

Rubenstein v The Lincoln Natl. Life Ins. Co.
2014 NY Slip Op 31957(U)
July 25, 2014
Sup Ct, Kings County
Docket Number: 501605/2012
Judge: David I. Schmidt
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At an IAS Term, Part ⁴⁷ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the ²⁵ day of July, 2014.

P R E S E N T:

HON. DAVID SCHMIDT,

Justice.

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DECISION AND ORDER

ALAN RUBENSTEIN, as trustee of the Isidore Dresner Insurance Trust,
Plaintiff,

- against -

Index No. 501605/2012

Seg no 1

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,

Defendant.

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The following papers numbered 1 to 10 read on this motion:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____
_____ Affidavit (Affirmation) _____
Other Papers _____ Memoranda of law _____

Papers Numbered

_____ 1 - 2 _____
_____ 3 _____

_____ 4-7 _____

In this action, Plaintiff seeks a declaration that the subject life insurance policy that it purchased from the defendant is in full force and effect and has been continuously since the policy was issued. Plaintiff alleges that after it paid premiums for a full year, in July, 2010 the defendant wrongfully declared that the policy lapsed without providing statutorily required notice of the alleged lapse. In addition to the cause of action seeking a declaratory judgment, plaintiff asserts causes of action of breach of contract, misrepresentation, violations of the requirements

of New York Insurance Law §4226 and New Jersey Statute §17:29B-4, and fraudulent inducement.

Defendants here move to dismiss the complaint in its entirety as moot, inasmuch as defendant has agreed to the relief sought by the plaintiff. Defendant contends that had the policy not lapsed, the plaintiff would have paid the premiums to date, and that upon payment of the premiums that have accrued since the lapse was declared, the policy shall be reinstated as though it never lapsed, as plaintiff requests. The plaintiff asserts that no premium payments are due for the period that there was no coverage, and, if payment of the back premiums is required to reinstate the policy, plaintiff disputes the reinstatement amount demanded by the defendant and seeks discovery with regard to the amount claimed due.

Plaintiff cites *Weld v MidAmerica Mutual Life Insurance Company*, 385 N.W.2d 58 (Court of Appeals, Minnesota, 1986) to support the position that insurance premiums need not be paid during a period when no coverage was in effect. In *Weld*, the plaintiff's health insurance policy had lapsed for non-payment of premiums, however the defendant reinstated the policy by accepting subsequent premium payments. Unbeknownst to the plaintiff, the payments he made after the policy's reinstatement were being applied by defendant retroactively to pay the prior defaults. When plaintiff suffered an injury a few months after the policy was reinstated, the carrier declined coverage as the insurance premiums were deemed two months overdue, beyond the 31 days grace period for making a claim after missing a premium payment. The court found that the language of the policy failed to give the plaintiff notice that his premium payments will be applied to prior defaults. Rather, the language of the policy implied that coverage would begin anew upon the reinstatement date. As such, the court found that the

plaintiff had commenced a new term of insurance when his policy was reinstated, and that the defendant was obligated to pay plaintiff's claim and it could not retroactively apply plaintiff's premiums to a period during which he had no coverage.

The facts in *Weld* are completely distinguishable from the facts in this case. In *Weld*, the plaintiff was paying monthly premiums without any notice that his insurance company was accepting these payments while considering itself under no obligation to provide coverage to him. The court found that defendant was not entitled to claim that it was reinstating the plaintiff's insurance policy without advising the plaintiff that he would be paying back past due premiums before his coverage would commence. The court found that coverage began anew on the reinstatement date and thus plaintiff was covered for his losses incurred during the period that he was paying premiums on the reinstated policy.

In the present case, the policy in question is a life insurance policy, and at the time the defendant declared it in lapse, it was actually in effect. Moreover, unlike *Weld*, once the policy is reinstated, plaintiff cannot claim that he was not covered for the entire time in question. Plaintiff has not demonstrated any legal or factual basis to find that defendant's error in declaring the policy to have lapsed relieves the plaintiff of the obligation to pay the premiums for the coverage that he purchased for the entire time period that it is in effect. This would result in plaintiff's obtaining an unearned windfall of having a Five Million Dollars life insurance policy while not paying any premiums towards it for four years. Moreover, unlike *Weld*, the insurance contract here clearly states that to reinstate the policy, the holder must pay the amount of the debt.

Defendant seeks to resolve this lawsuit without an admission that it failed to provide proper notice of the alleged lapse, and put the plaintiff back in the same position he would have been in had the lapse not occurred. This result would in fact render all of the relief sought in the plaintiff's complaint as moot (see, e.g. *Funderburke v New York State Dept. Of Civ. Serv.*, 49 AD2d 809 [2d Dept. 2008]), to the extent that the correct reinstatement amount can be agreed upon or determined. In addition to the amount of the unpaid premiums, the amount that the defendant posits as due appears to include fees and interest, all of which may not be appropriate since the lapse was initially brought on by the defendant. It is also not clear whether payments made by plaintiff after the alleged lapse were included in defendant's calculations.

As such, defendant's motion to dismiss is denied as premature, pending the parties' coming to an agreement with regard to the amount to be paid by the plaintiff to reinstate the policy in accordance with the findings here. The parties are directed to appear before this court on 9/24/14 to place a stipulation of settlement on the record or schedule a fact finding hearing as to the amount due to reinstate the policy.

All relief not expressly granted herein is denied.

This constitutes the decision and order of this court.

ENTER,

J.S.C.

HON. DAVID I. SCHMIDT