

**United States Life Ins. Co. in the City of
N.Y. v Morgan**

2008 NY Slip Op 30052(U)

January 7, 2008

Supreme Court, New York County

Docket Number: 0600393/2007

Judge: Shirley W. Kornreich

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

PRESENT: Hon Shirley Kornreich

PART 54

Index Number : 600393/2007
UNITED STATE LIFE INS. CO.
vs
MORGAN, MICHAEL
Sequence Number : 001
OTHER

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

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

FILED
JAN 11 2008
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

~~MEMORANDUM DECISION AND ORDER~~

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/7/08

HON. SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:

DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
THE UNITED STATES LIFE INSURANCE COMPANY,
IN THE CITY OF NEW YORK,

Index No.:600393/2007

Plaintiff,

-against-

**DECISION and
ORDER**

MICHAEL MORGAN, as Corporate Secretary,
PATTERSON'S AUTO PARTS POTSDAM, INC., and
SHARON LEE-PATTERSON SMITH,

Defendants.
-----X

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

KORNREICH, SHIRLEY WERNER, J.:

This is an interpleader action by plaintiff, The United States Life Insurance Company ("USLIC"), seeking adjudication of multiple, conflicting claims to the proceeds of a life insurance policy in a single action. USLIC has filed a motion for an order permitting it to deposit the entire amount of the proceeds in court and discharge it from liability. C.P.L.R. 1006(f) and (g). In support of its motion USLIC has submitted an affirmation of Michelle M. Arbitrio, Esq., the pleadings, the policy application, the death certificate of the insured and supporting memoranda of law. Defendant Patterson's Auto Parts Potsdam, Inc. ("PAPP") and defendant Michael Morgan as Corporate Secretary of PAPP oppose USLIC's motion through an affirmation of Michael Morgan ("Morgan Aff."). Defendant Sharon Lee-Patterson Smith ("Smith") opposes by affirmation and memorandum of law and has filed a cross-motion for attorney's fees and costs and for an order requiring USLIC to deposit the entire amount of the proceeds in court. For the reasons stated below, both motions are granted insofar as they seek an order requiring USLIC to

deposit the entire amount of the policy proceeds with the court. USLIC's motion to be discharged is denied, with any allocation of fees and costs reserved for determination after adjudication of the issues raised by the pleadings on the merits.

I. BACKGROUND

The following facts are not in dispute. On March 16, 1990, USLIC issued a life insurance policy insuring the life of Jeannette A. Patterson, with a face amount of \$185,000 ("the policy") and naming Patterson Auto Parts Pottsdam, Inc. as the owner and beneficiary. Jeannette A. Patterson died on July 10, 2006. Michael Morgan, as Corporate Secretary on behalf of PAPP, and Smith have asserted rival and conflicting claims to the policy proceeds of \$185,000 due under the policy. On February 6, 2007, USLIC filed a complaint for interpleader relief. Morgan and PAPP filed an answer, and Smith filed an answer, counter-claims and cross-claims. Smith alleged, among other things, that the policy had been assigned to her by PAPP, that USLIC was negligent in denying her payment of the policy proceeds, that USLIC wrongly induced PAPP and Morgan to breach their agreement with Smith and that USLIC violated a duty to notify Smith of unresolved items needed to effect assignment of the policy.

II. CONCLUSIONS OF LAW

The interpleader statute, C.P.L.R. § 1006, provides in pertinent part:

(a) Stakeholder; claimant; action of interpleader. A stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants.

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(e) Where the issue of an independent liability of the stakeholder to a claimant is raised by the pleadings or upon motion, the court may dismiss the claim of the

appropriate claimant, order severance or separate trials, or require the issue to be tried in the action.

* * *

(f) Discharge of stakeholder. After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party. The stakeholder shall submit proof by affidavit or otherwise of the allegations in his pleading. The court may grant the motion and require payment into court, delivery to a person designated by the court or retention to the credit of the action, of the subject matter of the action to be disposed of in accordance with further order or the judgment....

USLIC is not a mere stakeholder. Smith, who is one of the claimants to the proceeds of the policy, has filed counterclaims asserting the company's independent liability. C.P.L.R. § 1006(e); *see Inovlotska v. Greenpoint Bank*, 8 A.D.3d 623, 624-625 (2d Dept. 2004) (reversing Supreme Court's discharge of bank under CPLR 1006(f) where bank was named defendant against whom plaintiff asserted independent liability "notwithstanding the fact that the bank claimed no interest in the disputed funds"). The *Greenpoint Bank* decision is particularly instructive because the bank's conduct insofar as it affected the various claimants' positions with respect to the funds at issue, was in dispute. In *Greenpoint Bank*, the Supreme Court discharged the bank before a determination was rendered as to the competency of the decedent in the days preceding her death and the reasonableness of Greenpoint's conduct in refusing to honor the decedent's withdrawals. Under those circumstances, the Appellate Division found the lower court's action "inappropriate and unwarranted." *Id.*

Here, the exhibits show an attempt by the claimants to effect an assignment of the policy proceeds from PAPP to Smith, which USLIC refused to accept without additional paperwork. The legality of the attempted assignment has not yet been resolved and will require a closer look

at USLIC's practices, the legal requirements for assignment in the industry in general and under the law, as well as a determination of the facts that occurred in this instance. Consequently, Smith's counterclaims are not yet ripe for dismissal, and USLIC's alleged actions or inaction, preclude it from being a mere stakeholder entitled to discharge under the interpleader statute.

Accordingly, it is

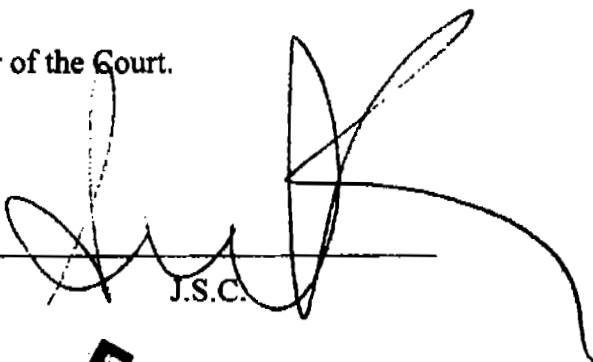
ORDERED that plaintiff USLIC's motion for interpleader discharge is denied; and it is further

ORDERED that plaintiff USLIC's motion and defendant Smith's cross-motion for an order requiring plaintiff to deposit the entire amount of the policy proceeds with the court is granted; and it is further

ORDERED that decision on the parties' motions for attorney's fees and costs is reserved until after a decision on the merits.

The foregoing constitutes the decision and order of the Court.

Date: January 7, 2008
New York, N. Y.



J.S.C.

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