

Matter of Kimberly S.
2016 NY Slip Op 30755(U)
March 17, 2016
Supreme Court, Broome County
Docket Number: efca2015002677
Judge: Ferris D. Lebus
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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 Broome County Supreme Court, 92 Court Street, City of Binghamton, New York, on the 11th day of March, 2016.

PRESENT: HON. FERRIS D. LEBOUS
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

In the Matter of the Application for Court Approval of the Sale and Transfer of Certain Structured Settlement Payment Rights of Kimberly S., pursuant to and in Accordance with Gen. Oblig. Law§ 5-1701

DECISION AND ORDER

Index No. efca2015002677
RJI No. 2015-1461

APPEARANCES:

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HON. FERRIS D. LBOUS, J.S.C.

This is the fifth petition within five years (and essentially a reargument of the fourth petition) seeking judicial approval of the proposed transfer of a portion of the future payments due Kimberly Smith under a structured settlement agreement in exchange for the present payment of a discounted lump sum (General Obligations Law § 5-1701 *et seq.*).

The petition was deemed submitted as of the return date of March 11, 2016.

BACKGROUND

The prior four petitions filed by Ms. Smith are summarized as follows:

- Petition #1: *Matter of Settlement Funding of New York, LLC [Kimberly M. Smith a/k/a Kimberly M. Knapp]*, Sup Ct, Cortland County, November 29, 2010, Rumsey, J., index No. 2010-0565. Order granting right to transfer \$200 in monthly payments from December 15, 2010 through November 15, 2017 plus lump sum payments of \$20,000 and \$35,000 in exchange for \$26,200.76.
- Petition #2: *Matter of Settlement Funding of New York, LLC [Kimberly Marie Smith a/k/a Kimberly M. Knapp]*, Sup Ct, Cortland County, May 4, 2011, Rumsey, J., index No. 2011-0220) [Decision & Order denying petition].
- Petition #3: *Matter of Rodolo, LLC [Kimberly M. Smith]*, Sup Ct, Broome County, April 22, 2015, Lebous, J., index No. 2015-0501) [Decision & Order denying petition].
- Petition #4: *Matter of LAE Holdings, LLC [Kimberly M. Smith]*, Sup Ct, Broome County, December 8, 2015, Lebous, J., index No. efca2015002677) [Decision & Order denying petition].
- Petition #5: The current petition.

The following chart sets forth the underlying settlement payment schedule with notations of which payments are the subject of the current petition (Petition #5).

Date paid/due	Amount Due/Paid	Seeking to transfer/ previously transferred or paid
10-1-1993 through 8-1-2002	\$200 payable monthly	Paid
8-1-2003 through 8-1-2006	\$17,500 per year for four years	Paid
8-15-2006	\$1,516 payable monthly for life (guaranteed for 30 years)	<p>←sold partial payments of \$200 per month from 12-15-2010 through 11-15-2017 (Petition #1).</p> <p>←Petition #5 seeks to sell 40 monthly payments of \$316 beginning 1-15-2016 through 4-15-2019.</p> <p>←Petition #5 also seeks to sell 207 monthly payments of \$516 beginning 5-15-2019 through 7-15-2036.</p>
8-15-2009	\$25,000	Paid
8-15-2014	\$25,000	←sold \$20,000 (Petition #1). \$5,000 balance presumably paid.
8-15-2019	\$50,000	<p>←sold \$35,000 (Petition #1)</p> <p>←Petition #5 seeks to sell \$5,000</p>

The financial deal proposed as part of this current petition (Petition #5) is exactly the same as proposed and rejected as part of Petition #4, namely Ms. Smith seeks to transfer

\$124,452 in future payments at an annual discount rate of 10.32% in exchange for a present payment of \$50,000. As outlined in the above chart, the payments to be transferred include 40 monthly payments of \$316 beginning January 15, 2016 through April 15, 2019; 207 monthly payments of \$516 beginning May 15, 2019 through July 15, 2036, and a \$5,000 lump sum payment payable August 15, 2019.

DISCUSSION

This fifth petition seeks to address the "concerns and issues" raised by this court's Decision & Order dated December 8, 2015 that denied Petition #4. The only new submissions contained herewith are Exhibits F-2 and F-3 which contain additional statements from Ms. Smith and which will be discussed below.¹

Two of the concerns noted by the court in the Decision & Order on Petition #4 related to inconsistencies on the identification of Ms. Smith's children and some issues relating to facsimiles received regarding an unidentified Florida transaction. The current Petition adequately addresses those concerns. The additional submissions, however, do not rectify the court's concerns regarding the underlying merits of the application with one exception.

Ms. Smith proposes (again) to use the transferred funds to purchase a used vehicle, find an apartment and pre-pay rent for a year, and to buy various furniture and other accessories required by the birth of her new child. Ms. Smith's latest submissions (Exhibits F-2 and F-3)

¹Exhibit F-1 was an affidavit submitted with Petition #4.

offer some additional information such as that she, her boyfriend, and their two children are living at her boyfriend's parent's house; that her boyfriend is a professional logger earning \$2,000-\$3,000 per month; that she receives \$300 per month in food stamps; that her boyfriend has a pickup truck but she would like a second vehicle to aid in her job search when the baby gets older. Ms. Smith also provides some detail regarding their basic living expenses which amount to approximately \$1,300 per month. Notably, when listing her monthly expenses, Ms. Smith fails to mention her monthly child support obligation. Finally, Ms. Smith answered the status of previously listed debts including medical bills, credit card bills and tax liens.

Despite this additional information, the court still does not find that this transaction is in Ms. Smith's best interest. Generally, courts have found transfers not in the best interest of the payee where the payee intends to use the proceeds to ease relatively minor financial burdens such as the purchase of a new or used vehicle (*Matter of 321 Henderson Receivables [Nelson]*, 21 Misc3d 1109[A] [Sup Ct 2008]). Ms. Smith submits no proof of her ongoing ability to maintain and insure a vehicle beyond the initial purchase. Nor is there an adequate reason that her partner's income (\$2,000-3,000 per month), together with the incoming monthly payments from her structured settlement (\$832 per month), plus food stamps (\$300 per month) are not enough to cover their monthly expenses.

That said, however, Ms. Smith states that she owes over \$13,000 in child support for her

daughter, Bianca Ann.² Although neither this nor the prior petition provided any details or proof of that debt (e.g., court orders), the court was able on its own initiative to confirm from the Cortland County Family Court that Ms. Smith is directed to pay \$255 per month for child support and, as of February 2, 2016, owes \$13,471.44 for Beonkiann Wood. The court also obtained a copy of a Order Modifying an Order of Support dated July 17, 2002 and an Order (Order Upon Support Magistrate Determination of Willfulness) on Consent dated January 14, 2015.

In view of this information the court directed that proof of service of this application be made on the Cortland County Support Collection Unit and upon the County of Cortland. By letter dated March 8, 2016, the Cortland County Support Collection Unit advised it had no objection to the petition but requested that any payments thereunder be made directly to the Cortland County Support Collection Unit.

To the extent that Ms. Smith proposes to use the funds to pay off and settle her child support obligation, that may make sense and be in her best interest. Accordingly, the court would consider a supplemental application, on notice to the Cortland County Support Collection Unit and the County of Cortland, that seeks to transfer funds *solely* to pay off Ms. Smith's child support arrears and any related judgment and interest to be paid directly to the Cortland County Support Collection Unit, but excludes any of the other proposed - and rejected - uses of the funds.

²Ms. Smith's statement spells the child's name as "Bianca Ann" while the Family court orders use "Beonkiann".

In sum, the court finds the proposed transfer is not in Ms. Smith's best interest.

CONCLUSION

Based on the foregoing, the court finds that petitioner has failed to demonstrate to the court's satisfaction that the transaction is in Ms. Smith's best interest (GOL § 5-1706 [b]).

Consequently, the Petition is denied without prejudice to the submission of a supplemental application in accordance with this Decision and Order.

Dated: March 17, 2016
Binghamton, New York

s/ Ferris D. Lebous

Hon. Ferris D. Lebous
Justice, Supreme Court

The court considered the following papers which are on file in the Broome County Clerk's Office:

1. Order to Show cause signed February 3, 2016;
2. Verified Petition dated January 28, 2016, with exhibits;
3. Order dated November 29, 2010 (Cortland Index No. 2010-0565);
4. Decision & Order dated May 4, 2011 (Cortland Index No. 2011-220);
5. Decision & Order dated April 22, 2015 (Broome Index No. 2015-0501);
6. Decision & Order dated December 8, 2015 (Broome Index No. efca2015002677);
7. Letter dated March 8, 2016 from the Cortland County Support Collection Unit to the Hon. Ferris D. Lebous.