

**Cicchetti v Metropolitan Life Ins. Co.**

2022 NY Slip Op 32669(U)

August 5, 2022

Supreme Court, New York County

Docket Number: Index No. 652467/2020

Judge: Debra A. James

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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. DEBRA JAMES**

**PART 59**

*Justice*

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INDEX NO. 652467/2020

ANTHONY CICHETTI, KIM CATALFAMO, LOUIS  
CICHETTI, and PAUL CICHETTI,

MOTION DATE 07/13/2022

Plaintiffs,

MOTION SEQ. NO. 001

- v -

METROPOLITAN LIFE INSURANCE COMPANY,

**ORDER – AMENDED  
RESETTLED (MOTION  
RELATED)**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49

were read on this motion to/for

DISMISSAL.

ORDER

ORDERED that the Order of August 5, 2022 determining motion sequence number 001 in this action is VACATED, RESETTLED AND CORRECTED, pursuant to CPLR § 5019(a) as follows:

Upon the foregoing documents, it is

ORDRED that motion of defendant Metropolitan Life Insurance Company (MetLife) to dismiss the verified complaint of Anthony P. Cicchetti, Kim H. Catalfamo, Louis Cicchetti and Paul Cicchetti (the "Plaintiffs") against it is granted; and such complaint is hereby dismissed; and it is further

ORDERED that motion of MetLife to dismiss the third party counterclaim of Emil Cicchetti (the "Third-Party Defendant") as

against it is granted, and such third party counterclaim is hereby dismissed; and it is further

ORDERED that on motion of the court, the Verified Answers, Counterclaims and "Third Party Complaint" of MetLife (NYSCEF Document Numbers 3 and 8) are hereby deemed an Interpleader Complaint; and the "Third Party" Answer of "Third Party" Defendant Emil Cicchetti (NYSCEF Document Number 5) and the Reply to Counterclaims of Anthony P. Cicchetti, Kim H. Catalfamo, Louis Cicchetti and Paul Cicchetti (NYSCEF Document Number 7), are hereby deemed Answers to the Interpleader Complaint and Cross Claims against Co-Defendant Emil Cicchetti; and the Verified Answer and Cross-Complaint of Emil Cicchetti (NYSCEF Document Number 6) is hereby deemed an Answer and Cross Claims against Co-Defendants Anthony P. Cicchetti, Kim H. Catalfamo, Louis Cicchetti and Paul Cicchetti; and Defendants Emil Cicchetti, Anthony P. Cicchetti, Kim H. Catalfamo, Louis Cicchetti and Paul Cicchetti are deemed to be Defendants and Cross Claimants, and such Defendants and Cross Claimants are compelled to litigate, adjust and/or settle among each other their respective and lawful entitlement to the life insurance benefits arising under and pursuant to the Annuity on account of the Decedent's death; and it is further

ORDERED that the cross motion of Defendant Emil Cicchetti for partial summary judgment that declares and distributes to

the Interpleader Defendants the portion of the death benefit that is allegedly uncontested is denied; and it is further

ORDERED that Interpleader Plaintiff MetLife is permitted to deposit the death benefit payable under the variable annuity contract issued by MetLife to Helen R. Cicchetti (the "Decedent"), bearing Annuity number 07832361 AB for the contract date of April 6, 2001 (the "Annuity"), with the Clerk of the Court, New York City Department of Finance, Treasury Division, Client Services, located at 1 Centre Street, Room 2200, New York, New York 10007, where such funds shall remain pending receipt of a certified copy of a further Order or Orders of the Court, accompanied by a Certificate of Deposit duly issued by the Department of Finance upon the deposit with the court of funds by Interpleader Plaintiff MetLife, and any other forms required by the Department (<http://www.nyc.gov>), to turn over to such Interpleader Plaintiff, or any other party or parties, the funds deposited with that Department, as reflected in the Certificate, less the fee of the Department; and it is further

ORDERED and ADJUDGED that Interpleader Plaintiff MetLife's application for reasonable attorney's fees, costs and disbursements incurred in its defense of this action, and the proportion or percentage of such attorney's fees, costs and disbursements to be assessed against defendants Anthony P. Cicchetti, Kim H. Catalfamo, Louis Cicchetti, Paul Cicchetti,

and Emil Cicchetti, respectively, pursuant to CPLR § 1006 is granted, and such application is severed, and referred for determination to a Special Referee pursuant to CPLR 4311; and it is further

ORDERED that within sixty (60) days from service of this Order with Notice of Entry, MetLife shall cause a copy of this order with proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) to arrange a date for a reference to determine pursuant to CPLR 4317 (b); and it is further

ORDERED and ADJUDGED that pursuant to CPLR § 4319 the Clerk is directed to enter judgment in favor of Interpleader Plaintiff MetLife and in the amount and in the proportion or percentages determined against Defendants Anthony P. Cicchetti, Kim H. Catalfamo, Louis Cicchetti, Paul Cicchetti, and Emil Cicchetti, respectively, in accordance with the report of the aforementioned Special Referee without any further application, unless, within thirty days of such report, MetLife seeks a further Order to withdraw the amount of the attorney's fees, costs and disbursements assessed from the funds deposited with the Department; and it is further

ORDERED that upon the issuance of the report of such assessment of reasonable attorney's fees, costs and disbursements, Interpleader Plaintiff MetLife shall be wholly and completely

discharged and absolved from any further liability, of whatsoever nature, to each of the parties hereto and to any other claimant to the death benefit arising under and pursuant to the Annuity, on account of the Decedent's death, and shall be discharged and dismissed with prejudice from this case; and it is further

ORDERED that counsel for the Defendants shall post on NYSCEF a preliminary discovery conference order or competing preliminary discovery conference order(s) at least two days before September 29, 2022, on which date counsel shall appear via NYSCEF, unless such appearance be waived by the court; and it is further

ORDERED that a copy of this Order with Notice of Entry shall be served upon all parties within seven (7) days of receipt thereof.

#### DECISION

Defendant Metropolitan Life Insurance Company (MetLife) is correct that

"[Defendant] [is] a neutral stakeholder and was prompted to commence the interpleader action only after the parties failed to reach an agreement, despite [defendant's] efforts toward that end. Accordingly, the matter is remanded for a hearing to determine, based upon all of the relevant facts and circumstances, [defendant's] reasonable attorneys' fees during the interpleader portion of the action and for a determination respecting how the costs should be divided between the competing defendants".

New York Life Ins Co v Lowy, 40 AD3d 295, 297 (1<sup>st</sup> Dept 2007).

With respect to the cross motion for partial summary judgment of defendant Emil Cicchetti, the cross claims of the co-defendants asserting fraud and associated damages against such cross movant raise an issue of fact with respect to the change of beneficiary designation that implicates credibility, which must be resolved at trial. See Siebert v Kanter, 28 AD2d 670, 671 (1<sup>st</sup> Dept 1967).

*Debra A. James*  
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<u>8/5/2022</u>			<u>DEBRA JAMES, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input checked="" type="checkbox"/>	REFERENCE