CASE NO. 21-11340-F

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

LUJERIO CORDERO,

Appellant,

vs.

TRANSAMERICA ANNUITY SERVICE CORPORATION n/k/a WILTON RE ANNUITY SERVICE CORPORATION, and TRANSAMERICA LIFE INSURANCE COMPANY

Appellees

On Appeal from the United States District Court, Southern District of Florida

Case No. 1:18-cv-21665-DPG

BRIEF OF APPELLEES

August 1, 2021

Stephen R. Harris
sharris@cozen.com
Cozen O'Connor
1650 Market Street
Philadelphia, PA 19103
215-665-4121

David Stahl
dstahl@cozen.com
Cozen O'Connor
200 South Biscayne Boulevard
Suite 300
Miami, FL 331331
305-397-0807

CERTIFICATE OF INTERESTED PERSONS

Appellees, Transamerica Annuity Service, et al., pursuant to Federal Rule of Appellate Procedure 26 and Eleventh Circuit Rule 26.1, certifies that the following persons and entities have or may have an interest in the outcome of this case:

1. Alliance Asset Funding, LLC
2. Cole Schotz P.C.
3. Cordero, Lujerio
4. Gayles, U.S. District court Judge Darrin P.
5. Harris, Stephen R.
6. Hassebrock, Benjamin C.
7. Liberty Settlement Solutions, Inc.
8. Otazo-Reyes, U.S. District Court Magistrate Judge Alicia M.
9. Singer Asset Finance Company, LLC
10. Stahl, David M.
11. Topolski, Scott John
12. Transamerica Annuity Service Corporation
13. Transamerica Life Insurance Company
14. Ver Ploeg & Marino, P.A.
15. Ver Ploeg, Brenton N.

16. Wilton Re Annuity Service Corporation

DISCLOSURE STATEMENT

Upon information and belief, Transamerica Annuity Service Corporation, n/k/a Wilton Re Annuity Service Corporation, is a subsidiary owned by Wilton Re U.S. Holdings, Inc., it is not a publicly traded company on the NYSE.

Upon information and belief, Transamerica Life Insurance Company is a wholly owned subsidiary of Aegon USA Group, it is a publicly traded company on the NYSE under ticker symbol AEG.

STATEMENT REGARDING ORAL ARGUMENT

Transamerica does not believe that oral argument is necessary because the issues decided by the district court are not complex and were decided in accordance with the applicable law.

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STATEMENT OF THE ISSUES

I. Whether the trial court was correct in dismissing Plaintiff's New York contract claims because Defendants had no affirmative obligation to prevent Plaintiff from assigning his annuity payments?

II. Whether the trial court was correct in dismissing Cordero's FAPSA claim under Fla. Stat. 415.1111?

STATEMENT OF THE CASE

In the Second Amended Complaint ("SAC"), D.E. 106, Plaintiff, Lujerio Cordero ("Cordero"), attempted to re-plead claims for breach of contract and violation of the Florida Protective Services Act, Fla. Stat. § 415.101 *et seq.* ("FAPSA"). However, the SAC fails to cure the deficiencies that resulted in the Court's previous dismissal of those claims.

Instead, the SAC merely invokes the word "malevolent" to describe Transamerica and includes pages of background information regarding structured settlements, factoring company overreaching, and the enactment of state Structured Settlement Protection Acts ("SSPAs") and Section 5891 of the Internal Revenue Code. *See* SAC ¶¶ 8-32. None of these new allegations salvage Cordero's claims.

The breach of contract claim fails because, as the trial court correctly held (i) the anti-assignment language in the underlying settlement contracts did not require Transamerica to exercise its discretion for Cordero's benefit; and (ii) requiring Transamerica to analyze each transfer and investigate whether Cordero was competent to effectuate those transactions would create new duties not required by those contracts, which the duty of good faith and fair dealing does not permit. *See* April 6, 2020 Order (D.E. 105) at pp 8-10.

Plaintiff's FAPSA claim cannot succeed either because, like the prior complaint, the SAC fails to allege any factual basis for finding the requisite fiduciary

relationship between Plaintiff and Defendants. *See id*. at pp. 12-13. The SAC also fails to allege facts showing that Defendants engaged in any abuse or exploitation, which is also essential to state such a claim.

The inescapable conclusion here is that Defendants simply do not owe Cordero a duty to investigate or thwart his decisions to enter into transactions with factoring companies. Allowing the Florida courts to perform their obligation to decide whether or not to approve those transactions is not actionable conduct. The trial court granted Transamerica's Motion to Dismiss as to both counts by Order dated March 29, 2021. D.E. 117 (the "Order").

STATEMENT OF THE FACTS

A. The Underlying Settlement

In 1996, when Cordero was a minor, his mother settled a personal injury negligence action by entering into a court-approved structured settlement agreement (the "Settlement Agreement") with the tort defendant and its insurer, Continental Insurance Company ("Continental"). D.E. 106 ¶ 34. The Settlement Agreement provided for Plaintiff to receive monthly payments of $3,183.94 beginning at age 18 (on December 20, 2008) and continuing for thirty years guaranteed (the "Periodic Payments"). *Id.* The Settlement Agreement, which specifies that it is governed by New York law, states that the Periodic Payments "cannot be accelerated, deferred, increased or decreased by the Plaintiff(s) or any Payee . . . nor shall the Plaintiff(s)

have the power to sell, mortgage, encumber or anticipate same, or any part thereof, by assignment or otherwise." *Id*. ¶ 37; Settlement Agreement ¶ 4. Transamerica Life and Transamerica Annuity were not parties to the Settlement Agreement.

Rather, pursuant to a "Transamerica Qualified Assignment and Release" (the "Qualified Assignment"), D.E 106-1, Continental assigned to Transamerica Annuity the obligation to make the Periodic Payments. *Id*. ¶ 38; Qualified Assignment, 106-1 ¶ 6. Transamerica Annuity then purchased from Transamerica Life an annuity (the "Annuity"), that generated a periodic payment stream identical to Transamerica Annuity's payment obligation. *Id*. ¶ 36. The Settlement Agreement, Qualified Assignment, and Annuity make clear that Transamerica Annuity is nothing more than a payment obligor; Transamerica Annuity owns the Annuity; Transamerica Life issued the Annuity and its only obligation is to issue the payments to the annuitant designated by Transamerica Annuity; the Annuity is for Transamerica Annuity's "convenience;" Plaintiff has no rights in or control over the Annuity; and Plaintiff "has no rights against Transamerica Annuity greater than a ***general creditor***." *See* Settlement Agreement ¶ 6; Qualified Assignment, ¶¶ 3, 6-7; Annuity Policy Data sheet and Schedule of Benefits showing Transamerica Annuity as owner, and General Provisions granting owner all contract rights) (Emphasis added).

B. Plaintiff's Factoring Transactions

1. The Allegations

Starting in July 2012, when Cordero's mother first made contact with a factoring company, Cordero elected to enter into a series of four transfer agreements with factoring company Singer Asset Finance Company ("Singer") to sell portions of his periodic payment rights. D.E. 106 ¶¶ 42-47.[1] In accordance with the Florida Structured Settlement Protection Act, Fla. Stat. § 626.99296 (2011) ("Florida SSPA"), in 2012 and 2013, these transfers were approved by the Circuit Court of the 5th Judicial Circuit in and for Sumter County, Florida (the "Sumter County Court"). *Id.* ¶¶ 44-47. In October 2013 and May 2014, Plaintiff entered into two transfer agreements with another, unrelated factoring company, Liberty Settlement Solutions ("Liberty"), which were approved, by the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Broward County Court"). *Id.* ¶¶ 48-49.

Cordero alleges that he suffered from lead paint poisoning as a child and that, as a result, he continues to suffer from "mental handicaps." *Id.* ¶¶ 33, 35. However, the Settlement Agreement and related contracts do not disclose the nature of the underlying injury, and the SAC does not (and cannot truthfully) allege facts showing

[1]Singer assigned its interest in the first transfer agreement to Alliance Asset Funding, LLC ("Alliance"). *Id.* ¶ 42.

that Defendants knew Cordero had any alleged mental impairments. Nor does Cordero allege that he is incapacitated or that he does not conduct his own affairs. *Indeed, Cordero brought the instant lawsuit on his own behalf.*

At most, Cordero alleges that he did not pass the GED exam, has only been able to secure "low-grade jobs," and lacks the capacity to understand (and did not read) the contracts and documents he signed when he entered into deals with Singer and Liberty. *Id.* ¶¶ 35, 43. Nevertheless, Cordero did manage to effectuate all of these transactions and collect from the factoring companies present value lump sums in the amount of $50,230 in July 2012, $15,000 in November 2012, $50,000 in April 2013, $70,900 in August 2013, $60,000 in October 2013, and $22,000 in May 2014. *See Id*. ¶¶ 42, 45-49.

2. The Transfer Petitions and Notices of Hearing

The Florida SSPA requires the factoring companies to serve their petitions and notices of hearings on settlement obligors and annuity issuers like Transamerica Annuity and Transamerica Life, respectively. That statute provides that these entities "may" file written objections to the proposed transfer. *See* Fla. Stat. §§ 626.9929(2)(i)(j)(o) and (4). The Florida SSPA also provides that if the transfer contravenes the underlying settlement agreement, "the court *may grant, deny, or impose conditions upon* the proposed transfer . . . ." Fla. Stat. § 626.9929(3)(b) (emphasis added).

SUMMARY OF THE ARGUMENT

The district court correctly held that the underlying settlement agreement did not create an obligation on the part of Transamerica to prevent Cordero from assigning his structured settlement payments. No New York case that has enforced anti-assignment language at the behest of annuity owners and issuers has even suggested that the annuity owners and issuers had an obligation to the payee to assert such language. Rather, those cases which have addressed the issue have found that the clause is for the sole benefit of the annuity owners and issuers.

The district court also correctly held that Cordero's FAPSA claim should be dismissed, both because the settlement agreement provides that it should be governed by New York law and because Cordero failed to state a claim under FAPSA. Transamerica had no affirmative obligation to keep Cordero from assigning his structured settlement payments- transfers that were approved on six separate occasions by Florida state court judges.

ARGUMENT

A. The SAC Fails to State a Breach of Contract Claim.

To state a claim for breach of contract under Florida law, a plaintiff must allege: (1) that a valid contract exists, (2) a material breach, and (3) damages. *Murciano v. Garcia*, 958 So. 2d 423, 424 (Fla. 3d DCA 2007). Here, as in Plaintiff's prior complaint, the alleged breach is Defendants' failure to enforce the anti-

assignment language in the Settlement Agreement and the Qualified Assignment. D.E. 106 ¶¶ 69-74.

However, the trial court has already held that Transamerica Life had no obligation to enforce that anti-assignment language, and therefore, no genuine breach has been alleged. *See* D.E. 105, April 6, 2020 Order at pp 8-10. The same holds true for Transamerica Annuity, which was assigned the Periodic Payment obligation pursuant to the Qualified Assignment.

As the trial court also correctly held, "the covenant of good faith and fair dealing does not permit the imposition of additional obligations on parties or 'creat[ing] independent contract rights.'" *See* D.E. 105, April 6. 2020 Order at p. 9, citing *Lehman Bros. Int'l (Europe) v. AG Fin. Prod. Inc.*, No. 653284/2011, 2013 WL 1092888, at *2-3 (N.Y. Sup. Ct. March 12, 2013) (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Xerox Corp.*, 25 a.D.3d 309, 310 (N.Y. App. Div. 2006)).

And under New York law, anti-assignment language in a structured settlement agreement is for the benefit of settlement obligors like Transamerica Annuity and annuity issuers like Transamerica Life. *See* April 6, 2020 Order at p. 9, citing *See Singer Asset Fin. Co. v. Wyner, 156 N.H. 468, 474-76 (2007). See also Matter of 321 Henderson Receivables Origination LLC (Logan)*, 856 N.Y.S.2d 817, 820 (N.Y. Sup. Ct., Queens Co. 2008) ("While a prohibition against assignments or transfers may be waived by the obligor . . . it may not be waived by the payee since the

provision is not for his or her benefit.") (Emphasis added); *Settlement Capital Corp. v. Pagan*, 649 F. Supp. 2d 545, 555 and n.52 (N.D. Tex. 2009) (holding that the structured settlement obligor, Fireman's Fund Insurance Company, "the party who under New York law may choose to raise or waive the anti-assignment provision, has effectively waived any objections it could raise regarding the transfer.").[2] Conclusory allegations to the contrary in the SAC do not change this result. Consequently, Defendants had the discretion whether or not to seek enforcement of that language.

The New York cases cited at pages 26 and 27 of Appellant's brief confirm this position. In those cases it was the annuity issuer or owner which asserted the anti-assignment language. There was absolutely no suggestion that the annuity issuer or owner would have been in breach of contract had it failed to assert the anti-assignment language. Indeed, New York courts have allowed waiver of the anti-assignment clauses by the annuity issuers and owners, finding that the clause is for

[2] Other jurisdictions are in accord. *See, e.g., Johnson v. J.G. Wentworth Originations, LLC*, 391 P.3d 865, 869 (Ore. Ct. App. 2017) (explaining that under applicable California law contractual anti-assignment clauses do not bar court-approved transfers of structured settlement payment rights if no interested party objects to the transfer); *Fox-Greenwald Sheet Metal Co. v. Markowitz Bros.*, 452 F.2d 1346, 1351-1352 (D.C. Cir. 1971) (stating that "[o]rdinarily a contractual prohibition of assignment is for the benefit of the obligor . . . .").

their benefit. *Matter of 321 Henderson Receivables Origination LLC (Logan)*, supra, at page 820. *See also Settlement Capital Corp. v. Pagan*, supra.

Surprisingly, Appellant relies on *Settlement Funding, LLC v. Brenston*, 998 N.E.2d 111, 375 Ill. Dec. 819 (Ill. App. 2013), a case which held that anti-assignment clauses rendered transfers void *ab initio*, to support its position here. But *Brenston* was subsequently modified by the amended Illinois SSPA, which provides that "[a] court shall not be precluded from hearing an application for approval of a transfer of payment rights under a structured settlement where the terms of the structured settlement prohibit sale, assignment, or encumbrance of such payment rights…[and] shall have authority to rule on the merits of the application and any objections to such application." 215 Ill. Comp. Stat. 153/30(e) (2015). The amendment following the *Brenston* decision thus made the law consistent with every other SSPA.

The recent case of *Taylor v. New York Life Insurance Company*, 2021 WL 467127 (S.D.N.Y.) is strikingly similar to the present case. In *Taylor*, suit was brought against the annuity owner and issuer by the parents of a structured settlement payee who had sold $11,000,000 of his structured settlement payments in ten transfers. The annuity owner and issuer consented to each of the transactions without contacting either the parents or the payee. The settlement agreement entered into by the parents on behalf of the minor payee contained an anti-assignment provision stating: "The Periodic Payments cannot be accelerated, deferred, increased or

decreased by the Plaintiff or any payee; nor shall the Plaintiff or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise." 2021 WL 467127 at pp. 1-2. Plaintiffs' claims included counts for breach of contract, breach of implied contract and breach of fiduciary duty.

In granting the annuity owner and issuer's motion to dismiss, the court held that, applying Virginia law, there was no provision in the settlement agreement "that gives rise to any duty on [the annuity owner's] part to oppose, investigate, or otherwise scrutinize the transfers." 2021 WL 467127 at p. 4. In finding that the anti-assignment clause is typically for the benefit of the obligor, the court held that, even if the provision was included for the benefit of the payee, "the Court is not persuaded that the anti-assignment language can be interpreted to impose affirmative obligations of objecting to, investigating, or otherwise intervening in [the payee's] assignment attempts." 2021 WL 467127 at p. 4.

The *Taylor* court relied on the lower court's opinion in this case in reaching its decision. Noting that the *Cordero* court applied New York law to its holding that the implied duty of good faith and fair dealing did not impose a new obligation on an annuity issuer to investigate or oppose a transfer, the *Taylor* court found that the similarities between New York and Virginia law justified its consistent holding.

The *Taylor* decision demonstrates that, far from being the "case of first impression" asserted by Appellant, the present case is simply another example of courts applying basic contract interpretation in the context of a structured settlement transfer. Appellant's argument represents an attempt to ask this Court to rewrite the Florida SSPA in a manner wholly inconsistent with its intent.

It was up to the Florida *courts*, not the Defendants, to determine whether or not any particular transfer was in Plaintiff's best interest and "fair, just and reasonable" as required by the Florida SSPA. *See* D.E. 105, April 6, 2020 Order at pp. 9-10. At most, the SSPAs, including the Florida SSPA, preserve the *right* of payment obligors and annuity issuers to oppose factoring transactions; these statutes do not *obligate* those entities to oppose such transactions.

Given the thousands of transfer petitions filed by factoring companies throughout the country, opposing them on the basis of anti-assignment language (which appears in nearly all structured settlements) is not feasible. *See* D.E 106, SAC ¶ 14. Like Defendants in this case, settlement obligors and annuity issuers typically lack information about the payee's original injury and the payee's current condition. These entities are not obligated, equipped, or qualified to conduct mental capacity, "best interest," and/or "fair, just and reasonable" evaluations. The SSPAs are in place to govern these transactions. D.E. 106, SAC ¶ 22. Consequently, if a factoring company and a payee elect to proceed with a transaction, the payment

obligor and annuity issuer are permitted to take the position that they will comply if the court decides to approve the transaction–which is all that is alleged to have happened here.[3]

As the trial court correctly concluded, exercising the discretion to waive the anti-assignment language in the Settlement Agreement and related contracts–even assuming *arguendo* that it was done for financial gain (which is not actually the case)–was not a breach of those contracts. D.E. 105, April 6, 2020 Order at p. 10. Nothing in the SAC changes this conclusion. Transamerica cannot reasonably be found to owe a legal obligation to seek enforcement of a contract provision that Cordero had already violated by entering into agreements with factoring companies to sell his payment rights. To hold otherwise would turn the implied covenant of good faith and fair dealing on its head.

[3] The article previously cited by Plaintiff (ECF No. 60, ¶ 19; ECF No. 74, p. 3, n. 3) explains that most structured settlement agreements contain anti-assignment provisions and that their effectiveness was extensively litigated in the context of factoring transactions that predated enactment of statutes like the Florida SSPA. *See* "*Transfers of Structured Settlement Payment Rights: What Judges Should Know About Structured Settlement Protection Acts*," Daniel W. Hindert and Craig H. Ulman, The Judges' Journal, Spring 2005, p. 26. However, "[t]aking into account the protections available under the SSPAs and IRC section 5891, . . . insurers now do not generally find it necessary to insist on enforcement of antiassignment [sic] provisions . . . [and those provisions are] waived in most cases." *Id*. By Plaintiff's own account, the factoring of structured settlement payment rights was a billion dollar industry as of 2003. (D.E. 106 ¶ 19). This belies any suggestion that settlement obligors and annuity issuers routinely seek enforcement of anti-assignment provisions in an attempt to prevent such transactions.

B. The SAC Fails to State a Claim for Violation of the Florida Adult Protective Services Act.

Section 415.1111 of the FAPSA states, in relevant part, that "[a] vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation." Fla. Stat. § 415.1111. Actionable exploitation under FAPSA is defined to mean when a person who "[*s]tands in a position of trust and confidence with a vulnerable adult* and *knowingly, by deception or intimidation, obtains or uses*" the vulnerable adult's property, or "*[k]nows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses*" the vulnerable adult's property, "with the intent to temporarily or permanently deprive" said person of that property for the benefit of someone other than the vulnerable adult. *See* Fla. Stat. 415.102(8)(a). (Emphasis added). The statute further provides that

> exploitation may include, but is not limited to: (1) Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property; (2) Unauthorized taking of personal assets; (3) Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or (4) Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

Fla. Stat. § 415.102(8)(b). "Fiduciary relationship," in turn, means "a relationship based upon the trust and confidence of the vulnerable adult in the caregiver, relative,

household member, or other person entrusted with the use or management of the property or assets of the vulnerable adult" such as "court-appointed or voluntary guardians, trustees, attorneys, or conservators . . . ." *Id*. at 415.102(11).

The trial court found that the Florida law claim failed because the parties' Settlement Agreement explicitly states that it shall be governed by New York law. D.E. 117 at 8. Moreover, the trial court found that Cordero failed to properly plead his FAPSA claim because Defendants had no affirmative obligation to prevent Cordero from assigning his annuity benefits to factoring companies. *Id*.

1. The SAC Fails to Allege Facts Showing the Existence of the Requisite Fiduciary Relationship.

Once again, Cordero alleges that Defendants "allowed exploitation by factoring companies through [their] failure to honor his contractual entitlement under the structured settlement agreement's anti-assignment provision, resulting in an unauthorized taking of his personal assets . . . ." D.E. 106 ¶ 82.

But like Cordero's prior complaint, the SAC is devoid of allegations showing any contact whatsoever between Plaintiff and Defendants, much less any that would give rise to the requisite fiduciary relationship. *See* D.E. 105, April 6, 2020 Order at p. 12; D.E. 106 ¶ 59 (alleging no contact). Defendants were not Cordero's caregivers, relatives, or household members, and they did not manage or use Cordero's money.

Instead, Transamerica Annuity merely accepted an assignment from Continental—Cordero's adversary in the underlying litigation—of Continental's obligation to make the Periodic Payments under the Settlement Agreement, and Transamerica Annuity then elected to fund that obligation for its "convenience" by buying the Annuity from Transamerica Life. *See* D.E. 106 ¶¶ 36, 38; Qualified Assignment ¶ 1 ("1. [Continental] hereby assigns and [Transamerica Annuity] hereby assumes all of [Continental's] liability ***to make the Periodic Payments***. . . .") (Emphasis added).

As the insurer for Cordero's adversary, Continental did not have a fiduciary relationship with Cordero and neither does Transamerica Annuity, as Continental's assignee, or Transamerica Life, as the issuer of the Annuity owned by Transamerica Annuity. *See, e.g.*, *Macomber v. Travelers Prop. & Cas. Corp.*, 804 A.2d 180 (Conn. 2002) (finding that allegations of a contractual relationship between settling plaintiffs and the defendant structured settlement obligors was insufficient to show the existence of a fiduciary duty); *Yerkes v. Cessna Aircraft Co.*, Civil No. 14-5925, 2016 U.S. Dist. LEXIS 38714, * 17 (D.N.J. March 24, 2016) (holding that the defendant and its insurer, which entered into a structured settlement with the plaintiff, were adversarial to the plaintiff and did not owe the plaintiff a duty of disclosure or any other duty); *Taylor Woodrow Homes Fla., Inc.* v. 4/46-A.Corp.,

850 So. 2d 536, 541 (Fla. 5th DCA 2003) ("[T]he courts have held that, in the usual creditor-debtor relationship, a fiduciary duty does not arise . . . .").

Rather, the relationship between Cordero and Transamerica was at most one of creditor and debtor as specified in the Qualified Assignment and the Annuity. *See* Qualified Assignment, D.E. 106-1, ¶¶ 3, 6-7 ("[Plaintiff] has no rights against [Transamerica Annuity] greater than a ***general creditor***.") (Emphasis added); Settlement Agreement, D.E. 1-3, ¶ 6; Annuity Policy Data sheet and Schedule of Benefits (showing Transamerica Annuity as owner, and General Provisions granting owner all contract rights in the Annuity). Such "arms-length" relationships created by contract do not give rise to a fiduciary duty "because there is not duty imposed on either party to protect or benefit the other." *See* D.E. 105, April 6, 2020 Order at p. 12, *quoting Am. Honda Motor. Co. v. MotorcycleInfo. Network, Inc*., 390 F.Supp.2d 1170, 1179 (M.D. Fla. 2005).

2. Leaving It to the Florida Courts to Determine Whether or Not to Approve a Transfer under the Florida SSPA Is Not Abusive or Exploitation.

The SAC also fails to allege facts showing that Defendants engaged in "abuse" or "exploitation" within the scope of the FAPSA. There is no allegation that Defendants (i) used, misappropriated, misused, or transferred Plaintiff's money, income, assets, or property (which property was acquired by the various factoring companies, not Defendants, pursuant to court approval); and/or (ii) engaged in any

unauthorized taking of Plaintiff's personal assets. Instead, the SAC alleges that the *factoring companies* exploited Plaintiff. D.E. 106 ¶¶ 67, 82.

Rather, all Defendants are alleged to have done is exercise their discretion not to object to the transfers and let the Florida courts make the determinations that the Florida SSPA requires them to make. *See* Fla. Stat. § 626.99296. Defendants had no involvement in Plaintiff's decisions to enter into agreements with the factoring companies, which occurred before Defendants received the factoring company petitions seeking approval of those transfers. D.E. 106 ¶¶ 42-49.

Moreover, the SAC does not (and cannot truthfully) allege any *facts* showing that Defendants ***actually knew*** of Plaintiff's alleged mental impairment. At most, the SAC asserts that Defendants should have conducted an investigation. *See* D.E. 106 ¶¶ 63(f), 65. There is nothing in the Settlement Agreement, Qualified Assignment, or Annuity indicating that Plaintiff had lead paint exposure or poisoning, or that he suffered from any mental impairment whatsoever.

As this Court has already correctly held, the Florida SSPA imposes the obligation to determine whether a transfer is in the payee's "best interest" and "fair, just and reasonable" on the Florida courts, not Defendants. *See* D.E.105, April 6, 2020 Order at pp. 9-10; Fla. Stat. § 626.99296. In fact, the Florida SSPA provides that the court "may grant, deny, or impose conditions" upon the proposed transfer if it would contravene the terms of the structured settlement and an interested party

objects. *See* Fla. Stat. § 626.99296(7)(b); *see also Rapid Settlements Ltd. v. Dickerson*, 941 So.3d 1275 (Fla. App. 4th 2006) (noting merely that the Court "is authorized" to deny petitions on the basis of anti-assignment language, and not stating that the Court "must" do so). In other words, the statute makes clear that the decision whether or not to allow a transfer is vested exclusively in the court. Allowing the Florida courts to perform their statutorily mandated duty does not constitute abuse or exploitation.

CONCLUSION

Appellant is understandingly remorseful over the transactions he made over seven years ago, resulting in six court orders which he now finds abhorrent. Rather than blame his mother, who introduced him to the factoring companies, or the factoring companies, with whom he dealt, or himself, Cordero chooses instead to sue the annuity owner and issuer, with whom he never dealt, and seeks to change the language of the Florida SSPA, which provides that these entities "may" file written objections to the proposed transfer, to require objections when, as in almost every case, the underlying settlement agreement contains anti-assignment language. However, neither the settlement agreement nor the Florida SSPA lend themselves to this absurd result. For the foregoing reasons, the trial court's opinion should be affirmed.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B). This brief contains 4,048 words. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of Fed. R. App. P. 32 (a)(6).

Respectfully submitted,

COZEN O'CONNOR

By: */s/ Stephen Harris*

Stephen R. Harris
sharris@cozen.com
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103
Telephone No. (215) 665-4121
Facsimile No. (215) 372-2361

and

David Stahl
dstahl@cozen.com
Cozen O'Connor
200 S. Biscayne Boulevard, Suite 3000
Miami, Florida 33131
Telephone No. (305) 397-0807

Counsel for Appellees Transamerica Annuity Service Corporation and *Transamerica Life Insurance Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF on this 2nd day of August, 2021. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via transmission of Notice of Electronic Filing generated by CM/ECF.

By: */s/ Stephen R. Harris*
Stephen R. Harris

SERVICE LIST

Brenton N. Ver Ploeg, Esq.
bverploeg@vpl-law.com
Benjamin C. Hassebrock, Esq.
bhassebrock@vpm-legal.com
Ver Ploeg & Marino, P.A.
100 S.E. 2nd Street, Suite 3300
Miami, Florida 33131
Telephone No. (305) 577-3996
Facsimile No. (305) 577-3558

Counsel for Appellant, Lujerio Cordero

Scott J. Topolski, Esq.
stopolski@coleschotz.com
Cole Schotz P.C.
2255 Glades Road, Suite 142W
Boca Raton, Florida 33431

Counsel for Third-Party Defendants

Merrie C. Surace

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