

Silinski v United States Life Ins. Co. in City of N.Y.
2014 NY Slip Op 31193(U)
May 5, 2014
Supreme Court, New York County
Docket Number: 654582/2012
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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THOMAS SILINSKI,

Plaintiff,

DECISION AND
ORDER

-against-

Index No. 654582/2012

THE UNITED STATES LIFE INSURANCE
COMPANY IN THE CITY OF NEW YORK a/k/a US
LIFE, d/b/a AMERICAN GENERAL LIFE COMPANIES HELMSLEY
ENTERPRISES, INC.,

Defendants.

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HON. ANIL C. SINGH, J.:

In this action for damages, plaintiff Thomas Silinski (“Plaintiff”) alleges the United States Life Insurance Company et. al. (“Defendants”), a financial institution, improperly accepted changes to an annuity’s beneficiary designations thus resulting in an improper distribution of funds. Plaintiff alleges in his amended complaint that these actions sound in causes of actions for (1) negligence, (2) professional malpractice, (3) conversion, and (4) breach of contract. Defendants move, for an order, pursuant to CPLR 3211(a)(5) dismissing the amended complaint as time barred and alternatively pursuant to CPRL 3211(7) for failure to state a cause of action upon which relief can be granted.

Facts

In 1994, Emil Silinski (“Emil”), Plaintiff’s father, purchased an annuity, Policy No. 2BA0388829, from defendants which he subsequently transferred ownership to his wife, Helen Silinski (“Helen”) in 1996. In 2005, Helen died as the owner and primary beneficiary of the annuity with Plaintiff and his brother William Emil Silinski (“William”) as contingent beneficiaries to share equally upon Helen’s death. After Helen’s death, Emil sent the defendants a letter on October 5, 2005 seeking to enact the spousal continuation option in the annuity.

The following day, he executed a form in which he erroneously listed himself as the deceased annuitant and purported to elect the spousal continuation payment option. Through correspondence between Emil and defendants, defendants confirmed Emil as the owner of the annuity with Plaintiff’s brother, William as the primary beneficiary and Plaintiff as the contingent beneficiary of the annuity.

Emil died in 2009 and consequently Defendants distributed one hundred percent of the funds to William. On July 3, 2012 Plaintiff became aware that Defendants allowed Emil to enact the spousal continuation option and change the beneficiaries during 2005 which prevented Plaintiff from collecting share of the annuity funds.

Discussion

Negligence

Plaintiff concedes that a three year statute of limitations apply to his negligence claims pursuant to CPLR 214. However, Plaintiff incorrectly asserts that his cause of action began to accrue upon his discovery of the alleged negligent act.

A negligence cause of action accrues when the claim becomes enforceable whereby all elements of the tort can be truthfully alleged in a complaint. (Snyder v. Town Insulation, Inc., 81 N.Y.2d 429, 432 [1993]). In other words, when the acts or omissions constituting the negligence produce the injury. (Id.). Once a financial institution provides an annuity and acts negligently which results in an injury, then the three year accrual period for a negligence claim begins to run. (Cator v. Bauman, 39 A.D.3d 1263 [4th Dept 2007] (finding claim began to accrue when broker gave negligent advice regarding sold annuity)). Here, the act constituting the negligence was defendant's improper acceptance of Emil's changes to the beneficiary designation form. As a result, defendants failed to issue payments to plaintiff and his brother equally as contingent beneficiaries to the annuity in 2005. Plaintiff's cause of action accrues in 2005 when he was injured by not being able to collect one half of the annuity's funds in accordance with the

terms that were in place prior to Emil's improper changes. Accordingly, plaintiff's negligence claim is time barred since it was not brought within three years of 2005.

Professional Malpractice

Plaintiff's professional malpractice claim is also time barred. (See Brooks v. AXA Advisors, LLC, 104 A.D.3d 1178, 1180 [4th Dept 2013] (holding that three year limitation period for injury to property applies in suit against financial consultant who recommended purchase of annuities)). The continuous representation doctrine is inapplicable to any statute of limitations in the case at bar since plaintiff has not alleged that he had any professional relationship with defendants in any capacity in order to constitute continuous representation. (Cusack v. Greenberg Traurig, LLP, 109 A.D.3d 747, 749 [1st Dept 2013]).

Conversion

Plaintiff's conversion claim fails because it is untimely or alternatively because plaintiff fails to state a cause of action. "A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession." (Colavito v. New York Organ Donor Network, Inc., 8 N.Y.3d 43, 49-50 [2006]). Assuming the conversion took place in 2005 when defendants failed to issue one half of the annuity funds to plaintiff and instead interfered with plaintiffs

right of possession by accepting Emil's improper beneficiary change, then the claim is untimely since it was "commenced more than three years after the alleged taking of the property occurred." (Close-Barzinex rel. de Bekessy v. Christie's, Inc., 51 A.D.3d 444 [1st Dept 2008]).

Alternatively, if the court assumes the conversion took place in 2009 when defendants distributed one hundred percent of the funds to William and not equally between William and plaintiff then plaintiff fails to state a cause of action. Here, defendants' distribution of funds is performed pursuant to the beneficiary form designation that was improperly executed in 2005 which ultimately sounds in breach of the annuity contract. Therefore, the conversion claim is dismissed as duplicative of the breach of contract claim. (Melcher v. Apollo Med. Fund Mgmt. L.L.C., 25 A.D.3d 482, 483 [1st Dept 2006]).

Breach of Contract

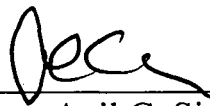
Plaintiff's final claim for breach of contract, which is based on the theory that plaintiff was a third party beneficiary to the annuity contract, is also time barred. A breach of contract claim must be brought within six years of the breach of contract. (Ely-Cruikshank Co., Inc. v. Bank of Montreal, 81 N.Y.2d 399, 402 [1993]). "[R]egardless of whether the damage to plaintiff[] was sustained later and plaintiff[] [was] unaware of the breach at the time it occurred." (Brooks v. AXA Advisors, LLC, 104 A.D.3d 1178, 1180 [4th Dept 2013]). Consequently, since

plaintiff only complains of defendants' act of accepting Emil's changes to the annuity beneficiaries in 2005, then his claim which was brought more than six years later is untimely and is accordingly dismissed.

For these reasons defendant's motion to dismiss the complaint is granted and the complaint is dismissed with prejudice.

The foregoing constitutes the decision and order of the court.

Date: 5/5/14
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**