

**Matter of Estate Fund, LLC v American Home Assur.
Co.**

2020 NY Slip Op 34375(U)

December 21, 2020

Supreme Court, Kings County

Docket Number: 522006/2020

Judge: Carolyn E. Wade

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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 Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 21st day of December 2020

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X

In the Matter of the Petition of ESTATE FUND, LLC,

Petitioner,

Index No. 522006/2020

-against-

DECISION and ORDER

AMERICAN HOME ASSURANCE COMPANY, THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK, and GABRIEL BARRIMOND,

Respondents.

-----X

Recitation, as required by CPLR '2219 (a), of the papers considered in the review of petitioner ESTATE FUND, LLC's order to show cause:

Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	<u>1</u>
Cross-Motion and Affidavits/Affirmations.....	_____
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memorandum of Law.....	_____

Upon the foregoing cited papers and after oral argument, petitioner ESTATE FUND, LLC (“Petitioner”) moves, by order to show cause, for an Order permitting the Superior Court of the State of Georgia, to determine and adjudicate a proposed sale and transfer of future structured settlement payment rights from Gabriel Barrimond, its successors and/or assigns, under the Georgia Structured Settlement Protection Act.

On July 16, 2007, the Hon. David Schmidi signed an Infant Compromise Order in favor of respondent GABRIEL BARRIMOND (“Respondent”) in an underlying Kings County Supreme Court action entitled *Gabriel Barrimond et al. v The City of New York and Park Place Day Care Center, Index #13187/2003*, which approved a structured settlement (the “Structured Settlement”). Pursuant to its terms, Respondent is scheduled to receive \$15,000.00 on July 1, 2019; \$16,000.00 on July 1, 2020; \$17,000.00 on July 1, 2021; \$19,000.00 on July 1, 2022; and \$20,758.87 on July 1, 2023. Respondent, who is now an adult and resides in Georgia, seeks to sell a portion of his Structured Settlement payment rights to Petitioner.

In its Order to Show Cause, Petitioner emphasizes that this Court is not being asked to determine whether this transfer is fair and reasonable or in the best interests of Respondent, but is “only being asked for leave to allow the Georgia Court to proceed to conclusion of the application in spite of the wording of the Infant Compromise Order and/or other underlying settlement documents” (Petition in Support of Order to Show Cause, ¶13).

The primary purpose of the New York Structured Settlement Protection Act 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 321 Henderson v Martinez*, 11 Misc 3d 892 [Sup Ct, New York County 2006]).

In the instant application, Petitioner refers to Georgia Code Title 51. Torts § 51-12-70 et seq., which provides, *inter alia*:

§ 51-12-70. Definitions

(12) "Structured settlement payment rights" means rights to receive periodic payments (including lump sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

(A) The payee or any other interested party is domiciled in this state;

(B) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(C) The settled claim was pending before the courts of this state when the parties entered into the structured settlement agreement.

Furthermore,

§ 51-12-71. Prerequisites for transfer of structured settlement payment rights

(a) No 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 approved in advance in a final court order by a court of competent jurisdiction or order of any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement based on express findings by the court or government authority that:

(1) The transfer complies with the requirements of this article and does not contravene any federal or state statute or the order of any court or any responsible administrative authority;

(2) The transfer is in the best interest of the payee taking into account the welfare and support of the payee's dependents;

The Georgia statutes cited above do not provide any procedural requirement that necessitates this Court to “allow” the Georgia courts to consider the proposed transfer.

Therefore, Petitioner has failed to cite any applicable law to support the requested relief (see *J.G. Wentworth Originations, LLC v Ruiz*, 44 Misc 3d 1211[A] [Sup Ct, Kings County 2014]; see also CPLR 2214 [a]).

Accordingly, based upon the above, petitioner ESTATE FUND, LLC’s Order to Show Cause to permit the Superior Court of the State of Georgia to determine the requested transfer of future structured settlement payments is **DENIED**.

This constitutes the Decision/Order of the court.

HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE



HON. CAROLYN E. WADE
SUPREME COURT JUSTICE

KINGS COUNTY CLERK
FILED
2020 DEC 28 PM 11:33