

**SBLI USA Mut. Life Ins. Co., Inc. v Unverricht**

2008 NY Slip Op 31051(U)

April 8, 2008

Supreme Court, New York County

Docket Number: 0104465/2007

Judge: Shirley W. Kornreich

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

PRESENT: JUDGE SHIRLEY WERNER KORNREICH

PART 54

Index Number : 104465/2007  
SBLI USA MUTUAL LIFE INSURANCE  
VS.  
UNVERRICHT, DONALD W.  
SEQUENCE NUMBER : # 001  
ORDER TO PAY MONEY INTO COURT

Justice

INDEX NO. 104465-07  
MOTION DATE  
MOTION SEQ. NO. #001  
MOTION CAL. NO. \_\_\_\_\_

read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...  
Answering Affidavits -- Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
1, 2	_____
3	_____

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

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**FILED**  
APR 11 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: 4/8/08

[Signature]  
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  
SBLI USA MUTUAL LIFE INSURANCE  
COMPANY, INC.,

Plaintiff,

-against-

DONALD W. UNVERRICHT and  
JAMES S. CORSITTO,

Defendants.

----- X  
KORNREICH, SHIRLEY WERNER, J.:

Index No.: 104465/07

DECISION  
and ORDER

**FILED**  
APR 11 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

This interpleader action arises out of adverse claims by defendants Donald W. Unverricht and James S. Corsitto to the proceeds from two life insurance policies issued by plaintiff SBLI USA Mutual Life Insurance Company, Inc. (SBLI) on the life of Jean Unverricht (the "Insured"). Here, SBLI moves, pursuant to CPLR § 1006(f), for an order granting it: (a) leave to pay into the Court the proceeds from life insurance policies Nos. 400017895 and 400025330 (together the "Policies") on the life of the Insured; (b) a discharge from any further liability as to the Policies; and © costs and disbursements, including attorneys' fees. Corsitto cross-moves for an order: (a) issuing a default judgment against Unverricht pursuant to CPLR § 3215(a) and; (b) directing that plaintiff deliver \$5,765.25 of the Policies proceeds to Moloney's's Bohemia Funeral Home and then tender him the remaining balance.

*I. Background*

On August 4, 1978 and April 27, 1990, SBLI issued the Policies to the Insured. Her husband, Charles G. Unverricht (Charles), was the original beneficiary of both Policies.

Following Charles' death on March 10, 2004, the Insured designated her son Donald Unverricht as the primary beneficiary. In or about October 2004, the Insured was diagnosed with pancreatic cancer and went to live with her son. Approximately three months later, Donald gave his mother the choice to either check into a nursing home or move out. As a result, the Insured moved in with James Corsitto in March 2005. On January 9, 2006, the Insured was admitted to Southside Hospital in Islip, New York for pancreatic cancer treatment. That same day, she executed two Beneficiary Change Forms naming Corsitto as the sole beneficiary under the Policies. Each policy states "the Beneficiary may be changed by the [Insured] by written notice ... When such notice is received and acknowledged...the change shall take effect."

The Insured died on January 19, 2006. That same day, Corsitto sent SBLI, via facsimile, the two Beneficiary Change Forms executed by the Insured on January 9. On January 20, 2006, Donald Unverricht notified SBLI of the Insured's death. On January 25, 2006, SBLI received an Assignment of Proceeds Insurance Form executed by Corsitto assigning \$7,000 of the proceeds under the Policies to Moloney's Bohemia Funeral Home (Moloney's) to pay for the Insured's funeral arrangements. On January 30, 2006, SBLI recorded the Beneficiary Change Forms naming Corsitto as the sole beneficiary.

On February 25, 2006, SBLI received a Claimant's Statement Form from Corsitto seeking release of the proceeds. SBLI received a second Claimant's Statement Form from Donald Unverricht on February 27, 2006. Consequently, SBLI processed the Policies on February 28, 2006, but suspended any release of the proceeds due to the competing claims. Upon being notified of the suspension, Unverricht contended that his mother was mentally and physically incompetent when she executed the Beneficiary Change Forms on January 9, 2006.

On June 20, 2006, SBLI notified Corsitto and Donald Unverricht of their competing claims and recommended that they reconcile this dispute to avoid legal action. In a letter dated July 27, 2006, Corsitto notified SBLI that the proceeds should be used to pay Moloney's for the Insured's funeral. In a letter dated August 25, 2006, the Insured's other son, Richard Unverricht, informed SBLI that he supported Corsitto's position. In a letter dated September 6, 2006, Donald Unverricht stated he was awaiting his mother's medical records so he could prove she was incompetent at the time she executed the two Beneficiary Change Forms naming Corsitto beneficiary. SBLI notified Donald Unverricht on January 22, 2007, that it intended to distribute the proceeds to Corsitto if he could not produce these records. On February 5, 2007, Donald Unverricht notified SBLI by letter that he could not produce his mother's medical records. However, he claimed, pursuant to the Insured's last will and testament, that she expressly desired for him to make all of her final arrangements and that Corsitto committed fraud and theft upon her. Donald Unverricht attached a copy of the Insured's last will and testament to his February 5 letter.

Due to the foregoing, SBLI never released the proceeds under the Policies. SBLI commenced the instant action by filing its summons and interpleader complaint on or about April 2, 2007. On or about April 23, 2007, Corsitto answered and cross-claimed against Donald Unverricht seeking the full proceeds due under the Policies and for the distribution of such proceeds to Moloney's. SBLI filed an amended interpleader complaint on or about May 9, 2007. Corsitto filed his amended answer and cross-claim against Donald Unverricht on or about June 7, 2007. Donald Unverricht was personally served with the amended interpleader complaint at his residence on June 7, 2007. Corsitto served Donald Unverricht with a copy of its amended answer and cross-claim via first class mail to his residence on or about October 5, 2007. Donald

Unverricht has neither answered nor opposed this motion.

As of September 1, 2007, the combined value of the Policies was \$7,339.31. To date, Moloney's has an outstanding balance of \$7,000 from the Insured's funeral.

## II. *Conclusions of Law*

A stakeholder is defined as one who "is exposed to multiple liability as the result of adverse claims." CPLR 1006(a). An interpleader action under CPLR § 1006 permits a stakeholder facing competing claims to the proceeds of an insurance policy to join the adverse claimants together in one action for a determination as to all the parties rights and obligations. *See* CPLR 1006; Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C1006:1, at 7. When the stakeholder acknowledges the debt and/or obligations at issue and only seeks a determination as to who the obligation is owed, it may move for an order of discharge pursuant to CPLR § 1006(f). Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C1006:4, at 11. Discharge allows the stakeholder to withdraw from the litigation and pay the proceeds at issue to the Court so delivery may eventually be made to the prevailing claimant. *Id.* Pursuant to CPLR § 1006(f), "the court may grant the motion and require payment into court [or] to a person designated by the court."

Here, interpleader relief for SBLI is warranted. As a result of Corsitto's and Unverricht's adverse claims, SBLI is exposed to multiple liability under the Policies. SBLI has acknowledged its obligation of payment and the only redress it seeks is for the Court to determine who should receive the proceeds and the costs of this action. In addition, Corsitto offers two valid Change of Beneficiary Forms naming him as the sole beneficiary under the Policies. These two forms, properly executed in accordance with SBLI's procedures, serve to trump Donald Unverricht's claim to the proceeds. *Lincoln Life and Annuity Co. of New York v.*

*Caswell*, 31 A.D.3d 1, 3 (1<sup>st</sup> Dept 2006) (where life insurance policy sets forth procedure for changing beneficiaries and does not authorize making such change by will, general testamentary statement in insured's will does not override prior designation of policy beneficiary that was made in manner prescribed by policy). Corsitto also has presented a valid "Assignment of Proceeds of Insurance" form naming Moloney's, the funeral parlor which took care of the Insured's remains, as beneficiary. Consequently, SBLI may pay \$7,000 of the proceeds to Moloney's. See *Lincoln Life*, 31 A.D.3d 1 (1<sup>st</sup> Dept 2006) (purported testamentary disposition of policy proceeds does not constitute 'substantial compliance' with policy and cannot be given effect over policy's beneficiary). SBLI is discharged from any further liability herein. *Matter of Bernstein*, 156 A.D.2d 683 (2<sup>nd</sup> Dept 1989) (interpleader is appropriate where antagonistic claims to proceeds of insurance policy are made); *Bankers Sec. Life Ins. Soc. v. Shakerdge*, 55 A.D.2d 568 (1<sup>st</sup> Dept 1976) (Life insurance company, against whom conflicting claims for payment of life policy proceeds were made by deceased insured's brother and widow, should have been allowed to pay insurance proceeds into court and be discharged from liability as stakeholder); *Connecticut General Life Ins. Co. v. Boni*, 48 A.D.2d 621 (1<sup>st</sup> Dept 1975) (Insurer's action to determine whom it should pay proceeds of life insurance policy properly brought in interpleader where insurer had been presented with adverse claims to proceeds and claims were not patently without substance).<sup>1</sup>

The remaining balance, plus accrued interest, is awarded to SBLI for its costs and fees incurred herein. CPLR 1006(f) (court shall impose such terms relating to payment of expenses, costs and disbursements as may be just); *Republic Nat'l Bank of New York v. Lupo*, 215 A.D.2d

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<sup>1</sup>Since the court has decided to distribute the proceeds under the Polices pursuant to SBLI's motion, the relief sought by Corsitto in his cross-motion is moot.

467 (2<sup>nd</sup> Dept 1995) (court has discretion in award to stakeholder of attorney's fees and costs).

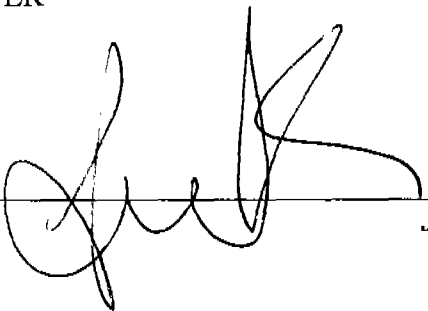
Accordingly, it is

ORDERED that SBLI's motion for an order, pursuant to CPLR § 1006(f) is hereby granted, on default. SBLI shall deliver \$7,000 of the insurance proceeds from life insurance policies Nos. 400017895 and 400025330 on the life of Jean Unverricht, to Moloney's Bohemia Funeral Home, in payment of their fees, within thirty (30) days of service of the instant decision and Order with notice of entry. Only upon compliance with the instant Order will SBLI be discharged from any further liability; and it is further

ORDERED that SBLI's application to deduct its attorneys' fees, costs, and disbursements, from the insurance proceeds, is granted to the extent that SBLI shall be entitled to the remaining proceeds, plus accrued interest, following its distribution of \$7,000 to Moloney's Bohemia Funeral Home; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

ENTER

  
\_\_\_\_\_ J.S.C.

DATE: April 8, 2008  
New York, NY

**FILED**  
APR 11 2008  
COUNTY CLERK'S OFFICE  
NEW YORK