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Appeal Filed by Sevelitte v. The Guardian Life Insurance Company of America, et al, 1st Cir., February 14, 2024

2024 WL 639314
Only the Westlaw citation is currently available.
United States District Court, D. Massachusetts.

Renee SEVELITTE, Plaintiff
and Crossclaim Defendant,
v.
The GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA, Defendant,
v.
Robyn A. Caplis-Sevelitte, as
Personal Representative of the Estate
of Joseph F. Sevelitte, Third-Party
Defendant and Crossclaim Plaintiff.

Civil No. 21-10630-LTS
|
Signed January 24, 2024

Synopsis

Background: Following insured's death, insured's ex-wife brought action in state court against insurer, seeking to recover proceeds from life insurance policy that named ex-wife as primary beneficiary prior to their divorce. Insurer removed to federal court and asserted counterclaim for interpleader against ex-wife and insured's estate. Estate asserted crossclaims against ex-wife, which led to ex-wife asserting counterclaims against estate. The United States District Court for the District of Massachusetts, Leo T. Sorokin, J., 2022 WL 1051351, granted insurer's motion for judgment on the pleadings, discharging insurer from action and enjoining ex-wife and widow from suing insurer with respect to policy, granted estate's motion for judgment on the pleadings insofar as it requested judgment in its favor on interpleader action, and dismissed all claims between estate and ex-wife except for those involving policy proceeds. On appeal by ex-wife, the United States Court of Appeals for the First Circuit, Lynch, Circuit Judge, 55 F.4th 71, affirmed in part, vacated in part, and remanded for further proceedings concerning disposition of policy proceeds. After further development of factual record through discovery, estate moved for summary judgment.

Holdings: On remand, the District Court, Sorokin, J., held that:

[1] motion to strike's general reference to "the Federal Rules of Civil Procedure" as basis for striking expert report for estate was not developed argument, coherent recitation of the record, or citation to specific legal authority that could support such motion by ex-wife;

[2] treatment as admitted was warranted for facts articulated and properly supported by estate;

[3] fact that affidavit of attorney who represented insured in divorce was signed after period for fact discovery had ended did not preclude admission of such affidavit in support of motion for summary judgment;

[4] ex-wife waived any privilege-based challenge to attorney's affidavit;

[5] ex-wife's memorandum submitted in opposition to motion for summary judgment was insufficient to satisfy local rule, supporting treatment as admitted for facts articulated and properly supported by estate;

[6] ex-wife waived any argument that court-order exception to general rule under Massachusetts law that divorce revoked beneficiary status of ex-spouse applied; and

[7] contract exception to general rule did not apply to policy, and thus, ex-wife's beneficiary status was presumptively revoked upon divorce.

Motion allowed.

West Headnotes (22)

[1] **Federal Civil Procedure** Construction of pleadings

Federal Civil Procedure Matters deemed admitted; acceptance as true of allegations in complaint

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When assessing motions to dismiss, federal courts assume the truth of a plaintiff's well-pleaded facts and draw any available and reasonable inferences in the plaintiff's favor.

[2] **Federal Courts** Dismissal or nonsuit in general

Appellate courts apply the same standard as federal district courts when reviewing rulings resolving motions to dismiss.

[3] **Federal Civil Procedure** Fact issues

The standard for evaluating a motion to dismiss neither entails nor permits fact-finding.

[4] **Federal Civil Procedure** Failure to respond; sanctions

Motion to strike's general reference to "the Federal Rules of Civil Procedure" as basis for striking expert report for insured's estate was not developed argument, coherent recitation of the record, or citation to specific legal authority that could support such motion by insured's ex-wife, in action initiated by insured's ex-wife seeking to recover proceeds from life insurance policy that named ex-wife as primary beneficiary prior to their divorce.

[5] **Summary Judgment** Form and requisites

Treatment as admitted was warranted for facts articulated and properly supported by estate for insured on estate's motion for summary judgment in action initiated by insured's ex-wife seeking to recover proceeds from life insurance policy that named ex-wife as primary beneficiary prior to their divorce; ex-wife failed to respond at all to estate's statement of undisputed facts, ex-wife was represented by counsel, and ex-wife and her counsel had received multiple warnings from trial court emphasizing need to comply with local rules governing motion practice. Fed. R. Civ. P. 56(c); U.S. Dist. Ct. Rules D. Mass. Rule 56.1.

[6] **Summary Judgment** Form and Requisites

Fact that affidavit of attorney who represented insured in his divorce with his ex-wife was signed after period for fact discovery had ended did not preclude admission of such affidavit in support of motion for summary judgment by insured's estate, in action initiated by ex-wife seeking to recover proceeds from life insurance policy that named ex-wife as primary beneficiary prior to divorce; ex-wife was not unaware of attorney's role in underlying events, attorney had information bearing on interpretation of divorce agreement that ex-wife purported addressed policy, and ex-wife was not prevented from seeking discovery from attorney. Fed. R. Civ. P. 56(c)(4).

[7] **Privileged Communications and Confidentiality** Waiver of objections

Insured's ex-wife waived any privilege-based challenge to affidavit of attorney who represented insured in his divorce with ex-wife, in action initiated by insured's ex-wife seeking to recover proceeds from life insurance policy that named ex-wife as primary beneficiary prior to their divorce, where ex-wife failed to initially raise claim of privilege and to provide authority establishing existence of privilege.

[8] **Summary Judgment** Statement of facts

Insured's ex-wife's memorandum submitted in opposition to insured's estate's motion for summary judgment was insufficient to satisfy local rule requiring party opposing summary judgment to provide concise statement of allegedly disputed material facts with page references to affidavits, depositions, and other documentation, supporting treatment as admitted for facts articulated and properly supported by estate, in action initiated by ex-wife seeking to recover proceeds from life insurance policy that named her as primary beneficiary prior to divorce; memorandum repeated same arguments trial court had already considered and rejected on their merits, and ex-wife only made unspecified statement that she did not agree with estate's

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motion. Fed. R. Civ. P. 56(c); U.S. Dist. Ct. Rules D. Mass. Rule 56.1.

[9] **Summary Judgment** Speculation or conjecture; mere assertions, conclusions, or denials

On a motion for summary judgment, a court is to ignore conclusory allegations, improbable inferences, and unsupported speculation. Fed. R. Civ. P. 56.

[10] **Summary Judgment** Essential elements; burden of proof at trial

A court may enter summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Fed. R. Civ. P. 56.

[11] **Divorce** Rights and liabilities as to property in general

Under Massachusetts law, divorce typically revokes beneficiary status of ex-spouse. Mass. Gen. Laws Ann. ch. 190B, § 2-804(b).

[12] **Divorce** Rights and liabilities as to property in general

Under Massachusetts law, revocation of beneficiary status of ex-spouse occurs automatically as matter of law upon divorce, unless one of exceptions listed in statute applies. Mass. Gen. Laws Ann. ch. 190B, § 2-804(b).

[13] **Federal Courts** Failure to mention or inadequacy of treatment of error in appellate briefs

Ex-wife of insured waived any argument that court-order exception to general rule under Massachusetts law that divorce revoked beneficiary status of ex-spouse applied, in action initiated by ex-wife seeking to recover proceeds from life insurance policy that named ex-wife as primary beneficiary prior to their divorce, where ex-wife failed to articulate any basis for finding that court-order exception would entail different analysis or yield different result than contract exception, given that divorce agreement was incorporated into judgment of divorce. Mass. Gen. Laws Ann. ch. 190B, § 2-804(b).

[14] **Contracts** Questions for Jury

Under Massachusetts law, interpretation of contract is ordinarily question of law for court.

[15] **Contracts** Ambiguity in general

Under Massachusetts law, even if contract appears ambiguous from its words alone, decision remains with judge if alternative reading is inherently unreasonable when placed in context.

[16] **Contracts** Reasonableness of construction

Under Massachusetts law, common sense is as much part of contract interpretation as is dictionary or arsenal of canons.

[17] **Contracts** Language of Instrument

Under Massachusetts law, words matter in contract, but words are to be read as elements in practical working document and not as crossword puzzle.

[18] **Contracts** Construction as a whole

Under Massachusetts law, contract language is not to be read in vacuum; rather, text is considered as whole, and surrounding text can provide further clarification.

[19] **Contracts** Construction as a whole

Contracts Intention of Parties

In the process of interpreting a contract under Massachusetts law, it is important to avoid interpretations that render a word superfluous or

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redundant and to effectuate the parties' discerned intent.

[20] **Contracts** Reasonableness of construction

Contracts under Massachusetts law generally should be interpreted as rational business instruments and in a manner that avoids absurd results.

[21] **Summary Judgment** Contracts in general

Though interpretation of ambiguous contract terms normally is question for trial, court may construe such terms at summary judgment if extrinsic evidence presented about parties' intended meaning is so one-sided that reasonable person would be compelled to resolve question in favor of moving party. Fed. R. Civ. P. 56.

[22] **Insurance** Effect on prior designation of beneficiary

Contract exception to general rule under Massachusetts law that divorce revoked beneficiary status of ex-spouse did not apply to life insurance policy that named insured's ex-wife as primary beneficiary prior to their divorce, and thus ex-wife's beneficiary status was presumptively revoked upon divorce, even if policy was "whole life" policy that divorce agreement required "remain in full force and effect"; policy was not connected to any payment obligation, agreement's intent was to entitle ex-wife to policy proceeds if it were cashed in, ex-wife would have received 80% of marital assets if allowed to collect death benefit, and agreement was silent regarding retention of ex-wife as beneficiary, despite unambiguously providing that she remain named beneficiary of other policies. Mass. Gen. Laws Ann. ch. 190B, § 2-804(b).

Attorneys and Law Firms

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ORDER ON THE ESTATE'S MOTION FOR SUMMARY JUDGMENT

SOROKIN, District Judge

***1** Since the death of Joseph F. Sevelitte ("Mr. Sevelitte"), litigation among his surviving family members—present and former—has abounded. At least seven state and federal courts have been drawn into the fray in eleven different legal actions.[1] The matter presently before this Court concerns competing claims to the death benefit provided by an insurance policy Mr. Sevelitte owned. Discovery is complete, and a motion by Mr. Sevelitte's estate ("the Estate") for summary judgment is now ripe. The Court resolves the Estate's motion on the papers and ALLOWS it in its entirety for the reasons explained below.

I. BACKGROUND

This case traveled an unusual path before arriving at the summary-judgment stage. Because context matters, both generally and in understanding the specific disputes now presented to the Court, the following sections will summarize the procedural history in this case before laying out the undisputed facts material to resolving the Estate's motion.

A. The Pleadings

Renee Sevelitte ("Renee") is Mr. Sevelitte's ex-wife. She initiated this action by filing a "Verified Complaint and Request for Jury Trial" against Guardian Life Insurance Company of America ("Guardian") in state court. Doc. No. 1-1.[2] Renee's initial pleading was prepared by attorney W. Kevin Fitzgerald and asserted claims for breach of contract, fraudulent misrepresentation, specific performance, and a violation of Chapter 93A of the Massachusetts General Laws. Id. at 3-6. In support of her claims, Renee advanced the following factual allegations.

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Renee married Mr. Sevelitte in 1986. Id. at 36. Ten years later, Mr. Sevelitte acquired a life-insurance policy ("the Policy") from Berkshire Life Insurance Company, pursuant to which "the beneficiary of the policy" would receive $75,000 "immediately upon the death of" Mr. Sevelitte. Id. at 2 (¶ 3). Mr. Sevelitte identified Renee as the primary beneficiary and named no contingent beneficiaries. Id. at 31. The terms of the Policy specified that the proceeds would be directed to the Estate if Mr. Sevelitte died without a living primary or contingent beneficiary. Id. at 20. At some point, Guardian "assumed all rights and obligations of Berkshire," including with respect to the Policy. Id. at 2 (¶ 5).

Mr. Sevelitte and Renee divorced in 2013. See id. at 63. They negotiated a binding written agreement ("the Divorce Agreement") in which they "settle[d] all matters relating to the interests and obligations of each party," including the equitable distribution of their property. Id. at 36, 52. Renee alleged in her Verified Complaint that the Policy "was part of" the Divorce Agreement, id. at 2 (¶ 4), and was therefore beyond the reach of the Massachusetts Uniform Probate Code and its section providing for revocation of a former spouse's beneficiary status upon divorce. Id. at 2-3 (¶¶ 4, 12). More specifically, she alleged that the terms of the Divorce Agreement: linked the Policy to Mr. Sevelitte's alimony obligation, id. at 3 (¶ 15); "transferred the ownership of the [Policy] to Renee," id. at 3-4 (¶¶ 19, 26); and referred to the Policy using the term "Whole Life Insurance Policy" because the Policy was the only "whole life" insurance Renee and Mr. Sevelitte had, id. at 4 (¶¶ 21-22).[3]

***2** On December 23, 2020, Mr. Sevelitte died. Id. at 2 (¶ 7). Because he had not amended the Policy after the divorce, the original designation of Renee as primary beneficiary still appeared in the Policy at the time of his death. See id. at 2 (¶ 8). Renee alleged she promptly submitted a claim to Guardian for the death benefit provided by the Policy, along with copies of Mr. Sevelitte's death certificate and the Divorce Agreement. Id. at 2-3 (¶¶ 7, 9, 12). Guardian refused to pay her, invoking Massachusetts's revocation-upon-divorce statute. Id. (¶¶ 10-11). When a demand letter pursuant to Chapter 93A did not alter Guardian's position, Renee filed this lawsuit on March 31, 2021. She sought compensatory and punitive damages "and relief for the intentional infliction of emotional, mental, physical and financial harm," requesting "in aggregate an award of One Million Six Hundred thousand dollars ... plus reasonable attorneys' fees," and further urging the Court to order "that Guardian be barred from selling insurance of any type in the Commonwealth of Massachusetts until the Court feels that Guardian abides by the terms of its Contracts." Id. at 5-6.

Guardian removed the action to this Court on April 15, 2021, invoking 28 U.S.C. § 1332. Doc. No. 1 at 3. Thereafter, Guardian filed an answer that included a counterclaim for interpleader. Doc. No. 5. Via the counterclaim, Guardian asserted that the Divorce Agreement did not unambiguously define "the post-divorce obligations" of Mr. Sevelitte "with respect to the Policy," leading Guardian to conclude it could not pay the death benefit to Renee "without subjecting [itself] to a duplicate claim by the Estate." Id. at 7 (¶¶ 12, 15). Pursuant to Federal Rule of Civil Procedure 22, Guardian named Robyn A. Caplis-Sevelitte ("Robyn"), the personal representative of the Estate, as a third-party defendant based on the expectation that the Estate would pursue a competing claim to the death benefit.[4] Id. at 5-6 (¶¶ 3-4). The Estate answered Guardian's third-party claim and asserted crossclaims against Renee, which led Renee to assert counterclaims against the Estate. Doc. Nos. 19, 20, 39.

Meanwhile, the Court permitted Guardian to deposit the insurance proceeds at issue with the Clerk. Doc. Nos. 27, 29, 41. A flurry of motions followed, including Rule 12 motions by Guardian and the Estate. Doc. Nos. 50, 70. After briefing was complete, and having heard the parties at a motion hearing, Doc. No. 76, this Court entered an Order on February 25, 2022, resolving the various pending requests. Doc. No. 77. As relevant here, the Court allowed Guardian's motion for judgment on the pleadings, discharged it from this action, granted it attorney's fees and costs, and enjoined the other parties from pursuing any further litigation against it related to the death benefit provided by the Policy. Id. at 15. The Court also dismissed Renee's counterclaims against the Estate, as well as the Estate's crossclaims against Renee related to matters other than the Policy. Id. at 16. Finally, the Court allowed the Estate's motion for judgment on the pleadings and directed the Clerk to distribute to the Estate the funds that Guardian had deposited with the Court. Id.

B. The Appeal

Renee appealed, challenging each aspect of this Court's decision that was adverse to her. See Doc. No. 79; see also Sevelitte v. Guardian Life Ins. Co. of Am., 55 F.4th 71, 75 (1st Cir. 2022). On December 7, 2022, the First Circuit issued a decision affirming some of this Court's rulings and vacating others, remanding for further proceedings as

to the latter category of issues. See Sevelitte, 55 F.4th at 86 (enumerating six aspects of this Court's decision that were affirmed, and three that were vacated). Because a series of post-remand submissions by Renee have evidenced a persistent misapprehension about the effect of the First Circuit's decision, a review of what the First Circuit did—and did not—do is warranted.

***3** The First Circuit did not "reverse" any ruling by this Court, see, e.g., Doc. No. 128 at 2; it vacated certain determinations based on errors it identified and explained, see, e.g., Sevelitte, 55 F.4th at 82. Had it reversed outright this Court's decision that the Estate was entitled to the death benefit, the First Circuit would have required that the death benefit be distributed to Renee without the need for further proceedings (or, perhaps, it would have remanded to this Court with express instructions to enter such an order). That is not what happened. Instead, the First Circuit found that the Divorce Agreement was "at least ambiguous" as far as the Policy and the paragraph most pertinent to its post-divorce status is concerned, and that Renee had alleged a "plausible" interpretation of the provision that was not "unambiguously foreclose[d]" by the plain language of the document. Id. at 83-84. This ambiguity "allowed Guardian to bring its interpleader action in good faith," id. at 84 n.14, and it required remanding the matter to this Court "to resume the second stage of the interpleader action," id. at 84.

[1] **[2]** **[3]** The First Circuit did not make any findings of fact—regarding the Divorce Agreement or anything else. Renee's suggestion to the contrary, see Doc. No. 128 at 23, not only misinterprets the First Circuit's decision, but misunderstands the fundamental role of an appellate court and the standards governing motions litigated at the pleading stage of a case. When assessing motions brought under Rule 12, federal courts assume the truth of a plaintiff's well-pleaded facts and draw any available and reasonable inferences in the plaintiff's favor. Kando v. R.I. State Bd. of Elections, 880 F.3d 53, 58 (1st Cir. 2018). Appellate courts apply the same standard when reviewing rulings resolving such motions. Id. This standard neither entails nor permits fact-finding. Because the First Circuit adhered to these familiar standards in this case, it did not "deci[de] ... that the [Guardian] policy is directly referenced and mentioned" in the Divorce Agreement, as Renee now contends. Doc. No. 128 at 2. Nor did the First Circuit "f[i]nd the [Divorce] Agreement [satisfied] an exception to revocation on divorce." Id. at 3. Rather, after noting in the margin that "Guardian disputes whether" the Divorce Agreement "refers to the Policy," the First Circuit observed that the standard governing its review required it to "assume that [the Divorce Agreement] does" refer to the Policy (given Renee's allegation to that effect). Sevelitte, 55 F.4th at 77 n.1. Proceeding on the basis of that assumption, the First Circuit found "that the Divorce Agreement was ambiguous"—not that it unambiguously triggered the contract exception upon which the parties' competing claims depend. Id. at 82.

In all, the First Circuit affirmed (on different grounds) the entry of judgment on the pleadings in favor of Guardian, as well as all other aspects of this Court's orders related to Guardian. Id. at 86. It also affirmed the dismissal of all claims, by Renee and by the Estate, involving accounts and property other than the Policy proceeds. Id. The First Circuit vacated the entry of judgment on the pleadings in favor of the Estate, remanding for further proceedings as to that aspect of the interpleader action and related crossclaims by Renee and the Estate concerning disposition of the Policy proceeds. Id. The mandate issued on December 29, 2022. Doc. No. 84. This Court resumed its work as directed by inviting the parties' input regarding a schedule for discovery and dispositive motion practice. See Doc. Nos. 85, 87, 91.

In the wake of the First Circuit's decision, one question appeared central to all remaining claims: Does the Divorce Agreement, in a paragraph the First Circuit expressly found to be ambiguous, operate to avoid the presumption of revocation-on-divorce codified in the Massachusetts Uniform Probate Code by triggering one of the statutory exceptions to that presumption? To answer that question, development of the factual record was required.

C. Post-Remand Motion Practice

***4** Almost immediately after proceedings resumed in this Court, Renee filed the first in what would become a series of seven dispositive motions asking the Court to enter judgment in her favor on the basis of the First Circuit's decision. Doc. No. 92 (filed January 22, 2023); see also Doc. No. 95 (filed February 12, 2023); Doc. No. 97 (filed February 22, 2023); Doc. No. 101 (filed February 26, 2023); Doc. No. 108 (filed June 11, 2023); Doc. No. 118 (filed October 15, 2023); Doc. No. 123 (filed October 17, 2023). She embarked on this course despite having assented to a complete and routine discovery schedule only days earlier. Doc. No. 87; see Doc. Nos. 89, 91 (adopting the jointly proposed schedule, which mapped out deadlines for the events that unfold during fact and expert discovery in ordinary civil cases, and which set a deadline for dispositive motions that was then nearly a year

away). The Court denied each of Renee's motions. Doc. Nos. 94, 96, 100, 104, 110, 119, 127.

In this sequence of filings, and in other non-dispositive motions filed during the same period, Renee repeatedly disregarded requirements contained in this Court's orders and various Local Rules. See, e.g., Doc. Nos. 95, 111, 118 (lacking certificates of conferral as required by L.R. 7.1). The Court, in turn, repeatedly cited such noncompliance, often rejecting submissions on the basis thereof, and expressly reminded Renee and Attorney Fitzgerald of the potential consequences for failure to adhere to applicable orders and rules of procedure. See, e.g., Doc. Nos. 96, 100, 112; cf. Doc. No. 10 (notifying the parties of the Court's general practices and requiring compliance with them); L.R. 1.3 (authorizing sanctions for "[f]ailure to comply with any of the directions or obligations set forth in, or authorized by," the Local Rules). Renee persisted in filing dispositive motions even after the Court warned her—twice—that she, like most parties in most civil cases, would be permitted to litigate only one such motion. See Doc. No. 96 (warning that Renee would be allowed only one dispositive motion); Doc. No. 104 at 3-4 (referring to the prior warning, denying a dispositive motion on its merits, and stating no further such motions by Renee would be permitted "absent a showing of good cause"). Despite this admonition, Renee filed three further dispositive motions after the Court denied one on its merits. See Doc. Nos. 108, 118, 123. She did so without any showing of good cause, without seeking reconsideration of the Court's earlier rulings on her motions advancing the same arguments, and without identifying any new facts or law that would support a different result.

[4] While Renee was engaging in this motion practice, the time to conduct fact discovery was elapsing. See Doc. No. 91. The Estate served discovery requests and deposed Renee.[5] See Doc. No. 126 ¶ 54; Doc. Nos. 126-1, 126-20, 126-22. Renee, on the other hand, elected not to take any discovery at all. See Doc. No. 128 at 3 (stating that Renee "did not wish to spend resources frivolously" and therefore took no discovery because "[t]he documents and decisions of the Courts in this matter speak for themselves"). When the period for expert discovery arrived, the Estate retained an attorney with substantial experience in family-related litigation, including divorce proceedings. See Doc. No. 126-5; cf. Doc. No. 117 (reflecting that the Estate noted its intent to hire an expert during an August 22, 2023 status conference). The Estate timely produced the expert's report to Renee. See Doc. No. 91 (setting September 15, 2023 deadline for expert disclosures); Doc. No. 117 (reiterating expert disclosure deadline); Doc. No. 128 at 9 (reflecting the Estate's lawyer emailed the report to Attorney Fitzgerald on the morning it was due).[6] Renee neither deposed the Estate's expert nor retained a rebuttal expert. See Doc. No. 126 ¶ 62.

***5** **[5]** **[6]** **[7]** **[8]** When the deadline for dispositive motions arrived, the Estate sought and obtained a two-day extension, Doc. Nos. 120, 122, then filed its motion on October 18, 2023, Doc. No. 124.[7] The Estate supported its motion with a Statement of Undisputed Facts ("SUF"), Doc. No. 126, as the Federal and Local Rules require, Fed. R. Civ. P. 56(c); L.R. 56.1. The Estate's SUF contained citations to supporting documents and was accompanied by nearly two dozen exhibits, allowing the Court to evaluate the cited sources.[8] Renee opposed the motion with a seven-page memorandum that included only one paragraph of "argument."[9] Doc. No. 128. She neither responded directly to the sixty-two facts contained in the Estate's SUF, nor did she address such facts in the text of her opposition.[10] See generally id. at 1-7. After the Estate filed a concise reply brief pointing out Renee's failure to comply with Rule 56(c) and to establish "that any facts properly asserted by the Estate are disputed," Doc. No. 129 at 3, Renee responded "under duress" by doubling down on her view that the First Circuit's decision forecloses any material factual disputes and dispenses with the need for further evidence, Doc. No. 130. Rather than seeking to respond to the Estate's SUF directly, with citations to record evidence or other supporting documentation as the applicable rules require, Renee instead summarily suggested she satisfied the rules by making an unspecified "statement that did not agree with" the Estate's motion.[11] Id. at 2.

***6** Renee is wrong. This Court's Local Rules include the following requirement:

> A party opposing [a] motion [for summary judgment] shall include a concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation.... Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties.

L.R. 56.1 (emphasis added). Renee's failure to respond to the Estate's SUF—in the manner required by Local Rule 56.1, or at all—justifies treating the facts articulated

and properly supported by the Estate as admitted for present purposes. See also Standing Order Regarding Briefing of Summary Judgment Motions for Judge Leo T. Sorokin's Session, https://www.mad.uscourts.gov/boston/pdf/sorokin/LTS_Standing% 20Order% 20re% 20Summary% 20Judgment% 20Rev.pdf [https://perma.cc/BK37-8XM8] (requiring the party opposing summary judgment to provide responses to the moving party's statement of facts and to submit "one combined statement" pairing each asserted fact with each response); Doc. No. 10 ¶ 3 (requiring counsel to review and comply with this Court's Standing Order on summary judgment). This is especially so where Renee is represented by counsel, and where the Court has time and again emphasized to Renee and Attorney Fitzgerald in this very action the need to comply with this District's Local Rules governing motion practice. Cf., e.g., Doc. No. 96 (noting specifically the need to "support[ ] all factual allegations with admissible evidence" at summary judgment). Her failure to adhere to such rules yet again, despite repeated warnings, was at her own peril.

D. The Undisputed Facts

The Court now summarizes the material, undisputed facts. These facts largely come from the Estate's SUF. The Court has reviewed the exhibits cited in support of each fact therein and confirmed that, with the exception of a few minor typographical errors involving dates, the Estate's recitation is supported by admissible, uncontradicted evidence.

Mr. Sevelitte married Renee in October 1986. On May 21, 1996, Mr. Sevelitte purchased the Policy, which has a death benefit of $75,000. The Policy's "Specifications" page refers to the "Plan of Insurance" as an "Ordinary Life Policy." Doc. No. 126-11 at 1. Nowhere does the Policy use the term "whole life insurance." See generally Doc. No. 126-11. The Policy does, however, include a table identifying the "Guaranteed Cash Value" in each year from 1997 to 2026. Id. at 2. Mr. Sevelitte identified Renee, who was his spouse at the time, as the primary beneficiary on the application for the Policy. Id. at 15. He identified no contingent beneficiary, and he never amended the beneficiary designation. The Policy is silent as to the effect of divorce on the beneficiary designation.

Mr. Sevelitte and Renee divorced in 2013. Both were represented by counsel, through whom they negotiated the Divorce Agreement. Attorney Valerie Ross represented Mr. Sevelitte. Exhibit G to the Divorce Agreement describes the parties' rights and obligations related to three insurance policies. The policies are not identified by policy number, nor are the insurance companies named. The Divorce Agreement does not describe these as the only policies either or both divorcing spouses possessed. Language elsewhere in the Divorce Agreement provides that Renee and Mr. Sevelitte each waived any interest in, and relinquished any cause of action related to, property owned by the other, the disposition of which was not specifically addressed by the terms of the Divorce Agreement.

***7** The first four paragraphs of Exhibit G relate to a life-insurance policy held by Mr. Sevelitte at the time of the divorce with a $100,000 death benefit. That is not the Policy at issue here. The Divorce Agreement unambiguously preserved Renee's status as the beneficiary of that policy. Doc. No. 126-2 at 23 (Exhibit G, paragraph 1). This was done explicitly because Attorney Ross and Renee's lawyer understood that such express language would be required to avoid automatic revocation under Massachusetts law. They intended to ensure the beneficiary designation on this policy survived the divorce, as the obligation to maintain the policy was tied to Mr. Sevelitte's child-support obligation.[12]

The fifth paragraph of Exhibit G relates to a "Mortgage Insurance/Life Insurance" policy that was already in place related to the marital home, where Renee continued to live after the divorce. That is not the Policy at issue here, either. The Divorce Agreement required only that the Mortgage Insurance policy "stay in full force and effect." Id. (Exhibit G, paragraph 5). Because the intended beneficiary was the bank holding the mortgage on the property, and the insurance was intended to ensure satisfaction of the mortgage in the event of Mr. Sevelitte's death, no additional language addressing the beneficiary was included in the Divorce Agreement.

The final paragraph of Exhibit G has been the focus of proceedings in this case. It says:

> The Parties acknowledge that the current Whole Life Insurance Policy shall remain in full force and effect and ownership of said policy is with the Husband. The Parties acknowledge that should the Husband elect to cash in said policy that the Wife shall be entitled to one half of the value of said policy at the time of the cashing in of said policy.

Doc. No. 126-2 at 24 (Exhibit G, paragraph 6) [hereinafter "Paragraph 6"]. This provision was not included in the original draft of the Divorce Agreement. It was added at Renee's request, and its specific terms were subject to back-and-forth negotiation, including as to ownership and control over the policy. See Doc. No. 126-4 ¶¶ 23-25. The focus of the

parties at the time, and the purpose of the provision ultimately included, concerned how to apportion this policy's cash value —not its death benefit. The parties ultimately agreed Mr. Sevelitte would retain ownership of the "whole life" policy, but Renee would receive an equal share of the asset value if Mr. Sevelitte chose to surrender the policy for cash during his lifetime (an event that never, in fact, transpired).[13] Because the parties did not intend to require or maintain Renee's status as beneficiary of the death benefit—and because the "whole life" policy was not being used to secure any other payment obligation included in the Divorce Agreement—the lawyers intentionally did not include in Paragraph 6 language preserving Renee as the beneficiary of the "whole life" policy.

***8** The Divorce Agreement was accepted by the state probate court and incorporated into its June 2013 Judgment of Divorce Nisi. Overall, it divided the relevant assets in a manner that favored Renee, allocating to her approximately sixty percent of the property at issue. Attorney Ross and the Estate's expert witness describe this distribution as generous to Renee and estimate that it falls near the upper limit of what a Massachusetts probate-court judge would typically approve absent special circumstances and without additional scrutiny.[14]

In 2015, Renee and Mr. Sevelitte signed a written modification amending certain terms of the Divorce Agreement.[15] First, Mr. Sevelitte's child-support obligation was eliminated. This had the effect of also terminating his associated obligation to maintain the $100,000 insurance policy described in the first four paragraphs of Exhibit G. See supra, note 12. Second, in place of the child-support obligation, Mr. Sevelitte agreed to pay alimony to Renee. To secure the new alimony obligation, Mr. Sevelitte was required to maintain a $50,000 life-insurance policy he had acquired through his employer and to ensure Renee was the designated beneficiary of that policy. Doc. No. 126-15 at 2. This, again, was done explicitly, to avoid the potential application of Massachusetts's revocation-on-divorce statute. Finally, Mr. Sevelitte and Renee agreed to sell the marital home, where Renee had been residing since the divorce. All other terms of the Divorce Agreement remained intact. The modification agreement does not reference Paragraph 6 or the Policy.

Mr. Sevelitte married Robyn in 2016. In January 2020, Mr. Sevelitte executed a will and established a family trust. These documents were prepared by Attorney Ross. Mr. Sevelitte named Robyn the personal representative of his estate and the trustee of the trust. He directed all of his assets to Robyn, except for a property that he devised to the trust, the terms of which grant Robyn a life estate in the property and make Mr. Sevelitte's son a contingent beneficiary entitled to the trust's assets when he turns forty-two. Neither the will nor the trust grant Renee any interest in Mr. Sevelitte's property or estate, and neither specifically addresses the Policy.

Mr. Sevelitte died on December 23, 2020, from complications he suffered as a result of contracting COVID-19. On January 8, 2021, Renee sent Guardian a form in which she claimed entitlement to the death benefit under the Policy. On a page entitled Claimant's Statement, Renee identified herself as Mr. Sevelitte's "spouse" and "next of kin." Doc. No. 126-12 at 4. (At the time, of course, she was neither.) Renee also electronically signed another page, beneath a statement warning of potential civil and criminal liability for filing insurance claims "containing any materially false information." Id. at 6. Along with the claim forms, Renee attached Mr. Sevelitte's death certificate—which, on its face, identified Robyn by name as Mr. Sevelitte's spouse. See Doc. No. 126-7. Discerning that Mr. Sevelitte and Renee had divorced, Guardian denied Robyn's claim, notified the Estate (which filed its own claim), and this litigation resulted.[16]

II. DISCUSSION

A. Legal Standard

***9** **[9]** **[10]** Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Once a party "has properly supported its motion for summary judgment, the burden shifts to the non-moving party, who 'may not rest on mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial.' " Barbour v. Dynamics Rsch. Corp., 63 F.3d 32, 37 (1st Cir. 1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). The Court is "obliged to [ ]view the record in the light most favorable to the nonmoving party, and to draw all reasonable inferences in the nonmoving party's favor." LeBlanc v. Great Am. Ins. Co., 6 F.3d 836, 841 (1st Cir. 1993). Even so, the Court is to ignore "conclusory allegations, improbable inferences, and unsupported speculation." Prescott v. Higgins, 538 F.3d 32, 39 (1st Cir. 2008) (quoting Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990)). A court may enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear

the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

[11] **[12]** Under Massachusetts law, "divorce typically revokes the beneficiary status of an ex-spouse." Sevelitte, 55 F.4th at 75. This occurs by operation of a provision in the Massachusetts Uniform Probate Code that says:

> Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage: (1) revokes any revocable (i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument ....

Mass. Gen. Laws ch. 190B, § 2-804(b). For purposes of this statute, the term "governing instrument" includes an insurance policy obtained before the divorce. Id. §§ 1-201(19), 2-804(a)(4). Revocation pursuant to § 2-804(b) occurs "automatically ... as a matter of law upon divorce," unless one of the exceptions listed in the statute applies. Sevelitte, 55 F.4th at 76; accord Am. Fam. Life Assurance Co. v. Parker, 488 Mass. 801, 178 N.E.3d 859, 866 (2022).

[13] The First Circuit already has determined that one exception does not apply: "Because the Policy contains no language, express or otherwise, that maintains the beneficiary designation after divorce, the express terms exception is not implicated here." Sevelitte, 55 F.4th at 83 (footnote omitted). The question before the Court, then, is whether the contract exception is satisfied by the language of the Divorce Agreement.[17] To answer this question, the Court turns to settled principles of contract interpretation.

[14] **[15]** **[16]** **[17]** **[18]** **[19]** **[20]** Applying "Massachusetts law, interpretation of a contract is ordinarily a question of law for the court." Bank v. Int'l Bus. Mach. Corp., 145 F.3d 420, 424 (1st Cir. 1998) (cleaned up). "Even if a contract ... appear[s] ambiguous from its words alone, the decision remains with the judge if the alternative reading is inherently unreasonable when placed in context." McAdams v. Mass. Mut. Life Ins. Co., 391 F.3d 287, 299 (1st Cir. 2004). "Common sense is as much a part of contract interpretation as is the dictionary or the arsenal of canons." Fishman v. LaSalle Nat'l Bank, 247 F.3d 300, 302 (1st Cir. 2001). "In short, words matter; but the words are to be read as elements in a practical working document and not as a crossword puzzle." Fleet Nat'l Bank v. H&D Entm't, 96 F.3d 532, 538 (1st Cir. 1996). Contract language is not to be read "in a vacuum"; rather, the text is considered "as a whole," and "surrounding text" can provide "further clarification." Minturn v. Monrad, 64 F.4th 9, 15-16 (1st Cir. 2023). In this process, "it is important to avoid interpretations ... that render a word superfluous or redundant," id. at 18, and "to effectuate the parties' discerned intent," id. at 14. Contracts generally "should be interpreted as rational business instruments," id. at 19, and "in a manner that avoids absurd results," Wipro Ltd. v. Analog Devices, Inc., 527 F. Supp. 3d 93, 98 (D. Mass. 2021).

***10** **[21]** Though interpretation of ambiguous contract terms "normally" is a question for trial, a court may construe such terms at summary judgment "if the extrinsic evidence presented about the parties' intended meaning is so one-sided that" a reasonable person would be compelled to resolve the question in favor of the moving party. Farmers Ins. Exch. v. RNK, Inc., 632 F.3d 777, 784 (1st Cir. 2011) (cleaned up). This is such a case.

B. The Contract Exception

[22] Applying the foregoing principles to the record in this case, the Court finds that the Estate is entitled to summary judgment. There are no disputes about material facts for a jury to resolve. The language of the Divorce Agreement—read as a whole, considering the context in which it was executed, and illuminated by the uncontested extrinsic evidence the Estate has submitted—does not avoid the presumption under § 2-804(b) that Renee's beneficiary status was revoked upon her divorce from Mr. Sevelitte. No reasonable factfinder, confronted with the record before the Court, could conclude otherwise.[18]

As the First Circuit and at least one Massachusetts court have explained, Paragraph 6 is ambiguous; it requires that the referenced "whole life" policy "remain in full force and effect," but it is silent as to whether Renee must be retained as the primary beneficiary. Doc. No. 126-2 at 24; see Sevelitte, 55 F.4th at 83; Super. Ct. Mem. at 8. This ambiguity is conclusively resolved, however, by the one-sided evidence before the Court shedding light on the context and intended meaning of the provision. The record establishes that, when the lawyers representing Mr. Sevelitte and Renee for purposes of their divorce meant to preserve Renee's beneficiary status in connection with an insurance policy, they did so expressly. That is, they included language unambiguously requiring that Renee be named the beneficiary of such policies. They did not leave room for doubt. The lawyers took this

approach twice: once in the Divorce Agreement, regarding the insurance policy intended to secure Mr. Sevelitte's child-support obligation, Doc. No. 126-2 at 23 (paragraph 1); and again in the modification, regarding the insurance policy intended to secure Mr. Sevelitte's alimony obligation, Doc. No. 126-15 at 2 (paragraph 7).

***11** The absence of such language in Paragraph 6 is evidence the parties did not intend to maintain her beneficiary status in connection with the "whole life" policy addressed therein. Indeed, the record establishes that they neither desired, nor believed the language they chose could accomplish, such a result. What the parties did intend—and what the language they chose does plainly provide—was for Renee to receive "one half of the value" of the "whole life" policy, "should [Mr. Sevelitte] elect to cash [it] in." Doc. No. 126-2 at 24. As Attorney Ross explains in her uncontroverted affidavit, the focus was on the cash value of the policy as an asset that was subject to equitable division as part of the marital estate. Doc. No. 126-4 at 5-6. The negotiations and ultimate agreement did not concern any claim to a future death benefit due under that policy. This is so because the parties understood that nothing in the Divorce Agreement or its later modification tied the "whole life" policy to any other payment obligation undertaken by Mr. Sevelitte, such that common practices and principles of Massachusetts matrimonial law would support including the policy's death benefit among the assets subject to division. See Doc. No. 126-5 at 5-6. Thus, all of the evidence provided concerning the context surrounding, and intent underlying, the drafting of Paragraph 6 establishes that the contract exception to § 2-804(b) is not satisfied here. There is no contrary evidence in the record.

If the one-sided state of the record as to the parties' intent were not enough reason to allow the pending motion, the Estate also has demonstrated that Renee's interpretation would work an absurd result. The record includes admissible evidence from both Attorney Ross and the Estate's expert establishing: 1) that awarding a divorcing spouse the death benefit of an insurance policy is disfavored under Massachusetts law, unless the policy is being used to secure a financial obligation imposed elsewhere in the contracts governing the divorce; and 2) that the equitable division to which the parties agreed in this case already granted Renee roughly sixty percent of the marital assets, not including the $75,000 death benefit at issue here. See generally Doc. Nos. 126-4, 126-5. The same evidence further establishes that the "whole life" policy was not securing another financial obligation, and an agreement to grant Renee the death benefit in addition to the other property she received under the terms of the divorce would result in her receiving approximately eighty percent of the marital assets. Without any evidence justifying such a lopsided division of assets or showing a Massachusetts judge evaluated and approved such a result—and there is no such evidence here—such a construction of the parties' agreement would be irrational. Considering all of this, the Court concludes that Renee's reading of Paragraph 6 is not only unsupported by the record but is also entirely odds with fundamental principles of Massachusetts contract and matrimonial law.

In sum, Renee would bear the burden at trial of establishing she is entitled to the Policy's death benefit. Here, that means she would bear the burden of overcoming the presumption of revocation created by § 2-804(b) by establishing that one of the exceptions applies. Her failure to conduct discovery, refusal to engage with the Estate's evidence and arguments, and single-minded reliance on the First Circuit's decision render her unable to satisfy that burden—at trial, or now. As explained above, Renee's belief that the First Circuit expressly and conclusively resolved the legal effect of the Divorce Agreement vis-à-vis the Policy and its beneficiary designation finds no support in the plain language of the appellate decision itself. See, e.g., Sevelitte, 55 F.4th at 81 ("The Divorce Agreement, not Guardian, is responsible for creating the ambiguity as to the beneficiary designation ...."); id. at 84 (observing that the Divorce Agreement "fails to explicitly name Renee as the continuing beneficiary," but reasoning that "we cannot say, at the Rule 12(c) stage, that the phrase 'full force and effect' cannot plausibly have been intended to retain the beneficiary designation"). This is a point the Court has explained to Renee already. See Doc. No. 104 at 2-3; see also Super. Ct. Mem. at 8-9 (concluding the "full force and effect" language of Paragraph 6 "is susceptible of more than one meaning"). Yet, she has persisted in advancing that—and only that—position at every turn, to her detriment.

***12** Straightforward application of familiar legal principles to the uncontested record evidence presented by the Estate establishes that, under Massachusetts law, Renee's status as primary beneficiary under the Policy was revoked automatically upon her divorce from Mr. Sevelitte. The Divorce Agreement does not avoid that result. Because this means the Policy names no beneficiary, the death benefit is payable to the Estate. Therefore, the Estate is entitled to judgment as a matter of law on the interpleader action, as well as on its remaining crossclaim against Renee.[19] The Estate also is entitled to judgment in its favor on Renee's remaining crossclaims.[20]

III. CONCLUSION

In sum, the Estate has supported its motion for summary judgment, and its reading of the Divorce Agreement, with citations to relevant legal authority and admissible evidence. Renee has opposed the motion by relying only on her incorrect interpretation of the First Circuit's decision. Accordingly, the Estate's motion (Doc. No. 124) is ALLOWED.

On the interpleader action and on the Estate's remaining crossclaims, judgment will enter in favor of the Estate and against Renee. Renee's remaining counterclaims are DISMISSED with prejudice. The death benefit from the Policy is, and shall remain, property of the Estate. A separate judgment will issue, memorializing the rulings just described.

SO ORDERED.

All Citations

--- F.Supp.3d ----, 2024 WL 639314

Footnotes

1 Besides this Court and the United States Court of Appeals for the First Circuit ("the First Circuit"), which resolved an appeal of an earlier Order in this case, the record includes references to matters filed in the Essex and Middlesex County Superior Courts, the Middlesex County Probate and Family Court, the Eastern Division of the Massachusetts Housing Court, and the Somerville District Court. See Doc. No. 126 ¶ 1.

2 Citations to "Doc. No. __" reference documents appearing on the court's electronic docket, and pincites are to the page numbers in the ECF header.

3 The undisputed evidence presented at summary judgment and recounted in Section I(D), infra, reveals that the first two allegations listed here are inaccurate. That is, the Policy was not linked to any alimony obligation, and ownership was not transferred to Renee.

4 Because Robyn is not participating in this action in her individual capacity, the Court will refer to her by name only when describing the underlying facts. When addressing the pending motion and the competing claims or arguments, the Court will generally refer to the Estate.

5 Renee attempted to prevent the Estate from deposing her, asserting that her "deposition cannot generate any evidence of value," reiterating her belief that the First Circuit's decision conclusively resolved this dispute, and mischaracterizing the Estate's deposition notice (suggesting it contained an admission that it plainly did not). See Doc. No. 111 at 2; Doc. No. 111-1 at 3.

6 To the extent Renee asks the Court to strike the Estate's expert report, the request is DENIED because it is not supported by any developed argument, coherent recitation of the record, or citation to specific legal authority. See Doc. No. 128 at 5-6 (containing only a general reference to "the Federal Rules of Civil Procedure").

7 Renee received the same extension, Doc. Nos. 121, 122, but the motion she then filed (her seventh dispositive motion) failed to comply with the Court's various prior orders requiring a showing of good cause for another dispositive motion, see Doc. No. 127.

8 Renee suggests in her papers that the Court should not consider an affidavit the Estate obtained from the lawyer who represented Mr. Sevelitte when he and Renee divorced. See Doc. No. 126-4. In her opposition, Renee's challenge focuses on the fact that the affidavit was signed after the period for fact discovery had ended. Doc. No. 128 at 5. That argument fails. Renee does not suggest she was unaware of this attorney's role in the underlying events. Indeed, the fact that Mr. Sevelitte's lawyer would have information bearing on how to interpret the Divorce Agreement she negotiated is obvious. Nor does Renee argue she was prevented in any way from seeking discovery from this witness. To the contrary, she concededly chose not to engage in discovery at all. In any event, Rule 56(c)(4) permits the submission of affidavits and declarations in support of or opposition to summary judgment, so long as the facts conveyed "would be admissible in evidence" and the affiant "is competent to testify on the matters stated." Nothing before the Court suggests the affidavit

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submitted by the Estate fails to satisfy these requirements. To the extent Renee expands her challenge in her quasi-surreply to include a claim of privilege, Doc. No. 130 at 2, she has not properly advanced or supported such a claim. Her initial opposition contained no developed assertion of privilege or argument in this regard. Cf. Doc. No. 128 at 5 (stating generally and without elaboration or citation that the Estate "introduces material not relevant, protected by privilege, and hearsay"). Her subsequent filing references a privilege applicable to "[s]ettlement communications" without citing a single case, rule, or other source of authority establishing the existence and contours of such a privilege. Doc. No. 130 at 2. This amounts to waiver of a privilege-based challenge to the affidavit. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990); see also In re Grand Jury Subpoena, 662 F.3d 65, 69 (1st Cir. 2011) ("The burden of showing that documents [or information] are privileged rests with the party asserting the privilege."). For all of these reasons, Renee's request to strike or disregard the affidavit is DENIED.

9 Attached to her memorandum, Renee included the following exhibits (which, for the most part, duplicate items the Estate submitted and are not explained or specifically cited anywhere in Renee's memo): a September 15, 2023 email from the Estate's lawyer disclosing the expert report (with the report itself attached); and a copy of the document establishing a trust created by Mr. Sevelitte. Doc. No. 128 at 8-43.

10 Her opposition does include a handful of inflammatory factual assertions without citation to any supporting evidence (admissible or otherwise). See, e.g., Doc. No. 128 at 4 (stating Robyn "sent an ambulance away from her home," and claiming Mr. Sevelitte's death "could have been prevented"). The Court DISREGARDS all such assertions by Renee and STRIKES them from the record, as they are not advanced in compliance with Rule 56(c) or Local Rule 56.1, nor are they material to the issues now pending. Including such allegations in a legal memorandum without offering supporting documentation demonstrating there is an evidentiary basis for them is inappropriate and potentially sanctionable.

11 Taken together, Renee's summary-judgment submissions fall far short of "the type of serious effort that allows" a court "to decide difficult questions, and doing her work for her is not an option, since that would divert precious judge-time from other litigants who could have their cases resolved thoughtfully and expeditiously because they followed the rules." Rodriguez-Machado v. Shinseki, 700 F.3d 48, 49-50 (1st Cir. 2012) (per curiam) (cleaned up). When it rejected her most recent two dispositive motions, the Court invited Renee to advance "her arguments for judgment ... in opposition to any dispositive motion filed by the" Estate. Doc. No. 119; see Doc. No. 127 (reiterating invitation and noting it served to protect Renee's "substantive rights"). Rather than advancing substantial arguments in her summary-judgment papers, though, Renee opted to train her attention on the First Circuit's decision and repeat the same arguments the Court already had considered and rejected on their merits.

12 One of Renee's state-court lawsuits against the Estate alleged that Mr. Sevelitte had breached the Divorce Agreement by failing to maintain the insurance required by the first paragraphs of Exhibit G. A Justice of the Superior Court dismissed that claim, finding that because the Divorce Agreement unambiguously tied that insurance requirement to Mr. Sevelitte's child-support obligation, the requirement terminated in 2015 when the child at issue was emancipated. See Mem. of Decision & Order on Mot. to Dismiss at 7-8, Sevelitte v. Estate of Joseph F. Sevelitte, No. 2277CV00241-A (Mass. Super. Ct. Apr. 10, 2023) [hereinafter "Super. Ct. Mem."].

13 The parties' compromise was both rational and in line with general principles of equitable distribution applied in Massachusetts. The Estate's evidence demonstrates that death benefits associated with insurance policies are typically included in the assets subject to division only when they are used to secure other payment obligations undertaken by a divorcing spouse (e.g., alimony or child support). The Policy was not used that way in the Divorce Agreement. Where an insurance policy has an associated, present-day cash value (as the Policy did), that cash value can be viewed as an asset subject to equitable distribution between the parties. It is that asset (i.e., the cash value) that Renee desired, and it was control of that asset (i.e., the ability to decide when and whether to cash the policy in) that Mr. Sevelitte was unwilling to surrender. Their competing positions were resolved by leaving control with Mr. Sevelitte, but promising Renee an equal share of the asset, should it be converted to cash—the value of which would increase over time, but would remain a fraction of the death benefit. This resolution accounted for the parties' concerns, is consistent with prevailing practice and governing law in this setting, and does not alter the overall proportions of the marital estate accorded to each spouse in the Divorce Agreement.

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14 Renee has advanced no challenge to the expert's credentials, nor to the substance or admissibility of her opinions. She also has not offered any evidence of her own, such as from the lawyer who represented her for purposes of the divorce, to dispute the Estate's evidence concerning the division of assets effected by the Divorce Agreement.

15 Like many contracts, the Divorce Agreement included standard “merger clause” language and a requirement that modifications be in writing (either signed by both parties or in the form of a court order). See Doc. No. 126-2 at 2, 6.

16 Even after filing this lawsuit, Renee continued to challenge Guardian's denial via letters. In one letter dated April 3, 2023, Renee mischaracterized the terms of the Divorce Agreement, incorrectly claiming the Policy was identified therein as securing Mr. Sevelitte's alimony obligation. Doc. No. 126-22 at 1. That assertion is disproven by the Divorce Agreement and the 2015 modification to it, both of which are in the record here. In the same letter, she wrote that the First Circuit “called [Guardian's] actions a ‘mistake.’ ” Id. The First Circuit's decision says no such thing; to the contrary, it found Guardian acted “reasonably” and in good faith. Sevelitte, 55 F.4th at 80-82.

In addition, Renee filed three other lawsuits in state court, bringing claims for damages against the Estate, Robyn, the Estate's lawyer, and Attorney Ross. Her son has petitioned to remove Robyn as the trustee and the personal representative of the Estate, and he has also filed civil and criminal complaints against Robyn. For her part, Robyn has sought declarations and orders regarding the validity and scope of her authority pursuant to Mr. Sevelitte's estate-planning documents. In all of these actions, Renee and her son are represented by Attorney Fitzgerald. The latest-filed lawsuit, against the Estate's attorney and Attorney Ross, was removed to this Court and promptly dismissed with prejudice, after significant pleading deficiencies were noted by the defendants and the Court. See Elec. Order, Sevelitte v. Ross, No. 23-cv-12471, ECF No. 21 (D. Mass. Dec. 5, 2023). A review of the state courts’ dockets and publicly available written decisions suggests none of the claims Attorney Fitzgerald has pursued in these actions on behalf of Renee and her son have yet yielded a judgment on the merits in their favor.

17 Renee also has pointed to the court-order exception, noting the Divorce Agreement was incorporated into the Judgment of Divorce Nisi. See Doc. No. 126-6. She has not, however, articulated any basis for finding that application of the court-order exception would entail different analysis or yield a different result than the contract exception. Cf. Parker, 178 N.E.3d at 867 n.8 (declining to apply or analyze the court-order exception where the only court order at issue merely incorporated a separation agreement between the parties, and where that agreement was subject to analysis under the contract exception). In these circumstances, Renee has effectively waived the opportunity to advance a reasoned argument based on the court-order exception. See Zannino, 895 F.2d at 17.

18 The Estate urges that there is no conclusive evidence in the record establishing that the Policy at issue in this lawsuit is the “whole life” policy addressed in Paragraph 6 of the Divorce Agreement, and that it is Renee's burden to provide such evidence. Doc. No. 125 at 14. Renee believes she need not offer such proof, because she reads the prior decisions by this Court and the First Circuit as having conclusively found such a connection. See, e.g., Doc. No. 126-1 at 5. Those decisions did no such thing; rather, as explained already, review at the pleading stage required this Court and the First Circuit to assume the truth of Renee's allegations, including her assertion that the Policy was the subject of Paragraph 6. The Estate correctly points out that Paragraph 6 does not name the Policy, cf. Super. Ct. Mem. at 8 (noting the court's inability to “determine which insurance policies are at issue” in provisions of the Divorce Agreement including Paragraph 6), and that the Policy does not use the term “Whole Life Insurance.” However, the Policy does include a cash-value table, and there is no evidence before the Court revealing whether Mr. Sevelitte held any other “whole life” policies at the time of the Divorce Agreement. As such, though the Court notes there is good reason to question whether Renee would be able to prove at a trial that Paragraph 6 relates to the Policy, the Court does not rest its present ruling on this issue. Instead, it assumes again, as it did before, that the Policy is the subject of Paragraph 6 and explains why the Estate is entitled to summary judgment anyway.

19 Most of the Estate's crossclaims were dismissed previously, as they did not relate to the Policy. The Court's review of the record suggests, and the relief the Estate seeks in connection with its pending motion confirms, the only crossclaim involving the Policy (and, therefore, revived by the First Circuit's ruling) seeks a declaration that the Estate is entitled to the death benefit. See Doc. No. 20 at 6.

20 Some of Renee's crossclaims, like those of the Estate, also were dismissed previously because they involved matters unrelated to the Policy. To the extent they relate to distribution of the Policy's death benefit, they fail for the same reasons

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identified above. To the extent Renee articulated a constitutional challenge to the revocation-on-divorce statute, Doc. No. 39 at 15-17, she has waived such a claim by failing to further develop it, see Zannino, 895 F.2d at 17, and, in any event, the Supreme Court has evaluated a similar statute and found no violation of the Contracts Clause, see generally Sveen v. Melin, 584 U.S. 811, 138 S.Ct. 1815, 201 L.Ed.2d 180 (2018).

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