

**Washington Sq. Fin. LLC v Hartford Fire Ins. Co.**

2012 NY Slip Op 33056(U)

June 21, 2012

Supreme Court, New York County

Docket Number: 115338/10

Judge: Lucy Billings

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

PRESENT: \_\_\_\_\_

PART 44

Justice

WASHINGTON SQUARE FINANCE LLC, et al.

INDEX NO.

115338/10

MOTION DATE \_\_\_\_\_

- v -

HARTFORD FIRE INSURANCE COMPANY, et al.

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1, to \_\_\_\_\_ were read on this petition motion to/for approve transfer

PAPERS NUMBERED

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

1

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered ~~that this motion~~ and adjudged that:

*The court denies the petition and dismisses this proceeding, pursuant to the accompanying decision.*

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/21/12

*Lucy Billings*

LUCY BILLINGS J.S.C.  
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):

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In the Matter of the Petition of

WASHINGTON SQUARE FINANCE LLC d/b/a  
IMPERIAL STRUCTURED SETTLEMENTS and  
RONALDIT MARTE,

Index No. 115338/2010

Petitioners

- against -

DECISION AND ORDER

HARTFORD FIRE INSURANCE COMPANY  
(Settlement Obligor) and HARTFORD LIFE  
INSURANCE COMPANY (Annuity Issuer),

Respondents

-----x

APPEARANCES:

For Petitioner Washington Square Finance LLC  
Christopher D. Mehno Esq.  
Windel Marx Lane & Mittendorf, LLP  
156 West 56th Street, New York, NY 10019

Ronaldit Marte, Pro Se

LUCY BILLINGS, J.S.C.:

After a hearing on the record, the court dismisses the  
petition for the reasons explained on the record and below.

I. THE PURPOSE OF THE PROPOSED TRANSFER

The purpose of Ronaldit Marte's structured settlement is to  
provide tax free funds for future subsistence needs and financial  
security. E.g., Settlement Funding of N.Y., LLC v. Brown, 11  
Misc. 3d 1059, 2006 WL 531131, at \*2 (Sup. Ct. Bronx Co. 2006);  
In re Settlement Capital Corp., 1 Misc. 3d 446, 448 n.1, 455  
(Sup. Ct. Queens Co. 2003). Transfers of structured settlement  
payments therefore are to be limited to circumstances

demonstrating current or impending hardship. Settlement Funding of N.Y., LLC v. Brown, 11 Misc. 3d 1059, 2006 WL 531131, at \*3; 321 Henderson Receivables, L.P. v. D'Amore, 9 Misc. 3d 1110, 2005 WL 2276027, at \*3 (Sup. Ct. Kings Co. 2005); In re 321 Henderson Receivables Ltd. Partnership, 2 Misc. 3d 463, 467-68 (Sup. Ct. Monroe Co. 2003); In re Settlement Capital Corp., 1 Misc. 3d at 448 n.1, 455.

The petition and Mr. Marte's affidavit and testimony set forth that his current needs include repaying \$7,000.00 in educational loans at a minimum of \$600.00 per month and repaying outstanding credit card debts. His primary income is from his employment as an inventory manager at a wine store, plus \$616.03 per month in structured settlement payments. Mr. Marte seeks to leave his employment to complete his remaining year toward his college degree and forego 181 months of the \$616.03 monthly payments, a total of \$111,528.43 over 15 years, in exchange for \$44,701.99 immediately. He proposes to use that immediate payment to repay the educational loans, as required to qualify him for a further loan to finance the remainder of his college education, including tuition, rent, and other school and living expenses.

Having already interrupted his education, Mr. Marte has failed to consider that within another year he could repay his educational loans fully with the \$616.03 monthly payments, while saving rent by living with his parents and using his employment income for other living expenses and repayment of his credit card

debts. The parties thus have failed to show any emergency financial need. None of Mr. Marte's current expressed needs either is extraordinary or rises to an emergency level.

Consequently, the reasons for transferring more than \$111,500 over the next 15 years, as Mr. Marte, just 22 years of age, attains his educational and professional objectives, do not comport with the statutory purpose. Settlement Funding of N.Y., LLC v. Brown, 11 Misc. 3d 1059, 2006 WL 531131, at \*3; In re 321 Henderson Receivables Ltd. Partnership, 2 Misc. 3d at 467-68; In re Settlement Capital Corp., 1 Misc. 3d at 449, 451. Instead, the transfer will deprive him of the long term security the structured settlement payments were to provide. Settlement Funding of N.Y., LLC v. Brown, 11 Misc. 3d 1059, 2006 WL 531131, at \*4; In re Settlement Capital Corp., 1 Misc. 3d at 451, 455. While he may intend the \$44,701.99 in immediate proceeds to be an investment toward his education and future professional objectives, the almost \$67,000, albeit over time that he would relinquish may be invested more fruitfully in the future.

## II. APPRECIATION OF THE TRANSFER'S TERMS AND CONSEQUENCES

The court also must consider the payee's demonstrated ability to appreciate the proposed transfer's financial terms and consequences based on independent legal and financial advice. Structured Asset Funding, LLC v. Taylor, 14 Misc. 3d 1230, 2007 WL 446603, at \*4 (Sup. Ct. Bronx Co. 2007); In re Settlement Capital Corp., 1 Misc. 3d at 455. At minimum, the court urged Mr. Marte, before foregoing the intended purpose of the

structured settlement established for him by his mother and his attorney Chet Kern, to consult Mr. Kern to assure Mr. Marte's full appreciation of the terms and consequences of (1) transferring the benefits his attorney secured and (2) possible alternatives to the proposed transfer.

The current record, for example, fail to set forth the details of a prior \$5,000.00 loan to Mr. Marte from the settlement fund, the loan's purpose or actual use, why Washington Square Finance LLC suddenly seeks repayment of that loan, or why Washington Square Finance would not consider another loan to assist with Mr. Marte's education. In any event, his current ill-defined proposal does not demonstrate his ability to appreciate the proposed transfer's financial terms and consequences.

Nor have the parties demonstrated the payee's ability to appreciate the proposed transfer's terms and consequences based on independent advice. Structured Asset Funding, LLC v. Taylor, 14 Misc. 3d 1230, 2007 WL 446603, at \*4; In re Settlement Capital Corp., 1 Misc. 3d at 455. The petition and affidavits demonstrate that Mr. Marte was informed of his right to seek independent financial advice, but not whether he sought it or, if so, whether the advisor recommended or discouraged the proposed transaction. The petition and affidavits further fail to demonstrate that this young man ever consulted either an attorney or his mother, who entered the structured settlement on his behalf when her son was a minor, or any adult family members for

their advice concerning this transaction. Such independent advice is of particular concern given Washington Square Finance's obvious financial interest, including repayment of its loan, in consummating the transaction, and Mr. Marte's obvious lack of appreciation at the hearing that, while Washington Square Finance denominated Mr. Marte a co-petitioner with Washington Square Finance, its attorney is not his attorney.

### III. CONCLUSION

Ordinarily the law recognizes the right of an adult to make his own financial decisions. New York General Obligations Law § 5-1706(b)'s statutory purpose, however, supplants total deference to an individual's decisionmaking rights with a best interests standard. Based on the petition and supporting affidavits, in conjunction the other relevant circumstances revealed at the hearing, it is impossible to determine that the transfer as proposed is in Mr. Marte's best interests, as specifically required. N.Y. Gen. Oblig. Law § 5-1706(b). E.g., In re 321 Henderson Receivables Ltd. Partnership, 2 Misc. 3d at 464; In re Settlement Capital Corp., 1 Misc. 3d at 455-56; In re Settlement Funding of N.Y., 195 Misc. 2d 721, 725 (Sup. Ct. Rensselaer Co. 2003). Under all the circumstances here, including Mr. Marte's young age and inexperience in financial decisionmaking, the absence of independent advice approving the transaction, and its very terms and consequences, the court is constrained to disapprove the transfer sought by the petition and therefore denies it and dismisses this proceeding.

This dismissal is without prejudice to a new proceeding before any assigned justice, based on current, consistent, complete, and more compelling information, as well as a showing that the discount rate, fees, and expenses are fair and reasonable. N.Y. Gen. Oblig. Law § 5-1706(b). E.g., Settlement Funding of N.Y., LLC v. Brown, 11 Misc. 3d 1059, 2006 WL 531131, at \*3; Settlement Funding of N.Y., LLC v. Solivan, 8 Misc. 3d 1006, 2005 WL 1498217, at \*2 (Sup. Ct. Kings Co.); In re 321 Henderson Receivables Ltd. Partnership, 2 Misc. 3d at 464-65; In re Settlement Capital Corp., 1 Misc. 3d at 447. Petitioner shall attach this decision, however, to any future petition to transfer Ronaldit Marte's structured settlement payments. Structured Asset Funding, LLC v. Taylor, 14 Misc. 3d 1230, 2007 WL 446603, at \*4. This decision constitutes the court's order and judgment of dismissal.

DATED: June 21, 2012

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

LUCY BILLINGS