

JPMorgan Chase Bank, N.A. v Williams

2009 NY Slip Op 31885(U)

August 19, 2009

Supreme Court, New York County

Docket Number: 602380/07

Judge: Shirley Werner Kornreich

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

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH

PART 54

Justice

Index Number : 602380/2007
JPMORGAN CHASE BANK
vs
WILLIAMS, SHANNON
Sequence Number : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 5/28/09
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

is motion to/for _____

PAPERS NUMBERED

1-3
4-6, 6A, 6B
7-9

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No
(2)

Upon the foregoing papers, it is ordered that this motion

FILED
AUG 21 2009
COUNTY CLERK'S OFFICE
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

Dated: 7/19/09

JUSTICE SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 54

-----X
JP MORGAN CHASE BANK, N.A., as Trustee
of the Shannon Williams Structured
Settlement Pour Over Trust,

Plaintiff,

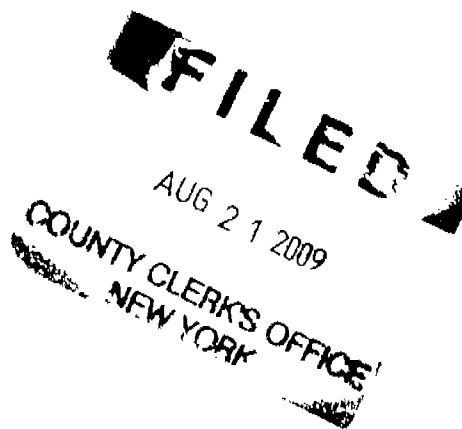
-against-

Index No. 602380/07

SHANNON WILLIAMS; NEW YORK LIFE INSURANCE
AND ANNUITY CORPORATION; NEW YORK LIFE
INSURANCE COMPANY; 321 HENDERSON
RECEIVABLES LIMITED PARTNERSHIP; 321
HENDERSON RECEIVABLES ORIGINATION LLC;
and WENTWORTH, SSC, LP,

Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.



Motions before the Court

Plaintiff, JP Morgan Chase Bank, N.A., as Trustee of the Shannon Williams Structured Settlement Pour Over Trust (Trust), moves, pursuant to CPLR 3212, for summary judgment against defendants New York Life Insurance and Annuity Corporation (NYLIA) and New York Life Insurance Company (NY Life) (collectively, NY Life Defendants), as follows: 1) money damages in the amount of \$61,573.19; 2) a declaration that NY Life must make all annuity payments due under an annuity policy issued by NY Life to plaintiff; and 3) an order declaring void, as between plaintiff and the NY Life Defendants, all previous assignments by Williams to defendant 321 Henderson Receivables Limited Partnership (321) of the annuity payments allegedly due plaintiff.

The NY Life Defendants oppose and cross-move for: 1) leave to assert a counterclaim

and cross-claim for a declaratory judgment determining the rights of the parties to the annuity payments and 2) for partial summary judgment on liability on their cross-claim for indemnification against 321.

Defendants 321, 321 Henderson Receivables Origination LLC and J.G. Wentworth, SSC, LP (collectively, Henderson), oppose the cross-motion and cross-move to amend their answer to assert an amended cross-claim for equitable estoppel against the NY Life Defendants. Henderson joins the NY Life Defendants' request for a declaration of the rights of the parties to the annuity payments, opposes the NY Life Defendants' cross-motion for indemnification, or, alternatively, requests that both the declaration and the NY Life Defendants' cross-motion be determined after completion of discovery. Henderson also opposes the cross-motion for indemnification on the grounds that it needs disclosure to explore whether plaintiff knew or had reason to know of the proceeding that resulted in the Florida Order. In addition, Henderson seeks to amend its answer to assert a claim that the NY Life Defendants are estopped from asserting the indemnification claim because they wrote a letter to Williams, dated July 19, 2005 (Letter), which stated that Williams was "presently receiving a monthly payment" from the Annuity, when in fact plaintiff was the sole payee. Henderson submits that it relied upon the Letter to its detriment. Finally, Henderson asserts that the payments could be transferred, pursuant to NY Insurance Law 3212(4) and General Obligations Law 5-1701.

Background

The facts are more fully described in the decision and order of the court, dated May 8, 2008 (Herman Cahn, J.), and will not be repeated here in detail.

Succinctly stated, this action concerns the competing claims of plaintiff and 321 to

payments due under the terms of Annuity Contract No. FP 203 444 (Annuity), which was issued by NY Life to fund a 1995 personal injury settlement (Settlement) for the benefit of defendant Shannon Williams (Williams). Under the terms of the Settlement, certain monthly and lump sum structured payments were required to be paid to Chemical Bank, as Trustee of the Trust, of which Shannon Williams was the sole beneficiary. At its inception, the Trust named Chemical Bank, Bertram D. Fisher and Sharon Williams (the mother of Shannon Williams) as Co-Trustees. Subsequently, Bertram Fisher died, Sharon Williams resigned and plaintiff, the successor-in-interest to Chemical Bank, is the sole remaining Trustee.

The NY Life Defendants do not dispute that under the terms of the Settlement, the Trust and the Annuity, plaintiff was the sole payee entitled to the Annuity payments. The Settlement provided that the payments could not be accelerated, decreased, sold, anticipated or assigned. Similarly, the Annuity issued by NY Life provided that the beneficiary, *i.e.* Williams, had no right to advance, assign or change any payment. The Trust instrument gave the trustees the right to collect the income and distribute it, in their sole discretion, to Williams during her lifetime and to her estate, following her death. The Trust is irrevocable and provides that the grantor, Shannon Williams, waived all right to alter, amend, revoke or terminate it, in whole or in part.

In 2005 and 2006, 321 petitioned Florida and Georgia courts to approve the transfer of the right to receive portions of the Annuity payments from Williams to 321. Copies of the petitions and the papers on which they were based are not in the record. The Georgia and Florida petitions were made on notice to the NY Life Defendants. The NY Life Defendants admit that they did not notify plaintiff. Nor has 321 presented any evidence that it notified plaintiff.

The NY Life Defendants wrote a letter to Williams, dated July 19, 2005 (Letter), which

stated that Williams was “presently receiving a monthly payment” from the Annuity, and referring to Williams as the “payee,” when in fact plaintiff was the sole payee. On August 22, 2005, in response to its receipt of the Florida petition, NY Life wrote a letter to 321's attorney, with a copy to Williams and the Florida court, listing the payments Williams sought to transfer. The letter stated that NY Life neither supported nor opposed the proposed transfers.

Plaintiff denies that it received notice of the transfers prior to December 2006, when they received notice from a non-party to this action. From October 2005 through August 2007, NY Life made a portion of the Annuity payments to 321, pursuant to the order of the Florida court, dated August 30, 2005 (Florida Order). During this period of time, plaintiff's Annuity payments from NY Life were reduced by the payments made to 321. The NY Life Defendants claim that 321 received a total of \$59,131.59, slightly less than the amount sought by plaintiff in its moving papers. Plaintiff's reply papers do not dispute the NY Life Defendants' calculation.

A second order was issued by a Georgia court on June 22, 2006 (Georgia Order), authorizing Williams to transfer to 321 the right to receive a lump sum payment in the amount of \$125,000.00 due in the year 2015. This transfer has not yet occurred.

Under the relevant Florida and Georgia statutes, 321, as transferee, was obligated to notify plaintiff of the petitions to approve the transfers. Fl. Stat. Ann. §§ 626.99296(2)(i)(5) and 626.99296(4); Ga. Code Ann. §§ 51-12-70(5) and 51-12-71(b). The Florida statute also provides that if the proposed transfer would contravene the terms of a structured settlement, the interested parties must be given an opportunity to object and the order must include a provision that the transferee shall indemnify the annuity issuer and settlement obligor from any liability resulting from the order, including reasonable costs and attorneys's fees. Fl. Stat. §626.99296(3)(b).

The Florida Order provided that NY Life was authorized to remit the payments to 321, that 321 was required to indemnify the NY Life Defendants for any liability, including reasonable costs and attorneys' fees, which arose from their compliance with the Florida Order, and that the Florida court made "no finding regarding the enforceability of any nonassignment provision(s) contained in the original settlement agreement or related documents."

Similarly, the Georgia Order provided that 321 would be liable to the NY Life Defendants if the transfer contravened the terms of the structured settlement, and for any liabilities, including reasonable costs and attorneys' fees, arising from compliance with the order, or as a consequence of 321's failure to comply with the requirements of the Georgia statute authorizing the proceeding.

On May 8, 2008, Justice Cahn issued an order, pursuant to which the NY Life Defendants were enjoined, during the pendency of this action, from making any payment due under the Annuity to any party other than plaintiff, as Trustee of the Trust. Since September 2007, NY Life has been holding the contested portion of the payments that would have been due to 321 pursuant to the Florida Order.

Discussion

A. Plaintiff's Motion for Summary Judgment

Plaintiff's motion for summary judgment on its third cause of action for breach of contract or breach of the Trust is granted. The NY Life Defendants oppose plaintiff's application for money damages on the ground of *laches*, claiming that plaintiff should have realized in October 2005 that the Annuity payments had been reduced and that the NY Life Defendants relied to their detriment on plaintiff's acquiescence in making the payments to 321. Further, the

NY Life Defendants state that they receive hundreds of petitions each year in connection with structured settlement annuities and that it is their policy not to take a position on such applications.

However, *laches* is not a defense to a breach of contract action brought within the applicable six year statute of limitations. *Gonzalez v. Chalpin*, 159 A.D.2d 553 (2d Dep't 1990), *affd.* 77 N.Y.2d 74 (1990), *citing Columbus Trust Co. v. Campolo*, 110 A.D.2d 616 (2d Dep't 1985), *affd.* 66 N.Y.2d 701 (1985)(defense of laches does not bar actions at law commenced within the applicable statute of limitations). Here, plaintiff sued within the applicable six year statute of limitations for breach of contract. CPLR 213(2).

It is clear that the NY Life Defendants breached the Trust as well as the Annuity when it made the annuity payments to 321 instead of to plaintiff. In its reply papers, plaintiff did not dispute that the amount paid to 321 under the Florida Order was \$59,131.59. Accordingly, plaintiff is entitled to recover that amount with interest from April 15, 2006.

In addition, plaintiff is entitled to a declaration that as between it and the NY Life Defendants, the purported assignments by Williams to 321 are of no force and effect. One is not bound by a judgment in a proceeding to which he is not a party. *County Fed. S&L Ass'n v. First Pa. Realty Corp.*, 29 A.D.2d 675 (2d Dep't 1968), *affd.* 23 N.Y.2d 680 (1968); *Gibbs v. Kinsey*, 170 A.D.2d 1049 (4th Dep't 1991). A foreign state judgment is unenforceable against a party over whom the foreign tribunal did not have personal jurisdiction. *Susi Contracting Co. v. Hartford Acci. & Indem. Co.*, 172 A.D.2d 255 (1st Dep't 1991), *app. den.* 78 N.Y.2d 984 (1991)(New York State courts do not give full faith and credit to foreign judgments entered without personal jurisdiction). Plaintiff was not served with process in the Florida and Georgia

proceedings and was not a party to the proceedings resulting in the Florida and Georgia Orders. Therefore, plaintiff is not bound by the them and is entitled to a declaration that, as to plaintiff, the Florida and Georgia Orders are void.

Plaintiff is entitled to a further declaration that, during Williams' lifetime, the NY Life Defendants are contractually obligated to make all of the Settlement Annuity payments that fell due after August 20, 200, or that become due in the future, to the trustees of the Trust. Having ruled that plaintiff is not bound by the Florida and Georgia Orders, the terms of the Settlement, the Annuity and the Trust mandate that the payments being held by the NY Life Defendants, as well as future Annuity payments, must be made to the trustees of the Trust during Williams' life.

B. Cross-Motions of the NY Life Defendants and Henderson

The NY Life Defendants seek indemnification from 321 Henderson LP for any payments and litigation expenses that the NY Life Defendants are ordered to pay in this action and in a related action entitled, *JP Morgan Chase Bank v. New York Life Ins. & Annuity*, Index No. 115680/08 (Related Action). In the Related Action, JP Morgan Chase seeks attorneys' fees and litigation costs incurred by it in litigating this action against the defendants other than the NY Life Defendants. However, 321 asserts that it was unaware of the existence of the Trust and plaintiff's entitlement to the Annuity payments because it relied upon the Letter, which described Williams as the payee and stated that she was receiving the Annuity payments.

The NY Life Defendants' cross-motion for summary judgment against 321 on liability on their claim for indemnification is granted. This is not a situation, as 321 urges, where there has been an agreement to indemnify the NY Life Defendants for their own negligence. Here, the court is presented with two foreign judgements, which are entitled to full faith and credit as

between the parties to the underlying proceedings. As a matter of full faith and credit, review by the courts of this State is limited to determining whether the rendering court had jurisdiction, an inquiry which includes due process considerations. *Fiore v. Oakwood Plaza Shopping Center, Inc.*, 78 N.Y.2d 572, 577-578 (1991). The merits underlying the judgment cannot be collaterally attacked where there was adequate due process and personal jurisdiction. *Id.* In addition, there is no need for discovery, as the NY Life Defendants' right to indemnification is conclusively established by the Florida and Georgia Orders. Accordingly, 321 must indemnify the NY Life Defendants for the judgment rendered against it in this action, plus reasonable attorneys' fees and costs, as well as any judgment rendered against the NY Life Defendants' in the Related Action, pursuant to the Florida and Georgia Orders.

The cross-motion of Henderson to amend its answer to assert a claim that the NY Life Defendants are equitably estopped from seeking indemnification is denied on the ground that the claim is foreclosed by the Florida and Georgia Orders. The court rejects Henderson's argument that the Annuity payments were assigned validly, pursuant to NY Insurance Law 3212(4) and General Obligations Law 5-1701. These statutes would have required notice to plaintiff.

Lastly, the cross-motion by the NY Life Defendants to amend their answer to assert a counterclaim against plaintiff and a cross-claim against 321 for a declaration of the rights of the parties to the Annuity payments is denied as moot. The court has already determined that plaintiff is entitled to the payments based upon the complaint. Accordingly, it is

ORDERED that the motion of plaintiff, JPMorgan Chase Bank, N.A., as Trustee of the Shannon Williams Structured Settlement Pour Over Trust, for summary judgment against defendants New York Life Insurance and Annuity Corporation and New York Life Insurance

Company is granted in its entirety, as follows:

1. on the third cause of action in the complaint judgment is granted in favor of plaintiff and against said defendants in the amount of \$59,131.59 with interest from April 15, 2006;

2. It is hereby ORDERED, ADJUDGED AND DECLARED that all prior court approvals of assignments of the structured settlement payments payable to plaintiff pursuant to Annuity Contract No. FP 203 444 issued by defendant New York Life Insurance Company to 321 Henderson Receivables Limited Partnership are hereby null and void and of no effect with respect to the right of plaintiff to receive said payments, and that defendants New York Life Insurance and Annuity Corporation and New York Life Insurance Company are contractually obligated to make all payments from said Annuity Contract to the JPMorgan Chase Bank, N.A., as Trustee of the Shannon Williams Structured Settlement Pour Over Trust, or its successors or assigns during the life of Shannon Williams, and shall make all such payments that it is currently holding, and all future payments from said Annuity Contract, to said Trustee, or its successors or assigns during the life of Shannon Williams; and it is further

ORDERED that the cross-motion of defendants New York Life Insurance and Annuity Corporation and New York Life Insurance Company to amend its answer and for summary judgment on liability on its indemnification claim against 321 Henderson Receivables Limited Partnership is granted solely to the extent that it is granted summary judgment on liability for indemnification against 321 Henderson Receivables Limited Partnership for any judgment entered against defendants New York Life Insurance and Annuity Corporation and New York Life Insurance Company in this action, plus reasonable attorneys' fees and costs, and any judgment entered against said defendants in the action entitled *JP Morgan Chase Bank v. New*

York Life Ins. & Annuity, Index No. 115680/08, and the motion to amend is denied as moot; and it is further

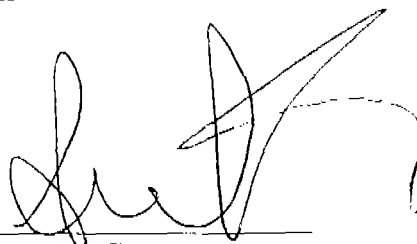
ORDERED that the cross-motion by 321 Henderson Receivables Limited Partnership is denied in all respects; and it is further

ORDERED that the parties shall appear for a status conference on September 10, 2009 at 9:30 a.m., in Room 418 of the courthouse located at 60 Centre Street, New York, NY; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly and to sever the remainder of the action, which shall continue.

Dated: August 19, 2009

ENTER:



J.S.C.

FILED
AUG 21 2009
COUNTY CLERK'S OFFICE
NEW YORK