JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. SACV 14-1462-JLS (RNBx) Date: January 27, 2015
Title: Betty Joe Atnip v. American General Life Insurance Company et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

| Terry Guerrero | N/A |
|---|---|
| Deputy Clerk | Court Reporter |

| ATTORNEYS PRESENT FOR PLAINTIFF: | ATTORNEYS PRESENT FOR DEFENDANT: |
|---|---|
| Not Present | Not Present |

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANT'S MOTION TO DISMISS (Doc. 14)**

Before the Court is a Motion to Dismiss filed by Defendant American General Life Insurance Company (hereinafter, "AGL"). (Mot., Doc. 14.) Plaintiff Betty Jo Atnip opposed, and AGL replied. (Opp., Doc. 20; Reply, Doc. 21.) The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing set for January 30, 2015 is VACATED. For the following reasons, the Court GRANTS the Motion.

## I. BACKGROUND

In 2004, AGL issued a $250,000 term life insurance policy to Plaintiff's now-deceased husband, Rodney Atnip. (Compl., Doc. 1, ¶ 10.) The Policy took effect on August 12, 2004, and listed Plaintiff as the beneficiary. (Id.) Rodney Atnip paid the premiums via monthly automatic bank drafts until May 2011, when the bank draft was "returned unpaid." (Id.) The policy then lapsed after May 12, 2011 – the date to which it had previously been paid – and provided no life insurance protection after that date. (Id.) Rodney Atnip died on April 3, 2013. (Id.)

At the time of Rodney Atnip's death, he was suffering from "multiple medical problems" that "caused his life insurance policy to lapse." (Id. ¶ 11.) These problems, combined with emotional stress "stemming from his wife and son's health problems had

impaired his decision making process" at the time the policy lapsed such that he "was not capable of making a rationale [sic] decision to terminate his life insurance policy." (Id.)

Following Rodney Atnip's death, Plaintiff requested AGL reinstate the policy on the grounds that "but for Rodney Atnip's irrational act of terminating his policy in May 2011, his ten year term policy beginning August 12, 2004 would have been in effect at the time of his death on April 3, 2013." (Id. ¶ 12.) In support of this, Plaintiff submitted declarations from herself and Rodney Atnip's physician, Dung Trinh, attesting to Rodney Atnip's lack of capacity to make the decision to terminate his life insurance policy. (Id.) Plaintiff demanded that AGL reinstate the policy up to the date of Rodney Atnip's death and pay Plaintiff the $250,000 policy amount, minus the unpaid monthly premiums. (Id.) AGL did not do so. (Id.)

On July 23, 2014, Plaintiff filed her Complaint against AGL in Orange County Superior Court, asserting a single claim for breach of the implied covenant of good faith and fair dealing. (Compl.) On September 10, 2014, AGL removed the case to this Court. (Notice of Removal, Doc. 1.) AGL now moves to dismiss. (Mot.)

## II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009). Rule 12(b)(6) is read in conjunction with Federal Rule of Civil Procedure Rule 8(a), which requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When evaluating a Rule 12(b)(6) motion, the district court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994). "However, where a complaint includes allegations of fraud, Federal Rule of Civil Procedure 9(b) requires more specificity including an account of the 'time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations.'" *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (quoting *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004)). "A pleading is sufficient under Rule 9(b) if it

identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 556). The issue on a motion to dismiss for failure to state a claim "is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims" asserted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). A complaint must be (1) sufficiently detailed to give fair notice to the opposing party of the nature of the claim so that the party may effectively defend against it and (2) sufficiently plausible that it is not unfair to require the opposing party to be subjected to the expense of discovery. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

In considering the motion, the Court is limited to the allegations on the face of the complaint (including documents attached thereto), matters which are properly judicially noticeable and "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994), *overruled on other grounds in Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

## III. DISCUSSION

As noted above, Plaintiff asserts a single claim against AGL for breach of the implied covenant of good faith and fair dealing. (Compl. ¶¶ 9-21.) To maintain this claim, Plaintiff must allege (1) the existence of an underlying contract and (2) her failure to receive some benefit due under it. *See, e.g.*, *Brandwein v. Butler*, 218 Cal. App. 4th 1485, 1514-15 (2013) ("[T]here is no cause of action for breach of the covenant of good faith and fair dealing when no benefits are due.") (citing *Progressive West Ins. Co. v.*

*Superior Court*, 135 Cal. App. 4th 263, 279 (2005)); *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 992 (9th Cir. 2001) (holding that under California law, a plaintiff stating a claim for breach of the implied covenant of good faith and fair dealing in the insurance context must allege (1) benefits due under the contract were withheld and (2) the reason for withholding the benefits was unreasonable or without proper cause).

Neither party disputes that an underlying contract – the insurance policy – exists. AGL, however, contends that Plaintiff fails to allege that any benefit is due to her insofar as she admits Rodney Atnip stopped paying premiums nearly two years before his death. (Mot. at 7.) Indeed, the Complaint affirmatively states that the policy lapsed in May 2011. (Compl. ¶ 10.) This is in accord with the policy's plain terms that it will lapse following nonpayment. (*See* Opp., Ex. 1, at 5.)[1] Although the policy provides for reinstatement within five years of its lapse, this provision plainly contemplates that the insured remains alive:

> **REINSTATEMENT**
>
> If this policy lapses, it may be reinstated within five years after the default. We will require *the insured to submit evidence of insurability* which is satisfactory to us. . . .

(Id. (emphasis added)). Because the policy had lapsed at the time of Rodney Atnip's death and reinstatement following lapse is permissible only where the insured is alive at the time of reinstatement, AGL is correct that no benefits are due to Plaintiff under the policy. Plaintiff's claim for breach of the implied covenant of good faith and fair dealing therefore fails. *See Brandwein*, 218 Cal. App. 4th at 1514-15.

Plaintiff contends this result does not attain because "because Rodney Atnip lacked the capacity to cancel his Policy in the first place," and the policy "therefore remained in effect up until and upon his death . . . ." (Opp. at 10-11.) Plaintiff does not

[1] The Court takes judicial notice of the policy because its contents are alleged throughout the Complaint and neither party contests its authenticity. *Branch*, 14 F.3d at 453-54. (Opp. at 11.)

attempt to argue, however, that Rodney Atnip lacked capacity to contract at the time he *purchased* the insurance policy. As a result, Rodney Atnip remained bound by his original agreement that (1) the policy would lapse upon nonpayment and (2) after such a lapse, the policy could be reinstated following submission of proof of insurability. *See* Cal. Civ. Code § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting . . . ."). Rodney Atnip's alleged subsequent lack of capacity does nothing to change these terms. As a result, Plaintiff is owed no benefits under the policy for the reasons discussed above.

Plaintiff's remaining arguments are without merit. Plaintiff contends that "equitable relief" is warranted to permit her to revive the policy because it is in the interests of justice. (Opp. at 9-10.) Plaintiff identifies no equitable doctrine warranting relief in this case, however, and the Court finds no reason to invent one here, given that AGL seeks nothing more than to enforce the insurance policy as written and agreed to by Rodney Atnip.

Plaintiff finally contends that she is entitled to invoke the policy's reinstatement provision without submitting evidence of insurability because California's insurance code mandates that a policy be "incontestable after it has been in force, during the lifetime of the insured, for a period of not more than two years after its date of issue . . ." Cal. Ins. Code § 10113.5. Plaintiff overlooks the next portion of Section 10113.5, however, which clarifies that it is inapplicable following "nonpayment of premiums." *Id*. In any case, Section 10113.5's purpose is "to fix a limited time within which the insurer must discover and assert any grounds it might have to justify rescission of the contract." *New York Life Ins. Co. v. Hollender*, 38 Cal. 2d 73, 78 (1951); *see also United Fid. Life Ins. Co. v. Emert*, 49 Cal. App. 4th 941, 945 (1996) ("The incontestability bar acts as a 'statute of repose' for the beneficiaries of polices, and establishes a limited period of time for insurers to investigate and discover possible fraud by their insureds."). It is inapplicable where, as here, an insurer does not seek to *rescind* the contract, but rather to *enforce* it.

Accepting all material allegations in the complaint as true, Plaintiff fails to allege that any benefits are due to her under Rodney Atnip's life insurance policy. Plaintiff's claim for breach of the implied covenant of good faith and fair dealing therefore fails.

*See Guebara*, 237 F.3d at 992. Moreover, because Plaintiff could not amend the Complaint to state a valid cause of action without contradicting facts she has already alleged, the dismissal is with prejudice.

## IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's Motion to Dismiss. This action is dismissed WITH PREJUDICE and without leave to amend.

Initials of Preparer: tg