

**Matter of Legacy Capital Funding, LLC v Metlife
Tower Resources Group, Inc.**

2022 NY Slip Op 33700(U)

October 28, 2022

Supreme Court, Kings County

Docket Number: Index No. 524426/2022

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**

_____X

In the Matter of the Petition of

LEGACY CAPITAL FUNDING, LLC,

Petitioner,

-against-

**METLIFE TOWER RESOURCES GROUP, INC.,
METROPOLITAN LIFE INSURANCE COMPANY,
and MANUEL SCOTT,**

Respondents.

_____X

DECISION / ORDER

Index No. 524426/2022

Motion Seq. No. 1

Date Submitted: 10/28/22

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this petition to transfer a structured settlement.

Papers	NYSCEF
Order to Show Cause, Petition and Exhibits Annexed.....	<u>1-14</u>

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

By this Order to Show Cause and Petition, petitioner seeks court approval to buy a structured settlement income stream from Mr. Manuel Scott. Mr. Scott is 39 years old and lives in Brooklyn, New York with his wife and four children. This petition is unusual in that the payments sought to be assigned are not due to be paid to him until October 15, 2038, through September 15, 2058, and are not guaranteed to be paid if he dies before then. To be clear, the earliest payment sought to be assigned is due 16 years from now. This is the reason petitioner gives for offering Mr. Scott \$101, 694.59 in

exchange for \$1,117,163.76 in payments, factoring in the required (3% compounded annually) annual increases.

The infant compromise order that established the structured settlement was signed in 2008 in a lawsuit brought by Mr. Scott's family on behalf of more than twelve Scott children against the City of New York and other defendants for lead poisoning (Index No. 26896/95). A copy of the settlement order is available at NYSCEF Doc 5 in one of Mr. Scott's prior applications to sell his income stream, at Ind. 508389/2014. The part that relates to Mr. Scott starts at Page 13. Counsel here did not include it in the papers, which it should have been. This document indicates that the case went on for thirteen years, and Mr. Scott had become an adult by the time it was settled.

The structured settlement annuity was directed by the court to provide that Mr. Scott receive \$1,427.33 per month, which payments are guaranteed for 30 years, to 2038, with annual increases at 3%, compounded annually. By 2038, when the payments are no longer guaranteed, but must be paid if Mr. Scott is still alive, petitioner has estimated the monthly payments to be \$3,464.67.

The petition annexes as Exhibit F copies of three prior court orders from courts which heard Mr. Scott's previous applications to assign his payments. From these orders, it is learned that in 2014 Mr. Scott successfully assigned 100% of the monthly payments which were intended to help support him, for ten years. In this application, he told the judge in Kings County, who has since retired, that he was going to use the money to purchase a home in New Jersey and a car. Today, he told this court that he has not purchased either a home or a car. In 2015, Mr. Scott went to Florida and obtained approval to sell all of the remainder of his guaranteed payments, from 2024 to

2038. He told that judge he wanted the money to purchase a house. He has not done so. Mr. Scott filed another application earlier this year, which was denied by another justice in Kings County, under Ind. 509538/2022. That application was filed by the same petitioner. Now, he brings another petition for court permission to assign the payments which will otherwise start in 2038, when he will be approximately 55 years old. He states he wants the funds to purchase a cooperative apartment.

Applicable Law

The SSPA (Structured Settlement Protection Act) was enacted as a result of concern that structured settlement payees are especially prone to being victimized and quickly dissipating their awards. (*Matter of Settlement Funding of N.Y.*, 195 Misc 2d 721, 722 [Sup Ct, Rensselaer County 2003]). "The SSPA protects payees from being taken advantage of by businesses seeking to acquire the payee's structured settlement payment rights" and discourages such transfers by requiring special proceedings seeking judicial approval of the transfer. (Id., General Obligations Law §§ 5-1705 and 5-1706). A proposed transfer of a portion of a payee's structured settlement for less than half its present discounted value was found not to be in the payee's "best interest", as required by the Structured Settlement Protection Act (SSPA). (Id., General Obligations Law §5-1706(b)). The payee's willingness to transfer the settlement "has no bearing on the court's determination of whether the interest rate paid by the transferee is 'fair and reasonable' within the meaning of the Structured Settlement Protection Act, (SSPA)." (Id.)

New York General Obligations Law §5-1706 provides that the transfer must be in

the best interest of the payee, the transaction must be fair and reasonable, and the payee must have been advised in writing to seek independent professional advice regarding the transfer and has either received such advice, or knowingly waived such advice in writing.

The Court must independently determine, in its discretion, 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*" (emphasis added) (*Matter of Settlement Funding of N.Y.*, 195 Misc 2d at 723 citing General Obligations Law §5-1706[b]). "This is a two-pronged test to be applied in evaluating the parties' agreement." (*Matter of 321 Henderson Receivables Origination, LLC v Lugo*, 23 Misc 3d 1138 [A] 2009 NY Slip Op 51189[U] Sup Ct, Kings County).

This best interests determination, at the court's discretion, involves consideration of several facts and circumstances concerning the payee, including the payee's age, mental capacity, maturity level, "ability to show sufficient income that is independent of the payments sought for transfer", and ability to provide for payee's dependents. (*Matter of 321 Henderson Receivables Origination, LLC v Lugo, supra*). "The best interest prong should be assessed on a case by case basis giving specific consideration to such factors as the payee's age; mental and physical capacity, maturity level; ability to show sufficient income that is independent of the payments sought for transfer; capacity to provide for the welfare and support of the payee's dependents; the need for medical treatment; the stated purpose for the transfer; and the demonstrated ability of the payee

to appreciate the financial terms and consequences of the proposed transfer based upon independent legal and financial advice." (*Whitney v LM Property*, NYLJ June 24, 2011; citing *Matter of Settlement Capital Corp.*, [Ballos], 1 Misc 3d 446, 445 [Sup Ct, Queens County]). The "best interest" consideration is separate and independent of the consideration of whether the transfer is "fair and reasonable". (*Matter of Settlement Funding of N.Y, supra*). For example, a payee who desperately needed cash to obtain "life sustaining medical treatment for a loved one" in the face of having no other alternative means of raising money would serve a payee's best interest in the face of a "life and death emergency" (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 financial security afforded to the payee and his or her dependents by the periodic payments." (*Matter of Settlement Capital Corp.*, [Ballos] 1 Misc 3d at 455). An explanation as to why the payee has an immediate need for the transfer of funds, or lump sum, is taken into consideration. (*Whitney, supra, citing Matter of Settlement Capital Corp.*, 194 Misc 2d 711).

In one decision, a payee who had not "enjoyed the benefits of wise and unbiased counsel in the management of her financial affairs" and waived her right to consult with an independent professional, confirmed the court's impression that the payee did not fully appreciate the consequences of her transfer (*Whitney v LM Property, supra*).

Discussion

The papers contain no explanation of Mr. Scott's use of the monies he has thus far received for the income stream from 2014 to 2038. His affidavit states that he wants the money to buy a home. However, that is what he said in the prior approved applications, and he has not done so. Mr. Scott will need the monthly funds when he is 55 in 2038, and he has no good cause to give away over a million dollars now.

The court has determined that the proposed transfer does not meet the "best interest" requirement, or the "fair and reasonable requirement" under the SSPA,. Therefore, the petition is denied and dismissed.

Any future application by any company seeking to purchase the structured settlement payments due to Manuel Scott must be made returnable to the undersigned and not to any other court or justice.

The foregoing constitutes the Decision, Order and Judgment of this court.

Dated: October 28, 2022

ENTER :



Hon. Debra Silber, J.S.C.