2018 IL App (2d) 170712-U
No. 2-17-0712
Order filed June 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PARENT PETROLEUM INC.,	)	Appeal from the Circuit Court
	)	of DuPage County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-L-465
	)	
STATE FARM LIFE INSURANCE	)	
COMPANY,	)	Honorable
	)	Ronald D. Sutter,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the trial court's order granting defendant's motion for summary judgment on plaintiff's claims for breach of contract and promissory estoppel; the life insurance policy in dispute was never issued, the coverage provided by the temporary binder expired on its own terms, and the collateral assignment did not create any coverage, nor did it create a duty on the part of defendant to inform plaintiff that no premiums were ever paid.

¶ 2 Plaintiff, Parent Petroleum Inc., filed a complaint against defendant, State Farm Life Insurance Company (State Farm), seeking to recover the proceeds payable under an insurance policy that was purportedly taken on the life of Jeffrey Janet, deceased. State Farm filed a

motion for summary judgment, arguing that the policy in dispute was never issued. The trial court granted State Farm's motion and plaintiff now appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are derived from the pleadings, exhibits, affidavits, orders, and reports of proceedings contained in the record.

¶ 5 Jeffrey was the president and sole shareholder of a fuel delivery company that sourced its petroleum products from plaintiff. In consideration for receiving a trade line of credit to purchase fuel, Jeffrey's company granted plaintiff a security interest in all of the company's assets. To further secure his company's line of credit with plaintiff, Jeffrey contacted his brother, Michael Janet, a State Farm Insurance agent, about obtaining a life insurance policy.

¶ 6 On October 2, 2009, Jeffrey submitted a written application for a preferred-rate policy with a Table 10 rating. This policy provided $3,000,000 in benefits with annual premiums as low as $4,744. In the "AGREEMENTS" section of the application, it was conspicuously stated that "[c]overage will be effective as of the policy date if the following conditions are met: the first premium is paid when the policy is delivered ***."

¶ 7 Also on October 2, 2009, upon paying State Farm $800, Jeffrey was issued a "Binding Receipt" which provided Jeffrey with life insurance benefits up to $1,000,000 during the time that his application for the preferred-rate policy was under review. The binder stated that the temporary coverage would end "when the first of the following occurs: (a) The application is approved; (b) Notice of disapproval of the application is given; (c) 60 days have expired starting with the Application Date." In addition, the binder provided that Jeffrey's $800 payment would be refunded if: "(a) the life insurance and/or any additional benefits offered are not accepted, or

(b) [State Farm] declines to approve the life insurance and/or any additional benefits, or (c) the 60-day period has expired."

¶ 8 State Farm submitted Jeffrey's application to its underwriters with the designation: "Policy LF-2716-0595." On October 23, 2009, before State Farm's underwriting process was completed, Jeffrey executed a document titled: "Collateral Assignment – Life Insurance." Jeffrey's signature appears alongside Michael's, who signed as a witness. The terms of the collateral assignment provided in pertinent part:

> "FOR VALUE RECEIVED, the undersigned hereby assign, transfer and set over to [plaintiff] *** Policy No. 2716-0595 issued by [State Farm] *** and any supplementary contracts issued in connection therewith *** upon the life of [Jeffrey] *** and all claims, options, privileges, rights, title and interest therein and thereunder *** subject to all terms and conditions of the policy ***."

Additionally, the instructions on the reverse side of the form stated that State Farm "is not a party to any assignment or release and does not assume any responsibility for its validity or effect."

¶ 9 State Farm underwriter Scott Etheridge signed an affidavit stating that State Farm encountered difficulties obtaining Jeffrey's medical records, and that the underwriting process for Jeffrey's application was prolonged because Jeffrey and his spouse had provided incorrect information. State Farm eventually learned from Jeffrey's medical records that he suffered from elevated blood sugar and high blood pressure. On those bases, State Farm's underwriters declined Jeffrey's application for the preferred-rate policy with a Table 10 rating and instead counter-offered a policy with a Table 06 rating. The policy that was counter-offered carried an annual premium of $27,465—more than five times the preferred rate that Jeffrey desired.

¶ 10 Kathleen Meehan, a service manager at Michael's State Farm agency, signed an affidavit stating that she informed Jeffrey of the underwriters' decision on December 9, 2009. According to Kathleen, Jeffrey said that he "would not accept [State Farm's counter-offer] under any circumstances due to the cost of the policy."

¶ 11 State Farm underwriter Kris Snow signed an affidavit stating that she sent Jeffrey a letter with State Farm's decision and counteroffer on December 22, 2009. Included was a document titled, "POLICY IDENTIFICATION," which referenced "Policy LF-2716-0595" and reflected the terms of the counteroffer—still providing $3,000,000 in coverage, but with a Table 06 rating and an annual premium of $27,465. The "SCHEDULE OF PREMIUMS" provided that the initial premium was due on December 22, 2009, which was also listed as the "Policy Date." Also included was a document titled: "AMENDMENT OF APPLICATION," which provided that Jeffrey's application would be amended to reflect that his policy would be issued with a Table 06 rating.

¶ 12 On December 23, 2009, State Farm sent a letter to Jeffrey notifying him that the collateral assignment for "Policy: LF-2716-0595" had been recorded in State Farm's files. The letter also stated that "State Farm is not a party to any assignment or its release and does not assume any responsibility for its validity or effect."

¶ 13 On February 23, 2010, State Farm sent another letter to Jeffrey with the title, "NOTICE OF NOT TAKEN." The letter referenced "Policy: LF-2716-0595," and stated the following: "There is no coverage provided by this policy since the initial premium, amendment and signed life application supplement have not been received. Enclosed is a check for $800 representing a return of all money submitted. Please be advised that since the policy has been terminated, the collateral assignment is no longer if (sic) effect."

¶ 14 Meehan attested that State Farm closed Jeffrey's application file on April 5, 2010. She also "advised Jeffrey that it would be up to him to notify [plaintiff] that his application for the policy was declined" and "that if [Jeffrey] wanted to apply for a different policy, he would be required to complete a new application and a new collateral assignment would have to be executed."

¶ 15 Snow attested that Jeffrey cashed the $800 refund check from State Farm on April 16, 2010.

¶ 16 On January 18, 2012, Jeffrey died in an automobile accident. The death certificate reflects that his truck spun out on an icy road and rolled over.

¶ 17 On August 20, 2013, plaintiff's attorney sent State Farm a letter demanding payment under "Policy LF 2716-0595" as Jeffrey's collateral assignee. On December 9, 2013, State Farm sent plaintiff's attorney a letter denying the demand.

¶ 18 On May 9, 2014, plaintiff filed a two-count complaint against State Farm, requesting a judgment of $3,000,000 plus interest and attorney fees. The first count was for breach of contract. Plaintiff alleged that State Farm breached its obligations under the terms of the collateral assignment by failing to notify plaintiff of the counteroffer, failing to notify plaintiff that Jeffrey had not paid the initial premium on the counteroffer, and failing to honor plaintiff's claim for the proceeds payable under Jeffrey's policy. The second count was brought under the theory of promissory estoppel. Plaintiff alleged that it had reasonably relied on the terms of the collateral assignment, which, according to plaintiff, provided that State Farm was required to notify plaintiff of Jeffrey's non-payment of premiums. In both counts, plaintiff alleged that State Farm violated section 234(1) of the Illinois Insurance Code, which provides in relevant part:

> "No life company doing business in this State shall declare any policy forfeited or lapsed within six months after default in payment of any premium installment or interest or any portion thereof, nor shall any such policy be forfeited or lapsed by reason of nonpayment when due of any premium, installment or interest, or any portion thereof, required by the terms of the policy to be paid, within six months from the default in payment of such premium, installment or interest, unless a written or printed notice stating the amount of such premium, installment, interest or portion thereof due on such policy, the place where it shall be paid and the person to whom the same is payable, shall have been duly addressed and mailed with the required postage affixed, to the person whose life is insured, or the assignee of the policy, (if notice of the assignment has been given to the company) at his last known post office address, at least fifteen days and not more than forty-five days prior to the day when the same is due and payable, before the beginning of the period of grace, except that in any case in which a parent insures the life of his minor child, the company may send notice of premium due to the parent." 215 ILCS 5/234(1) West (2008).

¶ 19 State Farm filed a motion for summary judgment, arguing that it never issued policy number 2716-0595. According to State Farm, there was never a "meeting of the minds" because State Farm rejected Jeffrey's application for the Table 10 policy and Jeffrey rejected State Farm's counteroffer for the Table 06 policy. State Farm acknowledged it had provided Jeffrey with temporary life insurance benefits, but argued that the binder expired on its own terms 60 days after the application date (October 2, 2009), on December 2, 2009. To the extent that the temporary coverage could have extended beyond 60 days, State Farm argued that it undoubtedly terminated on December 22, 2009, when State Farm rejected Jeffrey's application for the Table

10 policy. State Farm maintained that the collateral assignment did not create coverage where none otherwise existed, nor did it create any obligation on the part of State Farm. Finally, State Farm noted that section 234(1) does not require life insurance companies to keep defaulted policies in force for more than six months beyond the date of default. See *First National Bank of Decatur v. Mutual Trust Life Insurance Co.*, 122 Ill. 2d 116, 122 (1988) ("Considering the terms of section 234(1), we hold that though an insurance company fails to provide the premium-due notice required by section 234(1), when the policy has remained in default for six months plus any period of extended coverage made possible by the policy's provisions, as was the case here, the policy is subject to forfeiture."). Therefore, State Farm argued, even if Jeffrey had coverage under policy number 2716-0595, because he never paid any premiums, the policy was in default for more than two years at the time of his death, meaning that section 234(1) has no application.

¶ 20 On August 17, 2017, after hearing arguments, the trial court issued a written order granting State Farm's motion for summary judgment. In announcing its oral ruling, the court found that: (1) because State Farm rejected Jeffrey's application and Jeffrey rejected State Farm's counteroffer, policy number 2716-0595 was never issued to Jeffrey; (2) the coverage provided under the temporary binder expired on its own terms; (3) the collateral assignment did not create any coverage, nor did it estop State Farm from denying coverage; (4) because there was never a life insurance policy, section 234(1) of the Insurance Code does not apply; and (5) State Farm did not make any promises to plaintiff or Jeffrey.

¶ 21 Plaintiff filed a timely notice of appeal.

¶ 22 II. ANALYSIS

¶ 23 Plaintiff contends that genuine issues of material fact exist as to (1) whether life insurance policy number 2716-0595 was ever issued to Jeffrey, and (2) when the collateral

assignment was delivered to State Farm. In neither instance does plaintiff address the doctrine of promissory estoppel.

¶ 24 "The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact, and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). "In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162-63 (2007). Summary judgment is inappropriate where the material facts are disputed, or where reasonable persons might draw different inferences from the undisputed facts. *Id.* "Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). In appeals from summary judgment rulings, the standard of review is *de novo. Adams*, 211 Ill. 2d at 43.

¶ 25 Here, plaintiff's primary contention is that a genuine issue of material fact exists as to whether life insurance policy number 2716-0595 was issued on the life of Jeffrey. In support, plaintiff points to several internal communications between State Farm employees in which Jeffrey's application is referenced as a "policy." In addition, State Farm's "not-taken" letter to Jeffrey on February 23, 2010, states that, "since the policy has been terminated, the collateral assignment is no longer if (sic) effect." According to plaintiff, logic dictates that policy number

2716-0595 was, at some point, active and issued to Jeffrey, otherwise there would be nothing to "terminate."

¶ 26 We disagree with plaintiff. Life insurance policies are subject to the same rules of construction applicable to other types of contracts. *Benedict v. Federal Kemper Life Assurance Co.*, 325 Ill. App. 3d 820, 824 (2001). "A binding contract of insurance is formed 'if one of the parties to such a contract proposes to be insured and the other party agrees to insure, and the subject, the amount, and the rate of insurance are ascertained or understood *and the premium paid if demanded.*' " (Emphasis in original.) *Pekin Life Insurance Co. v. Schmid Family Irrevocable Trust*, 359 Ill. App. 3d 674, 679 (2005) (quoting *Zannini v. Reliance Insurance Co. of Illinois, Inc.*, 147 Ill. 2d 437, 454 (1992)). Here, Jeffrey never paid the initial premium on policy number 2716-0595, even though his application clearly stated that coverage would become effective as of the policy date *if* the first premium was paid when the policy was delivered. This is consistent with the terms of State Farm's counteroffer to Jeffrey on December 22, 2009, which provided that "Policy LF-2716-0595" was amended to have a Table 06 rating and an annual premium of $27,465, with the first premium due on December 22, 2009, which was listed as the policy date.

¶ 27 We find further guidance on this issue from *Pekin*, a case not cited by either of the parties. There, the insurance company sent the applicant a memorandum stating that her application for a third life insurance policy on her husband's life had been approved and that the initial premium was due within 15 days. Through her agent, the applicant faxed the insurance company a completed form authorizing automatic withdrawals to satisfy the premiums. However, the insurance company subsequently sent a notice of "not taken" to the agent, explaining that the initial premium was never paid, because the insurance company required the

initial premium to be paid by the traditional method before automatic withdrawals could be taken. Unfortunately, the agent did not relay this information to the applicant before the applicant's husband died. The trial court nonetheless granted summary judgment in favor of the applicant's family trust, finding that the policy was in effect at the time of the husband's death. *Pekin*, 359 Ill. App. 3d at 676-78. However, the appellate court reversed, holding that the life insurance policy never became a binding contract because it lacked the essential element of consideration. *Id*. at 682. The court went on to hold in relevant part:

> "Defendants never paid the demanded initial premium to [the insurance company], despite the fact their agent knew or should have known that the premium could not be paid by automatic withdrawal. Because [the agent] did not follow [the insurance company's] rules regarding the initial payment, defendants' application for Policy Three was incomplete and could not bind [the insurance company] to provide coverage. Additionally, without a binding contract, [the insurance company] had no duty to follow the policy's notice provisions for termination. The contract was not terminated-it never was formed." *Id*.

¶ 28 The reasoning from *Pekin* applies here. In *Pekin*, even though there was a meeting of the minds with respect to the essential terms of the contract, the lack of consideration precluded the issuance of a life insurance policy. Here, there was no meeting of the minds with respect to any essential terms, as State Farm rejected Jeffrey's application for the Table 10 policy and Jeffrey rejected State Farm's counteroffer for the Table 6 policy. But even if there was a question of fact as to whether the parties agreed to certain terms of a life insurance policy, it is undisputed that Jeffrey never paid the initial premium, meaning that the contract lacked the essential element of consideration. It is therefore irrelevant that State Farm designated Jeffrey's application as a

"policy," or that State Farm's internal communications referenced the application as such, or that State Farm sent Jeffrey a letter indicating that the "policy" had been "terminated." Just as in *Pekin*, there was no life insurance policy here to be terminated, because policy number 2716-0595 was never issued. As a result, and contrary to plaintiff's assertion, State Farm had no obligations with respect to the six-month grace period established by section 234(1) of the Illinois Insurance Code.

¶ 29 In its reply brief, plaintiff argues that there is a genuine issue of material fact as to whether Jeffrey's $800 payment for the temporary binder constituted the payment of a premium on policy number 2716-0595. This argument, despite being improperly raised for the first time in a reply brief (*Cain v. Joe Contarino, Inc.*, 2014 IL App (2d) 130482, ¶ 56), has no merit. Although an insurance binder is "in the nature of temporary insurance" (*Zannini v. Reliance Insurance Co. of Illinois*, 147 Ill. 2d 437, 454 (1992)), the temporary nature of a binder renders it incomparable to an actual policy of insurance. *Insurance Co. of Illinois v. Brown*, 315 Ill. App. 3d 1168, 1174 (2000). The terms of the "Binding Receipt" that State Farm issued to Jeffrey were clear that Jeffrey had paid for temporary coverage—up to a maximum of 60 days—during the time that his application was under review. Hence, the binder expired sixty days after it was issued, on December 2, 2009, which was *before* State Farm denied Jeffrey's application for the Table 10 policy and counter-offered the Table 06 policy. State Farm later refunded Jeffrey's $800 payment, which Jeffrey accepted by cashing the check. Even under the most liberal construction, there is nothing in the "Binding Receipt" to create a genuine issue of material fact as to whether Jeffrey's $800 payment constituted an initial premium for a life insurance policy. For all of these reasons, we reject plaintiff's argument that there is a genuine issue of material fact as to whether policy number 2716-0595 was issued on Jeffrey's life.

¶ 30 Plaintiff next contends that there is a genuine issue of material fact as to when the collateral assignment was delivered to State Farm. Although Jeffrey executed the collateral assignment on October 23, 2009, with Michael signing as a witness, the document was not recorded in State Farm's files until December 23, 2009. Plaintiff suggests that the trial court focused on the latter date, which was three weeks after the binder expired, in finding that the binder did not create any coverage or estop State Farm from denying coverage. Without citing any authority, plaintiff argues that, if the collateral assignment was delivered to State Farm before the binder expired, then State Farm had a duty to notify plaintiff of "material events affecting" policy number 2716-0595, including (1) the expiration of the temporary binder, and (2) any changes to the insurance policy provisions. We disagree.

¶ 31 To be valid, an assignment "must describe the subject matter of the assignment with sufficient particularity to render it capable of identification." *Brandon Apparel Group v. Kirkland & Ellis*, 382 Ill. App. 3d 273, 283-84 (2008). Here, the subject matter of the collateral assignment was "Policy No. 2716-0595 issued by [State Farm] *** and any supplementary contracts issued in connection therewith ***." Even assuming, *arguendo*, that the collateral assignment applied with respect to the binder, plaintiff has identified nothing that would require a notification from State Farm that the binder expired on its own terms. Furthermore, as we explained above, policy number 2716-0595 was never issued to Jeffrey, meaning that State Farm had no obligations with respect to the six-month grace period established by section 234(1) of the Illinois Insurance Code. Aside from section 234(1), plaintiff has identified nothing in the terms of the collateral assignment that created a duty on the part of State Farm to notify plaintiff of material events affecting Jeffrey's application for life insurance. It is therefore irrelevant whether the collateral assignment was delivered to State Farm before the binder expired.

¶ 32 In sum, plaintiff has not identified any genuine issues of material fact that would preclude summary judgment. The trial court correctly found that policy number 2716-0595 was never issued to Jeffrey, that the coverage provided under the temporary binder expired on its own terms, and that the collateral assignment did not create any coverage. We need not address the issue of promissory estoppel, as plaintiff has made no arguments in that regard on appeal.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's order granting State Farm's motion for summary judgment on plaintiff's claims for breach of contract and promissory estoppel.

¶ 35 Affirmed.