

**Matter of J.G. Wentworth Originations, LLC v Myong  
Hui Baek**

2011 NY Slip Op 30614(U)

February 28, 2011

Supreme Court, Nassau County

Docket Number: 21859/10

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 15 NASSAU COUNTY**

**PRESENT:**

***Honorable Karen V. Murphy***  
**Justice of the Supreme Court**

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**In the Matter of the Petition of**

**J.G. WENTWORTH ORIGINATIONS, LLC, f/k/a  
321 HENDERSON RECEIVABLES  
ORIGINATION, LLC,**

**Index No. 21859/10**

**Motion Submitted: 12/21/10  
Motion Sequence: 001**

**Plaintiff(s),**

**-against-**

**MYONG HUI BAEK, METROPOLITAN LIFE  
INSURANCE COMPANY and REPUBLIC  
FRANKLIN INSURANCE COMPANY,**

**As Interested Persons Pursuant to GOL § 5-1701(c).**

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The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....
- Reply.....
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Petitioner J.G. Wentworth Originations, LLC ("J.G. Wentworth") seeks an Order from the Court granting judicial approval of the transfer/sale of a structured settlement payment from Myong Hui Baek to J.G. Wentworth. Metropolitan Life Insurance Company and

Republic Franklin Insurance Company have not submitted opposition to the requested relief.<sup>1</sup>

This action arises from a structured settlement agreement pertaining to a 1988 personal injury action involving Myong Hui Baek. Ms. Baek has presumably received payments pursuant to the structured settlement, but now seeks to assign what appears to be the remainder of the structured settlement to petitioner in exchange for a sum of money.

The aggregate sum of money allegedly due Ms. Baek pursuant to the settlement agreement is \$121,000.<sup>2</sup> The payments petitioner seeks to purchase are as follows: 1) ten (10) monthly payments of \$700 each, beginning on January 15, 2011 and ending on October 15, 2011; 2) one payment of \$30,000 on October 15, 2011; and 3) 120 monthly payments of \$700 each, beginning on November 15, 2011 and ending on October 15, 2021. Ms. Baek wishes to sell/transfer those payments to petitioner for the net amount of \$ 75,000 in cash. Ms. Baek states in her affidavit that she intends to use the proceeds to consolidate outstanding debt, perform “home repairs,” and “the remainder of which will be spent towards business capital.” Ms. Baek states that she is fifty (50) years old, married, and has no children. She also states that she is “self-employed” by a laundromat, as the owner, “making approximately \$35,000.” Ms. Baek does not state whether her claimed salary is an annual salary, or a monthly salary, etc., or whether that figure is her gross or net compensation. In the absence of any other evidence, the Court will presume that Ms. Baek’s gross annual income is \$35,000.

Petitioner has provided as exhibits, *inter alia*, the disclosure statement dated October 11, 2010, the statement of professional representation dated October 22, 2010, the affidavit of Judson N. Caddy, Jr., the affidavit of Randi Sellari, the purchase contract dated October 22, 2010 pertaining to the prospective sale/transfer of the payments, and the settlement agreement. The purchase agreement and disclosure forms state that the sale/transfer of the \$121,000, with an allegedly discounted present value of \$110,933.48, will result in a

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<sup>1</sup>It does not appear that the insurance company respondents were properly served with the instant application. J.G. Wentworth’s affidavit of service indicates that respondents were served with notice of this special proceeding by mailing the supporting papers via Federal Express, rather than properly serving respondents pursuant to CPLR § 311 or 312-a. Although petitioner’s application may be denied with leave to renew on this basis alone, the Court will address the merits of the petition in the body of its decision.

<sup>2</sup>Neither petitioner nor Ms. Baek has provided any details regarding the personal injury action. An unsigned copy of the structured settlement has been included in petitioner’s submission to the Court.

payment to Ms. Baek of \$75,000,<sup>3</sup> which is equivalent to her being charged an interest rate of 13.25% annually. Based on a price quote from Metropolitan Life Insurance Company, the current cost of purchasing a comparable annuity for the aggregate sum of the payments (\$121,000) is \$114,793 (discounted present value). According to petitioner, Ms. Baek's gross/net would be 67.60 % of the discounted present value of the payment sought to be sold and transferred.

New York's Structured Settlement Protection Act, General Obligations Law, Title 17 was enacted to provide greater protection to individuals entering into structured settlement agreements, and/or negotiating to sell or transfer a periodic payment to a third party. Since 2002, such transfers require judicial approval in order to protect the long-term financial security of the structured settlement payees (*Matter of Settlement Funding of New York, LLC (Ciraolo) v. Structured Settlement Trust and Allstate Life Insurance Co.*, 2009 WL 3713136, 2009 Slip Op. 32553U [Sup. Ct. Nassau County, Trial Order 2009]).

Specifically, General Obligations Law § 5-1706 sets forth the express findings that a Court must make in order to authorize a transfer of any structured settlement payment to a third party. Among the findings required to be made for approval of the transfer are that the transfer complies with the requirements of Title 17; that the transfer "is in the best interests of the payee;" that the discount rate applied is "fair and reasonable;" that the payee has been advised in writing to seek independent professional advice regarding the transfer, and has either received such advice or knowingly waived such advice in writing.

The "best interests" analysis must be approached on a case-by-case basis, considering whether the transfer of a structured settlement payment "will provide needed financial rescue without jeopardizing or irreparably impairing the financial security afforded to the payee . . . by the periodic payments" (*Matter of the Petition of Settlement Capital Corporation for Approval of Transfer of Structured Settlement Payment Rights of Richard C. Ballos*, 1 Misc.3d 446, 455, 769 N.Y.S.2d 817 [Sup. Ct. Queens County, 2003]). Among the factors to be considered, are the payee's age, mental and physical capacity, maturity level, ability to show sufficient income independent of the payments sought for transfer, the stated purpose for the transfer, and the payee's ability to appreciate the financial terms and consequences of the proposed transfer based on independent legal and financial advice (*Id.* at 455; *Matter of the Petition of Ryan R. Barr and 321 Henderson Receivables L.P. v. Hartford Life Insurance Co.*, 4 Misc.3d 1021A, 798 N.Y.S.2d 342 [Sup. Ct. Nassau County 2004]).

In addition to the requirement that the transaction be in the best interests of the payee, the transferee must demonstrate that the discount rate used to determine the gross advance

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<sup>3</sup>The \$75,000 is amount of both the gross and net payment. No fees are being deducted from the proposed payment of \$75,000.

amount, and the fees and expenses used to determine the net advance amount, are “fair and reasonable” (*CPLR § 5-1706 (b)*; *Matter of Capital Corporation, supra* at 460-63; *Matter of Petition of Washington Square Financial LLC v. Allstate Assignment Company*, 29 Misc.3d 1204A, 2010 N.Y. Slip Op. 51688U [Sup. Ct., Queens County 2010]).

General Obligations Law (“GOL”) § 5-1703 requires that, prior to a payee signing a transfer agreement, the transferee must provide written disclosure setting forth, *inter alia*, the aggregate amount of the payment, the discounted present value of the payment, the gross advance amount, itemization of fees to be deducted, and the net advance amount that will ultimately be paid to the payee. The statute mandates that the disclosure be provided to the payee “not less than ten days prior to the date on which the payee signs a transfer agreement.” Furthermore, the disclosure must be provided to the payee by “first class and certified mail, return receipt requested or United States postal service priority mail.”

Turning first to the notice requirements of GOL § 5-1703, petitioner does not state by what method it provided Ms. Baek with the disclosure statement, just that she purportedly signed a copy dated October 11, 2010. Because petitioner has not submitted proof of mailing, the Court is unable to determine whether the statutory time requirements have been satisfied.

In addition, the structured settlement upon which this action is based has been submitted by petitioner. It is, however, unsigned, and the releasor named in that agreement is “Myong Olden,” not Myong Hui Baek<sup>4</sup>. In her own affidavit, Ms. Baek does not explain the discrepancy in the names. Absent a sworn statement by Ms. Baek regarding the name discrepancy, and that she is the same individual named in the 1991 settlement agreement, this Court finds petitioner’s application to be insufficient.

In any event, the Court further finds that the transfer/sale is not in Ms. Baek’s best interests, and that petitioner has not demonstrated by evidence in admissible form that the discount rate applied is fair and reasonable.

Firstly, the “affidavit” of Judson N. Caddy, Jr. attesting to the current cost of purchasing a comparable structured settlement annuity from Metropolitan Life Insurance Company (\$114,793), is unsworn. It is this figure from which petitioner draws the conclusion that Ms. Baek’s gross/net would be 67.60 % of the discounted present value of the payment sought to be sold and transferred. Thus, petitioner’s conclusion regarding the discounted present value is unsupported by admissible evidence.

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<sup>4</sup>Paragraph 4 of the unsigned settlement agreement states that the “releasor Myong Olden may not assign, pledge or sell the consideration to any third party in consideration of the payments made to and to be made by and on behalf of the payors . . . .”

Secondly, Ms. Baek has failed to provide a detailed explanation of her “outstanding debt,” or of what “home repairs” she intends to make. Ms. Baek has also failed to outline how the remainder of the \$75,000 will be “spent towards business capital.” Indeed, Ms. Baek has not even advised this Court as to the type of “business” to which she is referring. Assuming that her \$35,000 income is an annual gross salary, it appears to the Court that Ms. Baek may not have sufficient income independent of the payments sought for transfer.

Although Ms. Baek states that she is married, she has not stated whether her husband is employed, or what he earns, and whether or not he is able to financially assist her in consolidating outstanding debt, making home repairs, and investing in a business.

The Court now turns to the issue of the discount rate selected for the proposed transfer. Courts have routinely declined to accept as fair and reasonable high discount rates, when transferees fail to explain why a particular discount rate is selected, and why the rate should be deemed fair and reasonable (*Matter of Settlement Funding of New York, LLC for Approval of a Transfer of a Structured Settlement Payment Right of Christlyne B. Point Du Jour*, 2010 N.Y. Slip Op. 52102U, 2010 N.Y. Misc. LEXIS 6081 (Sup. Ct., Queens County 2010); *Matter of Settlement Funding of New York, LLC for Approval of a Transfer of a Structured Settlement Payment Right of Kareem M. Williams*, 2010 N.Y. Slip Op. 52103U, 2010 N.Y. Misc. LEXIS 6085 (Sup. Ct. Queens County 2010); *Matter of Petition of Washington Square Financial LLC, supra*; *Settlement Funding of New York, LLC v. Hartford-Comprehensive Employee Ben. Svc. Co.*, 25 Misc.3d 1220A, 901 N.Y.S.2d 910 [Sup. Ct. Queens County 2009]; *Matter of the Petition of Settlement Capital Corporation (Ballos), supra*).

In this case, petitioner has not demonstrated why this particular discount rate of 13.25% was selected to apply to the proposed transfer, and/or why it should be deemed fair and reasonable. The affidavit of Randi Sellari, petitioner’s President and Chief Operating Officer, lacks persuasiveness. The Sellari affidavit amounts to nothing more than a general dissertation concerning the state of the structured settlement market, and references to the Internet, but contains no factual explanation as to how petitioner arrived at the determination that a 13.25% discount rate should apply to Ms. Baek’s proposed transfer.

For all of the foregoing reasons, the instant petition is in all respects denied, and the proceeding is dismissed.

Petitioner’s counsel is directed to serve a copy of this Order, with Notice of Entry, upon each of the respondents, and in accordance with the CPLR.

The foregoing constitutes the Order of this Court.

Dated: February 28, 2011  
Mineola, N.Y.

*Karen V. Murphy*  
J. S. C.  
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**ENTERED**

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**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**