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Structured Settlement Update

Set forth below are summaries of three recent decisions involving attempts to transfer structured settlement payment rights. These cases demonstrate the impact structured settlement protection statutes continue to have on those seeking approval of a transfer of structured settlement payment rights. Copies of all of the summarized cases can be accessed by clicking on the case caption. Please feel free to reply with any comments, questions, or additional cases or materials you would like us to consider.

Rapid Settlements, Ltd. v. BHG Structured Settlements, Inc. (2006 Tex. App. LEXIS 8149, Sept. 14, 2006)

Rapid Settlements petitioned for court approval of a transfer petition under the Texas Structured Settlement Protection Act (the "Texas Act"). Upon notice of Rapid's petition, the annuity owner and issuer (collectively, the "Insurers") offered a competing bid to the payee. Rapid responded with a demand for arbitration based upon the terms of the transfer agreement.[1] An arbitrator issued a temporary injunction prohibiting the Insurers from competing with Rapid and directing the payee to use his best efforts to complete the transaction with Rapid. At the same time, the Insurers filed an application with the court to stay the arbitration proceedings and set aside any order of the arbitrator. The court granted the requested relief, and Rapid appealed.

On appeal, the court was called upon to determine whether the Federal Arbitration Act (the "FAA") preempted the Texas Act and whether Rapid was entitled to enforce its arbitration demand. The court noted that the FAA permits state law to apply if the state law governs issues of contract validity and enforcement generally.

The court concluded that, because the Texas Act did not address arbitration, did not prohibit inclusion of arbitration provisions in transfer agreements, and required approval of the entire transfer agreement — not specifically the arbitration provision — before it became effective, it was not preempted by the FAA. The court then concluded there was no agreement to arbitrate because, under the Texas Act, court approval is required before the proposed transfer — and the transfer agreement itself — becomes effective. Accordingly, because Rapid had not obtained court approval of its transfer, Rapid had no right to arbitration relief under the transfer agreement, and the appeal was denied.

In Re: 321 Henderson Receivables, L.P. (819 N.Y.S. 2d 826, Aug. 11, 2006)

321 Henderson sought court approval of a transfer petition under the New York Structured Settlement Protection Act (the "New York Act"). Both the payee and 321 Henderson appeared at the hearing to support the proposed transfer. The trial court denied the petition, and the payee moved to reargue and renew the petition.

In considering the payee's motion, the court briefly reviewed the development of the factoring market, the enactment of 5891, and the subsequent enactment of the New York Act. The court then noted each of the express findings which the New York Act required it to make prior to approval of the transfer in question. The court then considered the interplay between the findings that the proposed transfer be in the best interests of the payee and that it be fair and reasonable.

1. Rapid's agreement provided that disputes "of any nature whatsoever" under the transfer agreement would be resolved by arbitration.

The court noted that, inasmuch as the legislature had offered no definition of "best interests," courts were not limited to specific factors and should employ a "totality of the circumstances" test. The court then provided a two factor analysis of the fair and reasonable consideration: on one hand, an objective analysis of the transfer should be made based upon what is reasonable within the marketplace; on the other hand, the court should consider whether the transfer is in the best interests of the payee. The court applied this analysis and concluded that, even though the transfer was within an acceptable range in the marketplace, the facts did not demonstrate that the transfer was in the best interests of the payee. As a result, the court upheld its earlier decision denying the petition.

In Re: Michelle S. Jacobs (Pa. Ct. Com. Pl., No. GC06-009412, July 18, 2006)

The payee filed a transfer petition seeking approval of a transfer of a portion of her structured settlement payment rights pursuant to the Pennsylvania Structured Settlement Protection Act (the "Pennsylvania Act"). The court entered an order denying the petition without holding a hearing on the transfer. In rendering its decision, the court noted that the Pennsylvania Act "compels the court to make an independent determination that the transfer is in the best interests of the petitioner[.]" That determination, according to the court, was similar to the role played by a guardian who decides whether a transaction is in the best interests of an unsophisticated or incompetent person. Applying that principle to the transaction at hand, the court concluded that it could not make the required finding. The court noted that the petitioner failed to present a petition that contained information sufficient for the court's consideration and, moreover, failed to note that the same court had previously denied a similar petition filed by the payee. In addition, the petition noted a prior factoring transaction but failed to provide an explanation for the use of the funds the payee received from that transaction. According to the court, in light of these factual deficiencies, it could not be determined that the transfer was in the payee's best interests, and the petition was denied.

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