

Matter of Stone St. Capital, LLC

2008 NY Slip Op 32961(U)

October 31, 2008

Supreme Court, Greene County

Docket Number: 08-1415

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

In the Matter of the Petition of

STONE STREET CAPITAL, LLC,

Petitioner,

DECISION and ORDER

INDEX NO. 08-1415

RJI NO. 19-08-3835

and

JENNIFER TAYLOR
and METLIFE INSURANCE CO. OF
CONNECTICUT, and METLIFE INSURANCE
ANNUITY CO. OF CONNECTICUT,

as Interested Persons pursuant
to GOL § 5-1701(c).

Supreme Court Greene County All Purpose Term, October 3, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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Albany, New York 12207

Jennifer Taylor
Respondent, Pro Se
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TERESI, J.:

Petitioner seeks an order, pursuant to the Structured Settlement Protection Act (General Obligations Law § 5-1701 et. Seq.), authorizing the transfer of Scott Taylor’s interest in future structured settlement payments to Petitioner. Mr. Taylor passed away on November 23, 2007, and his estate is the beneficiary of his structured settlement payments. Jennifer Taylor, Mr.

Taylor's widow and the administratrix of his estate, is the proposed payee herein. The structured settlement was awarded to Mr. Taylor after he sustained personal injuries in a motor vehicle accident.

Petitioner proposes to pay Mr. Taylor's estate \$56,718.00 in return for 170 monthly payments of \$1,786.66 payable between March 1, 2020 and April 1, 2034, and a \$100,000.00 lump sum payment due on January 1, 2022. Ms. Taylor states that she will retain a \$100,000 lump sum payment due on January 1, 2033, and a \$200,000 lump sum payment due on January 1, 2041, if this transfer approved. The total sum of the payments sought to be transferred is \$403,732.20, with a present value of \$233,853.19. The proposed transfer contemplates the estate receiving approximately 24.3% of the present value of the payments. Petitioner alleges that a discount rate of 12.46% was applied.

Because this record fails to demonstrate the proposed transfer is in Ms. Taylor's "best interest" and is "fair and reasonable," the petition is denied.

Under the Structured Settlement Protection Act (SSPA), structured settlement payment rights may be transferred by court order. (General Obligations Law § 5-1706). A transfer will be ordered only if the SSPA's procedural requirements are met, the transfer "is in the best interest of the payee," and the transfer is "fair and reasonable." (*Id.* at [a], [b]). In this case, the SSPA's disclosure provisions and other procedural requirements have been satisfied.

In order for a court to find that a transfer is in a payee's "best interest," various factors are considered, including:

the payee's age; mental and physical capacity; maturity level; ability to show sufficient income that is independent of the payments sought for transfer; capacity to provide for the welfare and support of the payee's

dependents; the need for medical treatment; the stated purpose for the transfer; and the demonstrated ability of the payee to appreciate the financial terms and consequences of the proposed transfer based upon truly independent legal and financial advice.

(Settlement Capital Corp., 1 Misc 3d 446, 455 [2003]). The timing of the application and the adequacy of the information provided are also important considerations on the petition. (Id.).

“[T]he payee’s age; mental and physical capacity; [and] maturity level” each weigh in favor of approval of the proposed transfer. (Id.). Ms. Taylor is a 37 year old mother of three children, ages 8, 12, and 15. She is a widow and is raising her three children on her own. She supports herself as a private school teacher. This record demonstrates sufficient proof of Ms. Taylor’s mental capacity, physical capacity, and maturity level.

The record fails “to show sufficient income that is independent of the payments sought for transfer” and Ms. Taylor’s “capacity to provide for the welfare and support of [her] dependents,” which weighs against a “best interest” finding. (Id.). Here, Ms. Taylor alleges that she is a teacher at a private school, but does not state her income. Her affidavit alleges, in conclusory fashion, that she does not “rely upon [the] structured settlement to supplement” her regular income, which is sufficient to meet her “usual and customary financial obligations.” No facts are alleged to support such conclusions. Also, many of the debts Ms. Taylor seeks to pay off with the proposed transfer are “usual and customary financial obligations”, including her car payments and children’s medical bills.

The petition did not demonstrate an extraordinary “need for medical treatment” to support a “best interest” finding. (Id.). The record does not exhibit that either Ms. Taylor, or her

children, require future medical treatment that is out of the ordinary. Nor does the petitioner demonstrate whether Ms. Taylor has medical insurance for herself or her children. Additionally, Mr. Taylor will require no future medical care, as he has since passed away.

The alleged “purpose of the transfer,” does not support an approval of the proposed transfer. (Id.). Ms. Taylor generally alleges that the purpose of this transfer is to repay debts. The debts she wishes to pay off include a Social Security Administration overpayment, medical expenses incurred by her husband’s death, recent family medical bills, a judgment, back taxes, funeral expenses, and car payments. The record fails to demonstrate, however, how many of these debts were incurred. No explanation is offered as to why these recently incurred debts must be immediately paid, at a great future loss, or the lack of any other means to pay off these debts. (Id. at 453). There is no indication as to why Ms. Taylor is unable to secure a loan at a more favorable rate than the one offered by this transfer. (See 321 Henderson Receivables Origination, LLC v. Nelson, 21 Misc 3d 1109[A], *3, 2008 NY Slip Op 52019[U] [2008]). Additionally, in 2005, the record demonstrates that Mr. Taylor transferred 180 monthly payments of \$1,786.66 of his structured settlement. The petition does not state what compensation Mr. Taylor received in exchange for those interests, what the funds were used for, or if any of these funds remain available for Ms. Taylor’s current use. This lack of proof weighs heavily against a finding that the proposed transfer is in Ms. Taylor’s “best interest.”

Similarly, Ms. Taylor’s “ability . . . to appreciate the financial terms and consequences of the proposed transfer based upon truly independent legal and financial advice” has not been sufficiently demonstrated on this record. (Settlement Capital Corp., 1 Misc 3d at 455). While the petition alleges that Ms. Taylor waived her right to seek independent counsel with regard to

this matter, an exhibit attached to the petition and signed by Ms. Taylor specifically states that she did seek such advice. Such an obvious contradiction in the record weighs against a finding that Ms. Taylor appreciated the financial terms of this transaction. Additionally, the petition includes no proof of the substance of the opinions she received from the attorney she allegedly consulted with, a “noteworthy gap” in the petition. (Settlement Funding of NY, LLC, 195 Misc 2d 721, 723 [2003]).

Weighing the above, and considering the lack of information submitted, this Court is unable to find that the proposed transfer is in the “best interest” of Ms. Taylor and her children.

Considering next whether this transfer is “fair and reasonable,” “the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount” are considered. (General Obligations Law § 5-1706[b]).

Here, this Court cannot find that this transfer is “fair and reasonable” because Ms. Taylor would receive a mere 24% of the present value of her payments sought to be transferred. Petitions for transfers with similar, or more favorable, percentage returns have often been rejected by courts as being not “fair and reasonable.” (See 321 Henderson Receivables Origination, LLC, 21 Misc 3d at *4 [rejecting a petition where the payee would receive less than half of the present value of her payments]; Settlement Funding of NY, LLC v. Utica Mutual Ins. Co., 16 Misc 3d 1124[A], * 2, 2007 NY Slip Op 51563[U] [2007][rejecting a petition where the payee would receive “only 45.7% of the present value” of the payments]; 321 Henderson Receivables, LP v. Fontana, 13 Misc 3d 1216[A], *2, 2006 NY Slip Op 51848[U] [2006][rejecting a petition where the payee would receive “only 43.9% of the present value” of the payments]; Settlement Funding of NY, LLC, 195 Misc 2d 721, 723 [2003][rejecting a

petition where the payee would receive only 47.95% of the present value of his payments]; Settlement Capital Corp., 1 Misc 3d at 462 [finding it “unconscionable” that the payee would receive only 29% of his payments]).

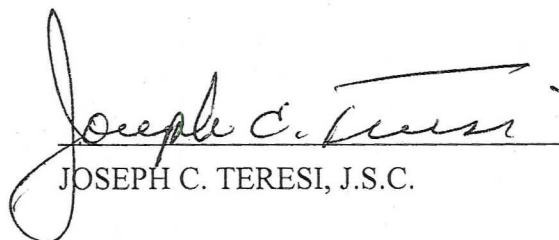
Additionally, petitioner failed to demonstrate why the discount rate of 12.46% was used or how it was calculated, to arrive at the gross advance payment due Ms. Taylor. (Settlement Capital Corp., 1 Misc 3d at 457). Without this information, this Court is unable to find that the discount rate is “fair and reasonable.” The Court is similarly unable to find that petitioner’s \$1,900.00 processing fee is “fair and reasonable” because the disclosure statement did not show how it was “calculated or what [it] consisted of.” (321 Henderson Receivables Origination, LLC, 21 Misc 3d at *4).

Because the petitioner failed to demonstrate that this transfer is in Ms. Taylor’s “best interest” and is “fair and reasonable,” the petition is denied.

All papers, including this Decision and Order are being returned to the attorneys for the petitioner. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: October 31 2008
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, dated September 2, 2008, with attached Verified Petition, dated September 2, 2008, and attached Affidavit in Support of Petition of Jennifer Taylor, dated August 26, 2008, with attached exhibits A-F.