

Mundell v Natsios-Mundell

2025 NY Slip Op 35042(U)

December 31, 2025

Supreme Court, New York County

Docket Number: Index No. 152401/2024

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

-----X

WILLIAM MUNDELL, ROBYN MUNDELL, ALEXANDER
MUNDELL, LILY MUNDELL

Plaintiffs,

- v -

VALERIE NATSIOS-MUNDELL,

Defendant.

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INDEX NO. 152401/2024

MOTION DATE 02/24/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 30, 31, 32, 33, 34

were read on this motion to/for DISMISS.

Defendant moves under CPLR 3211(a)(1) and (a)(7) to dismiss the first amended complaint filed by plaintiffs. Plaintiffs oppose, and cross-move under CPLR 3025(b) for leave to file a proposed second amended complaint adding a constructive-trust claim and refining their existing causes of action for conversion and fraud.

I. BACKGROUND

This action arises from a dispute among certain heirs of deceased Dr. Robert Mundell, a nonparty in this action, regarding the distribution of his retirement accounts governed by the Employee Retirement Income Security Act of 1974 (ERISA). Plaintiffs are Dr. Mundell’s children from his first marriage in 1968. After Dr. Mundell divorced his first wife, plaintiffs’ mother, he and defendant married in 1998 and remained married until his death in April 2021 (NYSCEF 32).

During his career as an economist, Dr. Mundell was affiliated with Columbia University, the University of Chicago, and Johns Hopkins University, each of which sponsored ERISA-

qualified retirement plans administered by the Teachers Insurance Annuity Associates and College Retirement Equity Fund (TIAA-CREF) (NYSCEF 13).

In their first amended complaint, plaintiffs allege that in September 1964, Dr. Mundell had designated his first wife as the primary beneficiary of his retirement accounts, and their three children, the plaintiffs herein, as the successor beneficiaries. They contend, upon information and belief, that between September 1964 and January 2014, they remained the proper beneficiaries (NYSCEF 13).

In October 2013, Dr. Mundell suffered a stroke that left him unable to communicate or manage his affairs (*id.*). Plaintiffs pleaded that upon information and belief, while Dr. Mundell was incapacitated, defendant accessed his TIAA-CREF account and, on January 4, 2014, submitted an electronic beneficiary designation naming herself as the 100% beneficiary of all retirement accounts (*id.*). Plaintiffs further allege that due to his poor health, Dr. Mundell could not have executed or authorized the change (*id.*).

In support of her motion to dismiss, defendant submits general governing plan documents for the Columbia University Voluntary Retirement Plan, the Columbia University Retirement Plan for Officers, the University of Chicago Contributory Retirement Plan, and the Johns Hopkins University 403(b) Plan (NYSCEF 14–17). Each plan is administered through TIAA-CREF and includes provisions designating a participant's spouse as the default beneficiary unless another beneficiary is named with the spouse's written, notarized consent (*id.*).

Plaintiffs allege they first learned in 2022 that defendant had changed the beneficiary designation in 2014 (NYSCEF 13). After defendant declined to remit their claimed share of the plan proceeds, plaintiffs commenced this action asserting claims for conversion, fraud, and related relief (*id.*).

Defendant affirms that in May 2015, she and Dr. Mundell visited TIAA-CREF's New York office to execute paperwork identifying her as his wife and sole beneficiary, and that TIAA-CREF thereafter issued written acknowledgment of that designation (NYSCEF 32). She further affirmed that she never consented to any beneficiary designations in favor of Dr. Mundell's prior spouse or descendants, and that the accounts were distributed to her after his death in accordance with ERISA and plan terms (*id.*).

In April 2024, defendant sought to remove this action to federal court, asserting that plaintiffs' claims were completely preempted by ERISA § 502(a) (29 USC § 1132[a]). In October 2024, the federal court held that the claims were not subject to complete preemption because they did not seek benefits under an ERISA plan, enforce plan rights, or challenge plan administration, but instead alleged independent post-distribution misconduct by defendant. The case was accordingly remanded to this Court for further proceedings (*Mundell v Natsios-Mundell*, 753 F Supp 3d 318 [SDNY 2024]).

Following remand, defendant moves to dismiss the first amended complaint filed by plaintiffs. Plaintiffs oppose, and cross-move for leave to file a proposed second amended complaint, adding a sixth cause of action for constructive trust, expanding the fraud allegations to include an alleged January 4, 2014 online beneficiary change while Dr. Mundell was incapacitated, clarifying that the alleged misconduct concerns post-distribution retention and use of plan proceeds, and pleading that plaintiffs first discovered the fraudulent 2014 change in 2022 (NYSCEF 22, 23).

II. DISCUSSION

A. Party Contentions

Defendant moves to dismiss the first amended complaint, arguing that plaintiffs' fraud and conversion claims are refuted by documentary evidence and legally deficient, as the plan documents show she is the sole lawful beneficiary of Dr. Mundell's retirement accounts as his surviving spouse, and that any prior beneficiary designations naming plaintiffs were automatically revoked upon their marriage more than twenty-five years ago. Defendant maintains that plaintiffs had no ownership or possessory interest in the plan assets and that the alleged misrepresentations were made to TIAA-CREF, not to plaintiffs. She further argues that all of plaintiffs' claims are preempted because they relate to the administration and distribution of benefits under ERISA-governed plans.

Plaintiffs oppose and seek leave to file a second amended complaint adding a constructive-trust claim and clarifying the fraud allegations. They argue that the plan documents do not conclusively disprove their claims because defendant's alleged fraud and misuse of the retirement accounts occurred both before and after the plan funds were distributed. Plaintiffs allege that defendant fraudulently accessed Dr. Mundell's TIAA-CREF account while he was incapacitated, changed the beneficiary designations to name herself as sole beneficiary without authorization, concealed that conduct, and later retained the distributed proceeds for her own use. They contend that the fraud claim is adequately pleaded, asserting that defendant's misrepresentations to TIAA-CREF may be imputed to them or, alternatively, that she committed fraud by concealing her access to and control over the accounts. Plaintiffs further assert that the claims are timely because the alleged fraud was discovered in 2022, and that ERISA preemption does not apply since they seek recovery from defendant personally, not from the plan. Finally,

they maintain that amendment should be permitted, as no prejudice will result, and the proposed pleading presents arguable state-law claims consistent with the federal court's remand reasoning.

In reply, defendant reiterates that the plan documents conclusively establish her status as the sole lawful beneficiary and that plaintiffs have no legal or equitable interest in the retirement accounts or their proceeds. She argues that plaintiffs' attempt to recast their claims as "post-distribution" misconduct does not avoid ERISA preemption, because the alleged wrongdoing still depends on the validity of plan beneficiary designations and distributions. Defendant further contends that the proposed constructive-trust claim is futile and unsupported by any factual basis showing fraud, wrongful conduct, or a confidential relationship. She maintains that plaintiffs' allegations remain speculative, devoid of reliance, and insufficient to support any amendment or relief under state law.

B. Analysis

Pursuant to CPLR § 3211(a)(1), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the grounds that ... a defense is founded upon documentary evidence[.]" Dismissal is "only warranted if documentary evidence conclusively resolves all factual issues to the asserted claims as a matter of law" (*Kolchins v Evolution Markets, Inc.*, 128 AD3d 47 [1st Dept 2015], *affd* 31 NY3d 100 [2018], *quoting Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]). "To qualify as "documentary," the paper's content must be essentially undeniable and . . ., assuming the verity of [the paper] and the validity of its execution, will itself support the ground on which the motion is based (*Amsterdam Hosp. Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 432 [1st Dept 2014] [internal citations omitted]).

In addition, pursuant to CPLR § 3211(a)(7), the court must dismiss any cause of action where “the [pleader] fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Holder v Jacob*, 231 AD3d 78, 86 [1st Dept 2024] [citation omitted]). Dismissal of a complaint pursuant to CPLR 3211(a)(7) requires that the pleading be afforded a liberal construction and that “[the court] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]; *Weil, Gotshal & Manges, LLP*, 10 AD3d at 271).

All of plaintiffs’ claims against defendant are premised on the assertion that plaintiffs, not defendant, are the proper beneficiaries and/or recipients of Dr. Mundell’s retirement accounts, and that defendant obtained, and refuses to return, funds that belong to plaintiffs.

However, the accounts, by their express terms, provide that upon a divorce and remarriage, the new spouse automatically becomes the beneficiary as a matter of law. For example, the Columbia University plan provides that “(u)pon the divorce of a Participant, a prior designation of a spouse as a Beneficiary shall be null and void . . .” (NYSCEF 14, p.2). The plans also provide that if the participant is married when he or she dies, the surviving spouse would have previously had to consent to the designation of any other beneficiary or beneficiaries, in writing and signed before a notary public.

Thus, for example, the Johns Hopkins plans provides as follows:

Married Participants – If you are married, your spouse at the time of your death will automatically be your beneficiary for 100% of your benefit. You are permitted to name someone other than your spouse as your beneficiary, but you must receive your spouse’s written consent witnessed by a notary public or a Plan representative in order to do so. You may not designate a non-spouse beneficiary for any portion of your benefit without your spouse’s consent. Additionally, if you designate a non-spouse beneficiary with valid

spousal consent and subsequently divorce and remarry, then you will need to prepare a new beneficiary designation form with your new spouse's written consent witnessed by a notary public or a Plan representative.

(NYSCEF 16, p. 10). Moreover, it provides that any "beneficiary designation you made will become invalid if you get married or remarried after such designation is made and before distribution of your benefit begins."

Defendant therefore demonstrates that when Dr. Mundell married her in 1998, any prior beneficiary designation involving plaintiffs and their mother became void, and absent defendant's written consent, no other beneficiaries could be designated. Defendant denies having given such consent, and absent from plaintiffs' complaint is the allegation that defendant ever consented to their remaining as beneficiaries to the accounts (*see* Estates, Powers and Trust Law 5-1.4[a] [divorce revokes any revocable disposition or appointment of property made by divorced individual to former spouse, including beneficiary designation in retirement benefits plan]; *Matter of McCauley v New York State and Local Employees' Retirement Sys.*, 146 AD3d 262 [3d Dept 2017] [ex-wife not entitled to decedent's retirement benefits as beneficiary designation was revoked by divorce]).

Defendant thus establishes that the retirement accounts, by their terms, gave her the sole right to their proceeds, and that plaintiffs therefore have no claim against her regarding their alleged entitlement to the proceeds (*see e.g. U.S. Life Ins. Co. in City of New York v Shields*, 171 AD3d 1262 [3d Dept 2019] [any revocable disposition of property, such as annuity, to former spouse is automatically revoked upon divorce]).

In light of this result, there is no need to address defendant's other arguments in favor of dismissal and, moreover, plaintiffs' application for leave to amend the first amended complaint is

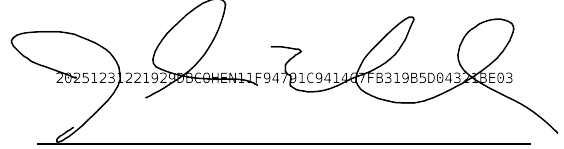
denied as academic, given that the proposed second amended complaint fails to show a potentially meritorious claim against defendant.

Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss the first amended complaint is granted, and the complaint is dismissed; and it is further

ORDERED that plaintiffs’ cross-motion for leave to amend the first amended complaint is denied as academic; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.



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12/31/2025
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE