

**Matter of Crotty v Allstate Assignment Co.**

2010 NY Slip Op 32180(U)

August 3, 2010

Sup Ct, Queens County

Docket Number: 8854/10

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 Petition of

Index No: 8854/10  
Motion Date: 6/30/10  
Motion Cal. No: 25  
Motion Seq. No: 12

ADRIANA M. CROTTY a/k/a ADRIANA CROTTY  
for Judicial Approval of Absolute Assignment with  
SETTLEMENT FUNDING OF NEW YORK, LLC,  
pursuant to Article 5 Title 17 of the New York  
General Obligations Law,

Petitioner,

-against-

ALLSTATE ASSIGNMENT COMPANY and  
ALLSTATE LIFE INSURANCE COMPANY OF  
NY,

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 Adriana Crotty to petitioner Settlement Funding of New York, LLC.

	PAPERS NUMBERED
Notice of Petition-Petition-Affidavits-Exhibits.....	1 - 9
Transcript.....	10

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 Settlement Funding of New York, LLC (“Settlement Funding”) 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 Adriana Crotty (“Crotty”) under a structured settlement obligated and funded by Allstate Assignment Company and Allstate Life Insurance Company of New York (“Allstate”), respectively. By hearing on June 2, 2010, which was the original return date of the petition, for this Court’s determination of

the propriety of the application for the transfer of those rights to Settlement Funding, Crotty testified that she is an 18 year old single person with no dependents, who is not employed because she is a full-time student. She further testified that she is seeking to sell a portion of the \$2500.00 monthly payments that she receives. She indicated that she lives in a rental unit with her mother, her brother and his wife and child. Crotty stated, in support of the application for judicial approval of the proposed transfer, and her affidavit in support reiterated, that initially she needed the money to purchase outright a foreclosed house in her neighborhood. However, she testified that as she cannot afford to do so at this juncture, she will use the money to bring the rent current and pay the rent for her family going forward. She further testified that she also intends to use a portion of the money to go to college once she graduates from high school.

### Discussion

Pursuant to an Absolute Assignment Agreement executed on April 4, 2010, Crotty transferred to Settlement Funding her annuity rights to 140 monthly payments in the amount of \$500.00, totaling \$70,000.00, commencing on June 10, 2010 through January 10, 2022, and one lump payment in the amount of \$50,000.00, due and payable on February 10, 2022. In consideration thereof, she agreed to receive a gross advance amount of \$42,696.22, less legal fees of \$2,000.00 and a “processing fee” of \$200.00, yielding a net advance amount from Settlement Funding of \$40,496.22, based upon an annual discount rate of 14.99%. 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.

The SSPA was adopted by the State Legislature to give greater protection to individuals either 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.”<sup>1</sup> Consequently, as the statute

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<sup>1</sup> 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:

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

Here, this Court expresses reticence in finding that the transfer of 140 periodic payments in the amount of \$500.00 and a lump sum payment of \$50,000.00, totaling \$120,000.00, is economically sound, particularly in view of the fact that Crotty seeks to sell that amount for a present value of \$40,496.22, including fees. Although the Court is marginally satisfied that Crotty 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 her best interest. This lack of appreciation of financial consequences and sophomoric fiscal acumen is underscored by the fact that she did not seek independent counsel to advise her regarding this transaction, but relies exclusively upon the representations made by Settlement Funding. Moreover, Crotty testified that when she turned 18 on February 10, 2010, she began receiving monthly payments of \$2500.00, and received a lump sum payment of \$50,000.00. She further testified that most of the lump sum payment that she receive went to paying the monthly \$2800.00 rent for the

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<sup>1</sup>(...continued)

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.

apartment where her family lives, and securing an attorney for her brother because he had “some problems with the law.” When asked by this Court if any part of the \$50,000.00 periodic payment is left, she stated, “I’m not sure approximately how much is left, but some of it.” When further questioned by this Court on this point, Crotty stated, “I don’t recall the amount.” However, notwithstanding her inability to recall the amount of the funds remaining, if any, implicit in this request to sell the future payments is the notion that there is a lack of funding sufficient to cover expenses. More pointedly, this Court presumes that the \$50,000.00 which she received just four months ago, has basically been consumed with very little to show for such consumption. Moreover, the apparent dissipation of funds is further evinced by the fact that Crotty, an 18 year old high school student, has received an additional \$2500.00 monthly since February 10, 2010, yet still seeks additional funding in the form of this transaction.

Moreover, although Crotty initially intended to improve her current living condition by purchasing a house, her intentions would leave her in a position whereby she would be incapable of financially handling the enormous responsibility of being a homeowner when all the ancillary responsibilities of home ownership are factored into her financial composite. Although she testified that she no longer desires to buy a house with the funds, equally disquieting is the unemployed Crotty’s desire to use the money to pay the \$2800.00 rent for the apartment where she lives with her mother, who works part-time as a dog breeder, her 20 year old brother and his wife, who both are unemployed, and their eight month old infant. Based upon her current familial dynamics, it is clear to this Court that there is certainly an inability for Crotty to show sufficient income that is independent of the payments sought for transfer. Although she is seeking to sell, *inter alia*, \$500.00 of the \$2500.00 monthly payments, she has no other income, and would be unable to provide for neither herself, nor the needs of her family, for whom Crotty presumably is the sole source of assistance.

Further, although Crotty indicated that she would also use a portion of the money to go to college to study culinary arts, she currently attends World Journalism Preparatory School, from which she is scheduled to graduate this year, and there has been no demonstration that Crotty has secured entry into an institution of higher learning. Although this Court can appreciate, and certainly encourages, a vision which is indicative of her desire to seek to procure a successful future, this Court is unwavering in its belief that approval of this settlement would serve to place Crotty in an unfavorable financial position prospectively. It is clear that the common theme in the line of thinking expressed above is illustrative of Crotty’s 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 her long-term financial security with the expressed need for financial rescue, the hardship of which Crotty assumes she is currently encountering. Indeed, had Crotty had proper guidance with regard to the lump sum payment she received, as well as the monthly periodic payments, which ironically is \$20,000.00 more than the \$40,496.22 than she would receive if this Court were to approve this application to sell her future payments totaling \$120,000.00, she would have had more than enough money to put a down payment on a house and begin her schooling, without jeopardizing the future payments which she now seeks to sell. Indeed, for the next three years, Crotty will receive a lump sum payment of \$50,000.00 on her birthday,

which, if used prudently, would be sufficient to not only improve her living conditions, but pay for her undergraduate education in full. 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 Crotty.

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 Crotty has failed to demonstrate that the transfer would be in her best interest. Accordingly, the petition is denied.

Dated: August 3, 2010

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J.S.C.