

<b>Matter of Asbury Park, LLC v American Home Assur. Co.</b>
2022 NY Slip Op 33253(U)
September 20, 2022
Supreme Court, Kings County
Docket Number: Index No. 511036/2022
Judge: Carolyn E. Wade
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: HON. CAROLYN E. WADE  
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In the Matter of the Petition of ASBURY PARK, LLC,

Petitioner,

Index No. 511036/2022

- and -

AMERICAN HOME ASSURANCE CO., THE UNITED STATES LIFE INS. CO. IN THE CITY OF NY F/K/A AMERICAN INTERNATIONAL LIFE ASSURANCE CO OF NY, and CHRISTIAN P.,

Respondents

for the Approval of Transfer of Structured Settlement Payment Rights In Accordance with GOL §5-1701 et seq.  
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**DECISION AND ORDER**

NS #1

**Recitation, as required by CPLR §2219(a), of the papers considered in the review of Petitioner’s Order to Show Cause:**

<u>Papers</u>	<u>Numbered</u>
<b>Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....</b>	<b>NYSCEF #'s 1, 14, 22</b>
<b>Cross-Motion and Affidavits/Affirmations.....</b>	
<b>Answering Affidavits/Affirmations.....</b>	
<b>Reply Affidavits/Affirmations.....</b>	
<b>Defendant’s Memorandum of Law.....</b>	

Upon the foregoing cited papers and after virtual oral argument, Petitioner, ASBURY PARK, LLC ("Asbury" or "transferee") moves, pursuant to Structured Settlement Protection Act ("SSPA"), General Obligations Law §5-1701 et seq., for approval of the transfer of two structured settlements.

Pursuant to the terms of the proposed transfer agreements, Asbury would purchase self-represented payee, CHRISTIAN PRINCE’s, ("Payee" or "Mr. Prince") annuities, with an aggregate total value of \$608,016 for \$285,241.98.

Mr. Prince's annuities are owned by AMERICAN HOME ASSURANCE CO. and issued by THE UNITED STATES LIFE INS. CO. IN THE CITY OF NY F/K/A AMERICAN INTERNATIONAL LIFE ASSURANCE CO OF NY (respectively "AHAC" and "US Life"). The first annuity contains three lump sum payments of: (1) \$75,000 due on May 16, 2024; (2) \$100,000 due on May 16, 2029; and (3) \$60,000 due on May 16, 2034; for a total of \$235,000. The second annuity contains: (1) monthly payments of \$2,081.00 commencing on January 16, 2023, through and including, April 16, 2034, for a total of \$283,016; and (2) a lump sum payment of \$90,000 due on May 16, 2034; for a total of \$373,016. The aggregate value of both annuities is \$608,016.

Mr. Prince is 22 years old, single, and has no dependents. Currently, he lives with his mother and works part-time for a church, and as a delivery person for Doordash. By way of affidavit, Mr. Prince represents that the approval of this sale is the "sole option available" to accomplish his goals and that he intends to use the proceeds of this transfer to purchase real property. Mr. Prince represented during his virtual appearance that he intends to move to Florida, where he would work as a home attendant. He also stated that he entered into a residential contract of sale to purchase a home in Florida. Petitioner submits a copy of the contract of sale, which indicates that it is a cash purchase and that the balance due at closing is \$230,000. (Petitioner's Pre-Trial Document, NYSCEF Doc. No. 27).

The SSPA requires the Court to make express findings that the proposed transfer is "fair and reasonable," and "in the best interest of the payee" (General Obligations Law § 5-1706 [b]). The "fair and reasonable test should not be governed solely by whether the amount offered is within the range of the marketplace, but also weighed against

whether the transaction is in the best interest of the payee” (*Matter of 321 Henderson Receivables L.P.*, 13 Misc 3d 526, 534 [Sup Ct, Erie County 2006]). The “SSPA is a ‘paternalistic statute’ requiring the courts to engage in a fact-based inquiry and not merely serve as a ‘rubber stamp.’” *Id.* at 531. “[C]ourts generally will not find that such a transfer is in the best interests of the payee where the payee intends to use the proceeds of the transfer for an investment or purchase (*Matter of Am. Farms, LLC v John Hancock Assignment Co.*, 61 Misc 3d 1203[A], 2018 NY Slip Op 51349[U], \*3 [Sup Ct, Kings County 2018]).

Here, Mr. Prince, stands to lose long-term financial security to purchase a home in Florida. Over the next 12 years, Mr. Prince is slated to receive a total of \$608,016, which is the aggregate value of both annuities. Under the proposed settlement transfers, Mr. Prince would forfeit over 50% (\$322,774.02) of the total value of both annuities for \$285,241.98. The residential contract of sale indicates that \$230,000 is due at closing, which does not include closing costs, prepaids, and prorations. Mr. Prince faces the possibility that he would have to use all, or most of the transfer to complete the purchase of the property. This is in addition to other expenses that arise with the purchase of property such as, taxes, insurance, attorney’s fees, etc.

Moreover, despite Mr. Prince’s belief that the proposed sale is his “sole financial option,” he is set to receive monthly payments of \$2,081 in less than a year (January 16, 2023). The Court is not convinced that Mr. Prince has adequately assessed the proposed transfers. Petitioner submitted Mr. Prince’s “Acknowledgement of Independent Professional Advice,” wherein he stated that he “choose[s]” to seek independent professional advice from an attorney or certified public accountant. (Petitioner’s Exhibit,

“F”). This does not indicate that the unrepresented Payee, had sought financial and/or legal advice with regards to the underlying proposed transfers. Therefore, the Court finds that the proposed transfers are not in the best interest of the payee.

Lastly, a settlement agreement which prohibits a payee from transferring or assigning the periodic payments “may not be waived by the payee since the provision is not for his or her benefit” (*Matter of 321 Henderson Receivables Origination LLC*, 19 Misc 3d 504, 507 [Sup Ct, Queens County 2008]). Here, in lieu of submitting the underlying settlement agreements, Petitioner submitted two affidavits from Mr. Prince, which state that he cannot locate a copy of the settlement agreement, and that to the best of his knowledge there is no language in the agreements limit his rights to transfer, assign, sell, or convey the periodic payments. (Petitioner’s Exhibit “B”). The affidavits also state that to the extent there is any prohibition on transfer, he waives “any and all rights” that he may have under that provision. Without reviewing the settlement agreements, the Court cannot determine if such waiver is proper.

Accordingly, based upon the above, Petitioner's request for approval of the transfer of funds from Mr. Prince’s structured settlements is DENIED.

This constitutes the Decision and Order of the Court.

DATED: 9/20, 2022

  
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HON. CAROLYN E. WADE, J.S.C.

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KINGS COUNTY CLERK  
FILED