

<b>Guardian Life Ins. Co. of Am. v Brown</b>
2019 NY Slip Op 30723(U)
March 21, 2019
Supreme Court, New York County
Docket Number: 655063/2016
Judge: Anthony Cannataro
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 41EFM

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THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA,	<b>INDEX NO.</b> <u>655063/2016</u>
	<b>MOTION</b>
Plaintiff,	<b>DATE</b> <u>11/07/2018</u>
	<b>MOTION</b>
- v -	<b>SEQ. NO.</b> <u>001</u>
ERROL BROWN,	
Defendant.	<b>DECISION AND ORDER</b>

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HON. ANTHONY CANNATARO:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion                             SUMMARY JUDGMENT .

Plaintiff, Guardian Life Insurance Company of America, commenced this action to reform its insurance policy agreement with defendant Errol Brown. Mr. Brown now moves for summary judgment dismissing the complaint, a judgment declaring the terms of the agreement to be in effect between the parties, and an award for legal fees. Plaintiff cross moves for leave to amend its complaint to include a cause of action to rescind the agreement.

With respect to plaintiff's cross motion for leave to amend its complaint, CPLR 3025 (b) requires that motions to amend be freely granted in the absence of prejudice or unfair surprise resulting from delay, unless the proposed amendment is plainly lacking in merit (*Thomas Crimmins Contr. Co., Inc. v City of New York*, 74 NY2d 166 [1989]). CPLR

3025 allows liberal amendment of pleadings absent demonstrable prejudice (*Atlantic Mut. Ins. Co. v Greater N.Y. Mut. Ins. Co.*, 271 AD2d 278 [1st Dept 2000]).

Here, plaintiff seeks to add to its a complaint a cause of action for rescission of its agreement with defendant. The proposed cause of action is merely an alternative legal theory which pertains to allegations already contained in the complaint and allowing defendant to include it would not prejudice plaintiff. Accordingly, the branch of plaintiff's cross motion for leave to amend its complaint is granted, and the proposed complaint attached to its motion papers is deemed the complaint in this action.

The Court next addresses defendant's motion for summary judgment. On a motion for summary judgment, the movant carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the movant meets its initial burden, the burden shifts to the opposing party to "show facts sufficient to require a trial of any issue of fact" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Summary judgment may be granted upon a *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence sufficient to eliminate material issues of fact (CPLR 3212 [b]; *Alvarez*, 68 NY2d at 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). When there are no triable material issues of fact, it is incumbent upon a court, in the interests of judicial economy, to grant summary judgment (*Andre v Pomeroy*, 35 NY2d 557 [1980]).

The relationship between the parties began in 2000, when Mr. Brown purchased a life insurance policy from plaintiff which had a face amount of \$500,000. Mr. Brown paid premiums on that policy through 2014. In 2014, Mr. Brown contacted plaintiff seeking to reduce or eliminate the need to pay premiums. Plaintiff, through its agents, provided Mr. Brown with alternative illustrations, one of which, the "Reduced Paid Up Illustration," would reduce Mr. Brown's premium to zero by reducing the amount of

the death benefit to \$334,776 with a potential to grow, and a cash value of \$196,698. Mr. Brown contacted plaintiff to confirm the accuracy of the information provided to him in the Reduced Paid Up Illustration. Plaintiff responded that the illustration was indeed accurate. Mr. Brown then accepted the Reduced Paid Up Illustration, and plaintiff marked the policy as Reduced Paid Up in its system and issued an endorsement to Mr. Brown to be attached to his policy.

One year later, in December 2015, plaintiff advised Mr. Brown that the Reduced Paid Up Illustration had been incorrectly calculated due to a computer error and sought to reform the policy agreement. Upon Mr. Brown's refusal to accept the old policy terms, plaintiff commenced the instant action to reform the agreement or seeks, in the alternative, to rescind the agreement between the parties.

"Mutual mistake and fraudulently induced unilateral mistake are the classic grounds for reformation" (*George Backer Mgmt. Corp. v Acme Quilting Co. Inc.*, 46 NY2d 211 [1978]). Mutual mistake occurs when the parties have reached an oral agreement and, unknown to either, the subsequent writing does not express that agreement (*Chimart Assoc. v Paul*, 66 NY2d 570 [1986]). "Reformation is not granted for the purpose of alleviating a hard or oppressive bargain, but rather to restate the intended terms of an agreement when the writing that memorializes that agreement is at variance with the intent of both parties" (*George Backer Mgmt. Corp.*, 46 NY2d 211, 219 [1978]).

Rescission of a contract on the basis of a unilateral mistake may be had where a party enters into a contract based upon a mistake as to a material fact and the other contracting party either knew or should have known such a mistake was being made (*Middle East Banking Co. v State Street Bank Intern.*, 821 F2d 897, 906 [2d Cir. 1987]). In addition to these factors which establish a unilateral mistake justifying relief, the party seeking rescission may need to show that failing to rescind would unjustly enrich the other party and that the parties can be returned to the *status quo ante* without prejudice

(*Gessin Elec. Contrs, Inc. v. 95 Wall Associates, LLC*, 74 AD3d 516 [2010]; *Cox v Lehman Bros., Inc.*, 15 AD3d 239 [2005]).

In this case, it simply cannot be said that there was a mutual mistake. There is nothing improper or illegal about the policy endorsement as is, and the calculation contained within it was, in fact, what the parties agreed to. The “mistake” asserted by plaintiff can only be called that to the extent that the offered modification was not in compliance with plaintiff’s own internal methods for calculating policies. There is no reason to suspect that Mr. Brown knew, and no reason to expect that he should have known, that plaintiff erred in its offer to modify his policy, especially after Mr. Brown specifically contacted plaintiff to confirm the policy offer, and plaintiff assured him that the offered policy was in fact an accurate reflection of the terms that plaintiff was willing to offer. As such, whatever mistake there was in this case must be deemed unilateral.

Given plaintiff’s unilateral mistake, the only possible remedy available under the circumstances would be rescission. Such a remedy, however, is inappropriate in this case. First, defendant had no actual or constructive knowledge of plaintiff’s error. Second, the parties cannot be returned to the *status quo ante* without prejudice defendant, because rescinding the Reduced Paid Up transaction would result in Mr. Brown having to pay over \$11,000 in premiums, after having lost the opportunity to pursue other policies, which may very well have required him to pay less in premiums.

The situation in this case is similar to the one discussed in *Loyalty Life Ins. Co. v Fredenberg* (214 AD2d 297 [1995]). There, an insurance company’s agent advised a policyholder that a reduction of the face amount of the policy would eliminate the need for premium payments. Based upon this representation, an endorsement to that effect was issued, and the policyholder stopped paying the premium payments. Close to a year later, the insurance company advised that the earlier communication was

erroneous, and that premium payments were due and owing. In that case, the Appellate Division determined that the case was clearly one of unilateral mistake, and the agreement was enforceable:

The result may be a burdensome bargain but we see no basis for the court's exercise of its equitable powers to relieve plaintiff of its contractual obligation. The amended policy was the product of an arm's length transaction between sophisticated, knowledgeable parties and plaintiff's claim of unilateral mistake is insufficient to defeat defendants' motion for summary judgment. Inasmuch as reformation is an equitable matter, we also note the length of the delay in discovering the mistake and defendants' detrimental reliance on the amended policy in structuring the finances of their business (*id.* at 299) (internal citations omitted).

The Court has considered plaintiff's remaining arguments and finds them to be unpersuasive. Nevertheless, the branch of defendant's motion seeking legal fees pursuant to 22 NYCRR § 130-1.1 must be denied as plaintiff's claims in this case, although ultimately unavailing, were not frivolous.

Accordingly, it is

**ORDERED** that so much of the cross-motion by plaintiff a seeks leave to amend its complaint is granted and the proposed amended complaint attached to the moving papers is deemed to be the complaint in this action; and it is further

**ORDERED** that the branch of defendant's motion for declaratory judgment with respect to the subject matter of the first, second and third counterclaim is granted, with costs and disbursements to defendant as taxed by the Clerk; and it is further

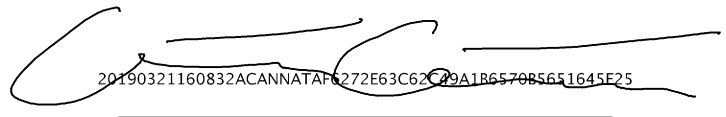
**ADJUDGED AND DECLARED** that that the amended policy remains in full force and effect and the endorsement effective October 4, 2014 is a legally binding and enforceable agreement between the parties; and it is further

ORDERED that the branch of defendant's motion for dismissal of the complaint is granted and the complaint is dismissed; and it is further

ORDERED that the branch of defendant's motion for an award of legal fees under Rule 130-1.1 is denied.

3/21/2019

DATE

  
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ANTHONY CANNATARO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE