

Matter of Wentworth v Manuel
2017 NY Slip Op 30245(U)
February 6, 2017
Supreme Court, Tioga County
Docket Number: 46993
Judge: Eugene D. Faughnan
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At a Motion Term of the Supreme Court of the State
of New York held in and for the Sixth Judicial
District at the Tioga County Courthouse, Owego,
New York, on the 9th day of December, 2016.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TIOGA

In the Matter of the Petition of J.G WENTWORTH
for the Approval of Transfer of
Structured Settlement Payment Rights in
Accordance with GOL §5-1701,

PETITIONER

-VS-

DECISION AND ORDER

Index No. 46993
RJI No. 2016-0289-M

GUSTA MANUEL, PACIFIC LIFE AND
ANNUITY SERVICES AND PACIFIC LIFE
AND ANNUITY COMPANY,

RESPONDENTS.

APPEARANCES:

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EUGENE D. FAUGHNAN, J.S.C.

This is a petition seeking judicial approval of a proposed transfer of a portion of future payments due to Gusta Manuel (“payee”), under a structured settlement agreement. The proposed transfer to J.G. Wentworth, is contemplated in exchange for the present payment of a discounted lump sum under General Obligations Law, § 5-1701 *et seq.* An Order to Show Cause was presented to this Court, and a return date set for December 9, 2016. Following the appearances of the parties in court on December 9, 2016, the Petitioner submitted an Amended Verified Petition¹ with Exhibits on December 12, 2016, setting forth details regarding the proposed transfer.

BACKGROUND

Gusta Manuel (“Manuel”) is the beneficiary of an annuity of a structured settlement from a personal injury matter. This Court approved a prior transfer of a portion of the structured settlement by Order dated August 29, 2016. At that time, Manuel transferred various payments for \$38,000. Manuel now has remaining payments due under his annuity of \$42,255.51, which he seeks to transfer to petitioner for the purchase price of \$19,827.00.

As stated in the Amended Verified Petition, and Payee’s affidavit in support, the payee is 33 years old, single, and has 3 dependent children: Hailie Manuel, who is twelve years old; Tyler Manuel, who is eight years old; and Gage Manuel, who is less than a year old. At the time of this

¹The Amended Petition alters the effective interest rate from 12.96% to 10.99% thereby changing the purchase price from \$17,000 to \$19,827.

Petition, Payee was unemployed but seeking work. In his affidavit, Payee states that he plans to use the proceeds of the sale to replace windows in his house (\$12,000) which will reduce his heating costs and "for my newborn child" (\$5,000) for medical bills, doctor visits and childcare expense.

DISCUSSION

General Obligations Law § 5-1701 et seq., also known as the "Structured Settlement Protection Act" or "SSPA", was enacted in 2002 due to the concern that structured settlement payees, such as Manuel, are particularly prone to being victimized and quickly dissipating their assets, and to protect them from the growing number of companies using "aggressive advertising, plus the allure of quick and easy cash, to induce settlement recipients to cash out future payments, often at substantial discounts, depriving victims and their families of the long-term financial security their structured settlements were designed to provide" (Mem. in Support, N.Y. State Assembly, 2002 McKinney's Session Laws of NY, at 2036)" *Singer Asset Finance Co., LLC v. Melvin*, 33 AD3d 355, 357822 N.Y.S.2d 68 (1st Dept 2006). This legislation "[d]iscourages such transfers by requiring would-be transferees to commence special proceedings for the purpose of seeking judicial approval of the transfer [*citations omitted*]" *Settlement Funding of New York, LLC [Cunningham]*, 195 Misc 2d 721, 722, 761 N.Y.S.2d 816 (Sup Ct, Rensselaer County 2003). "The SSPA clearly reflects the Legislature's dissatisfaction with the structured settlement transfer market rates, and its conclusion that payees cannot protect their best interest and thus require judicial supervision" *Settlement Funding [Cunningham]*, 195 Misc

2d at 724. "Clearly, the New York State Legislature in enacting [the] SSPA and in empowering the courts with the discretion to determine whether the terms of a proposed transfer of future payments are fair and reasonable did not intend for the courts to be mere rubber stamps" *Settlement Capital Corp. [Ballos]*, 1 Misc 3d 446, 461, 769 N.Y.S.2d 817 (Sup Ct, Queens County 2003).

Under GOL §5-1706(b), when reviewing a proposed transfer, the court will consider whether it is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; 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. For the reasons noted below, the Court concludes that the Petitioner has failed to demonstrate that the proposed transfer is in the best interest of the payee.

The SSPA "does not define the best interests of the payee, [but] case law and the intent of the statute suggest the court should consider: (1) the payee's age, mental capacity, physical capacity, maturity level, independent income, and ability to support dependents; (2) purpose of the intended use of the funds; (3) potential need for future medical treatment; (4) the financial acumen of the payee; (5) whether payee is in a hardship situation to the extent that he or she is in "dire straits"; (6) the ability of the payee to appreciate financial consequences based on independent legal and financial advice; (7) the timing of the application." *Settlement Funding*, 2 Misc3d at 876 (citations omitted); *see also, Settlement Capital Corp.*, 1 Misc 3d 446, 455 (Sup. Ct. Queens County 2003).

The payee had a transfer approved by this Court for a payment of \$38,000 approximately six weeks before the instant application was submitted. Of particular note is the fact that in the

prior transfer, Manuel noted that at least some of the money was for his new son's medical expenses. Yet the current application notes an additional \$5,000 for the newborn. The current Petition does not explain how the money from the prior approved transfer was spent, and if it went to the intended purposes. The Court has great concerns that the prior transfer was not utilized in the manner it was intended and that this is the reason for the instant petition so soon after the last. The instant request would transfer the balance of the periodic payments, and Manuel will be left with no further payments, unemployed, with three children. The proposed transfer ultimately may only provide money now, while taking it away from the future. While having these funds now may solve some financial problems temporarily, there is no indication that Payee would not find himself in this very same situation in a few months or a year. Except then he would have no future payments at all.

The timing of this application was only 6 weeks after the prior approval. Given the fact that Manuel is unemployed and the fact that the prior approved transfer apparently did not improve the Payee's financial situation, the Court is of the view that there is no reliable expectation that the current proposed transfer will be of ultimate benefit. The Court cannot say that this transfer is in the payees's best interest.

CONCLUSION

Because the Petitioner has failed to demonstrate that this transfer is in Manuel's best interest, the Petition is **DENIED**.

Accordingly, it is hereby

ORDERED, that the Petition is **DENIED** and the Petition is **DISMISSED**.

Dated: February 6, 2017
Owego, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice