

2024 WL 1857005

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United States District Court, D. Massachusetts.

Joseph GATTO, Individually, as Estate
Representative for the Estate of Josephine
A. Gatto, and as Trustee of the Josephine
Gatto Irrevocable Trust Agreement, Plaintiff,

v.

METTOWER,¹ Defendant.

Civil Action No. 22-cv-10804-MJJ

|

Signed February 5, 2024

Attorneys and Law Firms

Carlo Cellai, Cellai Law Offices, P.C., Braintree, MA, for
Plaintiff.

William D. Pandolph, Sulloway & Hollis, P.L.L.C., Concord,
NH, for Defendant.

MEMORANDUM OF DECISION

JOUN, United States District Judge

Owner:**Beneficiary:****Collateral Assignment:**

[Doc. No. 24-2; Doc. No. 20-2].
The Policy Summary reads, in part:

*1 On May 4, 2022, Plaintiff, Joseph Gatto, ("Mr. Gatto") individually and as Estate Representative for the Estate of Josephine A. Gatto and as Trustee of the Josephine Gatto Irrevocable Trust Agreement filed in Massachusetts Superior Court a First Amended Complaint against Defendant Metropolitan Life Insurance Company ("MetLife") alleging MetLife wrongly disbursed the funds from his mother, Josephine Gatto's ("Ms. Gatto") life insurance policy to Ms. Gatto rather than to an irrevocable trust that Ms. Gatto had designated as her policy's beneficiary. Mr. Gatto claims Breach of Fiduciary Duty (Count I), Breach of Contract (Count II), Breach of the Implied Covenant of Good Faith and Fair Dealing (Count III), violation of 93A (Count V) and requests Declaratory Judgment regarding the ownership of the funds resulting from Josephine A. Gatto's life insurance policy (Count IV). [Doc. No. 1].

On May 25, 2022, MetLife removed the case to this Court. [*Id.*]. On September 6, 2023, Mr. Gatto and MetLife filed Cross-Motions for Summary Judgment. [Doc. Nos. 20 and 23]. The Court held a hearing on the Motions on January 17, 2024. [Doc. No. 44].

I. BACKGROUND

On March 6, 1987, Josephine A. Gatto purchased a single premium, whole life insurance policy from Metropolitan Insurance and Annuity Company ("the Policy").² [Doc. No. 41 at ¶ 1; Doc. No. 24 at 2]. The Policy includes the following definitions:

As owner, you may exercise all rights under your policy while the insured is alive. You may name a contingent owner who would become the owner if you should die before the insured.

The beneficiary is the person or persons to whom the insurance proceeds are payable when the insured dies While the insured is alive, the owner may change any beneficiary or contingent beneficiary.

Your policy may be assigned as collateral. All rights under the policy will be transferred to the extent of the assignee's interest

This policy provides life insurance until the Maturity Date of the Policy. Life insurance is payable to the beneficiary if the insured dies before the Maturity Date of the Policy If

the insured is alive on the Maturity Date, the accumulation fund is payable to the owner.

[*Id.*]. The Final Date of the Policy, or the Policy's Maturity Date, is the Policy anniversary immediately following the insured's 95th birthday, i.e., March 6, 2016. [*Id.*]. The Policy lists Josephine Gatto as both the Owner and Insured and identifies Joseph Gatto as the Policy's Beneficiary. [*Id.*]

Several years later, on May 21, 1992, Ms. Gatto executed the Josephine Gatto Irrevocable Trust ("the Trust"). [Doc. No. 22 at ¶ 4, Doc. No. 20-3]. Although parts of the Trust document are missing, it can be reasonably inferred, and the parties do not dispute, that Joseph Gatto was the sole Trustee and beneficiary of the Trust. [Doc. No. 20-3, sec. F(1)]. Included in the missing pages is "Schedule A" which listed the assets belonging to the Trust. [Doc. No. 22 at ¶ 2]. The Policy is therefore not explicitly included in the Trust property.

*2 Shortly after executing the Trust, on July 20, 1992, Ms. Gatto designated the Trust as the "Revocable Beneficiary" of her Policy. [Doc. No. 20-4]. Ms. Gatto did not elect to assign her interests in the Policy; in fact, the "Assignment of Interest to Insured" portion of the designation form was crossed off. [*Id.*]. MetLife received the designation form and stamped it as filed on September 15, 1992. [*Id.*].

In 2008, Ms. Gatto was adjudicated incompetent due to [Alzheimer's Disease](#) and was placed under a Managed Guardianship by the Norfolk County Probate and Family Court. [Doc. No. 20-5]. On February 24, 2016, MetLife sent Ms. Gatto a letter regarding her Policy's upcoming Maturity Date. [Doc. No. 24-6]. MetLife received no response. [Doc. No. 24-1 at ¶ 28]. At this point Ms. Gatto was dying from late-stage [Alzheimer's Disease](#), was heavily medicated for pain from ulcers, and suffered from poor eyesight. [Doc. No. 22 at ¶ 23].

The Policy matured on March 6, 2016, and Ms. Gatto died twelve days later, on March 18, 2016. [Doc. No. 20-6]. Unaware that Ms. Gatto had died, MetLife sent another letter to Ms. Gatto on March 25, 2016. Again, there was no response. [Doc. No. 24-1 at ¶ 32]. MetLife thereafter placed the net maturity value in the amount of \$112,783.42 in an unclaimed funds account. [*Id.*]. On April 6, 2018, Mr. Gatto was appointed Personal Representative of Ms. Gatto's Estate. [Doc. 20-8].

On February 3, 2020, MetLife sent Ms. Gatto a letter informing her that the funds were still being held and that if

she did not submit a claim for them, they would be reported as "unclaimed" and transferred to the Massachusetts Unclaimed Property Division ("UPD"). [Doc. No. 24-10]. On April 13, 2020, the funds were escheated to the UPD. [Doc. No. 24-9].

On December 22, 2021, Mr. Gatto received a Notice from the Internal Revenue Service ("IRS") regarding a tax deficiency in the amount of \$17,128.83 resulting from the Policy funds MetLife made payable to Ms. Gatto. [Doc. No. 24-10]. This was the first time Mr. Gatto learned of the Policy's existence. [Doc. No. 22 at ¶ 19]. Mr. Gatto then began making a series of calls to MetLife to determine why the funds were made payable to Ms. Gatto and not to the Trust as the Policy's designated beneficiary. [Doc. No. 22 at ¶¶ 21-31]. Between April 5, 2021, and June 15, 2021, Mr. Gatto called and emailed with MetLife representatives conveying to them that Ms. Gatto was incompetent in 2016 and could not receive or respond to MetLife's letters regarding the Policy's Maturity Date and expressing frustration and bafflement over MetLife's failure to communicate with him as Trustee of the Trust designated as the Policy's beneficiary. [*Id.*]. MetLife responded by letters dated May 4, 2021, and October 6, 2021, advising Mr. Gatto to contact the UPD to claim the funds. [Doc. No. 24-11, Doc. No. 24-12].

II. LEGAL STANDARD

Summary judgment is appropriate when, based upon the pleadings, affidavits, and depositions, "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\(a\)](#). A fact is "material" if it "might affect the outcome of the suit under the governing law." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986). A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

Generally, "a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion." [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323 (1986). "To succeed, the moving party must show that there is an absence of evidence to support the nonmoving party's position." [Rogers v. Fair](#), 902 F.2d 140, 143 (1st Cir. 1990). Once it has made the requisite showing, the burden shifts to the nonmovant to "present definite, competent evidence to rebut the motion" and demonstrate that a "trialworthy issue persists." [Vineberg v. Bissonnette](#), 548 F.3d 50, 56 (1st Cir. 2008) (internal citations and quotations omitted). " '[T]he mere existence of a scintilla of evidence' is insufficient to defeat a properly supported motion for

summary judgment.” *Torres v. E.I. DuPont De Nemours & Co.*, 219 F.3d 13, 18 (1st Cir. 2000) (quoting *Anderson*, 477 U.S. at 252).

III. ANALYSIS

A. Count I: Breach of Fiduciary Duty

*3 Mr. Gatto contends that MetLife owed a fiduciary duty to Ms. Gatto and the Trust and that it breached its fiduciary duty when it failed to ascertain whether Ms. Gatto was alive or competent and failed to communicate with Mr. Gatto as the Trustee of the designated Beneficiary. MetLife responds that, as an insurance agent, it did not owe Ms. Gatto or the Trust a fiduciary duty.

Under Massachusetts law, “relationships between an insurance company and an insured are not typically understood to be fiduciary in nature, and an insurer, therefore, does not owe its insured a fiduciary duty absent special circumstances of assertion, representation and reliance.” *Thrivent Fin. for Lutherans v. Strojny*, 882 F. Supp. 2d 260, 267 (D. Mass. August 9, 2012) (cleaned up). Typically, courts find that there is a fiduciary duty where the facts of the case present a special circumstance, such as a continuing relationship between the agent and the insured, or where there is reliance by the insured on the insurer's agent for advice and guidance on the insured's policies.” *Id.* (gathering cases).

Here, no such special circumstances exist. Ms. Gatto did not have a personal or ongoing relationship with MetLife, nor is there evidence that MetLife advised Ms. Gatto on the terms of her Policy. Even if a fiduciary duty existed, MetLife disclosed all the relevant information about the Policy in the Policy document and in the Designation Form as well as in the letters it sent to Ms. Gatto in 2016. MetLife has therefore met the standard imposed on insurers even where there is a fiduciary duty. *Baldwin Crane & Equip. Corp. v. Riley & Rielly Ins. Agency, Inc.*, 687 N.E.2d 1267, 1269 (1997).

Accordingly, as there is no dispute of material fact, summary judgment as to Count I is granted as to Defendant, MetLife and denied as to Plaintiff, Mr. Gatto.

B. Count II: Breach of Contract

Mr. Gatto asserts that MetLife breached its contract with Ms. Gatto when it failed to pay the proceeds from the Policy to the rightful beneficiary: the Trust. MetLife contends that death proceeds are only payable to a beneficiary if the Policy

owner dies before the Policy's Maturity Date. By contrast, where the owner dies after the Maturity Date, only the cash value or accumulation fund is owed which is made payable to the Policy owner, not a revocable beneficiary. Accordingly, MetLife contends that it made the accumulation fund payable to Ms. Gatto as required by the contract.

Under Massachusetts law, “a breach of contract claim requires the plaintiff to show that (1) a valid contract between the parties existed, (2) the plaintiff was ready, willing, and able to perform, (3) the defendant was in breach of the contract, and (4) the plaintiff sustained damages as a result.” *Bose Corp. v. Ejaz*, 732 F.3d 17, 21 (1st Cir. 2013). A contract is interpreted in view of its plain terms and in order to give effect to each of its provisions. *Weiss v. DHL Express, Inc.*, 718 F.3d 39, 45 (1st Cir. 2013). The Court must read the terms of a contract “in the context of the entire contract rather than in isolation.” *Brigade Leveraged Cap. Structures Fund Ltd. v. PIMCO Income Strategy Fund*, 995 N.E.2d 64, 69 (2013) (citation omitted). In the event of an ambiguity, the Court may consider certain extrinsic evidence. *Id.* Ambiguity does not arise in each situation where the parties dispute the proper interpretation of a contract but instead arises where reasonably intelligent persons would disagree about the interpretation of terms which are “susceptible of more than one meaning.” *S. Union Co. v. Dep't of Pub. Utils.*, 941 N.E.2d 633, 640 (2011) (citation omitted). “The interpretation of language in an insurance contract ‘is no different from the interpretation of any other contract, and we must construe the words of the policy in their usual and ordinary sense.’ ” *Metro. Prop. & Cas. Ins. Co. v. Morrison*, 951 N.E.2d 662, 671 (2011) quoting *Boston Gas Co. v. Century Indem. Co.*, 910 N.E.2d 290, 304 (2009) (cleaned up).

*4 The parties' dispute focuses on whether the defendants indeed breached the agreement based on their differing interpretations of what the agreement required. When interpreting the terms of the governing contract, there is a factual issue for a jury to decide if the language is ambiguous, such that the terms are facially inconsistent or “reasonably susceptible to multiple, plausible interpretations.” *Nault v. United States*, 517 F.3d 2, 4 (1st Cir. 2008); see *Children's Hosp. Corp. v. George Washington Univ.*, 750 F.Supp.2d 239, 245 (D. Mass. Sept. 16, 2010) (citations omitted). An unambiguous contract, on the other hand, must be enforced according to its plain terms. *Smart v. Gillette Co. Long-Term Disability Plan*, 70 F.3d 173, 176–79 (1st Cir. 1995). A party has breached a contract if it has failed to perform, under the plain terms of the contract, and lacks a legal excuse for doing

so. See *Realty Developing Co. v. Wakefield Ready-Mixed Concrete Co.*, 100 N.E.2d 28, 30 (1951).

Here, the contract is unambiguous. As Mr. Gatto admits, the owner of the Policy always remained Ms. Gatto. [Doc. No. 20 at 13]. The original Beneficiary of the Policy was Mr. Gatto. Ms. Gatto later changed the Beneficiary from Mr. Gatto to the Trust. Under the plain terms of the contract, the Owner can change the Beneficiary at any time while the Insured is alive. The revocable nature of the Beneficiary is explicit in the designation form which Ms. Gatto submitted in 1992 to identify the Trust as the new Revocable Beneficiary of her Policy. Notably, Ms. Gatto did not elect to assign the Policy which would have transferred “[a]ll rights under the policy ... to the extent of the assignee's interest.” [Doc. No. 24-2; Doc. No. 20-2].

Mr. Gatto maintains that Ms. Gatto's designation of an irrevocable trust as her Policy's Beneficiary divested her from any beneficiary interest in the Policy. Therefore, Mr. Gatto appears to argue, as the Trust is the only entity with a beneficial interest in the Policy, it becomes the Owner and Beneficiary, and MetLife was contractually obligated to make the death benefits and/or maturity value payable to the Trust.

First, as a point of clarity, under the plain language of the contract, death benefits are payable to the Beneficiary when the insured dies before the Policy matures, and maturity value is payable to the Owner when the insured outlives the Maturity Date. In this case, Ms. Gatto died after the Maturity Date, therefore the relevant issue is to whom the maturity value was due.

Second, Mr. Gatto's emphasis on the irrevocable nature of the Trust is misplaced; it is the revocable nature of the Beneficiary designation that is dispositive. Because Ms. Gatto designated the Trust as a Revocable Beneficiary (and did not, for example, assign her interest), she retained ownership of the Policy. Therefore, under the clear terms of the contract, when the Policy matured, the maturity value was payable to her as the owner. MetLife would have been in breach of its own contract had it instead bypassed the owner and made the maturity value payable to the Beneficiary.

Accordingly, as the Policy was unambiguous and there is no triable issue, summary judgment as to Count II is granted as to the Defendant, MetLife, and denied as to the Plaintiff, Mr. Gatto.

C. Count III: Breach of the Implied Covenant of Good Faith and Fair Dealing

Mr. Gatto's next claim, that MetLife breached the Implied Covenant of Good Faith and Fair Dealing, echoes his claims for Breach of Fiduciary Duty and Breach of Contract. Specifically, Mr. Gatto argues that MetLife failed to communicate adequately with Ms. Gatto and ultimately made the funds payable to the wrong entity. MetLife reiterates its position that it performed under the terms of the contract, and therefore Mr. Gatto is not entitled to recovery.

*5 “In Massachusetts, all contracts contain an implied covenant of good faith and fair dealing which provides that each party involved will not ‘do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.’ ” *Cummings v. City of Newton*, 298 F. Supp. 3d 279, 290 (D. Mass. February 6, 2018) (quoting *K.G.M. Custom Homes, Inc. v. Prosky*, 10 N.E.3d 117, 124 (2014)). The implied covenant may not, however, be invoked to create rights and duties not contemplated by the provisions of the contract or the contractual relationship. *UNO Restaurants v. Bos. Kenmore Realty Corp.*, 805 N.E. 2d 957, 964 (2004); *AccuSoft Corp. v. Palo*, 237 F.3d 31, 45 (1st Cir. 2001). Nor is it applicable “where the defendant has exercised an express contractual power in good faith -- that is, in a manner that comports with the parties’ reasonable expectations as to performance.” *Speakman v. Allmerica Fin. Life Ins.*, 367 F. Supp. 2d 122, 132 (D. Mass. April 21, 2005).

As previously discussed, MetLife performed under the express terms of the contract. The Policy was not ambiguous, and while it is deeply unfortunate that Ms. Gatto was suffering and too infirm to receive or review her letters, MetLife was under no obligation to investigate her state of health or contact the Designated Beneficiary (the Trust). Moreover, there is no evidence that MetLife was ever made aware of Ms. Gatto's deterioration such that failure to pursue communication with her rose to the level of bad faith.

Accordingly, as there is no evidence that MetLife intended to (or in fact did) interfere with the rights of Ms. Gatto or Mr. Gatto, summary judgment as to Count III is granted as to MetLife and denied as to Mr. Gatto.

D. Count V: Violation of 93A

Mr. Gatto reasserts his earlier arguments in support of his claim that MetLife violated Massachusetts Consumer

Protection Law under M.G.L. c. 93A. MetLife responds that it performed under the contract.

Chapter 93A makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” *Mass. Eye & Ear Infirmary v. QLT Phototherapeutics, Inc.*, 412 F.3d 215, 243 (1st Cir. 2005) (quoting *Mass. Gen. L. c. 93A, § 2*). “In determining whether a practice violates Chapter 93A, [courts] look to ‘(1) whether the practice ... is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; [and] (3) whether it causes substantial injury to consumers (or competitors or other businessmen).’” *Id.* (internal quotation omitted). For example, “conduct in disregard of known contractual arrangements and intended to secure benefits for the breaching party constitutes an unfair act or practice for c. 93A purposes.” *Pazol v. Tough Mudder Inc.*, 384 F. Supp. 3d 191, 197 (D. Mass. June 13, 2019) (internal quotations and citation omitted).

Here, as described above, MetLife performed under the terms of the contract, and there is no evidence that the terms were reached through extortion or bad faith. Accordingly, summary judgment as to Count V is granted as to MetLife and denied as to Mr. Gatto.

E. Count IV: Declaratory Judgment

Finally, Mr. Gatto seeks declaratory judgment identifying the Trust as the rightful owner of the right, title and interest in and proceeds from the Policy. As already discussed, MetLife correctly made the maturity funds payable to Ms. Gatto, and after several years, properly escheated the funds to the UPD. As the Trust did not explicitly contain the Policy, it was treated as part of Ms. Gatto's estate and taxed accordingly.

*6 However, a trust instrument may be reformed to conform to the settlor's intent which can be ascertained by looking

“to the trust instrument as a whole and the circumstances known to the settlor on execution.” *Barker v. Barker*, 853 N.E.2d 1057, 1058 (2006) (quoting *DiCarlo v. Mazzarella*, 717 N.E.2d 257, 259 (1999)). Where a trust instrument as written would produce results inconsistent with the settlor's intent, courts may consider extrinsic evidence to establish that a mistake was made. *Id.* (citing *Walker v. Walker*, 744 N.E.2d 60,65 (2001)). In such cases, “the existence of a mistake in the drafting of a trust instrument must be established by ‘full, clear, and decisive proof.’” *Id.* (quoting *Putnam v. Putnam*, 682 N.E.2d 1351, 1353 (1997)).

Here, sufficient evidence exists that Ms. Gatto intended to include the Policy as part of the Trust property. First, Article V of the Trust document contemplates the Trustee collecting and receiving any amounts payable under any insurance policies included in Appendix A. Second, only months after executing the Trust, Ms. Gatto changed the beneficiary of her Policy from Mr. Gatto to the “Josephine Gatto Irrevocable Trust” under which Mr. Gatto is the sole beneficiary. Together, these documents compel the conclusion that Ms. Gatto intended the Policy to part of the Trust corpus, and the instrument should be reformed to reflect her wishes.

Accordingly, the Trust is the rightful owner of the maturation funds which Mr. Gatto may claim from UPD as Trustee.

IV. CONCLUSION

For the above reasons, MetLife's Motion for Summary Judgment as to Counts I, II, and V is GRANTED and Mr. Gatto's Cross-Motion for Summary Judgment as to the same counts is DENIED. Mr. Gatto's Motion for Summary Judgment as to Count IV is GRANTED.

SO ORDERED.

All Citations

Slip Copy, 2024 WL 1857005

Footnotes

- 1 The Complaint named Metropolitan Life Insurance Company (“MetLife”) as Defendant. At a hearing on January 17, 2024, the Court granted Plaintiff's unopposed Motion to substitute MetTower as the correct Defendant. However, in an effort to avoid confusion and remain consistent with the pleadings, this opinion will refer to the Defendant as MetLife.
- 2 Metropolitan Insurance and Annuity Company is no longer in existence. [Doc. No. 24-1 ¶ 15]. Although there have been intervening successors in interest, all life insurance policies issued by it are currently assumed by Metropolitan Tower Life Insurance Company [*Id.*; Doc. No. 24 at 5].

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