

**Matter of Sempra Fin., LLC v Wilton Re Annuity  
Serv. Corp.**

2019 NY Slip Op 30470(U)

January 22, 2019

Supreme Court, Kings County

Docket Number: 516276/2018

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22<sup>nd</sup> day of January, 2019.

P R E S E N T:  
HON. RICHARD VELASQUEZ  
Justice.

-----X  
In the Matter of the Petition of SEMPRA FINANCE, LLC,  
For Judicial approval of Structured Settlement Annuity  
Sale and Assignment Agreement with Q. MONTGOMERY  
Pursuant to Article 5 title 17 of the New York General  
Obligations Law,

Petitioner,

Index No.: 516276/2018

-against-

Decision and Order

WILTON RE ANNUITY SERVICE CORP. and  
TRANSAMERICA FINANCIAL LIFE INSURANCE  
COMPANY

Respondents.

KINGS COUNTY CLERK  
FILED  
2019 FEB 25 AM 9:25

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The following papers numbered 1 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	1

After oral argument and a review of the submissions herein, the Court finds as follows:

The Petitioner initiates this special proceeding by way of Order to Show Cause, for an order approving the transfer of structured settlement payment rights from WILTON RE ANNUITY SERVICE CORP. and TRANSAMERICA FINANCIAL LIFE INSURANCE COMPANY, and Q. MONTGOMERY to petitioner SEMPRA FINANCE LLC.

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Petitioner contends that the respondent, Q. MONTGOMERY, the Payee, seeks approval to transfer certain structured settlement payments due to her under a Structured Settlement Agreement.

Q. MONTGOMERY, under the terms of the proposed Transferred Assignment Agreement with SEMPRA FINAINCE LLC intends to transfer and sell her rights to a payment in the amount of Two Hundred Seventy-four thousand eight hundred and eleven dollars (\$274,811.00). In consideration for selling this payment, SEMPRA FINAINCE LLC agrees to pay Q. MONTGOMERY the sum of Thirty-six thousand one hundred and fifty-five dollars and fifty-nine cents (\$36,155.59).

#### ANALYSIS

The SSPA was enacted as a result of concern that the structured settlement payees are especially prone to being victimized and quickly dissipating their awards. (*In Re Petition of Settlement Funding of New York, LLC*, 761 NYS2d 816). "The SSPA protects payees from being taken advantage of by businesses seeking to acquire the payee's structured settlement payment rights" and discourages such transfers by requiring special proceedings seeking judicial approval of the transfer. (*Id.*, General Obligations Law §§5-1705 and 5-1706). A proposed transfer of a portion of payee's structured settlement for less than half its present discounted value was found not to be in the payee's "best interest", as required by the Structured Settlement Protection Act (SSPA) (*Id.* McKinney's General Obligations Law §§5-1706(b)). The payee's willingness to transfer the settlement "has no bearing on the court's determination of whether the interest rate paid by the transferee is 'fair and reasonable' within the meaning of Structured Settlement Protection Act, (SSPA)." (*Id.*)

General Obligations Law §5-1703, effective July 1, 2002, provides the following required disclosure:

- (a) the amounts and due dates of the structured settlement payments to be transferred;
- (b) the aggregate amount of such payments;
- (c) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating such discounted present value;
- (d) the price quote from the original annuity issuer, or, if such price quote is not readily available from the original annuity issuer, then a price quote from two other annuity issuers that reflects the current cost of purchasing a comparable annuity for the aggregate amount of payments to be transferred;
- (e) the gross advance amount and the annual discount rate, compounded monthly, used to determine such figure;
- (f) an itemized listing of all commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee and the total amount of such fees;
- (g) the net advance amount including the statement; "The net cash payment you receive in this transaction from the buyer was determined by applying the specified discount rate to the amount of future payments received by the buyer, less the total amount of commissions, fees, costs, expenses and charges payable by you";
- (h) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (i) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, no later than the third business day after the date the agreement is signed by the payee.

General Obligations Law §5-1706 provides that the transfer must be in the best interest of the payee, the transaction is fair and reasonable, and the payee has been advised in writing to seek independent professional advice regarding the transfer and has either received such advice, or knowingly waived such advice in writing. "[D]iscounted present value' means the present value of future payments, as determined by such payments to the present by using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service." (General obligations Law §5-1701(c)).

"The primary purpose of the SSPA is to protect recipients of long-term structured settlements from being victimized companies aggressively seeking the acquisition of their rights to guaranteed structured settlement payments." (*321 Henderson Receivables Origination, LLC v Lugo*, 889 NYS2d 508). The court must independently determine, in its discretion, whether "the transfer 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 fees and expenses used to determine the net advance amount, are fair and reasonable". (emphasis added.) (*In re Petition of Settlement Funding of New York, LLC*, *supra*, citing General Obligations Law §5-1706(b)). "This is a two-pronged test to be applied in evaluating the parties' agreement." (*321 Henderson Receivables Origination, LLC*, *supra*).

The best interest's determination, at the court's discretion, involves consideration of several facts and circumstances concerning the payee, including the payee's age,

mental capacity, maturity level, "ability to show sufficient income that is independent of the payments sought for transfer", and ability to provide for payee's dependents. (321 *Henderson Receivables Origination, LLC, supra*). "The best interest prong should be assessed on a case by case basis giving specific consideration to such factors as the payee's age; mental and physical capacity; maturity level; ability to show sufficient income that is independent of the payments sought for transfer; capacity to provide for the welfare and support of the payee's dependents; the need for medical treatment; the stated purpose for the transfer; and the demonstrated ability of the payee to appreciate the financial terms and consequences of the proposed transfer based upon independent legal and financial advice." (*Whitney v. LM Property*, 3375/2011 NYLJ June 24, 2011; citing *Matter of Settlement Capital Corporation, [Ballos]*, 1 Misc3d 446). The "best interest" consideration is separate and independent of the consideration of whether the transfer is "fair and reasonable". (*In re Petition of Settlement Funding of New York, LLC, supra*). A Payee who desperately needed cash to obtain "life sustaining medical treatment for a love one" in the face of having no other alternative means of raising money would serve a payee's best interest in the face of a "life and death emergency". (*Id.*) The Court found the transfer was not in a 21-year-old payee's best interest when the payee had a dependent, without any information concerning the putative father, and the request for funds to purchase a vehicle were not explained. ((321 *Henderson Receivables Origination, LLC, supra*).

"The 'best interest' standard under SSPA requires a case by case analysis to determine whether the proposed transfer of structured settlement payments, which were

designed to preserve the injured person's long-term financial security, will provide needed financial rescue without jeopardizing or irreparably impairing financial security afforded to the payee and his or her dependents by the periodic payments." (*In re Settlement Capital Corp.*, 769 NYS2d 817). An explanation as to why the payee has an immediate need for the transfer of funds, or lump sum, is taken into consideration. (Whitney, *supra*, citing *In re Settlement Capital Corp.*, 194 Misc2d 711).

The proposed transfer of the portion of the payee's structured Settlement which would result in the transferee paying "less than half of settlement's present discounted value" was not fair and reasonable" as required by SSPA. (*In re Petition of Settlement Funding of New York, LLC, supra*) The interest rate paid for the transfer of a structured settlement of "no more than 8% would be fair and reasonable" under SSPA whereby the transferee does not charge counsel fees and costs to the payee as a transfer expense. (*Id.*, citing General Obligations Law §5- 1701(5)).

In the present case, the aggregate amount of payments sold to SEMPRA FINAINCE LLC is Three Hundred Seventy-four thousand eight hundred and eleven dollars (\$374,811.00), at a discounted present value of one hundred and forty-six thousand five hundred eighty-seven dollars and sixty-two cents (\$146,587.62), with a net payment of thirty-six thousand one hundred and fifty-five dollars and fifty-nine cents, (\$36,155.59).

Here, the payment of thirty-six thousand one hundred and fifty-five dollars and fifty-nine cents, (\$36,155.59) is less than half of the discount present value, and therefore, is not "fair and reasonable."

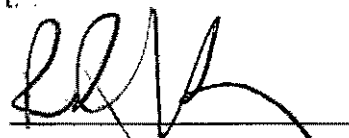
The second prong of this test requires this Court to determine whether the transfer is in the payee's "best interest." Q. MONTGOMERY avers that she is currently 21 years old, single and has one dependent who is one year of age, and she is currently unemployed and seeking gainful employment. She is also attending college and plans to use the proceeds from this transaction to remodel rental properties she has purchased with previous annuity payment.

More importantly, this Court is not only concerned that the transaction is not fair and reasonable as Q. MONTGOMERY will be receiving less than half of the discounted value but is also concerned that this is Q. MONTGOMERY's fourth application for similar relief and all three prior requests have been granted, which leaves this Court with the impression that she does not fully appreciate the consequences of the transfer. Moreover, the properties the payee has already invested in are currently producing income, and the payee has failed to adequately demonstrate the immediate need for the additional funds for the proposed improvements.

Accordingly, in light of the forgoing, as the proposed transfer of a portion of the payee's rights and interests in her structured settlement does not meet the "best interest" requirement, or the "fair and reasonable requirement" under SSPA, the motion is denied, and the petition dismissed.

This constitutes the Decision/Order of the Court.

Date: January 22, 2019

  
RICHARD VELASQUEZ, J.S.C.

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So Ordered  
Hon. Richard Velasquez