

Genworth Life Ins. Co. of N.Y. v Laraque

2011 NY Slip Op 32446(U)

September 16, 2011

Sup Ct, NY County

Docket Number: 104933/10

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. EILEEN A. RAKOWER

-PRESENT: _____

PART 15

Justice

Index Number : 104933/2010

GENWORTH LIFE INSURANCE

vs.

LARAQUE, LUCIEN

SEQUENCE NUMBER : 001

COMPEL

INDEX NO. 104933/10

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

this motion to/for _____

notice of motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED
1
2

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED

SEP 20 2011

NEW YORK COUNTY CLERK'S OFFICE



HON. EILEEN A. RAKOWER

Dated: 9/16/11

- Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
- Check if appropriate: DO NOT POST REFERENCE
- SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
GENWORTH LIFE INSURANCE COMPANY
OF NEW YORK, formerly known as GE CAPITAL
LIFE INSURANCE COMPANY OF NEW YORK,

Plaintiff,

Index No.104933/10

Seq No.: 001

- against -

Decision and Order

LUCIEN LARAQUE, FRANCES DUVERNEAU,
AND CARMELLE AUDIGE,

FILED

Defendants.

SEP 20 2011

-----X
HON. EILEEN A. RAKOWER, J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff Genworth Life Insurance Company of New York formerly known as GE Capital Life Assurance Company of New York ("Genworth") brings this interpleader action as the result of a potential conflict regarding two annuity contracts issued to Ms. Frankline Jean. Previously, Genworth moved, *ex-parte*, to deposit the proceeds of the annuities with the New York County Clerk. The Order was granted by Justice Martin Schoenfeld, and \$43,553.20 was deposited with the Clerk on June 7, 2010.

Presently before the Court is a motion by defendant Frances Duverneau, who moves for an Order directing the County Clerk to disburse the proceeds from the two annuities to her, and a cross-motion by Genworth, wherein it seeks to be dismissed from the action, with costs and attorneys fees. No party opposes either the motion or the cross-motion.

According to Genworth's complaint, the first annuity was issued in 2001. In 2007, a change was made to the contract, naming Duverneau as the sole beneficiary. Genworth confirmed the change with Ms. Jean by letter. Genworth received an application for a second annuity, dated May 15, 2008, wherein Ms. Jean requested

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that defendant Lucien Laraque be designated as primary beneficiary, and defendants Carmelle Audige and Duverneau be designated contingent beneficiaries. Thereafter, Ms. Jean's broker sent a corrected application, which named Duverneau as the sole beneficiary. Genworth sent another confirmation letter to Ms. Jean, confirming the beneficiary change to the 2008 annuity, and sought confirmation from Ms. Jean's broker, who claimed that the corrections were intended.

Ms. Jean died in 2009, and in October 2009, Audige sent a letter to Genworth requesting the "necessary forms" because "she knew" that Ms. Jean had not made the changes which designated Duverneau as the sole beneficiary of the two annuity contracts. Both Laraque and Duverneau submitted claims to the funds. A claim form was sent to Audige on October 29, 2009 but the form was never returned.

On April 22, 2010, Genworth commenced the instant action because it could not "discern which of the claimants is or are entitled to the benefits under the Policy." The summons and complaint was served upon Laraque on June 12, 2010, upon Duverneau on June 24, 2010, and upon Audige on June 22, 2010. Duverneau is the only defendant who answered the complaint.

Duverneau asserts that, as the defaulting defendants failed to make any claim to the funds, she should be declared the sole beneficiary of the annuities. Genworth, in support of its cross-motion, claims that it should be dismissed from the case, as it is a mere stakeholder.

Pursuant to CPLR §1006(a), "a stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants." CPLR §1006 (f) states, in relevant part:

Discharge of stakeholder. After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party. The stakeholder shall submit proof by affidavit or otherwise of the allegations in the pleading, The court may grant the motion and require payment into court . . .

"In order to qualify as a stakeholder . . . and thus be eligible for discharge, it

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is . . . necessary to show that there is exposure to double or multiple liability as a result of adverse claims. These adverse claims, therefore, must rest on some reasonable basis . . .” (*Nelson v. Cross & Brown Co.*, 9 AD2d 140[1st Dept. 1959]). Generally, courts will dismiss an interpleading stakeholder unless it is shown to have some independent liability. (see; *Birnbaum v. Marine Midland Bank*, 96 AD2d 776[1st Dept. 1983]).

Here, because of the claims already filed by Duverneau and Laraque, and the fact that Audige can be expected to make a claim, Genworth “took the safe and appropriate course by bringing this interpleader action.” (*Fischbein, Badillo, Wagner v. Tova Realty Co.*, 193 AD2d 442[1st Dept. 1993]). Genworth, as “a neutral stakeholder,” would be entitled to be reimbursed for costs and attorneys fees expended in bringing the interpleader action. (*New York Life Insurance Co. v. Lowy*, 40 AD3d 295[1st Dept. 2007]).

“A defendant in an interpleader action must follow the general rules for appearing in an action applicable to any defendant.” (*USF & G v. Maggiore*, 299 AD2d 341[2nd Dept. 2002]). Pursuant to CPLR 320, a defendant can appear by: (1) by serving an answer, (2) by serving a notice of appearance, or (3) making a motion which has the effect of extending the time to answer.

Duverneau’s co-defendants did not appear in the instant action. However, defendants’ failure to answer, does not, in itself, entitle any party to a declaration that Duverneau is the rightful owner of the funds. Indeed, “the absence of other claimants does not entitle a claimant in interpleader to a judgment since he must succeed upon his own rights to the fund.” (*District Attorney of Nassau County v. Farrington*, 56 Misc.2d 904[Sup. Court. Nassau Cnty[1967]). “[E]ach claimant must succeed in establishing his right to the property by a preponderance of the evidence. (*Midland Insurance Co. v. Friedgood*, 577 F.Supp. 1407[SDNY 1984]citing to CPLR §1006). Further, it is well established that “[d]eclaratory judgment can rarely, if ever, be granted solely on default, with no inquiry by the court as to the merits.” (*Tanenbaum v. Allstate Ins. Co.*, 66 AD2d 683,684[1st Dept. 1978]).

Here, neither Duverneau nor Genworth submit the annuity contracts, the various beneficiary change applications, or an affidavit by a person with knowledge of the facts alleged. Indeed, there is no evidence before the Court, “save for the barest statement of [Duverneau’s] colorable claim,” which would lend the Court to

grant the relief sought. (see *Bankers Security Life Insurance Society v. Shakerdge*, 55 AD2d 568[1st Dept. 1976]).

Wherefore it is hereby

ORDERED that the motion is denied; and it is further

ORDERED that the cross-motion is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: September 16, 2011



EILEEN A. RAKOWER, J.S.C

FILED

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