

Matter of J.G. Wentworth Originations, LLC
2016 NY Slip Op 30342(U)
March 2, 2016
Supreme Court, County of Schuyler
Docket Number: 15-150
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 Schuyler County Courthouse, Watkins Glen, New York, on the 5th day of February, 2016.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF SCHUYLER

In the Matter of the Petition of

J.G. WENTWORTH ORIGINATIONS, LLC.

Petitioner,

and

BRITTONI FREEMAN, HARTFORD CEDSCO and
HARTFORD LIFE INSURANCE COMPANY

DECISION AND ORDER

Index No. 15-150
RJI No. 2015-0106

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 Brittoni Freeman (“payee”), under a structured settlement agreement. The proposed transfer to J.G. Wentworth Originations, LLC (“Wentworth” or “Petitioner”), 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 4, 2015. That return date was adjourned at the request of the attorneys for Wentworth, and it was re-scheduled for February 5, 2016.

The Petitioner filed an Amended Verified Petition with Exhibits on September 4, 2015, setting forth details regarding the proposed transfer. Following the appearances of the parties in court on February 5, 2016, the Court reserved decision and afforded the parties 10 days to submit additional information about any potential revised purchase price, and information about payee's current debts, fines, or penalties. The Petitioner submitted a letter dated February 8, 2016 advising of an increased purchase offer, but no other information was received.

BACKGROUND

Payee is the beneficiary of an annuity as the result of a structured settlement which included a series of cash payments. The settlement agreement called for the following payments: \$7,500 due on September 4, 2008; \$10,000 on September 14, 2013; \$20,000 due on September 14, 2015; \$40,000 on September 14, 2015; \$40,000 on September 14, 2017; and \$75,634.40 on September 14, 2020. In the event of her death, her estate is the beneficiary of the structured settlement payments. In the application, payee proposed to transfer \$27,000 for a total of \$13,500. The proposed discount rate would be 19.75%. The amended offer is for \$16,000 and a discount rate of 10.55%.

Payee has made 4 prior applications to transfer portions of her structured settlement. In February, 2014, she transferred \$35,000 for a payment of \$19,118; in July, 2014 she transferred \$24,000 out of her structured settlement; in February, 2015 she transferred another \$24,000 out of her structured settlement; and in June, 2015, she transferred \$25,634 for a current payment of \$15,885.61.

As stated in the Verified Petition, and payee's affidavit in support, the payee is 19 years

old, single and has one minor dependent. She was employed at the time of her affidavit as a part-time bartender making approximately \$600 per month. Payee's affidavit is dated July 25, 2015, less than 2 months after the previous Order granting a transfer. Per her affidavit, she is seeking the money now so that she can purchase a piece of land and move her house onto the property. She did not indicate where the house is currently located, or any details regarding the moving of the house.

However, at the oral argument on the Petition, payee stated that she needed the transfer for payment of fines and/or penalties arising out of other court matters. That was not at all what the initial application asserted, and the Court did provide the parties an additional 10 days to provide supplemental information, but nothing has been received. Payee also stated that she is currently not working, as she lost her job. The proposed transfer would be of the remainder of her structured settlement.

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, 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, 822 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 has made 4 prior transfers in 2 years, and made this one on the heels of the last approved transfer. The current Petition does not explain how the money from the prior transfers was spent, and if it went to the intended purposes. The instant request would transfer the balance of the periodic payments. It may only provide money now, while taking it away from the future. Simply stating that one has debts they would like to pay down, does not establish that the transfer of future periodic payments are prudent, wise, or in that person's best interest, or in the best interest of their dependents. Moreover, the purpose for the transfer noted in the Petition, and the payee's affidavit (to purchase land), was apparently discarded in favor of seeking the money to pay fines or penalties. The Court received no admissible evidence with respect to these fines and or penalties (even with additional time being provided), and accordingly, could not possibly conclude that a transfer of structured payment to pay off undocumented penalties or fine would be appropriate.

While having these funds now may solve some financial problems temporarily, there is no indication that Payee would not find herself in this very same situation in a few months or a year. Except then she would have no future payments at all.

The timing of this application was less than 2 months after the last transfer. Given the history, the Court is of the view that this transfer would simply dissipate and extinguish the structured settlement, without an attendant benefit. This is the type of situation that lead to the

enactment of the SSPA and the requirement that there be judicial approval of the transfer of structured payments. 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 payee's best interest, or the best interest of her child, the Petition is **denied**.

Accordingly, it is hereby

ORDERED, that the Petition is **denied** and the Petition is **dismissed**.

Dated: March 2, 2016
Watkins Glen, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice