Mano Enters., Inc. v Metropolitan Life Ins. Co.
2019 NY Slip Op 32805(U)
September 14, 2019
Supreme Court, New York County
Docket Number: 652486/2013
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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INDEX NO. 652486/2013

MANO ENTERPRISES, INC.

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 014

- v -

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 014) 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 747

were read on this motion to/for JUDGMENT - SUMMARY.

This 2013 action arises from the attempted sale of a STOLI (stranger originated life insurance) policy which was thwarted by the insurer's allegedly improper hold on any transfers until resolution of a 2010 litigation to determine the policy's ownership. Plaintiff Mano Enterprises, Inc. (Mano) alleges that defendant Metropolitan Life Insurance Company (MetLife) breached a $5,000,000 life insurance policy (Policy) that MetLife issued in 2008 to the Marcos Molina[1] Family Trust (Trust) when MetLife refused to honor a request to change the ownership and beneficiary of the Policy in 2012. In motion sequence number 014, MetLife moves, pursuant to CPLR 3212, for summary

[1] When the Policy was issued on the life of Marcus Molina in 2008, he was 77 years of age. (NYSCEF 695, p. 1, MetLife Memo of Law).

judgment dismissing the remaining cause of action for breach of contract. The motion is denied as issues of fact abound.

Background

In March 2008, MetLife issued the Policy to the Trust with an annual premium of $302,671.60. (NYSCEF Doc. No. [NYSCEF] 517, Policy at p. 3). Nonparty Bedis Zormati brokered the Policy. (NYSCEF 625, D'Arcambal Aff at ¶ 3; NYSCEF 627, Policy Application at p. 15).

The Policy states, in relevant part:

> "During the Insured's lifetime, [the owner] may change the ownership and beneficiary designations, subject to any restrictions as stated in the Owner and Beneficiary provisions. [The owner] must make the change in written form satisfactory to us. If acceptable to us the change will take effect as of the time [the owner] signed the request, whether or not the Insured is living when we receive [the owner's] request at our Designated Office. The change will be subject to any assignment of this Policy or other legal restrictions."

(NYSCEF 517, Policy at § 2). "You" is defined earlier in the Policy as "The Owner of this Policy." (*Id.*, § 1). Pursuant to the Policy, MetLife was not "responsible for determining whether an assignment is valid." (*Id.*, § 2).

Nonparty Rafael Nino was designated the trustee of the Trust and he could resign at any time "by giving notice in writing to the Grantor [Molina]." (NYSCEF 656, Trust Agreement ¶ 5 [r] [2]).

In August 2010, MetLife received a "Life Insurance Absolute Assignment" form naming Mano the new assignee of the Policy. The first two pages of this form are initialed by "RVN" as "Owner" and the third page is signed by Nino as Trustee and as Owner of the Policy. (NYSCEF 559, Life Insurance Absolute Assignment). The form is

dated August 23, 2010, several months after the two-year contestability period ended.[2] (*Id.*). On August 27, 2010, MetLife notified the Trust, care of Nino, of Mano's new ownership of the Policy. (NYSCEF 733, ex E, Confirmation of Transaction).

On October 25, 2010, MetLife was informed that Stan Miller was the Trustee of the Trust. (NYSCEF 560, Miller letter to MetLife). Attached to Miller's letter was Nino's resignation as Trustee dated May 7, 2008 and Miller's acceptance as Trustee dated May 19, 2008. By letter dated November 4, 2010, MetLife informed Miller that Mano was the Owner of the Policy. (NYSCEF 561). That same day MetLife sent a letter to Mano, "attn. Marcos Molina," requesting confirmation to make the following address change on the Policy: "c/o Stan Miller, 21229 Hillside Ave Ste 5E-E, Queens Village, NY 11427-1803. (NYSCEF 562). Molina responded to MetLife by writing "Not authorized" next to Miller's name on that November 4, 2010 letter and signing the letter on November 11, 2010. (*Id.*). The Letter is stamped "November 15, 2010". (*Id.*).

By letter dated December 30, 2010, MetLife received notice from nonparty Dukes Bridge LLC (DB) that it purchased the Policy at auction. (NYSCEF 563). In September 2011, DB notified MetLife of its federal action filed December 3, 2010 against Molina, Nino, the Trust, Zormati and Mano in which DB claimed it had purchased the Policy at an auction for $573,478.21 and was its rightful owner. (*See* NYSCEF 600, DB Complaint at ¶ 57). In its 2010 complaint, DB asserted that the assignment to Mano was invalid because Nino had resigned as trustee years earlier and had no authority to assign the Policy to Mano. (*Id.*, ¶¶ 59-60).

[2] After this period, the insurer cannot deny the validity of life insurance claims. (Ins Law § 3203 [a] [3]; *see* Policy at § 3 [incontestability]).

The following month, MetLife placed a legal restraint, or "hold," on the Policy, blocking changes until the dispute was resolved. (NYSCEF 524, MetLife email chain discussing hold April 3, 2012; NYSCEF 532, MetLife alert May 2, 2012). On March 8, 2012, Mano sold the Policy to Jaffa Group LLC (Jaffa), with Molina signing for Mano, for $50,000 to be paid upon MetLife's endorsement of the change of owner and beneficiary and $2 million of the Policy proceeds upon Molina's death. (NYSCEF 617, Contract of Sale). In March 2012, when Mano attempted to assign ownership and change the beneficiary of the Policy to Jaffa, MetLife declined.[3] (NYSCEF 688, Life Insurance Change of Beneficiary). It did not process the assignment form or change the beneficiary. (NYSCEF 545, May 17, 2013 Letter).

In April 2012, Mano demanded an explanation for MetLife's failure to respond to Mano's inquiry. (NYSCEF 526; 530, MetLife emails). In a May 18, 2012 letter, Mano repeated its objection and demanded confirmation that MetLife "will comply with the terms of the contract." (NYSCEF 534, Letter from Gary Sickler, Mano's Corporate Secretary). Mano and Molina also filed a complaint with the New York Department of Finance, but it took no action. (*See* NYSCEF 528, DFS letter to MetLife April 23, 2012).

The last premium payment was made in December 2011. (NYSCEF 554, Premium Payment History).[4] On March 26, 2012, MetLife demanded the premium payment by June 3, 2012. (NYSCEF 585, Notice of Overdue Payment). The premium was not paid. (NYSCEF 554). MetLife's next notice, dated June 25, 2012, demanded

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[3] Jaffa

[4] Endeavor Realty, a company controlled by broker Zormati, made the last payment. (NYSCEF 548, Solomon-Stowe Affidavit ¶34; NYSCEF 554). On October 13, 2011, DB made the prior premium payment. (*Id.*).

premium payment by September 2, 2012 or the Policy would lapse. (NYSCEF 591). No payment was received. (NYSCEF 554). The Policy terminated on September 2, 2012 when the cash value was insufficient to cover the monthly deductions. (NYSCEF 548, Solomon-Stowe aff at ¶56). MetLife's September 4, 2012 notice informed Mano that the Policy had terminated, but the Policy could be reinstated with a payment of the outstanding premium of $322,921.34. (NYSCEF 592).

On April 9, 2013 the federal action settled with Mano retaining ownership of the Policy. (NYSCEF 657, Settlement Agreement).

In its May 17, 2013 letter to MetLife, Mano challenged MetLife's failure to process the form as unlawful and in bad faith. (NYSCEF 545, Letter). According to Mano, MetLife's failure to approve the transfer to Jaffa, which was to take over the premium payments, caused the lapse of the Policy. (*Id.*). Mano demanded the return of the $657,430.86 in premiums paid to MetLife in prior years, along with interest. (*Id.*).

On July 16, 2013, Mano commenced this action against MetLife. Mano alleges that MetLife's hold on the Policy was improper as was MetLife's failure to transfer the Policy to Jaffa. (NYSCEF 1, Complaint at ¶¶ 11-12). Mano claims that it had no duty to pay premiums during this period and MetLife acted in bad faith when it demanded payment. (*Id.*, ¶ 13). Mano asserts that it could not pay the premium because of MetLife's wrongful hold on the Policy. (*Id.*, ¶ 14). It claims that it has sustained damages of at least $657,431 – the premiums paid for two years. (*Id.*, ¶ 15). Mano originally asserted four causes of action: (1) breach of contract; (2) tortious interference with business relationship; (3) breach of covenant of good faith and fair dealing; and (4) promissory estoppel. (*Id.*, ¶¶ 17-58).

By decision dated November 7, 2014, Justice Oing granted MetLife's motion for summary judgment dismissing the second and fourth causes of action. (NYSCEF 602, So Ordered Transcript and Decision/Order). Although Justice Oing determined that the policy-holder remained obligated to pay the premiums during the hold period, he found that there were questions of fact as to whether MetLife breached the agreement by electing to place the hold on the policy and deny the transfer. (*Id.*, tr. 39:17-40:6; 41:21-24). Justice Oing dismissed these two causes of action based on their legal viability and did not evaluate the factual disputes relating to the remaining claims.

On appeal, the Appellate Division, First Department agreed that an issue of fact existed as to whether MetLife's refusal to process the assignment to Jaffa was appropriate. (*Mano Enters., Inc. v Metropolitan Life Ins. Co.*, 143 AD3d 597 [1st Dept 2016] [*Mano I*]). However, the Court modified by dismissing the third cause of action, breach of the covenant of good faith and fair dealing. (*Id.*). The first cause of action, breach of contract, is the sole remaining claim in this 2013 action.

On January 5, 2018, this court denied Mano's motion for summary judgment (motion sequence number 008) on the remaining claim. (NYSCEF 445, Decision [Mano 008], *affd Mano Enters., Inc. v Metropolitan Life Ins. Co,* 169 AD3d 551 [1st Dept 2019]). This court found that the motion was premature in light of outstanding discovery. Relying on the First Department's conclusions in *Mano I*, this court found that an issue of fact existed as to whether MetLife breached a contractual obligation when it refused to transfer the Policy, or change the beneficiary, to Jaffa. The determination that an issue existed as to the validity of the 2010 assignment stemmed from DB's documents which showed that Nino had resigned as trustee before he

authorized the transfer of the Policy from the Trust to Mano, though MetLife had notice of Nino's resignation since October 25, 2010. (*See* NYSCEF 312, D'Arcambal aff at ¶¶ 80-81; NYSCEF 560, Miller Letter to MetLife). Likewise, Mano's tardy production, on January 18, 2018, of the Jaffa purchase contract for the Policy (Jaffa Agreement) precluded meaningful consideration of Mano's motion for summary judgment. (*See* NYSCEF 593, Gokhale aff at ¶¶ 19-47; NYSCEF 617, Jaffa Agreement).

Since the issuance of the January 2018 Decision and Order, discovery has concluded. On November 2, 2018, MetLife filed the Note of Issue. (NYSCEF 513). A few days later, MetLife initiated this motion. MetLife argues that Mano lacks standing because the Policy was never properly transferred to Mano, that the legal hold was reasonable, that the evidence conclusively shows MetLife's refusal to allow the transfer to Jaffa was reasonable, that there are no ascertainable damages caused by MetLife, and that the Policy's lapse for nonpayment precludes breach of contract.

Mano's cross motion for a stay pending appeal of this court's prior decision is moot and was withdrawn at argument. (NYSCEF 807, tr. at 3:13-19). Likewise, that part of the cross motion seeking to seal certain documents is denied without prejudice for failing to follow the court's procedure set forth in the Part 48 rules.

Discussion

As a threshold matter, Mano objects to MetLife's motion for summary judgment because MetLife previously filed a motion for summary judgment in May 2014 (motion sequence number 001). Under "the 'single motion rule' of CPLR 3211 (e)", a party cannot make successive motions for summary judgment if it already has "had the full opportunity to raise [its] current . . . arguments." (*Landes v Provident Realty Partners II,*

L.P., 137 AD3d 694, 694 [1st Dept 2016]). The rule does not apply if the successive motion is based on evidence the movant acquired through discovery (*e.g., Elihu v Nicoleau*, 173 AD3d 578, 578 [1st Dept 2019]), or if the original motion was not based on, or was not decided, on the merits. (*E.g., Rivera v Board of Educ. of City of N.Y.*, 82 AD3d 614, 614 [1st Dept 2011]).

Here, Mano's tardy production of the Jaffa Agreement precludes application of the single motion rule. It was not until January 18, 2018 that Mano produced the Jaffa Agreement wherein Mano warranted that it would deliver the Policy to Jaffa "free and clear" of encumbrances, and that the failure to do so would void the parties' agreement. (NYSCEF 617, Jaffa Agreement at ¶¶ 3, 3 [f]) and that no pending court actions affected the Policy's validity. (*Id.* at ¶ 4 [h]; NYSCEF 593, Gokhale Aff in Support at ¶¶ 47-48). MetLife insists that the Jaffa Agreement establishes that MetLife did not cause Mano's damages. This document, which MetLife diligently sought for years, justifies a new motion.[5] Indeed, the decisions in motion sequence numbers 001 and 008, both of which noted that discovery was not complete, anticipated that MetLife would raise the issues it currently presents, even though MetLife raised them previously. (*See Maggio v 24 West 57 APF, LLC*, 134 AD3d 621, 625-626 [1st Dept 2015]).

As to the merits, a motion for summary judgment will be granted where there are no triable issues of material fact. (*See Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25 [2019]). The movant must provide sufficient evidence to demonstrate that there are no material issues of fact, and that the party is entitled to judgment as a matter

[5] Mano also failed to timely produce the May 17, 2012 assignment agreement between Mano and Jaffa until June 2018. (NYSCEF 593, Gokhale aff at ¶ 58).

of law. (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1984]; *see Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once the movant has established its *prima facie* right to summary judgment, the burden shifts to the opposing party to produce admissible evidentiary proof "sufficient to require a trial of material questions of fact." (*Prevost v One City Block LLC*, 155 AD3d 531, 533 [1st Dept 2017] [internal quotation marks and citation omitted]). The opposing party "must assemble and lay bare its affirmative proof to demonstrate that genuine triable issues of fact exist." (*Kornfeld v NRX Tech.*, 93 AD2d 772, 773 [1st Dept 1983], *affd*, 62 NY2d 686 [1984]). The questions of fact raised by the opposing party must be material and must not be predicated on "mere conclusions, expressions of hope[,] or unsubstantiated allegations or assertions." (*Lau v Margaret E. Pescatore Parking, Inc.*, 30 NY3d 1025, 1027 [2017], quoting *Zuckerman v City of New York*, 49 NY2d 557, 572 [1980]).

Preliminarily, the court rejects Mano's argument that all of MetLife's defenses are barred by the incontestability provision. The purpose of the incontestability clause is to prevent the insurer from denying coverage to the insured after the Policy has been in force for two years. (*New England Mut. Life Ins. Co. v Caruso*, 73 NY2d 74, 78 [1989]). In accordance with Insurance Law § 3203 (a) (3), the Policy states that MetLife "cannot contest the initial coverage after this Policy has been in force during the lifetime of the insured for two years from its Issue Date." (NYSCEF 517, p.11). "An incontestability clause renders void any defense that the life insurance policy was invalid at its inception." (*Ganelina v Pub. Adm'r, N.Y. County*, 39 Misc 3d 952, 956 [Sup Ct, NY County 2013] [citation omitted]). However, the statute does not bar an insurer from asserting defenses or challenging the ownership of the Policy after the two years have

expired, based on acts that occurred after the expiration of the contestability period, as Mano seems to assert. Therefore, the incontestability clause is irrelevant in this matter.

Standing

MetLife attacks Mano's standing in this action arguing that Mano has no contract with MetLife.[6] MetLife contends that the transfer from the Trust to Mano was invalid because Nino, who purportedly effectuated the transfer of the Policy in 2010, had relinquished the trusteeship prior to the transfer.

Mano counters that Nino's resignation is invalid because Nino failed to follow the Policy's requirements; Nino continued to operate as trustee after executing the resignation; Molina and MetLife treated Nino as trustee; and MetLife wrongly introduced this argument for the first time several years and multiple motions after the commencement of litigation.

MetLife insists the resignation of Nino was valid as early as May 7, 2008 when he signed the resignation and thus he lacked authority to transfer to Mano in August 2010. It relies on Miller's communications to MetLife about the change in trusteeship and the supporting documents. Also, in his deposition testimony in the DB lawsuit, Nino repeatedly states that he was not the trustee after his resignation, as the Zormati had wanted him out of the position. (*See, e.g.*, NYSCEF Doc. No. 637, Molina Dep Tr at pages 20, 23, 25, 31, 37, 41).

MetLife confirmed the transfer to Mano. Accordingly, Justice Oing held that Mano was the owner of the Policy as of August 23, 2010 and that is the law of this case.

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[6] Mano objects that this is a new argument that MetLife failed to raise until August 2017. Mano fails to offer any legal support for its position. As DB raised the identical argument in the 2010 action, Mano cannot be surprised by MetLife's adoption of it.

(NYSCEF 67, Oing Tr. 19:13-20:19). MetLife cannot rely on the contradictory depositions of Molina and Nino to establish otherwise.

Breach of Contract

"The elements of a cause of action to recover damages for breach of contract are (1) the existence of a contact, (2) the plaintiff's performance under the contract, (3) the defendant's breach of the contract, and (4) resulting damages." (*Palmetto Partners, L.P. v AJW Qualified Partners, LLC*, 83 AD3d 804, 806 [2d Dept 2011] [citation omitted]).

MetLife argues that, since the Policy lapsed on September 2, 2012 due to nonpayment of premiums, Mano failed to perform, and thus, cannot prove breach of contract as a matter of law. (*Maharan v Berkshire Life Ins. Co.*, 110 F Supp 2d 217 [WDNY 2000]). Premiums are due even if an insurer makes a mistake. (*Gerold v Companion Life Ins. Co.*, 31 AD3d 378 [2d Dept 2006]). The only event that suspends the obligation to pay premiums is the death of the insured – Molina was alive in 2014 and the court has not been informed otherwise. (See NYSCEF 67, Oing Transcript Nov. 6, 2014, tr. 25:6). Thus, MetLife has met its burden.

Mano insists that MetLife breached first because MetLife's January 2012 illegal hold thwarted Mano's payment of the premium which was contingent on the assignment to Jaffa in March 2012, long before the policy lapsed. While the last premium payment was in December 2011, the policy did not lapse until September 2012.

Alternatively, Mano argues that MetLife breached the Policy because it had no discretion to thwart the transfer to Jaffa because Mano used MetLife's notification form. According to Mano, MetLife could refuse to act on a transfer only if it was not "in written

form satisfactory to us." (NYSCEF 517, Policy at ¶ 2). However, the next sentence reads "If acceptable to us the change [in owner or beneficiary] will take effect . . ." (*Id.*). While the court rejects Mano's argument that MetLife's role was ministerial, Mano's use of MetLife's form is a consideration for the trier of fact as to whether MetLife's hold was "satisfactory."

MetLife's argument that the January 2012 hold was not a breach because it was placed on the Policy in accordance with the Policy's terms and industry practices creates more issues of fact. It is undisputed that there is no provision in the Policy that authorizes a legal hold. Rather, the Policy provides that a change in ownership must be in "satisfactory" written form acceptable to MetLife. Accordingly, the issue is whether MetLife acted reasonably when it placed the legal hold on the policy and when it refused to approve the transfer of the policy and change in beneficiary, effectively rejecting Mano's assignment to Jaffa as not satisfactory. "There is no inflexible test of reasonableness," which often is "heavily dependent on the factual context in which [these questions] arise." (*Donald Braasch Constr., Inc. v State Ins. Fund*, 98 AD3d 1302, 1304 [4th Dept 2012] [issue of fact as to insured's good faith in submitting claim]; *see also Continental Cas. Co. v Stradford*, 11 NY3d 443, 450-51 [2008] [reasonableness of time frame within which insurer completed its evaluation precluded summary judgment]). Further, the court has held on two prior summary judgment motions at both at the trial level and on appeal, that the issue of the reasonableness of MetLife's conduct was not resolvable on summary judgment. (NYSCEF 807, tr. at 7:20-26; tr at 8:2-5).

Generally, while the court's conclusion is subject to change after discovery closes, there is nothing in MetLife's current motion which alters this court's conclusion that issues of fact preclude summary judgment, as has been held three times by this court and twice on appeal. The affidavit of Michael Eng, a MetLife vice president and associate general counsel at the relevant period, details the steps MetLife took before it placed a hold on the policy and refused to approve the transfer to Jaffa. (NYSCEF 516). However, the Eng affidavit cannot establish reasonableness as a matter of law. That the State Finance Department did not object to MetLife's hold, after Mano's complaint, is one factor to consider, but it is not conclusive.

Damages

MetLife challenges whether Mano can show damages in light of Mano's agreement with Jaffa. Mano asserts damages arising from the premiums paid and from the amount that Jaffa would have paid Mano for assignment of the Policy. Under the Jaffa Agreement, Mano was to deliver the policy to Jaffa "free and clear" of encumbrances, and the failure to do so would void the parties' agreement. (NYSCEF 617, Jaffa Agreement at ¶ 3 [f]). Mano represented to Jaffa that there were no pending court actions affected the policy's validity when the DB action was pending. (*Id.,* ¶ 4 [h]). Thus, MetLife argues, the pendency of the DB Action would have voided the transfer even if MetLife had approved it, so the asserted damages are not attributable to MetLife.

The court concludes that issues of fact preclude summary judgement as to damages as well. Since the DB Action settled on April 9, 2013, the court cannot conclude as a matter of law whether the Jaffa Agreement void or not. There is no

evidence before the court that a closing date was scheduled with Jaffa prior to April 9, 2013 and that Mano failed to close. Moreover, the First Department stated that MetLife's refusal to recognize Jaffa "divest[ed] plaintiff of valuable ownership rights." (*Mano I*, 143 AD3d at 597).

Public Policy

Finally, MetLife argues that public policy prohibits this case. The transaction here constitutes a STOLI transaction which was permissible in New York in March 2008 when the Policy was issued. (*Kramer v Phoenix Life Ins. Co.*, 15 NY3d 539 [2010]). In 2009, however, the New York legislature revised the state's insurance law to prohibit STOLI transactions, but it did not take effect until May 18, 2010. (Insurance Law § 7815). While STOLIs were permissible at the time of the Policy, MetLife asserts that the court should prohibit Mano from benefiting from the "fraudulent scheme" as a matter of policy. However, sometimes, life insurance policies are used as collateral for loans, granting the financing entity a security interest, through a collateral assignment of the policy. (*Ohio Nat. Life Assur. Corp. v Davis*, 803 F3d 904, 908 [7th Cir. 2015]). In addition, insureds who no longer can afford to pay premiums or need cash, perhaps because of a catastrophic illness, may wish to sell their policies on the secondary market. (*Id.*). Indeed, Judge Posner noted that:

> "Despite the fact that purchasers of a life insurance policy as an investment also have a financial stake in the insured's early death (the stake is at its maximum if the insured dies before the investor pays his first premium), the law allows an investor to purchase the beneficial interest in an existing policy on the life of the insured. Hawley v. Aetna Life Ins. Co., 291 Ill. 28, 125 N.E. 707, 708–09 (1919). There are social benefits, thought to exceed the social costs discussed above, to these transactions. The owner of the policy may have a desperate need for money; the policy may be his only substantial asset; and if he's elderly or in very poor health the present value of that asset may be substantial and he may have

a pressing interest in being able to cash it in by selling the beneficial interest)." (*Id.*).

Although, MetLife insists that none of those acceptable practices – obtaining funding of the premiums by the insured to keep the policy in force, granting a financing entity a security interest in the policy, or selling the policy to obtain cash for personal or medical needs – is present here, this public policy consideration is relevant to reasonableness, which is an issue for the trier of fact, but it is not conclusive.

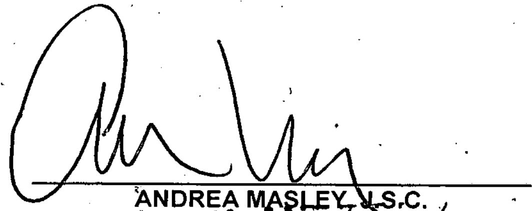
The court has considered all arguments even if not addressed here and finds that they would not yield a different result

Accordingly, it is

ORDERED that the motion for summary judgment is denied; and it is further

ORDERED that the cross motion is permitted to be withdrawn as to the stay and denied without prejudice as to sealing; and it is further

ORDERED, that the parties shall file motions in limine within 30 days of the date of this decision. Otherwise, they are waived. The court shall set an argument date for motions *in limine* if filed. Otherwise, the parties shall contact the Part Clerk within 35 days to select trial dates. The parties shall read the court's trial rules and comply therewith.



9/14/2019
DATE

ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION	
	[ ] GRANTED	[X] DENIED	[ ] GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE