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Appeal Filed by SEVELITTE v. GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, ET AL, 1st Cir., April 5, 2022
2022 WL 1051351
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United States District Court, D. Massachusetts.

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

Civil No. 21-10630-LTS
|
Filed 02/25/2022

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ORDER ON MOTION TO DISMISS AND MOTION FOR PROTECTIVE ORDER

SOROKIN, District Judge

***1** Despite a somewhat complicated procedural history, the dispute at the heart of this action is straightforward. It involves the disposition of a life insurance policy held by the late Joseph Sevelitte ("Joseph") to which his ex-wife, Renee Sevelitte ("Renee"), and widow, Robyn Caplis-Sevelitte ("Robyn"), make competing claims. There are several pending Motions before the Court, including the life insurance company's Motion for Judgment on the Pleadings (Doc. No. 50), Robyn's Cross-motion for Judgment on the Pleadings (Doc. No. 70), Robyn's Motion to Dismiss Renee's counterclaims (Doc. No. 40), and Robyn's Motion for a Protective Order and Order to Quash (Doc. No. 44). The Court addresses each Motion in turn.

I. FACTS

Joseph and Renee were married on October 4, 1986. Doc. No. 1-1, Ex. B at 36. During their marriage, Joseph purchased a Whole Life Insurance policy with a death benefit of $75,000 and named Renee as the primary beneficiary. Doc. No. 1-1, Ex. A at 31. Joseph did not name any contingent beneficiaries in the policy. Id. The policy was initially underwritten by Berkshire Life Insurance Company ("Berkshire"). Doc. No. 1-1, Ex. A. Berkshire was later acquired by Guardian Life Insurance Company ("Guardian"), the Defendant in this action. Doc. No. 1-1 at 2 ¶ 5.

The terms of the policy state that the proceeds will be directed to Joseph's Estate if there are no living beneficiaries at his time of death:

> [i]f you die while the policy is in force, the proceeds will be paid to the primary beneficiary, if living; otherwise, payment is to the contingent beneficiary, if living.... If no beneficiary survives you, the proceeds will be paid to the owner or the owner's estate.

Doc. No. 1-1, Ex. A at 20.

Renee and Joseph divorced on May 2, 2013. Doc. No. 1-1, Ex. B at 36. They entered into a divorce agreement that, in relevant part, provides:

> [t]he 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.

Id. at 59.

Joseph did not change the beneficiary designation on the policy upon his divorce or at any other time. Joseph later married Robyn. Doc. No. 20 ¶ 1. On December 23, 2020, Joseph died from complications related to COVID-19. Id. at 6 ¶ 17. Robyn was appointed personal representative of Joseph's Estate. Id. at 3 ¶ 2.

After Joseph's death, Renee submitted a claim to Guardian for the proceeds of the policy. Doc. No. 1-1 at 3 ¶ 9. Guardian commenced an investigation into Renee's claim, which revealed that Renee and Joseph were divorced at the time of his death. Under common law, the onus was on the insured to alter or amend the beneficiary status of an ex-spouse. Am. Fam. Life Assurance Co. of Columbus v. Parker, 178 N.E.3d 859, 863 (Mass. 2022). The Massachusetts Uniform Probate Code altered the traditional rule by adopting a revocation-on-divorce provision. The provision states:

> ***2** 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 and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse[.]

Mass. Gen. Laws Ann. ch. 190B, § 2-804(b).

In a letter to Renee's attorney dated February 24, 2021, Guardian explained that the divorce agreement was ambiguous because it does not expressly negate the revocation-on-divorce provision. Doc. No. 1-1, Ex. D at 70-71. Guardian requested further evidence supporting Renee's entitlement to the policy proceeds but received nothing in response. Id.; Doc. No. 51 at 9. Guardian also contacted Joseph's Estate via Robyn, who thereafter submitted a claim form on behalf of the Estate on June 16, 2021. Doc. No. 51, Ex. 1 at 23-24 ¶¶ 8-11.

II. PROCEDURAL HISTORY

On March 31, 2021, Renee sued Guardian in state court seeking the proceeds of Joseph's life insurance policy. Doc. No. 1-1. Renee's complaint brought the following claims: breach of the insurance policy contract (count I), fraudulent misrepresentation of contract (count II), acknowledgement of Plaintiff as owner of the contract (count III), and violation of Mass. Gen. Laws ch. 93A (count IV). Id. at 3-5 ¶¶ 17-37. In what the Estate and Guardian term a "substantial overreach," the complaint requested a total of $1,600,000 in damages arising from the failure to pay the $75,000 death benefit to Renee. Id. at 6; Doc. No. 72 at 1.

Guardian removed the case to federal court based upon diversity of citizenship because Guardian is a citizen of New York, and Renee is a citizen of Massachusetts. Doc. No. 1 at 3. Guardian then brought a counterclaim for interpleader against Renee and a third-party complaint in interpleader against Joseph's Estate (of Massachusetts citizenship) and Joseph's widow Robyn (also a Massachusetts citizen) who is the personal representative of the Estate. Doc. No. 5 at 5. The Court granted (Doc. No. 29) Guardian's Motion to Deposit (Doc. No. 27) and Guardian thereafter deposited the insurance proceeds, which total $77,118.92, with the Clerk (Doc. No. 41). All parties agree the Court has jurisdiction to resolve the proper disposition of the insurance policy as between these parties, and the Court concurs. The parties are diverse and the amount in controversy exceeds $75,000.

Robyn then brought various crossclaims against Renee claiming that Renee was improperly seeking to raid Estate assets. Doc. No. 20 ¶¶ 6-40. The complaint points to Renee's attempt to secure the proceeds from the life insurance policy and alleges that Renee successfully transferred $13,084.14 from Joseph's IRA to her own account.[1] Id. Robyn's complaint includes a request for declaratory judgment declaring the IRA and insurance proceeds property of the Estate (count I), a request for injunctive relief enjoining Renee from dissipating the Estate's assets (count II), claims for unjust enrichment and conversion based on the IRA funds (counts III and IV), and a claim for breach of the implied covenant of good faith and fair dealing arising from Renee's failure to comply with the terms of the divorce agreement (count V). Id. ¶¶ 24-40.

***3** Renee then counterclaimed against the Estate asserting various claims relating to property (including but not limited to the aforementioned insurance policy) that she asserts is rightfully hers rather than the Estate's. Doc. No. 39.

III. LEGAL STANDARD

A motion for judgment on the pleadings is "treated much like a 12(b)(6) motion to dismiss." Perez-Acevedo v. Rivero-Cubano, 520 F.3d 26, 29 (1st Cir. 2008). "There is, of course," a "modest difference between Rule 12(c) and Rule 12(b)(6) motions," in that the former "implicates the pleadings as a whole." Aponte-Torres v. Univ. Of Puerto Rico, 445 F.3d

50, 54-55 (1st Cir. 2006). To survive a motion to dismiss under Rule 12(b)(6) and, by extension a 12(c) motion, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The complaint must also "set forth 'factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.' " Berner v. Delahanty, 129 F.3d 20, 25 (1st Cir. 1997) (quoting Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Courts must "take all factual allegations [in the complaint] as true and ... draw all reasonable inferences in favor of the plaintiff." Rodríguez-Ortiz v. Margo Caribe, Inc., 490 F.3d 92, 96 (1st Cir. 2007).

A motion to dismiss for lack of subject matter jurisdiction brought pursuant to Rule 12(b)(1) is reviewed under a standard similar to that governing Rule 12(b)(6) motions. Murphy v. U.S., 45 F.3d 520, 522 (1st Cir. 1995). A party invoking the jurisdiction of a federal court bears the burden of proving its existence. Id.

IV. DISCUSSION

Now pending before the Court is Robyn's Motion to Dismiss Renee's counterclaims for lack of subject matter jurisdiction (Doc. No. 40), Robyn's Motion for a Protective Order and Order to Quash (Doc. No. 44), Guardian's Motion for Judgment on the Pleadings (Doc. No. 50), and Robyn's Cross-motion for Judgment on the Pleadings (Doc. No. 70).

A. Guardian's Motion

The Court turns first to Guardian's Motion, which seeks judgment in its favor on Renee's claims, judgment in its favor and a discharge from liability arising from its interpleader counterclaim, an order enjoining Renee, Robyn, and the Estate from commencing or prosecuting any claim against Guardian related to the insurance policy, and an award of attorneys' fees from the insurance proceeds. Doc. No. 5 at 8-10. Before the Court is the divorce agreement, the insurance policy, and the facts described above over which there is no dispute.

In Count I, Renee alleges that Guardian breached the insurance policy contract by refusing to pay her the proceeds upon Joseph's death. Doc. No. 1-1 at 3-4 ¶¶ 17-24. The Massachusetts revocation-on-divorce provision applies to life insurance policies and therefore governs Renee's breach of contract claim. Parker, 178 N.E.3d at 864. The provision revokes the policy's beneficiary designation unless the "express terms" of a governing instrument, the divorce agreement in this case, provide otherwise. Mass. Gen. Laws Ann. ch. 190B, § 2-804(b). In other words, the divorce agreement "must expressly provide that the beneficiary designation is not revoked by divorce or words to that effect." Parker, 178 N.E.3d at 869.

***4** Such express language is absent from the divorce agreement, which neither requires Joseph to maintain Renee's beneficiary status nor explicitly names the Guardian life insurance policy. Thus, the plain language of the divorce agreement lacks the required "express terms." To the contrary, the divorce agreement vests sole control over all aspects of the whole life insurance policy with Joseph and affords Renee no right to the death benefit, enabling Joseph to "elect to cash in said policy." Doc. No. 1-1, Ex. B at 59. Finally, the 2015 modification to the divorce agreement makes it clear that Renee, Joseph, and their lawyers understood the meaning of "express terms." In reference to another life insurance policy, the modification clearly states the Joseph must maintain the policy "with Renee as the beneficiary." Doc. No. 70-1 at 3. Yet, there is no similar language used in relation to the Guardian life insurance policy.[2] Thus, the revocation-on-divorce provision applies and revokes Renee's beneficiary status.

At the hearing, Counsel for Renee argued that Joseph was not permitted to cash in the whole life insurance policy without Renee's permission, which would tend to suggest, per Counsel, that the express terms of the agreement secured her beneficiary status post-divorce. In support of this argument, Renee points to paragraph 2 of Exhibit G of the divorce agreement, which relates to life insurance policies and states: "[t]he Husband agrees that he will not permit such insurance to lapse or expire and that he will not surrender, sell, assign, pledge, borrow against or in any other manner divest himself of the control of the policies, except upon written consent of the Wife." Doc. No. 1-1, Ex. B at 58. Yet, reading Exhibit G in its entirety establishes that paragraph 2 refers to paragraph 1, which requires Joseph to obtain a different life insurance policy naming his son as beneficiary. Specifically, paragraph 2 says "such" insurance, plainly referring to the policy described in paragraph 1. Moreover, paragraph 6 of Exhibit G relates to the whole life insurance policy at issue here and clearly states that Joseph can "elect" to cash in the policy as long as he splits the proceeds with Renee. Id. at 59. This specific, plain language excepts the whole life insurance policy described in paragraph 6 from the general language in paragraph 2 requiring Renee's permission.[3]

In light of the foregoing, Renee has failed to plausibly state a breach of contract claim. Put simply, there can be no breach of contract because Renee was not entitled to the funds. Accordingly, Guardian's Motion is ALLOWED as to Count I.

In Count III, Renee claims that her payment and Guardian's acceptance of one insurance premium transformed her into an owner of the policy. Doc. No. 1-1 at 5-6 ¶¶ 28-32. This is simply not so. She cites no statutory or contractual language in support of her position and, as Guardian points out, the policy specifies that all changes must be made by written request. Doc. No. 1-1, Ex. A at 21. Renee does not allege that she made such a request. Guardian's Motion is therefore ALLOWED as to Count III because Renee has failed to plausibly state such a claim.

***5** The Court's resolution of the breach of contract claim necessarily means that Guardian did not commit a 93A violation or a fraudulent misrepresentation in the course of investigating Renee's claim or filing the present interpleader action. There is no plausible allegation that Guardian made a false representation for the purposes of Renee's fraudulent misrepresentation claim. Cummings v. HPG Int'l, Inc., 244 F.3d 16, 22 (1st Cir. 2001). Even had Guardian's interpretation of § 2-804(b) or the policy been incorrect, such a mistake, without more, would not be sufficient to support Renee's 93A claim. Pediatricians Inc. v. Provident Life & Acc. Ins. Co., 965 F.2d 1164, 1173 (1st Cir. 1992). Guardian's Motion is ALLOWED as to Counts II and IV.

Finally, Guardian's request for judgment in its favor and a discharge of liability on its claim for interpleader with an express finding of finality pursuant to Fed. R. Civ. P. 54(b) is ALLOWED. Renee, Robyn, and the Estate are hereby permanently ENJOINED from commencing or prosecuting any claim against Guardian in state or federal court, or any other forum, with respect to the death benefit under the policy and on account of Joseph's death. The Court finds nothing in the record even plausibly suggests Guardian acted in bad faith; rather the record demonstrates that Guardian has acted in good faith by bringing the interpleader claim and is excused from further attendance in this cause. Disposition of the funds Guardian deposited with the Court is addressed below.

B. Robyn's Motions

The Court now addresses Robyn's Motions. As an initial matter, Robyn's Motion for Judgment on the Pleadings is ALLOWED insofar as it requests judgment in her favor on the interpleader action. As explained previously, the Massachusetts revocation-on-divorce provision revoked Renee's beneficiary status and thus the language of the insurance policy controls the ultimate disposition of the funds. In the absence of a primary beneficiary, the policy requires that the proceeds be directed to the contingent beneficiary or, if there is no contingent beneficiary, to Joseph's Estate. Doc. No. 1-1, Ex. A at 20. Because there is no contingent beneficiary, the Estate is entitled to the funds. The Clerk shall distribute the insurance policy proceeds (less the attorney's fees outlined below) to the Estate. In light of this determination, Robyn's crossclaims set forth in Doc. No. 20 are DENIED AS MOOT IN PART insofar as they seek: (1) a declaration that the insurance proceeds belong to the Estate, and (2) an order enjoining Renee from making claims against the policy.

In her Motion to Dismiss, Robyn contends that Renee's claims fall outside the reach of 28 U.S.C. § 1367, which states that "in any civil action of which the districts courts have original jurisdiction [and this action is indisputably such an action], the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Though § 1367(a) establishes a broad grant of supplemental jurisdiction, its reach is limited by the terms of § 1367(b). When a district court's jurisdiction is based solely on diversity of citizenship, it cannot exercise supplemental jurisdiction "over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure ... when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." 28 U.S.C. § 1367(b).

***6** As Robyn argues, Renee's claims fall squarely within the limits set forth in § 1367(b) and thus must be dismissed for lack of subject matter jurisdiction. The Court's original jurisdiction is based solely on diversity of citizenship—Renee, a citizen of Massachusetts, filed state law claims against Guardian, a citizen of New York. Robyn became a party to this lawsuit when Guardian filed a third-party complaint in interpleader against her pursuant to Federal Rule of Civil Procedure 14. Doc. No. 5. Therefore, Renee, a plaintiff, has made a claim against Robyn, a person made a party under Rule 14. Because Renee and Robyn are non-diverse, Renee's claim "would be inconsistent with section 1332." Indeed, had Renee originally named Robyn as a co-defendant with Guardian, this action would not have been removable, though Guardian could have filed its interpleader claim as separate civil action invoking the Court's diversity jurisdiction. Accordingly, Renee's Motion to Dismiss is ALLOWED.

That, however, is not the end of the matter. The Court is "under an unflagging duty to ensure that it has jurisdiction over the subject matter of the cases it proposes to adjudicate." Am. Policyholders Ins. Co. v. Nyacol Prod., Inc., 989 F.2d 1256, 1258 (1st Cir. 1993). Robyn's motion has caused the Court to examine its jurisdiction over Robyn's claims. The Court addressed this issue with the parties at hearings it held on the pending Motions.

The Court lacks subject matter jurisdiction over both Robyn and Renee's state law claims. In Robyn's case, however, it is § 1367(a) that strips the Court of jurisdiction. Under 1367(a), a court may exercise supplemental jurisdiction over "claims that are so related to claims in the action within [its] original jurisdiction." Courts have interpreted this "so related to" language to encompass claims that share a "common nucleus of operative fact" with the claims over which there is jurisdiction or "are such that [they] ... would ordinarily be expected to [be] tried ... in one judicial proceeding." Allstate Interiors & Exteriors, Inc. v. Stonestreet Const., LLC, 730 F.3d 67, 72 (1st Cir. 2013) (alteration in original) (Penobscot Indian Nation v. Key Bank of Me., 112 F.3d 538, 564 (1st Cir. 1997)). The original action concerns, only, the disposition of a single insurance policy under the contract of insurance with the ancillary question of the interpretation of a single paragraph of the divorce agreement. Robyn seeks to adjudicate additional disputes with Renee over actions regarding other property, specifically Joseph's IRA, and an alleged breach of the divorce agreement. Although certain portions of the divorce agreement bear on the disposition of the insurance policy, the controversy is limited to the proper disposition of the policy itself. It does not extend to the broader disputes over the divorce agreement, or the disposition of other property owned by Joseph at the time of his death. These matters are not "so related" to the claim over which the Court has original jurisdiction to authorize the Court to exercise supplemental jurisdiction. Rather these matters arise out of different facts, different contract provisions, and have no relationship to the insurance contract at the core of the dispute giving rise to the Court's subject matter jurisdiction.

Accordingly, the Court DISMISSES Robyn's crossclaims set forth in Doc. No. 20 and DENIES her Motion for Judgment on the Pleadings insofar as it seeks judgment in favor of the Estate on its crossclaims (Doc. No. 70). In light of the Court's ruling, Robyn's Motion for a Protective Order and Order to Quash (Doc. No. 44) is DENIED AS MOOT.

Finally, if the Court had supplemental jurisdiction over Renee or Robyn's claims, dismissal without prejudice would remain the proper outcome under 28 U.S.C. § 1367(c). § 1367(c) authorizes a district court to "decline to exercise supplemental jurisdiction" if, inter alia, "the district court has dismissed all claims over which it has original jurisdiction." Here, the claims over which the Court had original jurisdiction were Renee's claims against Guardian. Now that Guardian has been dismissed from this action, only non-diverse parties remain and the Court no longer has diversity jurisdiction.[4] Moreover, adjudication of Renee and Robyn's claims remain in their early stages with more discovery, summary judgment, and trial yet to come. The claims are particularly appropriate for resolution by the courts of the Commonwealth because they concern divorce and probate matters, which are traditionally not within the province of the federal courts. In these circumstances, even if the Court possessed supplemental jurisdiction, the Court would decline to exercise supplemental jurisdiction and dismiss the claims without prejudice.

C. Attorney's Fees

***7** That leaves only the question of Guardian's claim for attorney's fees. Plainly, the Court has discretion to award fees in an interpleader lawsuit. Sun Life Assur. Co. of Canada v. Sampson, 556 F.3d 6, 8 (1st Cir. 2009) (alteration in original) (quoting 7 Wright, Miller & Kane, Federal Practice and Procedure § 1719, at 675 (3d ed.2001)) ("It is settled that '[a] federal court has discretion to award costs and counsel fees to the stakeholder in an interpleader action ... whenever it is fair and equitable to do so."). In making this discretionary determination, the Court asks:

> should the interpleading party be required to assume the risk of multiplicity of actions and erroneous election[?] If not, then the stakeholder should be made whole. The test is not satisfied if the stakeholder has contributed to the need for interpleader by acting in bad faith or by unduly delaying in seeking relief.

Id. (quoting 7 Wright, Miller & Kane, supra, § 1719, at 672).

Guardian seeks $23,821.50 in attorney's fees and $575.46 in costs that it incurred in answering the Plaintiff's complaint, bringing this interpleader action, and responding the Plaintiff and Estate's motions and other communications. Doc. No. 51 at 19. There is little doubt that Guardian is entitled to attorney's fees. Faced with competing claims and an arguably ambiguous divorce agreement, Guardian was well within its rights to file an interpleader action. Guardian did not dispute its liability under the insurance policy, promptly deposited the funds at issue with the Clerk, and displayed no bad faith. Of course, this is not a mere interpleader action. While Renee's claim to the proceeds was not unreasonable, her other claims, which include an exorbitant request for damages, required Guardian to do more than simply file the interpleader suit. The time and effort that Guardian was required to expend defending itself against Renee's claims is reflected in Guardian's fee request, which amounts to approximately one-third of the total policy proceeds. The additional claims brought by Renee and Robyn with the attendant litigation caused Guardian to incur additional fees both to monitor the litigation of which it was a part and in which it was a defendant as well as to evaluate the effects of certain positions on the interpleader discharge from liability it sought in the interpleader claim.

Renee and Robyn each contend that Guardian is either entitled to no fee award or at most a very modest fee award of approximately $1,500 accounting for the several hours of work they suggest was involved in drafting the interpleader claim and the Motion to Deposit Funds. At the hearing, counsel for Guardian roughly calculated the fees attributable to the interpleader at $10,000 to $15,000.

Given the litigation circumstances described by the Court, Guardian is entitled to $5,000 in attorney's fees and costs. The Court finds that this amount reasonably reflects the expenses associated with maintaining the interpleader action. As to the remainder of the funds that Guardian spent, the Court finds these fees and costs attributable to defending against Renee's claims, and thus the Court applies the "American Rule" which holds that each party must bear its own legal fees. In re Volkswagen & Audi Warranty Extension Litig., 692 F.3d 4, 13 (1st Cir. 2012). The Court finds this to be a fair result that avoids permitting Guardian from recouping from the policy benefit its fees for defending against other claims. See Ferber Co. v. Ondrick, 310 F.2d 462 (1st Cir. 1962) (finding that the interpleader stakeholder was not entitled to the fees it expended in defending against a separate counterclaim made by a party to the interpleader).

V. CONCLUSION

***8** For the foregoing reasons, the Court:

- ALLOWS Guardian's Motion for Judgment on the Pleadings (Doc. No. 50). The Clerk shall distribute $5,000 from the deposited insurance proceeds to Guardian for its attorney's fees and costs associated with bringing and maintaining this interpleader action. Guardian's request for judgment in its favor and a discharge from liability on its claim for interpleader with an express finding of finality pursuant to Fed. R. Civ. P. 54(b) is ALLOWED. Guardian has no further liability to Renee, Robyn, the Estate, or to any person or entity claiming through them, for the death benefit payable under the terms of the policy, and on account of the death of Joseph. Renee, Robyn, and the Estate are hereby permanently ENJOINED from commencing or prosecuting any claim or proceeding against Guardian in state or federal court, or any other forum, with respect to the death benefit under the policy and on account of Joseph's death. The Court finds that Guardian has acted in good faith by bringing the interpleader claim and is excused from further attendance in this cause.

- ALLOWS Robyn's Motion to Dismiss (Doc. No. 40) and DISMISSES WITHOUT PREJUDICE Renee's crossclaims against Robyn set forth in Doc. No. 39.

- DENIES AS MOOT Robyn's Motion for a Protective Order and Order to Quash (Doc. No. 44).

- DENIES AS MOOT Robyn's crossclaims set forth in Doc. No. 20 insofar as they seek a declaration that the insurance proceeds belong to the Estate and an order enjoining Renee from making claims against the policy. Robyn's remaining crossclaims are DISMISSED WITHOUT PREJUDICE.

- ALLOWS Robyn's Motion for Judgment on the Pleadings (Doc. No. 70) insofar as it requests judgment in her favor on the interpleader action. The Clerk shall distribute the insurance policy proceeds (less the $5,000 due to Guardian for attorney's fees and costs) to the Estate. The Motion is DENIED insofar as it seeks judgment in favor of the Estate on its crossclaims (Doc. No. 70).

Judgment shall enter as described herein.

All Citations

Slip Copy, 2022 WL 1051351

Footnotes

1 The Court issued an Order prohibiting Renee from withdrawing or encumbering the IRA funds. Doc. No. 36. The Order also required Renee to notify the Estate in writing 14 days prior to transferring any cash, assets, property, stocks, bonds, or any other financial or property interests belonging to Joseph. Id.

2 At the hearing on this Motion, Renee's counsel pointed out that the revocation-on-divorce provision was enacted in 2012 shortly before the divorce agreement was written in 2013, which explains any shortcomings in the language used. Yet, Renee and her lawyers were on notice of the 2012 law at the time of the 2013 law and they were capable of later modifying the agreement to include express language just as they did for another insurance policy in the 2015 amendment.

3 Renee also argues that the language in the agreement stating that the whole life insurance policy "shall remain in full force and effect" provides the express language required by the revocation-on-divorce provision. See Doc. No. 71 at 2 ("For the terms to remain in full force and effect, the policy must be paid for and the terms unaltered."). This argument is unavailing. The next sentence of the divorce agreement empowered Joseph to cash in the policy at any time, demonstrating he did not have to keep the policy in effect and that Renee was not entitled to the death benefit. Doc. No. 1-1, Ex. B at 59. Simply put, this language does not constitute the "express terms" required to place the beneficiary designation outside the reach of the statute.

4 At the hearing, Counsel for Renee suggested that the Court may have federal question jurisdiction over the claims related to Joseph's IRA, however, neither Renee nor Robyn's complaint proffers federal question as a basis for jurisdiction. They both have had ample opportunity to make and submit reasoned argument supporting such an assertion. Neither has done so. Therefore, both parties have failed to satisfy their burden to establish federal question jurisdiction. See Murphy v. United States, 45 F.3d 520, 522 (1st Cir. 1995) (quoting Taber Partners, I v. Merit Builders, Inc., 987 F.2d 57, 60 (1st Cir. 1993), cert. denied, 510 U.S. 823 (1993)) ("[T]he party invoking the jurisdiction of a federal court carries the burden of proving its existence.").

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Table of Authorities (18)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**1. Allstate Interiors & Exteriors, Inc. v. Stonestreet Const., LLC** 730 F.3d 67, 1st Cir.(R.I.), 2013 LITIGATION - Jurisdiction. In diversity suit, district court had supplemental jurisdiction over third-party claims against non-diverse party.	Case		”	6
Discussed	**2. American Family Life Assurance Company of Columbus v. Parker** 178 N.E.3d 859, Mass., 2022 INSURANCE — Life. Insured's agreement to maintain life policy naming ex-wife as beneficiary did not fall within exception to automatic-revocation-on-divorce provision.	Case		”	1+
Cited	**3. American Policyholders Ins. Co. v. Nyacol Products, Inc.** 989 F.2d 1256, 1st Cir.(Mass.), 1993 Insurer sued for declaratory judgment regarding its obligation to defend and indemnify insured against which claims had been made under Comprehensive Environmental Response,...	Case		”	6
Cited	**4. Aponte-Torres v. University Of Puerto Rico** 445 F.3d 50, 1st Cir.(Puerto Rico), 2006 EDUCATION - Labor and Employment. Employees' allegations about “suspicious” files university maintained failed to state First Amendment claim.	Case		”	3+
Cited	**5. Ashcroft v. Iqbal** 129 S.Ct. 1937, U.S., 2009 CIVIL RIGHTS - Constitutional Torts. Pretrial detainee's complaint did not plead sufficient facts to state claim for purposeful and unlawful discrimination.	Case		”	3+
Mentioned	**6. Bell Atlantic Corp. v. Twombly** 127 S.Ct. 1955, U.S., 2007 ANTITRUST - Conspiracy. Allegations of parallel conduct were insufficient to state antitrust claim given “retirement” of Conley v. Gibson standard.	Case			3
Cited	**7. Berner v. Delahanty** 129 F.3d 20, 1st Cir.(Me.), 1997 Attorney brought action against state superior court justice, alleging that request to remove political button in court violated attorney's First Amendment rights. The United...	Case		”	3
Cited	**8. Cummings v. HPG Intern., Inc.** 244 F.3d 16, 1st Cir.(Mass.), 2001 TORTS - Fraud. Commercial buyer of industrial roofs did not have deceit claim against manufacturer based on pre-sale claims.	Case			5

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**9. Ferber Co. v. Ondrick** 310 F.2d 462, 1st Cir.(Mass.), 1962 Statutory interpleader filed by prime contractors against subcontractor and others, wherein subcontractor filed counterclaim. The United States District Court for the District of...	Case			7
Mentioned	**10. Gooley v. Mobil Oil Corp.** 851 F.2d 513, 1st Cir.(Mass.), 1988 Gasoline service station franchisee brought action against franchisor alleging breach of contract, violation of Petroleum Marketing Practices Act, and violation of Massachusetts...	Case			3
Cited	**11. In re Volkswagen and Audi Warranty Extension Litigation** 692 F.3d 4, 1st Cir.(Mass.), 2012 PRODUCTS LIABILITY - Attorney Fees. State law, rather than federal law, governed determination of award of attorneys' fees in class action in diversity.	Case			7
Cited	**12. Murphy v. U.S.** 45 F.3d 520, 1st Cir.(Mass.), 1995 Taxpayer brought action against United States for tax refund and damages stemming from alleged illegal or erroneous tax collection. The United States District Court for the...	Case			3+
Cited	**13. Pediatricians, Inc. v. Provident Life & Acc. Ins. Co.** 965 F.2d 1164, 1st Cir.(Mass.), 1992 Beneficiary under life policy sued life insurer to recover additional policy proceeds claiming that coverage amount at time of insured's death was $200,000, rather than $100,000 as...	Case			5
Cited	**14. Penobscot Indian Nation v. Key Bank of Maine** 112 F.3d 538, 1st Cir.(Me.), 1997 Penobscot Indian Nation brought action against bank and other parties involved in failed business venture, seeking declaratory judgment and damages under state tort and contract...	Case			6
Cited	**15. Perez-Acevedo v. Rivero-Cubano** 520 F.3d 26, 1st Cir.(Puerto Rico), 2008 CIVIL RIGHTS - Due Process. Farmers denied financial assistance via informal administrative procedure were not entitled to formal hearing.	Case		”	3
Cited	**16. Rodriguez-Ortiz v. Margo Caribe, Inc.** 490 F.3d 92, 1st Cir.(Puerto Rico), 2007 SECURITIES REGULATION - Fraud. Former company president failed to raise strong inference of scienter sufficient to state securities fraud claim.	Case		”	3

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**17. Sun Life Assur. Co. of Canada v. Sampson** 556 F.3d 6, 1st Cir.(Mass.), 2009 INSURANCE - Attorney Fees. Award of attorney fees to insurer in interpleader action to resolve allocation of insurance proceeds was not abuse of discretion.	Case		"	7+
Mentioned	**18. Taber Partners, I v. Merit Builders, Inc.** 987 F.2d 57, 1st Cir.(Puerto Rico), 1993 Partnership that owned hotel brought suit against contractor. Contractor moved to dismiss on grounds of lack of jurisdiction. The United States District Court for the District...	Case		"	6