

**Matter of Settlement Funding of N.Y., LLC**

2007 NY Slip Op 31965(U)

July 5, 2007

Supreme Court, Wayne County

Docket Number: 0061872/2007

Judge: Stephen R. Sirkin

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STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF WAYNE

2007

In the Matter of the Application of SETTLEMENT FUNDING OF NEW YORK, LLC, for Judicial approval of an absolute assignment and UCC Article 9 Security Agreement with WARREN A. JUHL, pursuant to Article 5, Title 17 of the New York General Obligations Law.

**DECISION**  
Index No.: 61872

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By Notice of Petition and Petition dated May 10, 2005, and an affidavit of Warren A. Juhl, dated April 23, 2007, Petitioner has made application for an Order approving transfer of the rights to certain structured settlement payments due under a structured settlement agreement. No objections have been made.

The terms of the original structured settlement arose out of an underlying medical malpractice suit and are as follows: (a) monthly payments of \$1,000 from 01/10/03 to 12/10/32; and (b) lump sum payment of \$15,000 on 12/10/07, \$25,000 on 12/10/12, \$25,000 on 12/10/17, and \$50,000 on 12/10/22. The proposed assignment would transfer from Mr. Juhl to Petitioner the right to receive 169 monthly payments of \$500 from 08/10/07 to 08/10/21, 48 monthly payments of \$1,000 from 09/10/21 to 09/10/25, and the \$25,000 lump sum due 12/10/12. In return, Mr. Juhl will receive a lump sum payment from Petitioner in the amount of \$37,185.67 (net).

The Court finds Petitioner has followed all of the statutory requirements in making the transfer agreement and in bringing the within application including providing to Mr. Juhl the required disclosures and giving notice of this proceeding. Turning then to the merits of the application, the Court must determine whether the transfer is in the best interests of Mr. Juhl and whether the transaction is fair and reasonable.

An analysis of the “best interest” standard under the Structured Settlement Protection Act (SSPA) requires case by case assessment, giving specific consideration to such factors as payee’s age, mental and physical capacity, maturity level, ability to show sufficient income independent of the payments sought for transfer, capacity to provide for the welfare and support of dependents, need for medical treatment, stated purpose for the transfer, and demonstrated ability to appreciate financial terms and consequences of the proposed transfer based upon truly independent legal and financial advice. (*In the Matter of the Petition of Settlement Capital Corporation (Ballos)*, 1 Misc.3d 446, 769 N.Y.S.2d 817)

In the instant case, Mr. Juhl’s affidavit indicates that he is 37 years old, married and has children that he and his wife support. He states that he has no mental disabilities which would prevent him from working, but is physically disabled and unemployed, receiving \$795 per month SSI disability. His wife earns approximately \$12,000 annually. Mr. Juhl intends to use the cash received from Petitioner to “pay off a personal loan, pay off a car loan, and home renovations.” Regarding the renovations, Mr. Juhl states “My wife have a growing family and we need additional room to accommodate our growing family. Therefore, I will. . . add an additional bedroom to our home.”

Using the standard set forth above, and given the reasons set forth by Mr. Juhl, this Court is unable to find the transfer to be in the best interests of the payee. The present value of the payments to be purchased is \$90,978.06. While this Court has concerns that the amount of the lump sum pay-out is only 40% of the present value of the structured settlement, this Court makes no determination at this time as to whether a pay-out of \$37,185.67 is fair and reasonable. Rather, the Court is stopped by the fact that it is unable, upon the information provided, to make a determination that the proposed transfer is in the best interests of Mr. Juhl.

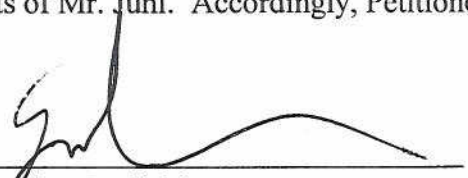
Initially, the papers provided appear to be inconsistent and misleading. For example, the petition in paragraph 22 states “Upon information and belief, no previous application for the specific relief prayed for herein has been made.” However, less than one year ago, this same Court denied a previous application by Settlement Funding of NY regarding the transfer of structured settlement payment rights of Warren Juhl. Further, the instant petition states that Warren Juhl has four children, while Mr. Juhl’s affidavit states that he has two. It is not necessarily the inconsistency which concerns this Court, however, so much as the implication that the children (however many there are) live with Mr. Juhl. Yet, in the application of 2006, Mr. Juhl stated that Anthony and Jonathan Juhl do not live with him. While this Court realizes that custodial circumstances change, this Court also takes judicial notice of the fact that there is presently pending before the Wayne County Support Magistrate at least one petition regarding child support to be paid by Mr. Juhl for the support of Jonathan, who does not appear to live with Mr. Juhl.

For purposes of this decision, this Court will assume that the above-mentioned statements and inconsistencies were merely the result of careless draftsmanship and not intentional in nature; however, inconsistencies aside, the papers provided also do not address very fundamental questions, to wit: Why does Mr. Juhl need to pay off the car loan now? Why can’t Mr. Juhl wait five more months (when he will be receiving a \$15,000 lump sum) to pay off personal loans and do any renovations? The Court, in evaluating the instant application, is unable on the papers before it to conclude that the benefits of the proposed transaction would outweigh those to be gained by waiting until the next periodic payment. Absent further information, the Court cannot make a finding that the proposed agreement is in the best interest of the payee.

Based upon the above, the Court finds that the Petitioner has failed to meet its burden of

establishing that the transaction is in the best interests of Mr. Juhl. Accordingly, Petitioner's application is denied.

Dated: July 5, 2007.



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Hon. Stephen R. Sirkin  
Supreme Court Justice, Acting