

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)
OF RAPID SETTLEMENTS, LTD.)
FOR APPROVAL OF TRANSFER OF) Case No. CIV-04-645-L
PAYMENT RIGHTS OF RICHARD)
GREGORY HOLDER)

ORDER

Rapid Settlements, Ltd. (“Rapid”) has filed a Complaint in this federal court seeking approval of the transfer of certain structured settlement payment rights from Richard Gregory Holder to Rapid under the Oklahoma Structured Settlement Protection Act of 2001, 12 O.S. 2001 §§ 3238-3245.¹ Mr. Holder’s structured settlement payment rights arise from the settlement of a personal injury action² brought in the United States District Court for the Eastern District of Arkansas, Western Division, styled Richard Gregory Holder v. United States of America, Case No. 4:01-CV-237-WRW. See Complaint, ¶ 1.

Mr. Holder’s structured settlement agreement provides for him, as payee, to

¹ The Oklahoma Structured Settlement Protection Act of 2001 provides a procedure for the judicial or administrative approval of any transfer of structured settlement payment rights. Before any transfer is approved, the proper court or administrative authority must make express findings that: (1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee’s dependent’s; (2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and (3) The transfer does not contravene any applicable statute or the order of any court or other government authority. 12 O.S. § 3241.

² Mr. Holder was given blood contaminated with the HIV virus while in a Veterans Administration Hospital. Complaint, ¶ 1.

receive certain structured settlement payments including: annuity payments of \$3,250.00 monthly beginning September 23, 2002, and ending August 23, 2007 for a total of 60 monthly payments; annuity payments of \$3,500.00 monthly beginning September 23, 2007, and ending August 23, 2012 for a total of 60 monthly payments; and annuity payments of \$3,750.00 monthly beginning September 23, 2012, payable only while Mr. Holder is living. Complaint, ¶ 2.

The “Structured Settlement Obligor” with respect to the structured settlement payments is the United States of America. Complaint, ¶ 3. The “Annuity Issuer” who has issued an insurance contract to fund the structured settlement payments is New York Life Insurance Company. Complaint, ¶ 4.

Mr. Holder has agreed³ and Rapid has agreed to purchase 12 monthly payments each in the amount of \$3,250.00 beginning on September 23, 2006 through and including August 23, 2007, and 60 monthly payments each in the amount of \$3,500.00 beginning on September 23, 2007 through and including August 23, 2012. Complaint, ¶ 5.

The “Jurisdiction and Venue” section of the Complaint, appearing at p. 2, states:

The District Court has jurisdiction over this civil action under 28 U.S.C. § 1332 for the reason that the Applicant is a Texas corporation with its principal place of business in Houston, Texas; The Payee is a resident of the City of Yukon, County of Canadian, State of Oklahoma; New York Life

³ Since the time of the settlement of the underlying lawsuit, Mr. Holder’s condition has worsened and he has been advised that he needs a heart transplant. Mr. Holder seeks to transfer a portion of his structured settlement payments to Rapid in exchange for a lump sum payment. Applicant’s Brief in Support of its Application for Approval of Transfer of Structured Settlement Proceeds, p. 2.

Insurance Company is a New York corporation with its principal place of business in New York City, New York; and the amount in controversy exceed[s] \$75,000, exclusive of interest and costs.

Venue in this District is based on 28 U.S.C. § 1391(e) because one of the Defendants is the United States and the plaintiff resides in this jurisdiction wherein no real property is involved. An application under the Structured Settlement Protection Act for approval of a transfer of structured settlement payment rights may be brought in the county in which the payee resides, 12 O.S. 2001, §§ 3243 (A). The Payee is a resident of Canadian County, Oklahoma, which is within this District.

Because of the existence of significant issues regarding this court's jurisdiction and whether the court has the authority to grant Rapid the relief it has requested in its Complaint, the court ordered the parties to file briefs on these preliminary issues. The court is thoroughly familiar with the procedural history of this case and has carefully reviewed the briefs and the arguments and authorities submitted by the parties. Based upon this review, the court determines that further briefing is not necessary and that this action should be dismissed for lack of jurisdiction.

Initially, the court agrees with the position of the United States that the diversity statute cited by Rapid in the Complaint clearly does not provide a basis for jurisdiction over the United States in this matter. The language of 28 U.S.C. § 1332 does not grant jurisdiction over an action between citizens and the United States. Rapid's continued urging of diversity of jurisdiction would require the court to ignore the presence of the United States of America in this litigation. Indeed, Rapid's analysis of the "diversity" of the parties omits any reference to the

government. However, as the court has noted, the participation of the United States of America in this action cannot be ignored and raises the type of issues that would ordinarily not arise in a case involving non-governmental entities.

Because the relief sought by Rapid would require the United States to take action with respect to Mr. Holder's structured settlement payment rights,⁴ the court finds that Rapid bears the burden of proving that the government's sovereign immunity has been waived. It is well settled that federal courts are courts of limited jurisdiction and Rapid, as the party seeking relief, must first demonstrate that the court has subject matter jurisdiction over its claim for relief. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994) (court presumes cause lies outside limited jurisdiction of federal court unless party asserting jurisdiction meets its burden of establishing the contrary).

The United States as a sovereign is immune from suit unless it consents to be sued. See United States v. Murdock Mach. & Eng'g Co., 81 F.3d 922, 929 (10th Cir. 1996). This immunity extends to injunctive relief. Id. If the government has not consented to suit, the court has no jurisdiction to either restrain the government from acting or to compel it to act. Id. at 930 (citation omitted). The government consents to be sued only when Congress unequivocally expresses its intention to waive the sovereign immunity in the statutory text. Id. (citations

⁴ The proposed "Order for Transfer" submitted by Rapid for the court's use, would, if approved, provide that it is "FURTHER ORDERED, ADJUDGED AND DECREED that the United States of America and New York Life Insurance Company are hereby directed to deliver the Assigned Payments to Rapid Settlements, Ltd. at the following address" The order would also have the court order the United States of America "to issue a formal acknowledgment letter of the transfer within twenty (20) days of receipt of this Order."

omitted). Legislative history cannot supply the unequivocal expression and a waiver of sovereign immunity cannot be implied. Id. (citations omitted).

Particularly in this case, where there has been some confusion surrounding Rapid's characterization of the United States as a "defendant," "structured settlement obligor," and/or "interested party" as defined in § 3239 of the State act, it is important to note that, "[i]n determining whether the United States is immune from 'suit,' courts interpret the term 'suit' broadly to include more than just an actual suit instituted against the United States." Id. at 931 (citation omitted). "The term 'suit' embodies the broad principle that the government is not subject to 'legal proceedings, at law or in equity' or 'judicial process' without its consent." Id. (citations omitted). The federal government's appearance in court through its officers and agents does not waive the government's sovereign immunity. Id. (citations omitted).

Rapid argues that Congress intended for The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002) ("VTTRA"), to establish personal and subject matter jurisdiction over transfers of structured settlement payment rights under Oklahoma's Structured Settlement Protection Act. Excerpts of the VTTRA are attached to Rapid's brief.

Section 115 of the VTTRA pertains to the tax treatment of certain structured settlement payments. 115 Stat. 2436. Subsection (a) imposes a tax on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction. Subsection (b)(1) states that the tax

imposed under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a “qualified order.” Subsection (b)(2) provides:

(2) QUALIFIED ORDER. – For purposes of this section, the term “qualified order” means a final order, judgment, or decree which --

(A) finds that the transfer described in paragraph (1) --

- (i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and
- (ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents, and

(B) is issued --

- (i) under the authority of an applicable State statute by an applicable State court, or
- (ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

According to Rapid, Oklahoma’s Structured Settlement Protection Act of 2001 satisfies the “applicable State statute” requirement of the VTTRA. Rapid asserts that the VTTRA makes no qualification or modification to the procedure if the United States of America is the structured settlement obligor. Therefore, according to Rapid, Congress gave power to state courts to bind the United States as a structured settlement obligor in an order approving a transfer of structured settlement payment rights to a transferee pursuant to the Oklahoma Structured Settlement Protection Act. Under this procedural scenario, Rapid asserts,

somewhat inconsistently, that the jurisdiction over transfers of structured settlement payment rights exists only in an Oklahoma state court.

Notwithstanding this assertion, Rapid is in essence requesting that this federal court order the state court to take action that would purportedly bind the federal government. Specifically, in its brief Rapid asks this court to “enter an order dismissing this action, without prejudice for refiling in an Oklahoma state court, and that any such order approving the transfer by the Oklahoma state court binds the structured settlement obligor and annuity issuer to adhere to the terms of the order entered and to grant [Rapid] its fees and costs for being forced to bring this action to resolve the frivolous positions taken by the United States of America in this matter.” Rapid’s Brief in Support of its Application for Approval of Transfer of Structured Settlement Proceeds, p. 4.

Upon thorough consideration of Rapid’s arguments, the court determines that the VTTRA does not express an unequivocal waiver of the federal government’s immunity to suit in this case. The court will not imply a waiver from the mere failure of the statute to specifically address whether the state court procedure should be modified in the event the transfer of structured settlement payment involves the United States as structured settlement obligor. A waiver of sovereign immunity cannot be implied. Rapid has not met its burden of showing that Congress has unequivocally expressed its intention to waive the United States of America’s sovereign immunity.

The court finds that without a clear and unequivocal waiver, the government

retains its sovereign immunity and the court has no jurisdiction to compel the government to act. The court has no authority to order indirectly what it cannot do directly. Therefore, not only must this action be dismissed for lack of jurisdiction, but the court cannot direct the state court to take the action requested by Rapid.

In dismissing this action, the court need not and does not address the government's argument that the anti-assignment clause of the underlying settlement agreement precludes Mr. Holder from transferring his structured settlement payment rights to Rapid.

Rapid's request for an award of its fees and costs is denied, since the court finds that the United States of America's valid assertion of sovereign immunity was not frivolous as suggested by Rapid.

This action is **DISMISSED** for lack of subject matter jurisdiction.

It is so ordered this 6th day of November, 2004.



TIM LEONARD
United States District Judge