

J.G. Wentworth Originations, LLC v Feasel
2018 NY Slip Op 33506(U)
December 7, 2018
Supreme Court, Monroe County
Docket Number: E2018007432
Judge: Jr., John B. Gallagher
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J.G. WENTWORTH ORIGINATIONS, LLC

FEASEL, ROBIN
TRAVELERS CASUALTY AND SURETY COMPANY
PRUDENTIAL INSURANCE COMPANY OF AMERICA

Total Fees Paid: \$0.00

Employee: JM

State of New York

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At a term of the Supreme Court of the State
of New York, County of Monroe, City of
Rochester on December 7, 2018.

SUPREME COURT
STATE OF NEW YORK

COUNTY OF MONROE

Present: Hon. John B. Gallagher, Jr., J.S.C.

J.G. WENTWORTH ORIGINATIONS, LLC,

Petitioner,

v

ROBIN FEASEL,
TRAVELERS CASUALTY AND SURETY COMPANY,
And PRUDENTIAL INSURANCE COMPANY OF
AMERICA,

Respondents.

DECISION AND ORDER

Index No. E2018007432

For Petitioner:

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For Respondent Feasel:

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For Monroe County:

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Background

Respondent Robin Feasel (Feasel) suffered injuries in a motor vehicle accident that occurred almost 30 years ago, and thereafter commenced a personal injury action against certain defendants. In or around November 1990, Feasel entered into a Settlement Agreement and Release with defendants' insurer. As relevant herein, Feasel received the rights to payments of \$1,033.88 per month for life commencing December 1, 1990, with 20 years of said payments

guaranteed.

Respondent Travelers Casualty and Surety Company, successor in interest to Aetna Casualty and Surety Company, is the settlement obligor and Respondent Prudential Insurance Company of America is the annuity issuer. Neither of those respondents has appeared in the present action.

Previous Transfers or Applications for Transfer

(1) A UCC Financing Statement filed with the Monroe County Clerk's Office on September 15, 1997 (Control #199709150418), and an amended UCC Financing Statement filed with the Monroe County Clerk's Office on March 24, 1999 (Control # 199903240967) indicate that Feasel transferred to J.G. Wentworth S.S.C., Limited Partnership his rights to the following payments:

- 36 monthly payments of \$1,033.88 each, beginning April 1, 1997 and ending March 1, 2000
- 72 monthly payments of \$1,033.88 each, beginning April 1, 2000 and ending March 1, 2006 (specified as separate payments of \$650.00 and \$383.88)
- 55 monthly payments of \$1,033.88 each, beginning April 1, 2006 and ending October 1, 2010

Exhibit A to the Financing Statement indicates that a Purchase Agreement and three amendments thereto were executed between the parties between March 1997 and February 1999. However, the court has not been provided with those agreements and, therefore, is uncertain how much money Feasel received for the \$168,522.44 aggregate amount that he relinquished.

(2) By Decision dated May 9, 2007 under Monroe County Index Number 2007/3184, the court (Polito, J.) denied the proposed transfer by Feasel of one guaranteed payment of \$1,033.88 on November 1, 2010 and 119 life-contingent partial payments of \$983.88 commencing December 1, 2010 and continuing through October 1, 2020. The court found that the sale of an asset for 27% of its value was not in the best interest of Feasel.

(3) By Order Approving Transfer of Structured Settlement Payment Rights dated November 8, 2007 under Monroe County Index Number 2007/11546, the court (Rosenbaum, J.) approved the transfer by Feasel to Settlement Funding of New York, LLC, of 200 life-contingent monthly payments of \$1,033.88 each, commencing on December 1, 2010 and continuing through July 1, 2027. The Order approving the transaction does not specify the net amount received by Feasel for the \$206,776.00 he relinquished. Feasel represented that he intended to use a portion of the money to satisfy a tax lien.

Current Petition and Hearing

By Verified Petition and Affidavit in Support of Petition filed September 18, 2018, and Amended Verified Petition filed October 18, 2018, J.G. Wentworth Originations, LLC (Petitioner), seeks court approval of an agreement between Petitioner and Feasel for the transfer of Feasel's rights to receive 180 life-contingent monthly payments of \$1,033.88.00 commencing on August 1, 2027 and ending on July 1, 2042. The aggregate amount of the proposed transfer is \$186,098.40, the present value of which is \$108,760.41 (federal discount rate of 3.4%). Petitioner has agreed to pay Feasel a gross/net payment of \$10,000.00, which is approximately 9.2% of the present value (approximately 5.4% of full value) and is representative of an annual interest equivalent of 22.13%.

The court conducted a hearing on December 7, 2018, at which Feasel testified. In consideration of Feasel's testimony and the papers filed in this matter, the court now makes findings of fact as follows:

Feasel is a 53 year-old man with some college education beyond a high school degree. He is unmarried, has no children and currently resides with his parents in their home. Feasel has monthly expenses that include rent (\$200.00 per month), cable/internet (\$190.00 per month), car insurance (\$74.00 per month), car lien payment (\$320.00 per month), fuel for car (\$50.00 per month), food (approximately \$400.00 per month), cell phone (\$120.00 per month) and credit card bills (approximately \$250.00 per month).

As a result of a motor vehicle accident occurring nearly 30 years ago, Feasel suffered back and neck injuries that have required seven surgeries to date. Feasel stated that he continues to receive medical care for issues related to his injuries, and anticipates the need for future medical treatment for the same.

Feasel has not worked since February 2013 and is receiving disability payments in an amount that will increase to \$1,380.00 as of January 2019. Feasel does not have any retirement benefits from employment and has not established any retirement accounts for himself. Because he sold his monthly annuity payments through July 2027, Feasel's only current source of income is the disability payments. Feasel also receives food stamps in the amount of \$16.00 per month.

Legal Analysis and Conclusions

General Obligations Law § 5-1706 provides that "[n]o direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of

structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction based upon express findings by such court that," among other things, "the transfer complies with the requirements of [the Structured Settlement Protection Act]" (GOL § 5-1706 [a])."

The requirements set forth in General Obligations Law § 5-1708 (c) state as follows: "No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, *prior to the date on which payee signs the transfer agreement*, the transferee has established and has agreed to maintain procedures *reasonably satisfactory to the annuity issuer and the structured settlement obligor* for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the even[t] of the payee's death" (emphasis added).

General Obligations Law § 5-1708 (c) expressly contemplates an arrangement between the transferee (i.e. Petitioner) and the annuity issuer and structured settlement obligor prior to the execution of the transfer agreement. Petitioner has failed to meet its burden of establishing that the procedures it maintains pursuant to the requirements of General Obligations Law § 5-1708 (c) have been deemed reasonably satisfactory to the annuity issuer and structured settlement obligor prior to the execution of the transfer agreement. For that reason alone, the application should be denied. Notwithstanding that substantive defect, the court will address the merits of the application.

General Obligations Law § 5-1706 provides, among other things, that the court may not approve a transfer of structured settlement payment rights unless it finds that such transfer is in the best interest of the payee and that such transfer is fair and reasonable.

A. Best Interest

In the case of *Matter of Settlement Funding of NY* (2 Misc 3d 872, 876 [Sup Ct, Lewis County 2003]), the court stated that the following factors should be considered in determining the best interest of the payee: "(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" (*id.* at 876; *see also Matter of Seneca One, LLC v Barr*, 2012 WL 4462396 [Sup Ct, NY County 2008]).

Based on the papers submitted and the testimony adduced at the hearing, the court finds as follows relative to the best interest factors:

(1) Feasel is 53 years old and single with no children. Feasel has adequate mental capacity and maturity, but diminished physical capacity. Feasel's only source on income is disability payments of \$1,380.00 per month and an additional \$16.00 in food stamps.

(2) Feasel's stated intention for the use of the money is to pay for car repairs, dental work and eyeglasses.

(3) Feasel stated that he is receiving current medical care for issues related to his injuries, and anticipates the need for future medical care.

(4) Fesael has demonstrated poor financial acumen by his past decisions to sell his structured settlement payments at a steep loss, as well as his willingness to enter into the present proposed transaction.

(5) With minimal income from only disability, Feasel is likely experiencing a degree of financial hardship.

(6) Feasel did not seek independent financial or legal advice.

(7) Feasel has transferred his structured settlement rights several times in the past.

The court finds that the best interest factors, as applied to the circumstances of this case, mitigate against the court approving the proposed transaction.

Feasel has not worked since 2013, did not state the intent or ability to work in any capacity in the future, and has no retirement benefits through employment or otherwise. The annuity payment of \$1,033.88 per month for life will therefore be an important source of income for Feasel for the remainder of his life.

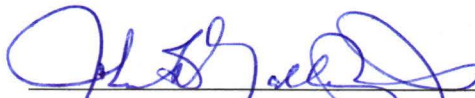
B. Fair and Reasonable

In light of its finding that the proposed transfer is not in Feasel's best interest, it is unnecessary for the court to further evaluate the fairness and reasonableness of the same. The court notes, however, that, while fully recognizing the payments sought to be transferred are life-contingent, the court would be hard-pressed to find a transaction with the terms proposed herein either fair or reasonable.

It is, therefore, hereby

ORDERED, that Petitioner's application is denied and the Verified Petition is dismissed.

Dated: December 7, 2018
Rochester, New York


Hon. John B. Gallagher, Jr., J.S.C.