

DOCKET NO.: PJR CV-02-0817228 : SUPERIOR COURT  
 :  
DAVID A. WILSON : JUDICIAL DISTRICT OF HARTFORD  
 :  
V. : AT HARTFORD  
 :  
THE TRAVELERS INSURANCE COMPANY :  
AND THE TRAVELERS LIFE AND ANNUITY :  
COMPANY : NOVEMBER 20,2002

**PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIM**

Pursuant to Practice Book Sections 10-30 and 10-33, plaintiff, David A. Wilson, hereby moves to dismiss defendants' counterclaim in the above-captioned action on the ground that defendants' lack standing to enforce the contract upon which the counterclaim is based because they are not parties to the contract. Accordingly, this court lacks subject matter jurisdiction over defendants' counterclaim.

Plaintiff submits the attached Sur-Reply Memorandum in support of its Motion to Dismiss.

PLAINTIFF  
DAVID A. WILSON

By: \_\_\_\_\_  
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**ORDER**

The foregoing having been heard, it is hereby ORDERED that the plaintiff's motion to dismiss the counterclaim is hereby: GRANTED / DENIED

BY THE COURT

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Judge

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**SUR-REPLY TO TRAVELERS' MOTION FOR  
DECLARATORY RELIEF AND ORDER TO SHOW CAUSE AND  
IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS**

**INTRODUCTION**

Pursuant to C. G. S. § 52-225f, plaintiff seeks court permission to assign his right to receive structured settlement payments. The Travelers Insurance Company ("Travelers Insurance") and The Travelers Life and Annuity Company ("*TLAC*" and collectively with Travelers Insurance "defendants") have objected to the application and sought summary judgment in their favor based on (1) an "anti-assignment provision" in a Settlement Agreement between plaintiff and Travelers Indemnity, to which defendants are not parties, and which the Qualified Assignment between defendants and Travelers Indemnity specifically removed; and (2) the claim that the Court has no jurisdiction over this matter because the Connecticut Act does not allow the plaintiff to seek approval for his proposed assignment in Connecticut because he did not bring an original action in Connecticut and is not a resident of Connecticut.

As set forth in plaintiff's response to defendants' motion, the Qualified Assignment, which allows plaintiff to assign his right to receive the structured settlement payments, superceded and

replaces the original Settlement Agreement. See e.g. Spicer v. Spicer, 35 Conn.App. 152, 158-159 (1993). Moreover, as explained in plaintiff's response, the court has jurisdiction to hear plaintiff's application because the Connecticut Act provides that "[t]he court in which the original action was or could have been filed or the court which has jurisdiction" and the plaintiff could have filed the original action in this court. Conn. Gen. Stat. § 52-225f(c)(2) (emphasis added).

This sur-reply responds to defendants' new argument, raised for the first time in their reply brief, that an original action against Travelers Indemnity could not be brought in Connecticut. This argument is contrary to the very case that defendants cite in their brief. The sur-reply also supports plaintiff's Motion to Dismiss, filed herewith, on the ground that (1) defendant's lack standing to enforce the provisions of the Settlement Agreement to which they are not a party; and (2) defendants are estopped from challenging this court's jurisdiction, having specifically directed the plaintiff to seek relief under the Connecticut Act (Exhibit A attached hereto).

The issues currently before the court are:

(I) Whether the defendants have standing to enforce the Settlement Agreement (an agreement to which the defendants are not parties);

(II) whether the assignment provision contained in the Qualified Assignment (an agreement to which Travelers Insurance is a party and which left the plaintiff with the power of assignment), superceded the non-assignment provision contained in the Settlement Agreement (an agreement to which the defendants are not parties and which prohibited the power of assignment);

(III) whether the defendants are estopped from contesting the assignment as a result of the Exhibit A letter in which they direct the plaintiff to seek relief under the Connecticut Act; and

(IV) whether an original action against Travelers Indemnity could have been brought in Connecticut, in which event this Court has jurisdiction to hear this matter.

## **ARGUMENT**

### **I. THE DEFENDANTS LACK STANDING TO ENFORCE THE ANTI-ASSIGNMENT PROVISIONS IN THE SETTLEMENT AGREEMENT**

#### **A. Legal Standard**

"Standing. . . implicates a court's subject matter jurisdiction, which may be raised at any point in judicial proceedings." Stamford Hospital v. Vega, 236 Conn. 646, 674 A.2d 821 (1996). "A party . . . need not prove the merits of the case merely to have standing. Standing is an examination of the parties, not the merits of the action." Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 64, 441 A.2d 68 (1981). The power to determine its jurisdiction is one of the core inherent powers of a court. "Once the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented. . . and the court must fully resolve it before proceeding further with the case. . . [ A] court must have jurisdiction to determine its own jurisdiction once that has been put in issue." (Citations omitted; internal quotation marks omitted.) Golden Hill Paugussett Tribe of Indians v. Town of Southbury, 231 Conn. 563, 571, 651 A.2d 1246 (1995) *quoting*, Castro v. Viera, 207 Conn. 420,429-30,541 A.2d 1216 (1988). "It is a basic principle of law that a plaintiff must have standing for the court to have jurisdiction. Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has. . . some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." (Internal quotation marks omitted.) Golden Hill Paugussett Tribe

of Indians, 231 Conn. at 571, *quoting*, Unisys Corp. v. Dept. of Labor, 220 Conn. 689, 693, 600 A.2d 1019 (1991). The standing requirement is "designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decision which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Internal quotation marks omitted.) Golden Hill Paugussett Tribe of Indians, *quoting*, Rose v. Freedom of Information Commission, 221 Conn. 217, 223, 602 A.2d 1019 (1992).

**B. Defendants Do Not Have Standing to Enforce the Terms of the Settlement Agreement**

In his application for declaratory relief, the plaintiff seeks to transfer certain structured settlement payments that he is receiving pursuant to an agreement with Travelers Insurance and TLAC. In response, the defendants seek declaratory relief of their own; not to enforce the assignment provision contained in their agreement with the plaintiff but rather to enforce the one contained in the Settlement Agreement. The defendants, however, lack standing to enforce the Settlement Agreement because they are not parties to that agreement: "It is well settled that 'one who [is] neither a party to a contract nor a contemplated beneficiary thereof cannot sue to enforce the promises of the contract . . .'" Tomlinson v. Board of Ed. of the City of Bristol, 226 Conn. 704, 718, 629 A.2d 333 (1993).

**II. THE QUALIFIED ASSIGNMENT ALLOWS ASSIGNMENT UNDER RUMBIN**

To avoid the effect of the Qualified Assignment, defendants make the bizarre argument that a novation could not occur because all of the agreements must be read together as one contract and that the Qualified Assignment was not intended to supercede the Settlement Agreement. This

argument is contrary to both fact and law. First, the parties manifested an intent that the Qualified Assignment supercede the Settlement Agreement by providing that the "Effective Date" of the Qualified Assignment would be August 14, 1994, which is two months *before* the October 6, 1994 date of the Settlement Agreement.

The defendants rely on Flagg Energy Development Corn. v. General Motors, 244 Conn. 126, 144 (1998) and argue that a novation could not occur because the Qualified Assignment does not and could not extinguish the Settlement Agreement. Such an argument misconstrues the holding in Flagg in that the Court in Flagg clearly indicates that a "partial novation" can occur. Id. Additionally, the Qualified Assignment was not a "substitute contract" under Flagg, because the terms of the Qualified Assignment were not different from the Settlement Agreement in whole of substantial part.

A "novation is a term. . . usually used with reference to instances in which a new party is introduced into the new contract, while 'substitute contract' is the designation commonly employed to cover agreements between the same parties which supersede and discharge prior contract obligations. . . There is, however, no distinction so far as concerns the legal effect." Riverside Coal Co. v. American Coal Co., 107 Conn. 40,44-45, 139 A. 276 (1927). In the present matter, Travelers Insurance is the new party introduced into the contract and a novation is effectuated. Except for the introduction of Travelers Insurance and the change to the non-assignment provision, the terms remain the same. It is only when the second agreement contains terms that are inconsistent in whole or in substantial part with the first agreement that a "substitute contract" rather than a novation occurs. Id., at 47.

Even, assuming *arguendo*, that a novation has not occurred, there is nothing to prevent this Court from enforcing the terms of the Qualified Assignment and permitting an assignment. See, Spicer, supra, 33 Conn.App. 152. As the court in Spicer explained, "[p]arties may alter any term of an existing contract by entering into a subsequent contract." Id., at 159. Defendants drafted the Qualified Assignment, in which they included provisions regarding the power to assign that conflict with the anti-assignment terms of the original settlement agreement. The Qualified Assignment, which changes the assignment terms of the Settlement Agreement controls and permits the assignment in this case under the terms of Rumbin v. Utica Mutual Insurance Co., 254 Conn. 259 (2000).

### **III. THE DEFENDANTS ARE ESTOPPED FROM CONTESTING THE PROPOSED ASSIGNMENT**

In Connecticut, the doctrine of equitable estoppel requires proof of two essential elements: "[First] the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and [second] the other party must change its position in reliance on those facts, thereby incurring some injury." (Internal quotation marks omitted.) Connecticut National Bank v. Voog, 233 Conn. 352, 366, 659 A.2d 172 (1995). When the plaintiff requested the defendants to provide income verification in order to assign his periodic payments, the defendants responded by writing to the plaintiff that "[i]t is the position of Travelers Property Casualty Corp. and Travelers Life and Annuity not to accept assignment or pledge of payments due the claimant under a structured settlement without appropriate

declaratory judgment as recently enacted by Connecticut House Bill 5548". Exhibit A. In effect, Travelers advised the plaintiff that if he wanted to make an assignment, he must first seek declaratory relief pursuant to the Connecticut Act. Clearly, the intent was to induce the plaintiff to bring suit in Connecticut. In reliance on the defendants' position, the plaintiff did indeed bring the present action, thus satisfying both elements to effectuate an equitable estoppel.

#### **IV. PLAINTIFF COULD HAVE BROUGHT AN ORIGINAL ACTION AGAINST TRAVELERS INDEMNITY IN CONNECTICUT**

The defendants' reliance on O'Donnell v. U.S. Fidelity & Guaranty Co., 1992 Conn. SuperLEXIS 426 (J.D. of Waterbury March 3, 1992) (Meadow, J) is also misplaced. First, the Court in O'Donnell clearly indicated that the settlement agreement at issue "expressly provided that such agreement was not a judgment and that the case be accorded open status." Id. No such language is present in either the Settlement Agreement or the Qualified Assignment. Additionally, the Order dated October 6, 1994, attached to Defendant's Motion For Summary Judgment dated June 21, 2002, now required Travelers Indemnity to indemnify the insured against liability. As such, an original action could indeed have been brought in Connecticut. Had the parties intended otherwise, they could have simply utilized the same or similar language as that found in O'Donnell, and left the action with "open status".

#### **CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the court dismiss the counterclaim or in the alternate sustain the plaintiffs objection to Summary Judgment.

APPLICANT,  
DAVID A. WILSON

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed, via Regular U.S. Mail, postage prepaid, and faxed, on November 21, 2002 to all counsel and pro se parties of record, as follows:

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\_\_\_\_\_  
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