Welfare Fund of the Intl. Union of Operating Engrs. Local 15, 15A, 15C & 15D, AFL-CIO v Petosa

2025 NY Slip Op 35527(U)

March 14, 2025

Supreme Court, Queens County

Docket Number: Index No. 720545/2021

Judge: Leonard Livote

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Supreme Court Justice

Commercial Division Part A

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WELFARE FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 15, 15A, 15C & 15D, AFL-CIO, by its Board of Trustees THOMAS A CALLAHAN, JAMES T. CALLAHAN, MICHAEL SALGO and WILLIAM TYSON,

Plaintiff,

Index No.: 720545/2021

FILED
3/18/2025
COUNTY CLERK
QUEENS COUNTY

-against-

Motion Date: 08/16/2022

BERNARD PETOSA,

Motion Seq.: 4

Defendants.

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The following papers read on this motion by plaintiff for an Order, pursuant to CPLR § 3212, granting plaintiff summary judgment, along with such other and further relief as this Court may deem just and proper.

	PAPERS NUMBERED
Notice of Motion, Affirmation, Affidavits and Exhibits, Memo of Law..	EF 52 – 78
Cross Motion, Affirmation, Affidavits and Exhibits..	
Answering Affirmations, Affidavits And Exhibits..	
Reply Affirmations, Affidavits And Exhibits..	
Other	

Upon the foregoing papers, this unopposed motion is determined as follows.

On September 14, 2021, plaintiff Welfare Fund of the International Union of Operating engineers Local 15, 15A, 15C & 15D, AFL-CIO, by its Board of Trustees Thomas Callahan, James T. Callahan, Michael Salgo and William Tyson ("Local 15 Welfare Fund") commenced this action with the filing of a Summons with Notice. According to the Verified Complaint, plaintiff is a multiemployer trust fund providing medical benefits to eligible participants and their dependents pursuant to the Summary Plan Description ("SPD") for the Local 15 Welfare Fund. Participants and their dependents become eligible for medical benefits based upon the number of hours in fringe benefit contributions that they redeem at the Local 15 Welfare Fund with eligibility being for four (4), eight (8) or twelve (12) months, depending upon the number of hours redeemed.

According to the Verified Complaint, the SPD's "Fraud & Abuse" section states that misrepresenting eligibility criteria for dependents (e.g., marital status and dependent children) to obtain or continue coverage for a person who would not otherwise meet the dependent eligibility criteria, is considered fraud and abuse against the plan. It further alleges that SPD provides that "[i]f you provide false information to the Plan or commit fraud, you may be required to indemnify and repay the Plan for any losses or damages caused by your false statements or fraudulent actions."

The Verified Complaint alleges three Causes of Action: (1) Breach of Contract; (2) Fraud; and (3) Negligent Misrepresentation.

On December 15, 2021, defendant Bernard Petosa appeared by Answer and admitted that he is a member of the Local 15 Welfare Fund and further admitted that (1) he married Sally Jo Marconi in 1998, and that in 2001, he enrolled his spouse and two unmarried step-children, Kristina Marconi and Marianna Marconi, for medical coverage under the plan administered by plaintiff Local 15 Welfare Fund, (2) on May 31, 2012, defendant obtained a judgment declaring his 1998 marriage void *ab initio* by reason of Sally Jo Petosa's marriage to another individual at the time of her marriage to Bernard Petosa, and (3) as a participant in the Local 15 Welfare Fund, he was required to abide by the terms and conditions of the plan.

Plaintiff now moves for an Order, pursuant to CPLR § 3212, granting summary judgment. Plaintiff claims defendant breached the terms of the SPD, negligently misrepresented his marital status and that he had two stepchildren and continued to fraudulently maintain medical coverage for his ex-spouse and her biological children when he knew they were no longer eligible for such coverage. In support of this motion, plaintiff alleges that between the dates of May 31, 2012 and May 26, 2020, it paid a total of $265,786.10 in medical claims on behalf of Sally Jo Petosa, and her children Kristina and Marianna Marconi, based on fraudulently submitted claims.

According to the Affidavit of Catherine Chase, the Administrator for the Local 15 Welfare Fund, in 2001, when defendant enrolled his wife and his stepchildren in the health coverage plan, they were eligible for coverage based upon the number of hours he worked. She attests that on February 2, 2009, defendant executed a form which states that he agreed "to immediately notify the Welfare Fund of any changes in this information and understand that if I fail to do so and receive or attempt to receive benefits, the Welfare Fund will consider that an act of fraud against the Plan" and she annexes a copy of the document to her affidavit. Ms. Chase avers that thereafter, on May 31, 2012, when defendant sued Sally Jo Petosa and obtained a judgment voiding their marriage, Sally Jo Petosa and the two children were no longer eligible for coverage. She alleges defendant failed to provide plaintiff with notification that the marriage had been declared void, failed to provide a copy of the judgment, even when asked to do so, and continued to represent that Sally Jo Petosa and her children were his dependents. Between the dates of May 31, 2012 and January 5, 2020 for Sally Jo Petosa and May 31, 2012 through May 26, 2020 for Kristina and Marianna Marconi, Catherine Chase avers that plaintiff Local 15 Welfare Fund paid medical claims on behalf of Sally Jo Petosa in the amount of $80,107.87, for Kristina Marconi in the amount of $33,904.39 and for Marianna Marconi in the amount of $151,773.84.

In further support of the motion, plaintiff annexes, *inter alia* (1) The pleadings; (2) The SPD agreement between plaintiff and defendant as a participant in the plan; (3) A Supreme Court, Richmond County "Judgment Declaring the Parties' Marriage Void Ab Initio" dated May 29, 2012 and entered May 31, 2012; (4) A letter from plaintiff to defendant dated July 11, 2014 indicating that defendant was required to submit a copy of the Judgment of Divorce and enrollment forms for any dependents, (5) A letter dated July 16, 2014, from defendant to plaintiff which states "Please be advised that there is no divorce decree because we are not legally divorced," (6) A 2014 enrollment form for the plan for Sally Jo Petosa and for Kristina Marconi and Marianna Marconi, the two step-children, indicating that they were defendant's dependents; (7) A letter dated May 26, 2020, from defendant to plaintiff which states "Enclosed you will find my divorce Judgment as well as my Qualified Domestic Relations Order. Hopefully this is everything [you] need so I can receive my Corona Virus related relief," (8) A chart for Sally Jo Petosa indicating that from September 14, 2012 to March 19, 2020, plaintiff paid a total of $80,107.87 on her behalf; (9) A chart for Kristina Marconi indicating that from June 26, 2012 to November 1, 2018, plaintiff paid a total of $33,904.39, (10) A chart for Marianna Marconi indicating that from December 10, 2012 to February 24, 2020, plaintiff paid a total of $151,773.84 on her behalf; and (11) A letter dated December 5, 2019 addressed to defendant and Sally Jo Petosa setting forth the multiple occasions wherein fraudulent medical claims were submitted, referenced a criminal prosecution of Sally Jo Petosa as a result of those fraudulent claims and rescinded coverage for Sally Jo Petosa based on fraud.

In addition, plaintiff submits portions of defendant's deposition transcript in which he admits that his marriage to Sally Jo Petosa was adjudged void *ad initio* in 2012, that they did not remarry, and that in 2014, he was not legally married to Sally Jo Petosa but enrolled Sally Jo Petosa as his spouse for health benefits and also enrolled her children Kristina Marconi and Marianna Marconi, as his stepchildren. He further admits that in 2020, he provided plaintiff with the Judgment declaring the marriage to Sally Jo Petosa void.

Summary judgment should be granted only when it "clearly appear[s] that no material and triable issue of fact is presented" (*Matter of Aaron Manor Rehabilitation & Nursing Ctr., LLC v. Zucker*, 42 NY3d 46, 58 [2024] quoting *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 449 [2016] quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; CPLR 3212 [b]). Once the movant makes the proper showing, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp*, 68 NY2d at 324). Facts must be viewed in the light most favorable to the non-moving party (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

To establish a prima facie breach of contract claim, a plaintiff must demonstrate the existence of a contract, plaintiff's performance under the contract, defendant's breach of its contractual obligations, and damages resulting from the breach (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d at 449; *Pare v Aalbue*, 222 AD3d 769, 773 [2023]). The elements of a cause of action sounding in fraud are "a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages (*Popal v DiLorenzo*, 231 AD3d 1067, 1068-1069 [2024] quoting *New York Tile Wholesale Corp. v Thomas Fatato Realty Corp.*, 153 AD3d 1351, 1353-1354 [2017]). Pursuant to CPLR §3016(b), fraud must be pleaded with the requisite particularity (*City of Long Beach v Agostisi*, 221 AD3d 776, 779 [2024]). To prevail on a cause of action for negligent misrepresentation, a plaintiff is required to demonstrate: "(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff, (2) that the information was incorrect, and (3) reasonable reliance on the information" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 180 [2011] quoting *J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148 [2007]).

Based on all the evidence submitted, including defendant's admission that he was a member of Local 15 Welfare Fund participating in the SPD health coverage plan, the Judgment Declaring the Marriage Void Ab Initio entered on May 31, 2012, his deposition transcript in which he admits he was no longer married after May 31, 2012 but did not inform plaintiff of that fact, the forms defendant admits submitting to plaintiff after 2012, indicating falsely that Sally Jo Petosa and her two daughters remained his spouse and stepchildren, plaintiff has met its burden of demonstrating that no material and triable issues of fact are presented as to the claims for Breach of Contract, Fraud and Negligent Misrepresentation. As there is no opposition, defendant fails to meet his burden of raising a material issue of fact for trial.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on the Complaint against defendant Bernard Petosa is granted; and it is further

ORDERED that the Clerk shall enter a money judgment in favor of plaintiff Welfare Fund of the International Union of Operating engineers Local 15, 15A, 15C & 15D, AFL-CIO, by its Board of Trustees Thomas Callahan, James T. Callahan, Michael Salgo and William Tyson against defendant Bernard Petosa in the principal amount of $265,786.10, with statutory interest thereon from the date of this Order through the date of final judgment, together with costs and disbursements as taxed by the Clerk.

This constitutes the Order of the Court.

Dated: March 14, 2025

FILED
3/18/2025
COUNTY CLERK
QUEENS COUNTY

LEONARD LIVOTE
J.S.C.