

**O'Shaughnessy v United States Life Ins. Co. of the
City of N.Y.**

2009 NY Slip Op 32697(U)

October 28, 2009

Supreme Court, Suffolk County

Docket Number: 13606-2008

Judge: Emily Pines

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SHORT FORM ORDER

INDEX NUMBER: 13606-2008

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

Present:

HON. EMILY PINES
J. S. C.

Original Motion Date: 04-29-2008
Motion Submit Date: 07-09-2008
Motion Sequence No's.: 001 MOTD
x002 MOTD

**MARY C. O'SHAUGHNESSY, Individually and as
the Parent and Gaurdian of ALANA M. MUNN,
KYLIE ANN MUNN, CHARLES DANIEL MUNN
and CASEY MARIE MUNN,**

Plaintiff,**-against-**

**THE UNITED STATES LIFE INSURANCE
COMPANY OF THE CITY OF NEW YORK and
RAJDAI MUNN,**

Defendant.**X**Attorney for Plaintiffs

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ORDERED, that the motion (motion sequence number 001) by plaintiff seeking an Order declaring plaintiff, MARY O'SHAUGHNESSY, the full beneficiary of The United States Life Insurance Company of the City of New York life insurance policy is granted; and it is further

ORDERED, that the defendant, The United States Life Insurance Company of the City of New York is directed to pay the full death benefit proceeds to the life insurance policy to plaintiff within sixty (60) days from the date herein; and it is further

ORDERED, that the cross-motion (motion sequence number 002) by defendant, The United States Life Insurance Company of the City of New York for an order dismissing the relief requested and granting interpleader relief is denied as moot.

Plaintiff, Mary O'Shaughnessey, commenced this action against defendants, The United States Life Insurance Company of the City of New York and Rajdai Munn, by filing of a Summons and Verified Complaint on or about April 10, 2008, seeking a declaration of her rights under a

certain insurance policy issued to her former, now deceased, husband, Charles P. Munn (“Munn” or “decedent”). The submissions reflect that plaintiff and decedent were married on or about March 6, 1996 and had three children, Alana (born 2/19/98), Kylie (born 2/27/00) and Charles (born 12/19/01). Plaintiff also has custody of decedent’s child, Casey (born 5/2/89). Plaintiff herein commenced an action for divorce against Munn in 2003 and on or about February 25, 2004, the parties entered into a Stipulation of Settlement (“Stipulation”) which was incorporated but not merged into the Judgment of Divorce (BLYDENBURGH, J.) granted July 16, 2004. Decedent married defendant Rajadi Munn subsequent to his divorce from plaintiff.

As relevant to the motion *sub judice*, the Stipulation provided as follows:

ARTICLE XIV
LIFE INSURANCE

Both parties agrees [sic] to provide and keep in full force and effect, life insurance insuring his/her life, with the other as the irrevocable trustee on behalf of the infant issue, in the amount of \$500,000.00 until the youngest child attains the age of twenty-one (21) years of age or twenty-two (22) years of age under terms set forth in the Emancipation Article of this Agreement.

Within thirty (30) days after the execution of this Agreement, each party shall exhibit satisfactory evidence that the provisions of this clause have been duly complied with. Furthermore, each party, upon written request of the other, not more than once per year, shall furnish him/her with documentary proof that the aforesaid insurance coverage is in full force and effect. Each party further agrees that the other is hereby authorized to obtain the necessary information from the insurance company or companies regarding the status of the policy not more than once per year.

In the event the responsible party fails to pay all premiums, dues and/or assessments which may become due and owing on the insurance policy or policies prior to the end of the grace period, the other party shall have the option of making such payments. If the other party pays such premiums, dues and/or assessments, the responsible party shall reimburse him/her in the amount so paid on or before the first day of the first month following such payment.

Failure to provide life insurance shall be deemed a priority charge against the Husband and/or Wife’s estate in an amount equal to the insurance required unless he/she is involuntarily disqualified from securing and maintaining life insurance for reasons other than non-payment of premium.

Plaintiff alleges, that, in direct contravention of the above provision of the Stipulation, Munn changed the beneficiary designation on his life insurance policy (issued by defendant The United States Life Insurance Company of the City of New York), removing plaintiff as trustee and substituting his estate as the beneficiary. The Complaint seeks a declaration of plaintiff’s rights under the insurance policy. Issue was joined as to defendant, The United States Life

Insurance Company of the City of New York, by their filing of a Verified Answer and Counterclaim/Cross-Claim for Interpleader Relief dated May 15, 2008 and as to defendant Rajdai Munn by her service of an Answer dated June 2, 2008.

Plaintiff now moves for an Order, *inter alia*, declaring her the full beneficiary of the life insurance policy issued by defendant The United States Life Insurance Company of the City of New York ("US Life"); directing US Life to immediately pay the full death benefit proceeds of the life insurance policy to plaintiff; restraining US Life from disbursing any and all benefits and proceeds from the life insurance policy or any successor policy to any individual or entity other than plaintiff; restraining defendant, Rajdai Munn, from applying for, receiving or negotiating any check or draft issued by US Life or any other life insurance company which maintained a policy for the life of Charles Munn; and imposing a constructive trust in plaintiff's favor on any insurance proceeds, if paid, to defendant, Rajdai Munn.

Defendant, US Life, cross-moves for an Order dismissing plaintiff's Order to Show Cause and granting it interpleader relief under CPLR §§1006, 1007 and 3011. US Life states that on or about August 11, 2004, it issued a policy to decedent in the amount of \$500,000.00 and in that policy, Munn designated "Estate" as the primary beneficiary. Thereafter, on a change of beneficiary form dated October 26, 2007, decedent changed the primary beneficiary to defendant Rajdai Munn. US Life states that subsequent to decedent's death, it has received death claims from both Rajdai Munn and plaintiff and as a result, an actual or potential rival, adverse and conflicting claims exist to the proceeds. Thus, US Life has been unable to discharge its liability on the policy without exposing itself to multiple liability and seeks to pay the proceeds due and owing on account under the provisions of the policy. US Life seeks an Order granting it leave to deliver, deposit or retain its admitted liability amounts and discharging it from any further liability.

Defendant Rajdai Munn opposes the motion by affirmation of her counsel. Defendant Munn argues that she is the rightful, sole beneficiary of the insurance proceeds and plaintiff's claim is only against the estate of decedent. Defendant's counsel states that Charles Munn, admittedly in violation of the Stipulation, never named plaintiff as a beneficiary under a life insurance policy. Rather, decedent initially named his estate as the beneficiary and then subsequently changed the designation to name defendant Rajdai Munn as the beneficiary. Defendant's counsel further states that plaintiff never verified whether decedent complied with the terms of the Stipulation although she was specifically authorized to do so and never requested documentary proof from decedent that the insurance policy was still in effect. Defendant's counsel asserts that plaintiff's sole remedy under the Stipulation is a claim against decedent's estate.

Since issue has been joined in this action, upon notice to all parties, the Court is treating the motion by plaintiff as one for summary judgment based on documentary evidence.

The Court of Appeals has recognized that promise in a separation agreement “to maintain an insurance policy designating a spouse as beneficiary vests in the spouse an equitable interest in the policy specified, and that spouse will prevail over a person in whose favor the decedent executed a gratuitous change in beneficiary.” *Rogers v. Rogers*, 63 N.Y.2d 582, 483 N.Y.S.2d 976, 473 N.E.2d 226 (1984). *See also, Simonds v. Simonds*, 45 N.Y.2d 233, 408 N.Y.S.2d 359, 380 N.E.2d 189 (1978). This principle has been followed by the Appellate Divisions in *National Benefit Life Ins. Co., v. Kelly*, 160 A.D.2d 570, 554 N.Y.S.2d 523 (1st Dept. 1990) and *McCourt v. McCourt*, 122 A.D.2d 539, 504 N.Y.S.2d 906 (4th Dept. 1986).

Here, the uncontroverted submissions reflect that plaintiff and decedent entered into a Stipulation wherein they both agreed to maintain life insurance policies in the amount of \$500,000.00 naming the other spouse as the irrevocable trustee for the benefit of the children. It is also undisputed that decedent wholly failed to comply with the terms of the Stipulation, first naming his estate as the beneficiary and subsequently changing the beneficiary designation to his wife, Rajadi Munn. Defendant has raised no questions of fact regarding these issues and the mere fact that plaintiff failed to require proof from decedent that he complied with the terms of the Stipulation is not a bar to plaintiff’s recovery herein. As held by the Court of Appeals, the Stipulation between plaintiff and decedent vested in plaintiff an equitable interest in the proceeds of the insurance policy which could not be divested by decedent’s unilateral and unauthorized designation of defendant Rajdai Munn as beneficiary.

Moreover, defendant’s claim that plaintiff’s sole remedy is against decedent’s estate is likewise without merit as any such claim would be fruitless, since the estate was no longer the designated beneficiary of the proceeds of the policy. *Simonds, supra*. It is the role of the Court to interpret the language of the Stipulation between plaintiff and decedent so as to give fair meaning to the language employed by the parties and to reach a practical interpretation such that their reasonable expectations will be realized. *Yonkers Contracting Co., Inc. v. Romano Enterprises of New York, Inc.*, 40 A.D.3d 629, 835 N.Y.S.2d 363 (2d Dept. 2007). In light of the foregoing principle of contract interpretation, the Court finds that a reasonable interpretation of the language of the Stipulation regarding a claim against the estate as a remedy to be applicable if the spouse did not have any life insurance, a situation not present here.

Based on the foregoing, the Court grants summary judgment in favor of plaintiff and


declares that plaintiff, Mary C. O'Shaughnessy, is the sole and full beneficiary of the proceeds of the life insurance policy in the amount of \$500,000.00 held by The United States Life Insurance Company of the City of New York. The United States Life Insurance Company of the City of New York shall pay the proceeds of said policy to plaintiff within sixty (60) days from service of a copy of this Order with Notice of Entry.

In light of the determination herein, the cross-motion by US Life for interpleader relief is denied as moot.

Plaintiff shall serve a copy of this Order with Notice of Entry upon counsel for all parties.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: October 28, 2009
Riverhead, New York


EMILY PINES
J. S. C.