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Superior Court of Massachusetts,
Suffolk County, Business Litigation Session.

Robert CHAMBERS
v.
TUFTS ASSOCIATED HEALTH MAINTENANCE ORGANIZATION, INC.

1884CV02837BLS2
|
February 25, 2020

MEMORANDUM AND ORDER ON CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT

Kenneth W. Salinger, Justice of the Superior Court

***1** Robert Chambers purchased family health insurance coverage for himself and his wife under a policy issued by Tufts Associated Health Maintenance Organization, Inc., which does business as Tufts Health Plan. The Court will refer to Defendant as "Tufts." The parties have filed cross motions for partial summary judgment as to two of the three issues giving rise to Chambers' claims in this action.

The Court concludes that Tufts is entitled to summary judgment in its favor on the claims that (i) Tufts breached the policy, violated G.L.c. 93A, and was unjustly enriched by requiring Mr. Chambers to pay a $4,000 deductible before obtaining coverage, and (ii) Tufts violated G.L.c. 175, § 22, and G.L.c. 93A, by imposing a contractual exhaustion of remedies requirement that plan members undertake an internal "Member Satisfaction Process" within 180 days as a condition precedent to filing suit.

1. Deductible Provision

Chambers contends that each individual insured need only pay a $2,000 deductible before receiving coverage, rather than having to pay the entire $4,000 family deductible. But the plain language of the policy says otherwise, and the "Summary of Benefits and Coverage" that Chambers relies upon does not trump the policy language.

When it enforced the $4,000 family deductible, Tufts acted in accord with the plain language of the policy. The policy explains that the deductible is the amount members must pay each year for covered services before Tufts will begin to make payments. It states that for families of just one member the annual deductible is $2,000, and for families of two or more members the annual deductible is $4,000. And the policy includes the following explanatory note of how the family deductible works:

> If you have two or more covered family MEMBERS enrolled in the plan, and only one MEMBER receives services in a CALENDAR YEAR, that MEMBER must meet the full family $4,000 DEDUCTIBLE himself or herself before TUFTS HEALTH PLAN will pay for any of his or her care in that year as COVERED SERVICES.

Read as a whole, this deductible provision makes clear that Chambers was subject to a $4,000 deductible each year even if he was the only family member to receive any covered services that year.

Chambers says that he never saw the policy before buying coverage from Tufts in January 2015, and that he instead reasonably relied on a "Summary of Benefits and Coverage" in which Tufts said that the deductible was "$2,000 person/ $4,000 family medical and pharmacy deductible per calendar year."

Chamber argues that this summary, unlike the policy, is ambiguous and the ambiguity must be construed against Tufts and in favor of its insureds. This argument fails as a matter of law.

Where an insurer (or its agent) issues a certificate of insurance that provides evidence of coverage, under Massachusetts law the contract between the insurer and the insured consists of both the certificate and the insurance policy. See *Kirkpatrick v. Boston Mut. Life Ins. Co.,* 393 Mass. 640, 649 (1985).

***2** But the summary document at issue here does not purport to be a certificate of insurance or similar document that provides evidence of coverage.[1] To the contrary, the document that Chambers says he relied upon states at the top: "This is only a summary. If you want more detail about your coverage or costs, you can get the complete terms in the policy or plan document" at a specified website or by calling a specified 800—number. The summary judgment record establishes that Chambers could have obtained and reviewed the full policy language before signing up for coverage from Tufts.

Since the policy itself is unambiguous, and the summary does not purport to provide evidence of coverage, the parol evidence rule bars consideration of the summary to create an ambiguity in the policy. "When the words of a contract are clear, they must be construed in their usual and ordinary sense, and we do not admit parol evidence to create an ambiguity when the plain language is unambiguous." *General Convention of New Jerusalem in the United States of America, Inc. v. MacKenzie,* 449 Mass. 832, 835 (2007) (internal citation omitted). The same rule applies when interpreting an insurance policy. See *Sullivan v. Southland Life Ins. Co.,* 67 Mass.App.Ct. 439, 440 & 444 n.4 (2006); *Jefferson Ins. Co. of New York v. City of Holyoke,* 23 Mass.App.Ct. 472, 476 n.6 (1987).

2. Exhaustion of Remedies Provision

Let's turn to the second issue raised by the cross-motions for partial summary judgment. The Tufts policy provides that (i) an internal appeal from adverse benefits decision must be filed within 180 days from the date a member is notified of the decision, and (ii) members cannot sue Tufts for failing to pay for covered services unless they have completed the internal appeal process and have filed the lawsuit within two years after they were first notified of the adverse benefits decision.

Chambers' claim that these provisions have the effect of reducing the statute of limitations to less than two years, in purported violation of G.L.c. 175, § 22, is without merit. Though § 22 provides that insurers may not reduce the limitations period to less than two years, that statute does not apply to HMOs like Tufts. See G.L.c. 176G, § 2 (provisions of c. 175 "shall not apply to a health maintenance organization"). In any case, the imposition of an internal administrative review process does not have the effect of shortening the limitations period for filing a civil action. The policy says that civil actions challenging benefits decisions must be filed within two years.

Nor does the requirement that members exhaust their internal appeal right before bringing a contract claim under the policy violate G.L.c. 93A, § 9(6). That statute provides that no one can be required to exhaust administrative remedies before bringing an action under c. 93A, § 9. But the contract provision at issue here does not purport to limit statutory claims under c. 93A. Tufts concedes in its reply memorandum that it is not entitled to raise failure to exhaust as a defense to Chambers' c. 93A claim, and it has not done so.

***3** Finally, the fact that the two-year limitations provision is part of Tufts' standard policy, and not subject to negotiation by individual members, does not make it unenforceable under Massachusetts law.

The Supreme Judicial Court has long held that insurance companies may impose contractual limitations periods, that are shorter than statutory limitations periods, by non-negotiable policy language or mutual insurance company bylaws. See *Lewis v. Metropolitan Life Ins. Co.,* 180 Mass. 317 (1902) (policy limiting claims to six months from date of death); *Amesbury v. Bowditch Mut. Fire Ins. Co.,* 72 Mass. (6 Gray) 596, 603 (1856) (mutual insurer bylaw limiting claims to four months from adverse determination).

Starting in 1856, the Legislature has barred insurers from reducing the limitations period for claims to anything less than two years, but it has never barred enforcement of other contractual limitations periods in non-negotiable insurance policies that are shorter than statutory limitations periods. See *Brown v. Savings Bank Life Ins. Co.,* 93 Mass.App.Ct. 572, 583 (2018); G.L.c. 175, § 22; St. 1907, c. 576, § 29; St. 1856, c. 252.

Furthermore, in Massachusetts, the "general rule [is] that contracts of adhesion 'are enforceable unless they are unconscionable, offend public policy, or are shown to be unfair in the particular circumstances.' " *Oxford Global Resources, LLC v. Hernandez,* 480 Mass. 462, 466 (2018), quoting *McInnes v. LPL Fin., LLC,* 466 Mass. 256, 266 (2013) (enforcing arbitration provision in brokerage account contract), and *Miller v. Cotter,* 448 Mass. 671, 684 n.16 (2007) (enforcing arbitration provision in nursing home admission contract); accord *Chase Commercial Corp. v. Owen,* 32 Mass.App.Ct. 248, 253 (1992) (enforcing jury waiver provision in loan agreement).

That rule applies with full force to insurance coverage like the Tufts policy at issue here. Though an insurance policy is a kind of adhesion contract, unambiguous insurance policy provisions that have the effect of limiting coverage are enforceable unless they lead to an unconscionable result or violate public policy. *Santos v. Lumbermens Mut. Cas. Co.,* 408 Mass. 70, 86 (1990) (enforcing subrogation provision in standard motor vehicle insurance policy).

Chambers has not shown that the two-year contractual limitations provision is unconscionable, offends public policy, or unfair in the circumstances.

Now, Chambers correctly notes that, in the context of franchise agreements, the SJC has ruled—in answering a certified question from a federal district court—that "[a]ny contractual reduction in a limitations period that is unreasonable or not subject to negotiation by the parties, such as in a contract of adhesion, will be unenforceable." See *Creative Playthings Franchising Corp. v. Reiser,* 463 Mass. 758, 763 (2012).

Just over two years later, however, the SJC seemed to back away from that ruling when it upheld a contractual limitations period far shorter than the three-year statutory limitations period that governs Wage Act claims, even though the contract at issue was entered into by a franchisee janitorial worker without any apparent negotiation. See *Machado v. System4, LLC,* 471 Mass. 204, 219 (2015). The SJC held that the provision was enforceable because plaintiff failed to show that it was unreasonable or contrary to public policy, without ever discussing whether the provision had been subject to negotiation. *Id.*

***4** But the Court does not have to try to reconcile *Machado* with the "subject to negotiation" portion of *Creative Playthings*.

The ruling in *Creative Playthings* only applied to franchise agreements. It was provided in response to a certified question asking whether:

> In a franchise agreement which is governed by Massachusetts law, is a limitations period in the contract shortening the time within which claims must be brought valid and enforceable under Massachusetts law?

See 463 Mass. at 758. The SJC's answer was:

> Yes, if the claim arises under the contract, and the agreed-upon limitations period is subject to negotiation by the parties, is not otherwise limited by statute, is reasonable, is not a statute of repose, and is not contrary to public policy.

Id. at 766.

The SJC did not suggest it was vacating or overruling its prior holdings in *Lewis* and *Amesbury* that contractual limitations periods imposed without negotiation by an insurance policy are enforceable. To the contrary, *Creative Playthings* discusses *Amesbury* at some length and makes clear it is still good law. See 463 Mass. at 762. And, since *Creative Playthings* was decided, the SJC has reiterated that contracts of adhesion are generally enforceable, unless they are unconscionable or against public policy. See *McInnes,* 466 Mass. at 266.

Since this case does not involve a franchise agreement, the Court is bound to follow *Lewis* and *Amesbury,* and the more recent SJC precedent holding that contracts of adhesion are enforceable unless shown to be unconscionable or against public policy. Under this controlling case law, the two-year contractual limitations provision at issue here is lawful and enforceable.

ORDER

Defendant's motion for partial summary judgment in its favor is hereby ALLOWED. Plaintiff's motion for partial summary judgment is DENIED. Defendant is entitled to judgment in its favor, meaning that Plaintiff is not entitled to recover anything, with respect to the contract claims asserted in Counts 1 and 2 of the complaint, with respect to the first two theories of liability under G.L.c. 93A asserted in paragraphs 48 and 49 of Count 3, with respect to the unjust enrichment claim asserted in Count 4, and with respect to the claim for injunctive and declaratory relief in Count 5.

When final judgment enters, it shall include a declaration of rights stating that the exhaustion of remedies provision of the contested insurance policy, which imposes a 180-day limit for seeking internal review of coverage decisions, is lawful.

This order does *not* resolve the third theory of liability under G.L.c. 93A asserted in paragraph 50 of Count 3.

The Court will hold a final pre-trial conference on May 7, 2020, at 2:00 p.m.

All Citations

Not Reported in N.E. Rptr., 2020 WL 2197932

Footnotes

1 For this reason, *Kirkpatrick,* 393 Mass. at 648-49, does not apply here and does not assist Chambers.

The Court notes, however, that the statute limiting the legal effect of actual certificates of insurance, G.L.c. 175, § 2(b), only applies to such certificates prepared as evidence of property or casualty insurance coverage; it does not appear to apply to certificates evidencing health insurance coverage. See G.L.c. 175, § 1 (definition of "certificate of insurance"). In any case, this statute was not enacted until January 7, 2015, and did not take effect until 90 days later on April 7, 2015. Given the presumption against retroactive application of statutes that change substantive rights, it does not appear that this statute would apply here if the Summary of Benefits was the equivalent of a certificate of insurance, which it is not.

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