

IN THE CIRCUIT COURT OF THE  
NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR MARTIN COUNTY,  
FLORIDA

CASE NO.: 04-377-CA

C & A FINANCIAL PROGRAMS, INC.

Plaintiffs,

vs.

MICHAEL E. AMOS

Defendant.

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**ORDER ON DEFENDANT'S MOTION FOR SUMMARY FINAL JUDGMENT**

THIS CAUSE came before the Court on the Defendant's Motion for Summary Final Judgment. The court heard argument of counsel and has considered statutory and case law submitted by the parties.

The two primary issues to be decided on the Motion for Summary Final Judgment are:

1. Whether or not the agreement between Plaintiff and Defendant is an assignment of the Defendant's retirement pension payments to Plaintiff, and
2. If it is an assignment of pension payments, is that assignment void *ab initio* or merely voidable.

The court finds that there is no dispute as to a material fact on those two issues.

The determination of these two primary issues is governed by federal law: both statutory and case law.

37 USCA Section 701(a) states:

"Under regulations prescribed by the Secretary of the military department concerned, a commissioned officer of the Army, Navy, Air Force or Marine Corps may transfer or assign his pay account, when due and payable."

37 USCA Section 701(c) states:

"An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void."

37 USCA Section 101(21) defines pay to include retired pay.

On the first issue, the court finds that the agreement between Plaintiff and Defendant is an assignment of the Defendant's pension payments to Plaintiff, and is not a sale of pension benefits to Plaintiff.

On the second issue, whether or not the assignment is void *ab initio*, or merely voidable, this court hereby rules that the assignment is void *ab initio*; of no legal force or effect; incapable of being enforced by law; and has no legal or binding force. The basis for the court's conclusion that the assignment is void *ab initio* is that the prohibition of assignment of pay in 37 USCA 701(c) is a declaration of public policy, and an assignment of an enlisted person's pension payments would be against that public policy. In making this decision the court has relied upon *Dorfman v. Moorhous*, 108 F.3rd 51 (4<sup>th</sup> Cir. 1997) and *In Re: Roy A Price*, 313 B.R. 805 (E.D. Ark. 2004). In the *Moorhous* case, a retired

military officer assigned a number of his military pension payments to Dorfman in exchange for lump sum advances from Dorfman. This court realizes that the *Moorhous* case is not the same as this case, because Moorhous was a retired officer and the Defendant here is a retired enlisted man.

This court also recognizes that the *Moorhous* decision may be based on flawed reasoning. The *Moorhous* case relied upon a "well settled general rule" that an assignment of a public officer's unearned salary, wages or fees is void as against public policy. The *Moorhous* court further went on to say that in accordance with that general rule, and statutes forbidding an officer to assign his pay before due, a military officer cannot assign his unearned pay, including unearned pay of a retired officer. The court said:

"The public policy justification arises from the concern that unforeseen financial embarrassments, following the assignment of an officer's future pay may prevent the officer from rendering the services for which he has been retained."

The flaw that this court sees in that reasoning is that a retired officer is no longer rendering services for which he has been retained. Even though this court may not agree with the *Moorhous* court, it is still federal case law.

In *Price*, the court stated that although the *Moorhous* court's "explanation of the policy behind 37 U.S.C. Section 701 refers only to officers, it is reasonable to assume the same

rationale applies to the anti-assignment prohibition regarding the pay of enlisted men."

Therefore, *Price* extended the *Moorhous* decision to retired enlisted military personnel.

As this court has previously noted, this decision is to be decided based upon federal law. The court finds, based upon the above-cited federal law, that the assignment of the Defendant's military pension benefits to Plaintiff is contrary to public policy and is therefore void *ab initio*.

WHEREFORE, this court having determined that the assignment of the retirement military benefits in this case is against public policy, and therefore, void *ab initio*, the Defendant's Motion for Summary Judgment is granted on that basis, and it is therefore not necessary to make a determination on the other issues raised in the Defendant's Motion for Summary Judgment.

DONE AND ORDERED this 10 day of January, 2006, in Chambers, at Stuart, Martin County, Florida.



ROBERT MAKEMSON  
CIRCUIT COURT JUDGE

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