

**Matter of R&P Capital Resources, Inc. v
Dimarcantonio**

2008 NY Slip Op 31286(U)

April 24, 2008

Supreme Court, Nassau County

Docket Number: 0565-08/

Judge: William R. LaMarca

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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**In the Matter of the Petition of
R & P CAPITAL RESOURCES, INC.,**

**Motion Sequence #1
Submitted February 13, 2008**

Petitioner,

**For Approval of the Sale and Transfer of
Structured Settlement Payment Rights of
RABIA DIMARCANTONIO In Accordance with
Gen. Oblig. Law § 5-1701, et seq.**

-against-

INDEX NO: 565/08

**RABIA DIMARCANTONIO, METROPOLITAN
INSURANCE AND ANNUITY COMPANY, and
METROPOLITAN LIFE INSURANCE COMPANY,**

Respondents.

The following papers were read on this petition:

Notice of Petition and Verified Petition.....1

Petitioner, R&P CAPITAL RESOURCES, INC. (hereinafter referred to as "R & P"), petitions the Court, pursuant to Title 17 of the General Obligations Law, entitled the Structured Settlement Protection Act (SSPA), for an order approving the transfer of a structured settlement payment right due to RABIA DIMARCANTONIO (hereinafter referred to as "DIMARCANTONIO") as a result of a personal injury lawsuit. Said right provided for

the following guaranteed payments:

- periodic payments commencing March 10, 2003 of \$1,700.00 per month for 30 years guaranteed and life thereafter, if longer;
- lump sum payments of
 - \$ 50,000.00 on October 25, 2003,
 - \$100,000.00 on October 25, 2008,
 - \$100,000.00 on October 25, 2013,
 - \$100,000.00 on October 25, 2018,
 - \$ 45,000.00 on October 25, 2023,
 - \$ 35,000.00 on October 25, 2028 and
 - \$ 30,614.00 on October 25 2033.

Petitioner states that the structured settlement was the subject of a "qualified assignment" pursuant to Internal Revenue Code §§104 and 130, 26 U.S.C. §§104 and 130, as a result of which Metropolitan Insurance and Annuity Company (MIACO) assumed the liabilities of the settlement obligor to make the payments provided for under the structured settlement, and funded its obligation through the purchase of an annuity issued by the Metropolitan Life Insurance Company (METLIFE). An Affidavit of Service reflects that all respondents were duly served with the instant petition, on January 15, 2008, but no papers are submitted in opposition to the petition which is determined as follows:

In an Agreement, signed by DIMARCANTONIO on December 9, 2007 and by petitioner on January 4, 2008, entitled "SALE AND ASSIGNMENT AGREEMENT", it appears that MS. DIMARCANTONIO has agreed to assign and transfer her rights to "the total portion of **1 payment of \$3,000 due October 25, 2008 and one payment of \$50,000 due October 25, 2013**" and that the transfer of the assigned payments "shall begin and end with the payment due on or about 10/25/2008". In a New York Code Disclosure document, under Title 17, §§ S-1701 thru S-1709, petitioner recites that the aggregate amount of the payments to be transferred equal \$53,000.00 and the discounted value of

the transferred payments equal \$39,609.25 utilizing a discount rate of 5.2% assuming monthly compounding. The gross amount payable to DIMARCANTONIO is \$22,500.00, which is the result of a 15.63% discount rate assuming monthly compounding , which results in a 42% recovery on the structured payments. It appears that DIMARCANTONIO is only selling a portion of the structured payments she is to receive in October, 2008 and October 2013, and the Court is unclear why the sale of \$53,000.00 in payments, which will net \$22,500.00, is necessary when DIMARCANTONIO is scheduled to receive a lump sum payment of \$100,000.00 on October 25, 2008. Although the Disclosure Statement advises DIMARCANTONIO that she has the right to seek independent professional advice regarding the transfer, she has waived said right.

In a Form Affidavit submitted in support of the petition, DIMARCANTONIO states that she does not depend on the payments she is selling to pay for the necessities of life and would prefer "upfront" cash rather than waiting for a series of smaller scheduled payments. She states that she intends to use the money to "have a new home for me and my children". The petitioner states that, upon information and belief, DIMARCANTONIO is widowed and has one (1) minor child and no other dependents or beneficiaries under the structured settlement payments which are the subject of this proceeding, but no explanation is given as to DIMARCANTONIO's hope for a new home for herself and her "children".

Procedurally, it appears that the within application is in compliance with the provisions of the SSPA (see, GOL§5-1706(a), (c), (d) and (e)). However, in addition to an express finding of procedural compliance, the Court must additionally determine whether the transfer of the structured settlement payments is in the "best interest" of the payee and

whether the transaction is “fair and reasonable”. GOL §5-1706(b); see, *Matter of Margaret Ford and Stone Street Capital, Inc.*, NYLJ 3/16/2004, page 19, col.3; *Matter of Settlement Capital Corp.*, 1 Misc.3d 446, 769 NYS2d 817 (Sup. Queens Co. 2003); *Matter of 321 Henderson Receivables LP*, 2Misc. 3d 463, 769 NYS2d 859 (Sup. Monroe Co. 2003).

The Courts have recognized the need to address transfer applications on a case by case basis.

Although the statute does not define the best interests of the payee, developing case law and the intent of the statute suggest the Court should consider: (1) the Payees age, mental capacity, physical capacity, maturity level, independent income, and ability to support dependents; (2) purpose of the intended use of the funds; (3) potential need for future medical treatment; (4) the financial acumen of the Payee; (5) whether Payee is in a hardship situation to the extent that he or she is in “dire straits”; (6) the ability of the Payee to appreciate financial consequences based on independent legal and financial advise (sic); (7) the timing of the application.

Although what constitutes a fair and reasonable transaction is also left undefined in the statute, two factors are specifically identified for consideration: the fees and expenses and the discount rate (GOL §5-1707[b]).

Matter of Margaret Ford and Stone Street Capital, Inc., *supra*.

After a careful reading of the submission herein, the Court finds that there are deficiencies in the application presently before the Court. The submission has no information as to the underlying events that resulted in the structured settlement nor of the Payees current health needs, if any, and the potential need for future medical treatment. Further, little information is provided concerning MS. DIMARCANTONIO’s age, employment status, and current living circumstances, and it is the judgment of the Court that a hearing is required. The Court will then be in a position to “raise such inquiries as


it [feels] necessary' and will have 'an opportunity to evaluate credibility, financial acumen, and the extent to which [MS. DIMARCANTONIO] was or was not compelled to make the transfer'. (Matter of Settlement Funding of New York LLC [Platt], 2003 NY Misc. LEXIS 1696)"; *Matter of Margaret Ford and Stone Street Capital, Inc., supra*. Accordingly, it is hereby

ORDERED, that petitioner, R& P CAPITAL RESOURCES, INC. and RABIA DIMARCANTONIO are directed to appear in the Courtroom of the undersigned on May 22, 2008 at 9:30 A.M. for the purpose of taking testimony or oral argument in accordance with the determination herein.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: April 24, 2008



WILLIAM R. LaMARCA, J.S.C.

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COUNTY CLERK'S OFFICE