DOCKET NO. MMX-CV-11-6006468	:	SUPERIOR COURT
ERIC RICE	:	JUDICIAL DISTRICT OF
V.	:	MIDDLESEX
REGIONAL SCHOOL DIST. #4 BOARD OF EDUCATION; RUTH LEVY; and IAN NEVIASER	:	AUGUST 15, 2014

MEMORANDUM OF DECISION ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

The defendants, Regional School District Number #4 Board of Education (the District), Ruth Levy, Superintendent of Schools, and Ian Neviaser, Assistant Superintendent of Schools (collectively, the defendants), have moved for judgment as a matter of law on all counts (One through Six) of the plaintiff, Eric Rice's, complaint. They have also moved for summary judgment on their counterclaim against the plaintiff. For the reasons set forth more specifically below, the court grants both summary judgments.

In support of their motion, the defendants have submitted the following evidence: (1) excerpts from a certified copy of the deposition testimony of Levy; (2) excerpts from a certified copy of the deposition testimony of Neviaser; (3) excerpts from a certified copy of the deposition testimony of the plaintiff; (4) a copy of the Release Agreement, waiver, and recommendation letter; (5) a copy of the Freedom of Information Act (FOIA) request, copies of correspondence between the Hartford Courant and Levy regarding the request, copies of correspondence between the Hartford Courant and Leander A. Dolphin, an employee of Shipman & Goodwin LLP, regarding the FOIA request; and (6) copies of two articles published by the Hartford Courant.

In support of his memorandum in opposition to the defendants' motion for summary judgment, the plaintiff submitted the following evidence: (1) a signed and sworn affidavit of the plaintiff; (2) excerpts from a certified copy of the deposition testimony of the plaintiff; (3) a copy of the Release Agreement, waiver, and recommendation letter; (4) excerpts from a certified copy of the deposition testimony of Neviaser; (5) copies of two articles published by the Hartford Courant; and (6) excerpts from a certified copy of the deposition testimony of Levy.

Undisputed Facts

Levy is the Superintendent of Schools for the District. Neviaser was at all times the Assistant Superintendent. During the 2009-2010 school year, the plaintiff was a first-year principal employed by the Hartford Public Schools. In the summer of 2010, he applied to become the new principal at Valley Regional High School in Region 4. The plaintiff was offered and accepted the position, and started in August 2010. Shortly after the plaintiff became principal, teachers complained to the Superintendent about the plaintiff's leadership style and job performance. Other teachers made similar complaints to Neviaser. Based on these complaints, as well as their own observations, the Superintendent and Neviaser became concerned about the plaintiff's ability to continue as principal. On September 14, 2010, Neviaser and the Superintendent met with the plaintiff to discuss their concerns and to provide guidance to the plaintiff on areas where he could improve his performance. Around that same time, a union representative spoke with the Superintendent and Neviaser about complaints he had received from teachers and staff members about the plaintiff. Neviaser and the Superintendent documented the statements they received from the teachers and the union representative. On September 17, 2010, Neviaser and the Superintendent met with the plaintiff again, and during that meeting the Superintendent suggested that the plaintiff consider resigning.

The plaintiff and the Superintendent then negotiated the terms of a Separation Agreement entitled "Release and Resignation Agreement"(Release Agreement) through their respective attorneys. During this period of time, students and community members held a rally on behalf of the plaintiff, and his potential resignation received media attention. During the same period of time, the plaintiff was provided with a list summarizing the District's concerns with his employment. That list had been provided to the plaintiff's attorney by the District's attorney.

The parties agreed upon the terms of the Release Agreement, and they signed that Agreement on October 8, 2010. That Agreement was contingent on approval by the Regional School District # 4 Board of Education (the Board). On October 12, 2010, the Superintendent presented the signed Release Agreement to the Board in executive session. At that time, the Board approved the Release Agreement.

The Release Agreement required the District to provide the plaintiff with a letter of recommendation. That letter was negotiated by the parties and their attorneys, and it was finalized and signed before the effective date of the Release Agreement. The plaintiff received the letter and used it in job applications. The Release Agreement also provided that the plaintiff would receive severance pay through April 2011, and receive benefits until he found new employment.

In November 2010, the plaintiff started teaching in the West Haven Public Schools, and accepted benefits in that district. Therefore, the plaintiff stopped receiving benefits from the District. The plaintiff continued to receive severance pay through April 2011, however, as required by the Release Agreement. In exchange for receiving severance pay, benefits, and a letter of recommendation, the plaintiff released and waived all claims against the defendants, known or unknown. When he signed the Release Agreement, the plaintiff was aware of this comprehensive waiver of all claims.

In November 2010, the Superintendent received a FOIA request from the Hartford Courant. That request sought items related to the plaintiff, such as his personnel file, as well as "all email messages sent to or from Schools Superintendent Ruth Levy between the dates of July 28, 2010 and October 31, 2010, inclusive." Between November 2010 and June 2011, the Superintendent or the District's outside counsel sent the Hartford Courant several responses to that FOIA request. Included in these responses were all of the Superintendent's non-privileged emails during the requested period. Every email or other document provided to the Hartford Courant was provided through these FOIA responses. There is no evidence that anything was provided to the media by the defendants outside of the FOIA response.

On June 23, 2011, the Hartford Courant called the plaintiff for a comment to include in a forthcoming story about his resignation. The plaintiff declined to comment. On June 25, 2011, the Hartford Courant published that article.

<u>Discussion of the Law and Ruling</u>

"Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Patel* v. *Flexo Converters U.S.A., Inc.*, 309 Conn. 52, 56, 68 A.3d 1162 (2013). "In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . .The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." (Internal quotation marks omitted.) *Schilberg Integrated Metals Corp.* v. *Continental Casualty Co.*, 263 Conn. 245, 252, 819 A.2d 773 (2003). "A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *H.O.R.S.E. of Connecticut, Inc.* v. *Washington,* 258 Conn. 553, 560, 783 A.2d 993 (2001). Summary judgment is "designed to eliminate the delay and expense of litigating an issue where there is no real issue to be tried." *Wilson* v. *City of New Haven*, 213 Conn. 277, 279, 567 A.2d 829 (1989).

The defendants argue that the plaintiff has waived his rights to bring this lawsuit in the Release Agreement. As a result, all of the plaintiff's claims are barred by the doctrine of waiver.

"Waiver must be based on facts known, actually or constructively, at the time of the waiver." *Breen* v. *Aetna Casualty & Surety Co.*, 153 Conn. 633, 648, 220 A.2d 254 (1966). "Waiver is the voluntary relinquishment of a known right . . . The rule is applicable that no one shall be permitted to deny that he intended the natural consequences of his acts and conduct . . . In order to waive a claim of law it is not necessary . . . that a party be certain of the correctness of the claim and its legal efficacy. It is enough if he knows of the existence of the claim and of its reasonably possible efficacy." *General Accident Ins. Co.* v. *Powers, Bolles, Houlihan & Hartline, Inc.*, 50 Conn. App. 701, 711-12, 719 A.2d 77 (1998), aff'd, 251 Conn. 56, 738 A.2d 168 (1999).

Here, it is undisputed that the parties entered into a Release Agreement in October, 2010. In exchange for valuable consideration, the plaintiff agreed to the following provision in the Agreement:

> Employee knowingly and voluntarily releases and forever discharges EMPLOYER, all of EMPLOYER'S past, present and future elected and appointed officials, officers, agents, attorneys, insurers, representatives, employees, individually and in their official capacity, and any person acting on behalf of or in concert with any of them (collectively, 'RELEASEES'), from any and all claims, demands, obligations, liabilities, causes of action, known or unknown, asserted or unasserted, and any claim for costs, attorney's fees, expenses or any form of damages whatsoever (including but not limited to liquidated and/or punitive damages, compensatory damages and/or damages for emotional distress) which EMPLOYEE has or may have against RELEASEES arising out of or in any way connected with EMPLOYEE's employment or separation from employment," including all of the statutes and other grounds for potential liability set forth in Paragraph 6 of the Agreement.[1]

Later in that same paragraph, the plaintiff again agreed to a "comprehensive waiver of any and all claims by the EMPLOYEE resulting from or arising out of or in any way connected with EMPLOYEE's employment or separation from employment." Id. The plaintiff was aware that he was releasing any and all claims through the Release Agreement. Therefore, it is undisputed that the plaintiff released all claims against the defendants, known or unknown, as of the effective date of the Release Agreement.

The Agreement also clearly provides that the plaintiff agreed to a comprehensive waiver of any and all claims by the plaintiff resulting from or arising out of or in any way connected with the plaintiff's employment or separation from employment. The right that has been relinquished by the plaintiff is the right to sue the defendants on *all* claims; this right is not necessarily limited to the right to sue on *certain* claims. Cf. *Muldoon* v. *Homestead Insulation Co.*, 231 Conn. 469, 482, 650

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Paragraph 6 the Release and Resignation Agreement released the Employer from any claim for an alleged violation of the Connecticut Teacher Tenure Act, General Statutes § 10-151, *et seq.*, many other enumerated statutes, and "Any other federal, state or local law, regulation or ordinance; Any obligation arising under any public policy;. . . Any obligation arising under tort or common law or other legal principle including but not limited to wrongful discharge, defamation, intentional and/or negligent infliction of emotional distress, misrepresentation and/or breach of the duty of good faith and fair dealing."

A.2d 1240 (1994) ("where the language of the release is directed to claims then in existence, it will not be extended to cover claims that may arise in the future"). The court finds that this is a comprehensive waiver of all claims, then in existence and those that may arise in the future. See generally *Barclays Business Credit Inc.* v. *Freyer*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-96-0152347-S (May 6, 1997, *D'Andrea, J.*) ("The term, 'any defenses,' unambiguously waives any defenses, whether they stem from acts committed before, after, or during the execution of the contract.").

The plaintiff agrees that the waiver in the Release Agreement applies to all claims that "preexisted the signing of the Agreement in October, 2010," yet argues that he is "not asserting claims for actions arising prior to the execution of the agreement." Plaintiff's Objection to Motion for Summary Judgment, p.8. This argument is misplaced because the complaint is filled with allegations regarding conduct that occurred prior to the signing of the Release Agreement. All of those claims were waived.

The plaintiff mischaracterizes the complaint as addressing only the District's FOIA response, which occurred after the Agreement was signed. However, the plaintiff fails to mention that is it undisputed that *every document released pursuant to the FOIA request was created before the Release Agreement was signed* and the plaintiff waived all his claims regarding the substance of any such document. Therefore, if any of those documents were defamatory, then any claims related to the defamatory statements were waived by the plaintiff in the Release Agreement.

The allegations in each of the six counts of the complaint pertain to actions that were subject to the plaintiff's waiver of all claims. All of the statements that were provided to the Courant in the FOIA response *were made by district employees prior to the effective date of the Release Agreement.*

All actions taken by the Superintendent and Neviaser in regard to the plaintiff's separation from employment were taken before the effective date of the Release Agreement. The only conduct that occurred after the effective date of the Release Agreement was the District's response to the FOIA request. All of the documents produced in response to the FOIA request were created prior to the effective date of the Release Agreement. Thus, even though the District's FOIA response occurred after the effective date of the Release Agreement, the only actionable part of the response—the documents produced—are covered by the waiver in the Release Agreement. As a result, all of the plaintiff's claims are covered by the doctrine of waiver. Summary judgment enters in favor of the defendants on all counts of the complaint based on the plaintiff's waiver and release of the claims asserted in those counts.

In the alternative, the defendants argue that each of the six counts set forth in the complaint are based on discretionary acts taken by the Superintendent or Neviaser and, therefore, they are also entitled to summary judgment on all counts of the complaint on the basis of governmental immunity.

At common law, so long as a municipal employer's challenged actions were discretionary in nature, they were entitled to immunity from liability for actions taken in discharging their public duties. See, e.g., *Ryszkiewicz* v. *New Britain*, 193 Conn. 589, 593, 479 A.2d 793 (1984) ("At common law, Connecticut municipalities enjoy governmental immunity, in certain circumstances, from liability for their tortious acts."). The same immunity from liability is provided for municipalities under General Statutes § 52–557n, which states, in relevant part:

> Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by . . . negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law.

Under Connecticut law, therefore, municipal employees enjoy the defense of governmental immunity when (1) their actions were public in nature, and (2) their employees were engaged in discretionary acts. *Gordon* v. *Bridgeport Housing Authority*, 208 Conn. 161, 167-70, 544 A.2d 1185 (1988).

Here, the defendants maintained and supervised the operation of a municipal school system, which "falls in the category of 'public actions.'" *Hardy* v. *Adebanjo*, United States District Court, Docket No. 3:10CV974 (JBA), 7 (D.Conn. Mar. 30, 2012); see also *Couture* v. *Board of Education*, 6 Conn. App. 309, 312, 505 A.2d 432 (1986) ("municipalities, by providing public education, are engaged in governmental duty.").

"The hallmark of a discretionary act is that it requires the exercise of judgment. . . . In contrast, [m]inisterial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion." *Martel* v. *Metropolitan District Commission*, 275 Conn. 38, 48-49, 881 A.2d 194 (2005). "[T]he ultimate determination of whether qualified immunity applies is ordinarily a question of law for the court. . . ." *Purzycki* v. *Fairfield*, 244 Conn. 101,107, 708 A.2d 937 (1998). The operation of a school district involves discretionary acts. See, e.g., *Heigl* v. *Board of Education*, 218 Conn. 1, 8-9, 587 A.2d 423 (1991) (concluding that the "the board of education was engaged in a discretionary activity in establishing the open campus policy. As a result, the board is immune from tort liability by reason of the doctrine of governmental immunity.").

In this case, all of the plaintiff's claims relate to two sets of actions by the defendants: the actions leading up to the Release Agreement with the plaintiff (Count Three; Count Four); and the actions responding to a FOIA request (Remaining Counts). The defendants argue that both sets of actions are discretionary, and subject to governmental immunity.

It is clear that addressing a personnel issue, deciding whether to enter into a Release Agreement or proceed with some alternative procedure (such as a teacher termination under General Statutes § 10-151), and deciding on the terms of that Release Agreement involve the Superintendent's exercise of discretion. See, e.g., *Singhaviroj* v. *Fairfield*, Superior Court, judicial district of Fairfield, Docket No. CV-05-007480-S (March 9, 2011, *Dooley, J.*) ("the overseeing or running of the technology department of the Board of Education and the hiring, firing and disciplinary issues that arise on a regular basis is quintessential governmental function."); *Lingos* v. *Clinton*, Superior Court, judicial district of Middlesex, Docket No. CV-04-0104139-S (October 11, 2005, *Silbert, J.*) (Connecticut courts have routinely held that the manner in which an employee is investigated is a discretionary function).

In this case, the Superintendent received complaints about the plaintiff, met with the plaintiff concerning his employment, asked the plaintiff to resign, and negotiated the Release Agreement with the plaintiff. Each action taken during this process by either the Superintendent or Neviaser is a quintessential discretionary act.

In the complaint, the plaintiff takes issue with the defendants' response to the FOIA request. The plaintiff contends that the defendants failed to notify him of the FOIA request, and erred by including certain documents in that response. Those decisions, however, were discretionary acts.

With respect to the documents included in that response, it is undisputed that the FOIA request from the Courant was addressed to four different types of documents, including the plaintiff's personnel file and the Superintendent's emails. The defendants necessarily had to exercise discretion when determining what documents, if any, were responsive to the Courant's four specific requests. In addition, the defendants had to exercise discretion when determining what, if any, exemptions were applicable to any of those responsive documents. See General Statutes § 1-210 (setting forth 27 possible exemptions from disclosure). As a school system, the defendants also had to ensure that no confidential student information was contained in the FOIA response. The plaintiff's disagreement with the determinations made by the defendants does not render those decisions ministerial. As a matter of law they were discretionary.

The plaintiff's opposition to the defendants' governmental immunity claim is based on one argument, that the defendants' actions were not discretionary because the documents released in the FOIA response were records of teacher performance and evaluation, which are protected from disclosure by § 10-151c. This argument is based on an unrealistic view of the facts. It is not disputed that the District received an FOIA request. Responding to that request is not a ministerial act. To the contrary, the defendants had to exercises discretion to determine what records were responsive, whether any of the FOIA's exemptions applied to those records, and whether those records constituted records of teacher performance and evaluation under § 10-151c. All of those steps, as a matter of law, involved discretionary determinations.

The discretionary nature of the defendants' response to the FOIA request is underscored by the plaintiff's argument that the defendants should have notified him of the FOIA request and/or given him an opportunity to object to that request. General Statutes § 1-214(b), however, only requires a district to give a teacher notice of an FOIA request when it "reasonably believes that the disclosure of such records would legally constitute an invasion of privacy." If the district "does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy," the district may release the documents without any notification. Id. The very acts about which the plaintiff complains are discretionary.

Governmental immunity is a defense to claims arising out of tortious and/or negligent conduct, and does not extend to breach of contract claims. See *Pelletier* v. *Bristol Board of Education*, Superior Court, judicial District of New Britain, Docket No. CV-08-5010351 (August 27, 2009, *Tanzer, J.*) ("Under common, principles of governmental immunity do not bar claims for breach of contract against political subdivisions of Connecticut."), citing *Saccardi* v. *Board of Education*, 45 Conn. App. 712, 697 A.2d 716 (1997). Therefore, the defendants are not entitled to summary judgment on Counts One and Two on the basis of governmental immunity. They are, however, entitled to summary judgment on the additional basis of governmental immunity with respect to Counts Three through Six.

The defendants further argue that they are entitled to summary judgment on all counts on the additional ground that each count is based on the defendants' response to the FOIA request and the plaintiff is essentially suing for alleged violations of FOIA even though there is no private right of action under FOIA.

General Statutes § 1-206 (b) (2) provides in relevant part that, "upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars."

The civil penalty provided by § 1-206 (b) (2) is the exclusive remedy for the violation of a right conferred by the FOIA, and FOIA does not give rise to a private cause of action. *Pane* v. *City of Danbury*, 267 Conn. 669, 678-79, 841 A.2d 684 (2004); see also *Perkins* v. *Freedom of*

Information Commission, 228 Conn. 158, 635 A.2d 783 (1993); *Massey* v. *Branford*, 119 Conn. App. 453, 471, 988 A.2d 370 (2010). As the Court stated in *Pane*:

> The general rule developed in our case law is that a municipality is immune from liability . . . unless the legislature has enacted a statute abrogating that immunity. . . . The plaintiff has pointed to no statutory provision expressly abrogating governmental immunity from claims arising under the FOIA. Accordingly, even if we assume that § 1-210 (b) (2) was intended primarily to advance the privacy interests of government employees within the meaning of *Napoletano*, the plaintiff's claim would be barred by governmental immunity. The fact that this leaves municipal employees who have otherwise meritorious claims against their employers without any remedy at law is simply an unavoidable consequence of the doctrine. Accordingly, we see no reason to disturb the trial court's well reasoned decision.

(Citation omitted.) *Pane* v. *Danbury*, supra, 267 Conn. 680-81. Although there is no remedy at law, our Supreme Court noted that "employees whose privacy rights are violated will [not] be left without a remedy" because § 1-206 (b) (2) provides for civil penalties. Id.,. 691.

In *Massey*, the plaintiffs claimed that a municipal employee "improperly handled the various requests made under the Freedom of Information Act . . . made by the plaintiffs." *Massey* v. *Branford*, supra, 119 Conn. App. 471. The Appellate Court affirmed the dismissal of their claim, however, as "our Supreme Court clearly has held that [FOIA] does not provide a private right of action for violation of its provisions and that the penalty provisions of the act are the exclusive remedy for the violation of a right conferred by the act." Id.

To the extent the plaintiff believes that the District mishandled the FOIA response, he should have sought relief at the FOIC. He did not, and he cannot now seek relief from this court through creative pleading. All of the counts in the complaint share the factual matrix that the District violated the FOIA when it complied with the Hartford Courant's request. Therefore, all counts are barred under *Pane* and *Massey*, which provides an additional ground for to grant the defendants' motion for summary judgment.

The defendants further base their motion for summary judgment on the grounds that there are no material issues of fact which would enable the plaintiff to prevail on any individual count of the complaint.

Counts One and Two: Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

"The elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 117 Conn. App. 550, 558, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009). "Whether there was a breach of contract is ordinarily a question of fact." (Internal quotation marks omitted.) *Rent-A-PC, Inc.* v. *Rental Management, Inc.*, 96 Conn. App. 600, 607, 901 A.2d 720 (2006).

In determining whether there was a breach, the court must look to the language in the Release Agreement. "A contract is to be construed as a whole and all relevant provisions will be considered together. . . . In giving meaning to the terms of a contract, we have said that a contract must be construed to effectuate the intent of the contracting parties. . . . The intention of the parties to a contract is to be determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . In interpreting contract items, we have repeatedly stated that the intent of the parties is to be ascertained by a fair and reasonable construction of the written words and that the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity. . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Citation omitted; internal quotation marks omitted.) *HLO Land Ownership Associates Ltd. Partnership* v. *Hartford*, 248 Conn. 350, 356-57, 727 A.2d 1260 (1999). "When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract." (Internal quotation marks omitted.) *Doyle* v. *Doyle*, 150 Conn. App. 312, 322, 90 A.3d 1024 (2014). "It is well established that [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law." (Emphasis omitted; internal quotation marks omitted.) *Harbour Pointe, LLC* v. *Harbour Landing Condominium Assn., Inc.*, 300 Conn. 254, 259-60, 14 A.3d 284 (2011).

The Release Agreement contains two provisions that are relevant to determining whether there exists a genuine issue of material fact as to whether the defendants breached the parties' Release Agreement. The first provision provides: "Except as provided in paragraph 7(c) and excluding attorney-client communications, EMPLOYEE and EMPLOYER, and their respective attorneys and agents shall not make any comment to any person, including but not limited to agents of the news and communications media, relating to claims by EMPLOYEE against EMPLOYER and/or this Agreement." This provision also provides: "It is understood that, this provision notwithstanding, EMPLOYER may be required to provide information concerning this Agreement pursuant to its obligations under the Freedom of Information Act or other applicable law and in order to carry out its obligations under this Agreement." The second provision of the separation agreement provides: "EMPLOYER and EMPLOYEE further agree that they will not make any disparaging, negative, false or misleading statements concerning or referring to the other at any time, oral or written (including in any electronic form), to any person or entity."

The defendants argue that they did not breach the relevant provisions of the Release Agreement. Specifically, they argue that the only statements made were in response to a FOI request, as anticipated by the Release Agreement. The court agrees with the defendants. The Release Agreement plainly and unambiguously states: "EMPLOYER may be required to provide information concerning this Agreement pursuant to its obligations under the Freedom of Information Act." The plaintiff seems to ignore this provision. Upon reading the contract as a whole and considering all relevant provisions together, it is apparent that the FOIA provision is an exception to the provisions that state no comments will be made to third parties, including media, and no disparaging, negative, false or misleading statements will be made. Therefore, if the defendants released information in response to the FOIA request, information that could otherwise be construed as disparaging, negative, false, or misleading, such release is authorized under the explicit language in the Release Agreement. Copies of correspondence between the defendants and the Hartford Courant demonstrate that the defendants complied a FOIA request when they furnished the Hartford Courant with information it requested regarding the plaintiff. The evidence submitted by the defendants demonstrates that they took a deliberative approach when they responded to the FOIA request by determining whether records were exempt from production. The evidence also demonstrates that the only statements made after the Release Agreement was entered into were in response to that request.[2] The defendants have met their initial burden of demonstrating the absence of a genuine issue of material fact as to whether the defendants breached the parties' Release Agreement. The burden now shifts to the plaintiff to establish that there is a genuine issue of material fact as to whether the defendants breached that Agreement.

The plaintiffs argue the defendants released records that are not subject to disclosure under FOIA. Specifically, they base their argument on the premise that records were disclosed that constituted teacher performance and evaluation records, which are not subject to the disclosure provisions of § 1-210, and their dissemination violates the provisions of § 10-151c.[3] The plaintiff's argument is misplaced for the following reasons.

First, unlike the two provisions that are explicitly provided for the in the Release Agreement, there is no provision in the agreement that specifically pertains to the disclosure of "teacher performance and evaluation records."

Second, the manner in which the defendants complied with the FOIA request, and the method of determining whether a record constitutes a "teacher performance and evaluation record" is beyond the scope of this breach of contract claim. The plain and unambiguous language of the provision providing for the disclosure of information pursuant to a FOIA request only anticipated for the possibility that the defendants would need to comply with a FOIA request. The provision only

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A review of the complaint also demonstrates that all of the plaintiff's allegations in Count One pertain to the defendants' compliance with a FOIA request from the Hartford Courant.

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Section 10-151c provides in relevant part that: "Any records maintained or kept on file by any local or regional board of education which are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of such teacher's records by a board of education. . . ."

pertains to the act of complying with a possible a FOIA request. Such provision did not control the substance of defendants' response. When only one interpretation of a contract is possible, this court need not look outside the four corners of the contract. *Doyle* v. *Doyle*, supra, 150 Conn. App. 322. See also *HLO Land Ownership Associates Ltd. Partnership* v. *Hartford*, supra, 248 Conn. 357 ("A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity."). When the plaintiff alleges in his breach of contract claim that the defendants released teacher performance and evaluation records in response to the FOIA request, the plaintiff indirectly concedes that the defendants complied with the FOIA provision in the Release Agreement. He has failed to demonstrate that the defendants breached the Release Agreement by producing records other than in response to a FOIA request.

The plaintiff also argues that releasing information diminished the value of a letter of recommendation. He argues that the defendants released information that was disparaging, negative, false, misleading and highly offensive to a reasonable person and information that rendered the agreed upon letter of recommendation meaningless when the defendants released records in violation of § 10-151c. The plaintiff, however, has failed to provide evidence to contradict the defendants' contention that they did not breach the relevant provisions of the Release Agreement by releasing information outside of the Hartford Courant's FOIA request. Whether the release of information rendered the letter of recommendation "meaningless" is irrelevant.

This court finds that all of the defendants' conduct alleged to have constituted a breach of the Release Agreement are within the FOIA exception in the Release Agreement. Therefore, the plaintiff has failed to meet his burden of demonstrating the existence of a genuine issue of material act as to whether the defendants breached the Release Agreement. For the foregoing additional reasons, summary judgment enters in favor of the defendants on Count One of the Complaint.

The defendants argue that they are entitled to summary judgment on Count Two of the plaintiff's Complaint because Count Two is dependent on Count One, so it should be dismissed for the same reason as Count One. Moreover, if Count Two has some independent viability, it still fails because the plaintiff has failed to demonstrate that the defendants acted in bad faith. The plaintiff counters that a genuine issues of material fact exist with respect to the plaintiff's claim of the breach of the covenant of good faith and fair dealing.

"[I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." (Citations omitted; internal quotation marks omitted.) *De La Concha of Hartford, Inc.* v. *Aetna Life Ins. Co.*, 269 Conn. 424, 432, 849 A.2d 382 (2004). "As our case law makes clear, no claim for breach of the duty of good faith and fair dealing will lie for conduct occurring prior to, or during, the formation of a contract." *Macomber* v. *Travelers Property & Casualty Corp.*, 261 Conn. 620, 638, 804 A.2d 180 (2002). An action for breach of the implied covenant of good faith and fair dealing requires proof of three elements: "(1) that the plaintiff and the defendant were parties to a contract under which the plaintiff reasonably expected to receive certain benefits; (2) that the defendant engaged in conduct that injured the plaintiff's right to receive some or all of those benefits; and (3) that when committing the acts by which it injured the plaintiff's right to receive under the contract, the defendant was acting in bad faith." (Internal quotation marks omitted.) *Le* v. *Saporoso*, Superior Court, judicial district of Hartford, Docket No. CV-09-5028391-S (October 19, 2009, *Domnarski, J.*).

It is possible for a party to engage in conduct which, although not a breach, injures a party's right to receive reasonably expected benefits. Even though the defendants have met their burden in establishing that there is no genuine issue of material fact as to whether they breached the provisions of the Release Agreement, this does not automatically mean that there is no genuine issue of material fact as to whether the defendants complied with the Release Agreement in bad faith. *Austrian* v. *United Health Group Inc.*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X06-CV-05-4010357-S (July 17, 2007, *Stevens, J.*) (43 Conn. L. Rptr. 852, 862) ("Although the court has concluded that the plaintiffs have not stated a cause of action based on an express breach of the agreements, no such finding is necessary to support a claim for breach of the implied covenant of good faith."), citing *Landry* v. *Spitz*, 102 Conn. App. 34, 46-47, 925 A.2d 334 (2007).[4] Rather, courts have often found that the breach of implied covenant of good faith and fair dealing automatically fails when there is no contract. *Hoskins* v. *Titan Value Equities Group, Inc.*, 252 Conn. 789, 793, 749 A.2d 1144 (2000) ("In accordance with these authorities, the *existence of*

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In *Landry* v. *Spitz*, the Appellate Court acknowledged that most courts decline to find a breach of the covenant apart from a breach of an express contract term. *Landry* v. *Spitz*, supra, 102 Conn. App. 47. The Court went on to explain that in a situation in which a party's compliance with certain contractual provisions requires discretion, courts may impose the requirements of good faith and fair dealing. Id., 48. Here, the determination of whether records are subject to disclosure under FOIA is discretionary. See *Ottochian* v. *Freedom of Information Commission*, 221 Conn. 393, 398-99, 604 A.2d 351 (1992) (In context of teacher performance records and FOIA: "In exempting these records of teacher performance and evaluation, the legislature chose neither to provide criteria for determining what documents constitute such records nor to define the term 'records.' When the legislature uses a broad term . . . in an administrative context, without attempting to define that term, it evinces a legislative judgment that the agency should define the parameters of that term on a case-by-case basis.").

a contract between the parties is a necessary antecedent to any claim of breach of the duty of good faith and fair dealing." [Emphasis added.]). This is not the issue here. Neither party has contested the validity or existence of the Release Agreement. Thus, the court turns to whether there is a genuine issue of material fact as to whether the defendants' compliance with the FOIA request was done in bad faith by releasing certain records.

"To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith. . . . Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves a dishonest purpose." (Citations omitted; internal quotation marks omitted.) *De La Concha of Hartford, Inc.* v. *Aetna Life Ins. Co.*, supra, 269 Conn. 433. "A mere conclusory allegation of bad faith unsupported by any factual allegations, is insufficient to sustain a claim of bad faith." (Internal quotation marks omitted.) *Wolverine Fire Protection Co.* v. *Tougher Industries*, Superior Court, judicial district of Hartford, Docket No. CV-01-0805554-S (June 20, 2001, *Hale, J.*) (29 Conn. L. Rptr. 731, 733). "[E]ven with respect to questions of motive, intent and good faith, the party opposing summary judgment must present a factual predicate for his argument in order to raise a genuine issue of fact." (Internal quotation marks omitted.) *Voris* v. *Middlesex Mutual Assurance Co.*, 297 Conn. 589, 603, 999 A.2d 741 (2010). "Whether a party has acted in bad faith is a question of fact . . . ." *Renaissance Management Co.* v. *Connecticut Housing Finance Authority*, 281 Conn. 227, 240, 915 A.2d 290 (2007).

In the present case, the defendants have demonstrated that they complied with the plain language of the Release Agreement when they furnished information and e-mails to the Hartford Courant pursuant to a FOIA request. The defendants argue that such compliance was not done in bad faith. Copies of correspondence between the defendants and the Hartford Courant demonstrate that the defendants took a deliberative approach in determining which records were responsive to the Hartford Courant's FOIA request. For example, a correspondence dated January 31, 2011, states that the defendants were "reviewing copies of the emails in question to determine the exempt or non-exempt status of each email message sent or received by the Superintendent during the relevant time period." Moreover, correspondence dated November 15, 2010, states that the defendants enclosed records "which . . . do not constitute records of teacher performance and evaluation." This demonstrates that the defendants did not engage in actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation. Even assuming that the records released did constitute teacher performance and evaluation records, at best such release was prompted by an honest mistake and not by some interested or sinister motive. The defendants have met their initial evidentiary burden of demonstrating the absence of a genuine issue of material fact as to whether the defendants acted in bad faith.

The plaintiff counters that the evidence demonstrates that the defendants failed to fairly, honestly and reasonably perform the terms and conditions of the Release Agreement, which constitutes bad faith on the part of the defendants and amounts to a breach of the covenant of good faith and fair dealing. The plaintiff, however, has provided no factual basis for his claim. Rather, the plaintiff merely argues the defendants acted in bad faith when they failed to perform their contractual obligations. "A mere conclusory allegation of bad faith unsupported by any factual allegations, is insufficient to sustain a claim of bad faith." *Wolverine Fire Protection Co.* v. *Tougher Industries*, supra, Superior Court, Docket No. CV-01-080554-S. The plaintiff has failed to demonstrate that the defendants neglected or refused to fulfill a contractual obligation or that the defendants acted with an interested or sinister motive. In the absence of evidence of bad faith, no genuine issue of material fact exists as to Count Two. Therefore, summary judgment enters in favor of the defendants on Count Two for the additional ground set forth above.

Count Three: Negligent Misrepresentation

The defendants argue that an additional ground exists to warrant summary judgment with respect to Count Three, which alleges negligent misrepresentation. The undisputed evidence demonstrates that the defendants' actions were perfectly consistent with the Release Agreement, there was no misrepresentation made by the defendants, and the plaintiff cannot establish reasonable reliance. The plaintiff counters that there is a genuine issue of material fact as to whether the defendants made any misrepresentations.

"Traditionally, an action for negligent misrepresentation requires the plaintiff to establish (1) that the defendant made a misrepresentation of fact (2) that the defendant knew or should have known was false, and (3) that the plaintiff reasonably relied on the misrepresentation, and (4) suffered pecuniary harm as a result." *Nazami* v. *Patrons Mutual Ins. Co.*, 280 Conn. 619, 626, 910 A.2d 209 (2006). "It must be established that there was a false representation in order for a plaintiff to prevail on a negligent misrepresentation claim. . . . A plaintiff also is required to show that he reasonably relied on the misrepresentation." (Citation omitted.) *Biro* v. *Matz*, 132 Conn. App. 272, 284-85, 33 A.3d 742 (2011). "[A] claim of . . . negligent misrepresentation is a question of fact."

(Internal quotation marks omitted.) *Sovereign Bank* v. *Licata*, 116 Conn. App. 483, 502, 977 A.2d 228 (2009), appeal dismissed, 303 Conn. 721, 36 A.3d 662 (2012).

The plaintiff's negligent misrepresentation claim focuses on two provisions of the Release Agreement. The defendants argue that there is no genuine issue of material fact as to whether the defendants made a false representation. The plaintiff argues that the defendants made a misrepresentation because what was disclosed was not subject to the FOIA request and therefore constituted the release of disparaging, negative, false or misleading statements which was prohibited by the Release Agreement. Thus, the issue centers on whether the defendants' statement in the Release Agreement, that they would not release disparaging, negative, false or misleading statements, was a statement that the defendants knew or should have known was false. As previously discussed in the context of the plaintiff's breach of contract claim, the Release Agreement contemplated the possibility that the defendants might need to furnish information regarding the plaintiff pursuant to an FOIA request, and the Release Agreement specifically provides that compliance with FOIA as an "exception" to the Agreement provisions. Because the Release Agreement explicitly provided for this possibility and the only "representations" of any sort made by the defendants were made in response to the FOIA request, the defendants made no misrepresentations regarding their intention not to make disparaging, negative, false or misleading comments about the plaintiff.

The plaintiff also argues that what was disclosed contradicted the recommendation letter affixed to the Release Agreement. In essence, the plaintiff argues that the content of the recommendation letter upon which the parties agreed was false, and therefore a false representation on part of the defendants, because the defendants subsequently released information contradicting the substance of the recommendation letter. This argument is unpersuasive for the same reasons discussed in regard to the provision in the Release Agreement stating that defendants would not make any disparaging, negative, false or misleading statements. The Release Agreement explicitly provided for the possibility of the defendants' compliance with a future FOIA request. It is undisputed that no statements of any kind were made by the defendants after the date of the Release Agreement. The only statements to which the Complaint pertains were created prior to the date of the Release Agreement and disclosed pursuant to the FOIA request. Accordingly, there exists no genuine issue of material fact as to whether the defendants made a false representation. This provides an additional ground on which summary judgment enters in favor of the defendants on Count Three of the Complaint.

Counts Four and Five: Defamation and Invasion of Privacy

The defendants argue that in regard to the plaintiff's defamation claim, the plaintiff cannot demonstrate that any statements were made with actual malice. In regard to the plaintiff's invasion of privacy claim, the plaintiff cannot demonstrate that the defendants acted with reckless disregard.

"A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him . . . . To establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Internal quotation marks omitted.) *Hopkins* v. *O'Connor*, 282 Conn. 821, 838, 925 A.2d 1030 (2007). "Defamation is comprised of the torts of libel and slander. . . . Slander is oral defamation. . . . Libel

. . . is written defamation." (Internal quotation marks omitted.) *Mercer* v. *Cosley*, 110 Conn. App. 283, 297, 955 A.2d 550 (2008).

"If the plaintiff is a public figure, however, the plaintiff also must prove that the defamatory statement was made with actual malice, such that the statement, when made, [was] made with actual knowledge that it was false or with reckless disregard of whether it was false." (Internal quotation marks omitted.) *Gambardella* v. *Apple Health Care, Inc.*, 291 Conn. 620, 628, 969 A.2d 736 (2009). "A public figure has been defined as someone who has assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classified as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."(Internal quotation marks omitted.) *McIntire* v. *Piscottano*, Superior Court, judicial district of Tolland, Docket No. CV-01-0076151 (May 23, 2005, *Scholl, J.*). In *Kelley* v. *Bonney*, 221 Conn. 549, 581, 606 A.2d 693 (1992), the Supreme Court concluded that "a public school teacher is a public official for defamation purposes."

To show actual malice based on the premise that the defendants knew of the falsity of the statements, "[t]he . . . proper inquiry is whether a defendant believes, honestly and in good faith, in the truth of his statements and whether he has grounds for such belief. . . . [H]owever, a trial court is not required merely to accept a defendant's self-serving assertion that he published a defamatory statement without knowing that it was false." (Citation omitted.) *Gambardella* v. *Apple Health Care, Inc.*, supra, 291 Conn. 638. To show actual malice based on the premise that the defendants acted with reckless disregard of the truth, the Supreme Court has stated that "reckless disregard may be found when an individual publishes defamatory statements with a high degree of awareness of . . .

[the statements'] probable falsity . . . or . . . entertained serious doubts as to the[ir] truth . . . ." (Internal quotation marks omitted.) Id., 639.

The court finds that there exists no genuine issue of material fact as to whether the defendants acted with actual malice. The crux of the plaintiff's claim is that communications that were exchanged in school were made negligently and/or with knowledge that such statements were false. The defendants argue that the undisputed evidence is that Levy and Neviaser received comments directly from numerous teachers and a union representative who came to see them about their concerns with the plaintiff's performance. All of these concerns related directly to the plaintiff's poor job performance. Levy and Neviaser then drafted documents and sent e-mails based on these concerns. The defendants contend that the plaintiff has not and cannot identify any facts that suggest that any statements from the teachers, Levy, or Neviaser were made with actual malice. The defendants have met their initial burden of demonstrating the absence of a genuine issue of material fact as to whether the defendants acted with actual malice.

The plaintiff has failed to put forth evidence that demonstrates that the defendants' statements were made with actual malice. The plaintiff merely states that malice can be inferred from the defendants' actions in releasing the statements after the agreement was entered into between the parties and despite the exclusion for records of teacher performance and evaluation from disclosure. Because the plaintiff has not presented evidence to support his claim of actual malice, but merely asserts its existence, he has failed to raise a genuine issue of material fact. Accordingly, there exists no genuine issue of material fact as to whether the defendants made acted with actual malice.

For the foregoing reasons, summary judgment enters in favor of the defendants on Count Four for the additional reason that there are no issues of material fact which support the necessary element of actual malice and, therefore, the plaintiff cannot prevail on his defamation count.[5]

The defendants argue that the lack of a genuine issue of material fact as to any of the elements of invasion of privacy serves as an additional ground for summary judgment with respect to Count Five.

Our Supreme Court, in recognizing a cause of action for invasion of privacy, adopted four categories: "(a) unreasonable intrusion upon the seclusion of another; (b) appropriation of the other's name or likeness; (c) unreasonable publicity given to the other's private life; or (d) publicity that unreasonably places the other in a false light before the public." (Footnote omitted.) *Goodrich* v. *Waterbury Republican-American, Inc.*, 188 Conn. 107, 128, 448 A.2d 1317 (1982). "A number of state and federal courts have applied the Restatement rule that a false light invasion of privacy occurs if (a) the false light in which the other was place would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. 3 Restatement (Second), Torts § 652E. . . . This form of invasion of privacy protects one's interest in not being placed before the public in an objectionable false light or false position, or in other words, otherwise than as he is. . . . The essence of a false light privacy claim is that the matter published concerning the plaintiff (1) is not true . . . and (2) is such a major misrepresentation of his character, history, activities or beliefs that

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Because there is no genuine issue of material fact as to whether the statements were made with actual malice, the court need not determine the defendants' remaining arguments as to whether the defendants made a defamatory statement, whether the statements were statements of opinion, and whether the statements were protected by the intra-corporate privilege.

serious offense may reasonably be expected to be taken by a reasonable man in his position." (Citations omitted; internal quotation marks omitted.) Id., 131. The Supreme Court has held that reckless disregard may be found when an individual publishes defamatory statements "with a high degree of awareness of . . . probable falsity . . . or . . . entertained serious doubts as to the truth of [the] publication . . . ." (Internal quotation marks omitted.) *Gambardella* v. *Apple Health Care, Inc.*, supra, 291 Conn. 639.

The court finds that there is no genuine issue as to whether the defendants acted with reckless disregard. The defendants argue that teachers and union representatives had concerns about the plaintiff's job performance. These concerns were shared by Levy and Neviaser. The statements are truthful opinions about these concerns and not made with a high degree of probable falsity or serious doubts as to their truthfulness. Further, the defendants contend that the plaintiff cannot identify any evidence that either Levy and Neviaser acted with reckless disregard in any conduct leading up to the plaintiff's resignation or in regard to the FOIA response. The defendants have met their initial burden of demonstrating the absence of a genuine issue of material fact as to whether the defendants acted with actual malice.

The plaintiff has failed to put forth evidence that demonstrates that the defendants' statements were made with reckless disregard as to the false light claim. Because the plaintiff has not presented evidence to support his claim of reckless disregard, but merely asserts its existence in his complaint, he has failed to raise a genuine issue of material fact. Accordingly, there exists no genuine issue of material fact as to whether the defendants acted in reckless disregard as to the falsity of[6] the

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Because there is no genuine issue of material fact as to whether the defendants acted with reckless disregard, the court need not address the defendants' remaining arguments as to whether publicized matter and this constitutes an additional ground upon which summary judgment enters in favor of the defendants on Count Five of the Complaint.

Count Six: Public Policy Tort

In the defendants' motion for summary judgment, they argue that there is no legal basis for the plaintiff's public policy tort claim. In Count Six, the plaintiff purports to assert a "public policy tort" based on the public policy set forth in § 10-151c. More specifically, the plaintiff claims that the defendants' alleged actions "are wrongful, unjustified and violate the judicially conceived notion of public policy. . . ." See Complaint, Count Six ¶ 16.

Neither the language of § 10-151c nor the language of the FOIA provide the plaintiff with a private right of action. The plaintiff does not explicitly allege a private cause of action under either statute. Instead, he claims a nebulous "public policy tort" based on the public policies set forth in those statutes. Such an argument, while creative, is without any legal basis. The legislature has made clear that any remedies for violation of the FOIA must be provided by the Commission pursuant to § 1-214, and the Legislature declined to include any remedial provision in § 10-151c. Had the legislature wanted to provide a private right of action in either FOIA or § 10-151c, it could have. Absent any such legislative action, there is no legal basis for Count Six.[7]

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an invasion of privacy claim is procedurally improper, whether there is a false statement, and whether the disclosure was highly offensive.

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The only "public policy" tort recognized by the Connecticut Supreme Court is a wrongful discharge tort. See, e.g., *Sheets* v. *Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 427, 427 A.2d 385 (1980). That tort plainly is not applicable here given that Plaintiff entered into a separation agreement and his allegations do not challenge the termination of his employment in any manner.

The foregoing supports an additional ground upon which to grant summary judgment in favor of the defendants on Count Six.

The Defendants' Counterclaim

The defendants argue that they are entitled to summary judgment on their Counterclaim against the plaintiff because the plaintiff waived his right to bring this lawsuit in the Release Agreement. Specifically, the undisputed evidence demonstrates that there is no legal or factual basis for the plaintiff's claims and that his claims are in direct violation of the parties' Release Agreement. The plaintiff counters that there is a sufficient basis for all of his claims as alleged and that genuine issues of material fact exist with respect to all of the plaintiff's claims. Thus, the plaintiff contends that the defendants should not be entitled to judgment as a matter of law on their counterclaim.

As previously discussed in the context of the plaintiff's breach of contract claim, "[t]he elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, supra, 117 Conn. App. 558. "Whether there was a breach of contract is ordinarily a question of fact." (Internal quotation marks omitted.) *Rent-A-PC, Inc.* v. *Rental Management, Inc.*, supra, 96 Conn. App. 607.

In determining whether there was a breach, the court must look to the language of the Release Agreement. "A contract is to be construed as a whole and all relevant provisions will be considered together. . . . In giving meaning to the terms of a contract, we have said that a contract must be construed to effectuate the intent of the contracting parties. . . . The intention of the parties to a contract is to be determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . In interpreting contract items, we have repeatedly stated that the intent of the parties is to be ascertained by a fair and reasonable construction of the written words and that the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity. . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Citation omitted; internal quotation marks omitted.) *HLO Land Ownership Associates Ltd. Partnership* v. *Hartford*, supra, 248 Conn. 356-57. "When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract." (Internal quotation marks omitted.) *Doyle* v. *Doyle*, supra, 150 Conn. App. 322. "It is well established that [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law." (Emphasis omitted; internal quotation marks omitted.) *Harbour Pointe, LLC* v. *Harbour Landing Condominium Assn., Inc.*, supra, 300 Conn. 259-60.

The release and waiver provisions in the parties' Release Agreement contains the following language. "Employee knowingly and voluntarily releases and forever discharges EMPLOYER, all of EMPLOYER's past, present and future elected and appointed officials, officers, agents, attorneys, insurers, representatives, employees, individually and in their official capacity, and any person acting on behalf of or in concert with any of them (collectively, 'RELEASEES'), from any and all claims, demands, obligations, liabilities, causes of action, known or unknown, asserted or unasserted, and any claim for costs, attorney's fees, expenses or any form of damages whatsoever (including but not limited to liquidated and/or punitive damages, compensatory damages and/or damages for emotional distress) which EMPLOYEE has or may have against RELEASEES arising out of or in any way connected with EMPLOYEE's employment or separation from employment . . . ." The release also includes any alleged violation of various statutes and other grounds for potential liability set forth in paragraph 6 of the Agreement. That same provision also contains the following language. "EMPLOYEE understands that this is a comprehensive waiver of any and all claims by the EMPLOYEE resulting from or arising of or in any way connected with EMPLOYEE's employment or separation from employment."

The agreement further provides that "[s]hould EMPLOYEE commence or prosecute any action or proceeding contrary to the provisions of this Agreement, EM[P]LOYEE agrees to indemnify EMPLOYER for all costs, including court costs and reasonable attorney's fees, including by EMPLOYER in the defense of such action or in establishing or maintaining the application or validity of this Agreement or the provisions thereof, to the extent allowed by applicable law." The waiver provision is clear as to which claims the plaintiff has agreed to waive, i.e., any and all claims, known or unknown, which the plaintiff has or may have against the defendants arising out of or in any way connected with the plaintiff's employment or separation from employment.

The defendants argue that the plaintiff breached the parties' Release Agreement by bringing this lawsuit. Specifically, as part of the Release Agreement, the defendants agreed to pay the plaintiff his then current salary through April 2011, provide him with a letter of recommendation, as well as continue the plaintiff's health insurance benefits through January 30, 2011 or until he obtained benefits elsewhere. The plaintiff does not dispute that the defendants complied with those obligations. In exchange, the plaintiff agreed to the release and waiver provisions in the Release Agreement. By signing the Release Agreement the plaintiff explicitly permitted the defendants to comply with FOIA requests. There being no material contested issues of fact supporting any conclusion other than the plaintiff has accepted the benefits of the Release Agreement and waived and released all the claims he now seeks to assert, the plaintiff has breached the Release Agreement. Therefore, he is liable under the Agreement for all the defendants' reasonable costs and fees incurred in relation to the defense of this action. Summary judgment enters in favor of the defendants on their counterclaim. The court will hold a hearing to determine the amount of the defendants' attorney's fees and costs.

By the court,

Aurigemma, J.