

Matter of Seneca One, LLC v Barr

2012 NY Slip Op 32417(U)

September 11, 2012

Supreme Court, Queens County

Docket Number: 4956/12

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 SENECA ONE, LLC,

Petitioner,

Index No. 4956/12

Motion
Date May 29, 2012

For Approval of the Sale and Transfer
of Structured Settlement Payment
Rights of SHIRLEY BARR in Accordance
with Gen. Oblig. Law § 5-1701, et
seq.

Motion
Cal. No. 16

Motion
Sequence No. 1

-against-

SHIRLEY BARR, UNITED STATES LIFE
INSURANCE COMPANY IN THE CITY OF NEW
YORK f/k/a AMERICAN INTERNATIONAL
LIFE ASSURANCE COMPANY OF NEW YORK
and AMERICAN HOME ASSURANCE COMPANY,

Respondents.

Papers
Numbered

Order to Show Cause-Affidavits-Exhibits... 1-4

Upon the foregoing papers it is ordered that this motion is
determined as follows:

By Order to Show Cause dated March 14, 2012, petitioner
Seneca One, LLC ("Seneca One") seeks judicial approval of an
assignment of a portion of respondent Shirley Barr's structured
settlement annuity with respondents United States Life Insurance
Company in the City of New York f/k/a American International Life
Assurance Company of New York and American Home Assurance Company
pursuant to General Obligations Law § 5-1701, et seq., more
commonly known as "The Structured Settlement Protection Act"
("SSPA"). Petitioner and respondent Shirley Barr, herself
appeared in Part 6 of this court for oral argument on May 29,
2012, and decision was reserved.

FACTS AND BACKGROUND

Respondent Barr is the payee of a structured settlement annuity issued by respondent United States Life Insurance Company in the City of New York f/k/a American International Life Assurance Company of New York. The moving papers do not explain the circumstances of Ms. Barr's entitlement to the structured settlement annuity, however, according to the petition and affidavit in support of Ms. Barr sworn to on March 30, 2011, she is entitled to receive the following guaranteed annuity payments from co-respondents:

- 1 lump sum payment of \$10,000.00 due on or about July 27, 2024;
- 1 lump sum payment of \$10,000.00 due on or about July 27, 2026;
- 183 monthly payments in the amount of \$781.43 beginning on or about January 27, 2014 continuing through and including the payment due on or about March 27, 2029.

Ms. Barr entered into an agreement on February 29, 2012 with Seneca One seeking to assign and transfer to Seneca One her right to receive lump sum payments and monthly payments. In return, Ms. Barr would receive immediate compensation from Seneca One in the amount of \$48,565.96.

In summary, in total Ms. Barr would be transferring a total of \$163,001.69 in future payments for a current gross payment of \$48,565.96. The gross payment is \$114,435.73 less than the full total future payment of \$163,001.69.

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. Barr, 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]).

BEST INTEREST

The court must consider whether the proposed transfer is in Ms. Barr'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 Misc 3d 872, 876 [Sup Ct, Lewis County 2003])".

Ms. Barr avers that she is presently 40 years of age, single, and has no minor children. She avers that she is currently unemployed and is receiving "\$2,781.43 from [her] structured settlement annuity through American International Life Assurance Company of New York". She does not disclose nor provide any details concerning her current income, financial resources,

assets, liabilities or indebtedness. Ms. Barr avers that she intends to use the proceeds as follows:

- \$15,000.00 to undergo some doctor recommended "medical surgery";
- \$10,000.00 - \$15,000.00 to "add on addition to [her] home to comfortable house [her] growing family";
- the balance of the funds for purchasing a reliable car and pre-paying car insurance for one year.

Although Ms. Barr 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 for medical treatment, construction costs for a house addition and purchase a car or current financial circumstances that require immediate infusion of money. 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. Barr's desire and wish to make home improvements, purchase an automobile and undergo recommended medical treatment, the papers submitted in support of the petition do not adequately explain these proposed uses and the projected amounts needed to acquire them. 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.

Based upon the record before the court, the court finds that agreeing to give up the right to \$163,001.69 in future payments in exchange for a payment today of \$48,565.96 is not in Ms. Barr's best interest. The court notes that this petition is the third application made on behalf of Ms. Barr to transfer a structured settlement. A petition filed by J.G. Wentworth in Bronx County Supreme Court under Index No. 0260828/2010 was denied. A second petition was filed by Seneca One, LLC in Queens County Supreme Court under Index No. 13141/2011 and was granted in an order dated February 3, 2012 in which she assigned future payments and received a net lump sum payment of \$65,021.32. Ms. Barr avers that she used the proceeds to "pay off a portion of [her] mortgage", to "get on the title to [her] property and to complete home renovations to her home". She has provided no documentation to support her actual expenditure of money for the purposes or reasons she claims.

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. Barr'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 Shirley Barr seeking the transfer of any of her future structured settlement proceeds include a copy of the within decision and order.

This constitutes the decision and order of the court.

Dated: September 11, 2012

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Howard G. Lane, J.S.C.