

**Mejer v Met Life**

2012 NY Slip Op 33288(U)

January 13, 2012

Sup Ct, NY County

Docket Number: 100754/11

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN

PART 17

Index Number : 100754/2011

MEJER, FEDERICO

vs

MET LIFE,

Sequence Number : 001

DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE 8/4/11

MOTION SEQ. NO. \_\_\_\_\_

or \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

No(s) 1-2

Replying Affidavits \_\_\_\_\_

No(s) memo only

No(s) \_\_\_\_\_

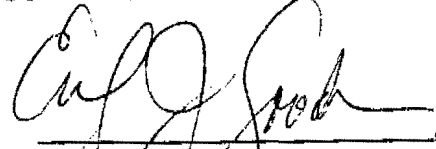
Upon the foregoing papers, it is ordered that this motion is is decided by the annexed  
memorandum decision and order

*NB! Conference 4/12/12 @ 10 Am*

**FILED**

JAN 23 2012

NEW YORK  
COUNTY CLERK'S OFFICE



J.S.C.

EMILY JANE GOODMAN  
NON-FINAL DISPOSITION

Dated: 1/13/12

- 1. CHECK ONE: .....  CASE DISPOSED
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 17

-----x

FEDERICO MEJER,

Plaintiff,

Index No.: 100754/11

-against-

DECISION & ORDER

MET LIFE, MET LIFE INVESTORS, FIRST MET  
LIFE INVESTORS INSURANCE COMPANY,

Defendants.

**FILED**

-----x

Emily Jane Goodman, J.:

**JAN 23 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff Federico Mejer (Mejer) sues defendants ~~NEW YORK~~  
Life, Met Life Investors, and First Met Life Investors Insurance  
Company (MetLife) over the denial of his application for death  
benefits under a life insurance policy. Defendants move,  
pursuant to CPLR 3211, to dismiss the complaint as against Met  
Life and Met Life Investors on the ground that these entities  
either do not exist or are irrelevant to the matter, and to  
dismiss counts two through nine of the complaint as against  
MetLife on the ground that they fail to state causes of action.<sup>1</sup>  
The motion is decided as follows.

Mejer alleges that on July 8, 2008, Alberto Rodriguez  
(Rodriguez) took out a \$1.5 million dollar life insurance policy  
(the Policy), issued by MetLife, that included Mejer as a  
beneficiary. Rodriguez died on March 15, 2009. Mejer filed an  
application for death benefits under the Policy. MetLife refused

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<sup>1</sup> Notably, neither side attach any exhibits.

the claim. This action followed, in nine causes of action for: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) fraud; (4) negligent misrepresentation; (5) breach of fiduciary duty; (6) aiding and abetting breach of fiduciary duty; (7) negligence; (8) intentional infliction of emotional distress; and (9) negligent infliction of emotional distress.

Plaintiff concedes that Met Life and Met Life Investors either do not exist or are unrelated to this action. Accordingly, the branch of the motion seeking dismissal of the complaint against those defendants is granted.

1. Good Faith & Fair Dealing (Count 2)

Defendants argue that the second cause of action should be dismissed because it is duplicative of the breach of contract, in that Mejer only seeks to enforce his rights under the contract.

"A defendant may be liable in tort when it has breached a duty of reasonable care distinct from its contractual obligations, or when it has engaged in tortious conduct separate and apart from its failure to fulfill its contractual obligations" (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 316 [1995]). "[W]here a party is merely seeking to enforce its bargain, a tort claim will not lie" (*id.*).

The complaint alleges that a contract exists and that

MetLife did not perform under it "to further their own economic interests" (Complaint, ¶ 17). It also alleges "unreasonable delays," "improper investigation," and that the denial of his claim was "wrongful;" each directly references MetLife's contractual duties under the Policy. No independent tortious conduct is alleged that would give rise to a breach of the covenant of good faith and fair dealing. Accordingly, the second cause of action is dismissed as duplicative of the breach of contract claim.

## 2. Fraud (Count 3)

To establish a cause of action for fraud, a "plaintiff must allege a misrepresentation or material omission by defendant, on which it relied, that induced plaintiff to purchase the policy of insurance. General allegations that defendant entered into a contract while lacking the intent to perform it are insufficient to support the claim" (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 316 [1995]).

Paragraph 27 of the complaint states, in full:

"In the Policy, and at its inception, said Defendants represented to Plaintiff, and the Insured, that said Defendants would in the event of certain contingencies, pay monies to Plaintiff on the death of his business partner with certain exceptions not relevant herein. . ."

(Complaint, ¶27).

Next, the complaint alleges that MetLife never intended to pay the benefits (*id.*, ¶28). No further specifics are alleged.

Accordingly, the allegations lack sufficient specificity, and the third cause of action must be dismissed.

### 3. Breach of Fiduciary Duty (Counts 5 & 6)

MetLife argues that there is no fiduciary duty between an insurer and a policy beneficiary in regards to the denial of death benefits. Mejer opposes this argument only on grounds of injustice and equity. He cites no cases in opposition.

The complaint alleges only that "when [MetLife] entered into the Policy and accepted premiums from the Insured . . . [it] thereby assumed a fiduciary duty and obligation to Plaintiff" (Complaint, ¶ 15). However, "payment of the premium by the policyholder did not create a fiduciary relationship, but was much more like that of a deposit in a bank by a depositor" (*Rabouin v Metropolitan Life Ins. Co.* [182 Misc.2d 632, 634 [Sup Ct, New York County 1999], citing *Uhlman v New York Life Ins. Co.*, 109 NY 421 [1888]). Moreover, "[e]xcept as required by statute, insurance companies deal with insureds at arm's length. No relationship involving trust or confidence is present." (*New York Hotel Trades Council v Prudential Ins. Co.*, 1 Misc.2d 245, 250 [Sup Ct, NY County 1955], *affd* 1 AD2d 952 [1st Dept 1956]).

The complaint does not sufficiently allege a fiduciary duty between an insurer and a policyholder (or beneficiary). Accordingly, there is no fiduciary relationship, and the fifth and sixth causes of action for breach of fiduciary duty and

aiding a breach of fiduciary duty should be dismissed.

4. Negligent Misrepresentation (Count 4)

The elements of a claim for negligent misrepresentation are: "(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information" (*JAO Acquisition Corp. v. Stavitsky*, 8 NY3d 144, 148 [2007]). The only special relationship discussed in the complaint is the alleged fiduciary relationship, which does not stand. Accordingly, the fourth cause of action is dismissed.

5. Negligence (Count 7)

This cause of action repeats the allegations made in the negligent misrepresentation and good faith and fair dealing causes of action. It is duplicative, and is dismissed.

6. Emotional Distress (Counts 8 & 9)

"[A]bsent a duty upon which liability can be based, there is no right of recovery for mental distress resulting from the breach of a contract-related duty" (*Wehringer v Standard Sec. Life Ins. Co. of N.Y.*, 57 NY2d 757, 759 [1982]).

Here, there remains only a cause of action for breach of contract. Accordingly, the eighth and ninth causes of action are dismissed.

CONCLUSION

In light of the foregoing, it hereby is

ORDERED that the defendants' motion is granted; and the complaint is dismissed as against defendants Met Life and Met Life Investors, and counts two through nine of the complaint are dismissed as against defendant First Met Life Investors Insurance Company; and it is further

ORDERED that First Met Life Investors Insurance Company is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 422, 60 Centre Street, on April 12, 2012, at 10:00 AM.

THIS CONSTITUTES THE DECISION OF THE COURT

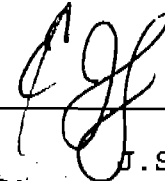
**FILED**

Dated: Jan 13, 2012

**JAN 23 2012**

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NEW YORK  
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J.S.C.

**EMILY JANE GOODMAN**