

**Loman v Lamon**

2021 NY Slip Op 32290(U)

November 1, 2021

Supreme Court, New York County

Docket Number: Index No. 652286/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE LOVE PART 63M**

*Justice*

-----X

JOYCE LOMAN,

Plaintiff,

- v -

DEBORAH LAMON, DEBRA LAMON, LAMON INSURANCE  
AGENCY

Defendants.

-----X

**INDEX NO.** 652286/2021

**MOTION DATE** 9/16/2021

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on defendants' motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action. A summons and complaint were filed on April 7, 2021. The summons and complaint were amended on or about July 14, 2021. This motion to dismiss was filed on August 11, 2021, and defendant's make this pre-answer motion to dismiss.

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining “only whether the facts as alleged fit within any cognizable legal theory” (see *D.K. Prop., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004]).

The amended complaint alleges, “the Lamon Insurance Agency LLC sold an irrevocable insurance trust to one Howard Paley, which named the Plaintiff, Joyce Loman, as a beneficiary.

There was one trust for the Plaintiff, Joyce Loman, in the amount of \$100,000 and another trust for the Plaintiff, Joyce Loman, in the amount of \$500,000. The Plaintiff, Joyce Loman, was notified of these bequests by First Allmerica Insurance Company which the Lamon Insurance Agency represented. In 2008, the Trustees for the irrevocable trust were replaced and a new schedule of payments to beneficiaries was revised omitting the \$500,000 bequest for the Plaintiff, Joyce Loman.” Plaintiff alleges causes of action for i) breach of fiduciary duty, and ii) breach of contract (see NYSCEF Doc. No. 19 Pars. 4, 7, 10, 15).

Defendant submits the affidavit of Debra Lamon, owner and President of the Lamon Insurance Agency,

“In or about 2017, I became the owner and President of The Agency after the passing of my father, who previously owned The Agency. Mr. Paley was a client of The Agency. The Agency procured various types of insurance for Mr. Paley at his request. The Agency did not sell Mr. Paley an irrevocable life insurance trust nor was The Agency in the business of ‘selling trust;’ however, to my knowledge, some of the life insurance policies obtained by The Agency for Mr. Paley were placed into a trust. In or about 1994, Mr. Paley requested that The Agency procure a life insurance policy on his behalf naming the plaintiff as the owner and beneficiary of that policy. Further, at times, Mr. Paley would request The Agency produce Schedules of Assets, as evidenced in Exhibits A and B of plaintiff’s Amended Complaint, attached herein as Exhibit B, regarding the life insurance policies The Agency had procured for Mr. Paley. These were internal documents created for the sole purpose of Mr. Paley’s information and education. Besides for obtaining the life insurance policy for Mr. Paley in approximately 1994 with plaintiff as the owner and beneficiary, The Agency did not provide the plaintiff with any advice or consultation regarding her policy or coverage. The Agency did not receive any compensation for services rendered to plaintiff absent the premiums on the procured policy. Plaintiff did not make any other specific requests for coverage from The Agency” (see NYSCEF Doc. No. 17 Pars. 5 – 9).

Insurance agents have a common-law duty to obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so; however, they have no continuing duty to advise, guide, or direct a client to obtain additional coverage. Absent a special relationship, a claim for breach of fiduciary duty does not lie. (see *Bruckmann, Rosser, Sherill & Co., L.P. v. Marsha USA Inc.*, 65 A.D.3d 865, 867 [1st Dept. 2009]).

A special relationship which creates an additional duty of advisement may arise when 1) the agent receives compensation for consultation apart from the payment of the premiums; 2) there was some interaction regarding a question of coverage, with the insured relying on the expertise of the agent; or 3) there is a course of dealing over an extended period of time which would have put objectively reasonable insurance agents on notice that their advice was being sought and specially relied on (see *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728 [2014]).

An affirmation in opposition states, “[t]he Defendants were directly supervised by Deborah Lamon who directly altered the trust bequest of \$500,000.00 which had been intended to the Plaintiff, Joyce Loman. Protocols for revisions of irrevocable trust were not followed” (see NYSCEF Doc. No. 23 P. 3 – Argument No. 3).

Plaintiff submits the alleged life insurance policy for \$500,000 (see NYSCEF Doc. No. 3 P. 7 – Exhibit A), the life insurance policy for \$100,000 (see NYSCEF Doc. No. 3 P. 9 – Exhibit B), and a letter from First Allmerica Insurance Company (see NYSCEF Doc. No. 3 – Exhibit C).

Defendant’s reply states, “[p]laintiff does not allege any facts that would give rise to a special relationship. Specifically, plaintiff does not allege that the Defendants received additional compensation for consultation apart from the payment of premiums nor does plaintiff allege that there was an interaction with the Defendants regarding a question of coverage or an established course of dealing over an extended period of time. Further, plaintiff does not allege

that the Defendants had any involvement in transferring, omitting or otherwise changing the policy/policies at issue. Even if the Defendants became aware that the policy/policies were changed, under New York law, the Defendants did not have a continuing duty to advise plaintiff to obtain additional coverage” (see NYSCEF Doc. No. 21 P. 4).

Plaintiff does not provide an affidavit to show the relationship between the parties and any possibility of a special relationship.

To establish a cause of action based on breach of contract, a plaintiff must show, 1) the existence of a valid contract between the plaintiff and the other contracting party; 2) defendant’s knowledge of the contract; 3) the defendant’s intentional and improper procurement of the breach of that contract; and 4) damages.

Defendants’ reply states, “[p]laintiff’s only contention against the Defendants under her breach of contract cause of action is that Ms. Lamon represented a typo was made in a schedule of assets sent to Mr. Paley which caused the contractual agreement between Mr. Paley and plaintiff to be declared null and void. Plaintiff does not assert that the Defendants had any knowledge of her alleged contract with Mr. Paley nor does she provide written proof of said contract. As the Defendants were not party to the contract and plaintiff does not allege the Defendants had knowledge of the contract, the Defendants could not have breached any such contract” (see NYSCEF Doc. No. 21 P. 6).

A review of the exhibits submitted fail to show the existence of any valid contract for the life insurance policy for \$500,000 or \$100,000 Plaintiff does not fulfill the elements for i) breach of fiduciary duty, nor ii) breach of contract.

ORDERED that the motion of defendants, DEBORAH LAMON, DEBRA LAMON, LAMON INSURANCE AGENCY, to dismiss the complaint herein is GRANTED and the

complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

11/1/2021  
DATE

  
LAURENCE LOVE, 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