STATE OF NEW YORK
SUPREME COURT
COMMERCIAL DIVISION

COUNTY OF ALBANY

CUSTOM PRINTERS OF GUILDERLAND, INC.,

Plaintiff,

-against-

DECISION AND ORDER

METLIFE, INC., METROPOLITAN LIFE INSURANCE COMPANY, METLIFE REINSURANCE COMPANY OF CHARLESTON, METROPOLITAN TOWER LIFE INSURANCE COMPANY, AND SEAN T. BYRNE dba STB ASSOCIATES,

Defendants.

Index No. 906836-16

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

TOWNE, RYAN & PARTNERS, P.C.
Attorneys for Plaintiff
(Susan F. Bartkowski, of counsel)
P.O. Box 15072
450 New Karner Road
Albany, New York 12212

HODGSON RUSS LLP
Attorneys for Defendants MetLife, Inc., Metropolitan Life Insurance Company, MetLife Reinsurance Company of Charleston and Metropolitan Tower Life Insurance Company
(Catherine Grantier Cooley, of counsel)
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202

Hon. Richard M. Platkin, A.J.S.C.

In this commercial dispute regarding the procurement of a life insurance policy and coverage thereunder, defendants MetLife, Inc., Metropolitan Life Insurance Company, MetLife Reinsurance Company of Charleston and Metropolitan Tower Life Insurance Company (collectively "the MetLife Defendants") move pursuant to CPLR 3211 (a) (1) and (7) for the dismissal of the claims asserted in the Amended Verified Complaint ("Complaint") filed by plaintiff Custom Printers of Guilderland, Inc. ("Custom Printers") and for the dismissal of the cross claim alleged by defendant Sean T. Byrne d/b/a STB Associates ("STB").

Specifically, the MetLife Defendants seek the dismissal of: (a) plaintiff's first cause of action as against MetLife, Inc., MetLife Reinsurance Company of Charleston ("MetLife Reinsurance") and Metropolitan Tower Life Insurance Company ("Metropolitan Tower"); (b) plaintiff's third cause of action, in its entirety; and (c) STB's cross claim as against MetLife, Inc., MetLife Reinsurance and Metropolitan Tower. The MetLife Defendants also seek an award of attorneys' fees and costs. Custom Printers opposes the motion, except to the extent that it seeks dismissal of MetLife Reinsurance and Metropolitan Tower from the case. STB has not opposed the motion.

BACKGROUND

The Complaint alleges that in July 2014, Custom Printers sought to purchase a life insurance policy for Joyce A. Ragone, one of its key individuals, and it requested the assistance of STB, which acted as an insurance broker on behalf of the MetLife Defendants (¶¶ 18-20). Plaintiff submitted an application for a policy on Ragone's life on or about August 4, 2014 (¶ 21).

According to the Complaint, "[o]n or about October 30, 2014 and again on November 10, 2014, MetLife approved [the] application" and, on or about November 13, 2014, "issued [a] policy in the minimum face amount of [$100,000] naming Ragone as Insured, [Custom Printers] as Owner and the U.S. Small Business Administration c/o NYBDC as Beneficiary and with a policy date of October 11, 2014 (hereinafter 'the Policy')" (¶ 23-24).[1] Ragone passed away on November 15, 2014 (¶ 25), and, as of that date, STB had not yet delivered the Policy, despite representing to plaintiff that it had been issued (¶ 26).

"On December 11, 2014, [Custom Printers] provided the initial premium payment to MetLife," which it allegedly accepted (¶¶ 27-29). STB notified "MetLife" of Ragone's death on or about January 2, 2015, and "MetLife" allegedly informed STB that plaintiff's claim "would be covered as long as the premium had been paid" (¶¶ 30-31). However, on January 12, 2015, "MetLife" attempted to refund $194 to plaintiff, allegedly for an overpayment of premium (¶ 32). Then, on February 4, 2015, "MetLife" attempted to refund a $574 premium payment, allegedly at plaintiff's request, although plaintiff denies ever requesting a refund (¶¶ 33-34). On February 20, 2015, Custom Printers submitted "a completed MetLife Individual Life/Death Claim form with supporting documentation," to which "MetLife" allegedly failed to respond (¶¶ 35-36).

The Complaint sets forth three causes of action: (1) breach of contract against the MetLife Defendants, alleging that "[p]laintiff performed the conditions and terms of the Policy" but "MetLife has refused to pay the insurance proceeds;" (2) insurance broker malpractice

[1] The Policy allegedly was to be used as security for plaintiff's loan with the U.S. Small Business Administration (¶ 22).

against STB; and (3) "wrongful delay or denial of claim" against the MetLife Defendants (¶¶ 37-51). Plaintiff seeks damages of $100,000, plus interest and costs.

The MetLife Defendants argue that plaintiff's first cause of action for breach of contract and STB's cross claim must be dismissed as against MetLife, Inc., MetLife Reinsurance and Metropolitan Tower because the documentary evidence conclusively establishes that these defendants were not parties to the Policy. The MetLife Defendants also seek dismissal of the third cause of action in its entirety, arguing that the claim is predicated upon the alleged breach of the Policy and does not allege any duty independent of the alleged contractual relationship. Finally, the MetLife Defendants seek an award of reasonable attorneys' fees and costs.

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the Court "'must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiff[] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012], quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). Dismissal is warranted under CPLR 3211 (a) (1) if documentary evidence conclusively establishes a defense as a matter of law (*see Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]).

The MetLife Defendants argue that plaintiff's first cause of action for breach of contract must be dismissed as against MetLife, Inc., MetLife Reinsurance and Metropolitan Tower because the documentary evidence conclusively establishes that none of these entities were parties to the Policy. "The essential elements of a cause of action . . . for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's

breach of its contractual obligations, and damages resulting from the breach" (*WFE Ventures, Inc. v Mills*, 139 AD3d 1157, 1160 [3d Dept 2016] [internal quotation marks and citation omitted]). "[I]t is axiomatic that if a party is not a party to a contract, it cannot be sued for its breach unless there is a separate basis for the non-parties' liability such as piercing the corporate veil or . . . a manifestation of an intent to be bound" (*MBIA Ins. Corp. v Royal Bank of Can.*, 28 Misc 3d 1225[A], 2010 NY Slip Op 51490[U], *28 [Sup Ct, Westchester County 2010, Scheinkman, J.] [collecting cases]; *see Delaware County v Leatherstocking Healthcare, LLC*, 110 AD3d 1211, 1213 [3d Dept 2013]; *Birch v McGhee*, 79 AD3d 1296, 1297 [3d Dept 2010]; *Pacific Carlton Dev. Corp. v 752 Pac., LLC*, 62 AD3d 677, 678 [2d Dept 2009]).

As correctly observed by the MetLife Defendants, the Complaint defines "MetLife" to include all of the MetLife Defendants (¶ 20), and the factual allegations of the Complaint repeatedly refer to "MetLife" without distinguishing among the four separate entities (*see e.g.* ¶¶ 23-24, 39-40). The Policy, however, states that it was issued by Metropolitan Life Insurance Company ("MLIC") and is "a legal contract between [plaintiff] and Metropolitan Life Insurance Company" (Som Aff., Ex. 2). In addition, the Policy and attached Endorsements are all signed by "Metropolitan Life Insurance Company," and there is no reference anywhere in the Policy to MetLife, Inc., MetLife Reinsurance or Metropolitan Tower. Further confirmation that plaintiff's contractual relationship was solely with MLIC is found in the Life Express Order Ticket, signed by Ragone on July 18, 2014 (*see* Som Aff., Ex. 1).

The Court therefore concludes that the proof adduced by the MetLife Defendants conclusively establishes that MetLife, Inc., MetLife Reinsurance and Metropolitan Tower were not parties to the Policy. Given the clear and unambiguous language of the written instrument sued upon by plaintiff and in the absence of any allegations of alter-ego liability, veil piercing or

other basis upon which to impose liability on these non-contracting parties, the first cause of action must be dismissed as against MetLife, Inc., MetLife Reinsurance and Metropolitan Tower (*see SUS, Inc. v St. Paul Travelers Group*, 75 AD3d 740, 742-743 [3d Dept 2010]).[2]

For the same reasons, and in the absence of any opposition from STB, the cross claim alleging contractual and common-law indemnity must be dismissed as against MetLife, Inc., MetLife Reinsurance and Metropolitan Tower

The MetLife Defendants next contend that the third cause of action should be dismissed in its entirety for failure to state a claim. The cause of action, which seeks damages for the "wrongful delay or denial of claim," alleges that "MetLife failed to provide written notice of its reasons(s) for denial of the claim *under the Policy* in a reasonably timely manner" (Compl., ¶ 50 [emphasis added]). To the extent that this claim is predicated upon a breach of the Policy, it merely restates the first cause of action and, therefore, must be dismissed as against MetLife, Inc., MetLife Reinsurance and Metropolitan Tower.

Insofar as the cause of action purports to assert a claim sounding in tort, plaintiff must allege "the violation of a legal duty independent of the contract" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389-390 [1987]; *see Quail Ridge Assoc. v Chemical Bank*, 162 AD2d 917, 919 [3d Dept 1990], *lv dismissed* 76 NY2d 936 [1990]). While the Complaint does not include such allegations, plaintiff's opposition to the motion asserts that MetLife, Inc. and

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[2] In its opposition, plaintiff concedes that the contractual cause of action should be dismissed as against MetLife Reinsurance and Metropolitan Tower. To the extent that plaintiff relies on exhibits B and E annexed to the affidavit of Kathleen M. Szesnat in contending that its claim for payment was submitted to MetLife, Inc. (*see* Bartkowski Aff., ¶ 11), this reliance is unavailing. Exhibit B, which is an email approving the application for the Policy, merely uses the "MetLife" registered trademark without any mention of MetLife, Inc., which does not create an ambiguity under the Policy or demonstrate MetLife, Inc.'s assent to its terms (*see SUS, Inc.*, 75 AD3d at 742 n 1 [rejecting similar argument]). And Exhibit E is a premium payment refund check that was issued by *MLIC*, not MetLife, Inc.

MLIC "owed an independent duty to [p]laintiff outside the [P]olicy" that is said to arise from "the rules and regulations governing all insurers doing business in the State of New York" (Opp MOL, p. 3). Specifically, plaintiff relies on 11 NYCRR 216.0 (e) (4) and (5), claiming that the failure of MetLife, Inc. and MLIC "to timely respond to [plaintiff's] communications" and "to inform . . . of [its] position" regarding the insurance claim at issue, as required by this regulation, constitutes a breach of an independent legal duty (Opp MOL, p. 3). However, "[i]t is well settled that no private cause of action exists for . . . an alleged violation of part 216 of the Insurance Regulations" (*De Marinis v Tower Ins. Co. of N.Y.*, 6 AD3d 484, 486 [2d Dept 2004]; *accord Blanar v State Farm Ins. Cos.*, 34 AD3d 1333, 1334 [4th Dept 2006]; *see Aetna Cas. & Sur. Co. v ITT Hartford Ins. Co.*, 249 AD2d 241, 242 [1st Dept 1998]). Accordingly, the third cause of action must be dismissed as against all of the MetLife Defendants.

Finally, the MetLife Defendants have failed to establish a legal basis for the requested award of attorneys' fees and costs.

CONCLUSION

Based on the foregoing, it is

ORDERED that the motion to dismiss is granted, except as to the branch thereof that seeks an award of attorneys' fees and costs, which application is denied; and it is further

ORDERED that the first cause of action contained in the Amended Verified Complaint is dismissed as against defendants MetLife, Inc., MetLife Reinsurance Company of Charleston and Metropolitan Tower Life Insurance Company; and it is further

ORDERED that the third cause of action contained in the Amended Verified Complaint is dismissed in its entirety; and it is further

ORDERED that the cross claim contained in the Verified Answer With Cross-Claims To Amended Verified Complaint of defendant Sean T. Byrne d/b/a STB Associates is dismissed as against defendants MetLife, Inc., MetLife Reinsurance Company of Charleston and Metropolitan Tower Life Insurance Company; and it is further

ORDERED that defendant Metropolitan Life Insurance Company shall serve an answer to the Amended Verified Complaint within **twenty (20) days** of the date of this Decision & Order; and finally it is

ORDERED that the remaining parties to this action shall confer regarding a schedule for discovery, the filing of a note of issue and other matters as provided for in Rule 8 of the Commercial Division, and, within **thirty (30) days** of the date of this Decision & Order, either: (i) stipulate to a scheduling order, which shall be submitted to the Court for approval; or (ii) request a scheduling conference with the Court.

This constitutes the Decision & Order of the Court. The original of this Decision & Order is being transmitted to counsel for the MetLife Defendants; all other papers are being transmitted to the Albany County Clerk. The signing of this Decision & Order shall not constitute entry or filing under CPLR 2220, and counsel is not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

Dated: Albany, New York
January 17, 2018

RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

NYSCEF Nos. 13-27

1-24-18 SB