

Matter of Ramirez v MetLife Ins. Co. of Connecticut
2012 NY Slip Op 31259(U)
May 14, 2012
Sup Ct, New York County
Docket Number: 101624/2012
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: _____

PART _____

Justice

Fernando Ramirez

INDEX NO.

101624/12

MOTION DATE

- v -

Metlife Insurance

MOTION SEQ. NO.

01

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the annexed decision.

FILED

MAY 15 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: _____

5/14/12

PK

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

In the Matter of the Petition of

Index No. 101624/2012

FERNANDO RAMIREZ for Judicial approval of a Structured
Settlement Annuity Sale and Assignment Agreement
with MOONFLOWER FUNDING, LLC, pursuant to Article 5
Title 17 of the New York General Obligations Law,

DECISION/ORDER

Petitioner,

-and-

METLIFE INSURANCE COMPANY OF CONNECTICUT
and METLIFE INSURANCE COMPANY OF
CONNECTICUT,

FILED

MAY 15 2012

Respondents

-----X

HON. CYNTHIA S. KERN, J.S.C.

**NEW YORK
COUNTY CLERK'S OFFICE**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for:

Papers	Numbered
Notice of Petition, Petition and Affidavits Annexed	<u>1</u>
Notice of Cross-Motion and Affidavits Annexed.....	<u> </u>
Answering Affidavits..	<u> </u>
Replying Affidavits.....	<u> </u>
Exhibits	<u>2</u>
Other	<u>3</u>

Petitioner Moonflower Funding, LLC ("Moonflower") commenced this special proceeding seeking approval of the transfer of certain structured settlement payment rights from Fernando Ramirez, the payee, to Moonflower under a Sale and Assignment Agreement. For the reasons set forth below, petitioner's application is denied.

The relevant facts are as follows. The payee is a married thirty-nine year old man with

three dependents. He is currently an unemployed construction worker but is actively seeking employment. He does not state whether he receives unemployment benefits or has other sources of income and provides no information with regard to his current expenses. Although petitioner does not attach a copy of the underlying settlement agreement, it states in the petition that under the underlying settlement agreement resulting from a personal injury lawsuit, payee is entitled to monthly payments in the amount of \$1,150.00 commencing April 1, 2012 through and including December 1, 2045.

Mr. Ramirez now seeks to transfer his right to receive the aforementioned payments, in exchange for a lump sum of \$147,491.95. The stated purpose of the transfer is to purchase a home outright. Moonflower advised Mr. Ramirez in writing to seek independent professional advice regarding this transaction but Mr. Ramirez has not made clear whether he has received or intends on seeking such advice.

Mr. Ramirez has twice before sought to exchange his right to receive certain future amounts for immediate lump sums. On November 2, 2009, his application to transfer his rights to certain of these structured settlement payments was granted by Justice Dominic R. Massaro. On December 6, 2011, an additional application to transfer his rights to certain structured settlement payments was granted by Justice Orin R. Kitzes.

The "Structured Settlement Protection Act," General Obligations Law § 5-1701, *et seq.* (the "SSPA"), was enacted as a result of a concern that structured settlement payees are especially prone to being victimized and taken advantage of by businesses seeking to acquire their structured settlement rights. *In re Petition of Settlement Funding of New York, L.L.C. (Cunningham)*, 195 Misc.2d 721 (Sup. Ct. N.Y. Co. 2003). The SSPA discourages such transfers

by requiring the would-be transferee to commence a special proceeding to obtain judicial approval of such transfers. The SSPA requires that certain procedural and substantive safeguards be followed before structured settlement payments may be transferred. The procedure is set forth in General Obligations Law § 5-1705. The statute requires that a copy of a disclosure statement as required under General Obligations Law § 5-1703 be attached to the application and that proof of service upon the payee be provided. Before a transfer may be effectuated, court approval must be obtained and express findings must be made by the court pursuant to General Obligations Law § 5-1706. Therefore, a case by case analysis of each application is required. Specifically, subdivisions (a), (c), (d) and (e) of § 5-1706 provide procedural mandates for an application. Section 5-1706 (b), the most substantive provision, provides that no transfer of structured settlement right shall be effective without an express finding of the court that the transfer is in the “best interest of the payee, taking into account the welfare and support of the payee’s dependants; and whether the transaction, including 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.” A petition to transfer will be denied where the transfer is found not to be in the individual payee’s best interest and the terms of the transaction are not fair and reasonable. GOL 5-1706(b); *In the Matter of the Petition of 321 Henderson Receivables, L.P. (Lemanski)*, 13 Misc.3d 526 (Sup. Ct. Erie Co. 2006). A determination of what is fair and reasonable must be based upon what is reasonable in the marketplace, measured against what is in the individual payee’s best interest. *In the Matter of the Petition of 321 Henderson Receivables, L.P. (Lemanski)*, 13 Misc.3d 526. What constitutes the payee’s best interest may only be determined by a thorough examination of the payee’s circumstances, looking at the following factors: the

payee's age, level of maturity, physical and mental capacity, and ability to earn a living and provide for his dependants, the payee's intended use of the proceeds and need for medical or other professional treatment, whether the payee is suffering from a hardship, whether he obtained independent legal and financial advice and whether he demonstrates an appreciation of the consequences of the transfer. *In the Matter of the Petition of 321 Henderson Receivables, L.L.C. (Walker)*, 20 Misc.3d 1114 (A) (Sup. Ct. Kings Co. 2008). In almost all of the published cases throughout the state in which the statute had been applied, the court has denied the petition.

The court finds that petitioner's submission meets all of the procedural mandates of the SSPA. However, the court is unable to conclude that the proposed transaction is in the payee's best interest under the circumstances. The payee is unemployed and has not supplied any information about his education, skills or job search, other than stating that he is actively seeking employment. Despite the fact that the court lauds his intentions of buying a home for his family, it is not clear that such a purchase is in the best interests of payee and his dependents. He has not identified the location where he intends to purchase this property and whether these funds will cover the entire cost of the purchase. In the event that this sum does not cover the entire cost, payee has not indicated how he would pay the amount not covered by this transaction. Further, payee has not provided any information as to whether the purchase of a home would actually improve the circumstances for his family.

It is not also clear that payee appreciates the amount of the discount he would be getting on this transfer. The court is also unable to conclude that the terms of the proposed transaction are fair and reasonable. The value of the payment to payee is only 39.8 % of its present value. The court cannot find this fair and reasonable under the circumstances.

Accordingly, petitioner's application for judicial approval of the transfer of interest in Mr. Ramirez's structured settlement is denied.

This constitutes the decision and order of the court.

Dated: 5/14/12

CR
J.S.C.

FILED

MAY 15 2012

**NEW YORK
COUNTY CLERK'S OFFICE**