

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SHREE, L.L.C.,

Plaintiff-Appellant/Cross-Appellee,

v

LEHMAN & VALENTINO, P.C., and PAUL G.  
VALENTINO,

Defendants/Crossdefendants-  
Appellees,

and

METROPOLITAN LIFE INSURANCE  
COMPANY,

Defendant/Crossplaintiff-  
Appellee/Cross-Appellant.

UNPUBLISHED  
December 14, 2004

No. 249321  
Oakland Circuit Court  
LC No. 01-036115-NZ

---

Before: Whitbeck, C.J., and Saad and Talbot, JJ.

PER CURIAM.

Plaintiff appeals the grant of summary disposition in favor of defendants Lehman and Valentino, P.C. (“Lehman”), Paul G. Valentino (“Valentino”), and Metropolitan Life Insurance Company (“MetLife”) in this breach of contract and fraud action, and we affirm. On cross-appeal, MetLife concurs with the grant of summary disposition in its favor and asserts additional justification for dismissal of plaintiff’s claims based on the failure of plaintiff (1) to identify the specific provisions of the contract allegedly breached or (2) to demonstrate that MetLife was the proximate cause of plaintiff’s damages.

I

Plaintiff says that MetLife breached its contract with plaintiff when it surrendered the cash value of a life insurance policy following issuance of a court order.<sup>1</sup>

The grant of summary disposition on a breach of contract claim is appropriate where the relevant contract language is unambiguous. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 700-702; 552 NW2d 919 (1996). Plaintiff's assertion that MetLife breached its duty to defend on the garnishment action is simply unsupported by the language of the contract. Plaintiff fails to produce any documentation or evidence to support its contention regarding MetLife's contractual duty. With reference to assignment of the policy to plaintiff, the language of the contract fails to support plaintiff's contention that MetLife breached its contract. The policy indicates that "the provisions of the policy must be read as a whole." Plaintiff's argument that the waiver of liability contained within the "collateral assignment" provision of the contract is limited or restricted is in error. Based on reading the policy "as a whole" the waiver provision contained within the assignment provision applies more broadly to changes in ownership and beneficiary. The language of the provision is a clear and explicit waiver of liability pertaining to assignments of the contract.

MetLife repeatedly indicated its understanding that the policy value was not subject to surrender. Even if plaintiff demonstrates MetLife erred in not designating plaintiff as the owner of the policy, plaintiff's assertion that MetLife breached its contract by releasing the life insurance proceeds following the issuance of a court order is without a legal basis:

A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date. [*Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998).]

It is undisputed that MetLife released the funds only after the issuance of a court order, and that plaintiff was apprised by MetLife, at each step in the process, of the action or position taken by it. By failing to take action to dispute the release of the funds, subsequent to the issuance of the court order, plaintiff violated the basic tenet, that:

A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal. [*Johnson v White*, 261 Mich App 332, 346; 682 NW2d 505 (2004), quoting *In re Contempt of Dudzinski*, 257 Mich App 96, 111; 667 NW2d 68 (2003).]

---

<sup>1</sup> The trial court granted summary disposition pursuant to MCR 2.116(C)(10) on plaintiff's claim of breach of contract. A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is sufficient factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). With reference to plaintiff's unpreserved argument pertaining to the proximate cause of plaintiff's damages, the issue is reviewed for plain error that affected substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Plaintiff knew of the issuance of the court order and the intent of MetLife to comply with the order, yet it did nothing to contest the order in a timely manner. It was incumbent upon plaintiff to defend against the garnishment or contest the order requiring MetLife to relinquish the funds. Even after attempting to intervene in the garnishment proceeding, plaintiff merely abandoned its efforts by dismissing the action. Hence, any damage incurred is attributable to plaintiff and fault cannot be assigned to MetLife for simply complying with a valid court order.

## II

Plaintiff asserts that Lehman and Valentino failed to accurately and fully disclose information in the garnishment proceeding, resulting in fraud. As noted by the trial court in its ruling, the statements and representations pertaining to ownership of the policy were known beforehand by plaintiff as a recipient of Valentino's written motion prior to hearing. While plaintiff asserts it did not know what Valentino would say at the hearing, there has been no demonstration by plaintiff that Valentino's oral representations to the court differed in any significant manner or context from his written pleadings. In addition, the court had received copies of the letter from MetLife indicating ownership of the policy. The letters from MetLife indicated Vinod Sharma was the policy owner. While the correspondence noted Sharma's title or role as the general partner of plaintiff, this does not demonstrate that Lehman and Valentino wrongfully pursued the asset. When viewed in the context of Sharma's own testimony at the creditors examination that plaintiff was not funded, plaintiff fails to present evidence sufficient to imply knowledge to Valentino that his representations regarding ownership of the policy to the court were false.

Plaintiff has not presented sufficient evidence on the reliance element necessary to demonstrate fraud, because the alleged misrepresentations were made to the court and not to plaintiff. *Cleary Trust v Muzyl Trust*, 262 Mich App 485, 499-500; 686 NW2d 770 (2004). The court, in the garnishment proceeding, acted less on Valentino's assertions than the absence of any opposition. Because plaintiff has not sufficiently established the requisite elements of fraudulent misrepresentation, the trial court correctly dismissed plaintiff's claim against Lehman and Valentino.<sup>2</sup>

Because we hold that the trial court properly granted summary disposition in favor of defendants, we decline to address the remaining issues on appeal.

---

<sup>2</sup> Plaintiff also argues, frivolously, that the trial court erroneously dismissed its claims of negligence and breach of fiduciary duty against MetLife. Plaintiff conceded to the trial court that its claims of negligence and breach of fiduciary duty were not viable and therefore plaintiff has waived these claims. See *Coddington v Robertson*, 160 Mich App 406, 412; 407 NW2d 666 (1987); See also *Phinney v Verbrugge*, 222 Mich App 513, 544; 564 NW2d 532 (1997) ("[A] party may not take a position in the trial court and subsequently seek redress in an appellate court on the basis of a position contrary to that taken in the trial court."); *Kast v Citizens Mutual Ins Co*, 125 Mich App 309, 313; 336 NW 2d 18 (1983).

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Michael J. Talbot