

**Lincoln Life & Annuity Co. of N.Y. v Wittmeyer**

2022 NY Slip Op 34462(U)

January 12, 2022

Supreme Court, Erie County

Docket Number: Index No. 802524/2020

Judge: Timothy J. Walker

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STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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LINCOLN LIFE & ANNUITY COMPANY  
OF NEW YORK,

Plaintiff,

v.

CAMI WITTMAYER, CATHY DECKER,  
MARIA R. BAUER, LAWRENCE J.  
ADYMY, JR., LINCOLN FINANCIAL,  
ADVISORS CORPORATION, A.J.S.C.  
LEE V. STADLER, and  
GEORGE W. BURNETT, INC.,

Defendants.

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**8<sup>th</sup> JUDICIAL DISTRICT  
COMMERCIAL DIVISION  
DECISION AND ORDER**  
Index No. 802524/2020

BEFORE: **HON. TIMOTHY J. WALKER, Presiding Justice**

APPEARANCES: **GOLDBERG SEGALLA LLP**  
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and Interpleader Defendants, Lincoln Financial Advisors Corporation,  
and Lee V. Stadler

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Attorneys for Defendants, Maria R. Bauer and Lawrence J. Adymy, Jr.

**WALKER, J.**

Plaintiff, Lincoln Life & Annuity Company of New York (“Lincoln”), has applied for an

order (Motion 7; Doc. 170) granting summary judgment and dismissing the counterclaims asserted by Defendants, Maria R. Bauer and Lawrence J. Adymy, Jr.

### BACKGROUND

The following facts are undisputed:

1. In 2004, Lincoln issued a life insurance policy (number 7181222; “Policy”) providing life insurance on the life of John Bauer (“Decedent”) (Doc. 182, ¶1; Doc. 185, ¶1).
2. The amount of the death benefit due under the Policy is \$350,000, plus any applicable interest (“Policy Benefit”) (Doc. 182, ¶2; Doc. 185, ¶2).
3. In the application for the Policy, Decedent named his daughters, Defendants Cami Wittmeyer and Cathy Decker, as primary beneficiaries in equal shares. (Doc. 182, ¶3; Doc. 185, ¶3).
4. On July 27, 2010, Decedent submitted a change of beneficiary form (“2010 Designation”) (Doc. 182, ¶4; Doc. 185, ¶4).
5. The 2010 Designation identifies Ms. Bauer, Decedent’s spouse, as a 22% primary beneficiary, Ms. Wittmeyer as a 39% primary beneficiary, and Ms. Decker as a 39% primary beneficiary of the Policy Benefit (Doc. 182, ¶5; Doc. 185, ¶5).
6. Ms. Bauer is listed as the Decedent’s attorney-in-fact in two power of attorney forms, one dated January 14, 2009 (“2009 Power of Attorney”) and a second dated March 27, 2013 (“2013 Power of Attorney”) (Doc. 182, ¶7; Doc. 185, ¶7).
7. On August 25, 2019, Decedent died (Doc. 182, ¶10; Doc. 185, ¶10).
8. On September 10, 2019, both Ms. Bauer and her son, Mr. Adymy, submitted

claims for the Policy Benefit (Doc. 182, ¶11; Doc. 185, ¶11).

9. On October 11, 2019, Ms. Wittmeyer submitted a claim for the Policy Benefit (Doc. 182, ¶12; Doc. 185, ¶12).
10. On the next day, October 12, 2019, Ms. Decker submitted a claim for the Policy Benefit (Doc. 182, ¶13; Doc. 185, ¶13).
14. Based on these competing claims, Lincoln filed a complaint for interpleader on February 19, 2020, and an amended complaint on March 10, 2020 (Doc. 182, ¶14; Doc. 185, ¶14).
15. In response, Ms. Bauer and Mr. Adymy asserted several counterclaims and cross-claims (Doc. 42; Doc. 182, ¶15; Doc. 185, ¶15).

The facts and circumstances surrounding a July 10, 2019 change of beneficiary are disputed. Lincoln contends, in its Statement of Undisputed Facts, that on said date, Ms. Bauer, in her capacity as Decedent's attorney-in-fact, "submitted a change of beneficiary form to remove Ms. Wittmeyer and Ms. Decker as beneficiaries of the policy and to designate herself and her son, Mr. Adymy, each as 50% primary beneficiaries" ("2019 Designation") (Doc. 182, ¶6).

Ms. Bauer and Mr. Adymy characterize this statement as "misleading" (Doc. 185, ¶6), and their Response to Lincoln's Statement of Facts adds additional details regarding the 2019 Designation, such as, *inter alia*, those regarding interactions between Defendant, Lee V. Stadler (Lincoln's representative), and Ms. Bauer.

According to Ms. Bauer and Mr. Adymy,

On July 9, 2019, at approximately 1:36 p.m., Lee Stadler sent an email to Maria Bauer advising her that he had contacted his "home office," which the defendants contend was a reference to Lincoln,

and that Maria could change the beneficiary form by submitting a power of attorney form, a completed change beneficiary form, and an affidavit that the power of attorney was still current, if it was older than three years. In other words, Lincoln's and Stadler's response to Maria's suggestion that John Bauer could sign the form was that it would not be necessary and that she could use her power of attorney to effectuate the change in beneficiaries (*Id.*).

According to Ms. Bauer and Mr. Adymy, on June 27, 2019, Mr. Stadler advised Ms. Bauer via a text message that the Policy had lapsed, and in a July 9, 2019 electronic mail, he recommended to Ms. Bauer that she pay \$13,498.56 to bring the Policy out of default and extend it to September 16, 2019 (*Id.*, at ¶9).

There are additional facts posited by Ms. Bauer and Mr. Adymy in support of their counterclaims against Lincoln, which are grounded in Ms. Bauer's reliance on advice and recommendations made by Mr. Stadler (Doc. 185; ¶¶6, 9, 17; Doc. 186, pp. 6-10).

On April 6, 2021, this court voided the 2019 Designation and granted judgment in favor of Ms. Wittmeyer, Ms. Decker, and Defendant, George W. Burnett, Inc. (Doc. 165).

Ms. Bauer and Mr. Adymy contend that they relied on Lincoln's instructions, by and through its representative, Mr. Stadler; that Mr. Stadler counseled Maria Bauer and Decedent about how to bring the Policy out of lapse and change the beneficiaries to the policy; that Mr. Stadler declined Ms. Bauer's suggestion that her late husband sign the change of beneficiaries form and, instead, informed her that she could change the beneficiaries using her power of attorney; that she tendered the premium payments required and requested by Lincoln to bring the Policy out of lapsed status; that Mr. Stadler prepared Ms. Bauer's affidavit for submission to Lincoln and presented it to her for her signature; that Ms. Bauer provided Mr. Stadler with both the 2009 Power of Attorney and 2013 Power of Attorney and Mr. Stadler

decided which one to submit with Ms. Bauer's affidavit; and that the premium payments and the power of attorney form had been accepted, and the change of beneficiaries effected (Doc. 186, pp. 10-11). Based on these allegations, Ms. Bauer and Mr. Adymy ultimately contend that the actions and omissions of Lincoln and its representative, Mr. Stadler, establish that Lincoln is not a mere stakeholder, but is subject to independent liability to them (*Id.*, at p. 11).

The difficulty with Ms. Bauer's and Mr. Adymy's position is that their allegations, even if true, do not constitute a valid counterclaim against Lincoln for negligence and equitable estoppel.

It is well settled that Ms. Bauer, as an attorney-in-fact through the 2009 Power of Attorney and the 2013 Power of Attorney, is precluded from relying on any statements (or mis-statements) by Mr. Stadler that were contrary to the terms of the power of attorney (*William Penn Life Ins. Co. of NY v. Viscuso*, 663 FSupp2d 353, 358 [SDNY 2009] [counterclaims similar to those asserted in the instant action dismissed despite that representative of plaintiff life insurance company erroneously represented to plaintiff that the change of beneficiary form was effective to change the beneficiaries to his wife and son, because defendants' "reliance . . . on any statement by William Penn that was contrary to the terms of both the policy and the power of attorney" ] [applying New York law]).

There are circumstances where an insured may justifiably rely on representations from an insurance agent, such as "with respect to insurance matters" that are within their "expertise" (*American Building Supply Corp. v. Petrocelli Group, Inc.*, 19 NY3d 730, 737 [2012]), but not **legal matters**, such as an opinion about an attorney-in-fact's legal authority to act under a power-of-attorney (*see Viscuso, supra*).

In addition, the counterclaims for specific performance and breach of contract also fail, as

a matter of law, because they are duplicative of Lincoln's interpleader claim, which has already been decided against Ms. Bauer and Mr. Adymy (Doc. 165).

Finally, Lincoln's application is not premature, because no discovery is required. In light of the application of *Viscuso* to this matter, there is no "evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the motion [are] exclusively within the knowledge and control of [Lincoln]" (*Kimyagarov v. Nixon Taxi Corp.*, 45 AD3d 736 [2d Dept 2007]). "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion" (*Id.*, at 737) (internal citations omitted).

In light of the foregoing, it is hereby

**ORDERED**, that Lincoln's application for summary judgment is granted, and Ms. Bauer and Mr. Adymy's counterclaims against Lincoln are hereby dismissed.

This constitutes the Decision and Order of this Court. Submission of an order by the parties is not necessary. The delivery of a copy of this Decision and Order by this Court shall not constitute notice of entry.

Dated: January 12, 2022  
Buffalo, New York



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**HON. TIMOTHY J. WALKER, J.C.C.**  
Acting Supreme Court Justice  
Presiding Justice, Commercial Division  
8<sup>th</sup> Judicial District