

**Ciambrone v Metropolitan Life Ins. Co.**

2019 NY Slip Op 30416(U)

February 19, 2019

Supreme Court, New York County

Docket Number: 657016/2017

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

INDEX NO. 657016/2017

MICHAEL CIAMBRONE,

Plaintiff,

MOTION SEQ. NO. 001

- v -

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ordered that the motion is granted.

In this action by plaintiff Michael Ciambrone seeking to recover damages for breach of contract, as well as for a declaratory judgment, against defendant Metropolitan Life Insurance Company, defendant moves, pursuant to CPLR 3211(a)(7), to dismiss the claim seeking declaratory relief. Plaintiff opposes the motion. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion is granted.

FACTUAL AND PROCEDURAL BACKGROUND:

In his complaint, plaintiff alleges that, in 2015, defendant issued to him a disability income insurance policy under policy number 6445374AH ("the policy"). Doc. 1 at par. 3. The policy provided that plaintiff would receive disability benefits for total disability in the amount of \$6,250 per month with cost of living adjustments of 3% per year until age 65 should he become disabled as defined by the terms and conditions of the policy. Doc. 1 at par. 5. Plaintiff claims that he

became disabled on August 31, 2009, at which time the policy was in effect. Doc. 1 at pars. 6-7. Defendant then paid plaintiff disability benefits from September 30, 2015 until March 29, 2016, minus a 90-day “elimination period.” Doc. 1 at par. 10. On or about July 18, 2017, plaintiff received notice that his claim for total disability benefits under the policy was terminated as of March 30, 2015. Doc. 1 at par. 11.<sup>1</sup>

As a first cause of action, plaintiff claimed that the failure of defendant to pay him benefits was a breach of the policy and that, as a result, he sought to recover no less than \$6,000 per month from August 31, 2009 to September 29, 2015 and from March 30, 2016 to date, for a total of \$575,000, plus a 3% cost of living adjustment and with interest on each payment from the date each payment should have been made. Doc. 1 at par. 14.

As a second cause of action, plaintiff sought a declaratory judgment that: 1) he was disabled pursuant to the meaning of the policy; 2) defendant was obligated to pay total disability benefits to plaintiff for as long as he remained totally disabled pursuant to the terms of the policy; 3) plaintiff’s premium was waived during the period of his total disability and waived for as long as he remained totally disabled; and 4) he may return to the court, upon motion, to seek further declaratory relief.

On January 19, 2018, defendant filed the instant motion seeking dismissal of the declaratory judgment claim (second cause of action). Doc. 8. In support of the motion, defendant argues that the claim for declaratory relief must be dismissed because it is duplicative of his breach of contract action. Defendant further asserts that the claim for declaratory relief must be dismissed due to the absence of a justiciable controversy.

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<sup>1</sup> This appears to be a typographical error and that the benefits were terminated as of March 30, 2016. Doc. 1 at par. 14.

In opposition, plaintiff argues, inter alia, that the claim for declaratory relief is not duplicative of the breach of contract claim and that the court has the discretion to decide when to issue a declaratory judgment.

In reply, defendant, inter alia, reiterates its claim that the declaratory judgment claim must be dismissed as duplicative of the breach of contract action.

### LEGAL CONCLUSIONS:

Plaintiff's second cause of action seeking a declaratory judgment must be dismissed as duplicative of his breach of contract claim. "A cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract." *Apple Records, Inc. v Capitol Records, Inc.*, 137 AD2d 50, 54 (1st Dept 1988).

In his breach of contract cause of action, plaintiff claimed that he was disabled pursuant to the terms of the policy and was thus entitled to the payment of benefits in an amount to be determined by a trier of fact for each month since October 2016. In his declaratory judgment claim, plaintiff asserts that he was disabled pursuant to the terms of the policy and that defendant thus had an obligation to pay him benefits as long as he remained disabled. Since the declaratory judgment claim effectively seeks the same relief as that demanded in the breach of contract cause of action, the claim seeking declaratory relief is dismissed as duplicative. *See Cherry Hill Market Corp. v Cozen O'Connor P.C.*, 118 AD3d 514, 515, 987 N.Y.S.2d 146 (1st Dept 2014), citing *Apple Records, Inc. v Capitol Records, Inc.*, *supra*.

Further, in an action on a disability policy in New York, “the insured is not entitled to a lump sum money judgment for future payments, nor to a declaration to that effect with respect to the insurer’s future obligations.” *Romar v Allia*, 120 AD2d 420, 421 (1<sup>st</sup> Dept 1986) (citation omitted).

In asserting that the claim for declaratory relief should not be dismissed, plaintiff relies, inter alia, on the case of *O’Connell v Guardian Life Insur. Co.*, Ind. No. 651102/17 (Sup Ct New York County 7/19/17). Doc. 15. However, in that decision, this Court (Lebovits, J.) stated that “plaintiff’s second cause of action [seeking a declaratory judgment] is not duplicative of the breach of contract [cause of action] because it seeks benefits from the defendant after the date of trial, if plaintiff is determined to be disabled within the meaning of defendant’s policy.” Doc. 15. This case is distinguishable, however, since plaintiff’s declaratory judgment claim does not seek benefits from defendant after the date of trial. Doc. 13 at pars. 18-22. Indeed, only plaintiff’s breach of contract claim seeks to recover damages as “determined by the trier of fact after trial.” Doc. 13 at par. 16.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by defendant Metropolitan Life Insurance Company to dismiss plaintiff’s second cause of action pursuant to CPLR 3211(a)(7) is granted; and it is further

ORDERED that plaintiff’s second cause of action is hereby severed and dismissed; and it is further

ORDERED that the remaining cause of action (the first cause of action) shall continue; and it is further

ORDERED that, within 20 days after entry of this order, defendant's attorney shall serve a copy of the same, with notice of entry, on counsel for plaintiff, as well as on the Clerk of the Court, who is hereby directed to enter judgment accordingly; and it is further

ORDERED that counsel shall appear for a preliminary conference on June 25, 2019 at 80 Centre Street, Room 280 at 2:15 p.m.; and it is further

ORDERED that this constitutes the decision and order of the court.

2/19/2019  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE