

Peachtree Settlement Funding, LLC v Myricks
2012 NY Slip Op 30497(U)
February 28, 2012
Supreme Court, New York County
Docket Number: 114406/11
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT:

KERN

Justice

PART

55

INDEX NO.

114406/11

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

PEACHTREE SETTLEMENT
- v -
FUNDING
CHRISTOPHER MYRICKS

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with the annexed decision.

FILED

MAR 01 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated:

2/28/12

J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG.

☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
In the Matter of the Petition of

Index No. 114406/11

PEACHTREE SETTLEMENT FUNDING, LLC,

Petitioner,

-and-

DECISION/ORDER

CHRISTOPHER MYRICKS, PRUDENTIAL
ASSIGNED SETTLEMENT SERVICES CORP.
and PRUDENTIAL INSURANCE COMPANY
OF AMERICA,

as Interested Persons pursuant to GOL 5-1701(c),

Respondents

-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for:

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Papers	Numbered
Notice of Petition, Petition and Affidavits Annexed	<u>1</u>
Notice of Cross-Motion and Affidavits Annexed.....	<u> </u>
Answering Affidavits.. ..	<u> </u>
Replying Affidavits.....	<u> </u>
Exhibits	<u>2</u>
Other	<u>3</u>

Petitioner Peachtree Settlement Funding, LLC ("Peachtree") commenced this special proceeding seeking approval of the transfer of certain structured settlement payment rights from Christopher Myricks, the payee, to Peachtree under a purchase contract. For the reasons set forth below, petitioner's application is denied.

The relevant facts are as follows. The payee is twenty-one years old, unmarried, and his girlfriend is expecting their first child. He is currently unemployed. He does not state whether

he receives unemployment benefits or any other source of income. Under the settlement agreement of the underlying lawsuit which was for personal injury resulting from lead poisoning, he is entitled to receive \$30,000, payable on January 26, 2015 and \$42,629.76, payable on January 26, 2020. He should have already received \$12,500 (rather than the original amount of \$25,000, pursuant to an agreement like the one under review here) on January 26, 2011 and an up-front payment of \$20,163.76 at the time of the initial settlement, which was entered into on June 23, 2009. Other than expected medical costs related to his girlfriend's pregnancy and delivery of the baby, he provides no information with regard to his current expenses.

Mr. Myricks now seeks to transfer his right to receive half of each of the aforementioned payments, totaling \$36,314.76, in exchange for a lump sum of \$14,600.00. Peachtree states that this amount represents 43.80% of the estimated current value of the payments using applicable federal rates. The stated purpose of the transfer is to pay his girlfriend's medical expenses associated with her pregnancy and the birth of their baby, to purchase a used car and to rent an apartment of his own. Mr. Myricks states that he will be able to afford his own apartment soon and that he will find work soon but he provides no details regarding his education, skills, employment history or job search. He only states that he had a job with UPS that ended because it was seasonal. Peachtree advised Mr. Myricks in writing to seek independent professional advice regarding this transaction and he has waived receiving such advice.

Mr. Myricks has twice before sought to exchange his right to receive certain future amounts for immediate lump sums. On June, 20, 2010, his application to transfer his rights to certain of these structured settlement payments was granted by Justice John Barone. On October 6, 2010, an additional application to transfer his rights to certain structured settlement payments

was denied by Justice Jane Solomon.

The “Structured Settlement Protection Act,” General Obligations Law § 5-1701, *et seq.* (the “SSPA”), was enacted as a result of a concern that structured settlement payees are especially prone to being victimized and taken advantage of by businesses seeking to acquire their structured settlement rights. *In re Petition of Settlement Funding of New York, L.L.C. (Cunningham)*, 195 Misc.2d 721 (Sup. Ct. N.Y. Co. 2003). The SSPA discourages such transfers by requiring the would-be transferee to commence a special proceeding to obtain judicial approval of such transfers. The SSPA requires that certain procedural and substantive safeguards be followed before structured settlement payments may be transferred. The procedure is set forth in General Obligations Law § 5-1705. The statute requires that a copy of a disclosure statement as required under General Obligations Law § 5-1703 be attached to the application and that proof of service upon the payee be provided. Before a transfer may be effectuated, court approval must be obtained and express findings must be made by the court pursuant to General Obligations Law § 5-1706. Therefore, a case by case analysis of each application is required. Specifically, subdivisions (a), (c), (d) and (e) of § 5-1706 provide procedural mandates for an application. Section 5-1706 (b), the most substantive provision, provides that no transfer of structured settlement right shall be effective without an express finding of the court that 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.” A petition to transfer will be denied where the transfer is found not to be in the individual payee’s best interest and the terms of the transaction are not fair and reasonable. GOL

5-1706(b); *In the Matter of the Petition of 321 Henderson Receivables, L.P. (Lemanski)*, 13 Misc.3d 526 (Sup. Ct. Erie Co. 2006). A determination of what is fair and reasonable must be based upon what is reasonable in the marketplace, measured against what is in the individual payee's best interest. *In the Matter of the Petition of 321 Henderson Receivables, L.P. (Lemanski)*, 13 Misc.3d 526. What constitutes the payee's best interest may only be determined by a thorough examination of the payee's circumstances, looking at the following factors: the payee's age, level of maturity, physical and mental capacity, and ability to earn a living and provide for his dependants, the payee's intended use of the proceeds and need for medical or other professional treatment, whether the payee is suffering from a hardship, whether he obtained independent legal and financial advice and whether he demonstrates an appreciation of the consequences of the transfer. *In the Matter of the Petition of 321 Henderson Receivables, L.L.C. (Walker)*, 20 Misc.3d 1114 (A) (Sup. Ct. Kings Co. 2008). In almost all of the published cases throughout the state in which the statute had been applied, the court has denied the petition.

The court finds that petitioner's submission meets all of the procedural mandates of the SSPA. However, the court is unable to conclude that the proposed transaction is in the payee's best interest under the circumstances. The payee is unemployed and has not supplied any information about his education, skills or job search. Despite the fact that the court lauds his intentions to help his girlfriend with the medical expenses of her pregnancy, he has no legal obligation to do so. He also waived any professional advice regarding this transaction. It is not clear that payee appreciates the amount of the discount he would be getting on this transfer. The court is also unable to conclude that the terms of the proposed transaction are fair and reasonable. The value of the payment to payee is only 43.8% of its present value. The court cannot find this

fair and reasonable under the circumstances. Finally, payee admits that the terms of this transaction "are similar to" those rejected by Justice Solomon in October 2010 but does not provide any information as to how they differ.

Accordingly, petitioner's application for judicial approval of the transfer of interest in Mr. Myricks's structured settlement is denied.

This constitutes the decision and order of the court.

Dated: 2/28/12

CR
J.S.C.

FILED

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