

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DENNIS E. PARKSTONE, III,)
)
 Plaintiff,)
)
 v.) Civ. No. 07-465-SLR
)
 CHRISTOPHER A. COONS,)
 RICHARD PRZYWARA, and NEW)
 CASTLE COUNTY,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 11th day of January, 2008, having reviewed defendants' motion to dismiss and the papers filed in connection therewith;

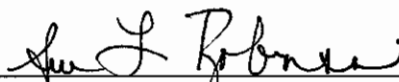
IT IS ORDERED that said motion (D.I. 6) is granted in part and denied in part as follows:

1. The motion is granted as it relates to dismissing defendants Coons and Przywara in their official capacities. (See D.I. 11 at 13 n.3)
2. The motion is denied as it relates to defendants' waiver argument. The Supreme Court in Town of Newton v. Rumery, 480 U.S. 386 (1987), did not establish a per se rule validating such release-dismissal agreements as the memorandum of understanding at issue; rather, the Court only dismantled the presumption that such agreements were invalid. It is apparent to the court that the enforceability of such agreements, like any contracts, must be viewed under a totality of the circumstances.

The circumstances under which the memorandum of understanding at issue was executed, when viewed consistent with plaintiff's allegations, raise sufficient questions of fact as to whether said agreement is enforceable to withstand a motion to dismiss.

3. The motion also is denied as it relates to plaintiff's invasion of privacy claim, consistent with plaintiff's allegations of wanton negligence or willful and malicious intent.

See Farris v. Moeckel, 664 F. Supp. 881 (D. Del. 1987).


United States District Judge