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Short Form Order

SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 11 NASSAU COUNTY

PRESENT:
Honorable Karen V. Murphy
Justice of the Supreme Court

x

In the Matter of the Petition of

PEACHTREE SETTLEMENT FUNDING, LLC,

Petitioner(s),

and

SAMUEL OLADIPO,
AMERICAN HOME ASSURANCE COMPANY
and AMERICAN INTERNATIONAL LIFE
ASSURANCE COMPANY OF NEW YORK N/K/A
UNITED STATES LIFE INSURANCE COMPANY
IN THE CITY OF NEW YORK,

As Interested Persons pursuant to GOL §5-1701(c)

x

Index No. 15436/11

Motion Submitted: 11/30/11
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause........................X
Answering Papers...
Reply...
Briefs: Plaintiff's/Petitioner's.....................................
Defendant's/Respondent's................................

Petitioner Peachtree Settlement Funding, LLC ("Peachtree") seeks an Order from the Court granting judicial approval of the transfer/sale of a structured settlement payment from Samuel Oladipo to Peachtree. American Home Assurance Company ("AHAC") and American International Life Assurance Company of New York n/k/a United States Life Insurance Company in the City of New York ("American International") have not submitted opposition to the requested relief.

This action arises from a structured settlement agreement pertaining to a negligence action commenced in Queens County in 1999 (Index No. 16254/99). Mr. Oladipo states that he has been receiving monthly annuity payments of $3,500, which payments commenced on Mr. Oladipo's eighteenth birthday in September 2005, and will conclude with a final payout on or about September 16, 2017. The terms of the Infant's Compromise Order submitted to this Court as an exhibit state that Mr. Oladipo was awarded the sum of $871,000, which is required to be paid through the subject structured settlement, with a total annuity yield of $1,792,250.47. In addition to the monthly payments, Mr. Oladipo is to receive two lump sum payments: $100,000 due and payable on September 16, 2012, and $238,250.47 on September 16, 2017.

Mr. Oladipo is now twenty-four (24) years old, single, has no children, and is unemployed. Because of the monthly annuity payments of $3,500, Mr. Oladipo receives approximately $42,000 in annual income.

By this application, Mr. Oladipo seeks to assign both lump sum payments totaling $338,250.47 to petitioner in exchange for a sum of money. According to the terms of the Purchase Agreement, Mr. Oladipo will realize $180,000 from the transfer of his $338,250.47 to petitioner. Mr. Oladipo states in his affidavit that he intends to use the proceeds of this transfer to pay "a series of debts" totaling $5,000. Mr. Oladipo states that his creditors include Capital One, Sheild Medical, Soomins Heating, and New York City Municipality for parking violations. Mr. Oladipo has not itemized his debts to each of these creditors.

Mr. Oladipo further states that the "remainder" will be spent to "pay off a large amount of my mortgage in attempts to re-finance my mortgage at a lower interest rate." Mr. Oladipo does not specifically state what property he owns, the amount of his mortgage, the terms of his current mortgage, any arrears if due, and the specifics of his "attempts" to re-finance at a lower interest rate.

Contrary to petitioner's counsel's affirmation (paragraph 16), Mr. Oladipo does not state in his own affidavit that he is "actively seeking employment."

The disclosure statement lists the discounted present value of the $338,250.47 as being $309,548.39, which will result in a payment to Mr. Oladipo of $180,000,[1] which is equivalent to him being charged an interest rate of 16.66 % annually. Based on a price quote from American International, the current cost of purchasing a comparable annuity for the aggregate sum of the payments to be transferred is $338,387.00. Based on the foregoing, Mr.

[1]The $180,000 is amount of both the gross and net payment. No additional fees are being deducted from the proposed payment of $180,000.

Oladipo's gross/net would be 58.10% of the discounted present value of the payment sought to be sold and transferred.

New York's Structured Settlement Protection Act, General Obligations Law, Title 17 was enacted to provide greater protection to individuals entering into structured settlement agreements, and/or negotiating to sell or transfer a periodic payment to a third party. Since 2002, such transfers require judicial approval in order to protect the long- term financial security of the structured settlement payees (***Matter of Settlement Funding of New York, LLC (Ciraolo) v. Structured Settlement Trust and Allstate Life Insurance Co.***, 2009 WL 3713136, 2009 Slip Op. 32553U [Sup. Ct. Nassau County, Trial Order 2009]).

Specifically, General Obligations Law § 5-1706 sets forth the express findings that a Court must make in order to authorize a transfer of any structured settlement payment to a third party. Among the findings required to be made for approval of the transfer are that the transfer complies with the requirements of Title 17; that the transfer "is in the best interests of the payee;" that the discount rate applied is "fair and reasonable;" that the payee has been advised in writing to seek independent professional advice regarding the transfer, and has either received such advice or knowingly waived such advice in writing.

The "best interests" analysis must be approached on a case-by-case basis, considering whether the transfer of a structured settlement payment "will provide needed financial rescue without jeopardizing or irreparably impairing the financial security afforded to the payee . . . by the periodic payments" (***Matter of the Petition of Settlement Capital Corporation for Approval of Transfer of Structured Settlement Payment Rights of Richard C. Ballos***, 1 Misc.3d 446, 455, 769 N.Y.S.2d 817 [Sup. Ct. Queens County, 2003]). Among the factors to be considered, are the payee's age, mental and physical capacity, maturity level, ability to show sufficient income independent of the payments sought for transfer, the stated purpose for the transfer, and the payee's ability to appreciate the financial terms and consequences of the proposed transfer based on independent legal and financial advice (***Id.*** at 455; ***Matter of the Petition of Ryan R. Barr and 321 Henderson Receivables L.P. v. Hartford Life Insurance Co.***, 4 Misc.3d 1021A, 798 N.Y.S.2d 342 [Sup. Ct. Nassau County 2004]).

In this case, the payee is twenty-four (24) years old and is apparently of competent mind and body. Mr. Oladipo does not claim any mental or physical disability in his affidavit. Mr. Oladipo states that he is unemployed, and that he does not have any other assets or credit resources to pay off his "series of debts" and "a large amount" of his mortgage. It is unknown how long Mr. Oladipo has been unemployed, and what his prior income/ocupation may have been. Thus, Mr. Oladipo has not demonstrated sufficient income independent of the $3,500 monthly payments he currently receives from the subject annuity.

In addition to the requirement that the transaction be in the best interests of the payee, the transferee must demonstrate that the discount rate used to determine the gross advance amount, and the fees and expenses used to determine the net advance amount, are "fair and reasonable" (***CPLR § 5-1706 (b)***; ***Matter of Capital Corporation, supra*** at 460-63; ***Matter of Petition of Washington Square Financial LLC v. Allstate Assignment Company***, 29 Misc.3d 1204A, 2010 N.Y. Slip Op. 51688U [Sup. Ct., Queens County 2010]).

General Obligations Law ("GOL") § 5-1703 requires that, prior to a payee signing a transfer agreement, the transferee must provide written disclosure setting forth, *inter alia*, the aggregate amount of the payment, the discounted present value of the payment, the gross advance amount, itemization of fees to be deducted, and the net advance amount that will ultimately be paid to the payee. The statute mandates that the disclosure be provided to the payee "not less than ten days prior to the date on which the payee signs a transfer agreement." Furthermore, the disclosure must be provided to the payee by "first class and certified mail, return receipt requested or United States postal service priority mail."

Turning first to the notice requirements of GOL § 5-1703, petitioner claims that it provided the disclosure statement "not less than ten (10) days prior to the date on which Payee executed the transfer agreement by regular mail and certified-mail return-receipt requested and/or postal office priority mail . . . ." Petitioner has failed to provide any proof that it mailed the disclosure statement to Mr. Oladipo via any of the aforementioned methods. Although the disclosure statement is dated ten days prior to the date that the purchase contract was executed, the affidavit of Mr. Oladipo fails to state the date upon which he received and signed the disclosure statement. Because petitioner has not submitted proof of mailing, the Court is unable to determine whether the statutory time requirements have been satisfied.

In any event, the Court further finds that the transfer/sale is not in Mr. Oladipo's best interests, and that petitioner has not demonstrated by evidence in admissible form that the discount rate applied is fair and reasonable.

Courts have routinely declined to accept as fair and reasonable high discount rates, when transferees fail to explain why a particular discount rate is selected, and why the rate should be deemed fair and reasonable (***Matter of Settlement Funding of New York, LLC for Approval of a Transfer of a Structured Settlement Payment Right of Christlyne B. Point Du Jour***, 29 Misd.3d 1230A, 920 N.Y.S.2d 244 (Sup. Ct., Queens County 2010); ***Matter of Settlement Funding of New York, LLC for Approval of a Transfer of a Structured Settlement Payment Right of Kareem M. Williams***, 29 Misc.3d 1231A, 920 N.Y.S.2d 244 (Sup. Ct., Queens County 2010); ***Matter of Petition of Washington Square Financial LLC, supra***; ***Settlement Funding of New York, LLC v. Hartfort-Comprehensive Employee Ben.***

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Svc. Co., 25 Misc.3d 1220A, 901 N.Y.S.2d 910 [Sup. Ct. Queens County 2009]; ***Matter of the Petition of Settlement Capital Corporation (Ballos), supra***).

In this case, petitioner has not demonstrated why this particular effective annual discount rate of 16.66% was selected to apply to the proposed transfer, and/or why it should be deemed fair and reasonable.[2] Petitioner has failed to submit an affidavit from any of its principals demonstrating the fairness and reasonableness of the discount rate applied. Instead, petitioner relies on the verified petition of its counsel, which does not even aver that such rate is reasonable. Without any explanation whatsoever, counsel's petition simply refers the Court to Exhibit A, which is the disclosure statement, for the annual discount rate.

Moreover, the Court finds it highly unlikely that a gross/net payment which is only 58.10 % of the discounted present value of the payment sought to be sold and transferred is in Mr. Oladipo's best interests in view of the fact that he is presently unemployed (***Matter of 321 Henderson Receivables, L.P. v. Lemanski***, 13 Misc.3d 526, 819 N.Y.S.2d 826 (Sup. Ct., Erie County 2006) [sale of a payment for 58.94% of its present value found not to be in best interests of payee]) .

For all of the foregoing reasons, the instant petition is in all respects denied, and the proceeding is dismissed.

Petitioner's counsel is directed to serve a copy of this Order, with Notice of Entry, upon each of the respondents, and in accordance with the CPLR.

The foregoing constitutes the Order of this Court.

Dated: January 24, 2012
Mineola, N.Y.

Karen V. Murphy
J. S. C.

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ENTERED
JAN 27 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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[2]Petitioner's disclosure statement clearly states that this interest figure is "provided as an illustration of the economic impact of the sale."