

At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Supreme Court, 92 Court Street, City of Binghamton, New York, on the 17th day of February, 2012.

PRESENT: HON. FERRIS D. LÉBOUS
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

In The Matter of the Petition of

PEACHTREE SETTLEMENT FUNDING, LLC,

Petitioner,

and

MICHELLE LONGE,

Genworth Life Insurance Company of New York and
Assigned Settlement, Inc.,

As Interested Persons pursuant to GOL § 5-1701(c).

DECISION AND ORDER

Index No. 2012-0071

RJI No. 2012-0039

APPEARANCES:

COUNSEL FOR PEACHTREE SETTLEMENT
FUNDING, LLC:

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HON. FERRIS D. LEBOUS, J.S.C.

This petition presents a troubling history to this court.

At first glance, this petition is simply an application by petitioner, Peachtree Settlement Funding, LLC, for judicial approval of the proposed transfer of certain future payments due Michelle Longe under a structured settlement agreement in exchange for the present payment of a discounted lump sum (General Obligations Law § 5-1701 *et seq.*).

However, the list of "related cases" attached to the Request for Judicial Intervention was the first indicator that this was not a simple application. The list of related cases is comprised of nine prior petitions, some denied, some approved, made in three different counties (Sullivan, Bronx, and Broome) to seven different supreme court justices in the span of seven years. The court will detail the previous petitions hereinbelow, but suffice it to say that the result of these multiple petitions is that Ms. Longe has essentially devastated her structured settlement.

The current petition was returnable on February 16, 2012 providing the court an opportunity to discuss the prior and current petitions with counsel and Ms. Longe.

BACKGROUND

In March 2005, Ms. Longe was the recipient of certain guaranteed payments under a structured settlement agreement for the wrongful death of two of her children as follows:

- \$ 1,524.39 monthly payments starting July 1, 2005 guaranteed for 360 payments (June 1, 2035) and life thereafter [SOLD THRU 2032];
- \$ 20,000 lump sum payment due on April 17, 2010 [SOLD];
- \$ 40,000 lump sum payment due on April 17, 2015 [SOLD];
- \$ 60,000 lump sum payment due on April 17, 2020 [SOLD];
- \$ 80,000 lump sum payment due on April 17, 2025 [SOLD \$50,000];
- \$100,000 lump sum payment due on April 17, 2030.

Before proceeding to a review of the current petition, the court will review the prior applications made by Ms. Longe which have resulted in the sale of the majority of payments due under said structured settlement agreement as denoted above by the term "SOLD".

By way of this current petition, Ms. Longe seeks to transfer \$70,000 in future payments (\$20,000 out of the April 17, 2025 payment and \$50,000 out of the \$100,000 payment due April 17, 2030) in exchange for a gross advance amount of \$6,000.

Starting in 2005, Ms. Longe made the first of ten applications (including this petition) to transfer various portions of said structured settlement. The ten applications are as follows:

<u>Order date</u>	<u>Supreme Ct [Petition #¹]</u>	<u>Justice</u>	<u>Index No.</u>	<u>Petitioner's Counsel²</u>	<u>Disposition</u>
11-25-2005	Sullivan #1	Ledina	2005-2346	Carro, Carro ³	Denied
5-3-2006	Bronx #2	Suarez	2006-13114	Carro, Carro	Granted
3-20-2007	Sullivan #3	Sackett	2007-0576	Ian Chaikin ⁴	Granted
10-15-2007	Broome #4	Tait	2007-1927	Melvin ⁵	Denied
1-23-2008	Sullivan #5	Sackett	2007-4067	Ian Chaikin	Granted
3-3-2009	Sullivan #6	Sackett	2008-4689	Ian Chaikin ⁶	Denied
6-10-2009	Broome #7	Lebous	2009-1076	Ian Chaikin	Denied
2-23-2010	Sullivan #8	Melkonian	2010-0336	Segal ⁷	Granted
6-4-2011	Sullivan #9	Gilpatrick	2011-0356	Segal	Denied
2-__-2012	Broome #10	Lebous	2012-0071	Trevett ⁸	Denied

¹At times the court will refer to the petitions by way of "Petition #", for instance "Petition #1".

²Petitioner in each case was Settlement Funding of New York, LLC, with the exception of Petition #4 which was 321 Henderson Receivables Origination, LLC and the current Petition #10 which is Peachtree Settlement Funding, LLC.

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⁴Ian M. Chaikin, Esq., The Law Offices of Ian M. Chaikin, 80 Maiden Lane, Suite 1201, New York, NY.

⁵Louis Levine, Esq., Melvin & Melvin, 217 South Salina Street, Syracuse, NY.

⁶Mr. Chaikin's address changed to 17 State Street, Suite 2000-Box 169, New York, NY.

⁷Theodore M. Eder, Esq., Segal McCambridge Singer & Mahone, LTD., 850 Third Avenue, Suite 1100, New York, NY.

⁸Robert E. Brennan, Trevett Cristo Salzer & Andolina, P.C., 2 State Street, Suite 1000, Rochester, New York, NY.

The court has reviewed the Decision & Order/Order from each application.⁹ The results are staggering. If an application was denied, petitioner and/or Ms. Longe simply made a nearly identical application to a different supreme court in a different county until the application was approved.

For instance, in November 2005, Petition #1 was submitted to the Hon. Burton Ledina in Sullivan County Supreme Court (seeking to transfer 132 partial monthly payments of \$824.39 from November 1, 2005 through October 1, 2016 and the lump sum of \$20,000 payable on April 17, 2010). On November 25, 2005, Justice Ledina denied Petition #1. Almost immediately after that denial, Petition #2 was filed, this time to the Hon. Lucindo Suarez in Bronx County Supreme Court (seeking to transfer 120 partial monthly payments of \$824.39 from April 1, 2007 through March 1, 2017 and the lump sum of \$20,000 payable on April 17, 2010). On May 3, 2006, Justice Suarez approved Petition #2. Petitions #1 and #2 were both made by Settlement Funding by the law firm of Carro, Carro & Mitchell, LLP.

Another example exists with Petitions #4 and #5. Petition #4 was made to the Hon. Jeffrey A. Tait in Broome County (seeking to transfer numerous partial monthly payments too numerous to list here, together with the lump sums of \$40,000 payable on April 17, 2015; \$60,000 payable on April 17, 2020; \$80,000 payable on April 17, 2025; and \$100,000 payable on April 17, 2030). On October 15, 2007, Justice Tait denied Petition #4. Almost immediately after that denial, Petition #5 was made to the Hon. Robert A. Sackett in Sullivan County (seeking to

⁹The Petition and plaintiff's affidavit in each case were not annexed to the current application, although the court was able to ascertain certain details from the Decisions/Orders.

transfer many of the same monthly payments listed in Petition #4 including \$40,000 from the 2015 payment; \$50,000 from the 2020 payment; and \$15,000 from the 2025 payment). On January 23, 2008, Justice Sackett granted Petition #5.

Yet another example exists with Petitions #6, #7, and #8. Having been successful with Justice Sackett on Petition #5, Petition #6 was again submitted to Justice Sackett in Sullivan County by Settlement Funding (seeking to transfer 114 monthly payments of \$1,524.39 from January 1, 2026 through June 1, 2035, the \$10,000 lump sum remaining from the 2010 payment, and the \$45,000 lump sum remaining from the 2025 payment). However, on March 3, 2009, Justice Sackett denied Petition #6. After Petition #6 was denied, two months later petitioner Settlement Funding and Ms. Longe made Petition #7 to this court seeking to transfer essentially the same payments (monthly payments between 2026 through 2035 and the remaining portions of the 2020 and 2025 lump sum payments albeit with some modifications). This court was not advised, either by counsel or Ms. Longe of Petitions #1, #2, #3, #5 and #6 although it did discover, on its own, Petition #4 to Justice Tait. On June 10, 2009, this court denied Petition #7. Not to be deterred, petitioner Settlement Funding and Ms. Longe made Petition #8, this time to the Hon. Michael H. Melkovian in Sullivan County seeking to transfer essentially the same monthly payments and remaining portions of the 2020 and 2025 payments just denied by this court in Petition #7. On February 23, 2010, Justice Melkovian granted Petition #8.

The court will now review the current petition (Petition #10) in the context of this history.

DISCUSSION

General Obligations Law § 5-1701 *et seq.*, also known as the "Structured Settlement Protection Act" or "SSPA", was enacted in 2002 due to the concern that structured settlement payees, such as Ms. Longe, are particularly prone to being victimized and quickly dissipating their assets and to protect them from the growing number of companies using "[a]ggressive advertising, plus the allure of quick and easy cash, to induce settlement recipients to cash out future payments, often at substantial discounts, depriving victims and their families of the long-term financial security their structured settlements were designed to provide' (Mem. in Support, N.Y. State Assembly, 2002 McKinney's Session Laws of N.Y., at 2036)" (*Singer Asset Finance Co., LLC v Melvin*, 33 AD3d 355 [2006]). This legislation "[d]iscourages such transfers by requiring would-be transferees to commence special proceedings for the purpose of seeking judicial approval of the transfer [*citations omitted*]" (*Settlement Funding of New York, LLC [Cunningham]*, 195 Misc 2d 721, 722 [Rensselaer County 2003]). "The SSPA clearly reflects the Legislature's dissatisfaction with the structured settlement transfer market rates, and its conclusion that payees cannot protect their best interest and thus require judicial supervision" (*Settlement Funding [Cunningham]*, 195 Misc 2d at 724).¹⁰

Thus, this court's judicial function under the SSPA requires an evaluation of a variety

¹⁰Noteworthy in this case is the 2010 legislative amendment to GOL§ 5-1705 which added subdivision (iv) requiring that all petitions now include "[a] statement setting forth whether there have been any previous transfers or applications for transfer of the structured settlement payment rights and giving details of all such transfers or applications for transfer". This addition was added, in part, to "[h]ave the effect of deterring the practice of filing a petition seeking a transfer in one venue after it has already been denied in a different venue" (Report of the Advisory Committee on Civil Practice to the Chief Administrative Judge of the Courts of the State of New York, January 2010, pp 58-59).

of factors, but particularly: (1) whether the transaction is fair and reasonable; and (2) whether the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, if any.

Here, Ms. Longe seeks to transfer \$70,000 in future payments (\$20,000 out of the \$80,000 payment due April 17, 2025 and \$50,000 out of the \$100,000 payment due April 17, 2030). In return, Ms. Longe would receive a gross advance amount of \$6,000 calculated by applying an annual discount rate of 16.04%. The court notes that similar rates have been deemed unreasonable (*Cunningham*, 195 Misc 2d at 724 [15.46%]; *Settlement Capital Corp., [Ballos]*, 1 Misc 3d 446 [19.82%]; and *Settlement Capital Corp. [“Y”]*, 194 Misc 2d 711 [18.621%]). The \$6,000 gross advance amount proposed to be paid to Ms. Longe represents less than 10% of the future payments of \$70,000 that Ms. Longe would transfer to petitioner. Based on the foregoing, the court finds said transaction is not fair and reasonable.

The next consideration is whether the proposed transfer is in Ms. Longe's "best interest." Ms. Longe avers that she is currently unemployed and seeks to use the \$6,000 payment for the following purposes:

- a. \$4,000 to refurnish her home after a severe flood;
- b. \$750 for clothes for her two children;
- c. \$750 for kitchen appliances and kitchenware; and
- d. \$500 for cleaning and salvaging items that have water damage.

(Longe Affidavit, ¶ 11).

By comparison, Ms. Longe has previously sworn in her previous applications that she

needed \$50,000 to open a hair salon (Petition #1); \$58,000 for the purchase of a new home because her prior home was destroyed by fire (Petition #4); \$5,000 to reduce recurring monthly debts (Petition # 6); \$10,000 to pay off debts including outstanding credit cards, medical bills, and electric bills (Petition #7); and \$3,000 to pay back rent, car insurance and unpaid medical bills (Petition #9).¹¹

On the return date of this application, Ms. Longe explained that she is awaiting a determination regarding her eligibility for social security disability which she anticipates receiving within three months. In the interim, Ms. Longe stated she is having difficulty meeting her living expenses and needs the proposed cash settlement to meet those daily expenses.

The court finds that Ms. Longe is in a genuine financial dilemma while she awaits a decision on her social security disability. However, the history of this case establishes that previous cash payments have been just a temporary band aid and have never provided Ms. Longe a long term solution. At this juncture, the court is more concerned with Ms. Longe's long term financial situation rather than a quick fix. The court finds that this case presents the very justification for structured settlement legislation that requires the courts protect payees, such as Ms. Longe, from being victimized by the allure of quick cash. The fact that Ms. Longe is willing to accept \$6,000 now in exchange for giving up \$70,000 in future payments in and of itself demonstrates the need for protection of the remaining portions of her settlement and the

¹¹The court was not provided the petitions and supporting affidavits from Ms. Longe on the previous applications. Of the nine previous applications, four were approved and five were denied. The denials were all done by way of written Decision/Orders from which this court was able to ascertain various details.

ludicrous nature of the proposal tendered by Peachtree.¹² Given this record, the court finds that giving up the right to \$70,000 in future payments in exchange for a payment today of \$6,000 is not in Ms. Longe's best interest (*Whitney v LM Prop. & Cas. Ins. Co.*, 32 Misc3d 1212(A) [2011]).

In view of the foregoing, the court will deny the pending application without prejudice. Any future application must reflect the determination of Ms. Longe's social security application and detailed documentation of Ms. Longe's expenses and income and underlying rental agreement, if any, together with an equitable package by petitioner that does not shock the conscience as does the current offer.

CONCLUSION

Based on the foregoing, the court finds that petitioner has failed to demonstrate to the court's satisfaction that the transaction is fair and reasonable and that the transfer is in Ms. Longe's best interest (GOL § 5-1706 [b]). Consequently, the Petition is denied without prejudice. A copy of this Decision & Order shall be annexed to any future petitions brought by or on behalf of Ms. Longe in this or any other County.

Dated: February 28, 2012
Binghamton, New York

s/ Ferris D. Lebous

Hon. Ferris D. Lebous
Justice, Supreme Court

¹²On the return date, Peachtree counsel offered to "make a call" to see if the cash payout could be increased. Frankly, the court finds this last minute jockeying slightly disingenuous.

