

**Matter of Thompson v Roman Catholic Diocese of
Albany**

2013 NY Slip Op 32414(U)

October 8, 2013

Supreme Court, Albany County

Docket Number: 3759-13

Judge: Joseph C. Teresi

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Petition of Vonetta Thompson and
CBC Settlement Funding, LLC for Judicial Approval
of the Sale and Transfer of Structured Settlement
Payment Rights, pursuant to New York General
Obligations Law, 5-1707, et seq.,

Petitioners,

against

Roman Catholic Diocese of Albany (“Settlement Obligor”)
and Executive Life Insurance Company of New York,
New York State Liquidation Bureau (“Annuity Issuer”),

Respondents.

DECISION and ORDER
INDEX NO. 3759-13
RJI No. 01-13-110711

Supreme Court Albany County All Purpose Term, October 1, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

CBC Settlement Funding, LLC (hereafter “CBC”) commenced this proceeding seeking an order, pursuant to New York General Obligations Law §5-1701, authorizing its acquisition of a portion of Vonetta Thompson’s (hereafter “Thompson”) structured settlement payments. However, because Petitioners failed to establish that the proposed transfer is fair and reasonable

and in Thompson's best interest this petition is denied.

The Structured Settlement Protection Act (SSPA) requires this court, before approving the transfer of any structured settlement, to ensure that "the transfer is in the best interest of the payee . . . and [that] the transaction . . . [is] fair and reasonable." (General Obligations Law § 5-1706 [b]; Matter of Seneca One LLC v D.C., 34 Misc 3d1236[A] [Sup Ct, Bronx County 2012]; In re Settlement Capital Corp., 1 Misc 3d 446 [Sup Ct, Queens County 2003]).

Considering first Thompson's "best interest," the factors this Court must consider are: "Payee's age, mental capacity, physical capacity, maturity level, independent income, and ability to support dependants; (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 strait's; (6) the ability of the Payee to appreciate financial consequences based on independent legal and financial advise; [and] (7) the timing of the application" (In re Settlement Funding of New York, LLC [Rahman], 31 Misc3d 1229[A] [Sup Ct, Queens County 2011]), quoting In re Settlement Funding of N.Y., LLC, 2 Misc3d 872 [Sup Ct, Lewis County 2003]).

Here, Petitioners failed to establish that this transfer is in Thompson's best interest. First, because CBC's attorney has no personal knowledge of Thompson's best interests, his affirmation and testimony of no "probative value." (2 N. Street Corp. v Getty Saugerties Corp., 68 AD3d 1392 [3d Dept 2009]; Groboski v Godfroy, 74 AD3d 1524 [3d Dept 2010]). Similarly, the two unsworn letters Thompson submitted are inadmissible. (*see* Ulster County v CSI, Inc., 95 AD 3d 1634, 1636 [3d Dept 2012]). Thompson did, however, properly support the petition with an affidavit, documentary evidence and testimony. Thompson, according to her affidavit, is

39 years old, married, and the mother of an eight year old child. Thompson offered no proof of her maturity level, her mental capacity, her physical capacity, her need for future medical treatment, or her financial acumen. She also offered no proof of her employment, current or future. On this record, her only disclosed source of income is her monthly structured settlement payment and this transfer would decrease her ability to support both herself and her minor child. While Thompson asserts that she plans to use this transaction's proceeds to purchase a new roof and furnace, her conclusory allegation that she considered "other means of raising cash" is insufficient. Importantly, she offered neither the various financing options she explored nor a comparison of this transaction with her alternative options. Moreover, Thompson admitted that she received no independent professional advice concerning this transaction. In light of the foregoing, Petitioner failed to demonstrate that this proposed transfer is in her best interest.

Petitioners also failed to establish that this proposed transfer is "fair and reasonable." (General Obligations Law § 5-1706 [b]). The fair and reasonable standard considers both what is reasonable in the marketplace (Matter of 321 Henderson Receivables L.P., 13 Misc 3d 526, 533 [Sup Ct, Erie County 2006]), along with the transaction's discount rate and its percentage of current value. (In re Stratcap Invs., Inc. V. Feola, 24 Misc 3d 1209(A) [Sup Ct, Bronx County 2009]).

Here, CBC proposes to pay Thompson \$34,342.70 for her interest in two hundred and thirty two monthly payments of \$800, a total of \$185,600. This purchase price constitutes 21% of Thompson's structured settlement payments' present value, utilizing an applicable discount rate of 18.4%. Neither the present value Thompson would receive nor the discount rate it applies are fair and reasonable. (Matter of Novation Funding LLC v Griffin, 39 Misc 3d 1207[A][Sup

Ct, Kings County 2012][16.66% discount rate was not fair and reasonable]; Matter of Peachtree Settlement Funding LLC, 34 Misc 3d 1223[A][Sup Ct, Nassau County 2011][16.66% discount rate with 58.10% of the discounted present value was not fair and reasonable]; Matter of Seneca One, LLC v Hall, __ Misc3d__ [Sup Ct, Nassau County 2011][transfer for less than half of the discounted present value was not fair and reasonable]; Matter of Settlement Funding of New York, LLC, v New York Life Insurance & Annuity Corporation, __ Misc3d__ [Sup Ct, New York County 2008][15% discount rate was not being fair and reasonable]; Matter of Stone Street Capital, LLC, __ Misc3d__ [Sup Ct, Greene County 2008][12.46% discount rate with 24% of discounted present value was not fair and reasonable]). Moreover, because CBC's attorney's claim that the applicable discount rate is below the national level was not alleged to be made upon his own personal knowledge it is of no probative value. (2 N. Street Corp. v Getty Saugerties Corp., supra). As such, Petitioners failed to demonstrate that this transfer is fair and reasonable.

Accordingly, the petition is denied.

This Decision and Order is being returned to the attorney for CBC. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute

entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: October 8, 2013
Albany, New York



Joseph C. Teresi, J.S.C.

Papers Considered:

1. Order to Show Cause dated July 11, 2013; Verified Petition dated July 2, 2013, with attached exhibits A-D; Letter from Vonetta Tompson dated August 21, 2013 with unnumbered exhibits; Letter from Vonetta Tompson dated October 1, 2013 with unnumbered exhibits.