

Structured Settlement Update

Settlement Capital Corporation, Inc. v. Zulay Pagan, et al., 2009 WL 2222634 (N.D. Tex.)

On July 24, 2009, the District Court for the Northern District of Texas entered a Memorandum Opinion and Order granting the Motion for Partial Summary Judgment of Settlement Capital Corporation, Inc. (SCC) against Seneca One, LLC (Seneca) and Route 28 Receivables, LLC (Route 28).

By way of brief background, Zulay Pagan (Pagan) entered into a settlement agreement (the Settlement Agreement) with Fireman's Fund Insurance Company (FFIC) resolving a personal injury claim. The Settlement Agreement provided that Pagan would receive a number of periodic payments over several years, including a lump sum payment due on August 1, 2009 (the 2009 Payment). The Settlement Agreement included an anti-assignment provision stating: "nor shall Zulay Pagan have the power to sell or mortgage or encumber the Periodic Payments, or any part thereof, by assignment or otherwise." In March 2002, Pagan (a resident of the state of New York at the time) and SCC entered into an agreement (the SCC Purchase Agreement) wherein Pagan agreed to assign to SCC her interest in the 2009 Payment. The SCC Purchase Agreement was executed prior to the enactment of the New York Structured Settlement Protection Act. In February 2007, Pagan (a resident of the state of Florida at the time) and Seneca executed an agreement (the Seneca Agreement) wherein Pagan agreed to assign to Seneca her interest in a portion of the 2009 Payment. Pursuant to the Florida Structured Settlement Protection Act, the Seneca Agreement was approved by a Florida state court on March 23, 2007 (the March 2007 Order). In March 2007, Pagan executed an agreement (the Stone Street Agreement) with Stone Street Capital, LLC (Stone Street) wherein Pagan agreed to assign her interest in a lump sum payment due on August 1, 2014, to Stone Street. The Stone Street agreement was approved by a Florida state court in April 2007 (the April 2007 Order). The April 2007 Order included an acknowledgement of SCC's pre-structured settlement protection act transaction with regard to the 2009 Payment.

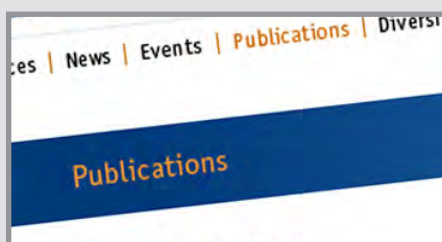
SCC filed suit in September 2007 naming Pagan, Seneca, Route 28, and FFIC as defendants, and seeking declaratory relief against Pagan, Seneca, Route 28, and FFIC with respect to the 2009 Payment. SCC also asserted claims for theft, conspiracy, conversion, and violations of Chapter 12 of the Texas Civil Practice and Remedies Code against Seneca. Seneca responded by filing counterclaims asserting slander of title and seeking declaratory relief in addition to raising several affirmative defenses. FFIC filed a counterclaim and cross-claim for interpleader and moved for summary judgment on the interpleader claim. In March 2009, FFIC's motion for summary judgment was granted and

FFIC was awarded attorneys' fees and costs, the amount of which to be determined by the Court at a later date.

The Court held that Seneca's and Route 28's arguments claiming that the SCC Purchase Agreement is void because of the anti-assignment provision fail as a matter of law, finding that neither Seneca nor Route 28 have standing to raise the anti-assignment provision to void the SCC Purchase Agreement. The Court further held that only Pagan and FFIC would have standing to raise the anti-assignment provision in the Settlement Agreement. In granting SCC's motion for partial summary judgment, the Court found that SCC is entitled to receive the proceeds of the 2009 Payment.

With respect to SCC's motion for summary judgment as to its conversion and civil theft claims against Seneca, the Court found that SCC failed to satisfy the required elements of a conversion and civil theft claim and denied SCC's motions on these claims. SCC's claim for tortious interference against Seneca is still pending before the Court. Further, the Court denied Seneca's and Route 28's counterclaims for declaratory judgment and slander of title. FFIC is represented by Stephen R. Harris and Jenifer N. Smith of Drinker Biddle.

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