

MEMORANDUM

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

**PART 17
HON. ORIN R. KITZES**

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BANKERS LIFE INSURANCE COMPANY OF NEW YORK
Plaintiff,

-against-

**Index No.:14076/07
Motion Date: 1/16/08
Motion No.:4**

**MAINAWATTIE SOMRAJ, YOUGUL KISHORE SHARMA,
LAKERAM SHARMA, MUNENDRA SHARMA,
YOURANI SHARMA, KAMALAWATIE MANGAR,
and NEERMALA SANGAR**

Defendant(s).

Dated: January 23, 2008

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Motion by Plaintiff Bankers Life Insurance Company of New York (“Bankers Life”) for interpleader relief and dismissal of defendants’ counterclaims is decided as follows:

Bankers Life claims that it is a stakeholder exposed to multiple liability as the result of conflicting claims to the proceeds of a \$50,000 life insurance policy made by family members of the deceased insured, Lachandai Sharma. Bankers Life concedes liability for payment of the death benefit under the policy and claims no beneficial interest therein. However, allegations of forgery and fraud by the deceased insured’s family have been asserted regarding the subject policy and such has raised doubts as far as the rightful beneficiary and this has prevented Bankers Life from paying the proceeds without facing the risk of multiple liability. As such, Bankers Life seeks to deposit the proceeds and accrued interest with the Court, be discharged from liability in whole to claimants, and recover its expenses, costs, and disbursements incurred in bringing this action, pursuant to CPLR 1006. Furthermore, Bankers Life claims that defendant Somraj’s counterclaims, seek nothing more than the policy proceeds that are the subject of this interpleader action and, therefore, should be dismissed as being adverse to the interpleader relief to which Bankers Life is entitled, pursuant to CPLR 3211 (a) (6). Banker’s Life also asserts that since the relationship between Bankers Life and Somraj is based in contract, the counterclaims fail to state a cause of action since they are for negligence, pursuant to CPLR 3211 (a) (7).

Defendant Mainawattie Somraj opposes this motion, claiming that Bankers Life is the reason, or a major contributing reason for the dispute regarding the proper beneficiary. According to defendant, Bankers Life was negligent in the custody of the insurance documents, in changing the beneficiary’s mailing address without proper authority from her and forwarding forms to change the

beneficiary under the policy of insurance to an improper address, even after the insurance company was alerted that the address where they were sending mail to was not the correct address of the beneficiary of the policy, and in facilitating a fraud on the Defendant herein. According to defendant Somraj, such acts by Bankers Life prevents the granting of the instant motion.

In support of its motion, Bankers Life has submitted an affidavit of Susan Novegrod, a claims Examiner of plaintiff, an affidavit of Cynthia K. Schmit, a member of plaintiff's law department, a copy of the subject Life Insurance policy, the application for the policy, and various correspondence between Banker's Life and members of the deceased's family. This evidence shows that Bankers Life issued a \$50,000 life insurance policy (the "Policy") on the life of Lachandai Sharma. The Policy, including the attached application, shows that Lachandai Sharma was the policy's original owner and her eight adult children (all named as defendants herein, except for one that predeceased the insured) were the originally named beneficiaries. Bankers Life subsequently recorded a change of ownership of the policy to defendant Mainwattie Somraj. Subsequently, Bankers Life also recorded a change of beneficiary under the Policy to defendant Yougul Kishore Sharma ("Yougul Sharma"). Upon the insured's death on June 2, 2006, Somraj and Yougul Sharma each claimed to be the Policy's sole beneficiary and each sought payment of the full benefit amount. Yougul Sharma claims to be the sole beneficiary pursuant to a change of beneficiary form purportedly signed by Somraj and the insured. Somraj, however, claims that the change of beneficiary form is forged, claims that the original designation of the insured's children as equal beneficiaries is also forged, and claims that she is the originally named sole beneficiary and owner. These conflicting claims involving allegations of fraud and forgery, caused Bankers Life to commence this interpleader action. All parties have now answered and defendant Somraj asserts three negligent counterclaims against Bankers Life seeking the Policy proceeds at issue based on her claim to be the Policy's sole beneficiary.

Bankers Life claims that it is a stakeholder entitled to avail itself of Interpleader Relief. It claims to have properly commenced this interpleader action, and should be discharged from liability to defendants upon payment of the policy proceeds into Court. Bankers Life claims it is a stakeholder because it is exposed to multiple liability from the adverse claims made by Somraj and Yougul Sharma to the Policy death benefit.

Defendant Somraj has opposed the motion by submitting her affidavit and an affidavit of Mohamed Ali, an insurance broker who helped in the procuring of the subject policy. According to defendant, this evidence shows that plaintiff is not a neutral stakeholder eligible for interpleader. This evidence shows that, on or about February, 1987 defendant Somraj applied to plaintiff for a life insurance policy on her mother, Lachandai Sharma. Thereafter, Plaintiff issued a policy of insurance on the life of the said Lachandai Sharma naming 8 children of the insured as the beneficiaries of the policy of insurance. Defendant, Somraj has maintained that she was and has always been the sole beneficiary under the policy of insurance. Mr. Ali states that the words written on the policy

application (plaintiff's BL000013 at paragraph 10 and on BL000015 at paragraph 21) are not in his handwriting, nor were they entered with his knowledge and/or consent. He also states that the contents of BL000013 at paragraph 10 and BL000015 paragraph 21 were done after he forwarded the application to the Plaintiff. Defendant also claims that plaintiff changed or facilitated changes to the policy of insurance, involving the address of defendant Somraj, without proper care, investigation and/or proper authority. Defendant Somraj claims that this evidence shows that plaintiff is culpable for creating the dispute that underlies this litigation, or was negligent in permitting changes to be made to documents while in their possession, care and safekeeping.

Pursuant to CPLR 1006(a), "[a] stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim." Under this subsection, "[a] stakeholder may commence an action of interpleader against two or more claimants." Banker's Life, has shown that it is the holder of proceeds of the insurance policy, has conceded its obligation to pay the policy proceeds, claims no beneficial interest for itself in the policy proceeds, and is prepared to pay the proceeds, with accrued interest, into the Court. Furthermore, the competing claims for the insurance proceeds do not lack substance. Consequently, Banker's Life is a stakeholder under CPLR 1006 (a)

CPLR 1006 (f), in pertinent part states that "After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party. The stakeholder shall submit proof by affidavit or otherwise of the allegations in his pleading. The court may grant the motion and require payment into court, . . . The court shall impose such terms relating to payment of expenses, costs and disbursements as may be just and which may be charged against the subject matter of the action." Case law provides that only if the party seeking CPLR 1006 (f) relief has demonstrated that it was a neutral stakeholder with no interest in the disputed fund will the Court discharge the stakeholder from liability. *See, Sun Life Ins. & Annuity Co. of N.Y. v. Braslow*, 38 A.D.3d 529 (2d Dept 2007.)

Here, defendant Somraj's asserts that Bankers Life is not a neutral stakeholder based upon its having committed wrongful acts that were the catalyst for the conflicting claims. However, her claims, in essence, involve the fraud of other purported beneficiaries of the policy, not Bankers Life. First, defendant Somraj' claims that an application was prepared and signed by herself and her broker naming her as the sole owner and beneficiary of the Policy are not supported by the evidence. The Policy and application do not name Somraj as the owner or the sole beneficiary. Moreover, there is no support for Somraj's assertions of another application being prepared, in fact, Banker's Life has submitted evidence that no other application was prepared. Second, any claims regarding Banker's Life not serving Somraj with correspondence and this created the subject conflicting are without merit since there is no admissible evidence that Somraj was the Policy owner such that she would be entitled to receive any correspondence concerning the Policy. Third, Yougul Sharma asserts in his amended answer that the correspondence relating to

the Policy was properly sent to the insured and that Somraj was aware of this. Fourth, the conflicting claims herein are due to Somraj's allegations of fraud and forgery by Yougul Sharma and Yougul Sharma's denials of such fraud and forgery; there are no allegations of Bankers Life acting in such similar fashion. Regardless if Somraj proves her fraud, or Sharma defends against the allegations, Bankers Life is only liable to pay the Policy proceeds once. Finally, there is no allegation of any specific act of negligence by Bankers Life.

Consequently, Somraj has failed to set forth a claim that Bankers Life has independent liability for the payment of the proceeds and the Court finds that plaintiff is a neutral stakeholder. Sun Life Ins. & Annuity Co. of N.Y. v. Braslow, supra. Furthermore, there is no evidence that Bankers Life acted in a way that would subject it to double liability, as in the cases cited by Somraj. See, e.g., Am. Motorists Ins. Co. v. Truman Oakley, 172 Misc. 319 (Sup. Ct. Broome County 1939) (insurance certificate designated two possible beneficiaries); see also, Rosenberg v. P. Viane, Inc., 109 Misc. 215 (Sup. Ct. N.Y. County 1919) (issuing receipts to separate persons for the same goods). Compare, Inovlotska v Greenpoint Bank, 8 AD3d 623, 780 N.Y.S.2d 358 (Plaintiff, had attempted to withdraw funds from accounts at Greenpoint Bank. The branch manager at Greenpoint refused to honor the withdrawal because he suspected that undue influence was being exerted on her. The plaintiff claimed that Greenpoint had wrongly failed to abide by the decedent's requests and that the plaintiff, therefore, was the rightful recipient of the Greenpoint funds. The Appellate Court found that the Supreme Court had improvidently exercised its discretion in discharging Greenpoint pursuant to CPLR 1006 (f) since it was a named defendant against whom the plaintiff asserted independent liability, and as such, was not a mere stakeholder, notwithstanding the fact that the bank claimed no interest in the disputed funds.)

Based upon the above, the branch of the motion seeking and order pursuant to CPLR 1006(f) is granted and plaintiff is permitted to deposit the policy proceeds and accrued interest with the court.

The branch of the motion seeking to dismiss defendant Somraj's counterclaims as not properly made in this interpleader action is granted. See CPLR 3211(a)(6). The counterclaims against Bankers Life assert negligence by Bankers Life in allowing changes to be made to the subject policy, however, these counterclaims do not seek more than the Policy benefits that are the subject of this interpleader action. Furthermore, Somraj's counterclaims stem from her contention that she was the original sole beneficiary of the policy and is thus entitled to the policy proceeds, which are the funds and issues properly litigated between interpleaded claimants. The counterclaims are, therefore, adverse to the purpose of the interpleader statute, and should be dismissed as not properly interposed in this interpleader action. See, e.g., CPLR 3211(a)(6); In re Bernstein, 156 A.D.2d 683, 683-684 (2d Dept 1989); Bankers Sec. Life Ins. Soc. v. Shakerdge, 55 A.D.2d 568, 569 (1st Dep't 1976) (finding lower court erred in not

dismissing counterclaims against stakeholder for punitive damages and counsel fees). Moreover, Somraj’s counterclaims must also be dismissed for failing to state a cause of action. *See* CPLR 3211(a)(7). The relationship between Somraj and Bankers Life is governed by contract, thus, Somraj’s negligence counterclaims cannot state a cause of action against Bankers Life. *See, e.g., Vought v. Teachers College*, 127 A.D.2d 654, 655 (2d Dep’t 1987) (“once a contractual relationship was entered into between the parties, that contract defined the scope of the duties owed to the plaintiff, and, without a special relationship out of which a separate and distinct legal duty sprang, the plaintiff cannot maintain a separate tort cause of action”). Accordingly, the counterclaims are dismissed. Furthermore, based on this finding and the granting of the branch of the motion pursuant to CPLR 1006 (f), plaintiff is discharged from liability in whole to claimants, and is granted its expenses, costs, disbursements and attorney’s fees. A hearing shall be conducted by this Court to determine the reasonable amounts to be awarded plaintiff for these items.

_____ Settle Judgment.

ORIN R. KITZES, J.S.C.