

Fiala v Metropolitan Life Insurance Co.

2005 NY Slip Op 30069(U)

October 11, 2005

Supreme Court, New York County

Docket Number: 0601181/1812

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Cahn
Justice

PART 4am

Eugenia S. Fiala

INDEX NO.

60118/00

MOTION DATE

9/14/04

MOTION SEQ. NO.

007

MOTION CAL. NO.

Metropolitan Life Insurance

- v -

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM
SUBMITTED IN MOTION SEQUENCE

COUNTY CLERK'S OFFICE
NEW YORK

OCT 17 2005

FILED

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 10/11/05

He Cahn

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

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EUGENIA J. FIALA, PAULETTE BELIUNAS,
THERESA HAZEN, VIJAH J. SHAH, JOHN T.
BROPHY, IRA J. GELB, JUNE A. GELB,
MARK D. SMILOW, on behalf of themselves
and all other similarly situated
policyholders of Metropolitan Life
Insurance Company, and PAUL HAZEN and
RICHARD E. SCHWEINBERG, individually,

Plaintiffs,

-against-

Index Nos.
601181/00

METROPOLITAN LIFE INSURANCE COMPANY,
METLIFE, INC., ROBERT H. BENMOSCHE,
CURTIS H. BARNETTE, GERALD CLARK,
JOAN GANZ COONEY, BURTON A. DOLE, JR.,
JAMES R. HOUGHTON, HARRY P. KAMEN,
HELENE L. KAPLAN, CHARLES M. LEIGHTON,
ALLEN E. MURRAY, STEWART G. NAGLER,
JOHN J. PHELAN, JR., HUGH B. PRICE,
ROBERT G. SCHWARTZ, RUTH J. SIMMONS,
WILLIAM C. STEERE, JR.,

Defendants.

-----X
CAHN, J. :

Defendants Metropolitan Life Insurance Company (MetLife),
MetLife, Inc., and all of the individually named officers and/or
directors of MetLife (together, the MetLife defendants) move to
dismiss and/or strike various portions of plaintiffs' Second
Amended Consolidated Complaint (the Amended Complaint), CPLR 3211
(a) (7) and/or 3024 (b).

BACKGROUND

The underlying facts have been detailed in several prior

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decisions and orders of this court, familiarity with which is presumed.

Briefly, on April 4, 2000, non-party the Superintendent of Insurance (Superintendent) issued an opinion and decision approving MetLife's Plan of Reorganization (Plan), pursuant to which MetLife converted itself from a mutual life insurance company to a domestic stock life insurance company, a process known as demutualization. In March and April 2000, the plaintiffs commenced two proposed class actions, now consolidated, challenging various aspects of MetLife's Plan (see Fiala v Metropolitan Life Ins. Co., [Consolidated Action] Index No. 601181/2000 [commenced March 17, 2000], and Shah v Metropolitan Life Ins. Co., Index No. 108887/2000 [commenced April 21, 2000]). In their respective complaints, the Fiala plaintiffs asserted claims against the MetLife defendants for (1) breach of fiduciary duty and (2) fraud; the Shah plaintiffs asserted claims against the MetLife defendants for (1) breach of contract, (2) breach of fiduciary duty, and (3) violations of Insurance Law § 7312 ("the Conversion Law").

In a decision dated February 21, 2003, this court dismissed both actions upon finding that, for the most part, the claims against the MetLife defendants represented impermissible collateral challenges to the Superintendent's decision approving MetLife's Plan, which should have been brought in the context of

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an Article 78 proceeding, and/or failed for other reasons (see
Shah v Metropolitan Life Ins. Co., 2003 WL 728869, 2003 NY Slip
Op. 50591 [U] [Sup Ct, NY County 2003]).

On appeal, the Appellate Division, First Department, modified that decision to the extent of reinstating (1) that portion of the Fiala plaintiffs' fraud claim that was based on MetLife's alleged failure to disclose its plan to buy back shares of MetLife stock after the Initial Public Offering (IPO) in its Policyholder Information Booklet (PIB), and (2) that portion of the Shah plaintiffs' violation of the Conversion Law claim that was based on MetLife's alleged preferential treatment of Armstrong Tire & Rubber (Armstrong), by allegedly allocating excessive shares to Armstrong in the course of the demutualization (see Fiala v Metropolitan Life Ins. Co., 6 AD3d 320 [1st Dept 2004]). In addition, the First Department granted the Fiala plaintiffs leave to replead that portion of their fraud claim that was based on MetLife's failure to disclose the allegedly preferential treatment accorded to Armstrong, to permit them to rectify their failure to provide a factual basis from which the materiality of such omission could be inferred, "if they are able to do so" (id. at 323). In all other respects, the February 21, 2003 decision dismissing the complaints was affirmed.

Upon remand, the Shah and Fiala actions were consolidated by

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stipulation. In their Amended Complaint, plaintiffs have now reasserted those two portions of their causes of action for fraud and violation of the Conversion Law that were reinstated by the First Department. Plaintiffs have also repleaded that portion of the Fiala plaintiffs' fraud claim that was based on MetLife's failure to disclose its alleged excessive allocation of shares to Armstrong in the PIB. However, plaintiffs have also expanded their claim of preferential treatment beyond Armstrong, by alleging, "on information and belief," that "defendants discriminatorily benefitted other policyholders in addition to Armstrong" (Amended Complaint, ¶ 64). Plaintiffs additionally have alleged that (1) the MetLife defendants' undisclosed plan to buy back shares after the IPO, and (2) the MetLife defendants' failure to disclose the planned buy-back of shares and the preferential treatment allegedly given to Armstrong, constitute two additional, separate, and independent violations of the Conversion Law, which provide further bases for their claim.

The MetLife defendants now move to dismiss both of the alleged additional bases for plaintiffs' Conversion Law claim, on the grounds these claims are precluded by the prior decisions in this case; constitute a collateral attack on the Superintendent's approval of the Plan, which should have been brought through an Article 78 proceeding; and/or, exceed the scope of the First Department's grant of leave to replead. Defendants move to

dismiss the expanded claim that MetLife allocated excessive shares to others besides Armstrong, on the ground that such expansion is barred by the prior decisions in this case. Defendants seek dismissal of that portion of the fraud claim that the First Department had granted the Fiala plaintiffs leave to replead, on the ground that plaintiffs still have failed to remedy the defects in pleading identified by the First Department in affirming dismissal of that claim. Finally, defendants move to strike and/or dismiss certain specified allegations that plaintiffs have included in the Amended Complaint, on the ground that these allegations are unnecessarily asserted, irrelevant and prejudicial.

DISCUSSION

Insofar as the movants seek dismissal of the first of two additional bases asserted by plaintiffs in their amended Conversion Law claim, i.e., the MetLife defendants' undisclosed plan to buy back shares after the IPO, the motion is denied. Contrary to defendants' contention, this particular claim does not appear to have been asserted in either of the earlier Shah or Fiala complaints, and thus is not necessarily precluded by the prior determinations in this action.

Additionally, the First Department, in reinstating that portion of the Shah plaintiffs' Conversion Law claim alleging MetLife's preferential treatment of Armstrong, held that while

most of plaintiffs' Conversion Law claims represented impermissible indirect challenges to the Superintendent's decision, the MetLife defendants

ha[d] not established the preclusive effect of the Superintendent's determination with respect to plaintiffs' claim that those defendants improperly accorded [Armstrong], a large policyholder that complained about the Plan's allocation formula, preferential treatment when in the course of the demutualization they allegedly allotted it excessive shares, since there is no indication that the Superintendent was aware of the alleged excessive allocation at the time he passed upon the Plan. If there is evidence that the Superintendent was aware of this, defendants may move for summary judgment

(Fiala, 6 AD3d at 321). Here, too, absent some indication that the Superintendent was aware, when he passed upon the Plan, of MetLife's proposed plan to buy back shares immediately after the IPO, defendants fail to establish the preclusive effect of the Superintendent's decision with respect to this claim.

The prior decisions establish that the Superintendent was aware of, and did pass upon, the amount and fairness of the consideration that policyholders were to receive under the Plan. Nevertheless, this particular claim does not constitute an impermissible collateral attack on the Superintendent's decision approving the Plan, to the extent that it is addressed to the impact that the undisclosed buy-back plan may have had on the consideration that the policyholders received and not to the fairness or value of the consideration provided by the Plan itself. Therefore, as plaintiffs' allegations arguably state a

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further basis for their cause of action alleging violation of the Conversion Law, dismissal of this claim at this pleading stage, is not warranted.

Plaintiffs' other claim, i.e., that defendant's failure to disclose both the proposed buyback plan and the preferential treatment given to Armstrong constitutes a separate and independent violation of the Conversion Law, is redundant and is dismissed. The First Department, in permitting the plaintiffs to assert a Conversion Law claim based on the preferential treatment of Armstrong, stated clearly that such a claim was viable only to the extent that the Superintendent was not aware of the excessive allocation of shares to Armstrong at the time he passed upon MetLife's Plan. The failure to disclose is thus a necessary element of this cause of action, and not a separate, independent basis for this claim.

Dismissal of this claim would be warranted, in any event, as the First Department reinstated the Shah plaintiffs' Conversion Law claim only insofar as it was based on the undisclosed preferential treatment given to Armstrong; it did not reinstate any portion of their claim insofar as it was based on the MetLife defendants' allegedly false, misleading and/or inadequate disclosures in the PIB, specifically including the failure to disclose the preferential treatment given to Armstrong. Accordingly, a Conversion Law claim based solely on the failure

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to disclose is necessarily precluded by the prior decisions.

Defendants' motion to dismiss plaintiffs' expansion of their Conversion Law claim, to allege excessive allocations of shares to policyholders other than Armstrong, is denied. As the information that could support this claim clearly would be in the possession of MetLife, rather than plaintiffs, plaintiffs will be permitted to pursue disclosure on this claim. If appropriate, defendants may renew their motion to dismiss this claim upon the conclusion of such disclosure.

Defendants' motion to dismiss that portion of the repleaded fraud claim, alleging defendants' failure to disclose the preferential treatment given to Armstrong, is granted; plaintiffs have still failed to provide sufficient factual basis from which the materiality of such omission could be inferred.

Finally, the motion to strike certain allegations in the Amended Complaint, on the grounds that they are unnecessary, irrelevant and prejudicial, is denied as to those allegations that relate directly to plaintiffs' claims regarding the proposed buy-back plan. Although these allegations arguably include matters that were addressed in, and disposed, by prior decisions, in light of the First Department's determination that, "[a]s to those policyholders who retained their shares, the complaint states a cause of action for dilution," plaintiffs are given some leeway in the pleadings. However, should it become apparent that

been alleged to bolster plaintiffs' sole reinstated fraud claim, and not merely to provide "context," they should be stricken. Plaintiffs are directed to strike, from their Amended Complaint, the allegations contained in paragraphs 30-35, 39, 49-50, 56-57, and 80. In addition, plaintiffs are directed to strike the first clause in the section heading, lettered "A," and the entire section heading lettered "B."

Accordingly, it is

ORDERED that the motion to dismiss and/or strike certain portions of the Amended Complaint is granted to the extent of (1) dismissing that portion of the Conversion Law claim based on defendant's failure to disclose the proposed buy-back plan and the preferential treatment given to Armstrong; (2) dismissing that portion of the plaintiffs' fraud claim based on the MetLife defendants' failure to disclose the preferential treatment given to Armstrong; and (3) striking, from the Second Amended Consolidated Complaint, the following paragraphs and headings: paragraphs 30-35, 39, 49-50, 56-57, and 80, the first clause of the section heading lettered "A," and the entire section heading lettered "B"; and the motion is in all other respects denied.

This constitutes the decision and order of the Court.

DATED: October 11, 2005

ENTER:

[Handwritten signature]

J.S.

CLERK'S OFFICE
NEW YORK COUNTY
OCT 17 2005
FILED