

STRUCTURED SETTLEMENT UPDATE

Set forth below is a summary of a recent court decision. A copy of the decision is attached below. If you have any questions, comments, or additional cases or materials that you would like us to consider, please feel free to send us a reply.

DrinkerBiddle

***Allstate Life Insurance Company v. Rapid Settlements, Ltd.* United States District Court for the Southern District of Mississippi (No. 06-00629, 2007 WL 2745806, September 20, 2007)**

In this declaratory judgment action, Allstate Life Insurance Company, the annuity owner and issuer, sought declaratory and injunctive relief against Rapid Settlements, Ltd., a factoring company, in connection with the factoring company's attempts to enforce a transfer agreement, arbitration award and judgment confirming the arbitration award. According to the complaint, the factoring company and the claimants executed a transfer agreement that purported to assign to the factoring company the right to certain structured settlement payments in exchange for a lump sum. A state court in Mississippi denied the factoring company's petition to approve the transfer agreement. Following the denial of its petition, the factoring company commenced arbitration proceedings against the claimants and obtained an arbitration award, which purported to approve the transfer agreement. The factoring company obtained a judgment confirming the arbitration award in Harris County, Texas. The factoring company then moved for an enforcement order, seeking to enforce the confirmation judgment against the annuity owner and issuer, that were not parties to the arbitration proceedings or the proceedings to confirm the arbitration award.

The district court granted summary judgment in favor of the annuity owner and issuer, declaring that "the arbitration award is void as to [the annuity owner and issuer]." 2007 WL2745806, at *5. In rejecting the factoring company's argument that the structured settlement acts did not apply because the arbitration award was an involuntary damages award for breach of contract, the court explained that the arbitration "was not a mere involuntary damages award – it was a transfer." *Id.* at 3. The court further explained that the annuity owner and issuer have interests that are distinguishable from the claimants' interests, and thus the annuity owner and issuer are not bound by the arbitration award. *See id.* at 5. In addition to declaring the arbitration award void as to the annuity owner and issuer, the court granted the annuity owner and issuer's request for injunctive relief with respect to its duty to transfer the periodic payments at issue to the factoring company. Finally, the court invited the annuity owner and issuer to submit additional briefings to enjoin the factoring company, in the future, from seeking to effectuate transfers involving the annuity owner and issuer without complying with the applicable structured settlement protection acts. *Id.* The annuity owner and issuer were represented by Stephen Harris, Katherine Villanueva and Nicole Lazarz of Drinker Biddle & Reath LLP.

If you have questions regarding the information contained in this publication, please contact any of the following lawyers:

Stephen R. Harris
(215) 988-2806
Stephen.Harris@dbr.com

Katherine Villanueva
(215) 988-2535
Katherine.Villanueva@dbr.com

Nicole Lazarz
(215) 988-2840
Nicole.Lazarz@dbr.com

DrinkerBiddle

LAW OFFICES | CALIFORNIA | DELAWARE | ILLINOIS | NEW JERSEY
NEW YORK | PENNSYLVANIA | WASHINGTON DC | WISCONSIN

© 2007 Drinker Biddle & Reath LLP. All rights reserved.
A Delaware limited liability partnership

Jonathan I. Epstein and Edward A. Gramigna, Jr., Partners in Charge of the Princeton and Florham Park, New Jersey offices, respectively.

This Drinker Biddle & Reath LLP communication is intended to inform our clients and friends of developments in the law and to provide information of general interest. It is not intended to constitute advice regarding any client's legal problems and should not be relied upon as such.

Westlaw.

Slip Copy

Page 1

Slip Copy, 2007 WL 2745806 (S.D.Miss.)
 (Cite as: Slip Copy)

Allstate Life Ins. Co. v. Rapid Settlements, Ltd.
 S.D. Miss., 2007.

Only the Westlaw citation is currently available.

United States District Court, S.D. Mississippi,
 Jackson Division.

ALLSTATE LIFE INSURANCE COMPANY
 Plaintiff

v.

RAPID SETTLEMENTS, LTD, et al. Defendants
 No. Civ.A.3:06CV00629DPJ.

Sept. 20, 2007.

James S. McCoy, Steen, Dalehite & Pace, Jackson,
 MS, Stephen R. Harris, Drinker Biddle & Reath
 LLP, Philadelphia, PA, for Plaintiff.

Kenneth S. Womack, Anderson, Crawley & Burke,
 PLLC, Ridgeland, MS, Monica Cavazos-Rosas,
 The Feldman Law Firm, LLP, Houston, TX, for
 Defendants.

ORDER

JORDAN, J.

*1 Two motions are before the Court: the motion to dismiss filed by Defendant Rapid Settlements, LTD ("Rapid Settlements"), and the motion for summary judgment filed by Plaintiff Allstate Life Insurance Company ("Allstate"). The Court, having considered the memoranda and submissions of the parties, along with the pertinent authorities, concludes that Defendant's motion should be denied and Plaintiff's motion should be granted in part.

I. FACTS

Rapid Settlements is a "factoring company" which purchases structured settlement payments from consumers in exchange for discounted, lump-sum payments. In this case, Percy and Betty Thomas Griffin ("the Griffins") agreed to a structured settlement of an unrelated civil action. Allstate, as

the annuity issuer and owner, was obligated to make periodic payments to the Griffins. In 2005, the Griffins signed a contract with Rapid Settlements (the "Transfer Agreement") whereby the Griffins agreed to sell the future income stream associated with the structured settlement in exchange for a lump-sum payment of \$50,000.

The Transfer Agreement included the following key provisions:

This Transfer Agreement is subject to court approval. A Court must approve Assignor's sale, assignment, and transfer to Rapid Settlements of the Assigned Payments before such payments can be transferred and the Assignment Price, set forth in Section 2 below, paid to Assignor. The Final Order shall state that the court at least has made all findings required by applicable law, and that Annuity Owner and Annuity Issuer are authorized and directed to pay the Assigned Payments to Rapid Settlements, its successors and, or assigns. Assignor and Rapid Settlements agree to proceed in good faith to obtain court approval of this Transfer Agreement.

Rapid Settlements having received the approval of a court for the sale and assignment contemplated in this Agreement. Assignor acknowledges that Rapid Settlements has no obligation to pay Assignor until Assignee obtains the Final Order.

Assignor shall fully cooperate with Rapid Settlements, including making any court appearances as reasonably requested by Rapid Settlements in obtaining the court order and/or acknowledgment referred to above and in the taking of or performing any and all acts necessary to facilitate the objectives of this Agreement.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Mississippi. Any dispute or disagreement arising under this Agreement of any nature whatsoever including but not limited to those sounding in constitutional, statutory, or common law theories as to the performance of any obligations, the satisfaction of any rights, and/or the

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Slip Copy, 2007 WL 2745806 (S.D.Miss.)
(Cite as: Slip Copy)

enforceability hereof, shall be resolved through demand by any interested party to arbitrate the dispute and shall submit the same to a nationally recognized, neutral, arbitration association for resolution pursuant to its single arbitrator, expedited rules.... The arbitration decision shall be final and binding in all respects and shall be non-appealable. Any person may have a court of competent jurisdiction enter into its record the findings of such arbitrators for all purposes, including for the enforcement of the award.

*2 The Transfer Agreement acknowledged that under the Mississippi Structured Settlement Protection Act ("SSPA"), Mississippi Code Ann. § 11-57-7 (2002), the transfer would require court approval. According to Rapid Settlements, court approval was not obtained pursuant to the SSPA because the Griffins failed in their contractual obligation to cooperate in the approval process. Rapid Settlements therefore invoked the arbitration clause and arranged for an arbitrator in Texas to hear the dispute over the telephone. The arbitrator ultimately entered an "Agreed Award" finding the Griffins in breach of the Transfer Agreement, approving the transfer under the SSPA, and awarding damages to Rapid Settlements that included transfer of the periodic payments. Although Allstate did not participate in the arbitration, the Agreed Award purported to bind Allstate and ordered it to make all future periodic payments directly to the "Transferee." Rapid Settlements thereafter obtained final judgment ("Final Judgment") in the County Civil Court at Law Number 4, Harris County, Texas, confirming the Agreed Award. Allstate was not a party to Rapid Settlements' action and did not receive notice of the Final Judgment until after it had been entered.

Allstate now seeks a declaratory judgment finding the Agreed Award and Final Judgment void as to Allstate. This is not the first time an annuity owner and/or annuity issuer has challenged an arbitration approving the transfer of structured settlement payments to Rapid Settlements. Significantly, this Court has reviewed the PACER records in other cases and has taken judicial notice that the local Texas attorney who arbitrated the Griffins' case

regularly arbitrates cases for Rapid Settlements. In each case reviewed by the Court, the arbitrator ruled for Rapid Settlements and entered an essentially identical agreed award. *See, e.g., Symetra Life Ins. Co. v. Rapid Settlements LTD.*, No. H-05-3167, 2007 WL 114497 (S.D.Tex. Jan.10, 2007). Moreover, in those instances in which a different arbitrator heard cases involving Rapid Settlements, they too arrived at the same result and used the same form award.*Id.*

II. STANDARD OF REVIEW

Summary judgment is warranted under Rule 56(C) of the Federal Rules of Civil Procedure when evidence reveals no genuine dispute regarding any material fact and that the moving party is entitled to judgment as a matter of law. The rule "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The party moving for summary judgment bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact. *Id.* at 323. The nonmoving party must then go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." *Id.* at 324. In reviewing the evidence, factual controversies are to be resolved in favor of the nonmovant, "but only when ... both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.1994) (en banc). When such contradictory facts exist, the court may "not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods. Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).

*3 In this case, the only disputed fact Rapid Settlements identified is whether its practice of using arbitration to enforce its transfer agreements is fairly characterized as an "improper arbitration

Slip Copy, 2007 WL 2745806 (S.D.Miss.)
 (Cite as: Slip Copy)

scheme.” (Defendant Rapid Settlements, LTD.’s Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment (“Defendant’s Memorandum”) at 8). Whether the practice is fairly described as a “scheme” is not material. However, Rapid Settlements also argues that additional discovery should be allowed before the Court rules. To avoid summary judgment based on Rule 56(f) of the Federal Rules of Civil Procedure, the “party opposing the motion [must] show by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition....” Rapid Settlement presented no such affidavit. *See Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 162 (5th Cir.2006) (“A party ‘cannot evade summary judgment simply by arguing that additional discovery is needed.’”) (citations omitted). Finally, Rapid Settlements saw fit to file a motion to dismiss based on many of the same legal issues presented in Allstate’s motion for summary judgment. The request for additional discovery is denied; this case can be decided as a matter of law.

III. ANALYSIS

A. *Validity of the Agreed Award*

Allstate’s motion for summary judgment raises a number of arguments, but the threshold issue is whether the Mississippi SSPA renders the Agreed Award void as to Allstate. Under the SSPA, [n]o direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings.

Miss.Code Ann. § 11-57-7. The statute defines “transfer” to mean “any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.” *Id.* § 11-57-3.

Rapid Settlements argues that the statute contemplates a “voluntary transaction in that the ‘transfer’ must be ‘made by a payee’ and requires ‘consideration.’ ” (Defendant’s Memorandum at 18 (citing Miss.Code Ann. § 11-57-3)). Rapid Settlements concludes that because the arbitrator’s order was an involuntary damages award for breach of contract, the SSPA did not apply, and court approval was not required.

The Court finds that the Agreed Award was not a mere involuntary damages award—it was a transfer. The first line of the order portion of the Agreed Award states that “the *transfer* pursuant to the transfer agreement ... is APPROVED.” (Emphasis added). The Agreed Award also found that “the *transfer* of the ‘Assigned Payments’ ... complies with all substantive and procedural requirements of the ‘Act’ [defined previously in the Agreed Award as the SSPA] ... and does not contravene any applicable law.” (Emphasis added). Moreover, the “damages” (as Rapid Settlements describes them) included the transferred periodic payments from the structured settlement, and the Agreed Award ordered Allstate to direct the payments to the “Transferee.” In exchange for the transfer, the Agreed Award ordered Rapid Settlements to pay the Griffins “the called for consideration [in the Transfer Agreement]....” Finally, the arbitrator based his jurisdiction to affirm the transfer on the SSPA and the Internal Revenue Code, both of which require approval of transferred structured settlement payments.^{FN1}

FN1. The SSPA and the Internal Revenue Code both allow approval by a court or a “responsible administrative authority.” The arbitrator held that “responsible administrative authority” applies to arbitration, but he failed to consider how the statutes define the term. The SSPA states that “ ‘responsible administrative authority’ means any *governmental* authority vested by law with exclusive jurisdiction over the settled claim....” Miss.Code Ann. § 11-57-3(k) (emphasis added). Likewise, the Internal Revenue Code defines “responsible administrative

Slip Copy, 2007 WL 2745806 (S.D.Miss.)
(Cite as: Slip Copy)

authority” as a body that exercises “exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.”²⁶ U.S.C. § 5891(b)(2)(B)(ii) (2002) (emphasis added). The plain language of both statutes demonstrates that the arbitrator had no authority to approve the transfer.

*4 To be sure, the arbitrator attempted to cover Rapid Settlements' bases and alternatively awarded the periodic payments as damages for the Griffins' breach of contract. However, the SSPA proscribes both direct and “indirect transfer[s] of structured settlement payment rights ... unless the transfer has been approved....” Miss.Code Ann. § 11-57-7. Those portions of the Agreed Award that alternatively characterize the transferred period payments as damages are merely an indirect attempt to consummate the transfer without obtaining the required approval. See *Symetra*, 2007 WL 114497, at *21 (“Although Rapid Settlements characterizes the damages it seeks in arbitration as remedies for contract breaches, the effect in most cases is to enforce the transfer agreement without the court approval required by the state protection statutes.”).
FN2

FN2. Though not necessary for this ruling, the fact that the arbitrator entered an “Agreed Award” based on “the agreement of the Parties” undercuts Rapid Settlements' argument that the award was an involuntary damages award. Moreover, the SSPA states that “[n]o such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.” Miss.Code Ann. § 11-57-13. Laws such as Mississippi's SSPA are paternalistic by design. The Griffins were not permitted to waive the Act's protections—court approval was mandatory.

This Court finds, as has every federal court to review a Rapid Settlements arbitration, that the transfer purportedly approved by the arbitrator is

void as to Allstate for want of requisite approval. See *Pac. Life Ins. Co. v. Rapid Settlements, Ltd.*, No. 06-CV-6554L, 2007 WL 2530098, at *1 (W.D.N.Y. Sept. 5, 2007) (finding transfer agreement and arbitrator's damage award void for failure to obtain court approval as required by statute); *R & Q Reinsurance Co. v. Rapid Settlements, Ltd.*, No. 06-14329-CIV, 2007 WL 2330899, at *3 (S.D.Fla. Aug. 13, 2007) (“Rapid may not use the arbitration process to circumvent the statutory requirements for transferring structured settlement payment rights.... This Court holds that enforcing the arbitration award would violate the applicable Florida Protection Act, and therefore the award is unenforceable against Plaintiff.”); *Allstate Settlement Corp. v. Rapid Settlements, Ltd.*, No. 06-4989, 2007 WL 1377667, at *6 (E.D.Pa. May 8, 2007) (finding arbitration award was an invalid attempt to circumvent state statute requiring court approval of transfer agreements); *Symetra*, 2007 WL 114497, at *22 (finding likelihood of success in demonstrating that Rapid Settlements arbitration procedures violated structured settlement protection acts).

B. Whether Allstate Can Now Challenge the Agreed Award and Final Judgment

Rapid Settlements also asserts various theories to contest Allstate's ability to challenge the Agreed Award and the Final Judgment, none of which are well-taken. For example, Rapid Settlements first argues that Allstate is bound by the Agreed Award, even as a nonparty to the arbitration agreement, because Allstate's interests were “indistinguishable from those of the Griffin's [sic].” (Defendant's Memorandum at 20 (citing *Nauru Phosphate Royalties, Inc. v. Drago Daic Interests, Inc.*, 138 F.3d 160, 165-66 (5th Cir.1998))). However, the use of arbitration to approve the Transfer Agreement in this case raises at least two issues unique to Allstate. First, the Agreed Award creates ambiguity as to the proper recipient of the periodic payments and subjects Allstate to the potential for double liability. See *Symetra*, 2007 WL 114497, at *35. Second, the Mississippi SSPA provides certain protections for the obligor that would be of no concern to transferors such as the Griffins. For

Slip Copy, 2007 WL 2745806 (S.D.Miss.)
 (Cite as: Slip Copy)

instance, with respect to life-contingent payments (which exist in this case), no transfer shall be approved unless

*5 the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (a) periodically confirming the payee's survival, and (b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

Miss.Code Ann. § 11-57-13. The Agreed Award provided no such protection, and the Court finds that Allstate's interests were **distinguishable**.

Rapid Settlements also attacks Allstate's motion based on the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, and disputes Allstate's standing to now challenge the Final Judgment in this Court. In *Symetra*, Judge Lee H. Rosenthal reviewed and rejected these same arguments. 2007 WL 114497. That case involved seven (7) consolidated cases, all of which presented the same operative contractual language that is now before this Court and arose from materially indistinguishable arbitration proceedings, awards, and final judgments. *See id.* After providing exhaustive analysis, the court summarized its holdings:

(1) the use of arbitration proceedings to avoid the applicable state structured settlement protection acts by obtaining arbitration awards and court orders confirming those awards to effect a transfer of structured settlement future-payment rights, despite lack of court approval as required under those acts, conflicts with the state acts; (2) the FAA does not preempt the state structured settlement protection acts; (3) a court may resolve this dispute rather than an arbitrator because *Symetra* is not bound by the agreements to arbitrate under the estoppel theory Rapid Settlements invokes; (4) the state-court judgments do not preclude further review given the lack of service and notice to *Symetra*; (5) *Symetra* has standing to sue; and (6) other federalism concerns have been satisfied.

Symetra, 2007 WL 114497, at *34. Judge Rosenthal's opinion is thorough, well reasoned, and correct, and there is no need for this Court to reinvent the wheel. The Court therefore adopts the

analysis and holdings of *Symetra* on these issues. *See also R & Q Reinsurance Co.*, 2007 WL 1428746, at *2 (holding that the FAA did not apply and that recourse in federal court was available); *Allstate Settlement Corp.*, 2007 WL 1377667, at *5 (same). This Court has considered and rejected the remaining arguments reflected in Rapid Settlements' submissions.

Finally, the Court must consider the scope of the relief Allstate seeks. First, the Complaint requests declaratory judgment that the arbitration award is void as to Allstate; this request is granted. Second, Allstate prays for preliminary and permanent injunctions with respect to its duty to transfer the Griffins' periodic payments to Rapid Settlements; this request is also granted. Finally, Allstate seeks an order enjoining all future attempts by Rapid Settlements to effect transfers involving Allstate without complying with applicable structured settlement protection acts. This final issue was not fully addressed in the parties' submissions. Should Allstate wish to pursue this relief, additional briefing is necessary. Within ten (10) days of the date of this Order, Allstate, as the moving party, must either submit a memorandum of law in support of the request for an injunction or inform the Court that that portion of the prayer for relief has been dropped and judgment may be entered.

*6 IT IS, THEREFORE, ORDERED AND ADJUDGED that Defendant's motion to dismiss is denied and Plaintiff's motion for summary judgment is granted in part and denied in part.

SO ORDERED.

S.D. Miss., 2007.
 Allstate Life Ins. Co. v. Rapid Settlements, Ltd.
 Slip Copy, 2007 WL 2745806 (S.D.Miss.)

END OF DOCUMENT