

<b>Stone St. Capital, LLC v VanHousen</b>
2016 NY Slip Op 31500(U)
August 9, 2016
Supreme Court, Tioga County
Docket Number: 46544
Judge: Eugene D. Faughnan
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At a Motion Term of the Supreme Court of the State  
of New York held in and for the Sixth Judicial  
District at the Tioga County Courthouse, Owego,  
New York, on the 10<sup>th</sup> day of June, 2016.

PRESENT: HON. EUGENE D. FAUGHNAN  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF TIOGA

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In the Matter of the Petition of STONE STREET  
CAPITAL, LLC for the Approval of Transfer of  
Structured Settlement Payment Rights in  
Accordance with GOL §5-1701,

PETITIONER

-VS-

DECISION AND ORDER

Index No. 46544  
RJI No. 2016-0120-M

DANIELLE VANHOUSEN, METLIFE TOWER  
RESOURCES GROUP, INC and METROPOLITAN  
LIFE INSURANCE COMPANY,

RESPONDENTS.

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**EUGENE D. FAUGHNAN, J.S.C.**

This is a petition seeking judicial approval of a proposed transfer of a portion of future payments due to Danielle VanHousen (“payee”), under a structured settlement agreement. The proposed transfer to Structured Asset Funding, LLC, is contemplated in exchange for the present payment of a discounted lump sum under General Obligations Law, § 5-1701 *et seq.* An Order to Show Cause was presented to this Court, and a return date set for June 10, 2016. The Petitioner filed a Verified Petition with Exhibits on April 19, 2016, setting forth details regarding the proposed transfer. Following the appearances of the parties in court on June 10, 2016, the Court reserved decision.

**BACKGROUND**

An Infant Compromise Order was signed by the Supreme Court of Broome County in June, 2008 which resolved the claim of payee, who was an 15 years old at that time. As a result of that Order, a settlement was approved, which included a series of cash payments under a structured settlement. The settlement agreement called for the following guaranteed payments: \$35,000 due at the time of settlement (of which \$25,282.62 went to her attorney); \$10,000 on March 26, 2014; \$10,000 on March 26, 2018; \$25,000 on March 26, 2023, \$10,000 on March 26, 2028 and \$216,186.51 on March 26, 2038. In the event of her death, her estate is the beneficiary of the structured settlement payments. In this application, payee seeks to transfer the final payment of \$216,186.51 due on March 26, 2038, for \$43,000. The proposed discount rate is 7.64%.

Payee made a prior application to this Court to transfer the March 26, 2038 payment. She filed a Petition in November, 2015 seeking to transfer that last payment and the discount rate on the proposal was 7.44%. The Court denied that Petition by a written Decision and Order dated February 5, 2016.

In addition to the 2015 Petition which this Court denied, Payee has made several prior applications to transfer portions of her structured settlement. In November, 2011 a Petition to transfer was denied. In May, 2012 and January, 2013, two more Petitions were denied. In August, 2014, a Petition to approve the transfer \$45,000 was granted. That \$45,000 consisted of the payments due in 2018, 2023 and 2028, leaving just the last payment due in 2038.

As stated in the Verified Petition, and Payee's affidavit in support, the payee is 23 years old, married, and has 4 dependent children: Isabella Warner, who is 8 years old; Aleaha VanHousen, who is five years old; Hunter VanHousen who is four years old; and Hannah VanHousen, who is one. At the time of this Petition, Payee was apparently unemployed, but by the time of the oral argument had recently obtained part time employment. She relies on family to be able to get to work. She also presented pictures and estimates regarding home repairs, and an advertisement regarding a car she would like to purchase. She rents the lot where they live. In her affidavit, Payee states that she needs "to raise money to complete significant repairs to my homes so that I can make my home a better environment for me and my children to live in. I also need a reliable vehicle to get a stable job and transport my children safely."

### **DISCUSSION**

*General Obligations Law § 5-1701 et seq.*, also known as the "Structured Settlement

Protection Act" or "SSPA", was enacted in 2002 due to the concern that structured settlement payees, such as Ms. VanHousen, are particularly prone to being victimized and quickly dissipating their assets, and to protect them from the growing number of companies using "aggressive advertising, plus the allure of quick and easy cash, to induce settlement recipients to cash out future payments, often at substantial discounts, depriving victims and their families of the long-term financial security their structured settlements were designed to provide' (Mem. in Support, N.Y. State Assembly, 2002 McKinney's Session Laws of NY, at 2036)" *Singer Asset Finance Co., LLC v. Melvin*, 33 AD3d 355, 822 N.Y.S.2d 68 (1<sup>st</sup> Dept 2006). This legislation "[d]iscourages such transfers by requiring would-be transferees to commence special proceedings for the purpose of seeking judicial approval of the transfer [*citations omitted*]" *Settlement Funding of New York, LLC [Cunningham]*, 195 Misc 2d 721, 722, 761 N.Y.S.2d 816 (Sup Ct, Rensselaer County 2003). "The SSPA clearly reflects the Legislature's dissatisfaction with the structured settlement transfer market rates, and its conclusion that payees cannot protect their best interest and thus require judicial supervision" *Settlement Funding [Cunningham]*, 195 Misc 2d at 724. "Clearly, the New York State Legislature in enacting [the] SSPA and in empowering the courts with the discretion to determine whether the terms of a proposed transfer of future payments are fair and reasonable did not intend for the courts to be mere rubber stamps" *Settlement Capital Corp. [Ballos]*, 1 Misc 3d 446, 461, 769 N.Y.S.2d 817 (Sup Ct, Queens County 2003 ).

Under GOL §5-1706(b), when reviewing a proposed transfer, the court will consider whether it is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; 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. For the reasons noted below, the Court concludes that the Petitioner has failed to demonstrate that the proposed transfer is in the best interest of the payee.

The SSPA “does not define the best interests of the payee, [but] case law and the intent of the statute suggest the court should consider: (1) the payee's age, mental capacity, physical capacity, maturity level, independent income, and ability to support dependents; (2) purpose of the intended use of the funds; (3) potential need for future medical treatment; (4) the financial acumen of the payee; (5) whether payee is in a hardship situation to the extent that he or she is in "dire straits"; (6) the ability of the payee to appreciate financial consequences based on independent legal and financial advice; (7) the timing of the application.” *Settlement Funding*, 2 Misc3d at 876 (citations omitted); *see also, Settlement Capital Corp.*, 1 Misc 3d 446, 455 (Sup. Ct. Queens County 2003).

The payee has had four prior transfers denied, and one approved. The Court noted its concern when denying the previous applications, including the written Decision and Order from the undersigned in February, 2016, just 4 months before the instant application. The Court has observed in the only approved transfer that it would give her more money at that time, but it would take away money from the future, specifically noting that she would have no more payments until 2038, which are the payments she is attempting to transfer away now. Apparently, the Court's concerns were well-founded, as the Payee seeks another transfer, due to continuing financial difficulties, in spite of the transfer in August, 2014. The current Petition does not explain how the money from the prior approved transfer was spent, and if it went to the intended purposes. At oral argument, Ms. Van Housen did elaborate that she used the prior

money to relocate to Florida, but that black mold was discovered at the place where they were living, and they could not remain there. The instant request would transfer the balance of the periodic payments, but the Court has the same concerns as it did previously. It may only provide money now, while taking it away from the future. While having these funds now may solve some financial problems temporarily, there is no indication that Payee would not find herself in this very same situation in a few months or a year. Except then she would have no future payments at all.

The timing of this application was only 4 months after the last denial. Given the history, including the fact that the prior approved transfer did not improve the Payee's financial situation, the Court is of the view that there no reliable expectation that the current proposed transfer will be of ultimate benefit. The Court cannot say that this transfer is in the payees's best interest.


### CONCLUSION

Because the Petitioner has failed to demonstrate that this transfer is in Ms. Van Housen's best interest, the Petition is **DENIED**.

Accordingly, it is hereby

**ORDERED**, that the Petition is **DENIED** and the Petition is **DISMISSED**.

Dated: August 9, 2016  
Owego, New York

  
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HON. EUGENE D. FAUGHNAN  
Supreme Court Justice