

**Seneca One, LLC v Owens**

2014 NY Slip Op 33999(U)

November 3, 2014

Supreme Court, Bronx County

Docket Number: 22126/2014

Judge: Betty Owen Stinson

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NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART IA8

-----X  
SENECA ONE, LLC,

Index No. 22126/2014  
**DECISION AND ORDER**

Petitioner(s),

Present:  
**HON. BETTY OWEN STINSON**

-against-

JAMES OWENS, METROPOLITAN LIFE  
INSURANCE COMPANY and  
METROPOLITAN INSURANCE AND  
ANNUITY COMPANY,

Respondent(s)

-----X  
STINSON, J.:

This petition for an Order of this court to permit James Owens to proceed with a proposed sale and transfer of certain of Mr. Owens's structured settlement payment rights in the State of Pennsylvania and transferring and conferring the power to adjudicate the sale and transfer of Mr. Owens's structured settlement payment rights to the Pennsylvania Court is denied.

In 1993, in the State of New York, County of Bronx, an action on behalf of James Owens, an infant at the time by his mother and natural guardian Carol Owens was settled. The action sounded in malpractice and was against the Bronx Cross County Medical Group. Pursuant to an Infant's Compromise Order dated May 14, 1993, Mr. Owens was to receive monthly payments beginning in November 1993 when he reached his majority age and continue for a period of 480 months or if he lived beyond 480 months to continue for the rest of his life. Additionally, lump sum payments were to be made in November 1993, November 2030 and November 2035. The

settlement was funded by annuities purchased from the Metropolitan Life Insurance Company. The Infant's Compromise Order also provided that the Supreme Court of the State of New York, Bronx County shall retain jurisdiction of the action for purposes of modifying and/or supplementing this Order, and/or for the purpose of enforcing compliance with the terms hereof. It was also provided that the plaintiff shall have no rights or incidence of ownership in said annuity policy in order to have the benefit of the applicable sections of the Internal Revenue Code in the guidelines and rulings of the Internal Revenue Service.

Since the establishment of the structured settlement, the plaintiff, James Owens has sold sixty monthly payments of \$600.00 each beginning June 26, 2012 through May 16, 2017. Additionally, in 2013 an application brought in Kings County, New York State by Mr. Owens and the same attorneys as here, a request was made to transfer to Seneca One, LLC five monthly payments in the amount of \$4,219.53 beginning on June 26, 2017 and continuing through the payment due on October 26, 2017; plus 180 monthly payment of \$4346.11 each beginning with a payment due on November 26, 2017 through and including October 26, 2032 increasing an annual rate of 3%. For that amount of future payments, James Owens was paid \$30,044.00 which he says he used to purchase a home. The Petition for Withdrawal was presented to Hon. Burt Bunyan, Kings County Supreme Court under index number 13802/2013. Judge Bunyan in a short form order dated September 25, 2013 reportedly stated "the petition of Seneca One, LLC....is granted, without any opposition thereto. Settle order on ten days written notice to all parties...". A copy of that Order has not been provided to this court. Two requests for transfer of annuity payments of James Owens have been brought since the structured settlement was set up. One by Peachtree Settlement Funding, LLC in Bronx County in July 2012, was brought in Bronx County where the

action was commenced and settled and in which the court retained jurisdiction. The second request brought by the current transferee Seneca One, LLC was brought in Kings County in 2013. No explanation has been provided as to why a special proceeding involving a case in Bronx County was brought in Kings County. This court is puzzled and concerned that the second transfer was brought in a county which had no jurisdiction over the parties as the Bronx court retained jurisdiction in the Infant's Compromise Order and the plaintiff was now living in Stroudsburg, Pennsylvania. Secondly, and even more troubling is that in Kings County the plaintiff was permitted to sell over \$800,000.00 of future income for a mere \$30,044.00.

The petitioner, through Co-petitioner Seneca One, LLC, is currently seeking to sell future payments in the total amount of \$281,253.20 for a current value of \$41,042.80. Despite the fact that two quotes for purchasing annuities of comparable value in today's dollars would cost the petitioner either \$78,538.00 or \$81,840.33.

This court's functions on a application to transfer structured settlement payments, is clearly set forth in General Obligations Law §5-1706. One of the findings that the court must make before a transfer can be approved is that the transfer be in the best interest of the payee, taking into account the welfare and support of the payee's dependents. Mr. Owens has no dependents, is single, but unemployed and disabled from work. The monthly payments created by the settlement of his malpractice action are for the injury, pain and suffering, and future medical expenses in connection with the need to pin both hips for slipped Femoral Epiphysis and the residual sequelae of motion limitations and the leg link discrepancy on the right side. The future prognosis is for pain and limitations for physical activity which will ultimately result in secondary degenerative osteoarthritis of both hips with pain, disability and probably a need for total joint

replacements sometime after age 40. The cost of the annuities which he seeks to sell, and has previously sold portions of, was \$719,300.00

A second and perhaps more tangible criteria in a structured settlement transfer application is whether the conditions of the transfer are fair and reasonable. The court is not a certified public accountant but it does not take one with that sort of expertise to know that the sale of \$281,253.20 of payments transferred for the gross advanced amount of \$41,042.80 is not fair and reasonable when comparable annuities in today's market would require \$81,840.33 or \$78,538.00 to purchase.

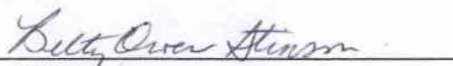
Lastly, the court notes that when the Order to Show Cause was submitted to the court for signing it was requested that service be made upon Metropolitan Life Insurance, an annuity company and Metropolitan Life Insurance Company at 1095 Avenue of the Americas, New York, New York (attn: Lisa Sterner). However, the Affidavit of Service indicates that the Metropolitan Life Insurance Company and Metropolitan Insurance and Annuity Company were served at 1095 Avenue of the Americas, Attn: Structured Settlements, New York, NY and were physically delivered to Mr. Matthew Michaels as Corporate Counsel for Met Life Insurance Company and Met Life Insurance and Annuity Company. Apparently, the service of the Order to Show Cause was improper. Additionally, service on the defendant James Owens was made by substituted service to a person named Patricia Fertress, co-resident at 1082 Bartonsvillewoods Road, Stroudsburg, Pennsylvania. However, on the payee's Affidavit in Support of Petition to Transfer Structured Settlement Rights, Mr. Owens lists his address as 1084 Bartonsvillewoods Road. It is also interesting to note that the process server gives his address in St. James, New York but his signature on the Affidavit of Service was subscribed before a Pennsylvania notary.

This court is seriously concerned by the advantage being taken of Mr. Owens regarding the funds which have been provided for his care for the past and the rest of his life. He has not sought legal counsel in any of these applications. He has stated that he wants to sell annuity payments "to purchase investment property". Mr. Owens can barely write his name to the documents presented to him by this petitioner. It is doubtful that he has the intellectual ability to make reasonable decisions about investment property.

For all of the foregoing reasons and most particularly for the preservation and protection of the remainder of annuity payments due to Mr. Owens for his support and maintenance, the petition is denied.

This is the decision and Order of the court.

November 3, 2014  
Bronx, New York

  
BETTY OWEN STINSON, J.S.C.