

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

WILCAC STRUCTURED SETTLEMENTS,
INC., d/b/a CNA STRUCTURED
SETTLEMENTS, INC. and WILCAC LIFE
INSURANCE COMPANY,

Plaintiffs,

-vs-

CANAN IPEK and HAYRULLAH IPEK,
individually and as guardians of Ekinan
Ipek, deceased

Defendants.

Civil Action No.: 2:19-cv-6928

COMPLAINT

JURY DEMANDED

Plaintiffs, Wilcac Structured Settlements, Inc., d/b/a CNA Structured Settlements, Inc. (“CNASSI”) and Wilcac Life Insurance Company f/k/a Continental Assurance Company (“Wilcac Life”) (collectively, “Plaintiffs” or “Wilcac”), by and through their undersigned counsel, brings this Complaint against Canan Ipek and Hayrullah Ipek (collectively, the “Ipeks” or “Defendants”), and in support thereof, avers as follows:

INTRODUCTION

1. In this action, Wilcac seeks the return of certain life-contingent structured settlement payments that were not due and owing under the terms of the underlying structured settlement agreement and related annuity contract at issue. More specifically, because the measuring life – Ekinan Ipek (“Ekinan”) – had passed away, life-contingent structured settlement payments not otherwise due were received (and retained) by the Defendants. Subsequently, Defendants failed to notify Wilcac of Ekinan’s passing. Instead, Defendants ultimately received a windfall, and have been unjustly enriched to Wilcac’s detriment.

PARTIES

2. CNASSI is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in Jacksonville, Illinois.

3. Wilcac Life is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in Jacksonville, Illinois.

4. Upon information and belief, Defendant Hayrullah Ipek (“Mr. Ipek”) is a natural person and citizen of the State of New York, residing at 405 Mineola Road, Mineola, New York 11501. Mr. Ipek is being sued both individually and in his capacity as former guardian for the deceased, Ekinan.

5. Upon information and belief, Defendant Canan Ipek (“Ms. Ipek”) is a natural person and citizen of the State of New York, residing at 405 Mineola Road, Mineola, New York 11501. Ms. Ipek is being sued individually and in her capacity as former guardian for the deceased, Ekinan.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1), insofar as the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and there is complete diversity between Plaintiffs and Defendants.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1), because Defendants Mr. Ipek and Ms. Ipek reside in this district.

BACKGROUND

8. On December 5, 1996, Ms. Ipek and Mr. Ipek, as parents and natural guardians of Ekinan, then a minor, entered into a Settlement Agreement (the “Settlement Agreement”) with a certain tort defendant (the “Tort Defendant”) in connection with the resolution of a personal

injury claim that resulted in purported injuries to Ekinan. A true and correct redacted copy of the Settlement Agreement is attached hereto as Exhibit “A.”¹

9. The Settlement Agreement provided that Ekinan was to receive certain payments including:

- \$475,237.00 in cash;
- monthly payments of \$25,000.00, commencing January 15, 1997, increasing 3% every January 15th thereafter, and continuing through and including December 15, 2001 (the “Guaranteed Monthly Payments”);
- monthly payments of \$30,000.00, commencing January 15, 2002, increasing 3% every January 15th thereafter, and continuing for the life of Ekinan thereafter (the “Life Contingent Monthly Payments”); and
- \$250,000 on December 15, 2001 and December 15, 2006, and every five years for the life of Ekinan thereafter (the “Life Contingent Lump Sum Payments”)

(collectively, the “Periodic Payments”). *See* Ex. “A.”

10. The Life Contingent Monthly Payments and the Life Contingent Lump Sum Payments² were due and payable if – and only if - Ekinan was alive on the date that each such life-contingent payment was due.

11. Pursuant to a Compromise Order (the “Order”) entered on October 1, 1997 by the Supreme Court of New York, County of New York (the “State Court”), in the matter styled *Canan Ipek and Hayrullah Ipek, as parents and natural guardians of their son, Ekinan Ipek, and Canan Ipek and Hayrullah Ipek, Individually v. The Mt. Sinai Hospital*, Index No.

121180/96 (the “Guardianship Matter”), the State Court authorized and empowered Mr. Ipek and

¹ Exhibits have been redacted to protect confidentiality.

² The exception to this was the guaranteed lump sum payments of \$250,000 paid on December 15, 2001 and December 15, 2006, which were due and payable regardless of whether Ekinan was alive.

Ms. Ipek to settle the underlying claims in accordance with the Settlement Agreement. A true and correct copy of the Order is attached hereto as Exhibit “B.”

12. As set forth in the Order, in the event of the demise of Ekinan, Defendants were ordered to arrange for the primary care physician of Ekinan to “furnish to [Wilcac] a letter attesting to the death of [Ekinan] within 4 days” *See id* at 16.

13. As permitted by the Order, pursuant to a Qualified Assignment Agreement (the “Qualified Assignment”), the Tort Defendant assigned to CNASSI the obligation to make the Periodic Payments.

14. CNASSI purchased an annuity (the “Annuity”) from Wilcac Life in order to fund the obligation to make the Periodic Payments.

15. Wilcac Life made all of the guaranteed Periodic Payments (through 2001), and then paid all of the Life Contingent Monthly Payments for Ekinan’s benefit through September 15, 2016.

16. Upon information and belief, Ekinan remained an incompetent individual for his life and, therefore, Mr. Ipek and Ms. Ipek remained Ekinan’s guardians, controlling all monies received for Ekinan’s benefit.

17. In or around late September 2016, Wilcac Life learned, for the first time, that Ekinan had passed away some eight (8) months earlier, on March 31, 2016.

18. Specifically, Ekinan’s certificate of death and an accompanying “Statement of Death” was mailed to Wilcac Life by priority mail dated September 15, 2016. A true and correct copy of the death certificate is attached hereto as Exhibit “C.”

19. Because Wilcac Life was not promptly advised of Ekinan’s death, the Life Contingent Monthly Payments of \$45,377.69 each, from April 15, 2016 through and including

September 15, 2016 were paid to Ekinan, totaling \$272,266.14 (the “Overpayment”). Neither Ekinan nor his parents, the Ipeks, were entitled to these funds pursuant to the terms of the Annuity contract.

20. Wilcac Life was neither required nor obligated to make any Life Contingent Monthly Payments to Ekinan or the Ipeks following Ekinan’s death. The Overpayment must be re-paid to Wilcac Life.

21. Wilcac Life has made repeated demands of Defendants to repay the Overpayment, which they have refused to do. True and correct copies of letters sent to Defendants and their counsel regarding recoupment of the Overpayment are attached hereto as Exhibit “D.”

22. Wilcac Life is entitled to recover from Defendants the full amount of the Overpayment, or \$272,266.14, along with interest, reasonable costs, and attorney’s fees.

COUNT I – CONVERSION/CIVIL THEFT

23. Wilcac hereby incorporates by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

24. As the owner and issuer of the Annuity, CNASSI and Wilcac Life, respectfully, had a legal right to maintain the Annuity for proper distribution.

25. Following Ekinan’s death, Ekinan, Mr. Ipek and Ms. Ipek were not entitled to receive any further Life Contingent Monthly Payments, including the Overpayment.

26. Because Mr. Ipek and Ms. Ipek failed to notify CNASSI or Wilcac Life of Ekinan’s death until eight (8) months later, Wilcac Life made, and Mr. Ipek and Ms. Ipek received, the Overpayment.

27. The Overpayment is, rightfully, Wilcac Life’s property.

28. Defendants are not entitled to the Overpayment.

29. Defendants knew that the Life Contingent Monthly Payments were contingent upon, and ended with, Ekinan's life.

30. Defendants knew that the Overpayment had been made after Ekinan's death.

31. Defendants knew that Wilcac Life immediately sought reimbursement of the Overpayment upon learning of Ekinan's death.

32. Mr. Ipek and Ms. Ipek each had an obligation to return the Overpayment to Wilcac Life, but both have repeatedly refused to do so.

33. Without CNASSI's or Wilcac Life's authorization, and with actual knowledge of their obligation to return the Overpayment, Mr. Ipek and Ms. Ipek, individually, and as guardians of Ekinan, wrongfully exercised dominion and control over the Overpayment and used the monies comprising the Overpayment for their own personal use after Ekinan's death.

34. By virtue of their failure and refusal to return the Overpayment, Defendants have willfully deprived, wrongfully taken away, and interfered with property that was legally owned by Wilcac Life.

35. Wilcac Life has conferred a benefit comprised of the Overpayment on Defendants, and Defendants accepted the benefit knowing that no further Periodic Payments were due, and that they were not entitled to them.

36. Defendants have been unjustly enriched in at least the amount of the Overpayment, and it would be inequitable for either one of them to retain such a benefit.

37. As a result of Defendants' collective wrongful actions, Plaintiffs have suffered economic damage totaling (i) the value of the Overpayment; (ii) interest; and (iii) other special and economic damages according to proof.

COUNT II – CONSTRUCTIVE TRUST

38. Wilcac hereby incorporate by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

39. Mr. Ipek and Ms. Ipek retained the full amount of the Overpayment, even though they were both made aware that the Overpayment should be returned to Wilcac Life. Likewise, they have failed to reimburse Wilcac Life for said funds.

40. Because Mr. Ipek and Ms. Ipek have failed to return the Overpayment to Wilcac Life, and because of their knowing and willful actions, Plaintiffs are entitled to the creation of a constructive trust and an accounting of the overpaid funds (\$272,266.14), and any portion of the same that remains in Mr. Ipek's and/or Ms. Ipek's control.

41. Defendants will continue to be unjustly enriched if they are entitled to retain any of the Annuity funds constituting the Overpayment.

42. Upon information and belief, Defendants and possibly others may be continuing to hide assets from Plaintiffs.

43. Plaintiffs have no other adequate remedy at law.

44. The circumstances of this case render it unconscionable for Mr. Ipek and Ms. Ipek to retain the Overpayment.

45. In order to do equity and prevent unjust enrichment, a constructive trust should be imposed.

46. Unless this Court imposes a constructive trust and makes Plaintiffs the constructive trustees of the overpaid funds at issue (i.e., the Overpayment), Plaintiffs will be irreparably harmed.

COUNT III – FRAUD

47. Wilcac hereby incorporate by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

48. Upon information and belief, Mr. Ipek and Ms. Ipek misrepresented by actively concealing and/or failing to disclose to Plaintiffs the fact that Ekinan had died, and that the Life Contingent Monthly Payments were no longer due or payable after Ekinan's death.

49. These misrepresentations were material to Plaintiffs' obligations to make the Life Contingent Monthly Payments pursuant to the underlying Settlement Agreement, Order, Qualified Assignment, and Annuity. Indeed, Wilcac Life would not have issued any of the Life Contingent Monthly Payments resulting in the Overpayment had it known Ekinan had died.

50. Upon information and belief, Defendants actively concealed and/or failed to disclose to Plaintiffs the fact that Ekinan had died with the knowledge that Ekinan was no longer alive and that the Life Contingent Monthly Payments were to have ceased along with his death.

51. Upon information and belief, Defendants made such misrepresentations and/or omissions with the intent to deceive and to induce Plaintiffs into continuing making the Life Contingent Monthly Payments after Ekinan's death.

52. When it continued to pay each Life Contingent Monthly Payment, Wilcac Life justifiably relied on the truth of Defendants' representation that Ekinan was still alive.

53. As a proximate result of Defendants' wrongful conduct and nondisclosures, Plaintiffs have incurred substantial damages and may sustain additional damages in the future.

COUNT IV – UNJUST ENRICHMENT

54. Wilcac hereby incorporates by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

55. Mr. Ipek and Ms. Ipek retained the Overpayment and have failed to reimburse Plaintiffs for said funds.

56. Because Mr. Ipek and Ms. Ipek have failed to return the Overpayment to Wilcac Life, Mr. Ipek and Ms. Ipek have been unjustly enriched at the expense of Plaintiffs in the amount of the Overpayment, plus interest due.

57. It is against equity and good conscience to permit Mr. Ipek and Ms. Ipek to retain any of the Overpayment.

58. As a result of Defendants' retention of the Overpayment, Plaintiffs have incurred substantial damages and may sustain additional damages in the future.

COUNT V – MONEY HAD AND RECEIVED

59. Wilcac hereby incorporates by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

60. Mr. Ipek and Ms. Ipek received the Overpayment, comprised of several Life Contingent Monthly Payments that were not due and owing following the death of Ekinan.

61. As the owner and issuer of the subject Annuity, Plaintiffs had a legal obligation to maintain the Annuity funds for only proper distribution.

62. Upon information and belief, Mr. Ipek and Ms. Ipek, individually, and as guardians of Ekinan, wrongfully exercised dominion and control over Wilcac Life (and the Overpayment) and used the monies comprising the Overpayment for their own personal use and, thereby, directly benefited from their receipt and retention of the Overpayment.

63. Under principles of equity and good conscience, Mr. Ipek and Ms. Ipek should not be permitted to keep any the Overpayment.

64. As a result of Defendants' retention of the Overpayment, Plaintiffs have incurred substantial damages and may sustain additional damages in the future.

COUNT VI—CONSPIRACY TO COMMIT CONVERSION, CIVIL THEFT AND FRAUD

65. Wilcac hereby incorporates by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

66. Upon information and belief, Mr. Ipek and Ms. Ipek had an agreement to withhold information from Wilcac related to Ekinca's death such that they could retain the Overpayment for their own personal benefit.

67. In fact, Mr. Ipek and Ms. Ipek did not notify either Plaintiff of Ekinca's death until the Overpayment was paid to the Defendants in furtherance of their agreement to defraud Wilcac Life of the overpaid funds.

68. Mr. Ipek and Ms. Ipek's failure to notify Plaintiffs of Ekinca's death was intentional, willful, and was in furtherance of their devised plan to obtain the Overpayment for their own personal use and benefit.

69. The conspiratorial actions of Mr. Ipek and Mrs. Ipek to commit conversion, civil theft, and fraud as set forth in Counts I and III above are incorporated and alleged herein by reference in their entirety.

70. As a result of Defendants' fraudulent actions, Plaintiffs suffered economic damage in the amount of the Overpayment, any interest due, and other special and economic damages according to proof.

WHEREFORE, Plaintiffs request that judgment be entered against Defendants for damages in the amount of \$272,266.14, plus interest, reasonable costs, attorneys' fees, and such other relief as the Court deems just and proper.

Dated: December 10, 2019

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