IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SETTLEMENT FUNDING LLC, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-12-2044
	§	
RSL FUNDING, LLC, et al.,	§	
	§	
Defendants.	§	

ORDER

Pending before the court are various pretrial motions and objections.[1] Central to many of the parties' disputes is the question whether Washington Square Financial, LLC v. RSL Funding, LLC, [hereinafter Washington Square], 418 S.W.3d 761 (Tex. App.—Houston [14th Dist.] 2014, pet. denied), applies to the tortious-interference claims in this case. Defendants take the position that it does, and Plaintiffs argue that the law-of-the-case doctrine renders Washington Square irrelevant. The court is forced to address at this time an issue that was left open in April 2014.[2]

I. Case Background

[1] See Doc. 249, Defs.' Mot. in Limine; Doc. 251, Pls.' Mot. in Limine; Doc. 252, Pls.' Objections to Defs.' Witnesses & Exs.; Doc. 261, Defs.' Objections to Pls.' Witnesses; Doc. 262, Defs.' Objections to Pls.' Exs.; Doc. 263, Pls.' Objections to Defs.' Jury Instructions & Questions; Doc. 264, Defs' Objections to Pls.' Jury Instructions. The parties filed motions in limine in May that were supplanted by the motions in limine filed in June. See Doc. 239, Pls.' Mot. in Limine; Doc. 242, Defs.' Mot. in Limine; Doc. 249, Defs.' Mot. in Limine; Doc. 251, Pls.' Mot. in Limine. The earlier motions in limine (Docs. 239, 242) are **MOOT**.

[2] See Doc. 185, Am. Order Dated Apr. 15, 2014 p. 4.

The only cause of action in this case is tortious interference with factoring agreements between Settlement Funding, LLC, ("Settlement Funding") and/or Peachtree Settlement Funding, LLC, ("Peachtree") and their customers. For the alleged interference with transfer agreements between Settlement Funding and Evelyn E. Franklin ("Franklin") and between both Settlement Funding and Peachtree Settlement Funding and Michale Parenti ("Parenti"), Plaintiffs seek damages. Plaintiffs Settlement Funding and Peachtree also seek a permanent injunction preventing Defendants Rapid Settlements, Ltd., ("Rapid"), Rapid Management Corp., RSL Funding, LLC, ("RSL"), Stewart A. Feldman, and their affiliates from interfering with Settlement Funding and Peachtree's factoring agreements.

As the court understands the undisputed facts stated in the Joint Pretrial Order ("JPO"), Rapid entered into a factoring agreement with Franklin, a New York citizen. The agreement was governed by New York law. Franklin canceled the contract on April 7, 2006, but Rapid pursued the approval of the agreement in a court of competent jurisdiction in New York pursuant to the requirements of the New York Structured Settlement Protection Act ("SSPA"). The court initially approved the transfer agreement on July 20, 2006. On August 5, 2006, Franklin and Settlement Funding entered into a transfer agreement, which was also governed by New York law. Rapid sought and obtained, through an arbitration proceeding in Texas, an

injunction issued on September 21, 2006, prohibiting Franklin from selling her payment rights to anyone except Rapid. On December 5, 2006, the New York court vacated the Rapid transfer and, on the same date, signed the order approving the transfer from Franklin to Settlement Funding.

Parenti, a Texas resident, entered into his second transfer agreement with Settlement Funding on July 5, 2010, and Settlement Funding applied for state court approval under the Texas SSPA in Harris County. RSL located the application in the court records and contacted Parenti to offer more money for the same payment stream. On July 22, 2010, Parenti's wife informed Settlement Funding that Parenti wanted to cancel the Settlement Funding agreement in order to enter an agreement with RSL instead. Settlement Funding sent a cease-and-desist letter to RSL regarding Parenti. The state-court order approving the Parenti/Settlement Funding transfer was signed on November 19, 2010.

The parties are in agreement, as to the above two transfer agreements, that the alleged interference occurred before the agreements were approved by the appropriate court. Plaintiffs' request for injunctive relief grows out of the transfer agreements with these two individuals and, thus, is limited to the prevention of interference with transfer agreements prior to state court approval.

In July 17, 2013, Settlement Funding filed its Motion for

Partial Summary Judgment on the Tortious-Interference Claim,[3] arguing that the state court of appeals decision in this case, which was entered prior to removal, found that Settlement Funding had established a probable right to relief on its claim of tortious interference with existing contracts. This court agreed, finding that the state appellate decision was law of the case.[4]

Later, in its amended order adopting the memorandum and recommendation, the district judge considered Washington Square, a case that had not been briefed by either party prior to the court's entering the memorandum and recommendation.[5] The court queried whether Washington Square affected the application of the law-of-the-case doctrine in this instance.[6] The court declined to address the issue because the parties had not briefed it.[7] In the various pretrial briefs, the parties have presented their positions on the application of both the law-of-the-case doctrine and Washington Square.

II. Law-of-the-Case Doctrine

The law-of-the-case doctrine generally prevents a district court on remand from reexamining an issue of fact or law decided on

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[3] See Doc. 115, Settlement Funding's Mot. for Partial Summ. J.

[4] See Doc. 165, Mem., Recommendation, & Order Dated Feb. 25, 2014 pp. 24-25.

[5] See Doc. 185, Am. Order Dated Apr. 15, 2014 pp. 3-4.

[6] See id. p. 4.

[7] See id.

appeal. United States v. Matthews, 312 F.3d 652, 657 (5th Cir. 2002)(quoting Tollett v. City of Kemah, 285 F.3d 357, 363 (5th Cir. 2002)). However, the doctrine is not jurisdictional but, rather, discretionary. Id. It "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power." Id. (quoting Messinger v. Anderson, 225 U.S. 436, 444 (1912)); see also Pepper v. United States, 562 U.S. 476, 506 (2011)(quoting Arizona v. California, 460 U.S. 605, 618 (1983)); Zarnow v. City of Wichita Falls, 614 F.3d 161, 171 (5th Cir. 2010). In fact, a court can revisit its prior decisions "in any circumstance." Zarnow, 614 F.3d at 171 (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 817 (1988)). Three changes in circumstance are generally recognized as warranting review of a prior decision: (1) the evidence at trial is substantially different; (2) an intervening change in the law by a controlling authority has been issued; and (3) the prior decision is clearly erroneous and would work a manifest injustice. See Matthews, 312 F.3d at 657 (referring to these three circumstances as exceptions to the law-of-the-case doctrine).

In this case, the Fourteenth Court of Appeals implicitly recognized the viability of Plaintiffs' claims of tortious interference. The court reversed and remanded the case only as to the scope of the state district court's injunction that prevented Defendants' interference with Plaintiffs Settlement Funding and

Peachtree's transfer agreements prior to court approval. Subsequent to the appellate court's implicit determination that Plaintiffs' tortious-interference claims were viable under Texas law, the Fourteenth Court of Appeals explicitly found, in Washington Square, "that transfer agreements that have not received the statutorily required court approval are not enforceable on public-policy grounds and therefore cannot form the basis of an action for tortious interference with an existing contract." Washington Square, 418 S.W.3d at 770.

The court finds that Washington Square is an intervening clarification of Texas law issued by a persuasive, if not controlling, authority. Washington Square addressed the exact issue facing this court and unequivocally held that, prior to court approval, structured-settlement transfer agreements are not subject to tortious-interference claims. Review was denied by the Supreme Court of Texas. Washington Square has since been favorably cited by two other Texas Courts of Appeal and followed by a federal district court in Washington State. See BOFI Fed. Bank v. Advance Funding LLC, Case No. 14-CV-00484-BJR, 2015 WL 1926382, at **4-5 (W.D. Wash. Apr. 28, 2015); In re Rains, No. 07-14-00132-CV, 2015 WL 4647779, at *2 (Tex. App.—Amarillo Aug. 5, 2015, no pet. h.); RSL-3B-IL, Ltd., NO. 01-14-00482-CV, 2015 WL 4141454, at *3 (Tex. App.—Houston [1st Dist.] July 9, 2015, no pet. h.).

In its discretion, the court finds that Washington Square is

a change in circumstance that warrants review of its prior decision. Applying Washington Square, the court's only option is to dismiss Plaintiffs' pre-approval tortious-interference claims that are governed by Texas law. Thus, the claim of tortious interference with Parenti's transfer agreement prior to court approval is dismissed.

III. Texas Law Versus New York Law

The JPO is unclear whether the parties agree that New York law applies to the Franklin transfer agreement. The court finds no other possibility. Franklin was a New York resident, both Rapid and Settlement Funding sought the approval of the New York court for their respective transfer agreements, and both Rapid and Settlement Funding's respective transfer agreements called for the application of New York law. New York law applies to the Franklin claim.

The court searched New York law for a case with a definitive holding as to whether tortious-interference claims are viable in relation to transfer agreements prior to court approval. The court found no case directly on point. Further, the court finds that Prosperity Partners v. Bonilla, 249 F. App'x 910 (2d Cir. 2007)(unpublished), cited by Defendants, is not instructive for this case because it addressed the specific language of a contract between those parties and because that assignment of lottery payments was governed by tax law, not the New York SSPA.

Absent New York case law guiding the court in this situation, the court looks to the New York SSPA. Except for a few differences in the required findings by the court of competent jurisdiction, the language of the New York SSPA tracks that of the Texas SSPA. Compare N.Y. Gen. Oblig. Law §§ 5-1701, 5-1706 with Tex. Civ. Prac. & Rem. Code §§ 141.002, 141.004. Because the requirements of the two statutes with regard to court approval are virtually identical, as are the definitions of "transfer" and "transfer agreement," the court finds that the rationale of Washington Square applies equally to the Franklin tortious-interference claim. Cf. BOFI Fed. Bank, 2015 WL 1926382, at *5 (following the analysis of Washington Square in determining that a Washington statute requiring court approval of an agreement assigning lottery winnings rendered a transfer agreement "unenforceable on public policy grounds[] and unusable as the basis for a tortious interference with contract claim").

Thus, the claim of tortious interference with Franklin's transfer agreement prior to court approval is dismissed.

IV. Conclusion

At the scheduled pretrial conference on Monday, September 14, 2015, the court will discuss with the parties what claims remain.

SIGNED in Houston, Texas, this 11th day of September, 2015.

U.S. MAGISTRATE JUDGE