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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NORBERT BILLARD,

Plaintiff,

v.

STATE FARM LIFE INSURANCE COMPANY,

Defendant.

CASE NO: 2:18-CV-00182-APG-PAL

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff, Norbert Billard ("Billard"), respectfully moves for summary judgment on the basis that the uncontested facts and evidence show he is entitled to payment of the $800,000 death benefit and accrued interest as a matter of law. All citations to pleadings and exhibits in the docket are hereby incorporated by reference. The legal standard for summary judgment is well known to the Court and has therefore been intentionally omitted. Billard does not request oral argument on this Motion.

Claim Upon Which Judgment Is Sought

Billard has asserted four causes of action against State Farm: 1) breach of contract; 2) unfair claim settlement practices; 3) negligence; and 4) bad faith. *See* Amended Complaint (ECF No. 31). This Motion focuses solely on Billard's claim for breach of contract against State Farm. Granting this Motion would terminate the case as Billard will abandon the remaining claims against State Farm in the event the Motion is granted. In the event the Motion

is denied, Billard will maintain all claims for trial. As more fully set forth in the following Statement of Uncontested Material Facts, Incorporated Memorandum of Points and Authorities, and the referenced and attached exhibits, there is no genuine dispute as to any material fact with respect to this claim, and Billard is entitled to summary judgment as a matter of law.

STATEMENT OF UNCONTESTED MATERIAL FACTS

1) On April 14, 2014, State Farm issued life insurance policy no. LF-3364-4561 (the "Policy") to Billard, as owner. *See* Amended Complaint (ECF No. 31, at ¶ 8); Ans. of State Farm (ECF No. 32, at ¶ 7); *see also* Exhibit A - Policy No. LF-3364-4561.

2) The Policy insured the life of Michael Chow ("Chow"), and had a face amount of $800,000. *See* Amended Complaint (ECF No. 31, at ¶ 9); Ans. of State Farm (ECF No. 32, at ¶ 8); *see also* Exhibit A - Policy No. LF-3364-4561.

3) Billard was named the primary beneficiary of the Policy's death benefit. *See* Amended Complaint (ECF No. 31, at ¶ 10); Ans. of State Farm (ECF No. 32, at ¶ 9); *see also* Exhibit A - Policy No. LF-3364-4561.

4) Billard timely paid all premiums from the inception of the Policy until Chow's death. *See* Amended Complaint (ECF No. 31, at ¶ 11); Ans. of State Farm (ECF No. 32, at ¶ 10) (admitting that all premiums were paid through the date of Michael Chow's death).

5) On September 14, 2017, Chow died from a heart attack while in Cabo San Lucas, Mexico. *See* Amended Complaint (ECF No. 31, at ¶ 12); Ans. of State Farm (ECF No. 32, at ¶ 11) (admitting his date of death); *see also* Exhibit B - Death Certificate.

6) On October 13, 2017, Billard submitted a claim to State Farm for the death benefit, which claim remains unpaid to date. *See* Amended Complaint (ECF No. 31, at ¶ 15); Ans. of State Farm (ECF No. 32, at ¶ 14).

INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES

Nature of the Dispute

Billard brought this action after State Farm delayed payment of his death benefit claim without justifiable excuse. Discovery reveals that State Farm confirmed Chow's death nearly a year ago, but has continued to withhold payment while treating Billard's claim as contestable, despite the Policy being well beyond the contestability period. State Farm has suggested that it could be subject to a competing claim from Chow's estate because Billard may not have had an insurable interest in Chow's life. However, State Farm failed to add Chow's estate or any other putative beneficiary as a party to this case, and the deadline for doing so has now passed. Accordingly, the death benefit is due and must be paid to Billard as a matter of law.

A. The Policy Obligates State Farm to Pay the Death Benefit to Billard.

The Policy is an enforceable contract between Billard and State Farm. It was in force on the date of Chow's death. State Farm does not deny that Chow is deceased. *See* Billard's Stmt. Uncon. Mat. Facts, at ¶ 5. Billard was the named primary beneficiary of the Policy. *See* id., at ¶ 3. He has not been disqualified from receiving the death benefit. Billard is therefore entitled to the death benefit and accrued interest.

In its Opposition to Plaintiff's Motion for Leave to File Amended Complaint ("Brief") (ECF No. 24), State Farm represented to the Court that it "is still investigating plaintiff's claim for benefits and therefore has not yet made a decision about: (1) what (if anything) is payable under the subject policy; or (2) who is entitled to receive any benefits which are payable under the policy." *See* id., at p. 5. With respect to "what (if anything)" is payable under the Policy, that would be the $800,000 death benefit and accrued interest. This is not some mystery. The death benefit was clearly defined in the Policy, and there is no outcome in which State Farm is not liable for the death benefit. The Policy was more than two years old, meaning it was

incontestable except for non-payment of premiums. *See* Exhibit A - Policy No. LF-3364-4561, at p. 7. As admitted in State Farm's answer, all premiums were paid through the date of Chow's death. *See* Billard's Stmt. Uncon. Mat. Facts, at ¶ 4. Therefore, it cannot contest the validity of the Policy. State Farm must pay the $800,000 death benefit.

B. The Issue of Insurable Interest is Now Moot for Purposes of this Action.

With respect to the second part of its representation that it is still investigating "who" is entitled to receive the death benefit, State Farm suggests that "unanswered questions about whether plaintiff had an insurable interest in the insured's life raise an important question about whether 'the executor or administrator of the person insured' has a legal basis for making a competing claim to any benefits that may be payable under the subject policy." Brief (ECF No. 24, at p. 3). State Farm is correct that Nevada law permits an estate representative to attack a beneficiary who receives the death benefit of any life insurance contract made in violation of the insurable interest requirement. However, that is an option available exclusively to the estate representative, and it is not mandatory. *See* Nev. Rev. Stat. § 687B.040(3) (if the beneficiary under any contract lacking insurable interest receives from the insurer any benefits thereunder accruing upon the death of the person insured, the executor or administrator of the person insured, "may maintain an action to recover such benefits from the person so receiving them.") (Emphasis added). The statute places no affirmative duty on State Farm to promote potential interests of a third-party estate, particularly over those of its own policy owner.

Moreover, while disputing that he lacked insurable interest in Chow's life,[1] even if this "unanswered question" is resolved in a light most favorable to the non-moving party, procedurally it no longer matters if Billard had an insurable interest for purposes of this lawsuit

[1] The underwriting file shows that State Farm flagged insurable interest as a "problem" during underwriting and subsequently marked the issue "resolved" on March 25, 2014, without contacting Billard.

because State Farm failed to bring any other putative beneficiaries into the case by the Court's deadline for doing so. *See* Order (ECF No. 28, at ¶ 1(b)) ("Last date to amend pleadings and add parties: **September 17, 2018."**) State Farm's initial concern that it could be subject to a competing claim from Chow's estate was apparently overblown. Indeed, if State Farm had received a competing claim from Chow's estate, or any other putative beneficiary; or if it had determined that anyone else needed to be made a party to this case, it would have sought to add such party, interplead the death benefit, and be dismissed by now. Instead, it has held on to the death benefit and taken no other action. State Farm cannot withhold payment even if it believes Billard lacked insurable interest. The statute does not permit voidance of the Policy. In fact, it does not permit voidance of payment to the named beneficiary. It merely gives the insured's estate discretion to pursue recovery directly from the beneficiary if it so chooses.

State Farm was aware of this statute and the Court's deadline for adding parties, yet made no effort to bring Chow's estate into this case and interplead the death benefit. Accordingly, the issue of insurable interest is now moot as the only person with standing to assert a claim against Billard for lack of insurable interest is not a party to this suit. State Farm cannot continue to use the vague allegation that he lacked insurable interest as a means to avoid paying the claim, particularly when it investigated this issue during underwriting and approved issuance of the Policy.

C. Billard is Not Under Investigation by Authorities for Chow's Natural Death.

Chow died of a heart attack in his sleep. *See* Exhibit B - Death Certificate (noting "infarto agudo al miocardio (5 min)" or "acute myocardial infarction.") His toxicology screen came back negative, eliminating any concern that he may have been poisoned. *See* Exhibit C – Toxicology Report (no alcohol or drugs in his system). State Farm hired a private investigator who spoke with the Public Prosecutor's Office in Cabo San Lucas, Mexico. The lawyer there

revealed that Chow's death was not considered a crime scene. *See* Exhibit D – Page 6 from Tweedy Investigation Report ("Lawyer Vera stated the insured was found without vital signs and without any signs of violence inflicted on him. She also mentioned that there was no evidence indicating that the event was the result of a robbery.") Nothing in the Tweedy Investigation Report suggests that Billard is under investigation by any governmental agency or body, or that Chow's death is even considered an open investigation. All authorities consider the death to be the result of a natural heart attack.

However, if State Farm did in fact believe Billard was a suspect in the death of Chow, then it would have named Chow's estate as a party to this proceeding as the putative beneficiary to receive the death benefit in the event of Billard's disqualification. Its decision not to add Chow's estate reveals that State Farm has no legitimate evidence against Billard or belief that he will be disqualified as the beneficiary.

CONCLUSION

It is obvious that State Farm is withholding payment of the death benefit to Billard without justifiable reason. He is entitled to payment of the death benefit and accrued interest promptly. Continued non-payment of the claim reeks of bad faith. Accordingly, Billard respectfully prays that his Motion for Summary Judgment be granted.

DATED this 21st day of September, 2018.

Respectfully submitted,

/s/ Michael J. Hoover
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LIST OF EXHIBITS

Exhibit A – Policy No. LF-3364-4561

Exhibit B – Death Certificate

Exhibit C – Toxicology Results

Exhibit D – Page 6 from Tweedy Investigation Report

Exhibit E – Declaration of Michael Hoover

CERTIFICATE OF SERVICE

☒ I hereby certify that on September 21, 2018, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/Michael Hoover
Michael Hoover