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United States District Court, C.D. California.

Thurma J. KELLEY, Plaintiff,
v.
COLONIAL PENN LIFE
INSURANCE COMPANY, Defendant.

Case No. 2:20-cv-03348-FLA (Ex)
|
Signed 01/03/2022

Attorneys and Law Firms

Alex Tomasevic, Craig M. Nicholas, Nicholas and Tomasevic LLP, San Diego, CA, Georg Capielo, Jack B. Winters, Jr, Sarah Ball, Winters and Associates, La Mesa, CA, for Plaintiff.

Jesse Steinbach, Kathy J. Huang, Alston and Bird LLP, Los Angeles, CA, Thomas A. Evans, Alston and Bird LLP, San Francisco, CA, for Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS [DKT. 15]

FERNANDO L. AENLLE-ROCHA, United States District Judge

RULING

***1** Before the court is Defendant Colonial Penn Life Insurance Company's ("Defendant" or "Colonial Penn") Motion to Dismiss Plaintiff's Complaint or Stay Action ("Motion"). Dkt. 15 ("Mot."). Plaintiff Thurma Kelley ("Kelley" or "Plaintiff") opposes the Motion. Dkt. 18 ("Opp."). For the reasons stated herein, the court DENIES Defendant's Motion.

BACKGROUND

Judge Fitzgerald has summarized the background of this case [1] as follows:

In 2012, the California Legislature enacted Insurance Code sections 10113.71 ("Section 10113.71") and 10113.72 ("Section 10113.72") (collectively, "the Statutes"), which instituted procedural requirements for the termination and lapse of life insurance policies. Dkt. 1 ("Compl.") ¶ 13. The Statutes mandate that every life insurance policy in and governed by California law shall contain a 60-day grace period and that the policy shall remain in force during the grace period. *Id.* ¶ 14 (citing Cal. Ins. Code. § 10113.71(a)). The Statutes further require that before an individual life insurance policy governed by California law is lapsed or terminated for nonpayment of premium, a 30-day written notice of pending lapse or termination must be mailed not only to the policyholder, but also to any additional person who had been designated to receive such notice, as well as any person having any interest in the policy. *Id.* ¶ 15 (citing Cal. Ins. Code § 10113.72(c)). The insurer must also notify the policy owner of his or her right to designate additional notice recipients on an annual basis. *Id.* ¶ 16. The Statutes further mandate that no lapse or termination is effective unless all the provisions are strictly complied with. *Id.* ¶ 17.

In or before 2001, Plaintiff purchased, from or in California, a life insurance policy bearing Policy No. FT2780319B (the "Policy" or "Subject Policy") from Defendant. *Id.* ¶ 27. The value of the Policy is $25,000 or more. *Id.* ¶ 29. As of January 1, 2013, and at all times thereafter, Defendant was responsible for all contractual and statutory obligations associated with the Policy. *Id.*

Plaintiff stayed current on the Policy and paid the premiums every month for over 15 years, and the premiums were fully paid in 2013, 2014, 2015, 2016, and part of 2017. *Id.* ¶ 27. After making these premium payments consistently for over 15 years, one payment was apparently missed in or around August 2017. *Id.* ¶ 31. Upon realizing the missed payment, Plaintiff contacted Defendant and was informed of the full amount needed to keep the Policy in force. *Id.* Plaintiff, thereafter, sent Defendant two months of premium payments in late August 2017. *Id.* Defendant kept Plaintiff's payments for a couple weeks, but then decided to refund the monies paid, and informed Plaintiff that her Policy had lapsed and was terminated. *Id.* Defendant further informed Plaintiff that it was not willing to reinstate the Policy without a significant increase in premium. *Id.*

***2** At no time during 2014, 2015, 2016, or 2017 did Defendant advise Plaintiff of her right to designate another

recipient of important policy notices, of her right to a 30-day notice prior to any effective lapse or termination, or of her right to a 60-day grace period to pay overdue premiums. *Id.* ¶ 30. Rather, at various times, Defendant misstated the actual form and type of notice required by law and the terms of the Policy. *Id.* Defendant also withheld and concealed from Plaintiff its previous failures to comply with those provisions. *Id.* Plaintiff has no record of receiving notices of (1) any missed premium payment in 2017, (2) any impending lapse or the triggering of any mandatory 60-day grace period, or (3) any right to designate an individual to receive notices. *Id.* ¶ 32. At all times, Plaintiff was financially capable of paying all premiums due and desired to maintain the Policy. *Id.*

Due to these alleged violations of the Statutes, Plaintiff concludes the lapse and termination of the Policy was void and ineffective. *Id.* ¶ 35. Therefore, according to Plaintiff, Defendant's refusal to reinstate the Policy was improper and illegal as the Policy had not been terminated. *Id.* ¶ 31. Plaintiff further alleges that Defendant's handling of the Policy is and was consistent with its standardized policies and procedures, such that Defendant has systematically failed to provide a class of policy owners the protections afforded by the provisions of Insurance Code sections 10113.71 and/or 10113.72. *Id.* ¶ 37.

Based on the above allegations, Plaintiff brings the following five claims for relief on behalf of herself and a proposed class and subclass: (1) declaratory judgment or relief pursuant to California Civil Code section 1060, et seq.; (2) declaratory judgment or relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.; (3) breach of contract; (4) unfair competition pursuant to California Business & Professions Code § 17200, et seq.; and (5) financial elder abuse pursuant to California Welfare & Institutions Code § 15610.30. *Id.* ¶¶ 51-91.

PROCEDURAL HISTORY

Plaintiff filed the Complaint in this action on April 9, 2020. Dkt. 1. On June 5, 2020, Defendant filed the present Motion to Dismiss Plaintiff's Complaint or Stay Action. Dkt. 15. Defendant's Motion argued that (1) Plaintiff's claims should be dismissed for failing to exhaust her contractually required administrative remedies, (2) Plaintiff failed to state a claim because the Statutes did not apply to policies issued prior to January 1, 2013, (3) the Statutes do not apply because Plaintiff's insurance Policy was not "issued or delivered" in California, and (4) Plaintiff failed to state a claim because the Statutes apply only to individual policies, not group policies like Plaintiff's. *See generally id.*; *see also* Dkt. 19 at 24-25. Alternatively, Defendant asked the court to stay this action pending decisions in two cases which considered whether the Statutes apply to policies issued before January 1, 2013—one before the California Supreme Court, *McHugh v. Protective Life Insurance Company*, Case No. S259215, and one before the U.S. Court of Appeals for the Ninth Circuit, *Thomas v. State Farm Life Insurance Company*, Case No. 20-55231. Dkt. 15 at 13-19.

On July 13, 2020, Judge Fitzgerald determined the contract that required Plaintiff to exhaust administrative remedies before filing suit was unenforceable and denied Defendant's Motion, in part, on this basis. Dkt. 23 at 4-8. The court, however, granted Defendant's Motion to Stay pending a decision in *McHugh* or *Thomas* to resolve whether the Statutes apply to policies issued before January 1, 2013, and ordered the parties to file a joint status report within one week of a decision in either case. *Id.* at 8-11.

On December 30, 2020, this action was transferred to this court. Dkt. 24. The parties filed a Joint Status Report on September 2, 2021, informing the court that the California Supreme Court had issued a decision in *McHugh*. Dkt. 26. Specifically, the Supreme Court held that the Statutes are "best read to extend protections to policies issued before [the Statutes] went into effect," and thus "apply to all policies in force as of January 1, 2013." *McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213, 240, 246 (2021). In light of *McHugh*, the court vacated the stay and ordered the parties to file simultaneous opening and responsive briefs regarding the effect of *McHugh* on the remaining issues in Defendant's Motion to Dismiss. Dkts. 27, 29. The parties filed supplemental briefs on October 25, 2021 and November 15, 2021. Dks. 30-33.

DISCUSSION

I. Legal Standard

***3** Under Fed. R. Civ. P. 12(b)(6), a party may file a motion to dismiss a complaint for "failure to state a claim upon which relief can be granted." The purpose of Rule 12(b)(6) is to enable defendants to challenge the legal sufficiency of the claims asserted in the complaint. *Rutman Wine Co. v. E. &*

J. Gallo Winery, 829 F.2d 729, 738 (9th Cir. 1987). A district court properly dismisses a claim under Rule 12(b)(6) if the complaint fails to allege sufficient facts "to state a cognizable legal theory." *Caltex Plastics, Inc. v. Lockheed Martin Corp*, 824 F.3d 1156, 1159 (9th Cir. 2016). "To survive a motion to dismiss, a complaint must contain sufficient factual matter ... to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id.* (internal citations omitted). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.' " *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679).

When evaluating a complaint under Rule 12(b)(6), the court "must accept all well-pleaded material facts as true and draw all reasonable inferences in favor of the plaintiff." *Caltex*, 824 F.3d at 1159; *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) ("We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party."). Legal conclusions, however, "are not entitled to the assumption of truth" and "must be supported by factual allegations." *Iqbal*, 556 U.S. at 679. A court must normally convert a Rule 12(b)(6) motion into a Rule 56 motion for summary judgment if it considers evidence outside the pleadings. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). "A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *Id.* at 908.

II. Analysis [2]

The parties agree *McHugh* forecloses Defendant's argument that the Statutes do not apply to Plaintiff's Policy because it was issued before January 1, 2013. *See* Dkt. 30 at 4; Dkt. 31 at 1. Thus, the two unresolved issues from Defendant's Motion are whether the Statutes apply to Plaintiff's insurance Policy, which Defendant argues (1) was not "issued or delivered" in California, and (2) is a group, rather than individual, policy. [3] As explained below, however, even if the court were to resolve these issues in Defendant's favor, Defendant fails to demonstrate the Complaint should be dismissed because Defendant fails to outline which of Plaintiff's claims fail as a matter of law. For the sake of completeness, however, the court will address each issue in turn.

***4** First, Defendant argues Alabama, rather than California, law applies here because Plaintiff's Policy was issued and delivered in Alabama, and the application for insurance and amendment riders were signed there. Dkt. 31 at 8-9; Dkt. 33 at 1. "California applies a three-step 'governmental interest' analysis to choice-of-law questions: (1) 'the court examines the substantive laws of each jurisdiction to determine whether the laws differ as applied to the relevant transaction', (2) 'if the laws do differ, the court must determine whether a true conflict exists in that each of the relevant jurisdictions has an interest in having its law applied', and (3) 'if more than one jurisdiction has a legitimate interest ... the court [must] identify and apply the law of the state whose interest would be more impaired if its law were not applied.' " *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1006 (9th Cir. 2001) (citing *Coufal* *Abogados v. AT&T, Inc.*, 223 F.3d 932, 934 (9th Cir. 2000)). As the party seeking to apply another state's law, Defendant carries the burden to identify the applicable rule of law in each potentially concerned state, to show Alabama law materially differs from the law of California, and to establish Alabama's interest in having its own law applied here. *See* *Wash. Mut. Bank. v. Super. Ct.*, 24 Cal. 4th 906, 919-20 (2001). Defendant, however, does not undertake any formal choice-of-law analysis. Accordingly, Defendant fails to establish that Alabama law applies on the instant Motion.

Second, Defendant also fails to establish that Plaintiff's Policy qualifies as a group policy under the Insurance Code and California law. [4] By statute, all insurance in California is governed by the provisions of the California Insurance Code, and the only forms of group life insurance recognized are

those set forth in sections 10200-10214. Cal. Ins. Code §§ 41, 10201. Group insurance policies must satisfy the requirement of Cal. Ins. Code § 10205, which provides that a "policy of group life insurance shall not be issued or delivered in this State ... until a copy of the form of the policy is filed with the commissioner and approved by him." On the present Motion, it is unclear whether Defendant complied with the statutory requirements to insure California residents under the purported group policy. Although the certificate of insurance states it is a "group policy" (*e.g.*, Dkt. 10 at 9), this is not sufficient to establish Plaintiff's Policy is a group policy as defined by California law. [5]

Regardless of how the two issues above are resolved, Defendant's Motion also does not articulate how Plaintiff's causes of action for breach of contract, unfair competition, and financial elder abuse necessarily fail as a matter of law. [6] Compl. ¶¶ 65-91. Plaintiff's allegations appear to be premised upon more than mere violation of the Statutes. For example, Plaintiff's breach of contract claim states: "Defendant breached and continues to breach the express terms of its life insurance policies, including Plaintiff's Policy, as well as the statutory mandates regarding such policies ...." *Id.* ¶ 66 (emphasis added). Similarly, Plaintiff alleges Defendant engaged in "unfair business practices" in violation of the UCL. *Id.* ¶ 78. It is plausible that Defendant violated the UCL even if it did not "unlawfully" violate Sections 10113.711 and 10113.72. Finally, Plaintiff alleges Defendant committed financial elder abuse by taking, hiding, appropriating, obtaining, or retaining her money or property for a wrongful use or with the intent to defraud Plaintiff, without reference to the Statutes. Compl. ¶ 87; *see also* Welf. & Inst. Code § 15610.30(a)(1). Defendant also does not address how its arguments regarding Plaintiff's Policy require dismissal of Plaintiff's class claims. *See* Compl. ¶ 38.

***5** In sum, Defendant's Motion fails to demonstrate sections 10113.71 and 10113.72 do not apply to the Subject Policy. The Motion does not outline the elements of Plaintiff's claims, how the inapplicability of sections 10113.71 and 10113.72 to Plaintiff's Policy would affect these claims, and why all claims should be dismissed as a matter of law. Defendant, therefore, fails to meet its burden on the present Motion to Dismiss, and the court DENIES the Motion.

CONCLUSION

For the reasons stated above, the court DENIES Defendant's Motion to Dismiss Plaintiff's Complaint, Dkt. 15. Defendant is ORDERED to file an Answer within fourteen (14) days of this order. *See* Fed. R. Civ. P. 26(a)(4)(A).

IT IS SO ORDERED.

All Citations

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Footnotes

1 The background summary is from Judge Fitzgerald's July 13, 2020 Order Granting Defendant's Motion to Stay, with stylistic edits from this court. *See* Dkt. 23. For purposes of the subject Motion to Dismiss, the court treats the allegations of the Complaint as true. *See* *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016).

2 In reaching its decision, the court does not rely upon Plaintiff's Request for Judicial Notice (Dkt. 18-2) or Defendant's Request for Judicial Notice (Dkt. 31.6).
Accordingly, both are DENIED as moot.

3 As the California Supreme Court has explained, group insurance differs significantly from individual insurance because it "is issued in the name of a group, usually an employer, which acts as a functionary in the collection and payment of premiums and in performing related duties." *Elfstrom v. New York Life Ins. Co.*, 67 Cal. 2d 503, 509 (1967). "Most [group] policies ... require an employee to pay a portion of the premium, which the

employer deducts from wages; the remainder is paid by the employer. The premiums are considerably lower than rates on policies issued on an individual basis." *Id.*

4 The court does not reach the question of whether the Statutes apply to only individual policies and not group policies, as Defendant fails to establish the threshold issue—i.e., that Plaintiff's Policy is a group policy.

5 Defendant also argues that Plaintiff was issued a certificate of insurance only rather than an actual insurance policy, Dkt. 31 at 4-6, but the document Plaintiff allegedly received does not contain language specifying that it is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policy listed therein, as required to qualify as a certificate of insurance under Cal. Ins. Code § 384(a). *See* Dkt. 10. To the contrary, (1) the cover page is entitled: "Your INSURANCE POLICY DOCUMENTS"; (2) the first page identifies the recipient as "our policyholder"; (3) the certificate schedule states that Defendant Colonial Penn will pay the benefits—rather than the insurer that issued the group policy to Defendant; and (4) the certificates contain an Administrative Remedies Rider that purports to amend the terms of Plaintiff's policy. *See id.* All this suggests that the document established an insurance policy between Plaintiff and Defendant, rather than certifying that Plaintiff was insured by the insurer providing the group policy to Colonial Penn. *See* Cal. Ins. Code § 380 ("The written instrument, in which a contract of insurance is set forth, is the policy.").

6 Plaintiff's first and second causes of action also seek a declaration or judgment that the Statutes applied as of January 1, 2013 to, inter alia, Plaintiff's Policy. Compl. ¶¶ 58, 63. As discussed *supra*, the court cannot conclude here that (1) Alabama law applies to Plaintiff's Policy, or (2) the Policy is for a group to which the Statutes do not apply.

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