IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

VERA CHAWLA, Trustee for Harald Giesinger Special Trust

Plaintiff,

v.

TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY,

Defendant.

Civil Action No. 03-1215

CORRECTED MEMORANDUM OPINION

The instant matter comes before this Court on Plaintiff's and Defendant's Cross Motions for Summary Judgment. This case arises from the purchase of a life insurance policy from Defendant. The decedent, Harald E. Geisinger applied for a life insurance policy on May 4, 2000 in the amount of $1 million. As part of that application, the decedent was required to submit Part 1 of the application in which he named Plaintiff as the owner and beneficiary of the policy, and Part 2 which contained the results of a medical examination conducted on the same day.

Upon the receipt of Part 1, Defendant refused to issue the policy naming Plaintiff as owner and beneficiary because she did not have an insurable interest in the life of the decedent. The proposed owner and beneficiary were thus changed from Plaintiff

92

to the "Harald Geisinger Special Trust" (the "Trust") of which Plaintiff and the decedent were co-trustees. The trust agreement did not grant the trustees authorization to procure life insurance on the life of the decedent.

Part 2 contained various questions regarding the decedent's medical history. The decedent gave negative responses to the following questions: "In the past five years have you had observation or treatment at a clinic, hospital, or sanitarium? Had or been advised to have a surgical operation? Have you ever received treatment or joined an organization for alcoholism or drug addition?" The decedent answered in the affirmative to the following question, "within the past five years have you consulted, been examined or been treated by any physician or practitioner?" Part 2 required that the applicant provide all details relevant to questions answered in the affirmative. The only details provided by the decedent to the question regarding treatment by a practitioner noted that Dr. Chawla, Plaintiff's husband, conducted a physical in February 2000 and that the decedent had seen a urologist in April of 2000 for an elevated PSA, and that a clean biopsy was performed. Dr. Chawla later provided a letter confirming the visit and attesting to the decedent's good health.

Based upon the information contained in the application, Defendant issued the policy which required compliance with

various delivery requirements before it became effective. In accordance with those requirements, Plaintiff signed Part 1 at her home in Maryland. On July 7, 2000, Defendant's agent, Debbie Holt, met Plaintiff at her home at which time Plaintiff submitted the revised Part 1 and a check for the full first premium on the policy. Also at this time, Holt delivered a copy of the policy to Plaintiff. As a trustee of the Trust, the decedent also had access to the policy.

In September of 2000, Plaintiff applied to increase the face value of the policy from $1 million to $2.45 million. As part of the application, both Plaintiff and the decedent signed another Part 1 and also a medical evaluation form identical to the one contained in the original policy application. Again, the decedent was asked the questions described above and his answers remained the same. Again, in reliance on those representations, Defendant issued the policy which Holt delivered to Plaintiff in Maryland on October 27, 2000. At that time, Plaintiff submitted a check in satisfaction of the full payment required for the increase in coverage. Plaintiff later forwarded a copy of the policy to the decedent.

Notwithstanding the representations contained in the decedent's application for life insurance, the evidence demonstrates that in October of 1999, the decedent underwent brain surgery in Austria for the partial removal of a tumor.

Following that procedure, he suffered a series of residual neurological afflictions. Due to a subgaleal collection of cerebrospinal fluid in the decedent's head, doctors performed a series of spinal taps. A neurological report issued by Rankweil State Hospital in Austria on October 1, 1999 included a diagnosis of chronic alcohol abuse. A pathological test reflected a moderate elevation of the liver transaminases which was interpreted as "a result of chronic alcohol poisoning in conjunction with known chronic alcohol abuse." Later, on November 26, 1999, the decedent developed motor dysfunction in his right hand and returned to the United States with files and x-rays to assist in preparation for the administration of prophylactic radiation therapy. On December 29, 1999, the decedent underwent additional surgery at George Washington University Hospital in Washington, D.C. during which doctors inserted a shunt into his head to drain the excess fluid that had accumulated after his brain surgery.

Later, in early 2000, the decedent was hospitalized for alcohol abuse. He was admitted to the hospital for a period of five days between January 4 and January 9 during which time a doctors made a secondary diagnosis of alcohol abuse was and instructed the decedent to refrain from the consumption of alcohol. On February 1, he was hospitalized again for alcohol abuse. Doctors administered an "H2 blocker for prophylaxis of

alcohol induced erosions." The medical report enumerated various alcohol related conditions and the patient discharge instructions associated with that visit prohibited the use of alcohol and recommended treatment by a psychiatrist specializing in alcohol abuse.

The decedent was subsequently hospitalized again during a period of approximately three weeks from August 14 until September 6, 2000. Doctors reported episodes of unconsciousness and attributed them to a combination of alcohol abuse in conjunction with a possible interruption of the blood supply to the brain. The discharge report noted eight episodes of unconsciousness and the diagnosis included "post-meningioma surgery condition [and] suspected psycho motor seizures that could not be differentiated with certainty from alcohol related causes and alcohol abuse."

The decedent subsequently died on September 23, 2001 in Europe. Defendant received a claim for benefits under the life insurance policy from Plaintiff in her capacity as trustee for the Trust. Defendant subsequently rescinded the policy, refunded the premiums, and denied Plaintiff's claim for the proceeds of the policy on the grounds that the decedent failed to disclose certain medical information that was material to Defendant's decision to issue the policy. Plaintiff then filed suit in this Court on September 24, 2003 for breach of contract in order to

recover those proceeds. Defendant answered and asserted a Counterclaim for fraud. Both Plaintiff and Defendant moved for summary judgment.

Summary judgment is appropriate where an examination of "the pleadings, depositions, interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. Pro. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material fact. Id. at 322-23. The party opposing the motion must then offer evidence sufficient to demonstrate the existence of a material issue for trial. Id.

In diversity actions such as this, a federal court must apply the law of the forum state including its choice of law principles. Seabulk Offshore Ltd. v. Amer. Home Assur. Co., 377 F.3d 408, 418-19 (4th Cir. 2004). "Under Virginia law a contract is made when the last act to complete it is performed, and in the context of an insurance policy, the last act is delivery to the insured." Id. In the instant case, both the policy and the documents memorializing the increase in its face amount were delivered to Plaintiff in Maryland. Moreover, the terms of the policy require delivery and payment of the first premium in full

in order to render the policy effective. Both of those events occurred in Maryland and thus it is the law of that state that governs this inquiry.

In Maryland, the general rule governing this area of law is that a "material misrepresentation in the form of an incorrect statement in an application invalidates a policy issued on the basis of such application." Hofmann v. John Hancock Mutual Life Ins. Co., 400 F.Supp. 827, 829 (D. Md. 1975) (citing Mutual Life Ins. Co. v. Hilton-Green, 241 U.S. 613 (1916)); see also Fitzgerald v. Franklin Life Ins. Co., 465 F.Supp. 527, 534 (D. Md. 1979). In determining whether an insurer is entitled to rescind a policy based on an alleged misrepresentation, courts engage in a two step inquiry. A court must first determine whether a misrepresentation has occurred. Fitzgerald, 465 F.Supp. at 534-35. Maryland courts have established that, while the good or bad faith of the insured is irrelevant, a court may nevertheless consider whether the question on the application was "reasonably designed to elicit information material to the risk." Id. Upon finding that a misrepresentation exists, the court must then determine whether it was material. Id.

The Defendant's insurance application was reasonably calculated to elicit the information that the decedent omitted in this case. The question explicitly inquired as to whether the decedent had been treated at a hospital or clinic, whether he had

undergone surgery within the past five years, and whether he had been treated for alcoholism. All of these questions were clearly phrased and calculated to elicit a complete response. The decedent's answers to the above questions included only descriptions of one visit to Dr. Chawla for a physical and another to a urologist. Because the evidence demonstrates that the application was incomplete and did not contain information regarding the decedent's neurological history, surgery, or alcohol abuse, and the application was reasonably designed to elicit precisely that information, the application contained a misrepresentation.

Section 12-207(b) of the Maryland Insurance Code sets forth the circumstances under which an insurer may avoid payment of life insurance benefits based on misrepresentations contained in an application. The statute provides, in pertinent part,

> A misrepresentation omission, concealment of facts, or incorrect statement does not prevent a recovery under the policy or contract unless:
>
> (1) the misrepresentation, omission, concealment, or statement is fraudulent or material to the acceptance of the risk or to the hazard that the insurer assumes; or
>
> (2) if the correct facts had been made known to the insurer, as required by the application for the policy or contract or otherwise, the insurer in good faith would not have:
>
> (i) issued, reinstated, or renewed the policy or contract;
>
> (ii) issued the policy or contract in as large an amount or at the same premium rates...

Md. Code Ann., Ins. § 12-207.

Here, both sections function to preclude recovery. In Maryland, the crux of the materiality inquiry is "whether the misrepresentation of the true facts would reasonably have affected the determination of the acceptability of the risk." North Amer. Specialty Ins. Co. v. Savage, 977 F.Supp. 725, 728 (D. Md. 1997) (quoting Nationwide Mut. Ins. Co. v. McBriety, 230 A.2d 81, 84 (Md. 1967)); see also Commercial Casualty Ins. Co. v. Schmidt, 171 A. 725, 728 (Md. 1934). There is ample evidence in the record to suggest that the decedent's medical treatment and, alternatively, his alcohol abuse, as discussed in further detail below, increased his risk of mortality and thus the risk of loss to Defendant.

Plaintiff's claim as to materiality must also fail as there is no genuine issue of material fact in dispute regarding Defendant's reliance on the misrepresentations in its decision to issue the policy. The evidence adduced to date demonstrates that, had Defendant possessed a complete knowledge of the facts, it would not have issued the policy on the terms that it did. Defendant maintains specific underwriting guidelines governing policies on insureds with a history of meningioma. Surgical treatment of a meningioma with incomplete removal within five years prior to the application date requires a Table D (+100) rating which indicates that the mortality rate would increase by

100%. Such a rating would have more than doubled the cost of the policy. The evidence clearly demonstrates that had Defendant known of the decedent's history of post-surgical fluid accumulation requiring the insertion of a shunt, the multiple episodes of unconsciousness, transient ischemic attack with transitory paralysis of the right hand, and his anticipated future tumor treatment, Defendant would not have issued the policy.

Moreover, Defendant's Guide to Initial Underwriting Requirements precludes an insured's qualification for the premier class of insurance if the applicant has any history of alcohol or substance abuse at anytime. Defendant's guidelines also required a minimum of one year with no alcohol use before such an applicant's application would even be considered. The record clearly evidences the decedent's extensive and well documented history of alcohol abuse. Consequently, no dispute remains as to whether the misrepresentations contained in the application were material under Maryland law and summary judgment is appropriate.

Contrary to Plaintiff's assertions, the doctrine of estoppel does not entitle her to recover under the policy. Plaintiff claims that Defendant had knowledge of the decedent's medical history at the time that it issued the policy and that such knowledge now estops it from rescinding the policy. Alternatively, Plaintiff also suggests that Defendant, upon

noting the presence of two surgical scars during the medical exam, was bound by a duty to investigate their origin and thus was on inquiry notice of the decedent's medical history. However, the record is devoid of evidence sufficient to convince this Court that Defendant had knowledge of the decedent's medical history.

Even assuming, arguendo, that such evidence existed, the doctrine of estoppel would nonetheless be of no utility to Plaintiff in seeking recovery. "Unless the party against whom the doctrine has been invoked has been guilty of some unconscientious, inequitable or fraudulent act...upon which another has relied and been misled to his injury, the doctrine [of estoppel] will not be applied." Id. (quoting Bayshore Indus. v. Ziats, 192 A.2d 487, 492 (Md. 1963)). Plaintiff has not offered any evidence to suggest that Defendant misled her or that she relied to her detriment on any alleged unconscientious, inequitable or fraudulent act by Defendant.

Furthermore, Maryland law is unequivocal in its refusal to impose a duty upon an insurance agent to investigate or verify an applicant's responses to the questions on an insurance application. Jackson v. Hartford Life and Annuity Ins. Co., 201 F.Supp.2d 506, 511 (2002). Moreover, such a failure to investigate does not mandate the application of the doctrine of estoppel. Id. at 511 n.3 (quoting Savage, 977 F.Supp. at 730).

Similarly, Plaintiff's assertion that the decedent is not responsible for the misrepresentation contained in the application as they were completed by Defendant's agent, is of no moment. Maryland law makes clear that an insured is responsible for all representations contained in an application even if a third party completed the application. Id. at 512. This is true even where that third party deliberately includes misleading or false information in the application. Id.; Serdenes v. Aetna Life Ins. Co., 319 A.2d 858, 863 (Md. App. 1974); see also Shepard v. Keystone Ins. Co., 743 F.Sup. 429, 432-33 (D. Md. 1990). "It is immaterial that it is the agent who inserts the false statements about material matters in an application for insurance, because if the insured has the means to ascertain that the application contains false representations, he is charged with the misrepresentations just as if he had actual knowledge of them and was a participant therein." Parker v. Prudential Ins. Co of America, 900 F.2d 772, 774 (4th Cir. 1990).

Here, the decedent signed Part 2 of the original application on May 4, 2000 after the medical examiner had completed it and thus had ample opportunity to discover and correct any misrepresentations or omissions contained therein. Further, the decedent had access to the Policy with Part 2 attached. Consequently, Plaintiff cannot disclaim knowledge or responsibility for the information that it contained.

Finally, even absent a material misrepresentation, Plaintiff's claim necessarily fails as a matter of law because the Trust maintained no insurable interest in the life of the decedent thus rendering the policy void. Pursuant to Maryland common law, "[b]efore a person can validly procure insurance upon the life of another, he must have an insurable interest in that life." Beard v. Am. Agency Life Ins. Co., 550 A.2d 677, 680 (Md. 1988).

Plaintiff fails to demonstrate the existence of an insurable interest for two reasons. First, the Maryland Code provides in relevant part that:

> (a)(1) An individual of competent legal capacity may procure or effect an insurance contract on the individual's own life or body for the benefit of any person.
>
> (2) Except as provided in subsection c) of this section, a person may not procure or cause to be procured an insurance contract on the life or body of another individual unless the benefits are payable to:
>
> (i) the individual insured;
>
> (ii) the individual insured's personal representative;
>
> (iii) a person with an insurable interest in the individual insured at the time the insurance contract was made.

Md. Code Ann., Ins. § 12-201. Maryland law defines "person" as "an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or entity." Md.

Code Ann., Ins. §12-101(dd). In the instant case, the policy was procured by the Trust which, pursuant to the statute is defined as a "person" and not an "individual". Id. Further, the Trust and not the insured/decedent was the owner and beneficiary of the policy. As such, the second part of the statute demands that in order to procure the insurance policy on the life of the decedent, the benefits be made payable to: the decedent, the decedent's personal representative, or a person with an insurable interest in the decedent at the time the policy was issued. Md. Code Ann., Ins. § 12-201(a)(2)(i)-(iii). The first two categories are clearly inapplicable in the instant case as the benefits were not payable to either the decedent or his personal representative. Consequently, in order to recover, at the time of issuance, the Trust, as beneficiary, must have had an insurable interest in the life of the decedent.

Plaintiff fails to demonstrate the existence of an insurable interest as defined by statute. Maryland law creates various classes of insurable interests. For example, one has an insurable interest in those "related closely by blood or law, a substantial interest engendered by love and affection is an insurable interest." Md. Code Ann., Ins. § 12-201(b)(2)(i). An insurable interest may also exist where one has "a lawful and substantial economic interest in the continuation of the life, health, bodily safety of the individual." Md. Code Ann., Ins.

§12-201(b)(3). This section contains the caveat, however, that "an interest that arises only by, or would be enhanced in value by, the death disablement, or injury of the individual is not an insurable interest." Id.

In the instant case, the Trust had title to the decedent's residence. During his lifetime, the decedent possessed the right to receive all income from the Trust and the right to occupy the residence. However, upon the death of the decedent, the Trust assets were distributed to Plaintiff who sold them for an amount in excess of the mortgage. Consequently, the Trust promised to gain more assets upon the decedent's death, i.e. death benefits under the policy, than it would have in the event that decedent had lived. Further, the Trust suffered no detriment, pecuniary or otherwise, upon the death of the decedent. As such, the Trust maintained no insurable interest in the life of the decedent.

Finally, an insurable interest may be found in a limited business setting. Md. Ins. Code Ann. §12-201(b)(5)(i) provides, in pertinent part, that in cases of

> (5)(i) ...contract or option for the purchase or sale of:
> 1. an interest in a business partnership or firm; or
> 2. stock shares, or an interest in stock shares, of a close corporation.
>
> (ii) An individual party to a contract or option described in subparagraph (i) of this paragraph has an insurable interest in the life of each individual party to the contract or option.
>
> (iii) The insurable interest specified in

subparagraph (ii) of this paragraph:
1. Is only for the purposes of the contract or option...

In Beard, the Maryland Court of Appeals held that the word "firm" as employed in the Maryland Code, refers to a "business or trade which is operated by two or more individuals and which is in the nature of a partnership." Beard, 550 A.2d at 684. This section further undermines Plaintiff's contention that an insurable interest exists because the Trust was not a business or trade and is not in the nature of a partnership and thus had no statutorily insurable interest in the life of the decedent. Similarly, Plaintiff has failed to identify a contract or option for the purchase or sale of an interest in a partnership or firm between either Plaintiff or the Trust and the decedent. As such, the statute above is inapplicable, no insurable interest exists, and Plaintiff is precluded, as a matter of law, from recovering under the life insurance policy.

Further, Plaintiff's contention that the doctrine of estoppel precludes Defendant from asserting an insurable interest defense is without merit. The Beard court made clear that the public interest, as protected by the insurable interest doctrine, is "of paramount importance and overrides the equitable doctrines of waiver and estoppel." Id. at 688. The court expressly stated that "the doctrines of waiver and estoppel do not apply and are not a bar to the insurable interest defense." Id.

Finally, as this Court is of the opinion that Defendant is entitled to summary judgment on all counts, its Counterclaim for fraud is rendered moot.

An appropriate order shall issue.

/s/
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
February 3, 2005