

**Matter of J.G. Wentworth Originations, LLC v Athene  
Annuity & Life Assur. Co. of N.Y.**

2015 NY Slip Op 30231(U)

February 17, 2015

Supreme Court, New York County

Docket Number: 161560/2014

Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

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

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In the Matter of the Petition of  
J.G. Wentworth Originations, LLC  
for Judicial Approval of Transfer of Structured  
Settlement Payment Rights with LYDIA KEMPSEY,  
In Accordance With New York General Obligations  
Law § 5-1701

Index No. 161560/2014

Petitioners

-and-

ATHENE ANNUITY & LIFE ASSURANCE  
COMPANY OF NEW YORK,

Respondents/Interested Persons Pursuant to  
GOL § 5-1701 et seq.

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**PETER H. MOULTON, J.S.C.:**

Lydia Kempsey seeks the transfer of certain structured payments due to her under a structured settlement agreement in accordance with 26 U.S.C. 5891 et seq. and GOL § 5-1701 et seq. Ms. Kempsey initially sought to sell monthly payments of \$1,476.82 each beginning on December 14, 2017 increasing at three percent (3.00%) compounded annually through and including February 14, 2028. The aggregate amount of those proposed purchased payments was \$213,686.22 (reflecting a discounted present value of \$178,092.77 at the federal interest rate of 2.20%). The gross amount payable to Ms. Kempsey was \$86,000.00, a net amount representing 48.30% of the current value of the proposed purchased payments at an annual interest rate of 12.10%.

The court expressed reservations about this initial application due to the amount of money that Ms. Kempsey would forfeit ( $\$213,686.22 - \$86,000.00 = \$127,686.22$ ) relative to the amount

of money that she would receive (\$86,000.00). Additionally, the court was disinclined to approve the application as it would have required Ms. Kempsey to relinquish to J.G. Wentworth future monthly payments likely to provide a monthly safety net for her family's ongoing basic needs.

To address these concerns, Ms. Kempsey's petition was amended. As amended, Ms. Kempsey seeks the transfer of her lump sum payment of \$101,500.00 due to her on March 14, 2016 for the purchase price of \$80,000.00. As adjusted by an updated e-mail disclosure dated February 13, 2015, the new purchase price for this transaction is \$81,500.00 (*see* Attached E-mail dated February 13, 2015). The discounted present value of the purchased payment at the federal interest rate of 2.20% is \$98,914.19. Originally, the transaction was the equivalent of interest payments to Ms. Kempsey of 22.23% annually, but has since been amended to interest payments of 20.3% annually. *Id.* As amended, the net amount that Ms. Kempsey will receive in connection with this transaction represents 82.39% of the current value of the payments. If her application is approved, Ms. Kempsey will retain the aforementioned future monthly annuity payments that she previously sought to sell. Those periodic monthly payments, unlike a lump sum payment, would provide Ms. Kempsey with a steady stream of income to supplement any income that she may receive in the future. Although the interest rate presently offered to Ms. Kempsey is more unfavorable than that of the original proposed transaction, the amount that Ms. Kempsey would forfeit under the new transaction ( $\$101,500.00 - 81,500.00 = \$20,000.00$ ) is less than the amount she would forfeit in connection with the prior transaction ( $\$213,686.22 - \$86,000.00 = \$127,686.22$ ). For the reasons explained here, Ms. Kempsey cannot wait a year for the lump sum payment due on March 14, 2016.

Ms. Kempsey's affidavit reflects the following: She is 38 years old, single, and lives in Queens, New York with her two daughters, aged 12 and 7 years old respectively. Ms. Kempsey is

currently unemployed, but hopes to use the funds that she would receive in connection with this transaction to relocate her family to Atlanta, Georgia, where housing is cheaper, and where she plans to seek out employment opportunities unavailable to her in New York.

The court met with J.G. Wentworth's counsel and Ms. Kempsey on the scheduled return date for the Order to Show Cause, January 7, 2015, and again on February 13, 2015. On both occasions, Ms. Kempsey expounded on her desire to relocate her family to Atlanta, Georgia. Ms. Kempsey even showed the court listings in the Atlanta area for two bedroom apartments valued at approximately \$900 a month. She went on to mention that her and her two daughters currently reside with her mother in an affordable housing unit that is the subject of a holdover proceeding. Beyond facing imminent eviction, Ms. Kempsey stated that during the winter months there has been insufficient heat for her and her children at her mother's unit. Additionally, she emphasized that although she has recently been able to obtain health care for her and her daughters, she is has not been able to receive food stamps and other forms of public assistance benefits. As such, Ms. Kempsey emphasized her immediate need for the funds in connection with the proposed sale.

The court finds that the transaction herein is both fair and reasonable and in the best interest of Ms. Kempsey. The \$81,500.00 that Ms. Kempsey will receive represents 82.39% of the estimated current value of the payments. Furthermore, given Ms. Kempsey's immediate need for the funds in connection with this transaction to relocate to Atlanta, where she hopes to find work and budget her money while living at a lower cost of living, it would not be in Ms. Kempsey's best interest for the court to disapprove this transaction. While it may have been best for Ms. Kempsey to wait until next year to receive her lump sum payment rather than relinquishing the difference between the money that she is receiving now set against what she would receive then (\$101,500.00 - \$81,500.00

= \$20,000.00), the fact that she is facing imminent eviction and desires to relocate to Atlanta where housing is more affordable, is a sufficient basis to permit the court to approve her present request for the funds in connection with this transaction.

However, Ms. Kempsey should take heed of the fact that any future applications may not be approved. Approval of this transaction should enable Ms. Kempsey to improve her life, but that is dependent on her finding employment, and not relying on selling the remaining portions of her structure, which will provide her with a monthly supplement for the rest of her life. The court notes that Ms. Kempsey has already sold portions of her structure, and that after this transaction, the only remaining portion is the original proposed transaction, which was not in her best interest to sell. Therefore, she is cautioned against reliance on her ability to sell the remaining portions of her monthly structured settlement payments and should use the \$81,500.00 that she is receiving here wisely.

It is hereby:

**ADJUDGED** that the petition is granted; and an Order is signed simultaneously herewith.

**This constitutes the Decision and Judgment of the Court.**

Dated: February 17, 2015

ENTER:



J.S.C.

**PETER H. MOULTON**  
J.S.C.