

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

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July 21, 2004

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RE: Toth v. Metropolitan Life Insurance Company & The State of Delaware State
Personnel Office
C.A. No. 03C-10-028 THG

Date Submitted: June 4, 2004

Dear Counsel:

Lucille Toth has sued the State of Delaware Personnel Office (SPO) and Metropolitan Life Insurance Company (MetLife) for breach of contract and bad faith because death benefits were denied her following her husband's death. Defendants have filed a motion to dismiss for failure to state a claim. Super. Ct. Civ. R. 12(b)(6). For the reasons set forth herein, Defendants' motion is granted.

STATEMENT OF THE FACTS

Mr. Toth was an employee of the State of Delaware and was a participant in a group life insurance policy provided to him as an employee benefit. It was administered by MetLife. In 1999, he became permanently disabled. In certain situations, a disabled employee's death benefits may remain in effect. On August 25, 2000, by correspondence from MetLife, Mr. Toth was advised his death benefits would continue. (Complaint, Exhibit A.) Contained in this letter is the following sentence:

Your policy will continue as stated under the terms of your contract, including any reduction or termination in the amount of insurance, as long as you remain totally disabled and provide proof of continuing disability upon request.

Mrs. Toth alleges she and her husband later called the SPO because they wanted to clarify the conversion rights which would entitle Mr. Toth to take over and continue the policy after the State no longer paid for it. In her pleadings, Mrs. Toth states this phone call took place after receiving a letter dated September 11, 2000, which contained a "statement regarding conversion of benefits." (Plaintiff's Answer to Motion to Dismiss Filed by the State of Delaware; Paragraph 8.)

The September 11, 2000 letter was correspondence from the SPO and it enclosed a copy of the MetLife August 25, 2000 correspondence. The September 11, 2000 letter specifically addresses conversion. This letter states, "Your life insurance coverage will continue conditional upon periodic review by Metropolitan Life, until the age of 65. At age 65, your coverage will be canceled, however you have the ability to convert your coverage to your own personal policy at additional cost by contacting any Metropolitan Life agent within 31 days after your 65th birthday."

In the telephone conversation with someone at the SPO, Mrs. Toth alleges she and her husband were informed that a notification of conversion rights would be mailed to them by MetLife. Mr. Toth turned 65 years of age on May 5, 2002. He did nothing to convert his group policy. Mrs. Toth alleges this was because nothing was received from MetLife regarding the conversion of the policy. MetLife alleges it sent a letter on July 3, 2002 to Mr. Toth at the same address used for all other correspondence. The State acknowledges receipt of its copy of this letter, but Mrs. Toth denies receiving it. Therefore, for purposes of this motion on the pleadings, Mrs. Toth's position that she did not receive the July 3, 2002 letter is presumed proven.¹

On September 26, 2002, Mr. Toth died. On October 16, 2002, Mrs. Toth filed a claim for benefits. MetLife informed Mrs. Toth on November 13, 2002 that her claim was denied due to Mr. Toth's failure to convert his policy from the State group policy to a personal policy upon reaching the age of 65. This lawsuit followed.

STANDARD OF REVIEW

In assessing the merits of a motion to dismiss for failure to state a claim pursuant to Superior Court Civil Rule 12(b)(6), all well-pleaded facts in the complaint are assumed to be true. *Laventhol, Krekstein, Horwath & Horwath, v. Tuckman*, 372 A.2d 168, 169 (Del. 1976). "A complaint[,] attacked by a motion to dismiss for failure to state a claim[,] will not be dismissed unless it is clearly without merit, which may be either a matter of law or of fact." *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970). Likewise, a complaint will not be dismissed for failure to state a claim unless "[i]t appears to a certainty that, under no set of

¹If this were a summary judgment motion, then this would be relevant as notice is complete, under the statute, based upon mailing and not receipt. See 18 *Del. C.* § 3125.

facts which could be proved to support the claim asserted, would the plaintiff be entitled to relief.” *Id.* That is to say, the test for sufficiency is a broad one. It is measured by whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint. *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978); *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952). If the plaintiff may recover, the motion must be denied.

THE POLICY

The Group Life and Accidental Death or Dismemberment Benefits Plan provided to employees by the State and administered by MetLife provides:

4. Termination

Your Death Benefits will end on:

- (a) the date you are no longer Totally Disabled; or
- (b) the date you do not give us proof of Total Disability when required; or
- (c) the day before the date you become 65 years old.

The policy also provides:

Amount of Continued Death Benefits During Total Disability

The amount of your Death Benefits will be determined by the table below. The percentage of your age on the date of your death is to be applied to the amount of your Life Benefits on the date your Life Benefits ended.

If You Are Disabled And You Die	Percentage
Before age 65	100%
On or after age 65	0%

and

Coverage

Death Benefits may be payable after your Life Benefits end in certain cases of Total Disability. We will pay Death Benefits to your beneficiary if:

5. you die before you are 65 years old...

However, no Death Benefits are payable if a death benefit is payable under RIGHT TO OBTAIN A PERSONAL POLICY OF LIFE INSURANCE ON YOUR OWN LIFE.

DISCUSSION

The focus of Mrs. Toth's complaint is that MetLife and the State are in breach of contract for failing to pay death benefits. Mrs. Toth contends that she is entitled to benefits because (1) the Defendants have failed to act in good faith in carrying out their obligations under the contract, (2) she and her husband detrimentally relied on the representations of the SPO regarding notification of conversion rights, and (3) the ambiguous nature of the group insurance policy.

In their motion for judgment on the pleadings, Defendants state that under the contract, Mr. Toth was no longer eligible for insurance coverage after he turned 65. Defendants state that under Delaware law, their obligation was to notify Mr. Toth of his right to convert his life insurance policy when eligibility under the group life insurance plan ended. Defendants argue that they fulfilled this requirement by providing Mr. Toth with the booklet and September 11, 2000 letter. Defendants argue that, assuming Mr. Toth was not notified and assuming that Mr. Toth was told by the SPO that MetLife would mail to them a notification of conversion right, nevertheless under Delaware law, the time to convert the policy cannot be extended beyond 91 days after the expiration of the policy. Thus, Defendants contend, whether or not Mr. Toth received notice regarding conversion has no bearing on the case as a matter of law, as the opportunity to convert the policy ended 91 days after coverage under the group life insurance plan ended and cannot be further extended by the Court.

The Delaware Code provides that there are 31 days to convert a State employee group life insurance policy to a personal policy. 18 *Del. C.* § 3120². The Code further provides that should an individual not be given notice of the right to convert at least 15 days prior to the expiration of the conversion period, he will have an additional period to exercise this right. 18 *Del. C.* § 3125.³ However, it is stated that “in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy.” *Id.*

The Code does not say that the State or insurance company is required to contact the insured *during* the conversion period or *immediately preceding* the period. It simply requires that the insured be contacted at least 15 days prior to the expiration date of such period. 18 *Del. C.* § 3125. In *Murray v. Metropolitan Life Insurance Company*, 1981 Del. Super. LEXIS 821 (Del. Super. Ct. 1981), the Superior Court stated that language of 18 *Del. C.* § 3123⁴ did not impose a duty upon the employer or insurer to give the employee a notification of the conversion privilege upon expiration of the group coverage. *Id.* at *5. The Court further stated that “under 18 *Del. C.* § 3123, no event, not even the complete failure to provide notice extends the conversion period

² The pertinent portion of 18 *Del. C.* § 3120 reads: “A group life insurance policy shall contain a provision that if the insurance, or any portion of it, on a person covered under the policy or on the dependent of a person covered, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him/her by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination...”

³ The pertinent portion of 18 *Del. C.* § 3125 states: “If any individual insured under a group life insurance policy hereafter delivered in this State becomes entitled under the terms of such policy to have an individual policy of life insurance issued without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy.”

⁴ 18 *Del. C.* § 3123 became 18 *Del. C.* § 3125 in 1985 when the Code was amended by 65 Del. Laws, c. 480, § 1.

for more than sixty days after the expiration of the conversion period provided in the policy.” *Id.* Other courts also have found that an employer or insurer is not required to notify an employee of conversion rights at the time when coverage under the group plan expires. *Id.* See also *Brunori v. John Hancock Mut. Life Ins. Co.*, 1981 Del. Super. LEXIS 689 at *8 (Del. Super. Ct. 1981) (where booklets, issued to covered employees under a group plan, contained provisions on the right to convert to individual plans, employees are charged with notice of such provisions and cannot recover from an employer or an insurer who fails to disclose to an employee the manner in which he may convert at the date of termination of employment).

In *DeGroot v. Metropolitan Life Insurance Company*, 94 Fed. Appx. 894 (3d Cir. April. 8, 2004), a case similar to the one at hand, DeGroot filed suit against his employer and insurer claiming he did not receive the statutory notice of his window to convert a group policy into a personal policy. *DeGroot* concerned a Pennsylvania statute identical in language to 18 *Del. C.* § 3125. The Court stated that the question of whether DeGroot received proper notice was moot, as the applicable statute bars recovery because coverage was not elected within 60 days of the expiration of his election period. *Id.* at 896.

In the case before the Court, Mr. Toth received not only the benefits booklet but also the SPO letter dated September 11, 2000 at least 15 days prior to the expiration date of his conversion period, as required by 18 *Del. C.* § 3125. The phone conversation that took place between the Toths and the SPO representative did not change the fact that coverage would end when Mr. Toth reached the age of 65. Additionally, that Mr. Toth did not receive later notice of his right to convert, as represented in the phone conversation, did not affect the limited conversion period as the law provides for a period no longer than 91 days to convert a group

policy into a personal policy once coverage under the group plan ceases. The representation made during the phone call could not, and did not, act to extend that statutorily defined window. Consequently, the right to convert the policy ended on August 13, 2002, 91 days after his 65th birthday. As Mr. Toth had not converted the policy by that time, he was not covered under the group policy at the time of his death.

Mrs. Toth also argues that Defendants should be estopped from relying upon the notice and filing obligations to deny her benefits, based on the representation that Mr. Toth would be contacted when it was time for him to convert his policy. Under Delaware law, the doctrine of equitable estoppel may be invoked “when a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment.” *Waggoner v. Laster*, 581 A.2d 1127, 1136 (Del. 1990). The party claiming estoppel must show that he lacked the knowledge of the true facts or he lacked the means to obtain the truth, he relied on the conduct of the party against whom the estoppel is claimed, and he suffered a prejudicial change of position as a result of his reliance. *Waggoner* at 1136. The party seeking estoppel must be able to prove these elements by clear and convincing evidence. *Reeder v. Sanford School, Inc.*, 397 A.2d 139 (Del. Super. Ct. 1979). This first element in essence states that “[o]ne who has knowledge of the facts cannot rely in good faith upon words or conduct of another which are inconsistent with the truth.” *Singewald v. Girden*, 139 A.2d 838 (Del. Ch. Ct. 1958).

Mrs. Toth cannot now be allowed to claim detrimental reliance when she and her husband had knowledge of the true facts and knowing that they had to act within the specified period, waited until it was too late. Not only would allowing Mrs. Toth to escape the filing obligations be contrary to Delaware law, which as explained above does not allow the Court to expand the

period of conversion to a period larger than 91 days, it would be in opposition to the requirements of the doctrine of equitable estoppel.

In this case, Mrs. Toth and her husband were told in the Group Insurance Plan booklet and also in the letter dated September 11, 2000 that Mr. Toth's insurance coverage would cease when he reached the age of 65 unless he converted the plan. The letter included the reminder that Mr. Toth must contact a MetLife agent within 31 days of his 65th birthday or else coverage would be canceled. Read together, the provisions in the policy as well as the letter should have made it abundantly clear that once the insured reaches the age of 65, coverage under the plan ends unless the insured takes advantage of his right to obtain a personal policy of life insurance of his own during the conversion period. Thus, Mr. Toth was under notice that his policy would end upon his reaching the age of 65 plus 31 days. Therefore, the doctrine of estoppel is not available to Mrs. Toth.

CONCLUSION

Under Delaware State law the conversion period ended 91 days after Mr. Toth's 65th birthday, prior to Mr. Toth's death, and cannot be further extended by the Court.

Based upon the foregoing reasons, Defendants' Motion to Dismiss for Failure to State a Claim is granted.

IT IS SO ORDERED

Yours very truly,

Judge T. Henley Graves

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