

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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In the Matter of the Petition of IMPERIAL Index No.: 15008/09
STRUCTURED SETTLEMENTS,

Petitioner,

Motion Date: 7/9/09

- against -

Motion No.: 10

Motion Seq.: 1

For approval of the Sale and Transfer of
Structured Settlement Payments Rights of
Vincent Daniel Angelillo In Accordance
with Gen. Oblig. Law § 5-1701, et seq.

VINCENT DANIEL ANGELILLO, ALLSTATE
ASSIGNMENT COMPANY, and ALL STATE LIFE
INSURANCE COMPANY,

Respondents.

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The following papers numbered 1 to 4 were read on this motion by
the petitioner is resolved as follows:

Papers
Numbered

Petitioner's Notice of Petition and Petition-
Affirmation-Affidavit(s)-Service-Exhibit(s)

1-4

Petitioner, Imperial Structured Settlements (Imperial), by
notice of motion, petitions the Court, pursuant to New York
Obligations Law § 5-1701 et seq., approving the transfer of
structured settlement payment rights from Vincent Daniel Angelillo
to petitioner.

As a result of a settlement of personal injury claim, Mr.
Angelillo became a recipient of certain structured settlement
payment rights which provided for a series of deferred cash

payments to Mr. Angelillo. Mr. Angelillo is to receive three (3) lump sum payments as follows:

November 13, 2012	\$ 7,500.00
November 13, 2015	\$ 7,500.00
November 13, 2017	<u>\$21,650.00</u>
	\$36,650.00

In a transfer of his structured settlement payments, Mr. Angelillo would receive from Imperial, a lump sum payment of \$9,807.76 "after deducting reasonable legal expenses, costs and court filing fees."

Title 17 of New York's General Obligations law, known as The Structured Settlement Protection Act (SSPA) requires judicial approval before a plaintiff can sell their rights to future structured settlement payments to a third party. 321 Henderson Receivables v. Martinez, 11 Misc3d 892, 893, 816 NYS2d 298 (Sup. Ct. New York County 2006). The SSPA was designed to protect recipients of long-term structured settlements from being exploited and deceived by companies assertively seeking to acquire their guaranteed structured settlement payments. Matter of Settlement Funding of New York, LLC (Olivarez), 2007 NY Slip Op. 51708U (Sup. Ct., Kings County 2007), citing 321 Henderson, supra at 893).

In addition, General Obligations Law §5-1706, states that the Court must make the following findings before a transfer can be effectuated. These are "that (a) the transfer complies with the requirements of this title; (b) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependants; and whether 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, are fair and reasonable. Provided the court makes the findings as outlined in this subdivision, there is no requirement for the court to find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments under this subdivision; (c) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; (d) the transfer does not contravene any applicable statute or the order of any court or other government authority; and, (e) is written in plain language and in compliance with section 5-702 of this article."

"The heart of the SSPA's protection lies in the courts' independent discretionary determination [of] 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 the fees and expenses used to determine the net advance amount, are fair and reasonable..." Matter of Settlement Capital Corp. (Yates), 12 Misc3d 1198(A), 2006 NY Slip Op. 51616(U) quoting Matter of Settlement Funding of New York, LLC (Cunningham), 195 Misc2d 721 (2003).

Since the enactment of the SSPA statute in 2002, the Courts have adopted a "a more global consideration, finding that the best interest standard requires an individualized 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 provided needed financial rescue without jeopardizing or irreparably impairing the financial security afforded to the payee and his or her dependents by periodic payments." The Matter of Loiseau, _____ Misc3d _____, 2008 WL 5270923, 2008 NY Slip Op. 33331(U).

In determining what is in the payee's best interest, the court should take into consideration the payee's age, mental and physical capacity, maturity level, ability to show sufficient income that is independent of the payments sought for transfer, 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 truly independent legal and financial advice. In the Matter of Settlement Capital Corporation, 1 Misc3d 446 (Sup. Ct., Queens County 2003).

Vincent Daniel Angelillo is an employed, 21 year old with no dependents. From the lump sum payment he would receive from Imperial, Mr. Angelillo's intention is to use approximately \$2,300.00 to finish classes at Queens College and earn his degree. In addition, Mr. Angelillo intends to use approximately \$1,910.00 to pay off debt. The remaining funds of approximately \$5,600.00 would be used for dental work consisting of three root canals and a bridge (no affidavit from a dentist has been submitted in support this claim).

Mr. Angelillo contends that none of the proceeds from the lump sum payment will be used for his day to day expenses as he is employed.

Courts have generally found that transfers that are not in the best interest of the payee where the payee tends to use the proceeds of the transfer to ease financial burdens such as paying back loans, credit card debts, or purchasing a new car or home

improvements (see, Matter of Barr v. Harford Life Ins., 4 Misc3d 1021(A) (2004); Matter of Settlement Funding, LLC (Cunningham, 195 Misc2d 725 (2003); Matter of 321 Henderson Receivables Limited Partnership (DeMallie), 2 Misc3d 463 (2003).

In this proposed transfer of Mr. Angelillo's structured settlement payments, the aggregate amount of the structured settlement payments to be transferred is \$36,650.00. The discounted present value of the payments to be transferred is \$31,008.16 (applying the then most available and published federal discount rate of 2.40). The gross advance amount (the amount to the payee before fees) is \$12,007.76. The annual discount rate, compounded monthly, used to determine the gross advance amount is 16.56%. The net advance amount (less \$2,200.00 for legal processing and administrative fees) is \$9,807.76 which represents 31.62% of the discounted present value.

Despite Mr. Angelillo's consent to proceed with the settlement transfer, the Court finds that said discount rate is neither fair nor reasonable taking into account the actual amount Mr. Angelillo would be receiving. Mr. Angelillo's would be receiving less than one-third (1/3) of the discounted present value of \$31,008.16, for a total \$9,807.76 after legal fees and administrative fees.

The court has considered Mr. Angelillo's intention to use a portion of funds for his dental work. It would appear that judicial approval of the structured settlement transfer would be in Mr. Angelillo's best interest for his proposed dental work, however, what is in the payee's best interest in this matter is heavily outweighed by what is fair and reasonable, and the net advance amount offered to Mr. Angelillo is neither.

In addition, the Court takes note that the "reasonable legal expenses, costs and court filing fees" are unreasonable. Pursuant to Gen. Oblig. Law § 5-1703(f), an itemized listing of all commissions, fees expenses and charges payable by the payee are to be disclosed. In this matter, counsel fails to submit and affidavit itemizing both the legal fees incurred and the processing fees pursuant to statute.

The Court finds that the proposed transfer is neither in Mr. Angelillo's "best interest" nor that the rate is "fair and reasonable."

Accordingly, the petition is denied.

Dated: Long Island City, N.Y.
July 23, 2009

ROBERT J. MCDONALD
J.S.C.