

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt #

Book Page

No. Pages: 3

Instrument: MISCELLANEOUS DOCUMENT

Control #: Unrecorded #8332555

Index #: E2020003377

Date:

Time:

Return To:  
Donald Scardino  
99 Exchange Blvd  
Rochester, NY 14614

Lape, Phillip

Structured Asset Funding, LLC  
Insurance Company of North America  
Life Insurance Company of North America

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



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 to Dismiss 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 Memorandum of Law by Mr. Davendorf; and upon an Affirmation in Opposition by Edward S. Stone, Esq., 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 not brings suit claiming Fraud and violation of the NY General Business Law.

Defendant-Structured Asset Funding moves to dismiss the Complaint, *in lieu of* Answer, claiming 1) it violates the Full Faith and Credit Clause; 2) it violates the *Res Judicata* doctrine; and 3) Plaintiff failed to join necessary parties. For the reasons stated below the Court denies Defendant's motion.

While CPLR §3211(b) states that "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit," the Court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez*, 84 N.Y.2d 83, 87-88, (1994). The role of the Court here is to determine whether Plaintiff has any cause of action. A

complaint should be dismissed “only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v Martinez*, 84 N.Y.2d at 83, 87-88 (1994).

Plaintiff asserts that he is not seeking this Court to overturn the actions of the Florida Circuit Court, but rather, he seeks a novel finding of fraud and deceptive business practices. Accordingly, he argues, neither the full faith and credit clause nor the doctrine of *res judicata* applies. The Court holds that Plaintiff has stated a claim for which relief can be granted in New York. In so ruling, the Court does not opine on the strength of Plaintiff’s case.

Accordingly, it is

ORDERED, that the motion of Defendant Structured Asset Funding, LLC, d/b/a/ 123 Lumpsum is denied; it is further

ORDERED, that Counsel shall participate in a phone conference with the Court on February 18, 2021 at 10:00 a.m.

Dated: December 15, 2020  
Rochester, New York



Hon. Ann Marie Taddeo, JSC