

Matter of Stone St. Capital, LLC v Larkins

2009 NY Slip Op 32181(U)

September 14, 2009

Supreme Court, Queens County

Docket Number: 13823/09

Judge: Patricia P. Satterfield

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Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19

Justice

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In the Matter of the Application of
STONE STREET CAPITAL, LLC, its Successors and/or
Assigns,

Index No: 13823/09

Petitioner,

**DECISION AFTER
STRUCTURED SETTLEMENT
HEARING**

-against-

Hearing Date: 7/1/09
Final Submission Date:
8/10/09

For Approval of a Transfer of a Structured Settlement
Payment Right of MATTHEW LARKINS to STONE
STREET CAPITAL, LLC, its Successors and/or
Assigns,

Respondent.

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The following papers numbered 1 to 10 read on this petition for an order approving the transfer of structured settlement payment rights from Matthew Larkins to petitioner Stone Street Capital LLC.

	PAPERS NUMBERED
Notice of Petition-Petition-Affidavits-Exhibits.....	1 - 8
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Upon the foregoing papers, it is ordered that the petition for an order approving the transfer of structured settlement payment rights is determined as follows:

Petitioner Stone Street Capital, LLC, its Successors and Assigns (“Stone Street”) makes the instant application, pursuant to General Obligations Law, Title 17, known as the Structured Settlement Protection Act (“SSPA”), for an order approving the transfer of payment rights vested in Matthew Larkins (“Larkins”) under a structured settlement obligated and funded by Allstate Life Insurance Company of New York and Allstate Assignment Company (“Allstate”), respectively. By hearing on July 1, 2009, which was also the return date of the petition, for this Court’s determination of the propriety of the application for the transfer of those rights to Stone Street, Larkins testified that he is a 22 year old single person with no dependents, who works off the books performing odd jobs such as gardening and moving work. He further testified that he receives payment two to three times

weekly, so that he has stable income other than the periodic payments he wishes to sell. He indicated that he just moved from his current residence and lives between the homes of his aunt in Valley Stream and his mother in Elmont, both located in Long Island, New York. Larkins stated, in support of the application for judicial approval of the proposed transfer, and his affidavit in support reiterated, that he needs the money to make a down payment on the purchase of a house while mortgage rates are historically low. He further testified that he also intends to use a portion of the money to go to college.

Discussion

Pursuant to a Purchase, Transfer and Assignment Agreement executed on April 18, 2009, Larkins transferred to Stone Street his annuity rights to 359 monthly payments in the amount of \$557.58, totaling \$200,171.22, commencing on July 1, 2009 through May 1, 2039. In consideration, he agreed to receive a gross advance amount of \$51,811.00, less a “processing fee” of \$1900.00, yielding a net advance amount from Stone Street of \$49,911.00, based upon an annual discount rate of 13.41%. General Obligations Law § 5-1706, entitled, “Approval of transfers of structured settlement payment rights,” states the following:

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;
- (c) 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.¹

The SSPA was adopted by the State Legislature to give greater protection to individuals either

¹ The Legislative Memorandum in Support [2002 Sess. Law News of N.Y. Legis. Memo Ch. 537 (McKinney's)] relating to the enactment of the Structured Settlement Protection Act, set forth the following as justification for the act:

Structured settlements are a well-recognized means of compensating personal injury victims and workers' compensation claimants. They are negotiated between the injured person's counsel and the other parties to a personal injury action or workers' compensation claim. The structuring of a settlement enables the settlement recipient to receive secure tax-free income over a course of years or a lifetime to provide for future medical care, housing, education, etc. In this way, the proceeds from an award are not dissipated or lost by individuals unaccustomed to managing large sums. Recently 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 settlement payments are generally prohibited by contract (and often prohibited under applicable state law) factoring companies have built a rapidly expanding business around circumventing these prohibitions. This market in the buying and selling of injured individuals' payment streams can pose a hazard to existing recipients of structured settlements and to the public assistance programs on which recipients must often rely, once they have traded away secure income from structured settlements. The market also threatens the viability of structured settlements for injury victims who may need them in the future. This legislation seeks to curtail this practice by limiting transfers of structured settlement payments to true hardship cases. The Act does this by requiring full disclosure of the costs of any factoring transaction, advance notice to interested parties, and court approval of any transfer. Transfers of structured judgments or settlements for workers' compensation claims would continue to be prohibited.

entering into a structured settlement agreement or negotiating to sell or transfer a periodic payment thereunder to a third party. At issue is whether approval of the proposed transfer would be consistent with the letter and spirit of the SSPA.

The plain language of General Obligations Law § 5-1706 sets forth several procedural mandates that must be adhered to as a condition precedent to judicial approval of an application for transfer of a structured settlement to a third party. Equally significant, the statute mandates that the Court, in determining such an application, apply a two prong inquiry based upon considerations of prudence, equity and reason, and vests in the Court the authority to make an independent discretionary determination as to whether the “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.” The instant record establishes that the petition and supporting papers are in compliance with the procedural mandates enumerated under the SSPA. Having satisfied the procedural requirements, this Court must scrutinize the proposed transfer, applying the two-pronged “best interest” and “fair and reasonable” test.

This Court has previously noted in In re Settlement Capital Corp., 1 Misc.3d 446 (N.Y.Sup. 2003), that absent statutory mandate or a determination by a higher court, which clearly defines the “best interest” standard as one that is analogous to the notion of “hardship” articulated in the Legislative Memorandum in Support of the SSPA, the temptation to adopt, as a general proposition, a “best interest” standard that bespeaks of “desperate or dire straits” or a “life or death emergency” is overly restrictive. In acknowledging the ambiguities between the “Best Interest” standard promulgated by the SSPA and the legislative intent set forth in the Legislative Memorandum in Support, on September 21, 2004, the Legislature amended Subdivision (b) of section 5-1706, to add the following language: “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.”² Consequently, as the statute

² The justification for the amendment on the New York Bill Jacket [2004 Assembly Bill 11677, Ch. 480 (McKinney's)], provides, in pertinent part, the following:

The law went into effect in February of 2003, since then, courts reviewing proposed structured settlement transfers have applied varying (and sometimes inconsistent) standards reflecting some possible confusion regarding the legislature's intent in enacting the law in 2002. It is believed that some of the confusion and inconsistency in application of the 2002 may stem from certain inaccuracies in the Bill Memo that accompanied the 2002 Act. The Structured Settlement Protection Act, as enacted, was the product of a three-year legislative discussion. As originally introduced, the legislation did not require that the then present value of a promise of

(continued...)

does not require courts to limit the best interest standard to indicia of hardship, this Court adopts a more global consideration, finding that the best interest standard requires an individualized analysis to determine whether the proposed transfer of structured settlement payments, which were designed to preserve the injured person's long-term financial security, will provide needed financial rescue without jeopardizing or irreparably impairing the financial security afforded to the payee and his or her dependents by the periodic payments. After an independent analysis, this Court determines that the best interest prong should be assessed on a case by case basis, giving specific consideration to such factors as 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 dependants; the need for medical treatment; the stated purpose for the transfer; and the demonstrated ability of the payee to appreciate the financial terms and

²(...continued)

future payments be disclosed to tort claimants as a precondition to establishing any structured settlement. Moreover, as originally introduced, the legislation barred transfers of structured settlement payment rights absent a court finding that the transfer was necessary to avoid "imminent financial hardship." After discussion and deliberation, the "hardship" requirement was eliminated as a precondition to transfers and the requirement that disclosures be made "at the front end" was added. As sometimes happens at the end of session, the bill memo drafted to accompany the original legislative proposal was renumbered and attached to the final legislation without revision to reflect the significant and substantive differences between the original proposal and the final bill as enacted. Thus, while the law as enacted into statute did not require a finding of "hardship," the bill memo accompanying the Act contained the vestigial (and erroneous) assertion that the bill was intended to require a showing of hardship.

Since enactment, several courts have cited the bill memorandum (and its erroneous and vestigial suggestion that transfer approvals be restricted to exceptional instances of "hardship") in denying transfers of payment rights sought by consumers. In fact, the Legislature neither intended nor required any such thing. [] An adult who has not been adjudicated incompetent or incapable of handling his or her own affairs is generally capable of determining what is in their own best interests with regard to their property and affairs, including their structured settlement payment rights, without having to demonstrate or prove "hardship," provided the consumer has been afforded the admonitions to consult with counsel, the rights of cancellation, and the disclosures required by the 2002 Act. This Act is intended to confirm those principles and eliminate the confusion stemming from language in the 2002 Bill Memo.

consequences of the proposed transfer based upon independent legal and financial advice.

Here, this Court expresses reticence in finding that the transfer of the remaining balance of Larkins' periodic payments in the sum of \$200,171.22 is economically sound, particularly in view of the fact that Larkins seeks to sell that amount for a present value of \$49,911.00. Although the Court is marginally satisfied that Larkins understands the terms of the proposed transfer, that satisfaction is belied by the apparent lack of appreciation for the financial consequences of the proposed transfer, and the failure to demonstrate a maturity, sophistication and intelligence to make financial decisions that appear to be in his best interest. This lack of appreciation of financial consequences and sophomoric fiscal acumen is underscored by Larkins' testimony that when he turned 18, he began receiving monthly payments of \$250.00, and received a lump sum payment of \$17,000.00. He further testified that he received more than one lump sum payment. Indeed, according to the June 9, 2004 Settlement Agreement and Release, commencing July 1, 2005, Larkins received four annual lump sum payments in the amount of \$17,770.79, guaranteed for four years, which total \$71,083.16. The record is devoid of any testimony with regard to the status of these funds, however, implicit in this request to sell the future payments is the notion that there is a lack of funding sufficient to cover larger expenses. More pointedly, this Court presumes that the \$71,083.16 which he received from 2005 to 2009, has basically been consumed with very little to show for such consumption.

Moreover, although Larkins intends to improve his current living condition by purchasing a house, his intentions would leave him in a position whereby he would be incapable of financially handling the enormous responsibility of being a homeowner when all the ancillary responsibilities of home ownership are factored into his financial composite. Equally disquieting is Larkins' inability to show sufficient income that is independent of the payments sought for transfer. Although Larkins contends that he does not depend on the monthly annuity payments as his off the book work is stable income sufficient to provide for his need, there is clearly a lack of understanding as to what would constitute stable income sufficient enough to maintain a household, particularly in this economically depressed environment where odd jobs, indeed, all jobs, continue to dissipate at an alarming rate.

Further, although Larkins indicated that he would also use a portion of the money to go to college to study business management, and states that he has upcoming general admissions tests for Fordham, Columbia and SUNY College, there has been no demonstration that Larkins has secured entry into an institution of higher learning. Although this Court can appreciate, and certainly encourages, a vision which is indicative of his desire to seek to procure a successful future, this Court is unwavering in its belief that approval of this settlement would serve to place Larkins in an unfavorable financial position prospectively. It is clear that the common theme in the line of thinking expressed above is illustrative of Larkins' need for independent professional financial advice and guidance, and further bolsters this Court's charge to carefully cull out an individualized analysis to balance the preservation of his long-term financial security with the expressed need for financial rescue, the hardship of which Larkins assumes he is currently encountering. Indeed, had Larkins had proper guidance with regard to the four lump sum payments totaling \$71,083.16, which

ironically is \$21,092.16 more than the \$49,911.00 that he will receive if this Court were to approve this application to sell his future payments totaling \$200,171.22, he would have had more than enough money to put a down payment on a house and begin his schooling, without jeopardizing the future payments which he now seeks to sell. Consequently, application of these and other factors to the instant case compels the conclusion that the proposed transfer at issue is not in the best interest of Larkins.

As previously set forth, the protections afforded by the SSPA vest this Court with the authority to determine whether the transfer is in the best interest of the payee, *and* whether the transaction, including the discount rate and the fees and expenses, are fair and reasonable. Therefore, as the best interest standard is an independent query from the fair and reasonable standard, and the two-prong standard must be met prior to approval of such transfer, a further inquiry by this Court would be academic as Larkins has failed to demonstrate that the transfer would be in his best interest. Accordingly, the petition is denied.

Dated: September 14, 2009

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J.S.C.