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In re: May and Stone Street Capital

IN RE: JOSHUA MAY and STONE STREET CAPITAL, LLC
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
No. 2009–91

Petition to Transfer Structured Settlement Rights, Structured Settlement Protection Act, Best Interests, Factors

1. A Petition to Approve Transfer of Structured Settlement Rights is decided under The Structured Settlement Protection Act, 40 P.S. §4001, et seq.

2. A court can approve a petition to transfer only if the petitioner can carry its burden of proof on the five required findings mandated by 40 P.S. §4003(a).

3. A key consideration in the analysis consists in the requirement that the payee establish "that the transfer is in the best interests of the payee or his dependents."

4. In determining the "best interests," courts analyze the reasonableness of the discount rates employed, the fairness of the fees and expenses charged to the payee, the urgency of the payee's immediate need for cash, and the payee's intended use of the money.

5. It was not in the payee's or his dependents' best interests for the court to approve a petition to transfer structured settlement rights when the payee needed a regular source of income and the transfer would give him only twenty percent of the discounted present value of the rights he sought to transfer.

Appearances:

Joshua A. May, *Petitioner*

Ronald E. Reitz, Esq., *Councel for Stone Street Capital, LLC*

OPINION

Walsh, J., February 17, 2009

<u>Facts</u>

This matter came before the Court on the Petition to Transfer Structured Settlement Rights of Joshua May, the payee, and Stone Street Capital, LLC, the transferee. Metlife Insurance Company is the structured settlement obligor and also the annuity issuer. On February 9, 2009, the Court held a hearing on the petition since it facially complied with Pa. R.C.P. 229.2 and the Structured Settlement Protection Act. 40 P.S. §4001 et seq.

At the hearing, May, the payee, appeared pro se, while Ronald Reitz, Esq. represented Stone Street Capital. Metlife consented to the transfer and did not appear at the hearing. Initially, May received the structured settlement in connection with a wrongful death claim he brought after his mother was killed in a car accident. Basically, the structured settlement established $1,000 monthly payments to May until 2033 and several lump sum payments during the life of the annuity. In prior proceedings May transferred a total of three lump sum payments. On November 10, 2008, May agreed to sell his final two lump sums[1] and 299 monthly payments of $300 to Stone Street Capital. In sum, the agreement would transfer $261,855 with a discounted present value of $145,771.87 for a net amount payable to May of $29,093. Petition, paragraph 13. The quotient is approximately 20% and the effective interest rate is 16.93% per year. Id. Under the agreement, May retains the right to receive 299 monthly payments of $700.

Before signing the transfer agreement, May investigated J.G. Wentworth as a potential purchaser but decided to deal with Stone Street Capital for unspecified reasons. He appeared at the hearing pro se and waived independent legal advice concerning the implications of the transfer and the tax ramifications of the proposed transfer. When pressed by the Court as to his understanding of the tax ramifications of the transfer, he seemed at a loss. May wants to use the $29,093 to pay off a $9,000 debt to his grandmother thereby preventing a sheriff's sale of his personal property. He then intends to use the remaining $20,000 to pay off credit card debt incurred when he suffered a back injury. He also hopes to use any remaining money to pay for injections to help him recover from his back injury and become employable again.

May has been unemployed for approximately two years, although in the past he has worked for Grove Manufacturing as a welder. He has no job applications pending and currently lacks a driver's license. He lives with an unemployed girlfriend with whom he has two children, ages two and three. May also lives with his girlfriend's two additional children. He is presently incarcerated on a probation violation, and he has an eleventh grade education. Finally, May wants to purchase a car and believes he can afford a car loan and home rent on the $700 monthly payments he has retained.

Discussion

The Structured Settlement Protection Act governs all petitions seeking prior court approval of structured settlement transfers. 40 P.S. §4001 et seq. In order to approve a transfer, a court must make "express written findings" in favor of the petitioners on five points.[2] 40 P.S. §4003(a). The petitioners have the burden of proof on all of these facts. First, based on the certification of Ronald Reitz, the attorney for Stone Street Capital, the transfer will not contravene any applicable law. 40 P.S. §4003 (a)(1). Second, May has signed an adequate disclosure statement. Petition, Exhibit D. Third, "the payee has . . . expressly waived in a separate written acknowledgement signed by the payee, independent legal advice regarding the implications of the transfer, including consideration of the tax ramifications of the transfer." 40 P.S. §4003 (a)(4); Petition, Exhibit F. Fourth, the Court must find that "the payee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court." 40 P.S. §4003(a)(6). Here, Stone Street Capital has provided notice of all the required information, except for Stone Street Capital's taxpayer identification number, so the Court can not make this required finding, and the transfer can not be approved.

But, this transfer suffers from a more fundamental flaw than a technical defect of lack of notice; the transfer is not in the payee's or his dependents' best interests. To approve the transfer, the Court must find that "the payee has established that the transfer is in the best interests of the payee or his dependents." 40 P.S. §4003(a)(3). Although the statute does not really define "best interests," the reasonableness of the discount rates employed, the fairness of the fees and expenses charged to the payee, the urgency of the payee's immediate need for cash, and the payee's intended use of that money are factors in analyzing "best interests." In re: Elaine Bendowski, 2006 WL 2988465 (C.P. Lackawanna). However, here, May has failed to carry this modest burden.

First, the discount rates are unreasonable, since May will receive a net amount of only $29,093 for a transfer of structured settlement payments with a present discounted value of over $145,000.[3] Therefore, he will receive only about 20% of the present value of the rights he is surrendering. These terms are far more draconian than the 57% terms that were determined to be unconscionable in Bendowski and evidence the predatory deal which Stone Street Capital struck with a young man who is going through a tough stage in his life. So, the discount rates are patently unreasonable.

Second, the fees and expenses to be charged May are not per se unfair. Under the transfer agreement as amended by Stone Street Capital's February 10, 2009 letter to the Court, May will have $500 deducted from his gross purchase price of $31,593 for "processing fees." This represents a fairly modest surcharge off the gross purchase price, but, considering the ridiculous discount rates from which Stone Street Capital will benefit, any deduction for fees is unfair. Thus, in the context of this transfer, $500 in fees is unfair.

Third, the urgency of the payee's need for cash should be analyzed. Here, May has an apparently urgent need for cash. Indeed, May is in debt and facing a potential sheriff's sale of his personal property for a debt that he owes his grandmother. Moreover, he is unemployed, injured, and caring for a girlfriend and four children, two of whom are his. But, it is difficult to see how a grossly inadequate payment of $29,093 will ease these endemic problems. Furthermore, retaining the full value of the monthly payments of $1,000 and the lump sums will likely do May and his dependents far more good with respect to long-term stability than the costly short-term fix that May has arranged. Thus, although May's need for cash in the short term is urgent, it does not nearly justify the transfer.

Fourth, the Court should weigh the payee's intended use of the money. Here, May has only a vague notion of how he intends to use the $29,093 that he will receive from the transfer. For instance, he testified that he intended to pay approximately $9,000 to his grandmother in order to avoid a sheriff's sale and that he planned to use the remainder to pay a $20,000 credit card debt. But, at other times, he indicated that the credit card debt was $11,000 or $15,000. Also, he indicated that he hoped to use the money to pay for $1,000 injections to cure his back injury and to buy a new car. This conflicting testimony reveals that May has not really thought out the transfer and, accordingly, the Court is not inclined to give excessive weight to his desires. Furthermore, May's proposed use will not benefit his dependent children, as it will be spent on debts incurred for past expenses and the money will not be available for their future needs. Indeed, the circumstances in which May presently finds himself are precisely those conditions a structured settlement seeks to alleviate. Accordingly, the Court will not approve the transfer, thereby preserving for May and his dependents the steady stream of income that can help to protect them from the buffets of life.

Conclusion

In conclusion, the Court will deny the Petition to Transfer Structured Settlement Rights. The record reveals that proper notice has not been given, because Stone Street Capital has not filed any proof that the structured settlement obligor has received notice of Stone Street Capital's taxpayer identification number. But, more importantly, May has failed to establish that the transfer is in his or in his dependents' best interests. Truly, the evidence shows that May was confronted with a relatively urgent need to pay off old debts and he signed a patently unconscionable and unreasonable transfer agreement. Since May and his dependents need the protection afforded by his structured settlement more than they need an immediate payment of 20% of the discounted present value of the structured settlement payments he is transferring, the Court will deny the petition. The transfer is not in the best interests of May or his dependents.

ORDER OF COURT

February 17, 2009, upon consideration of the evidence, the Petition to Transfer Structured Settlement Rights, and the law, it is ordered that the Petition to Transfer Structured Settlement Rights is denied.

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[1]May agreed to transfer lump sum payments of $50,000 due on September 13, 2024 and $122,155 due on September 13, 2029.

[2](1) The transfer complies with the requirements of this act and will not contravene other applicable Federal or State statutes or regulations or any applicable law limiting the transfer of workers' compensation claims.
(2) Not less than ten days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement setting forth all of the following:
(i) The amounts and due dates of the structured settlement payments to be transferred.
(ii) The aggregate amount of such payments.
(iii) The discounted present value of such payments, together with the discount rate or rates used in determining such discounted present value.
(iv) The gross amount payable to the payee in exchange for such payments. (v) An itemized listing of all brokers' commissions, service charges, application or processing fees, closing costs, filing or administrative charges, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee.
(vi) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subparagraph (v).
(vii) The quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments.

(viii) The amount of any penalty and the aggregate amount of any liquidated damages, inclusive of penalties, payable by the payee in the event of any breach of the transfer agreement by the payee.
(3) The payee has established that the transfer is in the best interests of the payee or his dependents.
(4) The payee has received or expressly waived in a separate written acknowledgment signed by the payee, independent legal advice regarding the implications of the transfer, including consideration of the tax ramifications of the transfer . . .
(5) The payee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court. 40 P.S. § 4003(a).

[3]Perhaps sensing that the Court was disinclined to approve the transfer, Stone Street Capital has, since the hearing, in a letter to the undersigned, offered to waive $2,000 in attorney fees, which would increase May's net payment to $31,093. Although this would give May an additional $2,000, it would adjust the quotient to only 21% and, thus, will not impact greatly on the Court's decision.