

Lape v Structured Asset Funding, LLC
2021 NY Slip Op 33675(U)
July 27, 2021
Supreme Court, Monroe County
Docket Number: Index No. E2020003377
Judge: Ann Marie Taddeo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

PHILLIP LAPE,

Plaintiff,

Index No. E2020003377
DECISION AND ORDER

v.

STRUCTURED ASSET FUNDING, LLC d/b/a/ 123 LUMPSUM,
INSURANCE COMPANY OF NORTH AMERICA,
LIFE INSURANCE COMPANY OF NORTH AMERICA,

Defendants.

Hon. Ann Marie Taddeo, JSC,

Upon a Motion for Summary Judgment by Defendant Structured Asset Funding, LLC, d/b/a/ 123 Lumpsum, an Affirmation in Support and an Affirmation in Reply by Jon P. Davendorf, Esq., an Affidavit in Support by Andrew Savysky, an Affirmation in Support and an Affirmation in Reply by Andrew Cummings, Esq., and a Memorandum of Law in Support and a Memorandum in Reply by Mr. Davendorf; and upon an Affirmation in Opposition by Edward S. Stone, Esq., and a Memorandum of Law in Opposition by Mr. Stone; and upon consideration of all exhibits attached to Counsels' papers, the Court renders the following Decision:

As a result of his settlement of a tort action. Plaintiff received periodic annuity payment. In 2014, 2015 and 2016, Plaintiff commenced actions in Florida to transfer some of these annuity payments.. These transfers were approved by a Florida Circuit Court Judge. Plaintiff now brings suit claiming Fraud and violation of the NY General Business Law.

Defendant Structured Asset Funding moves pursuant to CPLR §3212(b) to dismiss the Complaint, claiming that there is no issue of material fact or law with respect to the claims made by Plaintiff. Defendant contends that the documentary evidence supports its claim that Plaintiff improperly seeks to reverse three separate Florida Orders.

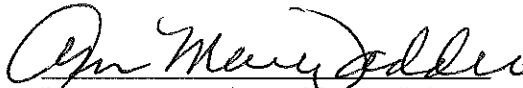
Defendant argues that Plaintiff's claims 1) violate the Full Faith and Credit Clause; 2) violate the doctrines of Res Judicata and Waiver; 3) are barred by the doctrine of Judicial

Estoppel; 4) were waived by his ratification of the rulings of the Florida Court; and 4) are barred by the principal of unclean hands.

Plaintiff opposes. Plaintiff asserts that his is an action for fraud, which was never pled in Florida, Thus, he says, Defendant's Full Faith and Credit and Res Judicata arguments do not apply. The Court agrees with Plaintiff that a foreign judgment procured by fraud is not entitled to Full Faith and Credit. However, the Court also agrees with Defendant that if Plaintiff was a knowing participant of said fraud, he is not entitled to the Court's protection under those doctrines.

The Court finds that Defendant's motion is premature; until discovery is complete the Court cannot properly assess either Plaintiff's or Defendant's role in the alleged "fraud". Accordingly, the Court denies Defendant's motion without prejudice to renew at the completion of all discovery.

Dated: July 27 2021
Rochester, New York


Hon. Ann Marie Taddeo, J.S.C.