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IN RE: OFRED TAVAREZ

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. **BER-L-4041-16**

Civil Action

OPINION

Argued: April 16, 2021

Decided: April 22, 2021

HONORABLE ROBERT C. WILSON, J.S.C.

Stephanie Nolan Deviney, Esq., appearing on behalf of SuttonPark Structured Settlements LLC
(from Fox Rothschild LLP)

Ofred Tavarez appearing Pro Se

PROCEDURAL HISTORY & FACTUAL BACKGROUND

THIS MATER initially began on July 8, 2016, when Advance Funding LLC sought Court approval for this Court to transfer the rights to annuity payments from Metropolitan Life Insurance Company to Ofred Tavarez (“Structured Settlement Order”). At that time, this Court took testimony wherein Mr. Tavarez testified that he needed to buy a house in Bergen County to shelter his six children and relocate them to New Jersey. Mr. Tavarez was to receive \$203,000 in return for the transference of One Hundred and Eighty (180) monthly payments of \$2,019.46, increasing at a rate of 3% per annum each May 17, commencing on May 17, 2020 and continuing through and including April 17, 2035. These annuity payments were originally awarded as a settlement of Mr. Tavarez’s brain damage injury suffered as a result of lead poisoning.

On July 8th, 2016, the same day as the Court’s Structured Settlement Transfer Order, Advanced Funding LLC executed an Assignment of Purchase Agreement assigning its rights in

the Structured Settlement Transfer Order to SuttonPark Structured Settlement LLC (“SuttonPark”). On July 18, 2016, SuttonPark paid Advance Funding \$203,000 for the assignment.

However, Mr. Tavaréz has certified that he was first only given two checks for \$40,000 by Advance Funding, of which one did not clear. Then he was tendered \$62,000 by electronic transfer, but not the full amount originally bargained for of \$203,000. This left \$101,000 unpaid, based on the undisputed certification of Mr. Tavaréz. Mr. Tavaréz was unable to secure the additional sums he had bargained for. Mr. Tavaréz was to continue receiving annuity payments until May 17, 2020 when the payments were to be sent to SuttonPark pursuant to the assignment from Advance Funding LLC.

Mr. Tavaréz first moved this Court on November 20, 2019—six months before the payments would transfer—stating “I want the order vacated dated on July 8, 2016 because company disappeared and gave me checks with no funds. I have tried over the years to find them and was told they fled.” On January 15, 2020 (“January 2020 Order”) this Court duly granted the motion, as it was unopposed.

When SuttonPark did not receive the first payment it believed was due, it sent correspondence to the Issuer and Owner and purportedly learned of the Court’s January 2020 Order. SuttonPark then filed a motion to vacate the January 2020 Order, which was granted as unopposed because SuttonPark claimed it had not been properly served or notified of the November 2019 motion to vacate. On October 2, 2020, SuttonPark’s motion to vacate the January 2020 Order was granted as unopposed. Four months later, on February 15, 2021, Mr. Tavaréz filed this motion to vacate.

For the reasons set forth below, Mr. Tavaréz’s Motion to Vacate is hereby **GRANTED**.

RULES OF LAW AND DECISION

The motion to vacate must be granted because SuttonPark's assignment of Advance Funding LLC's right to payment is subject to Advance Funding LLC fulfilling the terms of the Structured Settlement Order.

An assignment of a contract right will not delegate duties, and the rights of the assignee cannot be better than those of the assignor. Selective Ins. Co. of America v. Hudson East Pain Mgmt. Osteopathic Med. and Physical Therapy, 416 N.J. Super. 418, 426 (App. Div. 2010). While an assignment of a contract right extinguishes the right in the assignor and recreates the same right in the assignee, it is impossible to assign a duty. Id. In Selective, the defendant was assigned the rights to personal injury protection payments from Selective. Id. In that decision, the Appellate Division cited a case from the Florida Court of Appeals which decided en banc that while "the assignment of a contract right does not entail the transfer of any duty to the assignee," the "right of the assignee under the contract is no better than its assignor's rights." Id. (citing Shaw v. State Farm Fire & Casualty Co., 37 So. 3d 329 (Fla. Dist. Ct. App. 2010). If the assignor is entitled to be paid the assignee is entitled to be paid, but if the assignor is not entitled to be paid because of some failure of performance on the part of the assignor, then the assignee is not entitled to be paid either. Id.

Here, the original agreement before the Court provided for Advance Funding to pay Ofred Tavarez \$203,000 in exchange for the annuity payments. The undisputed facts here are that Advanced Funding never paid Ofred Tavarez in full, and therefore did not perform under the Structured Settlement Order. As the Appellate Division has already acknowledged in Selective, if the assignor is not entitled to be paid because of some failure to perform, then the assignee is not entitled to be paid either. While SuttonPark was a good faith purchaser of the rights of Advance Funding, it failed to do its due diligence. SuttonPark could not provide the Court with

any proof of Advance Funding paying Mr. Tavaréz and therefore fulfilling its obligations under the Structured Settlement Order and entitling it to payment. Both parties were injured by the presumptively fraudulent middleman, Advance Funding. However, contract law dictates that an assignee who take the rights of the assignor is at the mercy of their performance unless the assignee takes the obligations of the assignor's contract as well. In that case, SuttonPark would have been responsible for paying Ofred Tavaréz the balance of what he was owed at that time before they could be entitled to the 180 payments from MetLife. But under the current facts, the Structured Settlement Order was violated by Advance Funding at the outset due to its non-payment. Advance Funding then sold its rights to payment—which it never successfully acquired—to SuttonPark and now cannot be found to be held responsible. The remedy on this motion to vacate is to vacate the Structured Settlement Order which would result in Ofred Tavaréz remaining the beneficiary of the annuity. But, because Ofred Tavaréz has already been paid \$102,000, the Court will not preclude a motion from SuttonPark to recoup a portion of its losses from the future annuity payments to be paid to Mr. Tavaréz. For that reason, the Court now orders the Structured Settlement Order Vacated.

CONCLUSION

For the aforementioned reasons, Mr. Tavaréz's Motion to Vacate is hereby **GRANTED**.