

<b>Matter of Vandas Sanskrit, LLC</b>
2011 NY Slip Op 32041(U)
July 22, 2011
Supreme Court, Wayne County
Docket Number: 72953/2011
Judge: Daniel G. Barrett
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At a term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in Lyons, New York on the 20<sup>th</sup> day of July, 2011.

Present: Honorable Daniel G. Barrett  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

In the Matter of the Application of VANDAS SANSKRIT, LLC, for Judicial Approval of an Annuity Sale and Assignment Agreement with JAISHA HOLDEN, pursuant to Article 5, Title 17 of the New York General Obligation Law

DECISION  
Index No. 72953

2011

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Petitioner seeking approval of an assignment of a structured settlement. The matter having come on to be heard before the Court. Petitioner having been represented by Sugarman Law Firm, Steven Davoli, Esq. Of counsel and Jaisha Holden having appeared personally and without an attorney. The Court having heard oral argument from Mr. Davoli and having taken a statement from Ms. Holden and having inquired of Ms. Holden regarding the terms of the assignment.

This is a special proceeding for an Order pursuant to New York State Structured Settlement Protection Act pursuant to New York Obligations Law Section 5-1701 and 5-1706.

Jaisha Holden (herein after referred to as payee) having been the recipient of a structured settlement of the wrongful death of her mother and

has been receiving payments since she was an infant. Payee receives \$677.54. Said payments are to continue until October, 2024.

The payee signed a Structured Settlement Annuity Sale and Assignment Agreement on April 22, 2011 and now seeks approval of the Court for such assignment.

The relevant terms of the transfer are that the assignment will be made beginning on November 14, 2014 ending October 14, 2024 which will be 120 monthly payments of \$677.54 with a 3% increase every twelve months. The aggregate amount of payments would be \$93,207.00. The alleged discounted present value of said payments is \$71,809.35. The amount of the applicable federal rate used in calculating such discounted present value is 3%.

The current cost of purchasing a comparable annuity for the aggregate amount of payments to be transferred are \$70,707.50 and \$74,833.50.

The proposed gross amount payable to the payee in exchange for said payments is \$28,000.00. The annual discount rate, compounded monthly, used to determine such a figure is 14.71%.

Ms. Holden as payee is not subject to any commissions, fees, costs, expenses or charges of any kind. Therefore, she will net \$28,000.00.

The payee, in her affidavit, states that she would like to have this transfer approved because she wants to move back to the Syracuse area

to be with her family. She indicated she has searched a number of homes in the Syracuse area between \$20,000.00 and \$25,000.00. She would rather pay a mortgage than rent. She indicates she has looked into the cost of taxes and insurance.

She is twenty years old with no dependents and receives \$220.00 bi-weekly as a cashier at McDonalds.

Despite the fact that she was advised of her rights to seek legal and/or financial counsel, she did not. The Court offered to adjourn the matter to allow her to do that and she waived such opportunity.

She did say she spoke with an aunt who is "like an attorney." When the Court questioned what that meant she said her aunt was a counselor. The Court questioned her further and apparently she is a mental health counselor.

The basic requirements of General Obligations Law Section 5-1706 are set forth in subparagraph b which states the transfer must be in the best interest of the payee and whether the transaction including the discount rate and the fees and expenses is fair and reasonable.

Case law provides that the totality of circumstances are to be considered to determine what is in the best interest of the payee.

The payee's reasons for wanting this payment changed in Court as compared to her affidavit. In Court she stated she wanted to move to Florida with her family instead of Syracuse. That she would buy a house with her brother, who has money to buy a house, however there was no

specification of details regarding how much her brother had. When I advised her she would be losing her job, she stated she would find another job.

When asked by the Court concerning the prices of houses, which apparently is in the Tampa Bay area and the cost of living, etc., she had no details or specifics.

There is no real indication that Ms. Holden has any real plan for this money or that she really appreciates how much she is giving up. There would be no guarantee that if she got this \$28,000.00 that it would be used to buy a house or that she would even be moving. She would be giving up a substantial amount over the next ten years when the assignment would take effect. That amount is approximately \$65,000.00.

Ms. Holden's reasons for the request to buy a house is that buying a house is better than renting is not necessarily true in this economy and certainly buying a house for \$28,000.00 would indicate that she would not be getting much of a house and certainly such a house would probably depreciate instead of appreciate.

This money could easily be used for something other than a house and once it is spent she will have no income and possibly no job. Even if she keeps her job, she only makes \$220.00 every two weeks.

There is much case law to provide that to transfer a portion of the payee's structured settlement for less than half its present discounted value is not in the payee's best interest. In this case the lowest discounted value was approximately \$70,000.00 and the proposed amount to be paid

to her is only \$28,000.00.

In addition, Ms. Holden has no real plan for this money and it could be subject to doing something foolish with the money thereby leaving her without payments for ten years.

Therefore, based upon the totality of the circumstances, the proposed payment based upon the discount rate and considering the best interest of the payee the Court denies the application.

This constitutes the Decision of the Court. Counsel for Petitioner to prepare the appropriate Order.

Dated: July 22, 2011  
Lyons, New York



Daniel G. Barrett  
Acting Supreme Court Justice

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