

Courtroom Number: 2502

Location: District 10 Court

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
Cook County, COUNTY DEPARTMENT, CHANCERY DIVISION

FILED  
8/23/2018 11:36 AM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH10666

Bruce Burton and Laura Burton

Plaintiff

v.

Linklater Group, Co., d/b/a Linklater Financial Group, Matthew Linklater

Defendant

No. 2018CH10666

CHANCERY DIVISION CIVIL COVER SHEET  
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

- 0005  Administrative Review
- 0001  Class Action
- 0002  Declaratory Judgment
- 0004  Injunction

- 0007  General Chancery
- 0010  Accounting
- 0011  Arbitration
- 0012  Certiorari
- 0013  Dissolution of Corporation
- 0014  Dissolution of Partnership
- 0015  Equitable Lien
- 0016  Interpleader
- 0017  Mandamus
- 0018  Ne Exeat

- 0019  Partition
- 0020  Quiet Title
- 0021  Quo Warranto
- 0022  Redemption Rights
- 0023  Reformation of a Contract
- 0024  Rescission of a Contract
- 0025  Specific Performance
- 0026  Trust Construction
- Other (specify) \_\_\_\_\_

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FILED DATE: 8/23/2018 11:36 AM 2018CH10666

**IN THE CIRCUIT COURT OF COOK COUNTY  
CHANCERY DIVISION**

BRUCE BURTON, and )  
LAURA BURTON, )  
 )  
 *Plaintiffs,* )  
 )  
 v. )  
 )  
 LINKLATER GROUP, CO. d/b/a LINKLATER )  
 FINANCIAL GROUP, and )  
 MATTHEW J. LINKLATER, )  
 )  
 **Serve:** )  
 **Matthew Linklater** )  
 **1616 West Warren** )  
 **Chicago, Illinois, 60612** )  
 )  
 *Defendants.* )  
 \_\_\_\_\_ )

Case No. 2018CH10666

Judge:

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs Bruce Burton and Laura Burton (hereinafter “Plaintiffs”), by and through their undersigned counsel, upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, bring this Complaint against Linklater Group, Co., d/b/a Linklater Financial Group (“Linklater Financial”) and Matthew J. Linklater (“Linklater”) (collectively, “Defendants”). Plaintiffs alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Bruce Burton is an individual citizen of Illinois. Mr. Burton resides in Batavia, Illinois.
2. Plaintiff Laura Burton is an individual citizen of Illinois. Mrs. Burton resides in Naperville, Illinois.

3. Defendant Matthew Linklater is, upon information and belief, a citizen of the State of Illinois. Defendant offers his advising and financial services to the general public.

4. Upon information and belief, Defendant Linklater Group, Co. is a corporation organized and existing under the laws of Illinois. Defendant Linklater Group, Co. maintains a principal place of business at 1616 West Warren, Chicago, Illinois, 60612. Defendant Matthew Linklater is the President of Defendant Linklater Group, Co.

5. This Court has personal jurisdiction over Defendants because they are residents of Illinois.

6. Venue is appropriate in this county as Defendants maintain an office in this county and do business in this county.

#### **FACTUAL BACKGROUND**

7. Plaintiffs reside in Batavia and Naperville, Illinois. Bruce Burton is 67 years old and is a retired consultant. Laura Burton is 57 years old and works as a receptionist.

8. Linklater is an Investment Adviser Representative registered in the State of Illinois and also holds an Illinois license to sell life insurance products. Linklater holds himself out as an expert in retirement and financial planning and offers his advice and related services to the general public through Linklater Financial, which is based in Chicago, Illinois.

9. On information and belief, Linklater is, and was at all pertinent times, is an officer, shareholder, employee, and/or agent of Linklater Financial.

10. Plaintiffs sought retirement and financial planning advice from Linklater in or about December 2015. Plaintiffs were in contact with Linklater approximately every two weeks during the early period of the Plaintiffs' and Defendants' relationship.

11. Linklater proposed an overall retirement-planning strategy for Plaintiffs in mid-2016. As part of that strategy, Linklater identified Future Income Payments, LLC, and FIP, LLC (collectively, “FIP”) and recommended that Plaintiffs use existing retirement savings to purchase “structured cash flows” sold by FIP. In that transaction, Plaintiffs would pay a lump sum to FIP to purchase monthly income streams that represented the total amount paid to FIP plus a fixed return, which depended on the term of the structured cash flow. FIP paid higher returns for cash flows with longer terms.

12. Linklater further recommended that Plaintiffs establish indexed universal life insurance policies for each of them. Those policies would provide a death benefit and would also have an accumulated value that would allow Plaintiffs to supplement their retirement income later in life by borrowing against the policies and other means.

13. Plaintiffs had multiple meetings with Defendants about the proposed FIP investment at which they raised concerns to Linklater regarding the safety and security of the FIP product, as the funds used to purchase the FIP cash flows representing a substantial part of Plaintiffs’ retirement savings and were essential to the success of the retirement strategy proposed by Linklater.

14. Linklater represented to Plaintiffs that he had researched and understood both how the FIP product worked and the risks associated with the product. Linklater repeatedly assured Plaintiffs that FIP was a reasonable, appropriate, and prudent use of their retirement savings.

15. On or about February 2017, based on Linklater’s recommendations and assurances, Plaintiffs acquired through Linklater two separate FIP cash flows totaling approximately \$450,000. Both purchases provided that Plaintiffs would receive monthly payments for a term of 3 years at

6% return (approximately \$13,600 per month total). The FIP purchases were funded with conservatively invested retirement funds that were held in Bruce's IRA and a separate investment account.

16. Plaintiffs only agreed to use their retirement savings to fund the FIP purchases because Linklater represented that he had done due diligence on the FIP product and had determined it to be a reasonable, appropriate, and prudent way to provide retirement income in accordance with his proposed retirement-planning strategy for Plaintiffs.

17. Upon information and belief, Defendants received commissions or "referral fees" of 5% or higher on the sales of FIP cash flows.

18. Beginning in early 2018, Plaintiffs' FIP payments were first delayed, and then stopped completely. Plaintiffs are now faced with the prospect of losing a substantial part of their retirement savings as a result of Defendants' advice.

### **The FIP Structured Cash Flow Product**

19. Pensions, Annuities, and Settlements, LLC, is a Delaware limited liability company formed in 2011 and located in Henderson, Nevada. Scott Kohn is the sole and founding member of Pensions, Annuities, and Settlements, LLC, and its president, secretary, and treasurer.

20. In 2014, Pensions, Annuities, and Settlements, LLC amended its certificate of formation to change its name to Future Income Payments, LLC. Scott Kohn is the sole and managing member of Future Income Payments, LLC.

21. FIP LLC is a Nevada limited liability company formed in 2016 and located in Henderson, Nevada. Cash Flow Outsourcing Services, Incorporated, a corporation based in the Philippines and solely owned by Kohn, is the sole and managing member of FIP LLC.

22. The entities operating as Pensions, Annuities and Settlements, LLC, Future Income Payments, LLC, or FIP, LLC are collectively referred to herein as “FIP.” All available information indicates that Scott Kohn was the sole owner and manager of FIP at all times pertinent to this Complaint.

23. Scott Kohn pleaded guilty in 2006 to three federal felony offenses related to trafficking in counterfeit goods, and he was sentenced to fifteen months in federal prison. More specifically, Kohn pleaded guilty to directing employees of a company he owned to replace branded computer memory modules with counterfeit memory chips and then sell them fraudulently as though they were genuinely branded computer memory modules. He also hired other companies to encode generic computer hard drives with software to make them appear (falsely) to be branded hard drives and directed employees to sell them as though they were genuinely branded drives.

24. FIP funded the cash flows it sold to individuals like Plaintiffs by “purchasing” future income from pensioners, including retired teachers, police officers, and military personnel. FIP offered pensioners up-front, lump-sum payments in exchange for receiving a portion of their monthly pension payments over a specific term, often three to five years.

25. FIP marketed its product to pensioners as a “pension advance” or “pension buyout.” FIP’s agreement with pensioners provided that the pensioner would receive a one-time lump sum in exchange for a specified amount of the pensioner’s monthly pension for a specified period of months. As part of this arrangement, pensioners would instruct the bank into which their pension payments were received to transfer that specified amount to FIP, and pensioners often executed authorizations for electronic funds transfers allowing FIP to collect the pension installment payments from pensioners’ accounts.

26. The pension-advance industry has long been the subject of scrutiny with respect to the business practices prevalent among its companies. As the Consumer Fraud Protection Bureau noted in a recent court filing, “[i]n the past few years, the income stream market has come under sharp scrutiny for allegedly marketing loans at undisclosed, exorbitant interest rates to vulnerable populations, including veterans and the elderly.” See *John Doe Co. v. CFPB*, 849 F.3d 1129, 1130 (D.C. Cir. 2017). For example, in 2014, the United States Government Accountability Office did a thorough investigation of the industry and issued a report (GAO 14-420) concluding that “pension advance companies market their products as a quick and easy financial option that retirees may turn to when in financial distress from unexpected costly emergencies or when in need of immediate cash for other purposes, but, in fact, pension advances may come at a price that may not be well understood by retirees . . . [and] the lack of transparency and disclosure about the terms and conditions of these transactions, and the questionable practices of some pension advance companies, could limit consumer knowledge in making informed decisions.” The GAO report also recommended that the CFPB and FTC conduct formal reviews to determine whether the pension-advance companies such as FIP violated consumer laws or engaged in unfair trade practices.

27. As concerns about pension advance transactions grew, numerous state regulators initiated enforcement actions against FIP, alleging that its pension income purchases were, in fact, unlawful loans. Even though FIP characterized its pension transactions as “sales” or “purchases,” the transactions lacked certain fundamental characteristics of a sale and had all the salient features of a loan. For example, FIP would characterize the difference between the amount it paid for the income streams and the amount it would receive as a “discount,” when, in fact, that amount was really interest that pensioners were charged on the lump-sum that he or she borrowed. Having

determined that the FIP transactions actually were loans, the regulators determined that those loans were unlawful because (a) FIP was not a licensed lender; (b) the effective interest rates charged to the pensioners (more than 100% in some cases) violated state usury laws; and (c) the loans and were made without legally mandated disclosures. These regulatory actions also pointed out numerous questionable marketing, sales, and collection practices employed by FIP.

28. The following is a non-exclusive list of some of the regulatory actions taken against FIP in the past few years:

- The State of Colorado determined that FIP was making loans without proper licensure. In a January 2015 assurance of discontinuance, FIP agreed not to enter into any transactions in Colorado without first obtaining a supervised lender's license and not to charge interest on their existing agreements in Colorado.
- In March 2015, the State of California issued a desist and refrain order against FIP, alleging that it engaged in the business of financial lending or brokerage without a license. In September 2015, FIP agreed not to engage in transactions in California without obtaining a license.
- In March 2016, FIP entered into an assurance of discontinuance with the Commonwealth of Massachusetts that it would not enter into any future agreements with Massachusetts residents and that it would not charge interest on its existing contracts with Massachusetts residents.
- In June 2016, FIP entered into a settlement with the State of North Carolina whereby it agreed to reform its existing North Carolina transactions and to ensure that any future transactions with North Carolina residents would comply with the state's usury laws.
- In October 2016, FIP entered into a consent order with the State of New York, in which it agreed not to enter into any future transactions with New York residents and not to charge interest on its existing contracts with residents of New York.
- Under a December 2016 consent order with the State of Washington, FIP agreed not to enter into any transactions with Washington residents without obtaining a license and not to charge interest on its existing contracts with Washington residents.

- Under an assurance of compliance reached with the State of Iowa in December 2016, FIP agreed not to enter into any future transactions with Iowa consumers and not to charge interest on its existing contracts in Iowa.
- In February 2017, the Los Angeles City Attorney filed suit against FIP for failing to obtain a license to lend, making usurious loans, failing to disclose the terms of the loans, falsely threatening defaulting borrowers with criminal liability if they failed to make their monthly payments, and making illegal and harassing phone calls to collect on defaulted loan payments.
- In May 2017, the Commonwealth of Pennsylvania issued a cease and desist order against FIP for engaging in the business of making loans without a license and charging usurious rates of interest.
- In August 2017, the State of Minnesota filed a court action alleging that FIP's actions violated Minnesota law, and seeking to enjoin FIP from continuing in those violations; to declare all FIP loans to be void and releasing Minnesota residents from any obligations incurred under those agreements; to force FIP to make restitution to any residents harmed by its practices; and to require FIP to pay civil penalties.
- In January 2018, the State of Oregon launched an investigation of FIP's practices.
- In February 2018, the Illinois Department of Financial and Professional Regulation issued a cease and desist order, providing that FIP cease making loans to Illinois residents and stop collecting on loans previously made to Illinois residents.
- In March 2018, the Commonwealth of Virginia sued FIP, alleging that it targeted elderly veterans and retired civil servants in a scheme that masquerades high-interest predatory loans as "pension sales."
- In April 2018, the State of Illinois asked the court to void FIP's deceptive contracts and sought restitution for Illinois residents who had contracted with FIP. The State also sought to prohibit FIP from marketing or offering loan services without being licensed in the state.
- In April 2018, the State of Maryland ordered FIP to stop making new pension advances and other loans to Maryland consumers, and it also required that FIP stop collecting on any existing advances or other loans.

29. As a result of this overwhelming regulatory pressure, FIP ultimately ceased issuing new pension advances or collecting payments from pensioners on or about April 2018. All monthly

payments to Plaintiffs stopped around this same time, and FIP has subsequently informed Plaintiffs and other FIP purchasers that they cannot expect to receive any further payments from FIP.

30. The loss of the monthly income stream that Plaintiffs purchased from FIP has been devastating. Those monthly payments represented the only way that Plaintiffs could recoup the principal, much less the expected returns, of the retirement savings they had set aside.

**Defendants Failed to Assess the Risks of the FIP Product Adequately**

31. Defendants knew that the money that Plaintiffs used to purchase the FIP products represented a substantial part of their limited retirement savings. As such, Defendants further knew that Plaintiffs needed and expected the FIP income streams to be safe and secure, more than they needed the expected returns. It was therefore imperative that Defendants investigate and understand all risks associated with the FIP cash flow product before recommending and selling it to Plaintiffs. Defendants should never have recommended the FIP cash flow product without being completely sure that the risks of FIP could not cause Plaintiffs to actually lose the precious retirement savings they were trying to grow and protect.

32. Unfortunately, Linklater recommended the FIP cash flow product to Plaintiffs despite the substantial and troubling risks associated with FIP and the underlying pension transactions.

33. First, the FIP cash flow product was inherently mischaracterized as a purchase and not a loan. As the regulatory actions against FIP described above make clear, that fact posed an existential risk to the entire FIP enterprise and threatened Plaintiffs with the loss of retirement assets. Linklater was aware or should have been aware of that risk, as manifested by the numerous

public enforcement actions and specific disclosures in the FIP purchase agreements, but either failed to investigate or understand those risks adequately or disregarded those risks.

34. Beyond this regulatory risk, there were many other substantial risks associated with the FIP cash flow product that Defendants failed to assess adequately in deciding to recommend FIP to Plaintiffs. These risks include:

- The fact that Scott Kohn, the sole owner and manager of FIP, is a convicted felon who has served time in a federal penitentiary for selling counterfeit computer equipment;
- The fact that FIP is a small private company operated by a few individuals and is not associated with or backed by any financial institution or other reputable entity;
- The fact that the federal government, in the 2014 GAO report, questioned the business practices of the pension advance industry and called for more investigations into whether that industry was violating consumer-protection laws;
- The risk that the pensioners whose income streams were purchased could stop making payments at any time, with no recourse other than hoping that income from other pensioners will cover the shortfall;
- The risks that a pensioner could go bankrupt and the FIP contract be treated as an unsecured debt;
- The risk that pensioners could die, and their pension beneficiaries would not make payments;
- The fact that the FIP cash flows are completely illiquid;
- The fact that U.S. federal law prohibits the assignment or alienation of federal pensions, and that those laws may be enforced to prohibit or invalidate FIP pension advance contracts with federal pensioners.

35. Despite all of these risks, Linklater recommended the FIP pension income streams to Plaintiffs as a suitable way to preserve and grow their retirement savings. That recommendation was inappropriate and irresponsible and fell below the standard of care that Defendants owed to

Plaintiffs, particularly in light of the fact that Plaintiffs could lose crucial retirement assets if they did not receive the expected cash flow payments. Sadly, the risks that should have prevented Defendants from recommending the FIP cash flows in the first place have now materialized, and Plaintiffs are faced with a significant loss of retirement assets. Defendants should be held to account for those losses.

**COUNT 1 – BREACH OF CONTRACT**  
**(Against All Defendants)**

36. Each and every allegation contained in the foregoing paragraphs is hereby alleged fully as if set out herein.

37. Defendants undertook legal, valid and binding contractual obligations to Plaintiffs to provide sound retirement planning and other financial advice by undertaking to provide and providing such advice.

38. Defendants breached those contractual obligations by failing to conduct adequate due diligence on and/or failing to understand the risks of the FIP income stream product and nevertheless recommending those products to Plaintiffs.

39. At all pertinent times, Linklater was an officer, shareholder, employee and/or agent of Linklater Financial acting within the line of his duty and exercising the functions of his employment or agency. Linklater Financial is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Linklater.

40. As a direct and proximate result of Defendants' breach of fiduciary duty, Plaintiffs suffered substantial injury and damage. Plaintiffs are entitled to (1) actual damages, (2)

consequential damages, (3) punitive damages, and (4) such other relief as is just, equitable, and proper.

**WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- a. For actual damages;
- b. For consequential damages;
- c. For prejudgment interest at the highest legal rate;
- d. For the costs of this action;
- e. For reasonable attorneys' fees; and
- f. For such other and further relief as is just, equitable, and proper.

**COUNT 2 –BREACH OF FIDUCIARY DUTY  
(Against All Defendants)**

41. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.

42. As an investment advisor and investment advisor representative, Linklater Financial and Linklater assumed the role and duties of fiduciary as to Plaintiffs.

43. Linklater held himself out as an experienced financial adviser and provided retirement-planning and other financial advice to Plaintiffs. Plaintiffs placed their trust and confidence in Linklater, which Linklater accepted by providing specific advice as to how Plaintiffs should manage their assets for retirement. As such, Defendants undertook a fiduciary duty to Plaintiffs to act fairly and honestly, in good faith, and in the sole best interest of Plaintiffs.

44. At all pertinent times, Linklater was an officer, shareholder, employee and/or agent of Linklater Financial acting within the line of his duty and exercising the functions of his

employment or agency. Linklater Financial is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Linklater.

45. Defendants thus owed Plaintiffs the utmost duty of good faith to act solely in Plaintiffs' best interests. Defendants had the duty to ascertain the quality of the products that Linklater recommended to Plaintiffs and to refrain from soliciting or entering into transactions that were illegal and/or improper or unsuitable.

46. Defendants violated their fiduciary obligations to Plaintiffs by failing to conduct adequate due diligence on and/or failing to understand the risks of the FIP income stream product and nevertheless recommending those products to Plaintiffs.

47. As a direct and proximate result of Defendants' breach of fiduciary duty, Plaintiffs suffered substantial injury and damage. Plaintiffs are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages, and (4) such other relief as is just, equitable, and proper.

**WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- a. For actual damages;
- b. For consequential damages;
- c. For prejudgment interest at the highest legal rate;
- d. For the costs of this action;
- e. For reasonable attorneys' fees; and
- f. For such other and further relief as is just, equitable, and proper.

**COUNT THREE – NEGLIGENCE  
(Against All Defendants)**

48. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.

49. Linklater offered investment advice to Plaintiffs and thus owed Plaintiffs the clear duty to exercise reasonable care, skill, diligence and prudence under the circumstances presented by Plaintiffs' unique situation and investment objectives.

50. At all pertinent times, Linklater was an officer, shareholder, employee and/or agent of Linklater Financial acting within the line of his duty and exercising the functions of his employment or agency. Linklater Financial is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Linklater.

51. Defendants breached their respective duties to Plaintiffs to exercise reasonable care, skill, diligence and prudence under the circumstances and such breaches caused Plaintiffs to suffer damages.

52. As a direct and proximate result of Defendants' negligence, Plaintiffs suffered substantial injury and damage. Plaintiffs are therefore entitled to (1) actual damages, (2) consequential damages, (3) costs, (4) prejudgment interest, and (5) such other relief as is just, equitable and proper.

**WHEREFORE,** Plaintiffs pray for judgment against Defendants as follows:

- a. For actual damages;
- b. For consequential damages;
- c. For prejudgment interest at the highest legal rate;
- d. For the costs of this action;
- e. For reasonable attorneys' fees; and
- f. For such other and further relief as is just, equitable, and proper.

Respectfully submitted,

By: /s/ Brandon M. Wise

Brandon M. Wise – IL Bar No. 6319580

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