

Margiotta v Suffolk County Police Department

2013 NY Slip Op 30017(U)

January 3, 2013

Supreme Court, Suffolk County

Docket Number: 17738/2012

Judge: John J.J. Jones Jr

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SHORT FORM ORDER

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INDEX NO.: 0017738/2012
SUBMIT DATE: 10/10/2012

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 SUFFOLK COUNTY

Present:

HON. JOHN J.J. JONES, JR.
Justice

MOTION DATE: 8/15/2012
Mot. Seq. #002 - MG

-----X

VICTORIA MARGIOTTA, :

Plaintiff, :

-against- :

SUFFOLK COUNTY POLICE DEPARTMENT, :

SUFFOLK COUNTY POLICE BENEVOLENT :

ASSOCIATION INC., NEW YORK STATE EMPLOYEES :

RETIREMENT SYSTEM, ALLSTATE INSURANCE :

COMPANY, LILLIAN MARGIOTTA and SALVATORE :

DELLIGATTI, :

Defendants. :

-----X

Upon the following papers numbered 1 to 26 read on this application for an order dismissing the plaintiff's complaint for failure to state a cause of action; Notice of Motion/Order to Show Cause and supporting papers 1-17; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 18-26; Replying Affidavits and supporting papers _____; Other _____; it is

ORDERED that this application by the defendant Allstate Life Insurance Company ["Allstate"], for an order dismissing the complaint of the plaintiff, Victoria Margiotta, for failure to state a cause of action against Allstate or alternatively, for summary judgment pursuant to CPLR 3211 and 3212 based on documentary evidence, and

for a declaratory judgment that Salvatore Delligatti was the proper payee of the policy proceeds as the designated beneficiary of the policy at the death of the insured, Joseph Margiotta, [“the decedent”], and that Allstate fully complied with its obligations under the life insurance policy is granted.

This case arises out of the untimely death of the decedent on January 31, 2012, from a self-inflicted gunshot wound. At the time of his death, the decedent and the plaintiff were in the process of obtaining a divorce. The divorce proceedings had been initiated but not yet completed when the decedent died.

The moving papers establish that Allstate had issued a policy of term life insurance to decedent under policy number 03TC013581, with a start date of May 11, 2006. The policy provided a death benefit in the amount of \$315,000. The decedent was the owner of the policy and under its terms had the right to make a change of beneficiary subject to the approval and acceptance of Allstate.

Although the plaintiff was originally the primary beneficiary of the policy, on November 4, 2010, the decedent filed a request for a change in beneficiary from the plaintiff to the defendant, Salvatore Delligatti, the decedent’s brother-in-law [“Delligatti”]. The change of beneficiary was approved and accepted by Allstate. Shortly after the decedent’s death, Delligatti made a claim for the proceeds of the policy. Allstate made a payment in death benefits under the policy to Delligatti in the face amount of \$315,000.00, with interest, for a total net proceeds of \$315,750.82.

The plaintiff’s complaint alleges that the decedent did not know or was not of sound mind or memory to effect a change in beneficiary away from his wife and that the defendants have been unjustly enriched. There are no specific factual allegations against Allstate in the complaint.

Allstate established its entitlement to judgment as a matter of law pursuant to CPLR 3212. *See Winegrad v. New York Univ. Medical Center*, 64 N.Y.2d 851 (1985). The terms of the applicable life insurance policy provided that the decedent was the policy owner who retained the right to change the beneficiary while the policy was in force. Under the provision entitled “Change of Owner or Beneficiary” the policy provides:

“Unless you state in writing to the contrary, you may change the owner or beneficiary while the insured is alive by writing to us. Once the change has been received by us, it takes effect as of the date you signed the request. Each change is subject to any payment we make or any action we take before we receive it. “

“[A] person is presumed to be competent at the time of the performance of the challenged action and the burden of proving incompetence rests with the party asserting incapacity.” *Matter of Obermeier*, 150 A.D.2d 863, 864 (3d Dept 1989). Thus, to prevail, plaintiff must demonstrate that when the change of beneficiary was executed, the decedent’s mind was “so affected as to render him wholly and absolutely incompetent to comprehend and understand the nature of the transaction” (*Aldrich v. Bailey*, 132 N.Y. 85, 89 [1892]; see also *Lansco Corp. v. N.Y. Brauser Realty Corp.*, 63 AD3d 513, 514-15 [1st Dept 2009]), or that the beneficiary change was the result of a condition, such as a psychosis, that created impulsive or irrational behavior beyond the decedent’s control. *Blatt v. Manhattan Med. Group*, 131 A.D.2d 48, 52 (1st Dept 1987). Further, such incompetency/incapacity must have existed when the decedent executed the 2010 change of beneficiary. See *Feiden v. Feiden*, 151 A.D.2d 889, 890 (3d Dept 1989); *Matter of Obermeier*, 150 A.D.2d 864.

In the face of the presumption of competency, the plaintiff offered no evidence in opposition to Allstate’s summary judgment motion raising a material issue of fact that the decedent was incompetent when he executed the change of beneficiary form. Cf. *Vermeylen v. Genworth Life Ins. Co. of New York*, 28 Misc.3d 1236(a) (N.Y.Sup. 2010).

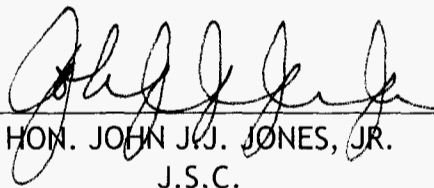
Thus, Allstate is entitled to summary judgment and the declaration it seeks.

ORDERED that the application by Allstate for summary judgment dismissing the plaintiff’s complaint in its entirety is granted; and it is further

ORDERED that Allstate is entitled to the following declaration:

Salvatore Delligatti was the designated beneficiary and proper payee of the proceeds of a term life insurance policy issued by Allstate Life Insurance Company of New York under policy number 03TC013581, at the death of the policy owner, Joseph Margiotta; Allstate fully complied with its obligations under the above-described life insurance policy.

DATED: 3 Jan - 2013


HON. JOHN J. JONES, JR.
J.S.C.

CHECK ONE: FINAL DISPOSITION

NON-FINAL DISPOSITION

TO:

AHERN & AHERN

By: Dennis P. Ahern, Esq.

Attys. for Plaintiff

One Main Street

Kings Park, NY 11754

DENNIS M. COHEN

Suffolk County Attorney

Atty. for Defendants

Suffolk County Police Department and

Suffolk County Police Benevolent Assoc.

100 Veterans Memorial Highway

P.O. Box 6100

Hauppauge, NY 11788-0099

ERIC T. SCHNEIDERMAN

Attorney General of the State of New York

By: Lori L. Pack

Assistant Attorney General

Attys. for *New York State Police and*

Fire Retirement System

300 Motor Parkway, Suite 205

Hauppauge, NY 11788

DAMON MOREY LLP

By: Joseph W. Dunbar, Esq.

Attys. for Defenant

Allstate Insurance Company

200 Delaware Avenue

Buffalo, NY 14202

BRIAN A. RAPHAN, PC

By: Matthew Carmody, Esq.

Attys. for Defendant

Lillian Margiotta

7 Penn Plaza - 8th Floor

New York, NY 10001

LAURINO LAURINO & SCONZO
By: Louis M. Laurino, Esq.
Attys. for Defendant
Salvatore Delligati
229 Seventh Street, Suite 201
Garden City, NY 11530