

**Matter of Peachtree Settlement Funding, LLC v
Salazar**

2012 NY Slip Op 32352(U)

September 10, 2012

Supreme Court, New York County

Docket Number: 103075/12

Judge: Cynthia S. Kern

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

PRESENT: _____
Justice

PART _____

In re:
Peachtree Settlement Funding
-v- LLC

INDEX NO. 103025/12
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 denied~~ is granted in accordance with the annexed decision.

FILED

SEP 12 2012

**COUNTY CLERK'S OFFICE
NEW YORK**

RECEIVED

SEP 12 2012

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 9/10/12

ca
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):

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

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

PEACHTREE SETTLEMENT FUNDING, LLC,

Petitioner,

Index No. 103075/12

DECISION/ORDER

-and-

KIRBY SALAZAR, GEICO and METROPOLITAN
LIFE INSURANCE COMPANY,

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:

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 Kirby Salazar, 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 years old, unmarried, and has one dependent child. He is currently unemployed but looking for employment. Pursuant to a prior settlement agreement the payee is entitled to receive thirteen (13) semiannual payments of

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\$4,840.00 each, beginning on April 4, 2013 and ending on April 4, 2019. Mr. Salazar now seeks to transfer his right to receive each of the aforementioned payments, totaling \$62,920.00, in exchange for a lump sum of \$37,320.00. Peachtree states that this amount represents 62.70% of the estimated current value of the payments using applicable federal rates. The stated purpose of the transfer is to pay for rent and expenses for a new apartment, to furnish said apartment, to buy clothes and to pay for child care expenses. Peachtree advised Mr. Salazar in writing to seek independent professional advice regarding this transaction but he has waived such advice.

Mr. Salazar has once before sought to exchange his right to receive certain future amounts for immediate lump sums. On March 15, 2012, his application to transfer his rights to certain of these structured settlement payments was denied by Justice Roger McDonough.

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

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§ 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.

