

Singer Asset Fin. Co., LLC v Culp

2007 NY Slip Op 31869(U)

June 26, 2007

Supreme Court, New York County

Docket Number: 0602766/2006

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON

PART 55

Justice

Singer Asset Finance Company

INDEX NO. 602766/06

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

Richard L. Cuff

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

FILED

Cross-Motion: Yes No

JUN 28 2007

Upon the foregoing papers, it is ordered that this motion

NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

See attached Decision Order, Declaration.

Dated: 6-26-07

JANE S. SOLOMON J.S.C.

Check one FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
SINGER ASSET FINANCE COMPANY, LLC,

Plaintiff,

-against-

RICHARD L. CULP and ALLSTATE LIFE
INSURANCE COMPANY,

Defendants,

-----X

JANE S. SOLOMON, J.

INDEX NO. 602766/06

DECISION, ORDER AND
DECLARATION.

FILED
JUN 28 2007
NEW YORK
COUNTY CLERK'S OFFICE

Defendant Charles Richard Culp (sued here incorrectly as Richard L. Culp) settled a medical malpractice claim in Michigan pursuant to a structured settlement agreement, and became entitled to a stream of payments in the amount of \$325 per month for three hundred months (i.e., for 25 years) beginning on March 11, 1988, and continuing monthly until February 11, 2013. The payments are made through an annuity issued by defendant Allstate Life Insurance Company ("Allstate").

In February 1999, Culp entered into an agreement with plaintiff Singer Asset Finance Company, LLC ("Singer") whereby he accepted \$20,404 in return for an assignment to Singer of 120 monthly payments. The agreement included a forum selection clause choosing New York County, New York as the venue to litigate any dispute over performance of the terms of the agreement, and Culp consented to personal jurisdiction here.

Until recently, there was no statutory scheme permitting these arrangements which frequently conflict with the terms of the structured settlements. Accordingly, neither Singer nor Culp were forthright with Allstate regarding the agreement. Instead, Culp sent instructions to Allstate to direct his payments to Singer's post office box in Newark, New Jersey. Allstate complied, and the monthly checks were sent to the post office box beginning in April 1999.

However, in 2006 Culp directed Allstate to send the checks to his home. Allstate complied, and Culp's checks for the months April 2006 through August 2006 were sent directly to Culp. Singer notified Allstate of its claim to the payments, and in response, Allstate withheld payment beginning September 2006.

Singer commenced this action in August 2006. There is an affidavit of service showing that the summons and complaint were served by personal delivery to Charles Culp at 17101 Clarann St., Melvindale, Michigan, 48122.

Allstate moved for an order pursuant to CPLR 1006(f) discharging it from liability and permitting it to deposit Culp's payments into court. By a separate motion, Singer moves for default judgment against Culp, and summary judgment against Singer. Singer does not oppose Allstate's motion, and Allstate does not oppose Singer's motion. Culp has not appeared in this action.

Neither Singer nor Allstate provide a copy of the complaint in their motions, but Allstate annexed a copy of its answer to the complaint, which shows what relief was sought. It also is apparent from Singer's motion that it is suing to recover the payments due to it under the agreement from April 2006 to date, and it seeks a declaration that it is entitled to receive the payments from Allstate through March 11, 2009. It also seeks attorney's fees and costs, as permitted under the agreement. Although Singer's prayer for relief on the motion is garbled and nonsensical, it appears that it requests that Allstate be directed to send withheld payments to the Newark post office box, and that Allstate resume making monthly payments as it did before April 2006.

Allstate's motion is denied because its obligation to the parties, as relevant to this lawsuit, will be discharged only upon its performance of the terms of this order. There is no reason to deposit funds into court. Upon entry of this order, Allstate will no longer be subject to multiple liability, if ever it was, so there is no basis for the relief sought under CPLR 1006(f). Accordingly, it hereby is

ORDERED and ADJUDGED as follows:

1. Singer's motion (motion sequence 02) for default judgment against Culp on its first cause of action for breach of contract is granted.

2. Singer is entitled to payment from Culp in the amount of \$1,625, representing five payments of \$325 each; of this amount, interest is due on the first \$325 from April 11, 2006, interest is due on the second \$325 from May 11, 2006, interest is due on the third \$325 from June 11, 2006; interest is due on the fourth \$325 from July 11, 2006, and interest is due on the fifth \$325 from August 11, 2006.

4. Singer is further entitled to payment from Culp of \$2,000 in reasonable attorneys fees, plus the costs and disbursements of this action as taxed by the Clerk of the Court.

5. The motion for default judgement is denied as to the balance of the complaint against Culp, and the second through fifth causes of action as against him are dismissed, and it is ADJUDGED and DECLARED that Singer has not met its burden of obtaining declaratory relief against Culp.

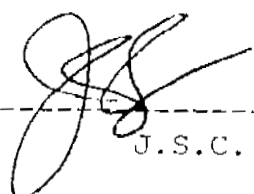
6. Singer's motion for summary judgment as against Allstate is granted on default as to the Sixth and Seventh causes of action.

7. It hereby is ADJUDGED and DECLARED that Allstate shall pay over to Singer all amounts withheld from September 2006 to date, and to make future payments to Singer at P.O. Box 19391A, Newark, NJ 07195-0391, through the payment due March 11, 2009, and thereafter, Allstate shall direct the payments to Culp at such address as he designates.

8. Allstate's motion (motion sequence 01) is denied, and the counter-claim for interpleader is dismissed as moot.

9. The Clerk is directed to enter judgment accordingly.

Dated: June 26, 2007



J.S.C.

JANE E. SOLOMON

FILED
JUN 28 2007
NEW YORK
COUNTY CLERK'S OFFICE