

J.G. Wentworth Originations, LLC v A.P.
2021 NY Slip Op 31977(U)
June 28, 2021
Supreme Court, Onondaga County
Docket Number: 001036/2021
Judge: Scott J. DelConte
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At a Special Term of the Supreme
Court of the State of New York held
in and for the County of Onondaga on
June 28, 2021.

PRESENT: **HON. SCOTT J. DELCONTE**
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

J. G. WENTWORTH ORIGINATIONS, LLC,

Petitioner,

and

A.P.; UNITED STATES FIDELITY AND GUARANTY
COMPANY; and FIDELITY AND GUARANTY LIFE
INSURANCE COMPANY,

Index No. 001036/2021

Respondents, as Interested Parties.

**DECISION AND ORDER ON PETITIONER'S APPLICATION FOR
AN ORDER PURSUANT TO GENERAL OBLIGATIONS LAW § 5-1701
(Motion No. 1)**

APPEARANCES:

Paris & Chaikin, PLLC *for Petitioner*

A.P., *pro se, Respondent*

This is a successive application pursuant to General Obligations Law § 5-1701 to assign Petitioner J. G. Wentworth Originations, LLC, a portion of Respondent A.P.'s structured settlement (Motion No. 1). The prior request to transfer was denied by the Court (*see*, Decision and Order, J.G. Wentworth Originations, LLC v. A. P., Onondaga County Index No. 012016/2019, Docket Nos. 18 and 19). After hearing the parties in a virtual proceeding on the record, and upon consideration of all of the papers, the requested relief of an assignment of a portion of the structure settlement is again **DENIED** for not being in the best interests of Respondent.

I.

Petitioner J. G. Wentworth Originations, LLC ("J. G. Wentworth") commenced this successive special proceeding under the Structured Settlement Protection Act, General Obligations Law § 5-1701 *et seq.*, by Verified Petition filed February 8, 2021 and Amended Verified Petition filed March 1, 2021. J. G. Wentworth now seeks judicial approval to pay A.P. \$15,300 in exchange for an assignment of approximately \$85,152.36 of her future settlement payments composed of portions of monthly Life Contingent payments of \$500 each, increasing at 3% annually, beginning on April 20, 2026 and ending on March 20, 2038.

In A.P.'s prior application to this Court, which was denied, J. G. Wentworth sought judicial approval to pay A.P. \$17,100 in exchange for an assignment of approximately \$145,934.40 of her future settlement payments, composed of \$500 portions of 144 dedicated monthly payments (increasing at 3% annually) beginning on April 20, 2026, and \$2,495.16 portions of 24 dedicated monthly payments (increasing at 3% annually) beginning on April 20, 2039.

This proceeding marks the eleventh time in the past 22 years that a financing agency has sought judicial approval to transfer portions of A.P.'s structured settlement. Altogether, A.P. has sold anticipated periodic payments in excess of \$668,591.76 for up-front, lump sum payments totaling only \$120,049.28. It appears that, on each prior occasion, the financing agency received portions of A.P.'s next successive periodic payments in exchange for a lump sum significantly below the fair market value of the cost of an equivalent annuity.

A.P. submitted an Affidavit in Support of the Petition, in which she avers that she has one child, is currently unemployed and receiving unemployment benefits. In her 2019 application, however, A.P. reported to the Court that she working as a registered nurse earning approximately \$50,000 per year. At the March 18, 2021 a virtual return, A.P. appeared along with Counsel for J. G. Wentworth. In support of the relief requested in the Petition, A.P. stated that she would like to use \$7,800 of the proposed upfront money to purchase a freezer, washer and dryer (no supporting documentation was provided as to the actual cost of the appliances); invest \$5,000 in a breeding French bulldog so that she can sell puppies; and use \$2,500 to brand and launch a personal body and face scrub business. A.P. further stated that she made a number of serious financial missteps previously and that, in hindsight, she regrets participating in the prior transfers of her structured settlement payments. A.P. reported, however, that she believes that she needs the new appliances and, at this time, breeding and selling bulldogs along with investing in a face scrub and bodywash business will provide her and her daughter with a sound financial future.

II.

The Structured Settlement Protection Act was created to protect the recipients of annuity payments through structured settlements from being victimized by predatory businesses practices. These individuals suffered catastrophic and, at times, career-ending injuries, leaving them in a vulnerable condition prone to the theft of their just compensation by unethical financiers. Eventually, the New York State Legislature concluded that judicial supervision of *all* assignments of structured settlement interests was the only way to protect these individuals (*Singer Asset Fin. Co., LLC v Melvin*, 33 AD3d 355, 357 [1st Dept 2006]). Such supervision was not to be relegated to a mere rubber-stamping of proposed assignments but, rather, a detailed review by the Courts to ensure that every single proposed transaction was fair, reasonable and in the best interests of the recipient (*see e.g. Matter of Advance Funding, LLC*, 51 Misc 3d 1215[A], [Sup Ct Broome Cty 2016]). The transaction proposed here falls short of that standard.

The purpose of a structured settlement is to provide the recipient with a steady and dependable income stream through periodic payments. To determine whether a proposed assignment of future payments under a structured settlement is in the best interests of an injured person, the Court must determine whether the proposed purchased price will resolve an immediate financial need of that individual without jeopardizing, or irreparably impairing, the future financial security afforded to her by the structured settlement (*see Matter of J. G. Wentworth Originations LLC*, 39 Misc 3d 1213[A] [Sup Ct Kings Cty 2013]).

By any measure, the practice of taking piecemeal assignments of periodic payments at substantially less than fair value beginning with the next successive payments is presumptively predatory and not in the best interests of a settlement recipient. This is especially true when a financier assigns itself the next successive periodic payment, as opposed to payments

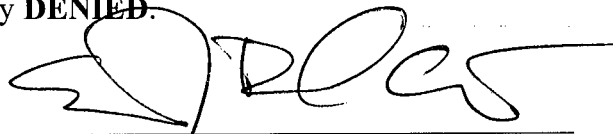
scheduled to begin further in the future or the entire structured settlement, which immediately deprives a necessary income stream. Vulnerable and often unable to meaningfully participate in the workplace, individuals with structured settlements may be without any other option but to go back to the financiers, and desperately seek to assign over additional portions of a structured settlement in order to replace the missing income stream, which was previously assigned for less than fair value. The foreseeable and inevitable result of this circular financing practice is to create an artificial need in those who have, and rely, on structured settlements to enter into continuous imbalanced assignments, all while the inequality of bargaining power in each of the subsequent transactions grows. This process can repeat itself until the entire structured settlement is depleted, at a mere fraction of its fair market value.

The assignment industry engaging in this predatory practice produces contracts tainted by procedural unconscionability which the Structured Settlement Protection Act was specifically enacted to prevent. It results in situations such as that before this Court now, where J. G. Wentworth proposes that A.P. assign over \$85,000 in periodical payments that would help to provide a stable future income for her and her child for only \$15,300. (In the last application presented to this Court – which was denied – J. G. Wentworth proposed that A.P. assign over \$145,000 in periodical payments for only \$17,100). Even taking into account that the subject payments to A.P. will not begin until 2026, the proposed purchase price offered by J.G. Wentworth is a mere fraction of what a comparative annuity would cost if purchased on the open market. Were the proposed assignment entered into without a need for judicial approval, it would be subject to being “set aside or held void as unconscionable” (*see e.g. Kessler v Kessler*, 33 AD3d 42, 45-46 [2d Dept 2006]).

Judicial approval, however, is needed. This Court cannot, under the provisions of the Structured Settlement Protection Act and its powers of equity, approve a transaction such as this that is so patently unfair and unreasonable. Moreover, Petitioner and Respondents have failed to put before this Court an immediate financial need of A.P. that is worth risking the future financial security that would be provided to her and her child by the periodic payments. It is telling that this is the eleventh time in 22 years that A.P. has come before the Court for approval to assign parts of her structured settlement, having previously assigned over \$668,000 in periodic payments for only \$120,000. Had some of those prior assignments not occurred, A.P. would be receiving significant periodic payments at the present time. While A.P. has set forth certain financial difficulties, they are not sufficient to establish that it would be in her best interests to sell her future financial security for a mere fraction of its present value to buy new home appliances, speculate in dog breeding and brand a start-up business. Accordingly, it is hereby

ORDERED that Petitioner J. G. Wentworth Originations, LLC's application pursuant to the Structured Settlement Protection Act is hereby **DENIED**.

Dated: June 28, 2021


HON. SCOTT J. DELCONTE, J.S.C.

ENTER.

PAPERS CONSIDERED

1. Verified Petition, sworn to February 5, 2021 (NYSCEF Doc. 1);
2. Affidavit in Support of Petition of AP. Platt, sworn to January 29, 2021, with Exhibits A through D, attached (NYSCEF Doc. 2);
3. Notice of Motion, dated March 9, 2021 (NYSCEF Doc. 7);
4. Order to Show Cause, signed February 17, 2021 (NYSCEF Doc. 9); and
5. Verified Amended Petition, sworn to March 1, 2021, with Exhibit attached (NYSCEF Doc. 10).