

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

BECKY JO WRUBEL,

Case No. 23-000057-CZ

Hon. Cynthia A. Lane

Plaintiff,

v.

PEKIN LIFE INSURANCE COMPANY,
MARK OUIMET, GENERAL R.V.
CENTER, INC., and RHO-MAR AGENCY,
INC.,

Defendants.

**OPINION & ORDER RE: PEKIN LIFE INSURANCE COMPANY AND
RHO-MAR AGENCYS' MOTIONS FOR SUMMARY DISPOSITION**

This case generally involves Plaintiff's purchase of a recreational vehicle from Defendant General R.V. Center, Inc. ("General RV"). Presently before the Court are two motions for summary disposition, filed by Defendants Pekin Life Insurance Company ("Pekin") and Rho-Mar Agency, Inc. ("Rho-Mar"). Plaintiff has filed responses in opposition to both motions. General RV and Defendant Mark Ouimet ("Ouimet") do not take a position on either motion. The Court heard oral arguments on March 18, 2024 and took the matter under advisement. This Opinion and Order follows.

On February 21, 2022, Plaintiff and her now-deceased husband, Michael Wrubel, purchased a Fleetwood Discovery LXE recreational vehicle (the "RV") from General RV. Ouimet, General RV's employee, assisted the Wrubels with the purchase. At the time of purchase, the Wrubels also opted to apply for a credit life insurance policy, offered by Pekin, to cover the payments for the RV in the event of one of their deaths. General RV had a policy through Pekin wherein Pekin agreed to "pay the benefits of each certificate, issued to an insured, to the creditor."¹ Pekin contracted directly with Rho-Mar for solicitation of applications for life and disability insurance.² Ouimet assisted the Wrubels

¹ Plaintiff's Amended Brief in Response to Pekin's MSD, Exhibit G.

² Plaintiff's Amended Brief in Response to Pekin's MSD, Exhibit F.

with the application; neither Pekin nor Rho-Mar had direct employees onsite at General RV.

Pekin's insurance application includes a number of eligibility and insurability requirements on the first page. Notably, it clearly indicates that the applicant cannot be insured for any coverage if he/she received treatment, including medication, for heart or vascular disease. Both Plaintiff and Mr. Wrubel signed the application, acknowledging that they read, understood, and met the eligibility and insurability requirements. The Wrubels discussed their medical histories with Ouimet, including the fact that Mr. Wrubel had been hospitalized for something "heart related" more than three years prior and that he still took prescription blood pressure medication.³ According to Plaintiff, Ouimet assured them that they would still be eligible for the coverage because Mr. Wrubel had not been hospitalized for heart related issues within three years before that date.

Mr. Wrubel died suddenly on May 31, 2022. His death certificate lists the causes of death as sudden cardiac death, coronary artery disease, and hypertensive cardiovascular disease.⁴ Plaintiff informed Pekin of Mr. Wrubel's death, and Pekin conducted an investigation into his medical history. Shortly thereafter, Pekin rescinded the credit certificate. Medical records from Mr. Wrubel's treating cardiologist, obtained by Pekin, indicate he had been prescribed and was taking medication for his heart condition within three years of the date the Wrubels applied for the insurance coverage at issue.

Plaintiff initially filed suit against General RV, Ouimet, and Pekin. Plaintiff later added Rho-Mar as a Defendant. Plaintiff's Second Amended Complaint consists of the following claims: Count 1: Breach of Contract (as to Pekin); Count 2: Misrepresentation/Fraud in the Inducement (as to all Defendants); Count 3: Equitable Estoppel (as to all Defendants); Count 4: Promissory Estoppel (as to all Defendants); and Count 5: Vicarious Liability (as to General RV, Rho-Mar, and Pekin). In deciding Defendants' motions, the Court will address each count of Plaintiff's Complaint separately.

Count I (Breach of Contract: as to Pekin)

Unrefuted medical evidence indicates that Plaintiff's decedent was taking medication for heart disease and for high blood pressure (a vascular condition) within three years of the date they applied for the insurance coverage at issue. The clear and unambiguous language of the insurance application (that both Plaintiff and Plaintiff's decedent signed) states that an applicant is not eligible for coverage if he/she received treatment, including medication, for heart or vascular disease during the previous three (3)

³ Plaintiff's Amended Brief in Response to Pekin's MSD, Exhibit E (Ouimet Deposition), at 76-78.

⁴ Plaintiff's Amended Brief in Response to Pekin's MSD, Exhibit D.

years. The fact that Plaintiff's decedent was prescribed and was taking medication both for heart disease and for high blood pressure and that Plaintiff herself was taking medication for high blood pressure within three years of the date of their insurance application rendered both of them ineligible for coverage under the policy for which they applied.

The terms of the application and contract for insurance gave Pekin the authority to do what it did – rescind the policy of insurance once it determined within the first two years of coverage that both Plaintiff and Plaintiff's decedent were ineligible for that coverage.

Therefore, as to Count I, the Court finds that there are no questions of material fact and Defendant Pekin is entitled to judgment in its favor as a matter of law.

Defendant Pekin's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is therefore GRANTED.

Count V (Vicarious Liability, as to Pekin and Rho-Mar)

Plaintiff claims that Defendant Ouimet, who was employed by Defendant General RV, was both an actual and an apparent/ostensible agent of both Defendants Pekin and Rho-Mar and that, as a result, both of those Defendants are vicariously liable for fraudulent representations Ouimet made to Plaintiff and her decedent to induce them to purchase the subject contract of insurance.

Defendant Ouimet was, at all times relevant to this action, an employee of General RV. He testified that he received training on how to sell Pekin's life insurance product from General RV, his employer. He further testified that when he had a question about a Pekin product he would consult General RV's finance and insurance manager. No evidence has been presented that either Pekin or Rho-Mar trained Ouimet or exerted any supervisory control over his presentation of Pekin's insurance products, nor has any evidence been presented that either Pekin or Rho-Mar entered into a contract with Ouimet to sell Pekin's insurance products.

No evidence has been presented that supports Plaintiff's claim that Defendant Ouimet was an actual agent of either Pekin or Rho-Mar or both. The Court therefore finds that there is no question of material fact concerning Plaintiff's claims of actual agency and both of these Defendants are entitled to judgment in their favor as a matter of law.

Plaintiff also claims that Defendant Ouimet was an apparent/ostensible agent of Defendants Pekin and Rho-Mar when he made the statements he allegedly did.

In order to prove someone is an ostensible or apparent agent of a principal, a plaintiff must reasonably believe the person they were dealing with was an agent of the principal. That belief must have been generated by the principal. *Little v. Howard Johnson Co.*, 183 Mich. App. 675, 683 (1990); *Alar v. Mercy Memorial Hosp.*, 208 Mich. App. 518, 528 (1995). In other words, the *principal* must have done something to create in the plaintiff's mind a reasonable belief that the alleged agent was acting on behalf of the principal.

With respect to Defendant Rho-Mar, Plaintiff has failed to plead and failed to produce evidence that, when she and her decedent were dealing with Ouimet, she reasonably believed Ouimet was an agent of Rho-Mar. Of critical importance is the fact that Plaintiff did not even know of Rho-Mar's existence and involvement in the marketing of Pekin's insurance policies until after this action was filed. It is therefore impossible for Rho-Mar to have done anything to give Plaintiff the impression that Ouimet was acting as its agent, as Plaintiff knew nothing of Rho-Mar's involvement when she and her decedent applied for the insurance coverage at issue. As a result, Plaintiff and her decedent could not have formed a belief, reasonable or otherwise, that Ouimet was acting as Rho-Mar's agent.

With respect to Defendant Pekin, no evidence has been produced indicating that Pekin did anything to give Plaintiff the impression and/or belief that Ouimet was its agent and had authority to modify the terms of Pekin's insurance product. Although Ouimet apparently gave Plaintiff and her decedent that impression, there is no evidence that *Pekin* did anything to give them that impression. While Plaintiff states she believed Ouimet was Pekin's agent and, as its agent, had authority to modify the terms of Pekin's insurance contract, there is no evidence that Pekin engaged in any action (or inaction) that caused Plaintiff to form that belief. As a result, Plaintiff's subjective belief that Ouimet was acting as Pekin's agent was not reasonable.

The Court therefore finds there is no question of material fact as to Plaintiff's claim of apparent/ostensible agency as to both Defendants Rho-Mar and Pekin and both Defendants are entitled to judgment in their favor as a matter of law.

Defendants' Motions for Summary Disposition on the issues of actual and apparent/ostensible agency are therefore GRANTED pursuant to MCR 2.116(C)(10).

Counts III and IV (Equitable Estoppel and Promissory Estoppel, as to Pekin and Rho-Mar)

The Court agrees with Defendant Pekin that equitable estoppel is not an independent cause of action. *Van v. Zahorik*, 227 Mich. App. 90, 102 (1997). Therefore,

as it concerns Count III of her Complaint, Plaintiff has failed to state a claim upon which relief can be granted. Summary disposition is therefore GRANTED, pursuant to MCR 2.116(C)(8), as to both Defendants' Motions concerning Count III. Further, because this reasoning equally applies to all Defendants in this action, Defendant General RV and Defendant Ouimet are also entitled to judgment as a matter of law as to Count III, pursuant to MCR 2.116(I)(1), and the same shall enter.

As to Count IV, Plaintiff's claim for promissory estoppel, Plaintiff has failed to produce any evidence that either Pekin or Rho-Mar made any promises to her. Any alleged promises made by Ouimet cannot be attributed to Pekin or Rho-Mar, as Ouimet was not the agent of either, as the Court previously ruled. Furthermore, the circumstances surrounding Ouimet's alleged statements cannot form a basis for the Court to find that a clear and definite promise was made, because those statements directly contradict the terms of the written contract into which Plaintiff and her decedent knowingly entered. *Zaremba Equipment, Inc. v. Harco Nat'l Ins. Co.*, 280 Mich. App. 16, 41 (2008).

Therefore, as to Count IV, the Court finds there are no questions of material fact and Defendants Pekin and Rho-Mar are entitled to judgment in their favor as a matter of law. Their Motions for Summary Disposition as to Count IV of Plaintiff's complaint are GRANTED pursuant to MCR 2.116(C)(10).

Count II (Misrepresentation / Fraud in the Inducement, as to Pekin and Rho-Mar)

These claims are based upon statements allegedly made by Defendant Ouimet. As the Court has ruled that Ouimet, if and when he made those statements, was not acting as an agent of either Pekin or Rho-Mar, Defendants Pekin and Rho-Mar are entitled to Summary Disposition on this Count as well, pursuant to MCR 2.116(C)(10).

DECISION

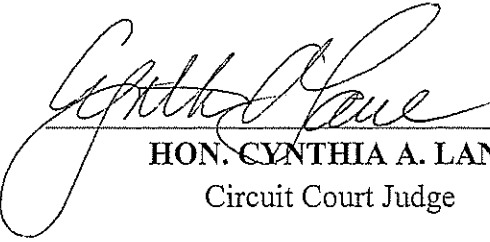
For the reasons stated above, Defendants' Motions for Summary Disposition are GRANTED in their entirety.

For the reasons stated above, Summary Disposition is also GRANTED in favor of Defendant General RV and Defendant Ouimet as to Count III only, pursuant to MCR 2.116(I)(1).

IT IS SO ORDERED.

This is not a final order and does not close the case.

April 9, 2024



HON. CYNTHIA A. LANE
Circuit Court Judge