

**Matter of R&P Capital Resources, Inc. v Metropolitan
Life Ins. Co.**

2003 NY Slip Op 30243(U)

October 28, 2003

Sup Ct, NY County

Docket Number: 101309/03

Judge: Jane S. Solomon

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

PRESENT: Hon. JANE S. SOLOMON
Justice

PART 55

In the Matter of RHP Capital Resources, Inc. and Hildreth

INDEX NO. 101309/03
MOTION DATE 7/28/03
MOTION SEQ. NO. 02
MOTION CAL. NO. 5

- v -

Metropolitan Life Ins. Co.

The following papers, numbered 1 to 4 were read on this ^{petition} ~~motion~~ to/for ^{approve transfer of} ~~the~~ ^{structured settlement}

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

PAPERS NUMBERED
1-4
SCANNED
OCT 31 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ^{and adjudged} that this ~~motion~~ ^{petition} is denied in accordance with the annexed memorandum decision, order and judgment

MO ON/CASE IS RESPECTFULLY REFERRED TO
J.JUSTICE
DATED: _____ J.S.C.

Dated: 10/28/03

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 55

-----X

In the Matter of the Petition of
R&P CAPITAL RESOURCES, INC. and
JERRY L. HILDRETH, SR.,

Index No. 101309/03

Petitioners,

DECISION, ORDER and
JUDGMENT

-against-

**METROPOLITAN LIFE INSURANCE
COMPANY** and **METROPOLITAN
INSURANCE AND ANNUITY
COMPANY,**

Respondents.

-----X

JANE S. SOLOMON, J.:

This decision on the petition by R&P Capital Resources, Tnc. and Jerry L. Hildreth, Sr. for approval of a transfer of structured settlement payments addresses a significant issue of first impression regarding the extent of this court's jurisdiction under the New York Structured Settlement Protection Act (General Obligations Law § 5-1701, et seq.) ("SSPA"). Notwithstanding the fact that petitioners failed to respond to an order to show cause **why** the petition should not be denied, this decision is issued.

Background

Earlier this year, the Chief Administrative Judge of this Court directed that **SSPA** proceedings commenced in New York County be assigned to the author. The SSPA was enacted last year, **with** an effective date of July 1, 2002. A steady stream of petitions are presented, and it is fair to say that both counsel.

and the court are learning how best to apply the statute. This decision is offered to advance that process.

Structured Settlement Sales

Personal injury litigation sometimes concludes with the plaintiff becoming entitled to a stream of future payments. This resolution is known as a structured settlement. The payment period can be over many years; ten to twenty-five years is not uncommon, and the payments may be a regular monthly amount, lump sum payments every fixed number of years, or another agreed program. The payments usually are funded through an annuity contract with an insurance company. In addition to providing the payee with a secure source of income, structured settlements provide insurance carriers with a less expensive means of settling a personal injury claim because it allows them to pay the obligation over many years, and they may qualify for favorable **tax** treatment. See, Internal Revenue Code, 26 U.S.C. § 130. The annuity contract typically contains a provision prohibiting a payee from assigning or otherwise transferring the payments.

Structured settlement payees sometimes find that their financial needs or desires are inconsistent with the long pay-out period. Finance companies exploit the opportunity presented by impatient payees with offers to purchase the payment streams. These purchases, in essence, are factoring transactions, with the

future payments being "sold" to the finance companies for discounted lump sums. The discount rate can be quite steep, usually between eighteen and twenty-five percent, which results in a relatively small payment to the payee and a large profit for the finance company. Understandably, such transactions are sensible for some payees in some circumstances.

However, perhaps because the payees frequently are unsophisticated and there is concern that finance companies take advantage of this lack of sophistication with offers of immediate cash, these purchases have not been looked upon favorably by courts or legislatures. In particular, courts have refused to approve factoring transactions where the annuity contract contains a non-assignment clause.¹

The SSPA and Federal Law

Acknowledging that these transactions have been entered into historically, whether or not the transactions were lawful, or permitted under the annuity contracts, the New York State legislature passed the SSPA. It is intended to protect recipients of structured Settlements, and to maintain the integrity of structured settlements for use in settling personal

¹ Examples of decisions enforcing the anti-assignment clauses in annuity contracts include: C.U. Annuity Service Corp. v. Scott Young, 281 A.D.2d 292 (1st Dept. 2001), Green v. SAFECO Life Ins., 727 N.E.2d 393 (III. App. Ct. 2000), Liberty Life Ins. Co. Of Boston v. Stone Street Capital, Inc., 93 F.Supp.2d 630 (D. Md. 2000), and Singer Asset Finance Co. v. Bachus, 294 A.D.2d 818 (4th Dept. 2002).

injury lawsuits. See, NYLS Bill Jacket, L. 2002, C. 537, New York State Assembly Memorandum in Support of Legislation. It permits a payee to transfer his or her payments, subject to certain restrictions, even if the transfer is not permitted under the annuity contract.

State court approval of these transactions is encouraged under Internal Revenue Code, 26 U.S.C. § 5891 ("IRC § 5891"). That statute, enacted also in 2002, imposes a forty percent tax on the factoring discount derived from structured settlement transactions, unless the transaction is made pursuant to a qualified order. IRC §§ 5891(a), 5891(b) (1). A qualified order means a final order, judgment or decree issued by a State court that finds that the transaction does not contravene any State or federal statute or order of a court or administrative agency; is in the best interest of the payee, taking into account the welfare and support of the payee's dependents (IRC § 5891 [b][2] [A]) ; and is issued under the authority of an applicable state statute by an applicable State court (IRC § 5891 [b][2] [B]). Applicable State statute is defined in IRC § 5891 as follows:

(3) Applicable State Statute.-For purposes of this section, the term "applicable State statute" means a statute providing for the entry of an order, judgment or decree described in paragraph (2)(A) which is enacted by-

(A) the State in which the payee of the

structured settlement is domiciled, or

(B) if there is no statute described in paragraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business.

New York's SSPA is an applicable State statute under § 5891. It provides that :

(a) An action for approval of a transfer of a structured settlement shall be by a special proceeding.

(b) Such proceeding shall be commenced to obtain approval of a transfer of structured settlement payment rights. Such proceeding shall be commenced:

(i) in the supreme court of the county in which the payee resides; or

(ii) in any court which approved the structured settlement agreement.

G.O.L. § 5-1705.

Notably, there is no provision for entertaining applications based upon the domicile in New York of either a party to the structured settlement or the person issuing the annuity, if the transferor-payee is neither a New York resident nor settled his or her claim in a New York court.

In the present proceeding, petitioner Jerry L.

Hildreth, Sr. lives in Alabama.' He settled a personal injury action with a structured settlement in an Alabama State court. The annuity issuer for the structured settlement is Metropolitan Life Insurance Company ("MetLife"), which is said to have its principal place of business in New York. The structured settlement obligor (see, SSPA § 5-1701(n)) and issuer of the funding asset for the structured settlement (see, IRC § 5891 [b][3][B]) is Metropolitan Insurance and Annuity Company ("MIAC"), which also is said to have its principal place of business in New York. Petitioner R&P Capital Resources, Inc. is a finance company with a White Plains, New York address that has offered to purchase Mr. Hildreth's periodic payments. Petitioners claim that they have come to this court because Alabama does not have an applicable State statute under IRC § 5891, so they are seeking approval in New York pursuant to IRC § 5891(b)(3)(B) because MetLife and MIAC have their principal places of business here.

Although IRC § 5891(b)(3) contemplates that approval may be sought in the State where the parties to the annuity

² This is not petitioners' first application. Without addressing the instant issue, I signed an earlier order to show cause to approve the transfer but later denied it when petitioners willfully dishonored the service provision, granting leave to renew. When the instant application was presented, I edited the proposed text so as to direct petitioners to show cause why the petition should not be denied for want of jurisdiction. No response, and no evidence of service, was submitted.

contract are domiciled or have their principal place of business, such approval must be pursuant to the State statute. New York's statute does not extend this court's jurisdiction to those circumstances. Under the maxim of legislative interpretation that when a broader grant of authority **is** available but only a limited one is articulated, the limited must be applied, the legislature did not grant jurisdiction to this court to entertain Mr. Hildreth's petition.

New York's legislature enacted the SSPA after the federal statute. Its members may have been aware of the broader application suggested under IRC § 5891(b)(3), and that many insurance and financial institutions are located here. However, the legislature did not elect to open New York courts to every person in a state that has yet to enact an applicable statute under IRC § 5891, but whose annuity is issued by a New York institution. The refusal to do so is sensible. In order to satisfy the court's obligation under both statutes to make inquiry of the propriety of the transaction for the individual consumer petitioner, a personal appearance necessarily is required. See, IRC § 5891 (b) (2)(A)(i) and (ii); and GOL 5-1706(b). The court must make a sober determination with respect to the payee's best interests (see, In re Settlement Funding of NY, LLC, 195 Misc.2d 271 [Sup. Ct. Rensselaer County 2003]), a task that **does** not lend itself to long distance litigation. And

to make New York court^s a nationwide clearinghouse for the protection of payee-consumers is an unwarranted burden on court and consumer alike.

Under the circumstances, it hereby is

ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.

Dated: October 28, 2003

ENTER:

J.S.C.

JANE S. SOLOMON