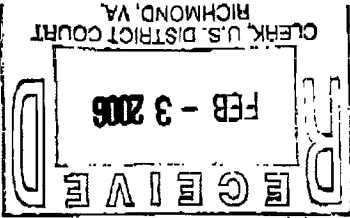


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2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

§ 1335.

1. This Court has original jurisdiction over this interpleader action based on 28 U.S.C.

I. UNDISPUTED, MATERIAL FACTS

The following are the undisputed, material facts:

considered the arguments of the parties presented at oral argument. memoranda, together with the respective statements of undisputed, material facts, and has memoranda of law in support of their respective positions. The Court has reviewed those ("Symetra"), previously was dismissed from this interpleader action. Both defendants have filed Receivables Company One, LLC ("Novation"). The plaintiff, Symetra Life Insurance Company Government" or "the United States", and the Defendants, Novation Capital, LLC and Structured motions for summary judgment filed by the Defendant United States of America ("the THIS MATTER came before the Court for a hearing on January 23, 2006 on cross-

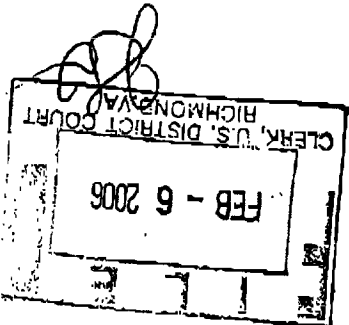
(Granting Defendant United States of America's Motion for Summary Judgment and Denying Defendant Novation Capital, LLC's Motion for Summary Judgment)

ORDER

Civil Action No. 3:05cv289

SYMETRA LIFE INSURANCE COMPANY,
Plaintiff,
v.
MICHAEL FENTRESS, et al,
Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division



3. In 1992, the United States and a representative for Michael Fentress ("Fentress"), then a minor, entered into a structured settlement agreement relating to the death of Fentress' father.
4. The United States purchased an annuity, contract number AA647437, from the plaintiff's predecessor, Safeco Life Insurance Company, now known as Symetra, for the benefit of Fentress, his mother, and his sister. The terms of the annuity contract, as it relates to Fentress, required payment of \$416.66 commencing on September 4, 1992, and on the 4th of each following month until 300 payments had been made. In addition, a payment of \$10,000 was to be disbursed on August 4, 1997 and a payment of \$25,000 on August 4, 2002. The owner of the annuity is the United States.
5. Under the terms of the annuity contract, "[t]he beneficiary is as named in the application unless changed by the owner [the United States]." The contract further provides that "[t]his contract has no cash surrender value. Benefit payments may not be advanced, accelerated, commuted, or encumbered by the annuitant or any beneficiary."
6. In the summer of 2004, Fentress contacted Novation to discuss the possibility of receiving a single lump sum payment from Novation in lieu of monthly payments of \$416.66 that he was scheduled to receive from Symetra through 2017.
7. On June 21, 2004, Fentress entered into an Agreement for Sale of Structured Settlement Payments with defendant, Novation Capital, LLC ("Novation") to transfer to Novation and/or its assigns, one-hundred and twenty (120) monthly payments in the amount of \$416.66 commencing on September 4, 2004 through and including August 4, 2014 ("the Assigned Payments") in exchange for a lump sum of \$25,000.

8. On September 17, 2004, Novation filed in the Circuit Court of Henrico County, Virginia, a Petition for Approval of Transfer of Structured Settlement Payment Rights

("Novation's Petition") pursuant to the "Structured Settlement Protection Act," Va. Stat. Ann.

§ 59.1-475, et seq. ("the Act").

9. Also on September 17, 2004, Novation filed in the Circuit Court of Henrico County, Virginia, a Notice of Hearing, indicating: a) that it would seek court approval pursuant to the

Virginia Act of the transfer of the Assigned Payments identified in Novation's Petition on

October 15, 2004 at 9:00 a.m.; and b) that written responses to Novation's Petition must be filed

on or before October 7, 2004 in order to be considered by the court prior to the hearing.

10. Novation served a Notice of Petition for Approval of Transfer of Structured

Settlement Payment Rights and Petition for Approval on Symetra and the United States on or

about September 21, 2004. The Notice stated that Novation would seek an Order authorizing

approval of the transfer in the Circuit Court for the County of Henrico on October 15, 2004. If

the Act were to apply to the United States, a response (if any) would have been due on October

12, 2004.

11. Fentress accepted service of Novation's Petition and Notice prior to September 24,

2004. He also submitted an Affidavit to the Henrico County Circuit Court explaining his desire

to transfer his structured settlement payments and his belief that the transfer is in his best

interests and the best interests of his minor dependents.

12. On October 15, 2004, the Henrico County Circuit Court continued the noticed

hearing on Novation's Petition until November 5, 2004. Despite their receipt of service of

Novation's Petition and Notice, no other party to the Petition, or interested party as defined by

the Virginia Act (including Symetra and the United States), attended the October 15, 2004

hearing.

13. On or about November 1, 2004, the Henrico County Circuit Court received a letter

dated October 29, 2004 from the U.S. Department of Justice ("DOI Letter" or "October 29, 2004, letter") advising the Henrico Circuit Court that it "is not entering an appearance in this action" and that "this letter should not be construed as a consent to the jurisdiction of the Court," but that the United States "is the Owner of the annuity policy at issue," and that "[a]ny action that would affect the United States' federal contract rights under the annuity policy would have to be brought in federal court," citing 28 U.S.C. §§ 1491(a)(1) and 1346(a)(2). In addition the letter

stated:

The annuity policy at issue specifically designates the United States as the Owner of the policy. Only the Owner has the right under the policy to assign the payments thereunder. Permitting Novation and Mr. Fentress to change the designated payee would contravene the terms of the policy and violate the United States' exclusive rights as Owner of the policy. Novation, in bringing this Petition, is attempting to alter the United States' contract rights with SAFECO. The United States respectfully suggests that this Court does not have jurisdiction to affect the federal contract rights of the United States, and therefore should deny the petition.

The DOI Letter was not copied to Fentress or Novation, the parties to the Petition.

14. On November 5, 2004, Novation attended the rescheduled hearing on its Petition in

the Henrico County Circuit Court, where it learned for the first time of the DOI Letter lodging an objection to the Petition. No other party to the Petition, or interested party as defined by the

Virginia Act (including Symetra and the United States), attended the November 5, 2004 hearing.

at which the Henrico County Circuit Court continued the matter to December 3, 2004 and

permitted Novation to respond to the DOJ Letter.

15. Novation filed with the Henrico Circuit Court a response to the United States'

October 29, 2004 letter, a copy of which was served on the Department of Justice. Novation

acknowledged the assertion of the Department of Justice "that matters concerning the annuity at

issue in this case . . . are solely within the jurisdiction of the federal courts and that any attempt

by Mr. Fentress to transfer payments thereunder violates the terms of the annuity contract."

Based on its knowledge of the United States' objection, Novation could have canceled its

agreement with Fentress.

16. On December 3, 2004, the Henrico County Circuit Court conducted a hearing on

Novation's Petition. Novation was the only party to the Petition who attended the hearing; no

other party to the Petition, or interested party as defined by the Virginia Act (including Symetra

and the United States), attended the December 3, 2004 hearing. The Henrico County Circuit

Court entered an Order approving the transfer of the Assigned Payments at the hearing. The

Order directed that the monthly payments due under the annuity be made to Novation's assignee,

Structured Receivables Company One, LLC ("SRCO").

17. As required by the Virginia Act and Internal Revenue Code § 5891, after full

disclosure of the terms of the transfer of the Assigned Payments from Fentress to Novation

and/or its assigns, the Henrico County Circuit Court found that the transfer of the Assigned

Payments from Fentress to Novation was in Fentress' best interests, that it complied with the

¹ E.g., the aggregate amount of the Assigned Payments, the present value of the Assigned Payments discounted at the Applicable Federal Rate, the gross and net amount of the lump sum payment to be received by Fentress and the applicable discount rate under the contract.

requirements of the Virginia Act, and that it does not contravene any applicable statute, order of court or other governmental authority. The State Court Order acknowledged the lodging of the DOJ Letter and overruled the objection of the United States to the transfer. It also provides: "No party to this proceeding, and no interested party to this proceeding as defined in Virginia Code § 59.1-475, shall hereafter refuse to honor this approved transfer or they may be subject to a finding of contempt as well as liquidated damages in [an] amount to be determined by the Court, costs and/or attorneys' fees."

18. After the hearing on December 3, 2004, Mr. Eiser from the DOJ called Novation's counsel to inquire about the outcome of the hearing on Novation's Petition that morning, and counsel to Novation advised him that the Henrico County Circuit Court had approved the transfer.

19. The State Court Order approving the transfer of the Assigned Payments from Fentress to Novation and/or its assigns was served on both Symetra and the DOJ in December 2004.

20. On December 15, 2004, Symetra advised Novation that it would comply with the State Court Order and redirect the Assigned Payments from Fentress to Novation's assign, SRCO.

21. On December 16, 2004, Mr. Eiser advised counsel to Novation that the DOJ would not appeal the State Court Order approving the transfer of the Assigned Payments.

22. In compliance with the State Court Order, Novation proceeded to pay Fentress the

agreed upon lump sum payment in two checks dated December 22, 2004 and January 5, 2005.²

23. On December 29, 2004, the DOJ sent a letter to Symetra "suggest[ing] that Symetra

take appropriate legal action to avoid breaching its contract with the United States, such as an

appeal of the state court order, or a motion for stay in the state court coupled with the filing of a

statutory interpleader action in a federal district court with jurisdiction."

24. In compliance with the State Court Order, and after the Department of Justice had

sent by facsimile its December 29, 2004 letter to Symetra, Symetra proceeded to make the

January 4, 2005 payment of \$416,666 to SRCO.

25. As a result of the DOJ's December 29, 2004 letter, Symetra stopped making the

monthly payments of \$416,666 to SRCO, as required by the State Court Order, and initiated this

interpleader action. Symetra has deposited the monthly payments of \$416,666 that have accrued

since February 2005 into the Court's registry, and has agreed to similarly deposit future monthly

payments of \$416,666 until the Court decides whether Novation's assign (i.e., SRCO) or Fentress

is entitled to the Assigned Payments.

26. Under the state court's Order, if Symetra refuses to honor the transfer, it may be

subjected to a finding of contempt, a claim for liquidated damages or other litigation by one or

more defendants.

²The original purchase price of \$25,000 reflected Novation's purchase of monthly annuity payments from September 2004 through and including August 2014. Because of the delay in the court approval of the transfer, however, Fentress received the monthly annuity payments from September through December 2004, instead of Novation or its assign. Accordingly, the purchase price was reduced by the amount of these four monthly payments (\$1,666.64), so that Novation issued checks to Fentress totaling \$23,333.36 (one for \$22,083.38 on December 22, 2004 and another for \$1,249.98 on January 5, 2005).

27. As a result of the conflict between the United States' claims as the owner of the annuity and the December 3, 2004 Order, Symetra filed the current interpleader action.

Based on the foregoing undisputed facts, the Court concludes as follows:

II. CONCLUSIONS OF LAW

1. This Court has original jurisdiction over this interpleader action based on 28 U.S.C. § 1335.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

3. As a matter of law under Allstate Ins. Co. v. American Bankers Ins. Co. of Florida,

882 F.2d 856, 859-60 (4th Cir. 1989), because the United States is the owner of the annuity

contract in this case, it alone had the right to designate the payee under the annuity contract.

Under Allstate, the annuity payee "[has] no ownership in the annuity," and therefore, "cannot

lawfully assign . . . proceeds to which he [is] to become entitled in the future." Allstate, 882 F.2d

at 859-60.

4. While Novation argues that Allstate has been superseded by the passage by the

Virginia General Assembly of the Act, this Court is of the opinion that the Act did not override

the authority of Allstate, nor can any modification of the tax treatment by Congress erode the

underpinnings of that decision.

5. Where the United States is the owner of the contract, there is exclusive federal

jurisdiction. Virginia cannot control federal jurisdiction. Consequently, the Act did not grant the

Circuit Court for Henrico County, Virginia jurisdiction to approve the transfer between Mr.

Fentress and Novation involving an annuity contract owned by the Government.

6. Because sovereign immunity barred action by the Henrico Court, and that court did

not have jurisdiction of the matter, the Rooker-Feldman doctrine does not apply.

III. CONCLUSION

For the foregoing reasons, Defendant's, United States of America's, Motion for Summary

Judgment is HEREBY GRANTED and Defendant's, Novation Capital, LLC's, Motion for

Summary Judgment is HEREBY DENIED.

The Court holds that the December 3, 2004 Order of the Circuit Court for the County of

Henrico, Virginia at issue in this case is void, as having been entered without jurisdiction and

without a waiver of the United States' sovereign immunity. In light of Novation's cross-claim

against Ferriss, it is hereby:

ORDERED that disposition of the interpleaded funds and future payments under the

annuity will be addressed by subsequent order.

The Clerk is directed to send a copy of this Order to all counsel of Record.

It is so ORDERED.

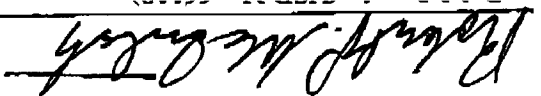
HL
HENRY B. HUDSON, Judge
United States District Court

Date: Feb 6, 2008
Richmond, VA

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WE ASK FOR THIS:

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