

Matter of Settlement Funding of N.Y., LLC v LM Prop. & Cas. Ins. Co.
2007 NY Slip Op 30840(U)
April 17, 2007
Supreme Court, New York County
Docket Number: 0103202/2007
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EILEEN A. RAKOWER
J.S.C.

PART Part 5

Index Number : 103202/2007

SETTLEMENT FUNDING

VS

I.M PROPERTY AND CASUALTY

Sequence Number : 001

OTHER RELIEFS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER**

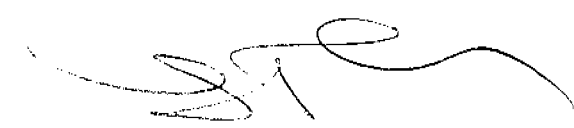
FILED

APR 23 2007

NEW YORK
COUNTY CLERK'S OFFICE

NOTICE: CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

Dated: April 17, 2007



EILEEN A. RAKOWER J.S.C.

Check if appropriate: DO NOT POST
Check one: FINAL DISPOSITION

REFERENCE
 NON-FINAL DISPOSITION

SUPREME COURT, STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
In the Matter of the Petition of
SETTLEMENT FUNDING OF NEW YORK, LLC,
for Judicial approval of Absolute Assignment and
UCC Article 9 Security Agreement with JERRARD
McCULLOUGH pursuant to Article 5, Title 17
of the New York General Obligations Law,

Index No.
103202/07

Decision
and Order

Petitioner,

- against -

LM PROPERTY AND CASUALTY INSURANCE
COMPANY and PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Respondents.

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COUNTY CLERK'S OFFICE
NEW YORK

Mot. Seq. 001

-----X
HON. EILEEN A. RAKOWER:

Petitioner, Settlement Funding of New York, is a Limited Liability Corporation which, in essence, forwards money to the recipients of structured settlements before those payments are due in exchange for monthly payments and a portion of the recipient's lump sum when the structured settlement payment is received. Here, Jerrard McCullough (Recipient) receives \$1,100 per month and is scheduled to receive his next lump sum payment of \$50,000 in April, 2010. Petitioner and Recipient wish to enter into an agreement under which Petitioner will forward to Recipient \$27, 999.74, in exchange for 60 monthly payments of \$300 (for a total of \$18,000) and a lump sum payment of \$30,000 from Recipient's \$50,000 in April, 2010.

The legislature enacted the Structured Settlement Protection Act with the intent of ensuring that Recipients are protected both from companies seeking to acquire their structured settlement payments at large discounts and from prematurely dissipating their funds. Therefore, the parties must receive judicial approval before any payment rights may be transferred. The legislative intent is that such transfers should be reserved for situations where the Recipient is suffering "true hardship" or

is in economic “dire need.” (*Settlement Capital Corp. v Yates*, 12 Misc. 3d 1198(A) [New York Sup. Ct. Bx. County, Aug. 14, 2006]). Some Courts have employed a more “global” view of such transfers where it is apparent that the Recipient is mature and fully understands the import of the transfer. (*Matter of the Petition of Settlement Funding of New York, LLC. [Platt]*, 2 Misc. 3d 872 [New York Sup. Ct., Lewis County, Nov. 4, 2003]). The Court’s review of such arrangements is governed by General Obligations Law §§ 5-1701-5-1708, and includes consideration of whether the transaction is in the best interest of the Recipient and whether the transaction is fair and reasonable. The “best interests” inquiry includes consideration of the Recipient’s physical age, level of maturity, physical and mental capacity, ability to earn a living, the intended usage of the proceeds, his present financial situation and whether he is experiencing any economic hardship, his level of financial sophistication, the timing of the application *vis-a-vis* any other scheduled payments and whether he obtained independent counsel regarding the financial consequences of the proposed transfer.

Here, Recipient states in his annexed affidavit that he is a 21 year old, full time student who is neither physically nor mentally disabled and is capable of working. He states that he has no dependants, has been supporting himself for the last three years and receives \$1,100 a month from the structured settlement for his expenses. He states that with the advance payment from Petitioner he wants to use \$5,000 to pay a past medical debt, \$10,000 to buy a reliable used car, \$3,200 to buy two computers, \$4,800 to pre-pay his rent for one year and \$2,500 to establish an “emergency” fund. Recipient does not state what he wants to do with the remaining nearly \$3,000 nor does he explain what happened to the \$50,000 that he received one year ago.

Recipient’s affidavit includes as part of paragraph 7 a space for Recipient to place his initials next to one of two paragraphs to indicate whether or not he received “professional advice regarding the Agreement from an attorney, accountant or other professional.” Paragraph A states “I chose not to retain or consult with such a professional. I understand that at all times, including at the time I entered into the Agreement and received the Disclosure Statement, and for all times, I knowingly waive the right to seek or obtain for myself independent professional advice regarding the Agreement.” Paragraph B states “I chose to retain or consult with an attorney, accountant or other licensed professional advisor of my choice.” Next to paragraph “A,” in the space available for the Recipient’s initials is a printed letter “A.” Recipient’s initials, “JM” do not appear next to either paragraph.

Recipient is a young man who does not suffer any physical or mental incapacity. He is able to work and is not suffering from any financial hardship or dire need. The stated intended use of the money, in large part, poses no urgency nor demonstrates immediate need. He has recently received a \$50,000 disbursement and receives \$1,100 tax-free each month as part of his settlement. He has not consulted with a professional other than the lender in this transaction and does not apparently have the level of financial sophistication to understand something as elementary as how to initial a paragraph in an important financial contract. Accordingly, this is not a case of a mature Recipient who fully understands the import of the transaction. The Court finds that this agreement is not in the best interest of the Recipient and declines to sign the proposed order.

Wherefore, it is hereby

ORDERED that the Petition is denied.

This constitutes the decision and order of the Court.

Dated: April 17, 2007



Eileen A. Rakower, J.S.C.

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NEW YORK
COUNTY CLERK'S OFFICE