

Matter of Washington Sq. Fin., LLC v Mejia
2012 NY Slip Op 31247(U)
May 8, 2012
Supreme Court, New York County
Docket Number: 102096/2012
Judge: Cynthia S. Kern
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

5/14/12

Matter of
Washington Square Financial
v.
Kelvin Mejia, et al

INDEX NO. 102096/12

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

RECEIVED
MAY 10 2012
FILED
MOTION COURT CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

MAY 14 2012

Dated: 5/8/12

NEW YORK
COUNTY CLERK'S OFFICE
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

-----X

In the Matter of the Petition of

Index No. 102096/12

WASHINGTON SQUARE FINANCIAL, LLC d/b/a
IMPERIAL STRUCTURED SETTLEMENTS
Approval of Transfer Structured Settlement Payment
Rights In Accordance with GOL § 5-1701

Petitioner,

-and-

DECISION/ORDER

KELVIN A. MEJIA a/k/a KELVIN MEJIA, ALLSTATE
ASSIGNMENT COMPANY and ALLSTATE LIFE
INSURANCE COMPANY OF NEW YORK,

FILED

MAY 14 2012

Respondents

-----X

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

NEW YORK
COUNTY CLERK'S OFFICE

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

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 Imperial Structured Settlements ("Imperial") commenced this special proceeding seeking approval of the transfer of certain structured settlement payment rights from Kelvin Mejia, the payee, to Imperial under an Absolute Sale and Security Agreement. For the reasons set forth below, petitioner's application is denied.

The relevant facts are as follows. The payee is nineteen years old, unmarried and has no dependents. Payee has not provided any information regarding his education, skills, employment

RECEIVED

MAY 10 2012

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

history or job search. Under the settlement agreement of the underlying lawsuit, the payee is guaranteed deferred periodic payments of \$50,000 on February 20, 2011, which has already presumably been paid out, \$75,000 on February 20, 2014, \$75,000 on February 20, 2018 and \$126,750 on February 20, 2023.

Under the contract at issue here, the payee would be transferring \$45,000 of the \$75,000 lump sum payment due to him on February 20, 2014. The current value of the payment is \$43,747.64 as calculated using the federal government's discount rate. The payee would be accepting a payment of \$31,546.52, which is only 72 % of the current value of the amount due to him. The stated purpose of the transfer is to use the funds as a down payment on the purchase of a duplex building.

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. First, the court has very little information regarding Mr. Mejia's current situation or expenses. As stated above, the court does not know whether Mr. Mejia is employed or even able to work. Very little is known about Mr. Mejia's current life situation apart from his age and the fact that he does not have dependents. Further, Mr. Mejia does not identify the property he intends to buy with the money nor does he identify the general location where he intends to buy. It is also unclear how much Mr. Mejia's mortgage payments would be and how he would make the payments. Although he states that he would make his mortgage payments with the proceeds made from renting out a portion of the property, this is speculative as he has yet to identify the property he intends to buy and has not provided any information about the rental market in the area where he intends to buy the property. In addition, Mr. Mejia also waived any professional advice regarding this transaction.

In addition, the terms of this transaction are not fair and reasonable. The payee would be accepting a 17.31 % discount. A discount rate of 17.31 % may be considered fair and reasonable under circumstances where there is a valid need for the money now and no alternative financing options are available. *See, e.g., In the Matter of the Petition of Henderson Receivables Origination, L.L.C. (Campos)*, 14 Misc.3d 1206 (A) (Sup. Ct. Bronx Co. 2006) (16% discount rate resulting in payee receiving 71.7 % of the estimated present value of his structured settlement payout held to be fair and reasonable where transfer would prevent the payee from losing his vehicle). However, that rate seems much less reasonable on the facts of this case where the withdrawal appears to be for discretionary purposes only. The court cannot find this

fair and reasonable under the circumstances.

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

This constitutes the decision and order of the court.

Dated: 5/8/12

FILED

MAY 14 2012

NEW YORK
COUNTY CLERK'S OFFICE
J.S.C.