

**Matter of Settlement Funding of N.Y., LLC v
Transamerica Annuity Serv. Corp.**

2007 NY Slip Op 32411(U)

July 18, 2007

Supreme Court, New York County

Docket Number: 0105397/2007

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
Charles Edward Ramos

53
PART 53

PRESENT: _____
Justice

SETTLEMENT FUNDING

INDEX NO. 105397/07

- v -

TRANSAMERICA ANNUITY

MOTION DATE _____

MOTION SEQ. NO. 001

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

AUG - 6 2007

NEW YORK
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*is decided in accordance with
accompanying memorandum decision and order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 7/18/07


CHARLES E. RAMOS

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----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 Jeffrey Marmolejos a/k/a
Guarionex Marmolejos, pursuant to Article
5 Title 17 of the New York General
Obligations Law,

Petitioner,

Index No. 105397/07

-against-

TRANSAMERICA ANNUITY SERVICE CORPORATION
and TRANSAMERICA OCCIDENTAL LIFE INSURANCE
COMPANY,

Respondents.

-----X
Charles Edward Ramos, J.S.C.:

Settlement Funding of New York, LLC ("Settlement Funding")
petitions this Court, pursuant to New York Obligations Law §5-
1701 *et seq.*, seeking approval of the Absolute Assignment and UCC
Article 9 Security Agreement (the "Agreement") facilitating the
transfer of certain structured settlement payment rights from
Jeffrey Marmolejos a/k/a Guarionex Marmolejos to petitioner.

Background

Marmolejos is 18 years of age, single, and has no children.
Marmolejos is the beneficiary of a Settlement Agreement arising
from a personal injury lawsuit. The settlement provides for a
series of deferred cash payments. Specifically, the settlement

provides that Marmolejos is to receive 60 monthly payments in the amount of \$500.00 commencing November 19, 2006 through and including October 19, 2011, and an additional 60 monthly payments in the amount of \$716.20 commencing on November 19, 2011 through and including October 19, 2016.

With this petition, Settlement Funding seeks approval of a transfer of Marmolejos's right to receive 53 of the first 60 payments of \$500.00 and all 60 payments of \$716.20. The aggregate amount of the structured settlement payments to be transferred is \$69,472.00. The discounted present value of the payments to be transferred is \$51,652.70 (applying the March 1, 2007 federal discount rate of 5.80%). The gross advance amount (the amount advanced to the payee before fees) is \$29,035.90. The annual discount rate, compounded monthly, used to determine the gross advance amount is 19.99%. The net advance amount (less \$2,950 for legal, processing, and administrative fees¹) is \$26,835.90 representing 51.95% of the discounted present value.

Discussion

The distinct role of the Court in this special proceeding is to enforce the Structured Settlement Protection Act (SSPA) codified under General Obligations Law ("GOL"), Article 5, Title

¹\$2,000 in legal fees and \$200 processing fees to plaintiff, and \$750 administrative fees to Transamerica Occidental Life Insurance Company.

17, enacted in July of 2002. It was enacted due to the concern that

"...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 designed to provide. Although transfers of structured settlements payments are generally prohibited by contract...factoring companies have built a rapidly expanding business around circumventing these prohibitions." See *Matter of 321 Henderson Receivables Origination LLC v Ramiro Campos, et al*, 14 Misc 3d 1206A, (Bronx County 2006) (quoting, *NY Spons. Memo.*, 2002 Ch. 537).

The Act requires that a determination be made by a Supreme Court judge as to whether the transfer is "in compliance with applicable law, that key terms have been disclosed, that the transfer meets a hardship standard, and that independent professional advice has been obtained." *Id* quoting *NY Bill Jacket*, 2002 AB 6936, Ch. 537). GOL § 5-1706 provides:

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction based upon express findings by such court 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;

© 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.

Pursuant to the GOL, this Court has the discretion to deem the terms of the Agreement fair, reasonable, and in the best interests of the payee, or not. According to the payee's affidavit, he wishes to use the advancement of funds to obtain and prepay three months rent on an apartment, buy a pre-owned car, and invest in his uncle's business, a small chain of variety stores. Applying the "totality of the circumstances" standard with regard to payee's best interests [*Matter of Settlement Capital Corp. v Yates*, 12 Misc 3d 1198A (Kings County 2006); *Matter of 321 Henderson Receivables Origination LLC v Ramiro Campos*, 14 Misc 3d 1206A (Bronx County 2006)] these reasons are as good as any to utilize the advance, however, this Court will not make such a finding. What this Court does find is that the net amount of the advance is not fair nor reasonable. As shown above, the payee will receive only 51.95% of the discounted

present value after fees. Looking to comparable cases, this does not pass muster under GOL 5-702. See *Matter of 321 Henderson Receivables, LP v Martinez*, 11 Misc 3d 892 (disapproving a net advance that amounted to 55.70% of the discounted present value); *Matter of 321 Henderson Receivables Origination LLC v Ramiro Campos, et al*, 14 Misc 3d 1206A, (Bronx County 2006) (approving a net advance that amounted 71.70% of the discounted present value).

The major contributing factor to the undervalued net advance is the 19.99% discount rate used to calculate it. Other lower level courts have found that discount rates of 15.46% (*In re Settlement Funding of NY LLC*, 195 Misc 2d 721 [Rensselaer County 2003]) and 18.621% (*In re Settlement Capital Corp. for Approval of Transfer of Structured Settlement Payment Rights of "Y"*, 194 Misc 2d 711 [Rensselaer County 2003]), were unreasonable.

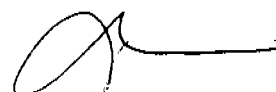
Moreover, when taking into account the net amount the payee would receive, a discount rate of 15.16% was found to be not fair nor reasonable. *Petition of Settlement Funding of NY LLC v Allstate Settlement Corp.*, 13 Misc 3d 1245(A) [2006]).

Therefore, the Court denies the petition to transfer funds due to the inadequacy of the net advancement paid to the payee and the unreasonableness of the annual discount rate applied.

Accordingly, it is

ORDERED that the petition is denied.

Dated: July 18, 2007



J.S.C.
CHARLES E. RAMOS

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

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