



Positive

As of: September 26, 2024 1:11 PM Z

Rivera v. Allstate Life Ins. Co.

Supreme Court of New York, Suffolk County

June 16, 2015, Decided; July 2, 2015, Published

63509/14

Reporter

2015 NYLJ LEXIS 5855 *

Rivera v. Allstate Life Ins. Co., 63509/14

63509/14

Notice: © [2015] ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. www.nylj.com

Decided: June 16, 2015

ATTORNEYS

(Rivera v. Allstate Life Ins. Co., 63509/14, NYLJ, Jul. 2, 2015 at Pg. 40)

Plaintiff's Attorney: Law Offices of Eric Dinnocenzo, New York, NY.

Subsequent History: Dismissed by, Affirmed by [Rivera v. Allstate Life Ins. Co. of N.Y., 144 A.D.3d 658, 39 N.Y.S.3d 815, 2016 N.Y. App. Div. LEXIS 7061, 2016 NY Slip Op 7175 \(Nov. 2, 2016\)](#)

Defendant's Attorney: Drinker, Biddle Reath, Philadelphia, PA.

Upon the following papers numbered 1 to 44 read on this motion for summary judgment:

Core Terms

premium, notice, grace period, insured, lapse, terminated, due date, insurance policy, nonpayment, monthly, premium payment, coverage, papers

Notice of Motion/Order to Show Cause and supporting papers 1-16;

Notice of Cross Motion and supporting papers_;

Answering Affidavits and supporting papers 17-44;

Judges: [*1] Justice Paul Baisley, Jr.

Replying Affidavits and supporting papers_;

Opinion

Other_;

(and after hearing counsel in support and opposed to the motion) it is,

Rivera v. Allstate Life Ins. Co., 63509/14

*1

COURT: Suffolk County

CASE NUMBER: 63509/14

ORDERED that the motion (motion sequence no. 001) of plaintiff Marco Rivera for an order granting plaintiff summary judgment on his claims is granted.

Cite as: Rivera v. Allstate Life Ins. Co., 63509/14, NYLJ 1202731050370, at *1 (Sup., SUF, Decided June 16, 2015)

Supreme Court, Suffolk County, I.A.S. Part XXXVI

CASENAME

Marco Rivera, Plaintiff v. Allstate Life Insurance Company of New York, Defendant

On June 20, 2005, Joanne Corless purchased a \$100,000 term life insurance policy from Allstate Life Insurance Company of New York ("Allstate") naming her then-eleven-year-old [*2] son, Marco Rivera, as sole beneficiary. The policy provided for an initial annual premium of \$460.00, but Ms. Corless selected an alternate payment plan providing for monthly premium payments of \$40.25 to be withdrawn electronically from her bank account pursuant to an "Agreement for

Electronic Fund Transfer ("EFT agreement") which she executed on the same date. Pursuant to the EFT agreement, monthly premium payments were automatically deducted from Ms. Corless' bank account every month commencing on July 21, 2005 through July 21, 2013. The EFT agreement (Def's Exhibit D) provided that the agreement "may be ended automatically by Allstate" if any debit entry has been refused by the bank and further provided that Allstate "will not send premium notices."

Plaintiff's submissions reflect that in August 2013, Ms. Corless, who was then terminally ill with cancer, closed the joint bank account from which the premium payments were being withdrawn, but failed to make alternate arrangements for payment of her life insurance policy premiums. Accordingly, the August premium payment in the amount of \$38.33 was refused by the bank as the account had been closed.

The insurance policy provides that [*3] "[i]f you do not make your payment by its due date, we will allow a grace period of 31 days from the due date. This contract will be in force during the grace period. If you do not make the payment by the end of the grace period, this contract will stop" (Policy, page 5-G10). The policy further provides that "[i]f the insured dies during the grace period, we will deduct any payments due us for coverage during the grace period from the amounts we pay (id.).

*2

The submissions reflect that after the August 2013 payment was refused, Allstate thereafter sent Ms. Corless a series of letters addressed to her at her last known address.^[note 1] The first letter, dated August 27, 2013 (Def's Exhibit E) advised Ms. Corless that "the funds deposited for your last Preauthorized Check was [sic] returned by your bank marked account closed" resulting in the nonpayment of the August premium. The letter advised Ms. Corless that the payment due date was August 13 and requested a replacement remittance in the amount of \$38.33. The letter warned that "[w]ithout this remittance your policy may lapse." The letter further advised Ms. Corless that the EFT agreement "has been terminated" and that a new EFT form would have to be completed [*4] to "re-set your policy on EFT."

A second, undated, letter reflecting "Information as of

August 27, 2013," denominated by Allstate as a "Notice of Payment Due" (Exhibit F), notified Ms. Corless that a quarterly premium payment in the amount of \$115.00 was due by August 21, 2013 (six days prior to the information-date of the letter). That letter advised Ms. Corless that her "premium should be paid by its due date. If the premium is not paid within the grace period of 31 days after its due date, the policy will terminate." The letter requested that Ms. Corless "[p]lease remit the payment shown above to ensure your insurance coverage stays in force," and included a payment stub indicating the payee and the address to which the payment should be sent.

A third letter, information-dated as of August 28, 2013, described by Allstate as a "grace notice" (Def's Exhibit G) required by [Insurance Law §3211](#), advised Ms. Corless that "Your policy is at risk for lack of payment." The letter informed her that "your life insurance protection will continue for 31 days from 08/27/2013. However, if we do not receive your payment of \$115.00 by 09/27/2013, your coverage will cease under the terms of the policy." It further advised her [*5] that "[a] payment in the amount of \$115.00 is due by 09/27/2013 to ensure that your policy remains inforce" [sic].

It is undisputed that no premium payment was made in response to any of Allstate's letters to Ms. Corless.

On September 28, 2013, Joanne Corless died. Unaware of its insured's death, Allstate mailed to Ms. Corless an undated "lapse notice" reflecting "Information as of September 28, 2013" which purported to advise the decedent that "the grace period for your premium payment has expired, and your policy has lapsed." The letter advised that the policy could be reinstated upon submission of a premium of \$115.00 and a completed application for reinstatement.

Upon being notified of Joanne Corless' death and of the claim of the decedent's son, Marco Rivera, for the death benefit under the policy, Allstate sent Marco Rivera a letter dated October 11, 2013 denying his claim. The letter stated: "Our records indicate this policy lapsed due to non-payment of premium on August 21, 2013. The grace period subsequently expired on September 27, 2013, and the policy terminated without value. Unfortunately, because no coverage was in effect at the time of death under this policy record, no [*6] benefits are payable."

Plaintiff Marco Rivera thereafter commenced this action to recover the \$100,000 proceeds of the insurance policy on grounds of failure to give proper notice of the

[note 1] Plaintiff does not deny receipt of the letters.

premium due and the risk of policy lapse pursuant to [Insurance Law §3211](#); breach of contract; and equitable principles

*3

predicated on the allegedly de minimis amount of the premium due and the de minimis one-day gap between the expiration of the grace period and the date of Joanne Corless' death. Plaintiff now moves for summary judgment on his claims.

The motion is opposed by Allstate, which contends that proper notice was given, pursuant to [Insurance Law §3211](#) and that the contract was properly terminated because payment of the outstanding premium was not received prior to the expiration of the applicable grace period. Allstate alleges that it properly terminated the EFT agreement after the August payment was not made, that it thereupon properly converted the policy to a quarterly premium payment schedule, and that the "grace period" notice dated "Information as of August 28, 2013" provided its insured with all of the information required by [Insurance Law §3211](#) and accordingly the policy lapsed on September 27, 2013 - prior to Joanne Corless' death - pursuant [*7] to its terms.

[Insurance Law §3211](#) requires that prior to terminating an insurance policy for nonpayment of a premium, the insurer must provide written notice to the insured of the premium due ([Insurance Law §3211 \(a\)\(1\)](#)). The notice must be mailed at least 15 and not more than 45 days prior to the day when the payment becomes due ([Ins. Law §3211\(a\)\(1\)](#)), and must state the amount of the payment, the date when due, the place where and person to whom it is payable, and specify that unless such payment is made on or before the due date or within the specified grace period thereafter, the policy will terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit ([Ins. Law §3211\(b\)\(2\)](#)). Notice in accordance with the statute is a condition precedent to termination of a life insurance policy for non-payment of premiums.

Where, however, the policy requires payment of monthly premiums or the insured has elected to pay the insurance policy premiums on a monthly basis, the insurer is not required to provide the insured with a written notice of cancellation prior to terminating the policy for nonpayment of a premium or to notify the insured that the policy has lapsed ([Ins. Law §3211\(f\)\(2\)](#); [Gerald v. Companion Life Ins. Co.](#), 31 AD3d 378, 819 N.Y.S.2d 276 [2d Dept 2006]; [Elston v. Allstate Life Ins.](#)

[Co. of New York](#), 274 AD2d 938, 712 N.Y.S.2d 185 [3d Dept 2000]).

[Insurance Law §3211](#) reflects the general public policy disfavoring forfeiture of life insurance [*8] policies for non-payment of premiums ([In re Preston's Will](#), 29 NY2d 364, 278 N.E.2d 623, 328 N.Y.S.2d 405 [1972]), and accordingly the statutory notice provision is strictly construed in favor of the insured ([Speziale v. Nat'l Life Ins. Co.](#), 328 F Supp 2d 295, 2004 US Dist LEXIS 12525 [NDNY 2004], aff'd, 159 Fed Appx 253 [2d Cir 2005]; [Fauer v. Aetna Life Ins. Co.](#), 70 F2d 693 [1934]). Any ambiguities are likewise construed strictly against the insurer and in favor of the insured ([Buchbinder Tunick & Co. v. Manhattan Life Ins. Co.](#), 219 AD2d 463, 631 N.Y.S.2d 148 [1st Dept 1995]).

The Court notes that the "default" relied on by Allstate for its determination that the policy lapsed prior to Joanne Corless' death is not the nonpayment of the August 21, 2013 monthly premium of \$38.33, which does not require a [§3211\(a\)](#) notice,^[note 2] but rather the insured's failure to pay a separate and distinct quarterly premium of \$115.00 (see, [Fauer v. Aetna Life Ins. Co.](#), 70 F2d 693 [2d Cir 1934]). Allstate does not dispute that, when it unilaterally terminated the EFT agreement and initiated a quarterly premium schedule, it was required to give its insured written notice of the new premium in accordance with [Insurance Law §3211\(a\)](#).

*4

Allstate concedes that the first notice to Ms. Corless of the new premium was the "Notice of Payment Due" dated as of August 27, 2013 (described in the Affidavit of Claims Consultant Gene Sanford, sworn to January 29, 2015, as "a system-generated notice that issued on a monthly basis" [¶12]). That notice, which was dated as of six days after the due date set forth therein (August 21, 2013), was [*9] insufficient, however, to satisfy the requirements of [Insurance Law §3211](#) because it was not sent "at least fifteen and not more than forty-five days prior to the day when such payment becomes due" ([Ins. Law §3211\(a\)\(1\)](#)) and accordingly must be regarded as a nullity.

Allstate's subsequent letter dated as of August 28, 2013 (the so-called "grace notice" [Sanford affidavit, ¶13]) is

[note 2] See [Ins. Law §3211\(f\)\(2\)](#); [Gerald v. Companion Life Ins. Co.](#), 31 AD3d 378, 819 N.Y.S.2d 276 [2d Dept 2006]; [Elston v. Allstate Life Ins. Co. of New York](#), 274 AD2d 938, 712 N.Y.S.2d 185 [3d Dept 2000].

similarly insufficient to satisfy the statutory notice requirements. Although the letter advises Ms. Corless that "there are unpaid premiums for your policy," notifies her that "your life insurance protection will continue for 31 days from 08/27/2013," and warns that "if we do not receive your payment of \$115.00 by 09/27/2013, your coverage will cease under the terms of the policy," the letter is ambiguous as it fails to set forth clearly "the date when due" of the \$115.00 payment ([Ins. Law §3211\(b\)\(2\)](#)). If the premium payment of \$115.00 was due on August 27, 2013, this notice, dated after the due date, also was not given "at least fifteen and not more than forty-five days prior to the day when such payment becomes due" and does not satisfy the statute ([Ins. Law §3211\(a\)\(1\)](#)). If, however, the "due date" is September 27, 2013, then the 31-day grace period was still in effect when the [*10] insured died the following day, September 28, 2013.

[Insurance Law §3211\(a\)](#) is clear and unambiguous in its requirement that no insurance policy may lapse for nonpayment of a premium unless notice of the premium is given at least 15 but no more than 45 days before the due date of the premium. Allstate's argument that the policy lapsed because "no payment was received within the 31-day grace period" (i.e., 31 days from August 27, 2013) erroneously conflates the due date of the premium with the lapse date at the end of the grace period.

The record establishes as a matter of law that Allstate failed to provide its insured with proper notice pursuant to [Insurance Law §3211\(a\)](#). Accordingly, the policy was still in effect when the insured died on September 28, 2013. In light of the foregoing, plaintiff's motion for summary judgment on his claim of entitlement to the policy proceeds, less any premiums due, is granted.

Settle judgment.

Dated: June 16, 2015

New York Law Journal