

Matter of Wentworth Originations, LLC v Ferrer

2012 NY Slip Op 31294(U)

May 8, 2012

Supreme Court, Queens County

Docket Number: 27269/11

Judge: Howard G. Lane

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IAS PART 6

In the Matter of J.G. WENTWORTH
ORIGINATIONS, LLC f/k/a 321
HENDERSON RECEIVABLES ORIGINATION,
LLC,
 Petitioner,
 and

AMANDA FERRER, ALLSTATE LIFE
INSURANCE COMPANY OF NEW YORK and
ALLSTATE ASSIGNMENT COMPANY.

Index No. 27269/11

Motion
Date January 24, 2012

Motion
Cal. No. 13

Motion
Sequence No. 1

By Order to Show Cause dated December 7, 2011, petitioner J.G. Wentworth Originations, LLC ("Wentworth") seeks judicial approval of an assignment of a portion of Amanda Ferrer's ("Ferrer") structured settlement annuity pursuant to General Obligations Law § 5-1701, et seq., more commonly known as "The Structured Settlement Protection Act" ("SSPA"). Petitioner and Ms. Ferrer, appeared in Part 6 of this Court for oral argument on March 20, 2012, and decision was reserved. Petitioner was granted 30 days or up to April 20, 2012 to file a supplemental or amended affidavit on behalf of Ms. Ferrer. By application of petitioner, this time was extended to May 4, 2012.

FACTS AND BACKGROUND

Petitioner Ferrer is the payee of a structured settlement annuity issued by respondent Allstate Life Insurance Company of New York. The moving papers do not explain the circumstances of Ms. Ferrer's entitlement to the structured settlement annuity, however, according to the petition and affidavit in support of Ms. Ferrer sworn to on November 19, 2011, she is entitled to receive certain guaranteed payments under a structured settlement including, but not limited to, (a) thirty seven (37) monthly payments of \$500.00 each, beginning on September 3, 2023 and ending on September 3, 2026; (b) one (1) payment of \$40,000.00 on September 3, 2026; and (c) one hundred forty-three (143) monthly payments of \$500.00 each, beginning on October 3, 2026 and ending

on August 3, 2038. The aggregate amount of those payments is \$130,000.00.

Also mentioned, but not explained in the moving papers, is Ms. Ferrer filed two prior applications for similar relief in New York Supreme Court, Kings County, which was granted and Superior Court of Connecticut, New Haven, which was also granted. Nothing in the moving papers indicates the amount of compensation Ms. Ferrer received as a result of a transfer in or about October 3, 2011, when the Superior Court of New Haven, Connecticut granted Wentworth's petition. Attached to the moving papers, but not referenced in any affidavit is an order dated May 20, 2011 Supreme Court, Kings County that ordered that Ms. Ferrer shall receive \$40,000.00 in exchange for the transfer of her rights to a one lump sum payment of \$10,000.00 due September 3, 2012; monthly payments in the amount of \$400.00, commencing on September 3, 2013 through and including August 3, 2023; and one lump sum payment of \$25,000.00 due on September 3, 2016.

Ms. Ferrer entered into an agreement on November 19, 2011 with Wentworth seeking to assign and transfer to Wentworth her right to receive (a) 37 monthly payments of \$500.00 each, beginning on September 3, 2023 and ending on September 3, 2026; (b) 1 payment of \$40,000.00 on September 3, 2026; and (c) 143 monthly payments of \$500.00 each, beginning on October 3, 2026 and ending on August 3, 2038. In return, Ms. Ferrer would receive immediate compensation from Wentworth in the amount of \$15,000.00. In summary, in total Ms. Ferrer would be transferring a total of \$130,000.00 in future payments for a current gross payment of \$15,000.00. The gross payment of \$15,000.00 is \$115,000.00 less than the full total future payment of \$130,000.00.

The Supplemental Affidavit of Amanda Ferrer sworn to on May 4, 2012, provides little or no additional evidence concerning petitioner and/or her financial circumstances. The affidavit references six exhibits C through H which are not even attached to the affidavit.

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 Ms. Ferrer, are particularly prone to being victimized and quickly dissipating their assets and to protect them from the growing number of companies using "[a]ggressive 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 [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 [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 [Sup Ct, Queens County 2003]).

"As such, this court's judicial function under the SSPA requires an evaluation of a variety of factors, but particularly: (1) whether the transaction is fair and reasonable; and (2) whether the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, if any" (*Settlement Funding Of New York, LLC*, 24 Misc 3d 1201[A] [Sup Ct, Broome County 2009]).

FAIR AND REASONABLE

In deciding whether the transaction is fair and reasonable the Court must examine, inter alia, the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount (General Obligations Law § 5-1706[b]; see, *In re Settlement Funding of New York, LLC*, 29 Misc 3d 1230[A], [Sup Ct, Steuben County 2010]; *In re 321 Henderson Receivables Origination, LLC*, 19 Misc 3d 504, [Sup Ct, Queens County 2008]). Here, petitioner determined the gross advance amount of \$15,000.00 by applying an annual discount rate of 13.59%. It appears that there are no fees or charges from Wentworth associated with the proposed transfer, nor any penalties or damages in the event the proposed transfer is not approved. The \$15,000.00 net advance amount proposed to be paid to Ms. Ferrer represents only 11.53% of the future payments of \$130,000.00 that Ms. Ferrer would transfer to petitioner. Wentworth failed to submit any comparative cases approving or

disproving a settlement agreement where the transferee applied a similar discount rate in order for the court to have an adequate basis to make a finding that the net advance amount is fair and reasonable. Based on the foregoing, the court finds said transaction is not fair and reasonable (see, *In re Settlement Funding of New York, LLC*, 31 Misc 3d 1229 [Sup Ct, Queens County 2011]).

The Court also finds that the proposed pay-off amount of only 14.78% of the discounted present value of transferred payments (\$101,518.90) is not fair or reasonable. To permit Ms. Ferrer to sell substantial future payments for such a nominal amount is "contrary to the intent of establishing structured settlement agreements: to prevent recipients from making rash decisions upon their receipt of large lump sum payments and to safeguard their future financial security (citations omitted)" (*Matter of Prudential Insurance Company of America*, 26 Misc 3d 1230[A] [Sup Ct, Steuben County 2010]).

BEST INTEREST

The next consideration is whether the proposed transfer is in Ms. Ferrer's "best interest". SSPA does not define the factors which must be considered in determining whether the transaction is in the "best interest" of the transferor, however, developing case law identifies such relevant factors as, (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" (*In re Settlement Funding of New York, LLC*, 2 Misc3d 872, 876 [Sup Ct, Lewis County 2003]).

Ms. Ferrer avers that she is presently 20 years of age, single, and has two minor children ages 3 years and 3 months. She testified that she is currently unemployed and living with the father of her children who himself is sharing an apartment of a friend. She testified that the highest education she attained was 9th grade. She does not disclose or provide any details concerning her current income, financial resources, assets, liabilities or indebtedness. Ms. Ferrer avers in her affidavit that she intends to use the proceeds for "home repair" and "childcare expenses"

Although Ms. Ferrer has stated her proposed use of the funds,

she has not presented any supporting documentation to justify the amounts she claims are needed to pay rent, purchase furniture and/or so called childcare expenses. Therefore, such request lacks any foundational and evidentiary support in the petition (*In re Settlement Funding of New York, LLC*, 23 Misc 3d 1111[A] [Sup Ct, Kings County 2009]). Although the Court has fully considered Ms. Ferrer's desire and wish for cash for "home repairs" and "child expenses", the papers submitted in support of the petition do not adequately explain these proposed uses and the projected amounts needed to acquire them. Moreover, Ms. Ferrer has provided no explanation concerning the expenditure of the funds that she received as a result of the two previous structured settlement sales in or about May 20, 2011 and October 3, 2011. Hence, the Court has not been presented with sufficient documentation to make findings required by General Obligations Law § 5-1706 and an informed determination on these issues.

Moreover, the petitioner does not indicate or reference Ms. Ferrer's mental capacity, financial acumen, ability to appreciate financial consequences, or maturity level. Ms. Ferrer was advised by Wentworth, as required by law, to seek independent professional advice regarding the sale of her payments, but refused the advice. As Ms. Ferrer has waived independent professional advice, there is no proof for the Court to determine whether Ms. Ferrer has the capacity or maturity level to comprehend or appreciate the financial nature of the sale and its short or long term consequences.

Based upon the record before the Court, the Court finds that agreeing to give up the right to \$130,000.00 in future payments in exchange for a payment today of \$15,000.00 is not in Ms. Ferrer's best interest and that such transfer may deprive her and her two young children of the long-term financial security the structured settlement was designed to provide.

CONCLUSION

Based on the foregoing, the Court finds that petitioner has failed to demonstrate to the Court's satisfaction that the transaction is fair and reasonable and that the transfer is in Ms. Ferrer's best interest (General Obligations Law § 5-1706[b]). Consequently, the petition is denied.

Accordingly, it is hereby

ORDERED, that petitioner's application be and the same hereby is denied and that the within petition be and the same hereby is dismissed; and it is further

ORDERED, that any future applications made on behalf of Amanda Ferrer seeking the transfer of any of her future structured settlement proceeds include a copy of the within decision and order.

A courtesy copy of this order is being mailed to counsel for petitioner and to Amanda Ferrer, 720 Fountain Avenue, Apt. 2F, Brooklyn, New York 11208 and 71-15 65th Street, Apt. 5B, Glendale, New York 11385

Dated: May 8, 2012

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Howard G. Lane, J.S.C.