

Matter of J.G. Wentworth Originations, LLC
2021 NY Slip Op 32663(U)
December 9, 2021
Supreme Court, Kings County
Docket Number: Index No. 523449/2021
Judge: Karen B. Rothenberg
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P R E S E N T :

Hon. Karen B. Rothenberg, J.S.C.

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In the Matter of the Petition of

J.G. WENTWORTH ORIGINATIONS, LLC,

Petitioner,

Index No. 523449/2021

-and-

FIDELITY AND GUARANTY LIFE INSURANCE
COMPANY, FIDELITY AND GUARANTY LIFE
ASSIGNMENT, LLC and DAVID VILLALBA,

As Interested Persons Pursuant to GOL §5-1701 (f).

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**ORDER APPROVING TRANSFER
OF STRUCTURED SETTLEMENT PAYMENT RIGHTS**

COME NOW, of J. G. Wentworth Originations, LLC ("Wentworth" or "Transferee"), by counsel, and David Villalba ("Mr. Villalba" or the "Payee"), upon the Transferee's Amended Petition in Support of Order to Show Cause for the Approval of Transfer of Structured Settlement Payment Rights (the "Petition"), pursuant to the New York Structured Settlement Protection Act, N.Y. Gen. Oblig. Law §§ 5-1701, et seq, (the "New York Act").

Accordingly, upon hearing and upon a review of the papers filed in this matter and the evidence presented, the Court finds that:

1. The Payee is entitled to receive payments (the "Periodic Payments") due under a Settlement Agreement dated on or about March 16, 2000 (the "Settlement Agreement"). The Periodic Payments are funded by an annuity, Contract Number 1876281 (the "Annuity"), issued by Fidelity & Guaranty Life Insurance Company ("FGLIC" or "Issuer") and owned by Fidelity & Guaranty Life Assignment, LLC ("F&G Assignment" or "FGLA"). The Periodic Payments include

a lump sum payment of \$60,000.00 which was due and payable on March 16, 2021 (the "2021 Lump Sum Payment") and a lump sum payment of \$142,151.00 which is due and payable on March 16, 2026 (the "2026 Lump Sum Payment").

2. Pursuant to an Order entered by this Court on or about December 5, 2019 in the case entitled In the Matter of the Petition of J.G. Wentworth Originations, LLC and Fidelity and Guaranty Life Insurance Company, Fidelity and Guaranty Life Assignment, LLC, and David Villalba, Index No. 3675/19, Mr. Villalba transferred to Wentworth his right to receive the 2021 Lump Sum Payment.

3. Pursuant to a Decision and Order entered by this Court on or about September 2, 2020 in the case entitled In the Matter of the Petition of J.G. Wentworth Originations, LLC against Fidelity and Guaranty Life Insurance Company, Fidelity and Guaranty Life Assignment, LLC and David Villalba, Index No. 507834/2020, this Court denied Wentworth's attempt to purchase Mr. Villalba's right to receive the 2026 Lump Sum Payment finding that the proposed transfer was neither reasonable nor in Mr. Villalba's best interest.

4. Pursuant to a New York Purchase Contract dated on or about September 3, 2021, (the "Transfer Agreement"), the Payee has agreed to transfer to Wentworth his right to receive the 2026 Lump Sum Payment (the "Assigned Payment").

5. At least ten days before the date on which the Payee signed the Transfer Agreement, Wentworth provided the Payee with a separate Disclosure Statement, in bold type no smaller than fourteen points, setting forth the disclosures required pursuant to § 5-1703 of the New York Act and by all other applicable structured settlement protection statutes, to the extent that they differ from the New York Act.

6. The transfer is in the best interests of the Payee, taking into account the welfare and support of the Payee's dependents, if any.

7. 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, is fair and reasonable.

8. The Payee has been advised in writing by Wentworth to seek independent professional advice regarding the legal, tax, and financial implications of the transfer and the Payee has either received such advice or knowingly waived such advice in writing.

9. The Transfer Agreement is written in plain language and in compliance with N.Y. Gen. Oblig. Law § 5-702 as required by § 5-1706(e) of the New York Act.

10. Wentworth has filed with this Court and has served on all interested parties its Petition and notice under § 5-1705 of the New York Act. None of the interested parties has objected to the transfer.

11. The Payee resides in this State, making this Court an appropriate forum for the filing and prosecution of the Petition.

12. Wentworth has given written notice of its name, address, and taxpayer identification number to F&G Assignment and to FGLIC and has filed a copy of such notice with the Court.

13. The transfer does not contravene any applicable Federal or State statute or regulation or the order of any court or other governmental or responsible administrative authority.

14. The proposed transfer complies with all the requirements of the New York Act, together with the applicable requirements of the Connecticut Structured Settlement Protection Act, Conn. Gen. Stat. Ann. § 52-225g et seq. (the "Connecticut Act"), the Iowa Structured Settlement Protection Act, Iowa Code §§ 681.31 et seq. (the "Iowa Act"), and all other applicable structured settlement protection acts and statutes to the extent that they differ from the requirements of the New York Act.

15. The Transfer Agreement between Wentworth and Mr. Villalba provides that the

domicile state of the Payee is the proper place and venue to bring any cause of action arising out of a breach of the Transfer Agreement.

16. The Payee is properly before this Court and has confirmed to the Court's satisfaction that he is a resident of this state.

Based on the foregoing findings, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

A. The transfer of Mr. Villalba's right to receive the Assigned Payment to Wentworth be and hereby is APPROVED and, pursuant to this Order, FGLIC is hereby authorized and directed to send the 2026 Lump Sum Payment, which would otherwise go to Mr. Villalba, in care of Wentworth at the following address:

P.O. Box 83364
Woburn, MA 01813-3364

or to such other address as Wentworth may designate, by written notice to F&G Assignment and FGLIC, signed and acknowledged by an authorized officer of Wentworth and given at least sixty (60) days before the date when such change is to take effect.

B. Wentworth and its successors and assigns shall be jointly and severally liable to F&G Assignment and FGLIC for any and all liabilities and costs, including reasonable costs and attorney's fees, arising from compliance with this Order or arising as a consequence of any failure of Wentworth to comply with the New York Act, the Connecticut Act, the Iowa Act, or any other applicable act or statute, or to comply with this Order.

C. Wentworth and its successors and assigns shall jointly and severally defend, indemnify, and hold harmless F&G Assignment and FGLIC and their respective directors, officers, employees, predecessors, representatives, affiliates, successors and assigns, from and against any and all claims, liabilities, damages, losses and expenses, including reasonable attorney's fees and

disbursements, arising out of, related to or in connection with the Transfer Agreement and/or the implementation of this Order, including, but not limited to, the redirection of the 2026 Lump Sum Payment or any portion thereof to Wentworth. Without limiting the generality of the foregoing, Wentworth and its successors and assigns shall jointly and severally defend, indemnify, and hold harmless F&G Assignment and FGLIC and their respective directors, officers, employees, predecessors, representatives, affiliates, successors and assigns, from and against any and all claims, liabilities, damages, and costs, including reasonable attorney's fees and disbursements, arising from any claim to the 2026 Lump Sum Payment or any portion thereof arising through Mr. Villalba, including, without limitation, (i) any such claim made by or on behalf of any creditor(s) or purported creditor(s) of Mr. Villalba, (ii) any claim made by any other actual or purported assignee or transferee other than Wentworth, and (iii) in the event of Mr. Villalba's death, by any representative of, or other party claiming through or on behalf of Mr. Villalba's estate or by any party asserting a claim as a legatee or beneficiary or heir of Payee (any claim within this clause (iii) being hereinafter referred to as an "Estate Claim"). To the extent Wentworth fails to honor this indemnification and defense obligation, FGLA and FGLIC may, in addition to all other remedies afforded by law, satisfy the same by withholding to their own credit the Assigned Payment.

D. If Wentworth receives from any source other than FGLIC or FGLA any information indicating that Payee has died, it shall promptly notify FGLIC and FGLA of the information. If Wentworth thereafter receives, from any source other than FGLIC or FGLA, any information indicating that the Assigned Payment (or any portion of said payment) is subject to an Estate Claim, it shall promptly notify FGLIC and FGLA of the information, including the identity of the claimant, the particulars of the claim, and the amount and due date of the Assigned Payment or any portion thereof in question. Within fifteen (15) days after Wentworth has received information

from any source (including FGLIC or FGLA) indicating that the Assigned Payment (or any portion of said payment) is subject to an Estate Claim, Wentworth shall notify FGLIC and FGLA of the steps that it has taken or proposes to take in order to resolve the Estate Claim and to forestall any action or proceeding (including any regulatory proceeding) implicating FGLIC and/or FGLA. Wentworth thereafter shall keep FGLIC and FGLA informed of the status of the Estate Claim and its efforts to resolve it. If Wentworth fails to comply with the provisions of any of the four immediately preceding sentences of this paragraph D, either FGLIC or FGLA may, after notifying Wentworth and consulting with it (or offering to do so if it declines to participate), commence, either alone or jointly, a declaratory judgment action or an interpleader action or, if available, a similar probate proceeding, in order to resolve the Estate Claim and to determine the proper disposition of the Assigned Payment or any portion of said payment that is the subject of the Estate Claim. If FGLIC or FGLA or both commence(s) a declaratory judgment action or an interpleader action or a probate proceeding as provided above, Wentworth shall pay and reimburse the reasonable attorneys' fees and disbursements incurred in commencing and prosecuting such action or proceeding (excepting any amounts that may be recovered from interpled payments).

E. If Wentworth fails to meet any of its obligations to FGLIC or FGLA under paragraph B, paragraph C, or paragraph D of this Order, the unpaid obligations may be deducted from, set off against, and retained from the amount(s) that otherwise would be payable to Wentworth in accordance with paragraph A of this Order, and FGLIC is hereby authorized to remit to FGLA and/or to retain the deducted amount(s) for application to the unpaid obligations.

F. Except as provided in paragraph E, neither FGLIC nor FGLA shall be under any obligation to direct the Assigned Payment (or any portion of said payment) to any party other than Wentworth (or a party that has succeeded to its interest by operation of law).

G. F&G Assignment and FGLIC are discharged and released as to all parties

whatsoever, except Wentworth, from any and all liability with respect to the 2026 Lump Sum Payment.

H. References in this Order to assigns and successors in interest of Wentworth shall not be construed to imply that Wentworth is authorized to assign (other than by operation of law) any of its rights under this Order, any voluntary assignment of such rights being hereby expressly prohibited. Under no circumstances shall F&G Assignment and FGLIC be under any obligation to send the 2026 Lump Sum Payment or any portion thereof to any party other than Wentworth (or a party that has succeed its interest by operation of law).

I. Neither FGLIC nor F&G Assignment shall have any liability whatsoever to any party other than Wentworth with respect to the 2026 Lump Sum Payment; and F&G Assignment and FGLIC are discharged and released as to any and all such liability with respect to all parties other than Wentworth.

J. This Order shall be binding upon Mr. Villalba (and, in the event of his death, his estate, heirs, devisees, executors and administrators), Wentworth, F&G Assignment, FGLIC, and all other interested parties that have been served with and/or have responded to the Petition and the respective successors and assigns of each of the foregoing. Neither the immediately preceding sentence nor anything else in this Order shall be construed to imply that any further assignment of the rights acquired by Wentworth under this Order is authorized, any voluntary assignment of such rights (by Wentworth or any successor in interest) being hereby expressly prohibited. Any successor in interest to Wentworth shall automatically be jointly and severally liable for all of the obligations of Wentworth under this Order.

K. Neither the absence of opposition by FGLIC and FGLA to the Petition nor their compliance with this Order shall constitute evidence in this or any other proceeding regarding: (i) the assignability of payment rights under a structured settlement agreement or annuity contract or

related documents; (ii) the enforceability of provisions that restrict or prohibit assignment of payment rights under a structured settlement agreement or annuity contract or related documents; (iii) the validity of any transaction entered into by Wentworth other than the transaction provided for in the Transfer Agreement and approved in this Order; and (iv) any purported waiver by FGLIC, FGLA, or Payee of any of its (or his) rights in connection with any matter other than the Petition.

L. This Order is entered without prejudice to the rights of F&G Assignment and FGLIC under, and the Court makes no finding concerning the enforceability of, any non-assignment provision(s) contained in the Settlement Agreement, in the Annuity and/or in any related documents. Nothing contained in this Order shall be deemed to afford the Payee any rights of ownership or control of the Annuity or shall otherwise affect the exclusive ownership and control of such Annuity by F&G Assignment. F&G Assignment and FGLIC shall under no circumstances (i) be required to make any payment that they would not have been obligated to make if the transfer had not occurred and (ii) be required to divide the 2026 Lump Sum Payment between two or more recipients.

M. Any notice or other communication required or permitted by the terms of this Order shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or sent prepaid via a recognized overnight courier service, addressed as follows:

If to Wentworth:
1200 Morris Drive,
Chesterbrook, PA 19087

If to FGLIC and FGLA:
Jane F. Kerr, CP, AIRC
Senior Compliance Paralegal
Fidelity & Guaranty Life
Two Ruan Center

601 Locust Street
Des Moines, IA 50309

And

Stephen H. Kaufman, Esq.
Wright, Constable & Skeen, LLP
7 Saint Paul Street, 18th Floor
Baltimore, MD 21202

N. This Order shall be construed so as to be consistent, insofar as possible, with any and all prior Orders of this or any other Court approving transfers of any of Payee's structured settlement payment rights. Unless otherwise expressly provided herein, nothing contained in this Order shall be deemed to supersede or modify any such prior Order; and the Assigned Payment that is the subject of this Order is in addition to any payments to which the Payee's rights have been transferred pursuant to any such prior Order.

O. Pursuant to the Transfer Agreement, Wentworth shall pay Mr. Villalba the net sum of \$97,000.00 for the Assigned Payment.

P. Counsel of record for the Transferee is directed to and shall transmit a certified copy of this Order to all interested parties.

Q. This Order shall constitute a final "Qualified Order" within the meaning of 26 U.S.C. § 5891.

SO ORDERED,



Karen B. Rothenberg, J.S.C.