IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

TRACIE LYNN COCHRAN and REBECCA LEIGH CLANTON,

Plaintiffs,

v.

JACKSON NATIONAL LIFE INSURANCE COMPANY,

Defendant.

Civil Action No. 7:16-CV-45 (HL)

ORDER

Before the Court are Defendant Jackson National Life Insurance Company's Motion to Dismiss Plaintiffs' Complaint (Doc. 3) and Motion to Dismiss Plaintiffs' Amended Complaint (Doc. 8). For the reasons discussed herein, Defendant's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. 8) is granted-in-part and denied-in-part, and Defendant's Motion to Dismiss (Doc. 3) is deemed moot.

I. FACTUAL BACKGROUND

On or about February 21, 1991, Phillip Randall Booker purchased life insurance policy number 0017623570 from Defendant (the "Policy"). (Doc. 1-1, p. 6). The insured under the Policy was Larry T. Tuten. (Doc. 8-2, p. 2). Mr. Booker was the beneficiary of the Policy. (Doc. 1-1, p. 7).

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On or about September 23, 2011, Mr. Booker and Mr. Tuten completed and submitted a Jackson National Life Service Request, seeking to change the owner and beneficiary of the Policy. (Doc. 1-1, pp. 7, 18–19). Mr. Tuten was named the new owner of the Policy, and acknowledged ownership by his signature. (Doc. 1-1, p. 19). Plaintiffs Tracie Lynn Cochran and Rebecca Leigh Clanton, as well as Cynthia Kaye Alderdice, were listed as the new beneficiaries on the form.[1] (Doc. 1-1, p. 18). The area for designating the percentage each beneficiary should receive under the Policy was left blank. (Doc. 1-1, p. 18). The instructions on the form as to beneficiary changes state that, "[p]ercentages must equal 100% for each beneficiary type. If left blank, all beneficiaries will receive equal shares." (Doc. 1-1, p. 18).

On October 4, 2011, Defendant sent a letter to Mr. Booker, letting him know that his request for an ownership change was completed, and that Mr. Tuten was the new owner of the Policy. (Doc. 1-1, p. 30). Also on October 4, 2011, Defendant sent a letter to Mr. Tuten thanking him for his request for a beneficiary change, and stating that, before processing, it would need "[a]ll designation information . . . including percentage of benefit and definition of primary versus contingent beneficiaries. All benefit percentages must equal 100%." (Doc. 1-1, p. 39).

[1] Tracie Lynn Cochran, Rebecca Leigh Clanton, and Cynthia Kaye Alderdice are Mr. Tuten's daughters. (Doc. 1-1, p. 5).

Mr. Tuten passed away on or about October 20, 2013. (Doc. 1-1, p. 7). The proceeds of the Policy in the amount of $150,000 were disbursed to Mr. Booker. (Doc. 1-1, p. 7). According to Defendant's records, Mr. Booker was the last recorded beneficiary of the Policy. (Doc. 1-1, p. 25). Defendant claims that it did not record Mr. Tuten's request for the change of beneficiary because Mr. Tuten did not provide the additional information requested in the October 4, 2011 letter.

On April 22, 2016, Plaintiffs filed an eight count Amended Complaint against Defendant relating to the life insurance proceeds. In Counts I and II, Plaintiffs each assert a tortious interference with contractual relations claim, alleging that Defendant wrongfully paid the insurance proceeds to Mr. Booker instead of Mr. Tuten's children. In Counts III and IV, Plaintiffs each assert a damages claim that includes her pro-rata share of the life insurance proceeds plus interest and costs, out of pocket expenses, financial suffering, and mental suffering. In Counts V and VI, Plaintiffs each assert a punitive damages claim. In Counts VII and VIII, Plaintiffs each assert a breach of contract claim, alleging that Defendant breached the terms of the Policy by paying the Policy proceeds to Mr. Booker instead of Mr. Tuten's children. Defendant moves to dismiss all counts of Plaintiffs' Amended Complaint.

II. DISCUSSION

A. Motion to Dismiss Standard

The Federal Rules of Civil Procedure require that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To avoid dismissal pursuant to Fed. R. Civ. P. 12(b)(6), 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)). The plaintiff is required to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

"At the motion to dismiss stage, all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." Garfield v. NDC Health Corp., 466 F.3d 1255, 1261 (11th Cir. 2006) (internal quotation marks and citation omitted). However, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." Oxford Asset Mgmt., Ltd. v. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002). The complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Twombly, 550 U.S. at 555 (internal quotation marks and

citation omitted). Where there are dispositive issues of law, a court may dismiss a claim regardless of the alleged facts. Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993).

B. Counts I and II – Tortious Interference

To state a claim for tortious interference with a contract, a plaintiff must prove the following:

> (1) improper action or wrongful conduct by the defendant without privilege; (2) the defendant acted purposely and with malice with the intent to injure; (3) the defendant induced a breach of contractual obligations or caused a party or third part[y] to discontinue or fail to enter into an anticipated business relationship with the plaintiff; and (4) the defendant's tortious conduct proximately caused damage to the plaintiff.

Mabra v. SF, Inc., 728 S.E.2d 737, 739–40 (Ga. Ct. App. 2012).

To prove that the defendant acted "without privilege," a plaintiff must show that the defendant "was a stranger to the contract or business relation at issue." Id. at 740. "[I]n order for a defendant to be liable for tortious interference with contractual relations, the defendant must be a stranger to both the contract *and* the business relationship giving rise to and underpinning the contract." Atlanta Market Ctr. Mgmt. Co. v. McLane, 503 S.E.2d 278, 283 (Ga. 1998). A party to a contract cannot tortiously interfere with its own agreement." See Tom's Amusement Co., Inc. v. Total Vending Svcs., 533 S.E.2d 413, 417 (Ga. Ct. App. 2000) ("Nor can Joseph be held liable for tortiously interfering with his own contracts); Advanced TeleMedia, L.L.C. v. Charter Comm'n, Inc., No. CIVA105CV2662-RLV, 2006 WL 3422669, at *6 (N.D. Ga. Nov. 27, 2006)

("[G]enerally parties to a contract cannot tortiously interfere with their own agreement."); Novatel Comm'ns, Inc. v. Cellular Tel. Supply, Inc., No. Civ.A.C85-267A, 1986 WL 798475, at *17 (N.D. Ga. Dec. 23, 1986) (holding that a party to a contract cannot be held liable for tortious interference with its own contract).

Here, it is undisputed that Defendant was a party to the Policy. As a result, Defendant was neither a stranger to the contract nor the business relationship giving rise to the contract.[2] Therefore, Defendant cannot be said to have acted with willful privilege. Plaintiffs' tortious interference claims, Counts I and II, are dismissed.

C. Counts III and IV – Compensatory Damages

In Counts III and IV of their Amended Complaint, Plaintiffs seek damages "for the life insurance funds plus interest, as well as, all of [their] costs, out of pocket expenses, financial and mental suffering that [they] ha[ve] endured due to Defendant's refusal to disperse the policy funds to the proper beneficiaries . . . ." (Doc. 1-1, p. 11).[3] As discussed *supra*, in subsection B, Plaintiffs' substantive

[2] Plaintiffs claim that they have satisfied the requirements for stating a tortious interference claim because Mr. Booker was a stranger to the contract and because Defendant purposely disbursed the life insurance proceeds to Mr. Booker. However, the law is clear that *the defendant* must be a stranger to the contract with which the defendant allegedly interfered.

[3] To the extent Plaintiffs intend to state a claim for negligent or intentional infliction of emotional distress, the Court finds that these claims must also be dismissed. Neither Plaintiff has alleged that she was physically injured, as required to state a claim for negligent infliction of emotional distress. See Lee v. State Farm Mut. Ins., 533 S.E.2d 82, 84 (Ga. 2000). Further, "an insurer's failure to pay benefits under an insurance policy does not, as a matter of law, rise to the

claims for tortious interference fail because Defendant is not a stranger to the contract. Because their substantive tort claims fail, Plaintiffs' damages claims contained in Counts III and IV must also be dismissed.[4]

D. Counts V and VI – Punitive Damages

In Counts V and VI, Plaintiffs have each alleged a punitive damages claim against Defendant. Under Georgia law, "[p]unitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences." O.C.G.A. § 51-12-5.1(b). Defendant moves to dismiss Plaintiffs' punitive damages claims because Plaintiffs' substantive claims for tortious interference fail.

In their Response to Defendant's Motion to Dismiss, Plaintiffs claim that Defendant exhibited willful misconduct when "it repeatedly ignored Plaintiffs' requests, its refusal to provide Plaintiffs with a copy of Mr. Tuten's entire issued policy[5], as well as, its refusal to acknowledge Mr. Tuten's intentions as set forth

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level of such outrageousness requisite to a cause of action for intentional infliction of emotional distress." Lincoln Nat'l Life Ins. Co. v. Davenport, 410 S.E. 2d 370, 371 (Ga. Ct. App. 1991) (citation omitted).

[4] Plaintiffs seek damages for their breach of contract claims separately, in ¶¶ 47 and 49 of their Amended Complaint. (Doc. 6).

[5] Plaintiffs did not allege in their Amended Complaint that Defendant refused to provide them with a copy of the insurance policy. That alleged action cannot form the basis of a punitive damages claim.

on the Defendant's own form." (Doc. 9-1, p. 7). However, in order to maintain a punitive damages claim, Plaintiffs must have a viable tort claim. Because their substantive tort claims fail, Plaintiffs' punitive damages claims must also be dismissed. Irving v. Bank of Am., 497 Fed. Appx. 928, 930 (11th Cir. 2012) ("Absent a sufficiently-pleaded underlying tort, Plaintiff's derivative claim for punitive damages must also be dismissed); Chaney v. Harrison & Lynam, LLC, 708 S.E.2d 672, 681 (Ga. Ct. App. 2011) (punitive damages claim cannot survive if plaintiff does not establish the underlying tort).

E. Counts VII and VIII – Breach of Contract

In Counts VII and VIII, Plaintiffs claim that Defendant breached the terms of the Policy when it disbursed the proceeds to Mr. Booker. To establish a breach of contract under Georgia law, Plaintiffs must show: (1) an enforceable agreement; (2) breach of that agreement; and (3) damages as a result of the breach. Broughton v. Johnson, 545 S.E.2d 370, 371 (Ga. Ct. App. 2001).

Defendant moves to dismiss Plaintiffs' breach of contract claims, arguing that Plaintiffs cannot show that there was an enforceable agreement naming Plaintiffs as beneficiaries of the Policy. Further, because Plaintiffs were not the named beneficiaries under the Policy, Defendant contends that Plaintiffs lack standing to raise a breach of contract claim against Defendant. In support of its

argument, Defendant has attached an authenticated specimen copy of the Policy to its Motion to Dismiss.[6]

In the Eleventh Circuit, Rule 12(b)(6) decisions have adopted the "incorporation by reference" doctrine, under which a document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment only if the attached document is: (1) central to the plaintiff's claim; and (2) undisputed. Horsley v. Feldt, 304 F.3d 1125, 1134 (11th Cir. 2002). "Undisputed" in this context means that the authenticity of the document is not challenged. Id.

Attached to its Motion to Dismiss, Defendant filed an authenticated specimen copy of the life insurance policy it issued insuring the life of Larry T. Tuten. Although the copy is not the exact policy issued to Mr. Booker, and later transferred to Mr. Tuten, the "specimen copy contains the same material terms as and correctly reflects the substantive terms of Jackson Policy No. 0017623570." (Doc. 8-2, p. 2). Because Plaintiffs are suing Defendant for allegedly breaching the terms of the Policy, the Court finds that the document is central to Plaintiffs' breach of contract claims. Plaintiffs have not challenged the authenticity of the document. As a result, the Court has considered the document in reaching its decision on Defendant's Motion to Dismiss.

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[6] According the Plaintiffs, a copy of the Policy was not attached to the Amended Complaint because Defendant has repeatedly failed to provide Plaintiffs with a copy.

1. Enforceable Agreement

Defendant contends that Plaintiffs' breach of contract claims fail because there was no enforceable agreement issued by Defendant naming Plaintiffs as beneficiaries. According to the Policy, in order for a change of beneficiary to become effective: (1) the policy owner must file with Defendant an acceptable written request to change the beneficiary; and (2) that request must be recorded by Defendant. Defendant insists that, when Mr. Tuten requested to change the beneficiary of the Policy, neither of these requirements were met. As a result, Defendant argues that the change of beneficiary was never effective, and that Plaintiffs' breach of contract claims should be dismissed.

i. Acceptable written request

Plaintiffs have alleged that Mr. Tuten completed a Life Service Request, requesting that his three daughters be added as the sole beneficiaries of the Policy. This Life Service Request is a form issued by Defendant for the purpose of allowing policyholders to submit requests for changes to their policies. With respect to requests for a beneficiary change, the form states that "[i]f [the blanks for designating percentages are] left blank, all beneficiaries will receive equal shares." (Doc. 1-1, p. 18). Plaintiffs have alleged that Mr. Tuten completed this form, left the area for designating percentages for beneficiaries blank as permitted by the form's instructions, and submitted the form to Defendant. It is Plaintiffs' position that the form was an acceptable written request, because Mr. Tuten complied with the instructions given on the form.

Defendant counters that the form was clearly not an acceptable written request, as demonstrated by Defendant's October 4, 2011 letter to Mr. Tuten, explaining that before processing his beneficiary request, Defendant needed Mr. Tuten to provide "[a]ll designation information," including the percentage of benefit and definition of primary versus contingent beneficiaries. (Doc. 1-1, p. 39).

Viewing the facts in the light most favorable to Plaintiffs, the Court finds that it is plausible that Mr. Tuten's request for a change of beneficiary was an acceptable written request. The form on which Mr. Tuten requested the change was provided by the Defendant for the purpose of submitting change requests. The form instructed that, if the percentage designations were left blank, all beneficiaries would receive equal shares. Mr. Tuten left the percentage designations blank and submitted the form. These facts are sufficient to allow the Court to draw the reasonable inference that Mr. Tuten's request to change the beneficiaries of the Policy to his daughters was an acceptable written request.

ii. Recording of request

Defendant next argues that it is entitled to dismissal because, even if the Life Service Request form was deemed an acceptable written request, Plaintiffs have not alleged that it was recorded. "Because the change in beneficiary form was never recorded, no enforceable agreement was ever created between [Defendant] and Mr. Tuten's children." (Doc. 8-1, p. 9). Defendant relies on

language in the Policy, which states that a request for change in beneficiary "will take effect only when recorded by the Company at its Home Office." (Doc. 8-2, p. 5). As a result, Defendant contends that Plaintiffs' breach of contract claims should be dismissed.

The Court disagrees. The Life Service Request form submitted to Defendant contained both Mr. Booker's request for a change in ownership and Mr. Tuten's request for a change in beneficiary *on the same page*. (Doc. 1-1, p. 18). Mr. Booker's request for a change in ownership was completed on October 4, 2011. (Doc. 1-1, p. 26). The Court finds these facts sufficient to allow the Court to draw the reasonable inference that the Life Service Request was recorded.

2. Standing

Finally, Defendant argues that Plaintiffs lack standing to raise their breach of contract claims because they were not third-party beneficiaries under the Policy. Georgia law provides, "[i]n order for a third party to have standing to enforce a contract . . . it must clearly appear from the contract that it was intended for his benefit. The mere fact that he would benefit from performance of the agreement is not alone sufficient." Scott v. Mamari Corp., 530 S.E.2d 208, 211 (Ga. Ct. App. 2000) (internal quotation marks and citation omitted). "Unless such an intention is shown on the face of the contract, defendant is under no duty and consequently plaintiff acquires no right as the third party beneficiary." Id. (internal quotation marks and citation omitted). "A contract is intended to benefit

a third party when the promisor engages to the promisee to render some performance to a third person." Id. (citation omitted).

As the Court previously concluded, Plaintiffs have alleged facts sufficient to allow the Court to draw the reasonable inference that Defendant is liable for breach of contract. Because the determination of whether Plaintiffs have standing to bring their breach of contract claims depends on whether Plaintiffs were third party beneficiaries of the Policy, Defendant is not entitled to dismissal on the basis of standing.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. 8) is **GRANTED-IN-PART** and **DENIED-IN-PART**. Defendant's Motion to Dismiss Plaintiffs' Complaint (Doc. 3) is deemed **MOOT**.

SO ORDERED, this the 28th day of July, 2017.

/s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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