

2021 WL 4596286

Only the Westlaw citation is currently available.  
United States Court of Appeals, Ninth Circuit.

Sarah Aislinn Flynn THOMAS, Plaintiff-Appellee,

v.

STATE FARM LIFE INSURANCE  
COMPANY, Defendant-Appellant.

No. 20-55231

Submitted October 4, 2021 \* Pasadena, California

FILED October 6, 2021

Appeal from the United States District Court for the Southern  
District of California, [Cynthia A. Bashant](#), District Judge,  
Presiding, D.C. No. 3:18-cv-00728-BAS-BGS

**Attorneys and Law Firms**

[Samuel L. Bruchey](#), Partner, Shernoff Bidart Echeverria LLP,  
Beverly Hills, CA, [Jeffrey Isaac Ehrlich](#), Esquire, The Ehrlich  
Law Firm, Claremont, CA, for Plaintiff-Appellee.

[Jeffrey S. Crowe](#), Esquire, Sheppard Mullin Richter &  
Hampton, LLP, Costa Mesa, CA, [Frank Falzetta](#), Esquire,  
Sheppard Mullin Richter & Hampton, LLP, Los Angeles, CA,  
[Lisa J. Perrochet](#), Esquire, [John F. Querio](#), Horvitz & Levy  
LLP, Burbank, CA, [Robert R. Pohls](#), Pohls & Associates, San  
Ramon, CA, for Defendant-Appellant.

Before: [MURGUIA](#) and [BADE](#), Circuit Judges, and  
[MOLLOY](#), \*\* District Judge.

## MEMORANDUM \*\*\*

\*1 Defendant State Farm Life Insurance Company (State Farm) appeals the district court's entry of summary judgment in favor of Plaintiff Sarah Aislinn Flynn Thomas. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

This case arises from a contract dispute brought under California law that is based on State Farm's failure to pay life insurance benefits to Thomas, the beneficiary of two life insurance policies held by her brother, James Flynn. State Farm argues that it did not breach its contractual obligations

because the policies lapsed prior to Flynn's death due to his failure to pay the premiums.

The policies did not lapse because State Farm failed to comply with two statutory provisions—sections [§ 10113.71](#) and [§ 10113.72](#) of the California Insurance Code. While State Farm originally argued that these statutory provisions did not apply to the policies, it now concedes that the provisions are applicable here given the California Supreme Court's decision in *McHugh v. Protective Life Insurance Co.*, No. S259215, 2021 WL 3853061 (Cal. Aug. 30, 2021).

State Farm nevertheless maintains that Thomas is not entitled to summary judgment on her breach of contract action. Specifically, State Farm argues that Thomas failed to establish causation because she did not offer any evidence that the policies would not have lapsed even had State Farm complied with [§ 10113.71](#) and [§ 10113.72](#). But this evidence is not necessary for Thomas to prevail.

[§ 10113.71](#) and [§ 10113.72](#) “create a single, unified pretermination notice scheme.” *McHugh*, 2021 WL 3853061, at \*14. This scheme requires that “[n]ew and existing policy owners [ ] have the opportunity to designate additional people to receive a notice of termination,” that “policy owners and any designees [ ] receive notice within 30 days of a missed premium payment,” and that “insurers send notice to these parties at least 30 days prior” to “termination for nonpayment.” *See id.* (citing [Cal. Ins. Code §§ 10113.71\(b\)\(1\), \(3\)](#) and [§ 10113.72](#)). An insurer's failure to comply with these statutory requirements means that the policy cannot lapse. *See id.* at \*13–14, 17–18.

Here, the parties stipulated that “[t]here is no known evidence that State Farm communicated with Mr. Flynn about designating a third party to receive notice of lapse or termination of [the policies] for nonpayment of premium or that it gave Mr. Flynn a form to make such a designation.” Because State Farm failed to bring forward any evidence indicating that it sent Flynn notice of the right to designate, there is no genuine dispute of fact about whether it did so. *See Fed. R. Civ. P. 56(c)(1), (e)*; *United States v. Falcon*, 805 F.3d 873, 876 (9th Cir. 2015). Accordingly, based on this record, State Farm failed to comply with [§ 10113.71](#) and [§ 10113.72](#), which prevented the policies from lapsing. *See McHugh*, 2021 WL 3853061, at \*13–14, 17–18.

**\*2 AFFIRMED.**

Therefore, State Farm breached its contractual obligations by failing to pay benefits to Thomas under the policies after Flynn's death. The district court properly granted summary judgment for Thomas.

**All Citations**

Not Reported in Fed. Rptr., 2021 WL 4596286

**Footnotes**

- \* The panel unanimously concludes this case is suitable for decision without oral argument. See [Fed. R. App. P. 34\(a\)\(2\)](#).
- \*\* The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.
- \*\*\* This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).