

**Affirmed in Part, Reversed and Remanded in Part, and Memorandum Opinion filed
September 9, 2010.**



In The

Fourteenth Court of Appeals

NO. 14-09-00637-CV

RAPID SETTLEMENTS, LTD., Appellant

V.

**SETTLEMENT FUNDING, LLC D/B/A PEACHTREE SETTLEMENT FUNDING,
Appellee**

**On Appeal from the 113th Judicial District Court
Harris County, Texas
Trial Court Cause No. 2006-23366A**

MEMORANDUM OPINION

Rapid Settlements, Ltd. appeals the trial court's order granting summary judgment in favor of appellee Settlement Funding, LLC d/b/a Peachtree Settlement Funding (hereinafter "Peachtree") and awarding Peachtree attorney's fees and costs in the amount of \$171,863.91. We affirm in part and reverse and remand in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

Rapid Settlements is a factoring company that purchases future income streams from individuals who are entitled to receive future payments, typically as compensation for the settlement of a personal injury claim. Rapid Settlements offers to buy the individual's future income stream in exchange for an immediate lump sum payment. Because of the risks for abuse inherent in such arrangements, most states, including Texas, have enacted statutes that require court approval of proposed transfers of settlement funds. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 141.001-.007 (Vernon 2005 & Supp. 2009) (detailing the "Structured Settlement Protection Act").

In this case, Rapid Settlements offered to purchase a future income stream to which William Maxwell was entitled. Rapid Settlements offered an immediate lump sum of \$32,000 for the transfer of a portion of Maxwell's monthly payments to Rapid Settlements. Maxwell agreed, and the parties executed a transfer agreement. Because Maxwell resided in Pennsylvania, Rapid Settlements filed its application for approval of the transfer in a Pennsylvania court as required by Pennsylvania law. *See* 40 Pa. Cons. Stat. §§ 4001-4009 (Supp. 2010). The Pennsylvania court denied the transfer on jurisdictional grounds because Maxwell had moved to South Carolina. Rapid Settlements then sought approval of its agreement with Maxwell through arbitration in Houston. An arbitrator entered an arbitration award in Rapid Settlements's favor on October 6, 2005, finding that (1) the transfer agreement between Maxwell and Rapid Settlements was valid; and (2) Maxwell had breached the agreement. Maxwell did not appear at the arbitration.

Meanwhile, Maxwell entered into a second agreement with another company, Settlement Funding, LLC d/b/a Peachtree Settlement Funding, for a lump sum payment in exchange for two income streams from his structured settlement. On April 18, 2006, a South Carolina court approved the first of two transfers between Maxwell and Peachtree.

On December 8, 2006, the South Carolina court approved the second transfer between Maxwell and Peachtree.

Rapid Settlements filed a petition for confirmation of its arbitration award against Maxwell in the County Civil Court at Law No. 1 in Harris County on October 31, 2005, and Peachtree intervened. In its amended plea in intervention, Peachtree requested declaratory relief, vacation of Rapid Settlements's arbitration award, and costs and attorney's fees. Rapid Settlements filed a counterclaim against Peachtree for tortious interference with existing business relationships. Maxwell filed a special appearance. Peachtree filed counterclaims against Rapid Settlements for declaratory relief and tortious interference with contract. Peachtree then filed a plea to the jurisdiction, claiming the amount in controversy exceeded the county court's jurisdictional limit; Rapid Settlements subsequently non-suited its claims against Peachtree.

Peachtree's plea to the jurisdiction was granted and the case was transferred to a Harris County district court by agreement of the parties. In the district court, Rapid Settlements filed an amended counterclaim against Peachtree seeking (1) damages for tortious interference with business relationships; and (2) attorney's fees and costs for defending against Peachtree's request for declaratory relief. The case was consolidated with two other lawsuits involving other individuals in the 113th Judicial District Court; these lawsuits also dealt with the purchase of structured settlement payments. After the consolidation, Rapid Settlements filed a motion to confirm the arbitration award as to Maxwell. The trial court granted Maxwell's special appearance and dismissed the case against him for lack of personal jurisdiction.

After the dismissal, Peachtree's claim to vacate the arbitration award, request for declaratory relief and attorney's fees and costs, and counterclaim for tortious interference with contract remained pending; Rapid Settlements's counterclaim against Peachtree for tortious interference with business relationships and its request for attorney's fees and costs also remained pending. Peachtree filed a motion for summary judgment on January

30, 2009 on its affirmative claim in intervention to vacate the arbitration award and on Rapid Settlements's counterclaim for tortious interference. In addition, Peachtree asked the trial court to (1) declare that Peachtree had the sole contractual right, title and interest in and to Maxwell's assigned structured settlement payments; and (2) award attorney's fees and costs under Texas Civil Practice and Remedies Code section 37.009. Rapid Settlements responded on February 16, 2009. On May 12, 2009, the trial court granted Peachtree's motion for summary judgment, declared that Peachtree had the sole contractual right to receive a portion of Maxwell's structured settlement payments, and ordered Rapid Settlements to pay Peachtree \$171,863.91 "for the reimbursement of Peachtree's necessary and reasonable costs and attorney's fees."

On June 3, 2009, Peachtree filed a motion to sever the claims relating to Maxwell from the other two lawsuits, which was granted in an order signed on June 9, 2009. Nothing in the record indicates when or how Peachtree's tortious interference counterclaim against Rapid Settlements or Rapid Settlements's request for attorney's fees and costs were resolved. On November 18, 2009, the trial court signed a "Final Judgment" stating that Peachtree had the sole contractual right to receive a portion of Maxwell's structured settlement payments; Rapid Settlements owed Peachtree \$171,863.91 for costs and attorney's fees; and Peachtree could recover reasonable and necessary appellate attorney's fees. The trial court also awarded postjudgment interest and court costs against Rapid Settlements. The "Final Judgment" states that it disposes of all parties and all claims and is final. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 206 (Tex. 2001).

Rapid Settlements filed its notice of appeal on June 30, 2009, after the trial court severed the claims relating to Maxwell from the other two lawsuits. Rapid Settlements filed an amended notice of appeal on November 23, 2009 to appeal from the "Final Judgment."¹

¹ Rapid Settlements timely appealed regardless of when Peachtree's tortious interference counterclaim or Rapid Settlements's request for attorney's fees and costs was resolved. The May 12, 2009

II. ANALYSIS

In one issue, Rapid Settlements contends the trial court erred in awarding Peachtree its attorney's fees and costs in the amount of \$171,863.91 because (1) Peachtree improperly used a declaratory judgment action to obtain attorney's fees; (2) the fees are not reasonable and necessary; (3) the fees are not just and equitable; and (4) Peachtree failed to segregate the attorney's fees.²

Rapid Settlements contends that Peachtree's request for declaratory judgment is more properly characterized as an action to vacate the arbitration award between Rapid Settlements and Maxwell. Specifically, Rapid Settlements argues that Peachtree has "artfully plead" a declaratory judgment action to obtain attorney's fees that would otherwise not be available.

Under the Uniform Declaratory Judgments Act (UDJA), "[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Tex. Civ. Prac. & Rem. Code Ann. § 37.003(a) (Vernon 2008). The UDJA's purpose is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered." *Id.* § 37.002(b).

summary judgment order could not have been final and appealable before the severance order was signed on June 9, 2009. Rapid Settlements filed its first notice of appeal on June 30, 2009—within 30 days of the date on which the severance order was signed. *See* Tex. R. App. P. 26.1. If these claims were resolved after the severance but before the November 18, 2009 "Final Judgment" was signed, then the June 30, 2009 notice of appeal was prematurely filed and is deemed to be filed on the day of the event that begins the period for perfecting the appeal. *See* Tex. R. App. P. 27.1(a). If these claims were not resolved until the "Final Judgment" containing *Lehmann* language was signed on November 18, 2009, then the second notice of appeal filed on November 23, 2009 is timely. *See* Tex. R. App. P. 26.1.

² Rapid Settlements does not challenge on appeal the trial court's judgment in favor of Peachtree on (1) Peachtree's request to vacate the arbitration award; and (2) Rapid Settlements's tortious interference counterclaim. Accordingly, we do not address these claims on appeal. *See* Tex. R. App. P. 38.1. We affirm the trial court's judgment in favor of Peachtree on (1) Peachtree's request to vacate the arbitration award, and (2) Rapid Settlements's tortious interference counterclaim.

A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Id. § 37.004(a). “In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.” *Id.* § 37.009.

A party cannot use the UDJA to settle disputes already pending before the court. *BHP Petroleum Co. v. Millard*, 800 S.W.2d 838, 841 (Tex. 1990) (orig. proceeding). Nor can a party use the UDJA to obtain otherwise impermissible attorney’s fees. *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669 (Tex. 2009). It is an abuse of discretion to award attorney’s fees under the UDJA when the statute is relied upon solely as a vehicle to recover attorney’s fees. *City of Houston v. Texan Land and Cattle Co.*, 138 S.W.3d 382, 392 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

In its first amended plea in intervention, Peachtree requested a declaratory judgment establishing the respective rights of Peachtree and Rapid Settlements in relation to Maxwell’s structured settlement payments. Specifically, Peachtree asked the trial court to declare that (1) Rapid Settlements had not complied with South Carolina law; (2) any transfer of structured settlement payment rights to Rapid Settlements would contravene orders approving a transfer of the payments to Peachtree; (3) a direct or indirect transfer by Rapid Settlements of Maxwell’s structured settlement payment rights was not effective; (4) Peachtree held valid legal and equitable ownership rights to the payments, and those rights were not affected by the arbitration award; and (5) the settlement obligor and annuity issuer were not required to make payments to Rapid Settlements. In its request to vacate the arbitration award, Peachtree asserted that (1) the arbitration award was obtained by corruption, fraud, or other undue means; (2) through the award, Rapid Settlements attempted to invalidate the rights of Maxwell and Peachtree; (3) there was partiality on the

part of the arbitrator; (4) the arbitrator exceeded his powers; and (5) the arbitrator did not conduct a proper hearing. Peachtree filed a motion for summary judgment on its plea in intervention in which it (1) argued that the arbitration award in favor of Rapid Settlements and against Maxwell should be vacated because there was no valid contract between Rapid Settlements and Maxwell; and (2) requested a declaration that Peachtree had sole title to Maxwell's structured settlement payments because Peachtree obtained court approval.

Rapid Settlements's position on appeal is not entirely clear. To the extent Rapid Settlements argues that Peachtree's request for declaratory judgment sought to settle a dispute already before the court, this argument is without merit. According to the record, the issue of whether Peachtree had legal and equitable ownership of Maxwell's structured settlement payments was not before the court until Peachtree intervened.

Insofar as Rapid Settlements contends that Peachtree's request for declaratory judgment is duplicative of Peachtree's request to vacate Rapid Settlements's arbitration award, this argument also is without merit. The request to vacate the arbitration award would not have established that Peachtree had legal and equitable ownership of the structured settlement payments Rapid Settlements was seeking; it would have established at most that the arbitration award was invalid. Therefore, Peachtree's request for declaratory judgment was not duplicative of Peachtree's request to vacate the arbitration award. Because Peachtree's request for declaratory judgment was permissible, the trial court did not abuse its discretion in awarding attorney's fees. We overrule this portion of Rapid Settlements's issue on appeal. We next consider the amount of attorney's fees awarded by the trial court.

Rapid Settlements contends Peachtree was required to segregate its attorney's fees between those incurred representing Maxwell and those incurred representing Peachtree. Rapid Settlements also asserts that Peachtree was required to segregate its attorney's fees among Peachtree's claim for declaratory judgment, its request to vacate the arbitration

award, and Rapid Settlements’s counterclaim for tortious interference. In Rapid Settlements’s summary judgment response, Rapid Settlements argued that Peachtree’s counsel failed to delineate between attorney’s fees incurred representing Maxwell and those incurred representing Peachtree.³

When a lawsuit involves multiple claims or parties, the proponent of attorney’s fees must segregate recoverable fees from those incurred by parties or on claims for which fees are not recoverable. *Clearview Props., L.P. v. Prop. Tex. SC One Corp.*, 287 S.W.3d 132, 143 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). Attorney’s fees that relate solely to a claim for which fees are unrecoverable must be segregated. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 313 (Tex. 2006). The party seeking to recover attorney’s fees bears the burden of demonstrating segregation is not required. *CA Partners v. Spears*, 274 S.W.3d 51, 82 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).

Peachtree’s counsel also represented Maxwell. Peachtree claims that it was not required to segregate attorney’s fees incurred representing Maxwell from attorney’s fees incurred representing Peachtree because “[a]ll of these purportedly separate claims and parties depend upon a common nucleus of facts and the same legal arguments” and are “inextricably intertwined.” However, as the Texas Supreme Court explained in *Chapa*, intertwined facts alone do not relieve an attorney’s fees proponent of the obligation to segregate fees. *Chapa*, 212 S.W.3d at 313. It is only when discrete legal services

³ Because Rapid Settlements did not argue that Peachtree failed to segregate its attorney’s fees between Peachtree’s claims and Rapid Settlements’s counterclaim, we do not consider this argument on appeal. See *Green Int’l, Inc. v. Solis*, 951 S.W.2d 384, 389 (Tex. 1997) (if no one objects to fact that attorney’s fees are not segregated as to specific claims, then objection is waived); *Haden v. David J. Sacks, P.C.*, ___ S.W.3d ___, ___, No. 01-01-00200-CV, 2009 WL 1270372, at *9 (Tex. App.—Houston [1st Dist.] May 7, 2009, pet. denied) (applying rule in summary judgment context); see also Tex. R. Civ. P. 166a(c) (“Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal.”).

advance both a claim for which fees are recoverable and a claim for which fees are unrecoverable that fees need not be segregated. *Id.* at 313-14.

Maxwell and Peachtree sought the same end result—vacation of the arbitration award in favor of Rapid Settlements and against Maxwell, and a determination that Peachtree had the sole contractual right to Maxwell’s structured settlement payments. It does not follow, however, that the legal services for both parties were identical. Some entries on the redacted billing statements submitted by Peachtree in support of its attorney’s fees claim refer only to work done on behalf of Maxwell. For example, the entry on April 19, 2007 states: “[O]utline issues to address prior to trial, including representation of Maxwell and his options in suit and potential federal action.” Other entries refer to Maxwell’s special appearance. For example, the May 7, 2007 entry states, in part: “Follow up with counsel regarding special appearance and impact on the motion for default set for Wednesday.” According to the record, Rapid Settlements filed a motion for default judgment only against Maxwell and Peachtree’s counsel filed a special appearance only on behalf of Maxwell.

Peachtree did not meet its burden under *Chapa* to establish that it was not required to segregate attorney’s fees between those incurred representing Maxwell and those incurred representing Peachtree. Peachtree, however, did not forfeit its right to recover attorney’s fees by failing to segregate them. *See 7979 Airport Garage, L.L.C. v. Dollar Rent A Car Sys., Inc.*, 245 S.W.3d 488, 510 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). The evidence presented regarding the total amount of attorney’s fees it incurred is some evidence of what the segregated amount should be. *Id.* Therefore, we sustain Rapid Settlements’s issue with regard to segregating attorney’s fees between fees incurred representing Maxwell and fees incurred representing Peachtree; reverse that portion of the judgment awarding \$171,863.91 in attorney’s fees and costs; sever that portion of the judgment, and remand this issue for further proceedings. *Id.*; *see also CA Partners*, 274 S.W.3d at 86. As a result of our disposition of this issue, we do not determine whether the

total attorney's fees award is reasonable and necessary and equitable and just. 7979
Airport Garage, L.L.C., 245 S.W.3d at 510.

III. CONCLUSION

We reverse the portion of the trial court's judgment awarding Peachtree \$171,863.91 in attorney's fees and costs, sever that portion of the judgment, and remand for further proceedings consistent with this opinion. We affirm the remainder of the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Chief Justice Hedges and Justices Yates and Boyce.