

**Matter of J.G. Wentworth Originations, LLC v
Allstate Life Ins. Co. of N.Y.**

2012 NY Slip Op 31501(U)

June 1, 2012

Sup Ct, NY County

Docket Number: 101030/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____
Justice

PART 55

J.G. Wentworth
Originations, LLC

INDEX NO.

101030/12

MOTION DATE

3

MOTION SEQ. NO.

MOTION CAL. NO.

Allstate Life Ins. Co.
Et Al.

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

JUN 07 2012

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COUNTY CLERK'S OFFICE

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JUN 4 2012

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 6/1/12

cgk

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. 101030/12

J.G. WENTWORTH ORIGINATIONS, LLC, for
Judicial Approval of Transfer of Structured
Settlement Payment Rights with GLORIEL PHIPPS,
Pursuant to Article 5, Title 17 of New York General
Obligations Law,

Petitioners,

FILED

-and-

JUN 07 2012

ALLSTATE LIFE INSURANCE COMPANY OF
NEW YORK and ALLSTATE SETTLEMENT CORP.,

NEW YORK
COUNTY CLERK'S OFFICE

As Respondents/Interested Persons Pursuant to
GOL § 5-1701 (c).

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

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.....	_____
Answering Affidavits..	_____
Replying Affidavits.....	_____
Exhibits	<u>2</u>
Other	<u>3</u>

Petitioner J.G. Wentworth Originations, LLC ("J.G. Wentworth") commenced this special proceeding seeking approval of the transfer of certain structured settlement payment rights from Gloriel Phipps (the "payee") to J.G. Wentworth under a Purchase Agreement. For the reasons set forth below, petitioner's application is denied.

The relevant facts are as follows. The payee is nineteen years old, single and has no

children. She is currently unemployed and is attending school as a full-time student. She states that she will seek part-time employment while she completes her undergraduate degree. Pursuant to an underlying settlement agreement, payee is entitled to receive certain guaranteed payments, including, but not limited to one payment of \$70,000.00 on March 25, 2017.

Ms. Phipps now seeks to transfer her right to receive \$70,000.00 on March 25, 2017 in exchange for a lump sum of \$30,000.00. Petitioner has stated that this sum represents 46.60% of the estimated current value of the payment based upon the discounted value using the applicable federal rate. Ms. Phipps states that the purpose of the transfer is to pay for her first five semesters as a pre-medical/nursing student at Medgar Evers College, including tuition, books and meal plans. J.G. Wentworth advised Ms. Phipps in writing to seek independent professional advice regarding this transaction but she has opted not to seek such advice.

Ms. Phipps has twice before sought to exchange her right to receive certain future amounts for immediate lump sums. On August 22, 2011, her application to transfer her rights to certain of these structured settlement payments was denied by Justice Jane Solomon. On February 1, 2012, this court declined to sign petitioner's Order to Show Cause noting the previous order denying the request for the same relief. Petitioner subsequently made a Motion to Renew and Reargue that decision which was granted on March 13, 2012 "solely to the extent that petitioner may submit a new order to show cause which specifies that the approval being sought is for a different transfer than the one that was previously denied." In her 2011 application Ms. Phipps stated that she intended to use the proceeds of the transfer for school tuition and expenses but also to purchase a used vehicle. Ms. Phipps no longer intends to purchase a vehicle with the proceeds from the transfer. Further, in her 2011 application, Ms. Phipps sought to transfer her

right to receive \$161,000.00 in exchange for a lump sum. In the instant application, Ms. Phipps seeks to transfer her right to receive \$70,000.00, which is \$91,000.00 less than the amount requested in the previous application.

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. Although the court lauds Ms. Phipps’ intention to go to school to build a future for herself, it is not clear that taking this deep discount on her settlement funds is the only or best option available to fulfill this goal. For example, Ms. Phipps has not stated whether she has looked into obtaining a student loan with terms more favorable than the transaction proposed here. Payee has also opted to waive petitioner’s advice that she seek

independent professional advice regarding the transfer. It is not clear that payee appreciates the amount of the discount she would be getting on this transfer. The court is also unable to conclude that the terms of the proposed transaction are fair and reasonable as the value of the payment to payee is only 46.60% 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 Ms. Phipps' structured settlement is denied.

This constitutes the decision and order of the court.

Dated: 6/1/12

Enter: _____
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