

Matter of J.G. Wentworth Originations, LLC v Genworth Life Ins. Co. of N.Y
2020 NY Slip Op 32432(U)
July 21, 2020
Supreme Court, Kings County
Docket Number: 507410/2020
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the
Supreme Court of the State of
New York, held in and for the
County of Kings, at the
Courthouse, at Civic Center,
Brooklyn, New York, on the
21st day of July 2020

HONORABLE FRANCOIS A. RIVERA

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In the Matter of the Petition of
J.G. WENTWORTH ORIGINATIONS, LLC,

Plaintiff,

DECISION & ORDER
Index No. 507410/2020

- against -

GENWORTH LIFE INSURANCE COMPANY OF
NEW YORK, GE CAPITAL ASSIGNMENT
CORPORATION OF NEW YORK and
Guillermo Clark Jr., As Interested Persons Pursuant
to GOL § 5-1701(f).

Defendants.

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By order to show cause and petition filed on May 25, 2020, petitioner J.G.

Wentworth Originations, LLC. (hereinafter petitioner or Wentworth), seeks an order
pursuant to General Obligations Law § 5-1701 et seq., approving the transfer of certain
structured settlement proceeds.

Petitioner commenced this special proceeding, pursuant to New York General
Obligations Law Article 5, Title 17, known as the Structured Settlement Protection Act
(hereinafter SSPA), seeking approval of the sale and transfer of certain structured
settlement payment rights to it from Guillermo Clark Jr., the payee (hereinafter Clark or

payee).

Clark is the owner of payment rights to a structured settlement. Specifically, he is expecting one particular payment on October 16, 2021 in the amount of ninety-two thousand, one hundred and twenty-one dollars and eighty cents (\$92,121.80). Clark supports the petitioner's application seeking approval to purchase this particular payment for the sum of sixty-nine thousand, five hundred and twenty-six dollars and eighty-eight cents (\$69,526.88).

Petitioner's annexed disclosure document establishes the following facts. The aggregate amount of the proposed purchased payment is ninety-two thousand one hundred and twenty-one dollars and eighty cents (\$92,121.80). The discounted present value of the aggregate purchased payments at the federal interest rate of 1.80% is eighty-nine thousand, six hundred and one dollars and sixty-seven cents (\$89,601.67). The payee would assign his rights in the aforementioned proceeds for the sum of sixty-nine thousand, five hundred and twenty-six dollars and eighty-eight cents (\$69,526.88).

The payee has averred in his affidavit in support that he is twenty-nine years old, unemployed, single and has no minor children. He has also averred, that if the petition were approved he would use the proceeds to pay rent, daily bills and to help support his ailing mother.

General Obligations Law Title 17, § 5-1701 et seq., sets forth the procedure for seeking and obtaining judicial approval of the appropriate Court of the State of New York for the transfer of certain structured settlement payments. SSPA was adopted by the

State Legislature to give greater protection to individuals either entering into a structured settlement agreement or negotiating to sell or transfer a periodic payment thereunder to a third party.

The plain language of General Obligations Law § 5-1706 sets forth several procedural mandates that must be adhered to for judicial approval of an application for transfer of a structured settlement to a third party (*Matter of Settlement Capital Corp. (Ballos)*, 1 Misc3d 446 [Sup Ct, Queens County 2003]). Equally significant, the statute mandates that the court, in determining such an application, make a two-prong inquiry based upon considerations of prudence, equity and reason, and vests in the court the authority to make an independent discretionary determination as to whether “the transfer 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” (*id.*). The primary purpose of the SSPA is to protect the recipients of long-term structured settlements from being victimized by companies aggressively seeking the acquisition of their rights to guaranteed structured settlement payments (*see Matter of 321 Henderson Receivables, L.P. v Martinez*, 11 Misc3d 892 [Sup Ct, NY County 2006]).

The issue before the court on such a petition is whether approval of the proposed transfer would be consistent with the letter and spirit of SSPA (*Matter of J.G. Wentworth Originations, LLC v Allstate Life Ins. Co.*, 61 Misc3d 1215[A], 2018 NY Slip Op 51530

[U] [Sup Ct, Kings County 2018]).

The petitioner has complied with the procedural requirements of General Obligations Law § 5-1705 by including a copy of the transfer agreement, a copy of the disclosure statement and by serving the petition upon all interested parties, including the party currently receiving the structured payments and the structured settlement obligors who are responsible for making the payments under the existing structured settlement (*see Matter of 321 Henderson Receivables L.P.*, 11 Misc3d at 892).

The courts are intended to examine the various statutory criteria and determine whether the proposed sale will truly serve the best interest of the payee (*id.*). The best interest standard under the SSPA requires a case by case analysis to determine whether the proposed transfer of structured settlement payments, which were designed to preserve the injured person's long-term financial security, will provide needed financial rescue without jeopardizing or irreparably impairing the financial security afforded to the payee and his or her dependents by the periodic payments (General Obligations Law § 5-1706; *In re Settlement Capital Corp.*, 1 Misc3d 446, 455 [Sup Ct, Queens County 2003]).

While considering the best interest of the payee, the court must also determine 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 (*see* General Obligations Law § 5-1706[b]; *Matter of Settlement Funding of NY LLC v Solivan*, 8 Misc3d 1006[A], 2005 NY Slip Op 50946 [U] [Sup Ct, Kings County 2005]).

Based on the net amount that the payee would receive and the amounts and timing of the structured settlement payments that the payee would be selling, this would be the equivalent of interest payments to the petitioner at a rate of 19.84% per year.

This Court concludes that the proposed sale of the payee's structured settlement payments to petitioner is not fair and reasonable and does not serve the best interest of the payee (*see Matter of 321 Henderson Receivables L.P.*, 11 Misc3d at 892).

CONCLUSION

The order to show cause and petition of J.G. Wentworth Originations, LLC. for an order pursuant to General Obligations Law § 5-1701 et seq., approving the transfer of certain structured settlement proceeds of Guillermo Clark Jr. is denied and the petition is dismissed without prejudice.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francois A. Rivera

J.S.C.

KINGS COUNTY CLERK
FILED
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