parties' intent.[44] The best evidence of the parties' intent is the written agreement.[45] Unless the agreement is ambiguous, it "must be enforced according to the plain meaning of its terms."[46] Eversheds argues that the Section 6.1 Release unambiguously includes it as part of the Taube Released Parties.[47] It argues that Eversheds falls under the definition because it includes all legal advisors and attorneys for MDLY and the Taubes and that at the time of the Settlement Agreement, it was a legal advisor and attorney for MDLY and the Taubes in the SEC investigation.[48]

While the definition of "Taube Released Parties" is sufficiently broad to support Eversheds' interpretation, the Court finds the interpretation unreasonable after reviewing the Settlement Agreement as a whole. When determining the parties' intent, a court must consider the contract in its entirety.[49] "[S]pecific clauses of a contract are to be read consistently with the overall manifest purpose of the parties' agreement."[50] Moreover, "agreements executed at substantially the same time and related to the same subject matter are regarded as contemporaneous writings and must be read together as one."[51] Applying these principles, the definition of the Taube Released Parties must be read alongside the Section 6.2 Release, the Eversheds Letter, and the Forbearance Agreement. And when those are considered together, it is clear that the parties did not intend to include Eversheds in the Section 6.1 Release as part of the Taube Released Parties.

As mentioned, the Section 6.2 Release released the claims held by the Taube Released Parties against the Debtor under sections 502(h) and 503 of the Bankruptcy Code. Therefore, if Eversheds was included as a Taube Released Party, then its Section 503 Claim was intended by the parties to have been released under this reciprocal release. But it is clear that it was not released because of the parties' contemporaneous entry into the Eversheds Letter and the Forbearance Agreement. Under the Eversheds Letter, Eversheds agreed to look to insurance for payment on its Section 503 Claim and forbear from collecting any unpaid amounts until the Trust distributed funds

[42] Settlement Agreement § II.16.

[43] *Mangini v. McClurg*, 24 N.Y.2d 556, 562 (N.Y. 1969).

[44] *Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 (N.Y. 2002).

[45] *Id.* (quoting *Slamow v. Delcol*,584 N.Y.S.2d 424, 425 (N.Y. 1992)).

[46] *Id.*

[47] Eversheds' Br. for Summ. J., Adv. D.I. 27 at 11.

[48] *Id.* at 13-14.

[49] *Ellington v. EMI Music, Inc.*, 24 N.Y.3d 239, 244 (N.Y. 2014) ("Where the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and reading the contract as a whole.").

[50] *In re AMR Corp.*, 562 B.R. 20, 41 (Bankr. S.D.N.Y. 2016) (quoting *Barrow v. Lawrence United Corp.*, 538 N.Y.S.2d 363, 365 (N.Y. App. Div. 3d Dept. 1989)).

[51] *1471 Second Corp. v. NAT of NY Corp.*, 79 N.Y.S.3d 23, 24 (N.Y. App. Div. 1st Dept. 2018) (quoting *Flemington Natl. Bank & Trust Co. [N.A.] v. Domler Leasing Corp.*, 410 N.Y.S.2d 75, 77 (N.Y. App. Div. 1st Div. 1978), *aff'd* 421, N.Y.S.2d 881 (N.Y. 1979)).

to other creditors. Similarly, under the Forbearance Agreement, Eversheds agreed to forbear from seeking payment from insurance for a prescribed period. If the parties intended to include Eversheds as part of the Taube Released Parties, then these agreements to forbear would be unnecessary because Eversheds released its Section 503 Claim under Section 6.2. Instead, the agreements were considered critical to the Settlement Agreement.[52] This renders Eversheds' argument that it is part of the Taube Released Parties unreasonable.

Eversheds makes two arguments why the parties intended to include it among the Taube Released Parties notwithstanding the Section 6.2 Release, the Eversheds Letter, and the Forbearance Agreement, but the Court is not persuaded by either. First, Eversheds argues that the Section 6.2 Release is not enforceable as to Eversheds because it did not sign the Settlement Agreement.[53] Even if that is true, however, the enforceability of the Section 6.2 Release does not affect the ability of the Court to consider it in interpreting section 6.1. The parties included it and therefore it may be considered by the Court in rendering its interpretation of the Settlement Agreement. Moreover, Eversheds' argument on this point lends further support for why Eversheds is not included in the Taube Released Parties because such an interpretation would require the Court to disregard section 6.2 as to Eversheds. But when interpreting a contract, the Court must enforce it according to its terms and "give full meaning and effect to the material provisions."[54] "A reading of the contract should not render any portion meaningless."[55] For the reasons just explained, that cannot be done if Eversheds is among the Taube Released Parties.

Second, Eversheds argues that the Eversheds Letter and Forbearance Agreement represent the parties' agreement to modify and carve out Eversheds from the Section 6.2 Release.[56] However, when a contract is negotiated between sophisticated, counseled parties, courts should refrain from interpreting the contract as impliedly stating something that the parties failed to include.[57] There are no indications in the contract or otherwise that the parties intended to except Eversheds from the Section 6.2 Release. On the contrary, everything points to the logical conclusion that Eversheds was never included in the Taube Released Parties and thus never granted a release of the Trust's claims asserted in the Complaint.[58]

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[52] Indeed, the Eversheds Letter is expressly "integral and inextricable" to the Settlement Agreement. Eversheds' Partner Decl., Adv. D.I. 28, Ex. 2 at 2.

[53] Eversheds' Reply, Adv. D.I. 55 at 14 (citing *Killian v. Metropolitan Life Ins. Co.*, 166 N.E. 798 (N.Y. 1929)).

[54] *Beal Sav. Bank v. Sommer*, 834 N.Y.S.2d 44, 47 (N.Y. 2007) (quoting *Excess Ins. Co. Ltd. v. Factory Mut. Ins. Co.*, 789 N.Y.S.2d 461, 464 (N.Y. 2004)).

[55] *Id.*

[56] Eversheds' Reply, Adv. D.I. 55 at 14.

[57] *Vermont Teddy Bear Co. v. 538 Madison Realty Co.*, 775 N.Y.S.2d 765, 767-68 (N.Y. 2004) (citing *Rowe v. Great Atl. & Pac. Tea Co.*, 412 N.Y.S.2d 827, 833 (N.Y. 1978)).

[58] Eversheds' interpretation is also inconsistent with the parties' behavior following the execution of the Settlement Agreement. For instance, if they intended to include Eversheds as one of the Taube Released Parties, there would have been no need for the Trust to file its Motion to Vacate and certainly no need for Eversheds to have engaged with the Trust to negotiate a settlement. These actions are reflected on the Court's docket, of which it may take judicial notice.

VI. CONCLUSION

For the foregoing reasons, the Court hereby concludes and orders that Eversheds' Motion for Summary Judgment is **DENIED**.

Dated: July 1, 2026
Wilmington, Delaware

Karen B. Owens
Chief Judge

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