

**Matter of McAllister v Genworth Life & Annuity Ins.
Co.**

2011 NY Slip Op 31213(U)

April 27, 2011

Supreme Court, Nassau County

Docket Number: 1898/11

Judge: Anthony L. Parga

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SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:

HON. ANTHONY L. PARGA
JUSTICE

-----X PART 8
In the Matter of the Petition of,

RONALD MCALLISTER for Judicial
approval of Absolute Assignment Agreement with
SETTLEMENT FUNDING OF NEW YORK, LLC,
pursuant to Article 5 Title 17 of the New York
General Obligations Law,

INDEX NO. 1898/11

Petitioners,

MOTION DATE: 3/21/11
SEQUENCE NO. 001

-against-

GENWORTH LIFE AND ANNUITY INSURANCE
COMPANY and GENWORTH LIFE INSURANCE
COMPANY OF NEW YORK,

Respondents.

-----X
Order to Show Cause, Affs. & Exs..... 1

Upon the foregoing papers, it is ordered that the unopposed application by petitioner Settlement Funding of New York, LLC for an order seeking approval of the transfer of structured settlement payments is denied.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

Ronald McAllister is the beneficiary of a Settlement Agreement arising from a personal injury lawsuit. The settlement provides that Mr. McAllister is to receive annuity payments of \$1,225.78 per month, guaranteed for 30 years from March 9, 1990 to February 9, 2010 and for his lifetime thereafter, and a \$20,000.00 lump sum due on the February 26, 1993, a \$30,000.00 lump sum due on February 26, 2003, a \$50,000.00 lump sum due on February 26, 2013, and a \$100,000.00 lump sum due on February 26, 2023.

Ronald McAllister now seeks to sell to petitioner, Settlement Funding, his future right to 120 monthly payments each in the amount of \$1,175.78, commencing on March 9, 2020 through and including February 9, 2030, for the lump sum of \$11,829.10 (the "gross advance amount"),

from which \$2,000 in legal fees, \$200.00 in processing fees, and a fee of \$4,629.10 for the purchase of a term life insurance policy (the terms of which have not been provided to this Court), will be deducted. Accordingly, Mr. McAllister shall receive the “net advance amount” of \$5,000.00 for the sale. The aggregate amount of payments Ronald McAllister is selling is \$141,093.60. The discounted present value of payments to be transferred, as calculated by the Peitioner, is \$109,355.64.

Ronald McAllister is a forty-five year old divorced man with two minor children, aged 7 years and 11 years. Both of his children reside with him. He is presently unemployed and receives \$1028.00 per month in unemployment benefits. In this application, Ronald McAllister states that \$4,629.10 of the proceeds of the transfer are to be used to purchase life insurance, \$2,000 will be used to pay his “outstanding fines,” \$2,000 will be used to pay household bills, and he states that he will place \$1,000 in a savings account to be used in the event of a financial emergency.

Additionally, Mr. McAllister has previously filed applications for court approval for a transfer of his payment rights under the within structured settlement six (6) times. His applications were approved five (5) of the six times for the following transfers:

1. To Settlement Funding, LLC: 120 monthly payments in the amount of \$550.00 commencing on February 9, 1999 through and including January 9, 2009, for which he received “approximately” \$30,000.000;
2. To Settlement Funding, LLC: 120 monthly payments in the amount of \$550.00 commencing on November 2000 through and including October 9, 2010 and one lump sum payment of \$30,000.00 due on February 26, 2003, for which he received “approximately” \$42,450.000 (funds were to be used to purchase vehicle and home);
3. To Settlement Funding, LLC: 112 monthly payments in the amount of \$125.78 commencing on July 9, 2001 through and including October 9, 2010; 112 monthly payments of \$275.78 commencing on November 9, 2010 through and including February 9, 2020, and one lump sum payment of \$15,000.00 due on February 26, 2013, for which he received “approximately” \$8,240.00 (funds were to be used to pay debt);
4. To Settlement Funding, LLC: 21 monthly payments in the amount of \$550.00, commencing on February 9, 2009 through and including October 9, 2010, 112 monthly payments of \$950.00 commencing on November 9, 2010 through and including February 9, 2020, and one lump sum payment of \$35,000.00 on February 26, 2010, for which he received “approximately” \$12,025.00 (funds were to be used for school expenses); and

5. "Unknown" transfer completed within Freedom Financial Solutions LLC

The sixth transfer was to Settlement Funding LLC, with \$69,767.47 due on February 26, 2023, but was vacated and "dismissed" by this Court (Nassau County Index Number 4906/09).

The 2002 Structured Settlement Protection Act (SSPA) as embodied in Title 17 of NY General Obligation Law requires judicial approval of a sale to a third party of future settlement payments. In an effort to assist the Court in exercising discretion, Title 17 sets forth the procedure and express findings which the Court must make in the review of the sale. (GOL §5-1706); (*Petition of 321 Henderson Receivables v. Martinez, Met Life*, 2006 NY Slip Op 26054 (Sup. Ct., New York Cty, 2006)). The court is required to find that "the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependants' 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." (GOL §5-1706(b)).

The court in this particular case will not grant the petitioner's request. There is no demonstration that Ronald McAllister consulted with an independent attorney, accountant, or licensed financial advisor, (as his declaration states that he "chose to not to retain or consult with such professional"), and the Court does not find that the instant transfer is within the best interest of the payee. The details of the prior fifth "unknown" transfer have not been disclosed, and as such, the Court cannot determine whether Mr. McAllister previously transferred the payments that he has now agreed to transfer to Settlement Funding herein. Further, based upon the foregoing, the payee has already transferred structured settlement payment rights in the approximate amount of \$374,924.72 to Settlement Funding for approximately \$92,715.00. Additionally, as noted above, the within transfer has a value of \$141,093.60, with a present value of \$109,355.64, for which Ronald McAllister will be paid the amount of \$11,829.10 (from which \$2,200 in fees shall be deducted). Accordingly, Mr. McAllister is agreeing to sell his future structured settlement payments for 10.8% of their total present value without seeking legal or other professional financial counsel. Based upon same, the Court cannot find that the proposed transfer is in the best interests of Ronald McAllister.

The Court also notes that it has not been provided with a complete copy of the annuity contract for the purpose of determining whether all "interested parties" have been notified of the within petition. It is unknown whether the settlement of the underlying action included structured settlements to other parties or whether beneficiaries were designated within the annuity contract to receive payments upon the death of Ronald McAllister. General Obligations Law 5-1705(c) provides that "interested parties" include the payee, any beneficiaries irrevocably designated under the annuity contract to receive payments following the Payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or

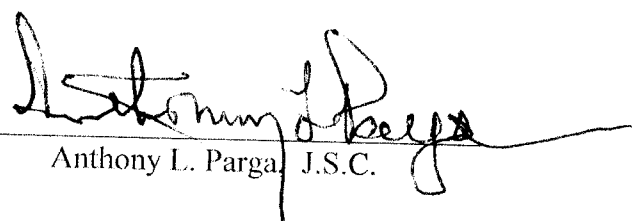
obligations under such structured settlement.

Lastly, it does not appear from Ronald McAllister's declaration that his monthly financial obligations can be met without the structured settlement as a supplement to his income. There is no mention of what Ronald McAllister's projected monthly financial obligations will be at the time that the structured payments at issue are paid to Settlement Funding as a result of this transfer, and Mr. McAllister is currently unemployed. There is no indication when his unemployment benefits are expected to cease or whether he has applied for employment. Further, he currently has two minor children living with him, the youngest of whom will not reach the age of majority for another eleven years.

There appears to be no exigent circumstances behind Mr. McAllister's desire to sell his interest, and while there is no requirement that the court find that an applicant is suffering from a hardship in order to approve the transfer of structured settlement payments, the court must find that the transfer is in the best interest of the payee. The court must also determine whether 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. The evidence before this Court does not indicate that the transfer is within Ronald McAllister's best interest. The Court is also concerned that Mr. McAllister's daily living expenses, including the support of his two minor children, while unemployed, may be too much of a burden on his income without the future structured settlement payments.

Examining the facts as presented in view of the statutory prerequisites, and considering the "paternalistic" purpose of the statute, the Court denies this application. (*See, 321 Henderson Receivables Origination, LLC v. Williams*, 20 Misc.3d 1101(A), 867 N.Y.S.2d 21 (Sup. Ct. Kings Cty. 2008); *In Re 321 Henderson Receivables, L.P.*, 13 Misc.3d 526, 819 N.Y.S.2d 826 (Sup. Ct. Erie Cty. 2006)).

Dated: April 27, 2011


Anthony L. Parga, J.S.C.

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ENTERED
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