

Custom Printers of Guilderland, Inc. v Metlife, Inc.
2018 NY Slip Op 33891(U)
June 13, 2018
Supreme Court, Albany County
Docket Number: 906836-16
Judge: Richard M. Platkin
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STATE OF NEW YORK
SUPREME COURT
COMMERCIAL DIVISION

COUNTY OF ALBANY

CUSTOM PRINTERS OF GUILDERLAND, INC.,

Plaintiff,

-against-

DECISION
AND
ORDER

METLIFE, INC., METROPOLITAN LIFE
INSURANCE COMPANY, METLIFE
REINSURANCE COMPANY OF CHARLESTON,
METROPOLITAN TOWER LIFE INSURANCE
COMPANY, AND SEAN T. BYRNE D/B/A
STB ASSOCIATES,

Defendants.

Index No. 906836-16

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

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Hon. Richard M. Platkin, A.J.S.C.

Plaintiff Custom Printers of Guilderland, Inc. (“Custom Printers”) commenced this commercial action to recover the proceeds of an insurance policy that allegedly covered the life of one of its key individuals. Defendant Sean T. Byrne d/b/a STB Associates (“Byrne”), who is alleged to have acted as the broker with respect to the policy, moves to dismiss plaintiff’s Second Amended Verified Complaint on the grounds that: (1) plaintiff failed to seek leave of Court for the amended pleading, as required by CPLR 3025 (b); (2) the causes of action alleged in the new pleading are legally insufficient (*see* CPLR 3211 [a] [7]); and (3) documentary evidence and plaintiff’s own admissions conclusively refute the claims alleged against Byrne (*see id.*, [a] [1]).¹ Plaintiff opposes Byrne’s motion, and cross-moves pursuant to CPLR 3025 (b) for leave to file and serve a second amended complaint. Byrne opposes the cross motion.²

BACKGROUND

In July 2014, Custom Printers sought to purchase a life insurance policy for Joyce A. Ragone, one of its key individuals, and requested the assistance of Byrne, an insurance broker (*see* Amended Verified Complaint [“AVC”], ¶¶ 18-20; MLIC’s Verified Answer to Amended Complaint [“MLIC Ans”], ¶ 20).³

¹ Although the moving affirmation of Byrne’s counsel states that the motion also is made pursuant to CPLR 3211 (a) (5), counsel confirms in reply that Byrne is not moving for dismissal based on any of the grounds set forth in CPLR 3211 (a) (5).

² Byrne’s argument that CPLR 2214 (b) does not afford plaintiff the opportunity to serve reply papers in further support of its cross motion is without merit (*see Presutti v Suss*, 254 AD2d 785, 786 [4th Dept 1998]), as are his other challenges to plaintiff’s reply.

³ The policy allegedly was to be used as security for Custom Printer’s loan with the U.S. Small Business Administration (*see* AVC, ¶ 22; MLIC Ans, ¶ 22).

On August 4, 2014, Custom Printers submitted an application to Metropolitan Life Insurance Company (“MLIC”) for a policy on Ragone’s life (*see* AVC, ¶ 21; MLIC Ans, ¶ 21). MLIC issued a life insurance policy to Custom Printers in the sum of \$100,000 on November 10, 2014, and it re-issued the policy on November 13, 2014 (“Policy”) (*see* AVC, ¶¶ 23-24; MLIC Ans, ¶¶ 23-24).

Ragone passed away on November 15, 2014, and MLIC ultimately refused to pay Custom Printers’ claim on the ground that there was no valid policy of insurance in effect at the time of the death (*see* AVC, ¶¶ 35-36; MLIC Ans, ¶¶ 26-29, 35-36). In particular, MLIC denied coverage on the grounds that the Policy had not been delivered and the required premium had not been paid prior to Ragone’s death (*see id.*).

Custom Printers commenced this action on November 11, 2016 by filing a summons and complaint, and it later filed an amended summons and amended verified complaint (“AVC”) (*see* CPLR 3025 [a]). The AVC sets forth three causes of action: (1) breach of contract against defendants MetLife, Inc., MLIC, MetLife Reinsurance Company of Charleston and Metropolitan Tower Life Insurance Company (collectively “MetLife Defendants”); (2) insurance broker malpractice against Byrne; and (3) “wrongful delay or denial of claim” against the MetLife Defendants (¶¶ 37-51).

Byrne answered the AVC, and cross-claimed against the MetLife Defendants for indemnity/contribution. The MetLife Defendants then moved to: (1) dismiss plaintiff’s first cause of action and Byrne’s cross claim against the MetLife Defendants, except as to MLIC; and (2) dismiss the third cause of action in its entirety. By Decision & Order dated January 17, 2018 (“Prior Decision”), the Court granted the requested relief.

Following service of MLIC's answer to the AVC, Custom Printers purported to file a second amended verified complaint ("SAVC") without leave of Court (*see* CPLR 3025 [b]). The SAVC sought to conform the pleading with the Prior Decision, but also alleged a new cause of action against Byrne for breach of contract. MLIC answered the SAVC, and Byrne filed the instant motion to dismiss. In response, Custom Printers cross-moved for leave to file and serve its second amended complaint.

DISCUSSION

The Court begins with plaintiff's cross motion for leave to file and serve a second amended complaint.⁴ "In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (*Betz v Blatt*, 160 AD3d 689, 693 [2d Dept 2018] [internal quotation marks and citations omitted]; *see NYAHSAs Servs., Inc., Self-Ins. Trust v People Care Inc.*, 156 AD3d 99, 102 [3d Dept 2017]). Byrne admittedly "is not claiming prejudice or surprise by the [SAVC]" (Barclay Reply Aff., ¶ 7), so the sole issue is whether the proposed amendment is palpably insufficient or patently devoid of merit (*see NYAHSAs Servs., Inc., Self-Ins. Trust*, 156 AD3d at 101-102).

"As a general rule, an insurance broker has a common-law duty to provide requested coverage within a reasonable time and may be held liable for negligence or breach of contract when a client establishes that a specific request was made for coverage that was not provided in

⁴ Contrary to Byrne's suggestion (*see* Barclay Reply Aff., ¶ 4), Custom Printers was not required to withdraw the SAVC and then move for permission to amend (*see e.g. Ciminello v Sullivan*, 120 AD3d 1176, 1177 [2d Dept 2014]). Custom Printers likewise is incorrect that Byrne's motion, insofar as it seeks the dismissal of the breach of contract claim, is premature (*see* Liguori Aff., ¶ 25; *see e.g. Ciminello*, 120 AD3d at 1177-1178). Rather, *Ciminello* teaches that the Court should decide the cross-motion to amend, and if Custom Printers is granted leave to allege a claim for breach of contract against Byrne, the merits of Byrne's motion to dismiss that claim will properly be before the Court.

the policy” (*Cromer v Rosenzweig Ins. Agency Inc.*, 156 AD3d 1192, 1193 [3d Dept 2017] [internal quotation marks, brackets and citation omitted]; see *American Bldg. Supply Corp. v Petrocelli Group, Inc.*, 19 NY3d 730, 735 [2012]; *Bruckmann, Rosser, Sherrill & Co., L.P. v Marsh USA, Inc.*, 65 AD3d 865, 866 [1st Dept 2009]). In this context, breach of contract and negligence merely are alternative theories of recovery (see *Bedessee Imports, Inc. v Cook, Hall & Hyde, Inc.*, 45 AD3d 792, 793-794 [2d Dept 2007]).

Here, Custom Printers proposes to allege that “[Byrne] breached [his] agreement to procure insurance for Ragone’s life” within a reasonable time by failing to deliver the Policy prior to Ragone’s death, “despite representing . . . that the Policy had been issued” (SAVC, ¶¶ 53-54). These allegations sufficiently state a cause of action for breach of contract against Byrne (see generally *American Bldg. Supply Corp.*, 19 NY3d at 735; *Cromer*, 156 AD3d at 1193).

In opposing the cross motion and seeking dismissal of the contractual claim,⁵ Byrne emphasizes that he did “obtain the insurance requested by the plaintiff” and argues that Custom Printers “fails to state how the alleged failure to deliver the Policy to the plaintiff in the two days between it being issued and Ms. Ragone’s death caused any of the plaintiff’s alleged damages” (Barclay Aff., ¶¶ 14-15). The Court does not find these contentions persuasive. The proposed contractual claim sufficiently alleges that Byrne breached his contract with Custom Printers by failing to timely procure and deliver the requested policy of insurance (see SAVC, ¶¶ 14-17; 47-

⁵ On a motion to dismiss pursuant to CPLR 3211 (a) (7), the Court ““must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiff[] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory”” (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012], quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). Dismissal is warranted under CPLR 3211 (a) (1) if documentary evidence conclusively establishes a defense as a matter of law (see *Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]).

55). Moreover, MLIC's answer alleges that it was not bound by the Policy until such delivery (see MLIC Ans, ¶¶ 26-29, 35-36; MLIC Ans to SAVC, ¶¶ 17, 53), and Custom Printers' president submits an affidavit in opposition to Byrne's motion further connecting plaintiff's claimed damages to delays allegedly caused by Byrne (see Szesnat Aff., ¶ 8).⁶

Based on the foregoing, Custom Printers' cross motion to file and serve the SAVC is granted, and Byrne's motion to dismiss the contractual claim for failure to state a cause of action and as conclusively defeated by documentary evidence is denied.

Nonetheless, there is merit to Byrne's contention (see Byrne's MOL, pp. 7-8) that the malpractice claim alleged by Custom Printers is duplicative of the contractual claim inasmuch as the SAVC does not allege that Byrne's failure to procure insurance "violated a legal duty independent of that created by the [parties'] contract" (*Muncil v Widmir Inn Rest. Corp.*, 155 AD3d 1402, 1404-1405 [3d Dept 2017] [internal quotation marks and citation omitted]; see *Frontier Ins. Co. v Merritt & McKenzie, Inc.*, 159 AD3d 1156, 1159 [3d Dept 2018]; *NYAHSVA Servs., Inc., Self-Ins. Trust v People Care Inc.*, 141 AD3d 785, 788 [3d Dept 2016]; *Belair Care Ctr., Inc. v Cool Insuring Agency, Inc.*, 55 Misc 3d 1216[A], 2017 NY Slip Op 50609[U], *17 [Sup Ct, Albany County 2017]). Further, both the tort and contractual claims are premised on essentially the same factual allegations, and both claims demand identical damages. In light of the foregoing, the second cause of action, alleging insurance broker malpractice against Byrne, should be dismissed as redundant of the contractual claim.

⁶ Thus, the SAVC alleges, in essence, that MLIC is liable to Custom Printers if there was a valid policy of insurance in effect and, if a valid policy was not in effect, Byrne breached his obligation to procure the requested insurance within a reasonable time.

CONCLUSION

Accordingly,⁷ it is

ORDERED that the cross motion of plaintiff Custom Printers of Guilderland, Inc. for leave to file and serve a second amended complaint is granted, *nunc pro tunc*; and it is further

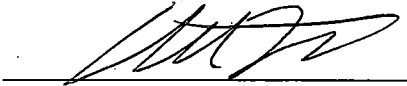
ORDERED that the motion of defendant Sean T. Byrne d/b/a STB Associates ("Byrne") to dismiss plaintiff's Second Amended Verified Complaint ("SAVC") is granted only to the extent of dismissing the second cause of action contained therein, alleging insurance broker malpractice against Byrne, and the motion is otherwise denied; and it is further

ORDERED that Byrne shall serve an answer to the SAVC within **twenty (20) days** of the date of this Decision & Order; and finally it is

ORDERED that the parties to this action shall appear for a status conference on **July 16, 2018 at 10:30 a.m.**

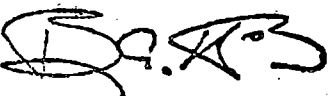
This constitutes the Decision & Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for plaintiff shall promptly serve notice of entry on all other parties to this action (*see* Uniform Rules for Trial Cts [22 NYCRR] § 202.5-b [h] [1], [2]).

Dated: Albany, New York
June 13, 2018


RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

NYSCEF Doc Nos. 32-45.


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⁷ The Court has considered the remaining arguments and contentions made by Byrne in seeking dismissal of the contractual claim, but finds them to be without merit.