

**Matter of J.G. Wentworth Originations, LLC v
Hartford Life Ins. Co.**

2012 NY Slip Op 31510(U)

June 1, 2012

Sup Ct, NY County

Docket Number: 151205/12

Judge: Cynthia S. Kern

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

PRESENT: Kern
Justice

PART 55

J.G. Wentworth

INDEX NO. 15 1205/12

MOTION DATE _____

MOTION SEQ. NO. 01

Hartford Life Insurance

MOTION CAL. NO. _____

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

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.

Kern

FILED
JUN 07 2012
NEW YORK COUNTY CLERK'S OFFICE
RECEIVED
JUN 4 2012
MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 6/11/12

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. 151205/12

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

Petitioners,

FILED

-and-

JUN 07 2012

HARTFORD LIFE INSURANCE COMPANY and
HARTFORD CEBSCO,

NEW YORK
COUNTY CLERK'S OFFICE

As 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.....	<u> </u>
Answering Affidavits..	<u> </u>
Replying Affidavits.....	<u> </u>
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 Leslie Marciano (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 forty-one years old, is engaged to be

married and has no minor dependents. She is currently unemployed. Pursuant to an underlying settlement agreement, payee is entitled to receive seventy-four monthly payments of \$440.00 each, beginning on May 15, 2012 and ending on June 15, 2008 and several other lump sums to be paid on future dates.

Ms. Marcano now seeks to transfer her right to receive \$440.00 per month beginning on May 15, 2012 and ending on June 15, 2018 in exchange for a lump sum of \$18,750.00. Petitioner has stated that this sum represents 60.30% of the estimated current value of the payments based upon the discounted value using the applicable federal rate. Ms. Marcano states that the purpose of the transfer is as follows: to pay for pre-planned funeral/burial expenses for her mother, to pay off her son's student loans, to pay for her son's final year and a half of college, to pay for attorney fees and to remodel her kitchen and make small repairs to her home. J.G. Wentworth advised Ms. Marcano in writing to seek independent professional advice regarding this transaction but she has opted not to seek such advice.

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

