

**CBC Settlement Funding, LLC v Pacific Life &
Annuity Servs., Inc.**

2020 NY Slip Op 31259(U)

April 22, 2020

Supreme Court, Kings County

Docket Number: 503412/2020

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
CBC SETTLEMENT FUNDING, LLC, Petitioner(s), INDEX NO. 503412 / 2020

-against-

PACIFIC LIFE & ANNUITY SERVICES, INC., ORDER
PACIFIC LIFE INSURANCE COMPANY, and
THADDEUS COOKE, Respondent(s).
-----X

THIS MATTER having come before the Court pursuant to the order to show cause and petition (the "Petition") of CBC Settlement Funding, LLC ("CBC") seeking approval of the transfer of certain structured settlement payments by the payee, Thaddeus Cooke, Jr. a/k/a Thaddeus Cooke ("Mr. Cooke"), to petitioner, CBC, pursuant to the provisions of General Obligations Law § 1701, *et seq.*, and upon consideration of the Wrongful Death Compromise Order, the Decree, and the Decision, all attached hereto collectively as Exhibit "A" approving the underlying structured settlement,

NOW, this 22 day of April, 2020, this Court finds that:

1. the transfer of the structured settlement proceeds, specifically, monthly payments of \$400.00 each, beginning on May 1, 2020 through and including July 1, 2029 (the "Assigned Payments"), by Mr. Cooke to CBC, as described in the Petition and in the Purchase and Sale Agreement dated February 19, 2020 (the "Purchase Agreement") between Mr. Cooke and CBC (the "Proposed Transfer") complies with all requirements of the New York Structured Settlement Protection Act, N.Y. Gen. Oblig. Law § 5-1701, *et seq.*; Colo. Rev. Stat. § 13-23-101, *et seq.*; Ariz. Rev. Stat. § 12-2901, *et seq.*, and 26 U.S.C. § 5891; and

2. the Proposed Transfer is in the best interest of Mr. Cooke, taking into account the welfare and support of Mr. Cooke's dependents, if any, and 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, is fair and reasonable; and
3. Mr. Cooke has been advised in writing by CBC to seek independent professional advice regarding the Proposed Transfer and has either received such advice or knowingly waived such advice in writing; and
4. the Proposed Transfer does not contravene any applicable federal or state statute or the order of any court or responsible governmental or administrative authority; and
5. not less than ten (10) days prior to the date on which Mr. Cooke signed the Purchase Agreement, CBC provided Mr. Cooke with a separate disclosure statement meeting the requirements of N.Y. Gen. Oblig. Law § 5-1703; and
6. CBC has given timely written notice of its name, address, and taxpayer identification number to the annuity issuer, Pacific Life & Annuity Company ("PLAC"), and the structured settlement obligor, Pacific Life & Annuity Services, Inc. (collectively, "Pacific Life"), and has filed a copy of the notice with the Court; and
7. notice of the Proposed Transfer and the application for its authorization has been filed with this Court and served on all interested parties in compliance with N.Y. Gen. Oblig. Law § 5-1705; and
8. the Purchase Agreement and all disclosures are written in plain language and in compliance with N.Y. Gen. Oblig. Law § 5-702; and
9. this Court has jurisdiction over this matter pursuant to N.Y. Gen. Oblig. Law § 5-1705(b).

10. CBC has assigned to SuttonPark Structured Settlements, LLC ("SuttonPark") all of its rights under the Purchase Agreement and the right to receive the Assigned Payments.

Based on the foregoing findings, IT IS HEREBY ORDERED that:

1. Pursuant to N.Y. Gen. Oblig. Law § 5-1706, the Proposed Transfer is approved.

The Assigned Payments shall be made to SuttonPark even in the event of Mr. Cooke's death, and Mr. Cooke understands he is giving up his rights, and the rights of his heirs, successors, and/or beneficiaries, to the Assigned Payments.

2. PLAC shall forward the Assigned Payments due under annuity contract no. 8101407124 / 14800757, within seven (7) days of the date due, by check made payable to "SuttonPark Structured Settlements, LLC," at Lock Box #9582, P.O. Box 8500, Philadelphia, PA 19178-9582, Account # 2000056386323, as follows:

- monthly payments of \$1,402.07 each, beginning on May 1, 2020 through and including July 1, 2029, with SuttonPark to retain \$400.00 of each payment and remit the remainder of each payment to Mr. Cooke (the "Servicing Arrangement").

3. In the event SuttonPark further assigns or otherwise transfers the Assigned Payments (or any portion thereof or interest therein) to another person or entity or in the event that Mr. Cooke seeks to assign the unassigned portion of the structured settlement payments to be remitted by SuttonPark to Mr. Cooke pursuant to the Servicing Arrangement (a "Reassignment"), Pacific Life will not be obligated to redirect the structured settlement payments that include the Assigned Payments (or any portion thereof) to any person or entity other than SuttonPark or to any payment address other than that specified herein, and CBC, SuttonPark, and Mr. Cooke shall remain obligated to comply with all terms and conditions herein and in the parties' stipulation ("Stipulation"). However, if SuttonPark's designated payment address is no longer viable for reasons beyond SuttonPark's control, Pacific Life agrees to send the structured

settlement payments that include the Assigned Payments to a new payment address upon the timely submission by SuttonPark of a written notice to PLAC confirming that such event has occurred and specifying the new payment address. Notwithstanding the foregoing, the parties' Stipulation and this Order, including but not limited to the Servicing Arrangement, will remain binding and fully enforceable against CBC, SuttonPark, and Mr. Cooke, and under no circumstances will CBC, SuttonPark or Mr. Cooke seek to compel Pacific Life, nor shall Pacific Life be required, to modify the Servicing Arrangement so as to redirect any portion of the affected structured settlement payments to any person or entity other than SuttonPark.

4. CBC and SuttonPark shall defend, indemnify, and hold harmless Pacific Life and its directors, shareholders, officers, agents, attorneys, employees, servants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, attorneys, employees, servants, successors, and assigns, past and present, from and against any and all liability, including but not limited to costs and reasonable attorneys' fees, for any and all claims asserted by any person or entity, including but not limited to any claims asserted by any person or entity not a party hereto, claiming an interest in the Assigned Payments, and any and all other claims made in connection with, related to, or arising out of the Purchase Agreement, the Servicing Arrangement, the Proposed Transfer, the Assigned Payments, any Reassignment, or Pacific Life's compliance with the parties' Stipulation or this Order, except with respect to claims by CBC and SuttonPark against Pacific Life to enforce Pacific Life's obligations to CBC and SuttonPark under the parties' Stipulation. To the extent CBC and/or SuttonPark fails to honor this indemnification and defense obligation, Pacific Life may, in addition to all other remedies afforded by law, satisfy the same by withholding to its own credit any funds owed to CBC and/or SuttonPark.

5. Pacific Life's lack of opposition to this matter, or its or the other parties' stipulation hereto or compliance herewith, shall not constitute evidence in this or any other matter, and is not intended to constitute evidence in this or any other matter, that:

- (a) payments under a structured settlement contract or annuity or related contracts can be assigned or that "anti-assignment" or "anti-encumbrance" provisions in structured settlement contracts or annuities or related contracts are not valid and enforceable; or
- (b) other transactions entered into by CBC and SuttonPark and their customers constitute valid sales and/or loans; or
- (c) Pacific Life has waived any right in connection with any other litigation or claims; or
- (d) CBC and/or SuttonPark has waived any right other than as expressly set forth herein or in the parties' Stipulation and/or this Order.

6. CBC, SuttonPark, and Mr. Cooke, for themselves and for their respective shareholders, officers, agents, attorneys, employees, servants, successors, heirs, beneficiaries, contingent beneficiaries, executors, administrators, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, attorneys, employees, savants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, attorneys, employees, savants, successors, and assigns, past and present (the "Releasors"), hereby remise, release, and forever discharge Pacific Life and its directors, shareholders, officers, agents, attorneys, employees, servants, successors, and assigns, and any parent, subsidiary, or affiliate thereof, and their directors, shareholders, officers, agents, attorneys, employees, servants, successors, and assigns, past and present (the "Pacific Life Releasees"), of and from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, settlements, damages, claims, and demands whatsoever, in law or in equity, in connection with, related to, or arising out of any claim or allegation that was or could have been asserted in connection with, related to, or arising

out of the Purchase Agreement, the Servicing Arrangement, the Assigned Payments, any Reassignment, the Proposed Transfer, or the parties' Stipulation, which the Releasors have or had from the beginning of the world through the date of this Order, except for claims of the Releasors against the Pacific Life Releasees to enforce the Pacific Life Releasees' obligations to the Releasors, if any, under the parties' Stipulation.

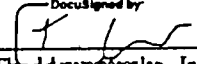
7. Mr. Cooke shall receive a net payment of \$27,000.00 from CBC in exchange for the transfer of the Assigned Payments.

8. This Order shall constitute a final "Qualified Order" within the meaning of 26 U.S.C. § 5891.

ENTER:


J.S.C.

Consented to and requested by:

DocuSigned by

Thaddeus Cooke, Jr. a/k/a Thaddeus Cooke, Transferor

So Ordered
Hon. Richard Velasquez

APR 22 2020