

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 12, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LESLIE BARGEL,

Plaintiff,

v.

PRINCIPAL LIFE INSURANCE

COMPANY, a foreign insurer,

Defendant.

No. 2:18-cv-00223-SAB

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is Defendant’s Second Motion for Summary Judgment, ECF No. 23. The motion was heard without oral argument. Plaintiff is represented by Robb Grangroth. Defendant is represented by Patrick Cronin.

Previously, the Court denied Defendant’s Motion for Summary Judgment, finding questions of material fact existed regarding whether JoAnn Bargel made the requisite payments or whether Defendant was justified in terminating her policy. ECF No. 19. After the Order was issued, Defendant sought discovery on the amount of payment. Defendant now asserts and Plaintiff does not deny that \$2,000, not \$4,000, was paid on the policy in September 2017. ECF No. 25. As a result, Defendant moves for summary judgment.

Motion Standard

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

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JUDGMENT ~ 1**

1 matter of law.” Fed. R. Civ. P. 56(a). Fed. R. Civ. P. 56(c). There is no genuine
2 issue for trial unless there is sufficient evidence favoring the non-moving party for
3 a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477
4 U.S. 242, 250 (1986). The moving party has the initial burden of showing the
5 absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317,
6 325 (1986). If the moving party meets its initial burden, the non-moving party must
7 go beyond the pleadings and “set forth specific facts showing that there is a
8 genuine issue for trial.” *Anderson*, 477 U.S. at 248.

9 In addition to showing there are no questions of material fact, the moving
10 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
11 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled
12 to judgment as a matter of law when the non-moving party fails to make a
13 sufficient showing on an essential element of a claim on which the non-moving
14 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party
15 cannot rely on conclusory allegations alone to create an issue of material fact.
16 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

17 When considering a motion for summary judgment, a court may neither
18 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
19 is to be believed, and all justifiable inferences are to be drawn in his favor.”
20 *Anderson*, 477 U.S. at 255.

21 **Interpretation of Insurance Contract**

22 A federal court sitting in diversity looks to the forum state’s choice of law
23 rules to determine the controlling substantive law. *Patton v. Cox*, 276 F.3d 493,
24 495 (9th Cir. 2002). Under Washington law, insurance policies are construed as
25 contracts, and interpretation of policies is a matter of law. *State Farm Gen. Ins. Co.*
26 *v. Emerson*, 102 Wash.2d 477, 480 (1984). Policies are to “be given a fair,
27 reasonable, and sensible construction” that comports with how the average
28 purchaser of insurance would view the policy. *Grange Ins. Co. v. Brosseau*, 113

1 Wash.2d 91, 95 (1989) (quotation omitted).

2 The court must enforce clear and unambiguous policy language as written; it
3 may not modify the policy or create ambiguity where none exists. *Quadrant Corp.*
4 *v. Am. States Ins. Co.*, 154 Wash.2d 165, 171 (2005). The expectations of the
5 insured cannot override the plain language of the contract. *Id.* at 172. Any
6 ambiguities are construed in favor of the insured; but a clause is ambiguous only
7 “when, on its face, it is fairly susceptible to two different interpretations, both of
8 which are reasonable.” *Id.* at 171 (citation omitted).

9 **Background Facts**

10 This action is a lawsuit for benefits under a life insurance policy that was
11 issued to Plaintiff’s mother, JoAnn Bargel, in 1990. Plaintiff is the beneficiary.
12 JoAnn Bargel died shortly after Defendant denied her application for reinstatement
13 after it terminated the policy for failure of payment.

14 The type of life insurance that was purchased by Plaintiff’s mother was a
15 “Flexible Premium Universal Life” policy. ECF No. 23. Plaintiff purchased her
16 policy in 1990. The Data Page had the following explanation:

17 *1 If sufficient premiums are paid, this policy provides life insurance
18 protection on the insured until the maturity date, which is the policy
19 anniversary following the birthday on which the insured attains age
20 95. You may have to pay other than the planned periodic premium
21 shown above to keep this policy and coverage in force to that date,
22 and to keep any additional benefit riders in force.

23 ECF No. 23.

24 The policy contained provisions relating to premium payments and
25 maintaining coverage under the policy:

26 **“Premium Payments and Reinstatement”**

27 Your Policy is effective and your first premium is due on the policy
28 date. After that, premiums may be paid at any time while this policy is
in force and in any amounts subject to the Premium Payment Limits
provision. We will give you a receipt on request.

1 **“Planned Periodic Premiums”**

2 You may elect to pay premiums by monthly preauthorization
3 withdrawal. You may also elect to pay premiums on an annual, semi-
4 annual, or quarterly basis. In this event we will send you reminder
5 notices of the amount and frequency of your planned periodic
6 premiums as selected in your application. These notices serve only as
7 a reminder of your preference. Premiums are to be sent to the address
8 we provide in reminder notices. You may request a change in the
9 amount and frequency of your planned periodic premiums by
10 notifying us in writing. We may limit the amount of any increase or
11 decrease. We will provide details of such limits upon request. If you
do not make a planned periodic premium payment or additional
premium payments and the net surrender value is less than the
monthly deduction due on the monthly date, the Grace Period
provision will then apply.

12 **“Premium Payment Limits”**

13 To keep this policy in force you need to satisfy the premium
14 requirements described in the Grace Period provision.

15 You may choose to make premium payments that are greater than the
16 planned periodic premium. However, we will refund any premiums
17 that would disqualify this policy as “life insurance” as defined in the
Internal Revenue Code, as amended . . .

18 **“Paid Up Benefit”**

19 If you do not make a planned periodic premium payment or additional
20 premium payments this policy will not terminate unless the net
21 surrender value is not sufficient for the monthly deduction due on the
monthly date. The Grace Period provision will then apply.

22 **“Grace Period”**

23 If the net surrender value on any monthly date is less than the monthly
24 deduction a 61 day grace period will begin. However, we guarantee
this policy will stay in force during the first 5 policy years when (A-
B) is greater than or equal to (C x D), where;

- 25 A. Is the sum of premiums paid;
26 B. Is the sum of all existing loans, loan interest, partial surrenders
and transaction charges
27 C. Is the minimum premium as shown on the current data page;
28 and

1 D. Is the number of months since the policy date.

2 A notice will be sent to you and any assignee at the start of any grace
3 period. It will be mailed to you and any assignee at the last post office
4 address known to us.

5 If by the end of a grace period we do not receive an amount sufficient
6 to allow at least 3 monthly deductions, your policy terminates as of
7 the date the first unpaid monthly deduction was due.

8 If the insured dies during a grace period, we will pay the death
9 proceeds to the beneficiary.

10 **“Termination”**

This policy terminates when any one of the following events occurs:

- 11 1. You surrender your policy for cash.
- 12 2. The Insured dies;
- 13 3. The policy maturity date is reached; or
- 14 4. The grace period ends as described in the Grade Period
15 provision.

16 **“Reinstatement”**

If this policy terminates as a result of an unpaid monthly deduction as
17 described in the Grace Period provision, you may reinstate it while the
18 insured is alive provided that:

- 19 1. Not more than 3 years have elapsed since the policy terminated;
- 20 2. You supply evidence which satisfies us that the insured is
21 insurable under our underwriting rules then in effect; and
- 22 3. You make a payment large enough to make monthly deductions
23 for at least 3 months.

24 ECF No. 23 at 25-31.

25 Defendant sent Plaintiff a Life Insurance Policy Annual Statement that was
26 prepared on June 4, 2017. ECF No. 28, Ex. B. It indicated the net Surrender Value
27 was \$790.65. *Id.* The Death Benefit was \$80,000 and the Planned Annual Premium
28 was \$4,000. *Id.* It also included a chart that explained the impact of the variable
rates on the expected length of coverage. *Id.*

In June 2017, Defendant sent Plaintiff a Premium reminder on June 24,
2017. ECF No. 9, Ex. D. It indicated the Annual premium was \$4,000.00. This

1 reminder also included the following language:

2 **Important information**

3 To maintain your desired coverage, it is important to make timely
4 payments. While your policy provides flexibility in the amount,
5 frequency, and duration of premium payments when you need it, these
6 changes can impact your policy values and guarantees. See your
7 policy for further details.

8 *Id.*

9 Plaintiff made a \$2000 payment in September. The \$2000 payment provided
10 coverage through October 2017. By November 2017, JoAnn Bargel's policy had a
11 net surrender value of \$36.75, but the monthly policy charge due on that date was
12 \$532.72. ECF No. 9-2. Defendant then mailed notices to JoAnn Bargel's home
13 mailing address on November 4, 2017 and December 4, 2017, informing her that
14 her policy was in Grace Period and would terminate on 1/6/2018 if the payment
15 amount of \$1,707.78 was not received. ECF No. 9-2, Exs. E, F. Plaintiff indicates
16 her mother never received these notices because her mailbox had been stolen. After
17 the policy expired, she attempted to make the \$1707.78 payments by sending in
18 multiple money orders. Defendant returned the payments due to its policy of not
19 accepting money orders over \$500 from institutions other than the U.S. Postal
20 Service or a bank or credit union domiciled in the United States. ECF No. 9-2.

21 When the payment was not timely made and the policy was terminated,
22 JoAnn Bargel applied for reinstatement; that application was sent to the
23 underwriting department and was denied based on her health conditions at that
24 time.

25 **Analysis**

26 Plaintiff argues that the premium owed in June 2017 was \$4,000 for the
27 year, and the "cost of insurance" should have been calculated by dividing that
28 fixed premium by 12 months; thus, the \$2,000 payment made in September, 2017,
when added to the "accumulated value" balance should have kept the policy in
effect for six months. She asserts the terms of the policy allowed for premium

1 payments to be made at any time while the policy was in force and she could have
2 paid on an annual, semi-annual, or quarterly basis. She maintains she made a semi-
3 annual payment or 1/2 of the stated \$4,000 payment, which should have covered
4 her insurance for six months. Thus, the payment of \$1,707.78 was improperly
5 rejected in January 28, 2018. She states she was never notified that the payment
6 was increasing, nor did she sign an authorization to increase the premium as she
7 had done in 2013. She argues the failure to provide her with the total and accurate
8 premium for the new policy without obtaining her consent created a misleading
9 and deceptive act supporting her bad faith claim.

10 Plaintiff's arguments are not supported by the terms of the policy. The
11 \$4,000 was not a premium that was set by Defendant. Rather, it was the premium
12 chosen by Plaintiff. The policy is clear that this is a "flexible premium" policy in
13 which the insured bears the risk or responsibility of making sure the payments are
14 enough to insure coverage. The terms of the policy define the cost of insurance,
15 and it is not a fixed yearly premium divided by 12 months. Instead, when the
16 accumulated value is less than the cost of insurance in any given month, the
17 insured must pay more to prevent a grace period, irrespective of whether it exceeds
18 their original planned premium. On Nov. 4, 2017, the policy value was \$36.75,
19 which was not enough to cover the month's cost of insurance and so the policy
20 entered into a grace period requiring additional payments. Plaintiff failed to make
21 those payments.

22 Nor do Plaintiff's arguments bear out in history. Throughout the policy,
23 JoAnn Bargel voluntarily made increased payments when her planned periodic
24 payments were not enough to cover the cost of the insurance. She increased the
25 planned premium in 2007 and again in 2013. This indicates that JoAnn Bargel
26 understood her responsibilities under the policy, and that the annual policy
27 statements provided by Defendant were not misleading or deceptive.

1 Moreover, there is nothing in the record to support Plaintiff's breach of
2 contact claim. The record establishes that Defendant followed the terms of the
3 policy in providing the notices and terminating the policy. Since Defendant did not
4 breach any contract or violate any duty when JoAnn Bargel's policy lapsed in
5 accordance with the terms of the policy contract, Plaintiff's remaining claims—bad
6 faith, violation of the Consumer Protection Act or the Insurance Fair conduct
7 Act—fails as well.

8 Even though the results appear to be harsh, JoAnn Bargel was notified in
9 June that she was required to make the \$4000 payment. If she had, she would have
10 had coverage prior to her death. Plaintiff is asking the Court to rewrite the terms of
11 the contract and interpret the contract as a fixed premium contract, but the clear
12 terms of the insurance policy prevent it from doing so.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Defendant's Second Motion for Summary Judgment, ECF No. 23, is
15 **GRANTED.**

16 2. All pending motions are **DENIED**, as moot.

17 3. The December 9, 2019 bench trial is **STRICKEN.**

18 4. The District Court Executive is directed to enter judgment in favor of
19 Defendant and against Plaintiff.

20 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
21 and forward copies to counsel.

22 **DATED** this 12th day of November 2019.



25
26

A handwritten signature in blue ink that reads "Stanley A. Bastian".

27 Stanley A. Bastian
28 United States District Judge