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| Matter of Washington Sq. Fin., LLC v Mejia |
| 2012 NY Slip Op 31248(U) |
| May 8, 2012 |
| Supreme Court, New York County |
| Docket Number: 102097/2012 |
| Judge: Cynthia S. Kern |
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: KERN
Justice

PART 55

WASHINGTON SQUARE FINANCIAL, LLC

INDEX NO. 102097/12

DINANGELY MEDIA, -v-
ETAL.

MOTION DATE _____

MOTION SEQ. NO. 01

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.

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NYS SUPREME COURT - CIVIL

~~is decided in accordance with the annexed decision.~~

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

Dated: 5/06/12

CK
J.S.C.

CYNTHIA S. KERN

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. 102097/12

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

FILED

DINANGELY MEJIA, ALLSTATE
ASSIGNMENT COMPANY and ALLSTATE LIFE
INSURANCE COMPANY OF NEW YORK,

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 Dinangely 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 twenty years old, unmarried and has no dependents. Payee has not provided any information regarding her education, skills, employment

history or job search. Under the settlement agreement of the underlying lawsuit, the payee is entitled to \$900.00 per month for her lifetime, guaranteed for 30 years commencing December 2002, compounding annually at 3% commencing on December 8, 2009. Payee was also guaranteed a payment of \$40,000 on December 8, 2009 and is guaranteed \$70,000 on December 8, 2021.

Under the contract at issue here, the payee would be transferring a portion of her settlement payments – 120 monthly payments of \$283.00 commencing on or about May 8, 2012, increasing 3.00% annually every December, and ending on or about April 8, 2022. The current value of the payments is \$36,571.21 as calculated using the federal government's discount rate. The payee would be accepting a payment of \$18,018.37, which is only 49.4 % of the current value of the amount due to her. 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 Ms. Mejia's current situation or expenses. As stated above, the court does not know whether Ms. Mejia is employed or even able to work. Very little is known about Ms. Mejia's current life situation apart from her age and the fact that she does not have dependents. Moreover, Ms. Mejia does not identify the property she intends to buy with the money nor does she identify the general location where she intends to buy. It is also unclear how much Ms. Mejia's mortgage payments would be and how she would make the payments. Although she states that she would make her mortgage payments with the proceeds made from renting out a portion of the property, this is speculative as she has yet to identify the property she intends to buy and has not provided any information about the rental market the area where she intends to buy the property. In addition, she also waived any professional advice regarding this transaction. 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 49.4 % of its present value. The court cannot find this fair and reasonable under the circumstances.

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

