

Summercourt, LLC v John Hancock Assignment Co.
2020 NY Slip Op 32387(U)
July 20, 2020
Supreme Court, Kings County
Docket Number: 507939/2020
Judge: Carolyn E. Wade
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At I.A.S. Part 84 of the Supreme Court of the State of New York, held in the County of Kings, at the Courthouse located at Madison St, on this 20 day of July 2020.

PRESENT: HON. CAROLYN E. WADE
Justice of the Supreme Court
-----X

Index No. 507939/2020

SUMMERCOURT, LLC

Petitioners,

-against-

JOHN HANCOCK ASSIGNMENT COMPANY,
JOHN HANCOCK LIFE INSURANCE COMPANY OF
NEW YORK, AND HEAVEN BANNERBIE,

Respondents.

-----X

ORDER

This matter coming to be heard on Summercourt, LLC's ("Summercourt") Order to Show Cause, Verified Petition and Amended Verified Petition ("Petition") for the approval of a transfer of structured settlement payment rights between Summercourt, LLC and Heaven Bannerbie a/k/a Heaven Savana Bannerbie ("Ms. Bannerbie" or "Payee") in accordance with the New York Structured Settlement Protection Act, N.Y. Gen. Oblig. Law § 5-1701, *et seq.* (the "Act"). The Court being fully advised in the premises, and the Court having jurisdiction of the matter and the parties to this Order, and in accordance with the Act and upon papers submitted, including the Purchase, Sale and Transfer Agreement dated May 11, 2020 ("Purchase Agreement"), the Disclosure Statements signed by Ms. Bannerbie, and the testimony of Ms. Bannerbie, the Court expressly finds as follows:

1. Notice of the Petition has been given to John Hancock Life Insurance Company of New York ("John Hancock Life" or "Issuer") and John Hancock Assignment Company ("John Hancock Assignment" or "Obligor") at least twenty (20) days before the date of the hearing, who do not object to the Petition or appear in Court based upon the terms of this Order.

2. Not less than ten (10) days prior to the date on which Ms. Bannerbie signed the Purchase Agreement, Summercourt provided her with a separate disclosure statement meeting the requirements of N.Y. Gen. Oblig. Law § 5-1703.

3. Ms. Bannerbie has been advised in writing by Summercourt to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing.

4. Summercourt has given timely written notice of its name, address, and taxpayer identification number to John Hancock Life and John Hancock Assignment, and has filed a copy of the notice with the Court.

5. Notice of the proposed transfer and the application for its authorization have been filed with this Court and served on all interested parties in compliance with N.Y. Gen. Oblig. Law § 5-1705 and/or as otherwise prescribed and directed by the Court.

6. The Purchase Agreement and all disclosures are written in plain language and in compliance with N.Y. Gen. Oblig. Law § 5-702.

7. This Court has jurisdiction over this matter pursuant to N.Y. Gen. Oblig. Law § 5-1705(b).

8. Ms. Bannerbie is properly before the Court and has confirmed to the Court's satisfaction that she is a resident of and is domiciled in Kings County, New York and is entitled to avail herself of the Act.

9. Summercourt has assigned all of its right, title and interest in and to the Assigned Payments (defined below) to St. James Receivables LLC (“Assignee”).

10. The proposed transfer complies with the requirements of N.Y. Gen. Oblig. Law § 5-1701, *et seq.* and 26 U.S.C. § 5891, and will not contravene other applicable law.

11. This Court finds that the transfer satisfies all requirements under the Act and that the transfer described in Paragraph 1 of this Court Order below does not contravene any Federal or State statute or the order of any court or responsible government or administrative authority, and is in the best interest of Ms. Bannerbie taking into account the welfare and support of Ms. Bannerbie’s dependents, if any, 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, is fair and reasonable.

12. Ms. Bannerbie is entitled to receive payments from an annuity issued by John Hancock Life, annuity contract number 18082-50002-20100331 (the “Periodic Payments”), and purchased by John Hancock Assignment, which funds payments due under a Settlement Agreement and Release. The Periodic Payments due under the annuity originally were annual payments of \$30,000.00 each, beginning on December 4, 2019 through and including December 4, 2022; one lump sum payment of \$100,000.00 due on December 4, 2026; and one lump sum payment of \$222,500.00 due on December 4, 2031, all payable under a Uniform Qualified Assignment with an effective date of May 5, 2010.

13. Ms. Bannerbie currently seeks to transfer to Summercourt the following Periodic Payment: three (3) annual payments of \$30,000.00 each, beginning on December 4, 2020 through and including December 4, 2022; one lump sum payment of \$100,000.00 due on

December 4, 2026; and one lump sum payment of \$222,500.00 due on December 4, 2031 (the "Assigned Payments").

14. Ms. Bannerbie resides in this County, making this Court an appropriate forum for the filing and prosecution of this Petition.

15. Periodic Payments due to Ms. Bannerbie constitute damages on account of personal injuries and sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code 1986, as amended, and such payments are not taxable payments and do not constitute attorneys' fees payments.

Based on the foregoing findings, the transfer of payments from Ms. Bannerbie to Summercourt should be approved.

IT IS HEREBY ORDERED, that the Petition for the approval of a transfer of structured settlement payment rights between Summercourt and Ms. Bannerbie is approved in all respects pursuant to the Act on the following terms:

1. Pursuant to the Act, Ms. Bannerbie is granted leave to assign the following Periodic Payments: three (3) annual payments of \$30,000.00 each, beginning on December 4, 2020 through and including December 4, 2022; one lump sum payment of \$100,000.00 due on December 4, 2026; and one lump sum payment of \$222,500.00 due on December 4, 2031, pursuant to the Settlement Agreement and Release and the John Hancock Life annuity contract number 18082-50002-20100331. The Assigned Payments, a total of \$412,500.00, are in exchange for a gross lump sum payment of \$239,945.77 to be paid to Ms. Bannerbie pursuant to the Purchase Agreement only by Summercourt or Assignee.

2. Any obligation of John Hancock Life and John Hancock Assignment hereunder to direct the Assigned Payments to Assignee is limited to only such Assigned Payments as have not already been paid as of the date John Hancock Life and John Hancock Assignment receive this Order entered by the Court allowing the Proposed Transfer. Summercourt and Assignee agree to seek recovery solely from Ms. Bannerbie for the Assigned Payments if made by John Hancock Life and John Hancock Assignment prior to the receipt of the foregoing.

3. The Issuer is hereby directed to deliver and make payable to Assignee at the following address:

St. James Receivables LLC
 P.O. Box 8500, Lockbox #9582
 Account # 2000056386323
 Philadelphia, PA 19178-9582

the Assigned Payments due beginning on December 4, 2020 through and including December 4, 2031. The contingent beneficiary under the Annuity for the Assigned Payments shall be the estate of Heaven Bannerbie a/k/a Heaven Savana Bannerbie.

4. Summercourt, Assignee and their respective affiliates and successors in interest shall defend, indemnify and hold harmless Obligor and Issuer and their successors and assigns, parents, attorneys, affiliates, and subsidiaries from and against any and all liability from all claims in connection with, related to, or in any way arising out of the Purchase Agreement, the Petition, or this Order, whether such claims are brought by Ms. Bannerbie (including heirs, dependents, beneficiaries, contingent beneficiaries, or executors), or by any other individual or entity.

5. To the extent Summercourt or Assignee fails to honor this indemnification and defense obligation, John Hancock Life and John Hancock Assignment may, in addition to all

other remedies afforded by law, satisfy the same by withholding to their own credit the Assigned Payments.

6. Summercourt, Assignee and their respective affiliates and successors in interest shall be liable to Obligor and Issuer for any and all liabilities and costs, including reasonable costs and attorneys' fees arising from compliance with this Order or arising as a consequence of any failure of Summercourt or Assignee to comply with the Act.

7. The Obligor and Issuer are hereby discharged from all liability with respect to the Assigned Payments due beginning on December 4, 2020 through and including December 4, 2031, and any transferred portions thereof as to all parties except Assignee. This Order is entered without prejudice to the rights of the Obligor and Issuer, and the Court makes no finding regarding the enforceability of any non-assignment provisions contained in the original Settlement Agreement and Release, the Annuity Contract, the Uniform Qualified Assignment and Release, or related documents. This Order in no way modifies or negates the ownership or control over the underlying annuity contract by the Obligor and Issuer, and nothing contained in this Order shall be deemed to afford Ms. Bannerbie any rights or ownership or control of the annuity contract which funds the settlement payments to Ms. Bannerbie or shall otherwise affect the exclusive ownership and control of such annuity contract by the Obligor. This Order shall be binding on Ms. Bannerbie, Summercourt, Assignee, the Obligor and Issuer, and all other interested parties.

8. The limited assignments permitted herein are expressly limited to the subject annuity contract; and by their agreement to this Order, neither John Hancock Life nor John Hancock Assignment waives enforcement of the anti-assignment provisions in these or any other Settlement Agreements, Qualified Assignments, or Annuity Contracts.

9. Ms. Bannerbie, for herself and for her assigns, heirs, and administrators, or individuals or entities that may claim through them, hereby remises, releases, and forever discharges John Hancock Life and John Hancock Assignment and their directors, shareholders, officers, agents, attorneys, employees, servants, reinsurers, 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, of and from any and all manner of actions and causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, settlements, damages, claims, and demands whatsoever, in law or in equity, arising out of, related to, or in connection with the Assigned Payments identified herein, or John Hancock Life's or John Hancock Assignment's compliance with this Order.

10. It is agreed and understood that in the event that Assignee attempts to further assign the Assigned Payments to another person or entity, John Hancock Life and John Hancock Assignment will not be obligated to re-direct the Assigned Payments to any such person or entity. If Assignee is granted approval to further assign the Assigned Payments, Assignee will continue to service the Assigned Payments due beginning on December 4, 2020 through and including December 4, 2031.

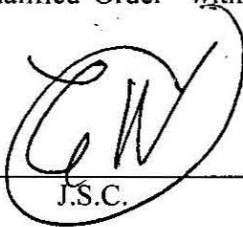
11. The death of Ms. Bannerbie prior to the due date of the last Assigned Payment shall not affect the transfer of the Assigned Payments from Ms. Bannerbie to Assignee, and Ms. Bannerbie understands she is giving up her rights, and the rights of her heirs, successors, and/or beneficiaries, to the Assigned Payments.

12. Summercourt, by its counsel Luigi Brandimarte, Esquire, expressly represents to the Court that it is a corporation in good standing and that it hereby submits to the jurisdiction of this Court for the purpose of the entry and enforcement of this Order.

13. Any further transfer of structured settlement rights by Ms. Bannerbie shall be made only after compliance with the requirements of the structured settlement protection acts applicable to this transfer.

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

ENTER:



J.S.C.

AGREED TO AND APPROVED
AS TO FORM AND SUBSTANCE:

Hon. Carolyn E. Wade
Acting Supreme Court Justice

PAYEE,



Heaven Bannerbie a/k/a Heaven Savana Bannerbie

Summercourt, LLC
by its attorneys



Luigi Brandimarte, Esquire