

**Matter of Freedom Fin. Solutions, LLC v Hartford
Comprehensive Empl. Benefit Servs. Co.**

2020 NY Slip Op 33106(U)

September 22, 2020

Supreme Court, Kings County

Docket Number: 501670/2015

Judge: Debra Silber

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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 : PART 9**

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**In the Matter of the Petition of
FREEDOM FINANCIAL SOLUTIONS, LLC
For Approval of Transfer of Structured Settlement
Payment Rights In Accordance with New York
GOL §5-1701,**

DECISION & ORDER

Petitioner,

-against-

**Index No. 501670/2015
MS # 2**

Submitted: 9/17/20

**HARTFORD COMPREHENSIVE EMPLOYEE BENEFIT
SERVICES COMPANY AND MICHAEL AND
SHIRMINE OKEBIYI INDIVIDUALLY AND AS
PARENTS AND NATURAL GUARDIANS OF
NICHOLAS OKEBIYI,**

Respondents.

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HON. DEBRA SILBER, J.S.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of proposed intervenors' motion to intervene.

Papers

NYSCEF DOC.

Notice of Motion, Affirmation and Exhibits Annexed..... 9-17, 20

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Proposed intervenors Dennis Deiasi, Ann Marie Deiasi, Brian Greig, and Patricia Greig ("Proposed Intervenors"), move to intervene in this disposed special proceeding, and to obtain an order from the undersigned (proposed order E-File Doc 17) that they may intervene and move, under this index number, for an order lifting the restraining order imposed by this court in its order dated November 9, 2015 (E-File Doc. 13). For the reasons which follow, this motion is denied, despite the absence of opposition.

There are reasons both procedural and substantive that prohibit this court from granting this motion. The most important of the reasons is that this court has been divested

of jurisdiction over the income stream at issue, and the only place this application may be made is before the Surrogate in Kings County Surrogate's Court. Pursuant to the Order of Court of Claims Judge DeBow (E-File Doc 23), the income stream from the structured settlement cannot be paid to an assignee(s) of Michael and/or Shirmine Okebiyi, but must be paid to the Guardian(s) for Nicholas Okebiyi appointed by the Surrogate. Any assignment of all or part of the income stream also must be approved by the Surrogate. As this procedure was not followed, and Nicholas Okebiyi had a Guardian appointed by the Surrogate's Court in 2014 and for many years prior to 2014, the undersigned believes the assignment documents are voidable and unenforceable, but that issue is not before this court.

By way of background, briefly, the Surrogate appointed the child's father as Guardian under Article 17-A of the SCPA simultaneously with the settlement of the infant's claims against some of the defendants in a medical malpractice action with regard to Nicholas. That settlement was entered into in Kings Supreme, and the income stream was payable to the Guardian, and the Guardian was accountable to the Surrogate. The action as against the hospital was settled in the Court of Claims, and that order omitted to provide for payment of the income stream to the Guardian for the child appointed by the Surrogate, instead directing the payor to issue payments directly to the "parents and natural guardians." For some fourteen years, these payments were issued to the parents with no accounting requirements and no court oversight. It was only when the parents tried to sell their disabled adult son's money that this court directed that the payments cease until the Surrogate could take control of the funds. With the order of the Court of Claims, that has been accomplished. Unfortunately, the Order from the Court of Claims is ambiguous, and

can be read to be retroactive to 2001, or read to only apply to the payments due to be paid after the court's 2018 decision. This court believes the proper interpretation of the order is that it is retroactive to 2001, as the body of the decision makes clear that the order is to correct an error and inserts language into the 2001 order which should have been there all along.

The ordering paragraph in Judge DeBow's order dated February 5, 2018 and entered March 20, 2018, states as follows:

"Accordingly, it is ORDERED, that the temporary guardian's motion to resettle the prior order of the Court of Claims is GRANTED, and the Amended Compromise Order filed in the Court of Claims on March 16, 2001 is further amended to include a decretal paragraph stating that "all periodic payments for the benefit of NICHOLAS OKEBIYI, payable on or after the date of filing of this decision and order, shall be payable to the Guardian of the property of Nicholas Okebiyi, as appointed by the Surrogate's Court of Kings County."

The above order was issued by the Court of Claims after the undersigned issued the 2015 order, which stated in pertinent part, "IT IS HEREBY ORDERED that Hartford CEBSO and Hartford Life Insurance Company immediately cease making any and all payments under the structured settlement annuity set up by the Court of Claims order to Freedom Financial Solutions LLC or their assignee and to Michael and Shirmine Okebiyi, unless and until the Surrogate's Court, the Court of Claims or another court of competent jurisdiction appoints a guardian over this income stream and determines whether there should be a co-guardian or a different guardian, whether the prior order dated February 18, 2014 and amended on April 9, 2014, approving the sale of part of the structured settlement

was forged and should be declared void, and whether the structured settlement order from the Court of Claims should be amended to require that the payments be issued to a guardian for Nicholas Okebiyi appointed by the Surrogate rather than to Michael and Shirmine Okebiyi in their inaccurate capacity as “natural guardians.”

The court notes that the parents’ first application, brought under Ind 20093/2013, was brought by Order to Show Cause and Petition, and there is not one mention of Nicholas Okebiyi in the papers. Michael and Shirmine Okebiyi, his parents, seem to have (mis)represented to petitioner that it was their structured settlement which they sought to assign. The caption in the Order to Show Cause and the Petition is “In the Matter of the Petition of MICHAEL AND SHIRMINE OKEBIYI for Judicial Approval of a Structured Settlement Annuity Sale and Assignment Agreement with FREEDOM FINANCIAL SOLUTIONS, LLC, pursuant to Article 5 Title 17 of the New York General Obligations Law.” Then, when they appeared before the court,¹ counsel for petitioner presented an order approving the transfer which substituted a different caption, which the judge signed, apparently unaware of the change, which reads “In the Matter of the Petition of MICHAEL AND SHIRMINE OKEBIYI, Individually, and as Parents and Natural Guardians of NICHOLAS OKEBIYI for Judicial Approval of a Structured Settlement Annuity Sale and Assignment Agreement with FREEDOM FINANCIAL SOLUTIONS, LLC, pursuant to Article 5 Title 17 of the New York General Obligations Law.” A few months later, apparently when the payor objected, an application was made to “amend the caption and the petition” which

¹If they in fact appeared before the court, as the firm representing petitioner had a paralegal who forged between seventy-five and a hundred orders in cases involving the assignment of structured settlements. “Paralegal Indicted for Forging Signatures of 76 Judges,” NY Law Journal, 9/17/15.

was granted on April 9, 2014 by Justice Bayne, in a handwritten order that states that the caption and the petition are amended retroactively to match the order issued February 18, 2014 and make clear it is Nicholas Okebiyi's funds which his parents had assigned.

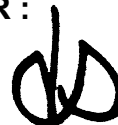
Shortly thereafter, having received the sum of \$402,653 from petitioner for the sale of the monthly payments under the 2014 order, another application was filed by Michael and Shirmine Okebiyi, under this Index number, to sell more of Nicholas Okebiyi's money. It was that application which resulted in this court's order dated November 9, 2015, and in turn, the Order from the Court of Claims.

Accordingly, this motion is denied in its entirety.

This shall constitute the decision and order of the court.

Dated: September 22, 2020

ENTER:



Hon. Debra Silber, J.S.C.