IT IS SO ORDERED.

Dated: February 28, 2025

Guy R. Humphrey
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
EARL G. HARRIS JEANETTE C. HARRIS,	:	Case No. 22-31221 Chapter 7 Judge Humphrey
Debtor.	:	
Ohio Attorney General,	:	
Plaintiff,	:	
v.	:	Adv. No. 23-3003
Jeanette C. Harris,	:	
Defendant.	:	

DECISION DENYING OHIO ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT (DOC. 54)

I. PROCEDURAL BACKGROUND

On August 31, 2022 the debtors, Earl G. Harris and Jeanette C. Harris, filed a joint petition for relief under Chapter 7 of the Bankruptcy Code. Estate Doc. 1. On March 2, 2023 the state of Ohio, through the Ohio Attorney General ("Ohio"), filed an adversary proceeding against Jeanette Harris ("Harris"). As detailed in a prior decision of the court denying Harris's motion to dismiss (Doc. 22), Ohio's complaint concerns Harris's dual role in certain community schools and, as will be explained, the management companies that had a direct or indirect relationship with these schools. In Count I, the complaint sought to find Harris strictly liable for at least $2,198,651, plus interest for strict liability as a public official for funds received by two management companies that entered into contracts with the community schools. See Ohio Rev. Code § 9.39 (stating that "[a]ll public officials are liable for all public money received or collected by them or by their subordinates under color of office."). The second count seeks a finding that Harris breached her fiduciary duty of loyalty in this dual role with the community schools and the management companies. Count III seeks to find Harris liable under the faithless servant doctrine for all compensation she received from the community schools due to her violation of the fiduciary duty of loyalty.[1] Count IV seeks to find any judgment against Harris non-dischargeable pursuant to § 523(a)(7) of the Bankruptcy Code.

On March 23, 2023 Harris sought to dismiss the complaint for failure to state a claim. Doc. 10. Ohio voluntarily agreed to dismiss Count I. Doc. 16 at 1. The court otherwise denied Harris's motion to dismiss. Docs. 22, 23. The court also denied Harris's motion to strike the appendix to

[1] As the court noted in its prior decision [Doc. 22 at 5 n.2], Count III is mislabeled as Count II in the complaint due to a scrivener error.

Ohio's complaint, a 496 page audit of the community schools prepared by the Auditor for the State of Ohio, dated June 30, 2011. Docs. 8, 17, 18.

Due to the death of Harris's legal counsel during the pendency of this adversary proceeding, this litigation was effectively stayed until Harris's new counsel filed a notice of appearance on December 12, 2023. Doc. 33. Harris filed her answer on January 12, 2024. Doc. 38. The court issued a scheduling order on March 19, 2024, which, among other things, fixed a summary judgment deadline of December 6, 2024. Doc. 44. On December 6, 2024, Ohio filed for summary judgment on the remaining three counts, seeking a judgment in the total amount of $876,829, which represents compensation Harris received (which will be explained below), and a finding that this judgment is non-dischargeable under § 523(a)(7) of the Bankruptcy Code. Harris filed her response on December 31, 2024, and Ohio its reply on January 2, 2025. Docs. 58, 59. This court took the matter under advisement.

II. JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. § 1334(b) and the Standing Order of Reference (Amended General Order No. 05-02) of the District Court for the Southern District of Ohio in accordance with 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). This court has constitutional authority to determine the dischargeability of debts and to enter a final judgment by the knowing and voluntary consent of the parties, and additionally, by the nature of the causes of action in the complaint. See Joint Preliminary Pretrial Statement, Doc. 41 at 2 (parties consenting to final determination by the bankruptcy court); *Wellness Int'l Network, LTD. v. Sharif*, 575 U.S. 665, 686 (2015) (holding that bankruptcy courts are constitutionally permitted to try *Stern* claims by consent); *Hart v. S. Heritage Bank* (*In re Hart*),

564 Fed. Appx. 773, 775-77 (6th Cir. 2014) (determining that a bankruptcy court has the constitutional authority to enter a monetary judgment in a dischargeability action).

III. SUMMARY JUDGMENT STANDARD

A court "shall 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." Fed. R. Civ. P. 56(a) (made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056). "A 'genuine' dispute exists only where 'evidence is such that a reasonable [finder of fact] could return a [judgment] for the nonmoving party.'" *Papa v. Bolera* (*In re Bolera*), 564 B.R. 569, 577 (Bankr. S.D. Ohio 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 270 (6th Cir. 2009)). A fact is material if it might affect the outcome of the suit under substantive law. *Niecko v. Emro Mktg. Co.*, 973 F.2d 1296, 1304 (6th Cir. 1992) (citing *Anderson*, 477 U.S. at 248).

"To prevail, the moving party, if bearing the burden of persuasion at trial, must establish all elements of its claim." *Bolera*, 564 B.R. at 577 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)). "[T]he nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co, Ltd.. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted). When reviewing a motion for summary judgment, a court views all evidence and draws all inferences in the light most favorable to the nonmoving party. *Id.*

IV. FINDINGS OF FACT

The state of Ohio permits what are statutorily defined as "community schools." Ohio Rev. Code Chapter 3314; *DeWine v. Dudley* (*In re Dudley*), 582 B.R. 708, 714 (Bankr. S.D. Ohio 2017). Community schools use public funds from grants and also state operating funds that are transferred from the public school district in which a community school student resides. *Id.* Community

schools are "political subdivisions" of the state of Ohio. *Greater Heights Academy v. Zelman*, 522 F.3d 678, 680 (6th Cir. 2008). Community schools are commonly referred to as charter schools. *Dudley*, 582 B.R. at 714 n.4.

Harris founded four different schools known as the Richard Allen Academies or Richard Allen Schools (the "Schools") starting in 1999. Montgomery County (Ohio) Court of Common Pleas, No. 2017 CV 5140, Transcript of Jeanette Harris Deposition (May 17, 2022) ("Harris Dep.") (Doc. 54, Ex. 1) at 12:13-17. [2] Harris was President of the Schools from 2002 until January 3, 2009, and was President/CEO of the Schools from 2009 through 2012. Pl. Ex. 2 at 7-8. Harris testified that she was "initially CEO" of the Schools. Harris Dep. at 11:5-7. The corporate records of the Schools appeared to show Harris was President of the Schools for a longer period, from 2000 to 2016. *Id.* at 15:19-17:21. In any event, Harris indicated there was not a meaningful difference in these two officer designations. *Id.* at 19:15-20. Harris testified that the position of the President of the Schools was "really a corporate function" and that she was not involved in "any administration" or "management functions" of the Schools. *Id.* at 17:25-18:11. Harris stated as President she "took care of corporate matters such as with the board", but also negotiated "deals . . . with the management companies." *Id.* at 18:23-19:3. Harris never had an employment contract with the Schools. *Id.* at 19:21-23.

The Schools operated with a "consolidated set of officers" and also "Board members." *Id.* at 15:4-10. Harris also founded the Institute of Management Resources ("IMR"). Pl. Ex. 2 at ¶ 15 (Request for Admissions). IMR had a contract with the Schools to provide management services. The Schools did not require competitive bidding for IMR to receive these contracts, although it

[2] The names of the Schools were the Richard Allen Academy, Richard Allen Academy II, Richard Allen Academy III, and the Richard Allen Preparatory Academy. Harris Dep. at 12:4-9.

appears this was not required under state law. See Ohio Rev. Code § 3314.04 (providing community schools are generally exempt "from all state laws and rules pertaining to schools, school districts, and boards of education, except those law and rules that grant certain rights to parents.").[3] Harris signed contracts on behalf of IMR. *See e.g.* Harris Dep. 47:20-48:1 (Harris testifying that she signed the management contract with the Schools on behalf of IMR in her capacity as President). Harris also owned another management company known as the Institute of Charter School Management and Resources ("ICSMR" and collectively with IMR, the "Management Companies"). Harris Dep. 26:7-17. Harris was the sole shareholder, CEO, and President of ICSMR from 2000 until at least 2018. Pl. Ex. 2 (Request for Admissions 18). The Schools had contracts with IMR, and IMR in turn had separate contracts with ICSMR to provide services to IMR. Besides the Schools, ICSMR worked with other schools in Florida and Georgia with "development, help with the management" and "train[ing] staff." Harris Dep. at 96:1-8.

Harris was never employed by the Schools. *Id.* at 19:21-23. As noted, Harris also testified that she was never paid by the Schools or IMR, but instead she was paid by ICSMR.[4] *Id.* at 20: 1-8; 25:6-8. See also Pl. Ex. 2 at 9 (answering interrogatory 3 by stating that Harris never was compensated by the Schools). The compensation Harris received from ICSMR was from 2006 through 2013. Pl/ Ex. 2 (Request for Admissions 20). Federal tax forms 990 filed for the Schools, and signed by Harris under penalty of perjury, show that Harris was paid by organizations related to the Schools.[5] Pl. Ex. 4 at 8, 22 (stating for the 2008 fiscal year, within the Richard Allen

[3] Harris also references a document from an unknown source titled "Guide to Charter or Community Schools" for the principle that Ohio community schools are not required to comply with "competitive bidding requirements." Harris Ex. B. Besides the unknown source of this document, the court did not give it any weight for purposes of determining Ohio's summary judgment motion because it appears to be a legal opinion.

[4] Harris was covered by health insurance through IMR. Harris Dep. 89:23-25.

[5] Tax exempt organizations are required to file a federal tax form 990 yearly, based on the organization's tax year. 108 Prac. Tax Strategies 35 (June 2022). The Schools' tax year ended on June 30th. See e.g. Pl. Ex. 1 at 2.

Academy Inc. Form 990, Harris received $175,000 in reportable compensation and $24,500 in non-taxable benefits for a total of $199,500); Pl. Ex. 5 at 7, 23 (stating that for the 2009 fiscal year, within the Richard Allen Academy II Inc. Form 990, Harris received $185,004 in reportable compensation, $25,901 in "retirement and other deferred compensation" and $9.585 in non-taxable benefits for a total of $220,490); Pl. Ex. 6 at 7, 24 (stating that for the 2010 fiscal year, within the Richard Allen Academy III Form 990, Harris received $189,376 in reportable compensation (salary and bonuses), $26,513 in "retirement and other deferred compensation, and $10,796 in non-taxable benefits for a total of $226,685); Pl. Ex. 7 at 7, 24 (stating that the 2011 fiscal year, within the Richard Allen Academy III Form 990, Harris received $175,000 in base compensation, $14,376 in bonuses, $26,513 in "retirement and other deferred compensation", and $14,265 in non-taxable benefits for a total of $230,154).[6] In total, according to the tax returns filed by the Schools, and signed under oath by Harris, Harris received $876,829 during the Schools' fiscal years 2008 through 2012. Harris also received $12,725 from IMR in 2006. Pl. Ex. 2 at 9 (Interrogatory 2).

Harris testified that she was not involved in the financial affairs of the Schools or IMR. Harris Dep. 101:8-9. She testified that a superintendent managed the Schools. *Id.* at 18:13-16. The Schools also had a treasurer to address financial matters. See Harris Ex. A (bond for the Schools signed by Felix A. O'Aku, as Treasurer); Harris Ex. D (affidavit of O'Aku stating that, as Treasurer of the Schools, that he "was familiar with all the aspects of the finances"). When asked about her role as an officer, she indicated that she was not involved in day-to-day management. Harris did not recall having signatory authority on the Schools' bank accounts. Pl. Ex. 2 (Request for

[6] The parties stipulated that the Form 990s for each school were identical as to Harris's compensation for that particular fiscal year. Harris Dep. 20:24 – 21:4.

Admissions 21).[7] However, in another portion of her testimony, Harris indicated that she was involved in the IMR contracts with the Schools and also with contracts with other vendors. Harris Dep. 19:1-6. Harris received $12,725 from IMR in 2006, but indicated no other compensation was paid to her by IMR. Ex. 2 (Interrogatory 2).

The primary customer of IMR was the Schools. Harris Dep. at 43:13-16. Harris testified that IMR had separate contracts with other schools for which it provided occasional training, but could not identify any specific schools, stating only that they were located in Ohio, Florida, and Michigan. *Id.* at 43:17 – 44:13. IMR did not manage any other schools. *Id.* at 44:14-16. IMR provided "management services" to the Schools, including employing all the teachers and staff. *Id.* at 45:21-24. IMR also negotiated contracts with vendors on behalf of the Schools. *Id.* at 46:12-14. Harris was the President of IMR from 2006 through at least 2010. Pl. Ex. 2 (Request for Admissions 15).

Harris wholly owned ICSMR and was the CEO and President from its inception in 2000 and remains the owner. *Id.* at 26:11-17; 94:18-95:20. Excepting $12,725 she received from IMR in 2006, Harris's compensation was paid by ICSMR. Pl. Ex. 2 (Interrogatory 1 and 2). ICSMR provided consulting services to and had a contract with IMR. Harris Dep. at 31:6-11, 96:22. IMR employed all the personnel for the Schools, and "[paid] virtually all other school operating costs." *Id.* at 31:10-17. ICSMR provided consulting services for IMR. Pl. Ex. 2 at (Request for Admissions 19) (Harris stating "[t]here were contracts between the entities to provide services."); Harris Dep. at 31:6-17 (Harris not disputing ICSMR provided "consulting services" to IMR); *Id.* at 97:10-25

[7] In Ohio's complaint, it was alleged that "[s]tate audits found that Harris was the Schools' superintendent and wrote checks on the Schools' bank accounts or otherwise transferred the Schools' funds." Doc. 1 at ¶ 8c. Harris denied those allegations in her answer. Doc. 38 at ¶ 8. Ohio's summary judgment motion does not refer to specific pages of the State Audit, which as noted earlier is 493 pages. The court cannot be expected to "scour the record" for summary judgment evidence. *Abdulsalaam v. Franklin Cty. Bd. of Com'rs*, 637 F. Supp. 2d 561, 576 (S.D. Ohio 2009) (Marbley, J.).

(Harris testifying that ICSMR "negotiated some contracts" for IMR, "helped [IMR] with some hiring", "did some recruitment of staff", and "[t]hose kind of things."). Harris did provide invoices sent in 2008 by ICSMR to another school, New Life Academy of Excellence for management services. Harris Ex. C.

The Ohio auditor did a special audit of the Schools for the fiscal years 2010, 2011 and 2012. *Inst. of Mgmt. and Res., Inc. v. Yost*, No. 15AP-219, 2015 WL 8481571, at *1, 2015 Ohio App. LEXIS 4959, at *3 (Ohio Ct. App. Dec. 10, 2015). Those audits concluded that the Schools overpaid IMR under the parties' management agreement more than one million dollars. In 2017, IMR and the Schools sought declaratory judgment against the Ohio Attorney General challenging the basis for recovery, which involved an interpretation of a specific section of the management agreement between the Schools and IMR. *Id.* Essentially, under a provision of the Schools' management contracts with IMR, the Schools paid IMR a total of 97% of their total revenues, with the Schools retaining 3%. The Ohio Auditor, on the other hand, interpreted the contracts to provide for the Schools' payment of approximately 88% of their total revenues to IMR, with the Schools to retain approximately 12%. The trial court granted Ohio summary judgment based on its interpretation of the management agreement. *Id.* at *2. That decision was affirmed by the Ohio Court of Appeals. *Id.* at *3-4. While the Schools and IMR were plaintiffs and appellants in that case against Ohio, Harris was not a party to that litigation.

In separate litigation, Ohio sued Harris, O'Aku, Michelle Harris (Harris's daughter), and the bonding company for the Schools in the Montgomery Court of Common Pleas. No. CV 05140. IMR filed a voluntary petition for Chapter 11 bankruptcy relief on March 22, 2018. No. 18-30821 (Bankr. S.D. Ohio) (Buchanan, J.). The case was converted to Chapter 7 on November 18, 2019.

Doc. 146 (No. 18-30821). Harris's individual bankruptcy petition in 2022 stayed the state court litigation.

V. ANALYSIS

A. Material Issues of Fact Must be Resolved to Determine if Harris Breached Her Fiduciary Duty to the Schools

Under Ohio law, "[i]t is axiomatic that corporations and their officers and directors occupy a fiduciary relationship with corporate shareholders*." Thompson v. Central Ohio Cellular, Inc*., 639 N.E.2d 462, 540 (Ohio Ct. App. 1994). Officers of a corporation, as fiduciaries, have a common law duty of loyalty. *Liquidating Trust of the Amcast Unsecured Creditor Liquidation Trust v. Baker* (*In re Amcast Indus. Corp.*), 365 B.R. 91, 105 (Bankr. S.D. Ohio 2007). As this court explained in its prior decision denying Harris's motion to dismiss:

> The elements for breach of fiduciary duty include: "(1) the existence of a fiduciary duty; (2) the failure to observe the duty; and (3) an injury resulting proximately therefrom." *DPLJR, Ltd. v. Hanna*, 8th Dist. Cuyahoga, No. 90883, 2008-Ohio-5872, ¶ 19 (Ohio Ct. App. 2008) (citing *Strock v. Pressnell*, 38 Ohio St. 3d 207, 527 N.E.2d 1235, 1243 (Ohio 1988)); see *Liquidating Tr. of the Amcast Unsecured Creditor Liquidating Tr. v. Baker* (*n re Amcast Indus. Corp.*), 365 B.R. 91, 110 (Bankr. S.D. Ohio 2007) (similar). "A fiduciary is a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking." *Lutz v. Chitwood*, 337 B.R. 160, 172 (S.D. Ohio 2005) (quoting *Strock*, 527 N.E.2d at 1243-244)) (internal quotation marks omitted); see *Hanick v. Ferrara*, 2020- Ohio 5019, 161 N.E.3d 1, 22 (Ohio Ct. App. 2020) (similar). A fiduciary relationship encompasses "a duty of good faith, a duty of loyalty, a duty to refrain from self-dealing, and a duty of disclosure." *Maas v. Maas*, 2020- Ohio 5160, 161 N.E.3d 863, 872 (Ohio Ct. App. 2020); see *Unencumbered Assets, Tr. V. JP Morgan Chase Bank* (*In re Nat'l Century Fin. Enters.*), 617 F. Supp. 2d 700, 718 (S.D. Ohio 2009) (stating that a "corporate officer . . . has a fiduciary relationship to the corporation and carries a duty not to waste or mismanage corporate funds."). Further, an employee has a duty to act "in the utmost good faith and loyalty toward his . . . employer." *Berge v. Columbus Community Cable Access*, 136 Ohio App. 3d 281, 736 N.E.2d 517, 549 (Ohio Ct. App. 1999) (quoting *Connelly v. Balkwill*, 160 Ohio St. 430, 116 N.E.2d 701. 707 (Ohio 1954)).

Ohio AG v. Harris (*In re Harris*), No. 23-3003, 2023 Bankr. LEXIS 2246, at *6-7 (Bankr. S.D. Ohio Aug. 28, 2023).

As the President or CEO of the Schools, there is no doubt that Harris had fiduciary duties to the Schools. It is also not in dispute that Harris was an officer of IMR, and IMR paid ICSMR for certain consulting duties. Harris was paid by ICSMR, a company she wholly owned and controlled. Therefore, the record is clear that, at an absolute minimum, Harris had significant involvement in the Schools, ICR, and ICSMR.

Ohio argues that Harris's statement in her deposition that she was not involved in financial matters of the Schools or IMR is not credible or supported by the record. First, Ohio points out that Harris testified that she negotiated with the Management Companies and vendors for the Schools. Harris Dep. at 19:12-13. Further, Harris signed the original management contracts and addendums while President of both the Schools and IMR. *Id.* at 47:20-54:6. Harris testified at the meeting of creditors in the Chapter 11 bankruptcy case of IMR. *Id.* at 77:16:-77:20. Additionally, the legal bills sent by bankruptcy counsel to IMR were sent to Harris's home address. *See id.* at 79:20-80:4. Harris also loaned IMR $265,000. *Id.* at 88:17-89:6.

Nevertheless, Harris argues that material issues of fact exist as to whether Harris breached her duty of loyalty to the Schools. First, Harris's testimony was that a separate superintendent managed the Schools day to day. *Id.* at 18:13-16. Second, Harris noted that she was never employed or paid by the Schools. Third, Harris testified that, although she was President or CEO of the Schools, she was not involved in the day-to-day management of the schools and largely

performed corporate functions.[8] It is fair to say that Harris's deposition testimony contains some internal contradictions in that she indicates she negotiated with IMR and vendors of the Schools, but at other points in her testimony asserts her role was mostly a corporate function. Harris also signed the Schools' 990 tax forms under penalty of perjury.

Both parties cite and discuss the relevance of a state trial court decision, *State ex rel. Ohio AG v. Lager*, No. 18-CV-7094, 2022 Ohio Misc. LEXIS 42 (Ct. C.P. May 6, 2022). In *Lager*, the defendant, William Lager, founded the Electronic Classroom of Tomorrow ("ECOT"). *Id.* at *1. Lager also founded a management company known as Altair Learning Management I, Inc. ("Altair"). *Id.* at *2. Out of $28,885,449 paid by ECOT to Altair, at least $23,885,116 was received by Lager. *Id.* Altair had no other clients besides ECOT. Lager also benefited from his ownership interest in a company called IQ Innovations, LLC ("IQ"). Lager benefitted from that contract in the amount of $22,731,083. *Id.* at *3. Lager or other family members also benefitted financially from yet another company known as Third Wave, which was "closely connected" to Altair. *Id.* at *3-4. Lager's involvement in all aspects of ECOT was incontrovertible. The record showed that Lager "represented ECOT" before government agencies, "fielded hundreds of inquiries on ECOT's behalf", negotiated contracts for ECOT with "vendors and business partners", and spoke on ECOT's behalf at a rally at the Ohio Statehouse. *Id.* at *8-9. Further, Lager lobbied directly on behalf of ECOT. *Id.* at 12. As Lager was an agent for Altair, and its CEO, and Altair managed ECOT's operations, the court concluded that Lager was a subagent for ECOT. *Id.* at 18.

[8] Harris also raises the issue of whether the funds in question were "public funds" when Harris was paid by ICSMR. However, that issue appears more relevant to whether Harris would be strictly liable under Ohio Revised Code § 9.39, and Ohio is no longer pursuing that legal theory when Count 1 was dismissed. See *State ex rel. Yost v. Burns*, 200 N.E.3d 183, 185-87 (Ohio 2022) (determining that Burns did not "collect or receive" public funds and was not liable under § 9.39); *Cordray v. Int'l Preparatory School*, 941 N.E.2d 1170, 1173-75 (Ohio 2010) (similar). To the extent the question is whether Harris was acting as a fiduciary for the Schools, the court finds that she was as its President, regardless of whether public funds were involved when Harris received her compensation from ICSMR. See *State ex rel. Ohio AG v. Lager*, No. 18-CV-7094, 2022 Ohio Misc. LEXIS 42, at *24-25 (Ct. C.P. May 6, 2022) (finding that a public official's fiduciary duty is violated when "public office" is used for "private gain").

In the record before the court, again, there is not a material dispute of fact that Harris was a fiduciary of the Schools. But it is not clear from the summary judgment record what specific actions Harris took in breach of her fiduciary duty to the Schools. The record in *Lager* was far more established, and showed Lager was receiving the bulk of the payments directly from ECOT to Altair and IQ. The record only shows Harris receiving a significant yearly salary from ICSMR, but there's little in the summary judgment record for this court to determine whether the compensation paid to her by ICSMR was reasonable compensation in part, in whole, or not at all for the services which IMR and ICSMR provided to or on behalf of the Schools. Ohio must show that Harris breached specific fiduciary duties to the Schools and that the breach of those duties resulted in specific harm. *Amcast*, 365 B.R. at 110-11.

Additionally, the exact basis for the level of Harris's compensation with ICSMR, if any, that is not related to the Schools is also not clear from the record. But it also appears some of the revenue of ICSMR, although how much is not known to the court, is unrelated to IMR or the Schools. Ohio needs to demonstrate that Harris acted not in the best interests of the Schools, but instead in the best interest of IMR, ICSMR, and ultimately herself. At this point, no link between the overpayments to the Schools established by the audit, and Harris's compensation and the actions she took has been made. Ohio needs to establish Harris's breach of loyalty or breach of any other fiduciary obligation to the Schools proximately led to the ultimate harm to the Schools.

Ohio's argument largely rests on the premise that Harris violated her duty of loyalty based upon her simultaneous roles with IMR, ICSMR, and the Schools. These roles certainly create a considerable concern for any fiduciary because the financial interests of IMR, ICSMR, and the Schools were not aligned. Still, Ohio, at least at the summary judgment stage, does not point to specific contracts, transactions, or actions by Harris that were negotiated or entered into in bad

faith or that otherwise were inconsistent with her fiduciary duties to the Schools. Instead, the argument is apparently that Harris signed agreements that ultimately, even if indirectly through ICSMR, generally benefited her rather than the Schools. Ohio alleged that Harris had signatory authority for the Schools' bank accounts, but there is no evidence in the summary judgment record showing she authorized disbursements on behalf of the Schools which violated her fiduciary obligations. Pl. Ex. 2 (Request for Admissions 21) (Harris did "not recall having [signature] authority" for the Schools' operating accounts). The record does establish that the Schools had a separate Treasurer and Superintendents responsible for such functions.

The damages Ohio seeks, the forfeiture of compensation that Harris received from ICSMR, has not been established on this record. That is, Ohio has not established through its summary judgment motion that Harris breached specific fiduciary duties by authorizing the payment of the funds to IMR and then to ICSMR and then to herself or by failing to recover those overpayments from IMR on behalf of the Schools. The audits, and the subsequent judgments of the Franklin County Common Pleas Court and the Court of Appeals, establish that the overpayments were improper. However, evidence must be adduced to establish that Harris violated her fiduciary duties to the Schools in allowing those payments to or in failing to recover those overpayments from IMR. Simply establishing that the Schools' funds were, at least in part, the original source of the funds used by ICSMR to pay her compensation is not sufficient to establish that she breached fiduciary obligations to the Schools.

B. Faithless Servant Doctrine May Not Apply to Harris's Compensation from ICSMR

A claim under the faithless servant doctrine requires the plaintiff to prove "that the defendant was an employee or agent of the principal, (2) that the employee acted in breach of the duty of loyalty, (3) and that the employee received compensation during this time period." *Harris*,

2023 Bankr. LEXIS 2246, at *8-9. The faithless servant doctrine is grounded in the fiduciary duty of loyalty, and requires the agent to return compensation paid during the period of "faithlessness." The faithless servant doctrine may be unrelated to actual loss by the principal. *State of Ohio v. Lee* (*In re Lee*), 611 B.R. 303, 311 (Bankr. S.D. Ohio 2019) (Hopkins, J.). This principle applies because the faithless servant doctrine seeks to deter the breach of fiduciary duty regardless of loss. *Id.* Thus, even if Ohio did not establish a loss as a result of Harris's alleged breaches of fiduciary duties, the doctrine would allow for the forfeiture of Harris's compensation if the doctrine otherwise applies.

Again, there is no dispute of fact that Harris was President or CEO of the Schools, and at the same time was an officer of and paid by ICSMR, a company she wholly owns. Further, the Management Companies' relationships with the Schools were all based on no-bid contracts, which although apparently permitted under Ohio law, raises concern of inflated consideration paid by the Schools for its contracts with IMR. Such contracts could ultimately have inured to Harris's benefit because some of those funds ultimately flowed to ICSMR. Further, there is no dispute as to the total amount of compensation Harris received from ICSMR, although some of those funds may be unrelated to the Schools.

Nevertheless, as discussed, Harris was never an employee of the Schools and did not receive any income directly from the Schools. In most of the decisions that this court has reviewed concerning the application of the faithless servant doctrine, the compensation returned was due to the faithlessness of an employee to the employer for which the employee worked and received compensation. *Id.* at 306 (finding debtors forfeited compensation they received as employees of the schools under the faithless servant doctrine); *Roberto v. Brown Cnty. General Hosp.*, 571 N.E.2d 467, 469 (Ohio Ct. App. 1989) (noting that the faithless servant may be denied

compensation otherwise agreed to with his employer during his period of "dishonesty and disloyalty"); *Cartwright v. Falls Heating & Cooling, Inc.*, No. 160079, 1994 WL 286280, at *6-7, 1994 Ohio App. LEXIS 2936, at *15-18 (Ohio Ct. App. June 29, 1994) (applying faithless servant doctrine to an employee that may have violated his duty of loyalty to his employer); *Foley v. Am. Elec. Power*, 425 F. Supp. 2d 863, 872-75 (S.D. Ohio 2006) (employer entitled to setoff for amounts payable to a former employee for deferred compensation during his period of faithlessness, and collecting cases for the same legal principle); *Mollett v. Lawrence Cty., Bd. Of Developmental Disabilities*, 242 N.E.3d 744, 762 (Ohio Ct. App. 2024) ("We . . . agree that the Faithless Servant Doctrine applies in determining whether an employer may withhold an employee's compensation for acting in dishonest and/or disloyal manner in their employment."); *Fin. Dimensions v. Zifer*, Nos. C-980960, C-980993, 1999 WL 1127292, at *8-9, 1999 Ohio App. LEXIS 5879, at *23-28 (Ohio Ct. App. Dec. 10, 1999) (applying faithless servant doctrine and denying commissions to an agent acting under an independent contractor agreement); *Cheryl & Co. v. Krueger*, 536 F. Supp. 3d 182, 212-13 (S.D. Ohio 2021) (similar). See also *The Spring Works, Inc. v. Sarff*, 242 B.R. 620, 628 (B.A.P. 6th Cir. 2000) (citing § 469 of the Restatement of Agency Second and determining damages for compensation were non-dischargeable).[9] Indeed, the decision that apparently began the legal concept of the "faithless servant doctrine" also involved compensation of an employee. *Bessman v. Bessman*, 520 P.2d 1210, 1220 (Kan. 1974). See also *Carco Group, Inc. v. Maconachy*, 383 Fed. Appx. 73, 76-77 (2d Cir. 2010) (applying faithless servant to deny compensation to an employee under N.Y. law applying the faithless servant

[9] Section 469 of the Restatement Second of Agency is frequently cited as the basis for the faithless servant doctrine. See e.g. *Foley v. Am. Elec. Power*, 425 F. Supp. 2d 863, 874 n.15 (S.D. Ohio 2006) (citing to comment a of § 469 which provides that "[a]n agent who, without the acquiescence of his principal, acts for his own benefit or for the benefit of another in antagonism to or in competition with the principal in a transaction is not entitled to compensation[.]").

doctrine). But see also *Enzo Life Sciences, Inc. v. Adipogen Corp.*, 82 F. Supp. 3d 568, 606 (D. Del. 2015) (determining that Delaware had not adopted the faithless servant doctrine).

The court also considered the reported trial court decision in *Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera*, 926 N.E.2d 375 (Ct. C.P. 2010). This case involved both former employees of the law firm and also former shareholders. *Id.* at 377. The law firm sued the former employees and partners for various claims, including a breach of loyalty. *Id.* at 378. The former employees and shareholders counterclaimed for withheld compensation. *Id.* The court discussed the faithless servant doctrine, and reached the same conclusion as the cases already cited. Compensation may be denied for the period of time an agent is disloyal to the employer. *Id.* at 388-89.

In *Edelman v. JELBS*, 57 N.E.3d 246 (Ohio Ct. App. 2015), the appellate court remanded a case in which it found that a minority shareholder could not pursue a faithless servant claim against a majority shareholder because the duties of the shareholder were to the closely held corporation, but did allow the corporation to pursue the majority shareholder as a faithless servant. *Id.* at 259. But even in this more expansive understanding of the faithless servant doctrine, the shareholder was pursued for compensation he received from the corporation in which he held an ownership interest. *Id.* at 259-60.

In this instance, Ohio is alleging that Harris was disloyal in her fiduciary role as an officer of the Schools, and therefore should forfeit all compensation she received during her period of alleged disloyalty. Complaint, ¶ 55. But Harris was not paid by the Schools, and, excepting $12,725 in 2006, was not paid by the counterparty to the Schools' management contract, IMR. Pl. Ex. 2 at 9 (Interrogatory 1). Harris instead was paid by another management company, ICSMR,

that IMR paid for consulting services. Stated more simply, the principal [the Schools] did not compensate Harris, as an agent of the Schools.

The Supreme Court of Ohio has never opined on the adoption of the faithless servant doctrine under Ohio common law. As a federal court, this court must determine whether the Supreme Court of Ohio would recognize this tort. *Allstate v. Thrifty Rent-A-Car Sys., Inc.*, 249 F.3d 450, 453-54 (6th Cir. 2001). This court must look at all "available data", which in this case is a series of decisions by the other Ohio appellate courts. *Id.* Based on a review of the Ohio Common Pleas Court, Ohio Court of Appeals, and federal district court cases which have adopted the concept of the faithless servant doctrine, this court believes that the Supreme Court of Ohio would recognize this doctrine.

The question then becomes whether the faithless servant doctrine may be applied under the circumstances of this case in which the defendant was compensated by an entity other than the principal. The application of the faithless servant doctrine that Ohio seeks would require Harris to forfeit compensation she was paid as an employee, partner or officer of a company that had an indirect business relationship with the principal to which she owed fiduciary duties. The court recognizes that the faithless servant doctrine applies regardless of whether the principal was damaged. *Lee*, 611 B.R. at 311. But the damages, even if unconnected to the particular acts, concerns compensation in some manner that was paid by the principal. *See id.* ("[The damages] were based on a calculation that was unrelated to the payments VLT Academy made pursuant to the contracts targeted in the State Court case. Instead, those damages were based on the amount of the regular salary that the Lees were paid during a particular period of time."). The court is not making a final determination at this time, but currently is unpersuaded that the doctrine goes as far

as Ohio suggests. Ohio's application would appear to take general corporate fiduciary duty claims and move them into the narrower class of cases involving the faithless servant doctrine.

For these reasons, the court declines to grant Ohio summary judgment as to Count III, finding Harris liable under the faithless servant doctrine.

C. Dischargeability Under § 523(a)(7) Cannot be Resolved Upon Summary Judgment

Section 523(a)(7), other than certain tax penalties not applicable here, exempts from discharge any debt of an individual "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a government unit, and is not compensation for actual pecuniary loss[.]" The Sixth Circuit has stated that a debt under this subsection must satisfy a three part test: "(1) it must be for a fine, penalty, or forfeiture; (2) it must be payable to and for the benefit of a government unit; and (3) it must not be compensation for actual pecuniary loss." *In re Hollis*, 810 F.2d 106, 108 (6th Cir. 1987) (internal quotation marks omitted).

Application of the three elements must be applied to both of Ohio's theories of liability – breach of fiduciary duty and violation of the faithless servant doctrine. However, the analysis under either theory is consistent.

As to the first element, in determining whether a judgment is a fine, penalty, or forfeiture, Judge Hopkins determined that violations of the faithless servant doctrine, which, as noted, are not directly related to compensation for actual injury, meet the requirements of being a penalty. *Lee*, 611 B.R. at 310. If not a penalty, this court finds that a violation of the faithless servant doctrine would qualify as a "forfeiture," as the remedy for such a violation is the forfeiture of one's compensation. In this case, the court has not yet determined whether any violation of the faithless servant doctrine can be applied to this litigation. It also appears that a judgment based upon a violation of Harris's fiduciary duties to the Schools may constitute a penalty because the damages

Ohio seeks are unrelated to any compensation Harris received from the Schools. Whether Ohio can establish a debt by proving either theory of liability – breach of fiduciary duty or violation of the faithless servant doctrine – is an issue for trial.

As to the second element, any judgment under either theory of liability would be payable to a government unit. See 11 U.S.C. § 101(27) (defining government unit to include a "State").

As to the third element, the analysis in *Lee* was similar to the analysis of the first element. Amounts awarded under the faithless servant doctrine (and also in that decision the Corporate Practices Act) are not based on actual loss, but may be awarded even in the absence of harm. *Id.* at 311. As noted, though, the application of the faithless servant doctrine Ohio seeks may not be expandable to this fact pattern. In addition, an award for breach of fiduciary duties in the amount of Harris's compensation received from ICSMR appears not to be based upon actual loss to Ohio, but rather, would be a penalty or forfeiture and, therefore, not pecuniary damages.

In any event, absent a liquidated judgment, the court has no basis to make a finding of non-dischargeability at this time. Both parties sought to have both the amount of any debt and its non-dischargeability determined by this court. As the court indicated in its decision denying Harris's motion to dismiss, "because the claims have not yet been liquidated, the court cannot conclude that they are non-dischargeable as a matter of law." *Harris,* No. 23-3003, 2023 Bankr. LEXIS 2246, at *11-12.

Therefore, the court will reserve determination of the dischargeability issues until trial.

VI. CONCLUSION

For all these reasons, the court determines there are material issue of fact regarding the remaining counts in the complaint (Counts II, III, and IV), and denies Ohio's motion for summary judgment. The court will enter a separate order contemporaneously with this decision.

Copies to:

Counsel for Plaintiff

Counsel for Defendant