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D/RS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



YVONNE H. JONES,)
)
 Plaintiff,)
)
 v.)
)
 GE LIFE AND ANNUITY ASSURANCE)
 COMPANY,)
)
 Defendant.)
 _____)

Case No. 1:03CV241

MEMORANDUM OPINION

TILLEY, Chief Judge

This matter is now before the Court on Defendant's Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c) [Doc. #14]. For the reasons discussed below, Defendant's Motion to Dismiss will be GRANTED.

I.

The facts in the light most favorable to the Plaintiff, the non-moving party, are as follows. Plaintiff Yvonne H. Jones purchased a "Flexible Premium Adjustable Life Insurance Policy"¹ ("the policy") from the predecessor of GE Life

¹GE Life describes this type of policy as follows:
 Universal life insurance policies . . . offer flexibility with respect to the payment of premiums. Unlike traditional ordinary life policies where the required premium charged under the policy is calculated and guaranteed to provide a fixed death benefit for the life of the policy, universal life policyholders are given a certain flexibility to choose and adjust the level of their premium payments, if any, and/or the amount of the death benefit. Universal life policies are generally cash value driven—so long as there is sufficient cash value in the policy to support a particular death benefit, coverage exists. However, if interest rate

and Annuity Assurance Company ("GE Life"). (Def.'s Mem. Mot. J. Pleadings Ex. A.) The particular policy sold to Ms. Jones is a uniform contract of insurance sold by GE Life nationwide. According to the terms of the policy, GE Life would calculate a "cost of insurance rate" that would be used to determine a monthly "cost of insurance charge." The cost of insurance charge would be paid each month by the policyholder, either directly or through a deduction from the accumulated cash value of the policy.

In 1992, tax laws were changed in a manner that increased GE Life's overall tax liability.² As a result, GE Life increased its cost of insurance rates. On January 28, 2003, Ms. Jones filed a class action Complaint in Guilford County Superior Court. [Doc. #1]. The Complaint alleges that GE Life breached its contract with Ms. Jones, and others similarly situated, by increasing the applicable cost of insurance rates to compensate for GE Life's increased tax liability. On March 14, 2003, GE Life removed the action to the Middle District of North Carolina based on diversity of citizenship [Doc. #1], and filed an Answer to the Complaint [Doc. #3]. On

levels decrease or cost of insurance charges increase, the policy's cash value may be insufficient to support a particular death benefit without additional and/or higher out-of-pocket premium payment(s); or a reduction in the policy's death benefit may be necessary to keep the policy from lapsing.

(Def.'s Mem. Mot. J. Pleadings at 3-4, citing Kenneth Black, Jr. & Harold D. Skipper, Jr., Life & Health Insurance, 113-16 (13th ed. 2000).)

²The specific nature of the tax code changes are irrelevant to the issues before the Court.

September 18, 2003, GE Life filed a Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c). [Doc. #14].

II.

a.

In considering a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), facts³ presented in the pleadings and the inferences drawn therefrom must be viewed in the light most favorable to the non-moving party. Edwards v. City of Goldsboro, 178 F.3d 231, 243-44 (4th Cir. 1999). In this respect, the standard applied to a motion for judgment on the pleadings is the same as that applied to a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), i.e. the motion should only be granted if, after taking all well pleaded allegations in the complaint as true, the plaintiff can prove no set of facts entitling her to relief. Id. at 243.

b.

In deciding GE Life's 12(c) motion, the life insurance policy itself will be considered along with the factual allegations of the Complaint and Answer. The policy is integral to and explicitly relied upon in the Complaint, and its authenticity is

³For purposes of a 12(c) motion, the movant "concedes the accuracy of the factual allegations in his adversary's pleading, [but] does not admit other assertions that constitute conclusions of law, legally impossible facts, or matters that would not be admissible at trial." Wright & Miller, Fed. Practice & Procedure, § 1368 (emphasis added).

unchallenged.⁴ For the reasons discussed below, the pleadings establish that Ms. Jones' claim is barred by the applicable statute of limitations. Therefore, GE Life's other arguments need not be addressed, and GE Life's Motion for Judgment on the Pleadings will be GRANTED.

The essence of Ms. Jones' Complaint is that GE Life breached the parties' contract by increasing the cost of insurance rate in a manner contrary to that set out in the policy language. The relevant provision from the policy is as follows:

Cost of Insurance Rate. The monthly rate is based on insured's sex, obtained age, policy duration and risk class. The rates are determined by [GE Life] according to our expectations of future experience. We can change rates from time to time, but they will never be more than the maximum rates shown in the Table of Guaranteed Maximum Insurance Rates. A change in rates will apply to all persons of the same age, sex and risk class and whose policies have been in effect for the same length of time.

(Def.'s Mem. Mot. J. Pleadings Ex. A. at 9.)

⁴Generally, only the allegations of the pleadings are considered in deciding a motion to dismiss pursuant to Rule 12(c). Eagle Nation, Inc. v. Mkt. Force, Inc., 180 F. Supp. 2d 752, 754 (E.D.N.C. 2001). When "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Fed. R. Civ. P. 12(c); see also Eagle Nation, 180 F. Supp. 2d at 754.

However, in analyzing a 12(c) motion, a district court may consider documents extraneous to the complaint in certain circumstances without converting the motion into one for summary judgment. Specifically, documents that are "integral to and explicitly relied on in the complaint" may be considered, if the authenticity of such documents is not in question. Phillips v. LCI Intern, Inc., 190 F.3d 609, 618 (4th Cir. 1999) (discussion in context of Rule 12(b)(6) motion); see also Eagle Nation, 180 F. Supp. 2d at 754.

Ms. Jones contends that this provision prohibits GE Life from calculating the cost of insurance rate using any factors other than the insured's sex, age, policy duration, and risk class. Therefore, she contends that GE Life breached the contract by increasing the cost of insurance rate in 1992 in response to GE Life's increased tax liability. Because GE Life used the increased rate set in 1992 to calculate each subsequent month's cost of insurance charge, she contends the breach is ongoing.

In contrast, GE Life contends that the provision gives it discretion to change the cost of insurance rates, subject only to the guaranteed maximum rates provided in the referenced tables. It contends that, when read as a whole, the provision provides that the cost of insurance rates may be changed by GE Life, even though the initial rates flow from and are based on tables identifying rates applicable to each insured depending on "sex, attained age, and risk class" and the "policy duration."

Because Ms. Jones' claim is barred by the statute of limitations, further interpretation of the above-quoted contract provision is unnecessary. Both parties agree that the statute of limitations governing Ms. Jones' breach of contract claim is found in N.C. Gen. Stat. § 1-52, which provides a three-year statute of limitations for breach of contract actions.⁵ The three-year period begins at the time of the

⁵When federal jurisdiction rests on diversity of citizenship, as it does here, the federal court applies the substantive law of the state in which the court sits. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); Security Ins. Co. of Hartford v. Arcade Textiles, Inc., 40 Fed. Appx. 767 (4th Cir. 2002). For purposes of analysis under Erie, state statute of limitations periods are considered substantive. Guaranty Trust Co. v. York, 326 U.S. 99, 110-12 (1945). Therefore, the North Carolina statute of limitations for breach of contract actions governs in this case.

breach giving rise to the cause of action. Penley v. Penley, 314 N.C. 1, 19 (1985).

Here, the parties disagree as to the date of any alleged breach. GE Life contends that the Complaint references the date of the cost of insurance rate increase as 1992. Because the rate increase is what Ms. Jones contends constitutes the breach of contract, the statute of limitations began to run in 1992 and expired in 1995, years before Ms. Jones filed her Complaint.

Ms. Jones agrees that an alleged breach occurred in 1992 at the time of the rate increase. However, she argues that a new breach occurred in every subsequent month, when GE Life calculated the monthly cost of insurance charge using the "incorrect" cost of insurance rate. Therefore, Ms. Jones contends that the contract in question is divisible, and that because the statutory period begins anew for each successive breach, the three-year statute of limitations does not bar her recovery. Instead, she contends it limits her recovery to the three-year period preceding her filing of the Complaint, that is, the period from 2000 to 2003.

Absent an agreement to the contrary, a life insurance contract is to be interpreted as an entire contract for the life of the policy, and not a divisible contract subject to continuous breach. N.Y. Life Ins. Co. v. Statham, 93 U.S. 24, 28 (1876); McMaster v. N.Y. Life Ins. Co., 183 U.S. 25, 35 (1901); see also Lee R. Russ & Thomas F. Segalla, Couch on Insurance § 69:5 (3d ed., West). In other words, life insurance contracts are contracts for life, or for the term specified in the policy, in consideration of periodic payments. Each payment is not consideration for the

period in which it is paid, but is part consideration for the entire contract.

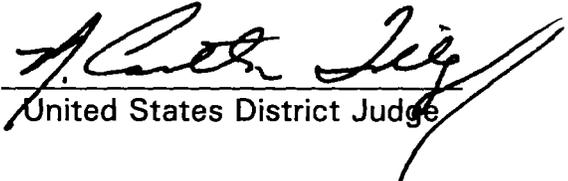
Ms. Jones argues that the authority discussed above does not apply to modern universal life insurance policies, as these type policies were not even created at the time the cases were decided. However, Ms. Jones provides no applicable support for her view that universal life policies should be treated as divisible contracts instead of being governed by the general rule.

Further, the face of Ms. Jones' Complaint makes it clear that only one breach is alleged, the 1992 increase in the cost of insurance rate. The Complaint does state that GE Life continued to use the new rate in calculating the cost of insurance charge each month. However, the provision of the policy alleged to have been breached addresses only the calculation of the cost of insurance rate, and not the cost of insurance charge. Accordingly, the policy in question is properly treated as an entire contract, and the three-year statute of limitations period began in 1992.

III.

In short, viewing the factual allegations of the pleadings in the light most favorable to Ms. Jones establishes that more than three years elapsed between the alleged breach of contract and Ms. Jones' filing of suit. Therefore, the claims are barred, and GE Life's Motion for Judgment on the Pleadings will be GRANTED.

This 17th day of March, 2004


United States District Judge