

**Salkey v State Farm Life Ins. Co.**

2019 NY Slip Op 31240(U)

May 7, 2019

Supreme Court, Broome County

Docket Number: EFCA2018001953

Judge: Eugene D. Faughnan

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At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 27th day of February, 2019.

PRESENT: HON. EUGENE D. FAUGHNAN  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF BROOME

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TIFFANY M. SALKEY

Plaintiff,

DECISION AND ORDER

Index No. EFCA2018001953  
RJI No. 2018-1567-M

-against

STATE FARM LIFE INSURANCE COMPANY and  
STATE FARM FIRE & CASUALTY COMPANY,

Defendants.

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**EUGENE D. FAUGHNAN, J.S.C.**

This matter is before the Court upon the motion to dismiss made by Defendants State Farm Life Insurance Company and State Farm Fire & Casualty Company. The motion is opposed by Plaintiff Tiffany M. Salkey (“Salkey”). For the reasons set forth below, the Defendants’ motion is granted.

**BACKGROUND FACTS**

The relevant facts are not in dispute. In May, 2002, Salkey was the recipient of an infant settlement in connection with a personal injury action. At that time, she was 12 years old. The

overall settlement was for \$282,500, and as part of that settlement, an annuity was purchased from State Farm Life Insurance Company to provide future periodic payments. State Farm Fire & Casualty was to be contingently liable should State Farm Life Insurance Company fail to make the payments. Under the annuity, payments were to be made in 10 annual installments of \$25,686.85 from July 11, 2007 to July 11, 2016.

Thereafter, in May, 2015, the Broome County Family Court issued an Order essentially garnishing the last two installment payments due from the settlement. The father of Plaintiff's children had brought a child support proceeding in the Family Court, and the Family Court directed State Farm Life Insurance Company to pay the last two installments directly to the Broome County Support Collection Unit in order to satisfy Salkey's child support arrears, and to secure future weekly child support payments. Salkey was represented by counsel in the Family Court action, and the Order stated that it was being entered on consent of the parties. State Farm Life Insurance Company received the Order, and did as directed by the Family Court- accordingly, Salkey's 2015 and 2016 annuity payments were forwarded to the Broome County Support Collection Unit.

On July 21, 2018, Salkey commenced the current action alleging breach of fiduciary duty and breach of contract. Specifically, with respect to the breach of fiduciary duty claim, Salkey alleges that Defendants knew, or should have known, that the Family Court Order did not comply with Family Court Law, and the Order should not have been obeyed.<sup>1</sup> The breach of contract claim is based upon the same facts and circumstances as the breach of fiduciary duty claim.

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<sup>1</sup>Family Court Law §471 provides that any undertaking to pay for child support must be of a definite duration, not to exceed three years. The Order in question was open-ended and not of definite duration. Based on the amount of the weekly child support obligation, the last two installment payments from the settlement would exceed three years of child support payments.

Defendants filed this motion seeking dismissal pursuant to CPLR §3211 (a) (7)<sup>2</sup>. Defendants argue that they complied in good faith with the Family Court Order, and that failure to comply would have resulted in contempt. They further note that since Salkey was represented by counsel and the Order was entered upon consent, Salkey should not be heard to complain about a defective or improper Order at this point. Salkey never appealed or made a motion to set aside the Family Court Order. Further, at oral argument, Salkey conceded that no efforts have been made to determine if there is still any balance of the undertaking being held by the Support Collection Unit. Defendants also argue that the doctrine of *laches* should bar Salkey's complaint. Almost 4 years have elapsed since the Family Court Order was entered and the money has continued to be depleted with each weekly support payment.

"In the context of a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference ... Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss." *EBC I, Inc. v. Goldman Sachs & Co.*, 5 NY3d 11, 19 (2005) [internal citation omitted]; see *Maki v. Bassett Healthcare*, 141 AD3d 979, 980 (3<sup>rd</sup> Dept. 2016), *appeal dismissed and lv denied* 28 NY3d 1130, (2017), *reconsideration denied* (2018). However, "[t]his liberal standard ... will not save allegations that consist of bare legal conclusions or factual claims that are flatly contradicted by documentary evidence or are inherently incredible." *DerOhannesian v. City of Albany*, 110 AD3d 1288 (3<sup>rd</sup> Dept. 2013) (citations omitted). A claim for breach of fiduciary duty must be pleaded with particularity. See, CPLR 3016(b); *Dineen v. Wilkens*, 155 AD3d 607 (2<sup>nd</sup> Dept. 2017)

The elements for a claim of "breach of fiduciary duty are (1) the existence of a fiduciary

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<sup>2</sup>The Notice of Motion and Attorney Affidavit in support both say the Motion is made "pursuant to CPLR 3211 (a) and 3211(a)(7)." It is not clear if the Defendants intended to include a second ground from CPLR 3211 (a), or just CPLR 3211 (a)(7). As the motion papers did not identify a specific ground except for CPLR 3211 (a)(7), the Court limits its review to the CPLR 3211 (a)(7) basis.

relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct.” *Rut v. Young Adult Inst., Inc.*, 74 AD3d 776, 777 (2<sup>nd</sup> Dept. 2010) (citation omitted); *Loch Sheldrake Beach & Tennis Inc. v. Akulich*, 141 AD3d 809 (3<sup>rd</sup> Dept. 2016).

With respect to the first element, “[a] fiduciary relationship arises between two persons or entities ‘when one of them is under a duty to act for . . . the benefit of another upon matters within the scope of the relation.’” *East Schodack Fire Co., Inc. v. Milkewicz*, 140 AD3d 1255, 1256 (3<sup>rd</sup> Dept. 2016), quoting *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 NY3d at 19; See *WIT Holding Corp. v. Klein*, 282 AD2d 527, 529 (2<sup>nd</sup> Dept. 2001) (“A fiduciary relationship may exist where one party reposes confidence in another and reasonably relies on the other's superior expertise or knowledge.”); See *Doe v. Holy See (State of Vatican City)*, 17 AD3d 793, 795 (3<sup>rd</sup> Dept. 2005). When a party seeks to show a fiduciary relationship with an institution, she must demonstrate that the relationship was unique from the institution’s relationship with others. *Robare v. Fortune Brands, Inc.*, 39 AD3d 1045, 1047 (3<sup>rd</sup> Dept. 2007). “In determining whether a special relationship exists in a commercial context, the Court of Appeals has instructed that ‘a fact finder should consider whether the person making the representation held or appeared to hold unique or special expertise; whether a special relationship of trust or confidence existed between the parties; and whether the speaker was aware of the use to which the information would be put and supplied it for that purpose.’” *Fleet Bank v. Pine Knoll Corp.*, 290 AD2d 792, 796 (3<sup>rd</sup> Dept. 2002) quoting *Kimmell v. Schaefer*, 89 NY2d 257, 264 (1996).

Here, Salkey has failed to allege a fiduciary relationship existed between her and either of the Defendants. Salkey has not alleged any sort of special trust or confidence between the parties, or any reliance she had on Defendants other than to make the installment payments when due. Similarly, there is no allegation that Defendants made any representations or offered unique expertise with respect to any matter because there was nothing discretionary about this financial arrangement. Cf. *Brooks v. Key Trust Co. Nat’l Assoc.*, 26 AD3d 628 (3<sup>rd</sup> Dept.) (Defendants served as Plaintiff’s financial advisor and had discretion with respect to investments). Even though Salkey notes that Defendants were custodians of infant settlement funds, outside of the

settlement funds being used to purchase an annuity, the complaint does not allege any contact, discussions, or any other business connections between Salkey and Defendants that would support a fiduciary relationship.

Salkey's complaint makes conclusory assertions that Defendants owed a fiduciary duty to her. However, there are no facts alleged with particularity (as required under CPLR 3016(b)) from which it could be concluded that Defendants "had a duty to act for or give advice for the benefit of the plaintiff, or ... that any type of a relationship of trust existed between them." (*Faith Assembly v. Titledge of NY Abstract, LLC*, 106 AD3d 47, 62 (2<sup>nd</sup> Dept. 2013).

Even if there was a fiduciary relationship, the other two elements in a breach of fiduciary duty claim are misconduct by the Defendants and resulting damages. Salkey contends that Defendants should have determined that the Family Court Order was invalid, and that Defendants should not have disbursed the funds as directed by the Family Court.

Defendants had a responsibility to safeguard the settlement money and ensure it was paid out timely, but that would not extend to disobeying Court Orders, or even evaluating the legal sufficiency of the Court Order. Here, Salkey was represented by counsel when the Family Court Order was made, and the parties to that proceeding all agreed to the settlement funds being used to satisfy the child support obligation. There would be no reason or duty on the part of the Defendants to make further inquiry, and indeed, Defendants would not have had any standing to challenge the Family Court Order. If there was any fiduciary duty owed by Defendants, there is no basis to claim that it extended to evaluating the legality of an underlying Order. While the Defendants might be obligated to verify there was an authentic Court Order (i.e. it was facially valid) prior to disbursing the funds, the scope of any fiduciary relationship would not have extended to evaluating the wisdom or substantive validity of a Family Court Order. The complaint fails to allege any facts which would support a claim that Defendants were under any obligation to challenge the Family Court Order.

Furthermore, Salkey had reached an age of majority by the time the Family Court Order was made, and to the extent that Defendants may have had some oversight responsibility when she was a minor, that would have been eliminated when she reached 18 years old. Presumably, Salkey could have even assigned her rights to the installment payments, through a transfer of structured settlement proceeds. Under Salkey's theory, Defendants would have to ensure that an Order granting the transfer of settlement proceeds, or any other Court Order, was valid under any applicable laws. The Court cannot conclude that Defendants' compliance with an authentic Family Court Order can give rise to a claim of misconduct.

To adopt Plaintiff's argument would essentially make an annuity payer responsible for advising the payee of the effects of all their day to day activities and liabilities, and the impact it might have on the annuity payments. That approach is far too broad, when the reality is that the annuity payer simply needs to pay out the money when it becomes due. In fact, Plaintiff could even go one step further, and claim that the Defendants should have monitored her child support obligations to make sure that she was not in arrears, because it might someday jeopardize her installment payments or that an Order could be made to satisfy an undertaking. Plaintiff does not challenge the Family Court's authority to make the Order, just that it was not time definite.

The complaint also fails to allege cognizable damages. Salkey does not contend that child support arrears or weekly payments are inaccurate or invalid. Instead, she argues that the Family Court Order should not have been granted because it covered more than 3 years of child support payments. However, if the child support obligation existed and the installment payments were used to satisfy those weekly obligations (even if for a greater period than authorized by statute), Salkey has not suffered any damages. That settlement money has simply been used to pay the amounts due and owing for child support- a debt or obligation that she does not dispute.

For all these reasons, the Court concludes that the complaint fails to state a claim for breach of fiduciary duty.

The Court will now turn to the breach of contract claim. The analysis is quite similar insofar as the breach of contract claim is based upon the same facts and allegations as the breach of fiduciary claim.

“The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach.” *WFE Ventures, Inc. v. Mills*, 139 AD3d 1157, 1160 (3<sup>rd</sup> Dept. 2016) quoting *Carione v. Hickey*, 133 AD3d 811, 811 (2<sup>nd</sup> Dept. 2015); see *Clearmont Prop., LLC v. Eisner*, 58 AD3d 1052 (3<sup>rd</sup> Dept. 2009). As the Court has already discussed above, the actions of the Defendants in obeying the Family Court Order do not give rise to a claim of misconduct, or a breach of contract, and in any event, Salkey has not suffered any damages as a result. Therefore, the Court concludes that the allegations fail to state a cause of action for breach of contract.

The Court also concludes that Salkey's claim is barred by the doctrine of *laches*. “This doctrine is applicable where there has been a considerable delay resulting in a change of position ... or other disadvantage.” *Reed v. Reed*, 195 AD2d 451, 451 (2<sup>nd</sup> Dept. 1993) (citations omitted).

In the present case, the Court Order was issued in May, 2015, and as a result the settlement payments due in July, 2015 and July, 2016 were made to the Support Collection Unit. Presumably, the proceeds have been depleted each week to satisfy the Salkey's support obligation. The Order was almost four years ago, and Defendants turned over the payments more than two and a half years ago. Yet, Salkey did not commence this action until July, 2018. She did not take any step to appeal or modify the Order in Family Court, or make any payments to satisfy the child support obligation herself. She could have done so, and requested that Family Court issue an Order directing that payments from the Support Collection Unit cease. Had she done so, then the money would still be available from Support Collection Unit. Instead, it has been paid out to satisfy Salkey's support obligation, as directed by the Family Court Order.

As Defendants also point out, had there been any dispute or a second claim made for the settlement proceeds, Defendants could have deposited the money into court and started an interpleader action so the question of entitlement to the proceeds could have been resolved. Due to Salkey's delay in challenging the Order to which she consented, the funds have been depleted by payment to the Support Collection Unit, and the weekly assessment of child support payments. Thus, a large percentage of the money has been paid out and is no longer available. This has prejudiced the Defendants. The Court finds that Salkey's unexplained and unexcused delay in asserting a claim that the settlement installments were improperly paid to the Support Collection Unit has caused unfair disadvantage to the Defendants; therefore, Salkey's claim is barred by laches.

Based on all the foregoing, Defendants' motion to dismiss the complaint is GRANTED.

IT IS SO ORDERED.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

Dated: May 7, 2019  
Binghamton, New York



HON. EUGENE D. FAUGHNAN  
Supreme Court Justice

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