2018 WL 3475531
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United States District Court, D. Massachusetts.

FARM FAMILY LIFE INSURANCE COMPANY, Plaintiff,
v.
Elizabeth BARKER, AS TRUSTEE OF the BARKER IRREVOCABLE TRUST, Defendant.

CIVIL ACTION NO. 1:17-cv-10377-IT
|
Signed 05/31/2018

Attorneys and Law Firms

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REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (#27).

M. Page Kelley, United States Magistrate Judge

I. Introduction

***1** This is a dispute over the value of a life insurance policy. Plaintiff Farm Family Life Insurance Company ("Farm Family") claims the Guaranteed Cash Surrender Value of the policy is currently under $200,000; defendant insured, Elizabeth Barker, Trustee of the Barker Irrevocable Trust ("Trustee"), claims it is roughly $8 million. Farm Family seeks partial summary judgment on the Trustee's Fourth Affirmative Defense, that Farm Family is not entitled to equitable relief because of unclean hands. (##27-28.) The Trustee opposes the motion (#41), which stands ripe for adjudication. For the reasons below, the court RECOMMENDS that Farm Family's motion be GRANTED.

II. Facts

Farm Family is a life insurance company based in New York. (Pl. SOF ¶ 1.)[1] Farm Family issued a single premium life insurance policy to Dorothea C. Barker ("Ms. Barker"), as the name insured, on April 9, 1998. *Id.* ¶ 3. Ms. Barker paid the single premium of $100,000; the initial face amount of the policy was $237,456. *Id.* ¶ 4. Ownership of the policy was transferred to the Barker Irrevocable Trust on or about November 19, 2012. *Id.* ¶ 5.

Under the policy, the insured could surrender the policy during her life in return for payment of the "Cash Surrender Value." *Id.* ¶ 6. "Cash Surrender Value" is defined in the policy as the "Account Value plus the cash value of any paid-up additions less the Surrender Charge less any indebtedness." *Id.* ¶ 7. "Guaranteed Cash Value" is defined as the "net single premium at the attained age based on the 1980 CSO Mortality Tables male and female and 6% interest, using continuous commutation columns." *Id.* ¶ 9. The "Guaranteed Cash Surrender Value" is defined in the premium as the "Guaranteed Cash Value less the Surrender Charge." *Id.* ¶ 8; #30-1 at 9.[2] The Policy section titled "Basis of Policy Values" states that Guaranteed Cash Surrender Values "are based upon the 1980 CSO Mortality Tables, male and female, age nearest birthday, with the guaranteed interest rate shown on page 3 less the appropriate Surrender Charge per the surrender provision." (Pl. SOF ¶ 11, #30-1 at 15.)

The "Guaranteed Cash Surrender Values" were also set forth on a Table of Policy Values (Original Table). (#30-1 at 6.) The Original Table included a schedule of guaranteed cash surrender values ranging from approximately $4 million to approximately $8.5 million, which increase in a consistent manner. Def. SOF ¶ 3. Under the heading "Basis of Policy Values," the policy provides that "[t]he Table of Policy Values on page 5 shows guaranteed values of this policy." *Id.* ¶ 5. Farm Family claims that the values on the Original Table were inaccurate. (#1 ¶¶ 16-19.) For example, according to Farm Family:

> The inaccurate Table of Policy Values indicated that on April 8, 2017 (End of Policy Year 19 of the Policy), the Guaranteed Cash Surrender Value would be $8,388,185. Under the calculations described in the Policy language quoted above, the actual Guaranteed Cash Surrender Value

> on April 8, 2017 (End of Policy Year 19 of the Policy) is $189,955.10.

***2** *Id.* ¶ 18. The Trustee contends that Farm Family is bound by the values in the Original Table, which is part of the valid, enforceable policy. (#24 ¶¶ 17-19.)

After the policy issued, "Farm Family sent the Policy owner annual statements ... which list the 'Account Value' and the 'Surrender Value' of the Policy (the 'Annual Statements')." Pl. SOF ¶ 15. [3] In each year, the Annual Statements included the Surrender Value that Farm Family contends is correct. *Id.* The Trustee contends that the values were not correct, because they differ from the values in the Original Table. *See* Def. Response to Pl. SOF ¶ 15. Farm Family also claims it "produced an illustration projecting the Net Account Value, Net Surrender Value, and Net Death Benefit of the Policy for years 1 through 33 of the Policy (the 'Illustration')." Pl. SOF ¶ 19. The Trustee disputes this, contending that the original beneficiary "does not recall receiving an 'Illustration' from Farm Family shortly after the Original Policy was issued." Def's Response to Pl. SOF ¶ 19. The values in the Illustration contain what Farm Family contends are the correct Net Surrender Values, not the values in the Original Table. Pl. SOF ¶ 20. Farm Family further contends that the illustration was provided to the original insured "in accordance with its standard practice," while the Trustee counters that there is no evidentiary basis for this belief. Pl. SOF ¶ 23, Def's Response. [4]

The Trustee requested a copy of the original policy from Farm Family on September 2, 2016. Pl. SOF ¶ 26; Def. SOF ¶ 7. Farm Family sent a copy of the policy without the original Table of Policy Values; instead, Farm Family substituted what it deemed to be a "corrected" Table of Policy Values ("Replacement Table"). Pl. SOF ¶¶ 28-29. Farm Family labeled the Replacement Table as a "Facsimile of Original Policy," even though it was not the same as the Original Table. *See id.* ¶ 29, Def's Response. Farm Family "did not notify the Trustee that a new table of policy values had been created and substituted for the table of policy values included in the Original Policy." Def. SOF ¶ 23.

On December 28, 2016, counsel for the Trustee requested payment of $8,222,080 from Farm Family, based on the values contained in the Original Table. *See* Pl. SOF ¶ 30. Farm Family has refused to pay Trustee this amount. Def. SOF. ¶ 24. Farm Family filed this action on March 7, 2017, seeking declaratory judgment or reformation of the insurance policy, with the net result that the Guaranteed Cash Surrender Values of the policy for Years 18 and 19 would be declared to be around $200,000. *See* #1 at 6. The Trustee has made a counter-claim for declaratory judgment that Farm Family pay the Guaranteed Cash Surrender Value in the Original Table, or roughly $8 million. *See* #24 at 14-15; #41 at 5.

III. Discussion

A. Summary Judgment Standard.

***3** When considering a motion for summary judgment, "a court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of asserting the absence of a genuine issue of material fact and "support[ing] that assertion by affidavits, admissions, or other materials of evidentiary quality." *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003) (citations omitted). "Once the moving party avers the absence of genuine issues of material fact, the non-movant must show that a factual dispute does exist, but summary judgment cannot be defeated by relying on improbable inferences, conclusory allegations, or rank speculation." *Fontánez-Núñez v. Janssen Ortho LLC*, 447 F.3d 50, 54-55 (1st Cir. 2006) (internal quotation and citation omitted). When evaluating summary judgment:

> "A fact is material if it has the potential of determining the outcome of the litigation." *Maymi v. P.R. Ports Auth.*, 515 F.3d 20, 25 (1st Cir. 2008). To proceed to trial, a material fact does not need to be resolved conclusively in favor of the party asserting it; "all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Peabody Essex Museum, Inc., v. U.S. Fire Ins. Co., 623 F. Supp. 2d 98, 106 (D. Mass. 2009).

In determining whether summary judgment is proper, "a court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor." *Clifford v. Barnhart*, 449 F.3d 276, 280 (1st Cir. 2006). Farm Family has moved for partial summary judgment on the Trustee's unclean hands defense. Therefore the record will be viewed in the light most favorable to the Trustee.

B. The Application of the Unclean Hands Doctrine.

Farm Family seeks three remedies in this case: (1) a declaratory judgment "that the Guaranteed Cash Surrender Value of the Policy shall be determined using the calculations described in the Policy and without regard to the incorrect 'Table of Policy Values' originally included in the policy;" (2) a declaratory judgment that at the end of policy year 18 the "Guaranteed Cash Surrender Value of the Policy was $179,341.02," and "$182,955.10" at the end of policy year 19; and, (3) "Reform of the Policy to correct the Table of Policy Values and conform the Policy to the mutual understanding and intention of the parties[.]" (#1 at 6.)[5] The Trustee asserts that the doctrine of unclean hands bars Farm Family's access to these remedies. *See*, #24 at 11 (Fourth Affirmative Defense); #41 at 6-10. Farm Family seeks partial summary judgment that unclean hands does not apply in this case. (#27.)

"The doctrine of unclean hands denies equitable relief 'to one tainted with the inequitableness or bad faith relative to the matter in which [he] seeks relief.' " *Murphy v. Wachovia Bank of Delaware, N.A.*, 36 N.E.3d 48, 54 (Mass. App. Ct. 2015) (quoting *Fidelity Mgmt. & Research Co. v. Ostrander*, 662 N.E.2d 699, 704 (Mass. App. Ct. 1996)).[6] Reformation of a contract is an equitable remedy. *Hingham Mut. Fire Ins. Co. v. Mercurio*, 878 N.E.2d 946, 952 (Mass. App. Ct. 2008). Declaratory judgment is also generally considered an equitable remedy. *See, e.g.*, *Samuels v. Mackell*, 401 U.S. 66, 70 (1971) ("[T]he declaratory judgment sought by the plaintiffs was a statutory remedy rather than a traditional form of equitable relief, the Court made clear that a suit for declaratory judgment was nevertheless essentially an equitable cause of action....") (internal quotations and citations omitted); *Lizza & Sons, Inc., v. Hartford Acc. & Indem. Co.*, 247 F.2d 262, 264 (1st Cir. 1957) (" '[A] declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion.' ") (quoting *Eccles v. Peoples Bank of Lakewood Village, Cal.*, 333 U.S. 426, 431 (1948)); *McWilliam v. McWilliam*, 46 N.E.3d 598, at *1 (Table) (Mass. App. Ct. 2016) ("The daughter's complaint was [...] brought [...] as a declaratory judgment action seeking equitable relief."); *Miranda v. Sweet*, No. 09-11486-GAO, 2010 WL 16444628, at *1 n.1 ("Miranda cannot obtain a declaratory judgment, a type of equitable relief....") (D. Mass. Apr. 22, 2010); *but see, El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488 (1st Cir. 1992) ("Declaratory judgment actions, being statutory creatures, are neither inherently legal nor inherently equitable.") (citations omitted).

***4** The doctrine of unclean hands does not apply in every case in which a party seeking equitable relief has acted in bad faith. Instead, the inequitable conduct must affect the party asserting the unclean hands defense, and relate directly to the conflict at issue in the litigation. *See Lima v. Lima*, 570 N.E.2d 158, 162 (Mass. App. Ct. 1991) ("The 'clean hands' doctrine would not bar equitable relief; no harm is shown to have been done by the wife's (and her first attorney's) unlawful deletions from the deeds [...] and the relief she sought was not predicated on those acts or on her recordings of the altered deeds.") (citations omitted). *See also*, 14C Mass. Practice *Summary Of Basic Law* § 10:59 (5th ed. 2017) ("Equity may bar relief if the defendant shows (1) that the plaintiff's illegal or unconscionable conduct actually affects the defendant himself and (2) that such conduct directly influences the subject matter of the litigation.") (citations omitted). Neither of these requirements is met in this case.

If the Trustee was not harmed by Farm Family's alleged bad faith, unclean hands does not apply. *See, e.g., Lima*, 570 N.E.2d at 162 (refusing to apply unclean hands doctrine to preclude wife's interest in real property where wife had altered the deeds because, in part, no harm was shown to have resulted from the alterations); *see also, In re Mullarkey*, 410 B.R. 338, 354 (D. Mass. 2009) (finding unclean hands did not apply where "there was no evidence" that the alleged victim "was actually defrauded"); *Arrow Plywood Corp. v. Eighty Boylston Street Corp.*, 277 N.E.2d 525, 526 (Mass. 1972) (affirming judge's decision that plaintiff's alteration of an invoice did not prevent him from recovering where "the misrepresentations of the plaintiff did not harm the defendant"); *Barche v. Shea*, 140 N.E.2d 305, 308 (Mass. 1957). The Trustee admits she was not fraudulently deceived by Farm Family's use of the Replacement Table.

See #41 at 10. Rather, the Trustee claims that she was harmed by the Replacement Table because its issuance "has prevented her from receiving the guaranteed cash surrender value set forth in the Original Table...." *Id.* at 10 (citing Def. SOF ¶¶ 1-24). However, the Trustee sets forth no facts to establish any link between the Replacement Table and Farm Family's refusal to pay the Trustee the $8 million listed in the Original Table. "[S]ummary judgment cannot be defeated by relying on improbable inferences, conclusory allegations, or rank speculation." *Fontánez*-Núñez, 447 F.3d at 54-55.

Moreover, unclean hands is not applicable here because the alleged wrongful act of replacing the Original Table does not relate to the claims brought by the Trustee. "The doctrine of unclean hands only applies when the claimant's misconduct is directly related to the merits of the controversy between the parties, that is, when the tawdry acts 'in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication.' " *Texaco Puerto Rico, Inc. v. Dep't of Consumer Affairs*, 60 F.3d 867, 880 (1st Cir. 1995) (quoting *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245 (1933)).

In essence, this case boils down to whether Farm Family is bound by the Original Table, or whether Farm Family is entitled to relief based on the alleged definitions in the policy itself and the alleged understanding of the parties at the time the policy was sold. Farm Family's substitution of the Replacement Table for the Original Table in the policy it produced in 2016, and alleged cover-up of the substitution, does not affect whether, when the policy was signed, the parties understood the cash value as other than that contained in the Original Table, or whether the value should be determined by the definitions in the policy or by the Original Table. *See, e.g., Murphy v. Wachovia Bank of Delaware, N.A.*, 36 N.E.3d 48, 54 (Mass. App. 2015) (holding that the unclean hands defense failed where "The conduct at issue—Thorpe's failure to disclose his interest in the surplus in his divorce and bankruptcy cases—is unconnected to Wachovia's erroneous distribution of surplus funds and did not 'directly affect the claim being brought.' ") (quoting *Amerada Hess Corp. v. Garabedian*, 617 N.E.2d 630, 634 (Mass. 1993) (rejecting unclean hands defense where allegations that plaintiff contaminated property were unrelated to specific performance of the lease)); *see also Arrow Plywood*, 360 Mass. at 706-07 (refusing to apply unclean hands defense where plaintiff's alteration of an invoice did not impact "the promise" or "the consideration") (citation omitted). This is distinct from the case cited by the Trustee, *Northwestern Mutual Life Insurance Company v. Koch*, where the unclean hands defense applied to a dispute involving three related insurance policies issued to the same insured, two of which had been obtained by fraud. No. CC08-5394BHS, 2010 WL 519727 (W.D. Wash. Feb. 10, 2010).

***5** Farm Family does not attempt to rely on the Replacement Policy to obtain relief. Rather, Farm Family relies on an alleged mutual mistake made at the time the policy was signed and on language within the policy. Where there is no reliance, unclean hands is not applicable. *See*, *Peres v. Costa*, 324 N.E.2d 630 (Mass. App. Ct. 1975) (affirming trial court's annulment of conveyance of real property in favor of plaintiff). As the *Peres* court stated, the doctrine of unclean hands did not apply "because the plaintiff 'does not ... rely here on his improper conduct ... or upon the (forged) deed ... and no harm has been caused to the defendant by the deed....' *Id.* at 630 (quoting *Barche v. Shea*, 140 N.E.2d 305, 308 (Mass. 1957)) (ellipses in original) (additional citations omitted). Similarly, in *Fisher v. Fisher*, 212 N.E.2d 222, 224 (Mass. 1965) the court did not apply the unclean hands doctrine, noting that:

> "The doctrine of clean hands is not one of absolutes. It is to be so applied as to accomplish its purpose." *MacCormac v. Flynn*, 313 Mass. 547, 550, 48 N.E.2d 24, 26 [(1943)]. Its purpose is to prevent a party from benefiting by his dishonesty. In the instant case the plaintiff's claims do not arise out of his improper conduct.

Here, plaintiff does not base claims about the erroneous nature of the Original Table on the Replacement Table, or seek to benefit from the Replacement Table. Where Farm Family does not rely on its alleged wrongful conduct, which does not relate to Farm Family's claims and has not harmed the Trustee, the unclean hands defense does not apply.

IV. Recommendation

The Court hereby RECOMMENDS that Plaintiff's Motion for Partial Summary Judgment be GRANTED, and that the defense of unclean hands be stricken from Defendant's First Amended Answer and Affirmative

Defenses to the Complaint and Counterclaim Against the Plaintiff (#24).

V. Review by the District Court Judge

The parties are hereby advised that any party who objects to this recommendation must file specific written objections with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The objections must specifically identify the portion of the recommendation to which objections are made and state the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b), Fed. R. Civ. P., shall preclude further appellate review. *See Keating v. Secretary of Health & Human Servs.*, 848 F.2d 271 (1st Cir. 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983); *United States v. Vega*, 678 F.2d 376, 378-379 (1st Cir. 1982); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980); *see also Thomas v. Arn*, 474 U.S. 140 (1985).

All Citations

Slip Copy, 2018 WL 3475531

Footnotes

1 The parties combined their statements of undisputed facts, and their responses, into document #46. The court will cite to portions of this document as Pl. SOF and Def. SOF.

2 Page number citations are to the page numbers as labeled by ECF.

3 Defendant does not dispute that plaintiff sent the annual statements, but disputes "that the Owner received and/or reviewed them prior to the Trustee becoming the owner of the Policy." Def. Response to Pl. SOF ¶ 15.

4 The parties also dispute whether the Table of Maximum Mortality Rates contained in the policy were actually based on the 1980 CSO Mortality Tables. (Pl. SOF ¶ 10, Def's Response.) This dispute has no bearing on the motion at issue here.

5 Plaintiff also "requests that the Court ... [a]ward such other and further relief as the Court deems necessary and proper." *Id.*

6 The parties both cite to Massachusetts law, which the court will apply. *See, Hershey v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 317 F.3d 16, 20 (1st Cir. 2003) ("Where parties have agreed to the choice of law, this court is free to 'forego an independent analysis and accept the parties' agreement.' ") (quoting *Borden v. Paul Revere Life Ins. Co.*, 935 F.2d 370, 375 (1st Cir. 1991)).

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