

## Structured Settlement Update

*United States Court of Appeals for the Second Circuit affirms summary judgment in favor of an annuity owner and annuity issuer in a case addressing the use of arbitrations to effect transfers of structured settlement payment rights.*

The United States Court of Appeals for the Second Circuit, in a summary order, affirmed an order from the United States District Court for the Western District of New York granting summary judgment in favor of an annuity owner and annuity issuer.

The case was commenced as a declaratory judgment action, wherein the annuity owner and annuity issuer sought declaratory and injunctive relief against 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 annuitant 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. The state court in New York denied the factoring company's petition to approve the transfer agreement. When the annuitant sought to cancel the transfer agreement, the factoring company commenced arbitration proceedings against the annuitant and obtained an arbitration award, which purported to approve the transfer agreement. The factoring company obtained a judgment confirming the arbitration award in a Texas state court. The factoring company then obtained an enforcement order, which purported to enforce the confirmation judgment against the annuity owner and annuity issuer, neither of which were parties in the arbitration proceedings or the proceedings to confirm the arbitration award.

The district court granted summary judgment in favor of the annuity owner and the annuity issuer, declaring that "the purported assignment of the right to receive structured settlement payments . . . is void and unenforceable." 2007 WL 2530098 at \*1 (W.D.N.Y. Sept. 5, 2007). In the hearing on the motion, the court explained that the statutorily-mandated court approval was a condition precedent to a valid transfer, and it was improper for the factoring company to obtain an arbitration award and confirmation judgment in another forum once the court in New York had denied approval of the transfer agreement. *See id.* at \*2 (proceedings). The court further declared that the arbitration award is void and unenforceable, and the factoring company "is enjoined from taking any further action in any forum to seek to recover the annuity payments due to the annuitant]." *See id.* at \*1. The factoring company appealed the district court's decision.

On appeal, the factoring company contended that the district court erred in granting summary judgment for several reasons. The factoring company argued that the payments were properly assigned to the factoring company despite the structured settlement agreement's anti-assignment language and despite the absence of a court order approving the transfer in accordance with the New York Structured Settlement Protection Act, N.Y. GEN. OBLIG. LAW §§ 5-1701 *et seq.* Further, the factoring company argued that the arbitration award was valid and enforceable under the Federal Arbitration Act. It also argued that the Full Faith and Credit Clause under the U.S. Constitution required that the district court give preclusive effect to the Texas state court's judgment confirming the arbitration award. Moreover, the factoring company contended that the district court erred in enjoining it from pursuing a recovery of the annuity payments in another forum.

The United States Court of Appeals for the Second Circuit, in affirming the district court's order, declared that "[f]or substantially the same reasons stated by the District Court..., we conclude that [the factoring company's] claims are without merit and that the [District] Court did not err in granting summary judgment to the [annuity owner and annuity issuer] or in enjoining the [factoring company]. *Pacific Life Insurance Company v. Rapid Settlements, Ltd.*, 2009 WL 320184 (C.A.2 (N.Y.)). The annuity owner and annuity issuer were represented by Stephen R. Harris and Katherine L. Villanueva of Drinker Biddle & Reath LLP.

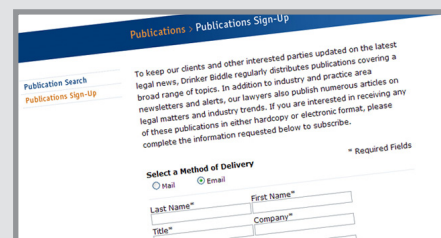
At Drinker Biddle, we are not only familiar with the legal issues involved in the context of this case, but we have also been addressing many other issues in the structured settlement arena for the past decade. If we can be of any assistance in answering further questions on this topic or resolving pending issues, please do not hesitate to contact Stephen R. Harris at Stephen.Harris@dbr.com or (215) 988-2806, or your regular Drinker Biddle contact.

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10<sup>th</sup> day of February, two thousand and nine.

PRESENT:

JOSÉ A. CABRANES,  
DEBRA A. LIVINGSTON,  
*Circuit Judges,*  
RICHARD K. EATON,\*  
*Judge.*

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PACIFIC LIFE INSURANCE COMPANY, CONFEDERATION  
LIFE INSURANCE AND ANNUITY COMPANY,

*Plaintiffs-Appellees,*

v.

RAPID SETTLEMENTS, LTD.,

No. 07-4145 -cv

*Defendant-Appellant,*

JOYCE ALLEN,

*Defendant.*

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**FOR APPELLANT:**

STEWART FELDMAN (Susan F. Hatcher and Monica Cavazos-Rosas, *on the brief*), The Feldman Law Firm, LLP, Houston, TX (Alan J. Knauf, Knauf Shaw LLP, Rochester, NY, *on the brief*).

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\* The Honorable Richard K. Eaton, Judge, United States Court of International Trade, sitting by designation.

**FOR APPELLEE:**

STEPHEN R. HARRIS (Katherine L. Villanueva, *on the brief*),  
Drinker Biddle & Reath LLP, Philadelphia, PA.

Appeal from an order of the United States District Court for the Western District of New York (David G. Larimer, *Judge*).

**UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the order of the District Court is **AFFIRMED**.

Defendant-appellant Rapid Settlements, Ltd. ("Rapid Settlements") appeals from a September 5, 2007 order of the District Court granting summary judgment to plaintiff-appellees, Pacific Life Insurance Company and Confederation Life Insurance and Annuity Company, and dismissing as moot defendant's motion to dismiss. *See Pacific Life Ins. Co. v. Rapid Settlements, Ltd.*, 2007 WL 2530098, at \*1 (W.D.N.Y. Sept. 5, 2007). Specifically, the District Court (1) declared void and unenforceable the purported assignment of defendant Joyce Allen ("Allen") to Rapid Settlements annuity payments she was entitled to receive pursuant to a structured settlement agreement, (2) declared void and unenforceable an arbitration award purporting to effectuate the assignment, and (3) enjoined Rapid Settlements from taking further action in any forum to recover the annuity payments due to Allen.

On appeal, Rapid Settlements contends that the District Court erred in granting summary judgment to plaintiffs because (a) Allen's annuity payments were properly assigned to Rapid Settlements, notwithstanding (i) the anti-assignment language in Allen's structured settlement agreement and (ii) the absence of a court order approving the assignment in accordance with the New York Structured Settlement Protection Act,<sup>2</sup> N.Y. GEN. OBLIG. LAW §§ 5-1701 to 1709, which prohibits the assignment of structured settlement payments unless the assignment is approved by a New York court; (b) the arbitration award at issue was valid and enforceable under the Federal Arbitration Act; and (c) the Full Faith and Credit Clause, *see* U.S. CONST. art. IV, § 1, required the District Court to give preclusive effect to a Texas state court judgment confirming the arbitration award. Rapid Settlements also contends that the District Court erred in enjoining it from seeking in other forums to recover the annuity payments due to Allen. We assume the parties' familiarity with the facts and procedural history of the case.

For substantially the reasons stated by the District Court in its order of September 5, 2007, we conclude that Rapid Settlements's claims are without merit and that the Court did not err in granting summary judgment to plaintiffs or in enjoining defendant. The September 5, 2007 order of the District Court is **AFFIRMED**.

FOR THE COURT,  
Catherine O'Hagan Wolfe, Clerk of Court

By \_\_\_\_\_

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<sup>2</sup> It is undisputed that at the time of purported agreement at issue Allen was a resident of New York and that, accordingly, the New York Settlement Protection Act was applicable.