

Matter of Settlement Capital Corp. v Drew

2007 NY Slip Op 30703(U)

March 16, 2007

Supreme Court, Queens County

Docket Number: 0027461/2006

Judge: James P. Dollard

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, JAMES P. DOLLARD IAS PART 5
Justice

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In the Matter of the Petition
of SETTLEMENT CAPITAL
CORPORATION for the Approval
of Transfer of Structured
Settlement Payment Rights In
Accordance with GOL §5-1701,

Index No. 27461/06

Petitioner,

Motion Date: Jan. 9, 2007

-against-

Cal. No. 31

Motion Sequence No. E001

KIEANNA E. DREW A/K/A
KIEANNA E. COX, METROPOLITAN
INSURANCE AND ANNUITY COMPANY
and METROPOLITAN LIFE INSURANCE
COMPANY,

Respondents.

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The following papers numbered 1 to 4 read on this motion by petitioner Settlement Capital Corporation for an order of approval of the transfer of action structured settlement payment rights due under a structured settlement agreement in accordance with 26 U.S.C. §5891 et. seq. and GOL §5-1701, et. seq.

	<u>PAPERS</u> <u>NUMBERED</u>
Order to Show Cause-Affidavit-Exhibit.....	1 - 4

Upon the foregoing papers it is ordered that this motion is denied.

The proposed transfer seeks approval, as authorized by the aforesated statutes, for the sale of \$71,817.28 out of the total payment of \$81,022.00 due on September 24, 2012. The transferor Kieanna E. Drew a/k/a Kieanna E. Cox (Ms. Drew) consents and joins in this application. Ms. Drew has one dependent, her son Christian Loveless.

Title 17 of the General Obligations Law, known as Structured Settlement Protection Act (SSPA), requires judicial approval before an injured plaintiff can sell future structured settlements to a third party (Matter of 321 Henderson Receivables, L.P. v. Martinez, 11 Misc 3d 892 (Sup. Ct. N.Y. Co. 2006)). This act was intended "to protect the recipients of long-term structured settlements from being victimized by companies aggressively seeking the acquisition of their rights" (Matter of Settlement Capital Corporation v. Ballos, 1 Misc. 3d 446 (Sup. Ct. Queens County 2003)). GOL §5-1706 dictates that the following standards be met before judicial approval: "(a) the transfer complies with the requirements of this title; (b) the transfer is in the best interest of the payee...; (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...; and (e) is written in plain language and in compliance with section 5-702 of this article."

The aforestated "best interest" standard necessitates a case by case determination to ascertain whether or not a proposed transfer of structured settlement payments will provide the needed financial relief without irreparably impairing or jeopardizing the financial security provided to the payee and his or her dependants (Matter of 321 Henderson Receivables v. Fontana, 13 Misc. 2d 1216(A) (Sup. Ct. Suffolk Co. 2006)). The market of purchasing and selling injured payee's structured settlement payments threatens the viability of structured settlements from injury victims who may need them in the future (Id citing Matter of 321 Henderson Receivables, LP v. Martinez).

The Assembly Memorandum in Support of the SSPA states in relevant part the following as justification for the act: "Recently a growing number of factoring companies have used aggressive advertising, plus the allure of quick and easy cash, to induce settlement recipients to cash out future payments, often at substantial discounts, depriving victims and their families of the long-term financial security their structured settlements were designated to provide." General Obligations Law §5-1706(b) dictates that the court find that "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 fees and expenses used to determine the net advance amount, are fair and reasonable".

The transferor, Ms. Drew, (plaintiff in the personal injury action which resulted in the structured settlement award) submits an affidavit dated November 28, 2006, asking the court to approve

the sale of \$71,817.28 out of the \$81,022.00 due on September 24, 2012. She states that she is 24 years old and is aware that the up-front money she will get will be \$27,500.00 which she will use to pay for her son's day care so that she can pursue her new job as a Corrections Officer and "cover our expenses through June 2007 and retain some of the money to apply as a down payment for permanent home outside of New York City". She further states that "my training salary will not be enough to cover all monthly expenses, including rent, day-care and day-to-day needs". She also signed a "Waiver of Independent Legal Advice" dated October 13, 2006. A proposed transferor's willingness to transfer settlement payments has no bearing on the Court's determination of the "fair and reasonable" standard of the SSPA (Matter of 321 Henderson Receivables v. Fontana, supra citing Settlement Funding v. Cunningham 195 Misc. 2d 721 [Supt. Ct. Rensselaer County 2003]). In the Fontana case, Mr. Fontana was an unemployed 43 year-old father of three children ages, fourteen, twelve and five respectively who was collecting \$4,200 monthly in social security disability benefits. Mr. Fontana wanted to sell 110 monthly payments of \$1,029.00 each beginning on September 10, 2015 and ending on October 10, 2024 for an aggregate total of \$113,190.00. He intended to use the cash as follows: \$15,000.00 for a down payment on a house, \$8,000.00 for various utility bills, \$5,000.00 for a college fund for his children and \$2,000 for every day expenses. The court found that notwithstanding Mr. Fontana's consent to the sale "the petition fails to include admissible proof upon which the Court may expressly find the transfer is in the best interest of Mr. Fontana and his family, or that the transaction, including the discount rate and the advance amount, is fair and reasonable. (Matter of 321 Henderson Receivables v. Fontana, supra citing In re Ballos, supra. The Fontana court found that there had been no showing that the proposed transfer would satisfy the transferor's immediate financial obligations without irreparably impairing or jeopardizing the long-term financial security that the future periodic payments would provide for him and his family.

Similarly in In the Martinez, supra, Mr. Martinez was employed as a cashier earning only \$15,000.00 per year. He wanted to sell to the factoring company 321 Henderson one lump-sum payment of \$50,000.00 due in May 2008 and another lump sum of \$69,700.00 due in May, 2013. Out of the total \$119,700.00 of future payments Henderson would pay Martinez only the sum of \$51,021.35. The court noted that this amount was only 55.70% of the estimated current value of the payments. In its notice to Martinez, Henderson advised him that he would "in effect, be paying interest to [Henderson] at a rate of 16.39% per year. Henderson further advised that the proposed transfer would have significant tax consequences. In his affidavit, Martinez explained that he planned to use the cash as follows: \$40,000.00

for a down payment on a store front in Harlem, \$5,000.00 for two months of the store's mortgage and the balance of \$6,021.35 for store merchandise. In a scheduled conference before the court Martinez stated that he wanted the money to open a barber shop. The court noted that Martinez had no knowledge of licensing requirements for a barber shop, had not located a suitable space and had only an acquaintance who was a barber. Notwithstanding repeated adjournments and assistance from counsel, Martinez was unable to develop a concrete plan or even locate an appropriate storefront. The court denied the petition holding that this scenario is exactly the type which the SSPA guards against and "enticed by the 'allure of quick and easy cash' Martinez was prepared to sell valuable future payments for a fracture of their worth and a potentially large tax bill." The court found that even if the transaction were considered "fair and reasonable" which it was not, it did not meet the "best interest" standard since Martinez lacked any real concrete plan for the money.

Such is the case at bar. Ms. Drew is now gainfully employed by the New York City Department of Corrections as a corrections officer. Although she is undergoing four months of training, she will receive her full salary in June 2007 which is less than three months away. She states that with the upfront money of \$27,500.00 she will "cover our expenses through June of 2007 and retain some of the money to apply as a down payment for a permanent home outside of New York City". She fails to offer proof of any prospective homes she may purchase with this money nor does she explain where this potential home may be located and will she still be able to commute to her place of employment and what day care her son will attend. In essence, the court finds she has no concrete plan for the use of this money. She also states that "the father of my child does not furnish support". She should proceed with child support enforcement to assist her in the support of her infant son, not jeopardize the financial security of herself and her son by going through with this transaction which is not in her "best interest". Out of 2012 payment of \$81,022.00 she seeks to sell \$71,817.28 of that amount five years early and obtain merely \$27,500.00. The SSPA was enacted precisely to protect the transferor from obtaining quick cash at a reduced rate because they experience hardship. The Disclosure Statement annexed to the petition states the gross amount would be \$29,000.00 and the annual discount rate, compounded monthly is 15.901%. This does not include legal fees estimated at \$2,500.00 "and actual attorneys' fees could be more or less". Moreover, Ms. Drew would face tax consequences.

It appears that Ms. Drew and/or her mother have previously sold Ms. Drew's rights to prior structured payments to the petitioner, Settlement Capital Corporation in 2001 and 2002 (See

Ms. Drew's affidavit, paragraph 10) prior to the enactment of the SSPA. The annuity at issue is from Metropolitan Life Insurance Company and represents an extremely low risk of nonpayment. Petitioner submits evidence that to purchase a comparable annuity from New York Life paying \$71,817.28 would cost \$57,634.31. These amounts are more than twice what petitioner proposes to pay to Ms. Drew. Considering the low degree of risk and Ms. Drew's lack of sophistication the proposal appears to be predatory and unconscionable.

Based on the foregoing, the court finds that there is no showing that the proposed transfer would satisfy Ms. Drew's immediate financial concerns without irreparably impairing or jeopardizing the long-term financial security that the future periodic payment would help provide for Ms. Drew and her infant son. The transfer would not be in her best interest.

As such, the petition is denied in all respects and the proceeding is dismissed.

Dated: March 16, 2007

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J.S.C.