

Matter of Ray

2011 NY Slip Op 30793(U)

March 28, 2011

Supreme Court, New York County

Docket Number: 2011-0056

Judge: Ferris D. Lebus

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At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Supreme Court, 92 Court Street, City of Binghamton, New York, on the 18th day of March, 2011.

PRESENT: HON. FERRIS D. LEBOUS, JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

In the Matter of MATTHEW K. RAY,
TRAVELERS CASUALTY & SURETY COMPANY
(f/k/a) AETNA CASUALTY & SURETY COMPANY
and ING LIFE INSURANCE AND ANNUITY COMPANY
(f/k/a) AETNA LIFE INSURANCE AND
ANNUITY COMPANY,

DECISION AND ORDER

Interested Parties,

Index No. 2011-0056
RJI No. 2011-0037

Regarding the Transfer of Structured Settlement Proceeds
to Stone Street Capital, Inc.,

Petitioner.

APPEARANCES:

COUNSEL FOR PETITIONER
STONE STREET CAPITAL, INC.:

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HON. FERRIS D. LEBOUS, J.S.C.

Petitioner, Stone Street Capital, Inc., moves for judicial approval of the proposed transfer of certain future payment rights of Matthew Ray due under a structured settlement agreement in exchange for the present payment of a discounted lump sum (General Obligations Law § 5-1701 *et seq.*).

BACKGROUND

This is Mr. Ray's third request for judicial approval of such a transfer. The record shows that Mr. Ray obtained a structured settlement arising out of a personal injury action with payments scheduled as follows:

\$50,000 paid at time of 1995 settlement
\$20,000 on May 25, 1997
\$50,000 on May 25, 2004
\$60,000 on May 25, 2009
\$75,000 on May 25, 2014
\$75,000 on May 25, 2019
\$100,000 on May 25, 2024
\$100,000 on May 25, 2029
\$111,923 on May 25, 2034.

In 2006, 321 Henderson Receivables Origination, LLC and Mr. Ray submitted a petition (hereinafter "Petition #1") seeking approval of the transfer to petitioner of the \$60,000 payment due on May 25, 2009 in exchange for a lump sum payment to Mr. Ray of \$38,650 using a 18.14% discount rate. At that time Mr. Ray represented to the court that he sought to purchase land for \$18,650 and a trailer for \$20,000. The stated purpose convinced this court to grant Petition #1 as memorialized in an Order and Judgment dated February 27, 2007 under Broome Index No. 2006-2347.

In 2009, 321 Henderson Receivables Origination, LLC and Mr. Ray submitted a second petition (hereinafter "Petition #2"), this time seeking a transfer of \$29,193.63 out of the \$75,000 payment due on May 25, 2014. This court denied Petition #2 for the reasons stated in a Decision and Order dated March 11, 2009 (*Matter of Matthew Ray*, Sup Ct, Broome County, March 11, 2009, Lebous, J., Index No. 2008-3181).¹

By way of this petition ("Petition #3"), petitioner and Mr. Ray seek approval of an Agreement in which Mr. Ray would transfer his right to \$120,000 in total future payments (combining the \$75,000 payment due in 2014 and \$45,000 out of the \$75,000 payment due in 2019) in exchange for a net amount of \$61,736.69.

Mr. Ray's personal life has changed since his last petition. At the time of Petition #2, submitted one year ago, Mr. Ray was described as 29 years old, single with no children, and employed as a truck driver earning \$45,000 annually. Now, Mr. Ray indicates that while he is still unmarried, he has a ten month old son and is expecting the birth of a second child, lives with the mother of his children, and is still employed as a truck driver.

DISCUSSION

General Obligations Law § 5-1701 *et seq.*, also known as the "Structured Settlement Protection Act" or "SSPA", was enacted in 2002 due to the concern that structured settlement payees, such as Mr. Ray, are particularly prone to being victimized and quickly dissipating their

¹For ease of reference, the court has shortened the formal caption.

assets and to protect them from the growing number of companies using "[a]ggressive 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' (Assembly Mem in Support, 2002 McKinney's Session Laws of NY, at 2036)" (*Singer Asset Fin. Co., LLC v Melvin*, 33 AD3d 355, 357 [1st Dept 2006]). This legislation "[d]iscourages such transfers by requiring would-be transferees to commence special proceedings for the purpose of seeking judicial approval of the transfer [citations omitted]" (*Settlement Funding of N.Y., LLC*, 195 Misc 2d 721, 722 [2003]). "The SSPA clearly reflects the Legislature's dissatisfaction with the structured settlement transfer market rates, and its conclusion that payees cannot protect their best interest and thus require judicial supervision" (*Settlement Funding*, 195 Misc 2d at 724). "Clearly, the New York State Legislature in enacting [the] SSPA and in empowering the courts with the discretion to determine whether the terms of a proposed transfer of future payments are fair and reasonable did not intend for the courts to be mere rubber stamps" (*Matter of Settlement Capital Corp. [Ballos]*, 1 Misc 3d 446, 461 [2003]).

As such, this court's judicial function under the SSPA requires an evaluation of a variety of factors, but particularly: (1) whether the transaction is fair and reasonable; and (2) whether the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, if any. In determining whether the transaction is fair and reasonable, the court should examine the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount.

Here, petitioner determined the gross advance amount of \$61,736.69 by applying an annual discount rate of 14.00%, less a "processing fee" fee of \$1,900. The discount rate of 14.00% used here in Petition #3 is less than the 18.14% used in Petition #1 and the 18.16% used in Petition #2. That having been said, similar rates have been deemed unreasonable (*Settlement Funding*, 195 Misc 2d at 724 [15.46%]; *Settlement Capital Corp., [Ballos]*, 1 Misc 3d 446 [15.59%]; and *Matter of Settlement Capital Corp.*, 194 Misc 2d 711 [2003] [18.621%]). Moreover, the net advance amount proposed of \$61,736.69 to be paid to Mr. Ray represents approximately 50% of the total future payments of the \$120,000 that Mr. Ray would transfer to petitioner. Based on the foregoing, the court finds said transaction is not fair and reasonable.

The next consideration is whether the proposed transfer is in Mr. Ray's "best interest." With respect to Mr. Ray's personal situation, he avers that he is living with his girlfriend, Brittney, who is "taking care of our children, fulltime" (Ray's Affidavit, ¶ 13). Presumably, this means that Brittney is a stay at home mother and Mr. Ray is the sole source of financial support for the household.

With respect to Mr. Ray's employment situation, he avers that he continues to be employed fulltime as a truck driver for Hadd Trucking. However, Mr. Ray does not supply his annual income. The court will presume he is making at least, if not more, than the \$45,000 annual salary he reported in connection with Petition #2. Additionally, to the extent that Mr. Ray avers he needs funds to pay for the birth of his second child, Mr. Ray does not indicate what, if any, health insurance he receives from his employer.

With respect to Mr. Ray's financial situation, the court's prior Decision & Order addressed the problem of lack of information and the lack of information has continued in this third petition. In Petition #1, Mr. Ray represented to this court that he sought to purchase land for \$18,650 and a trailer for \$20,000. Mr. Ray now reports that the funds from Petition #1 were actually spent to pay off an unidentified debt of \$5,000, pay for improvements to a mobile home of \$25,000, and to purchase a used truck for \$8,000 (Ray's Affidavit, ¶ 6). In Petition #2, Mr. Ray averred that he needed funds to make a \$15,000 addition to his "house", \$10,000 to pay property taxes, and to pay utility and credit card bills (Ray's Affidavit in Support of Petition #2, ¶ 10). Now, in Petition #3, Mr. Ray states that he is "hoping to purchase a house in Norwich, which costs approximately \$35,000.00" (Ray's Affidavit ¶ 12). In this court's view, the record is unclear what, if any, property Mr. Ray currently owns, whether he paid and/or owes any property taxes on that property, and the value of that property. Nor is there any information regarding the proposed purchase of a home in Norwich.

There is also a lack of proof regarding Mr. Ray's prior payments and use of funds previously dispersed under his Settlement Agreement. More specifically, according to Mr. Ray's structured settlement he has received \$158,650 since 1995 (\$50,000 in 1995 paid to his guardian, \$20,000 in 1997, \$50,000 in 2004, and \$38,650 in 2007). As noted above, Mr. Ray provides only the vaguest explanation of his use of the \$38,000 in funds he most recently received in 2007 by stating he paid an unidentified debt of \$5,000, paid for improvements to a mobile home of \$25,000, and the purchase of a used truck for \$8,000 (Ray's Affidavit, ¶ 6).

In view of the foregoing, the court finds that there has been no showing that there would be a real advantage or gain to Mr. Ray in receiving \$61,736.69 in exchange for giving up \$120,000 in future payments.

CONCLUSION

Based on the foregoing, the court finds that petitioner has failed to demonstrate to the court's satisfaction that the transaction is fair and reasonable and that the transfer is in Mr. Ray's best interest (GOL § 5-1706 [b]). Consequently, the Petition is denied with prejudice and on the merits.

Dated: March 28, 2011
 Binghamton, New York

s/ Ferris D. Lebous

Hon. Ferris D. Lebous
Justice, Supreme Court