

MI JA JAE, Plaintiff-Appellant,
v.
METROPOLITAN LIFE INSURANCE COMPANY, Defendant-Respondent.

Docket No. A-2302-11T4.

Superior Court of New Jersey, Appellate Division.

Argued October 22, 2012.

Decided February 14, 2013.

Francis X. Garrity argued the cause for appellant (Garrity, Graham, Murphy, Garofalo & Flinn, attorneys; Mr. Garrity, of counsel; Naveen M. Nadipuram, on the brief).

Thomasita L. Sherer (Abamont & Associates) of the New York bar, admitted pro hac vice, argued the cause for respondent (**Methfessel & Werbel**, and Ms. Sherer, attorneys; Jonathan Hirschorn (Abamont & Associates) of the New York bar, admitted pro hac vice, and Charles T. McCook, Jr., on the brief).

Before Judges Graves and Espinosa.

NOT FOR PUBLICATION

PER CURIAM.

Plaintiff Mi Ja Jae was the designated beneficiary of a life insurance policy with a face amount of \$1,000,000 issued to her husband, Seodong Kim (Kim), by defendant Metropolitan Life Insurance Company (MetLife). Following the death of her husband and the denial of her claim for death benefits, plaintiff filed suit to recover the proceeds of the policy. Plaintiff appeals from a summary judgment order dismissing her complaint. For the reasons that follow, we affirm.

In his application for life insurance dated September 9, 2006, Kim stated his annual earned income as president of Palm & Pine Enterprises, Inc. (Palm & Pine), was \$300,000 and his net worth was \$1,800,000. Additionally, in a section of the application form entitled "existing or applied for insurance," Kim stated he had only one existing life insurance policy with American General Life Insurance Company (AIG), issued in 2004 in the amount of \$1,500,000.

The application form included the following "fraud warning": "Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties." The "agreement/disclosure" section of the application, just above the signature line on the final page of the form, stated in bold letters: "I have read this application for life insurance including any amendments and supplements and to the best of my knowledge and belief, all statements are true and complete."

Based on Kim's representations, MetLife issued a \$1,000,000 policy effective September 11, 2006. The policy provided, in relevant part: "The insurance issued under this Policy will not be contestable after it has been in force during the life of the insured for two years from the Date of Issue ... except for nonpayment of premiums."

Kim died on January 2, 2007, approximately four months after the policy was issued. Following his death, plaintiff submitted a claim to MetLife for the proceeds from the policy. However, because Kim died within the contestability period, MetLife conducted an investigation to verify the statements in Kim's application for life insurance.

During the investigation, MetLife obtained various documents from plaintiff in an effort to verify Kim's annual earned income. As part of the investigation, MetLife obtained a copy of Kim's 2004 tax return from the Internal Revenue Service (IRS) and verification of non-filing for tax years 2005 and 2006. According to Kim's 2004 individual income tax return, his total income was \$11,700. MetLife also obtained the corporate tax returns for Palm & Pine, which confirmed that Kim earned \$6,600 in 2003, \$7,800 in 2004, and no compensation in 2005.

In a letter dated October 26, 2009, MetLife informed plaintiff that her claim was rejected because Kim misrepresented material facts in his application. Plaintiff filed a complaint seeking the proceeds of the policy, and an amended complaint alleging that MetLife acted in bad faith in denying the claim. MetLife denied plaintiff's allegations and asserted a counterclaim for rescission alleging that Kim made material misrepresentations in his application form. MetLife also alleged Kim violated the Insurance Fraud Prevention Act (IFPA). N.J.S.A. 17:33A-1 to-30.

During discovery, MetLife learned: Kim defaulted on his mortgage payments on his condominium in Fort Lee in September 2006; Palm & Pine was sued by its landlord for non-payment of rent for the period from September 2006 to January 2007; during the same period, Kim wrote "numerous checks [that] were returned for insufficient funds"; and, according to Kim's estate tax return, the total gross estate consisted of two AIG life insurance policies.^[1] The estate tax return revealed that Kim had obtained a second life insurance policy with AIG with a face amount of \$1,500,000 in 2005.

Plaintiff deposed Eileen Kosiner, an underwriter employed by MetLife. Kosiner testified "life insurance is not an investment. It is not a vehicle to create wealth." She also said, "It may not be readily apparent, but overinsurance is a risk factor." She explained:

Prior to the issuance of a policy, MetLife evaluates the need for and suitability of the coverage applied for, in addition to the level of mortality risk presented by the proposed insured. To be considered suitable, the applied-for coverage must satisfy a genuine need, and the premium must be affordable. Life insurance is intended to indemnify a beneficiary for a financial loss sustained as a result of the death of an insured and its purpose is not to place the beneficiary in a better financial position as the result of the death of an insured. Life insurance is not an investment. Among the factors MetLife considers in determining suitability is the proposed insured's income. MetLife's financial underwriting guidelines set the maximum amount of insurance that may be issued based on a proposed insured's income. The amount of life insurance coverage already in force with MetLife or any other insurer on the life of the proposed insured is taken into account when determining the amount of insurance MetLife will consider.

....

Additionally, as noted, the amount of in-force insurance is taken into account when determining the maximum amount of insurance that may be issued That is, the maximum amount of insurance available with respect to income replacement includes the amount of in-force insurance. For example, if the guidelines allow \$200,000 of life insurance, and there is already \$100,000 in force, then the amount of insurance currently available is the difference between the two, or \$100,000.

The parties cross-moved for summary judgment and the matter was heard on December 16, 2011. Plaintiff maintained that MetLife bore "the burden of proving that [Kim] did not earn what he represented he earned." Moreover, in an attempt to substantiate Kim's annual earned income, plaintiff provided a schedule of estimated expenditures by her and her husband in 2006. According to the schedule, the couple had an "estimated annual expenditure" of \$238,754. Plaintiff claimed the expenditures supported an annual earned income of at least \$300,000. However, plaintiff's counsel acknowledged that Kim's failure to include the second AIG policy was "a misrepresentation, no question about it."

The trial court granted summary judgment in favor of MetLife but rejected the claim for damages under the IFPA. In a written decision on December 22, 2011, the court stated:

The evidence before the Court shows that decedent, Mr. Kim, made a material misrepresentation by failing to disclose an additional \$1,500,000 of in-force insurance with American General (AIG) at the time the application was signed. In addition, Mr. Kim misrepresented his annual earned income as \$300,000, and his net worth as \$1.8 million. Although Plaintiff argues that Mr. Kim did not intend for MetLife to rely on his misrepresentations, under New Jersey law, an insurer need not demonstrate intent to rescind a policy.

Plaintiff argues on appeal that MetLife failed to prove Kim made a material factual misrepresentation in his application for life insurance. Plaintiff contends that any misstatements by Kim were not material because they were not causally related to the risk of Kim's premature death. She also claims there is a genuine factual dispute regarding Kim's income.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving

party is entitled to judgment or order as a matter of law." R. 4:46-2(c). When reviewing a grant of summary judgment, an appellate court utilizes the same standard applied by the trial court. See, e.g., Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), cert. denied, 154 N.J. 608 (1998). We must first determine "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). If there is no genuine issue of material fact, we must then decide whether the trial court's application of the law was correct. *Id.* at 537.

A life insurance policy may be rescinded after the death of the insured so long as it is within the contestability period. Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 635 (1995) (citing Formosa v. Equitable Life Assurance Soc'y, 166 N.J. Super. 8, 13 (App. Div.), cert. denied, 81 N.J. 53 (1979)); see N.J.S.A. 17B:25-4. An insurer is entitled to rescission based on equitable fraud when "it relies on incorrect information provided by an insured in an insurance application if the information was material either to the insurer's decision to insure or to the terms of the contract." Mass. Mut. Life Ins. Co. v. Manzo, 122 N.J. 104, 118 (1991); see also N.J.S.A. 17B:24-3(d) ("The falsity of any statement in [an application for life insurance] may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer."). Further, "a party claiming equitable fraud must prove the required elements by clear and convincing evidence." Daibo v. Kirsch, 316 N.J. Super. 580, 588 (App. Div. 1998) (citing Stochastic Decisions, Inc. v. DiDomenico, 236 N.J. Super. 388, 295 (App. Div. 1989), cert. denied, 121 N.J. 607 (1990)).

A life insurance application asks two types of questions: objective and subjective. Ledley, supra, 138 N.J. at 635.

Objective questions call for information within the applicant's knowledge, such as whether the applicant has been examined or treated by a physician. In contrast, subjective questions seek to probe the applicant's state of mind. They are concerned with more ambiguous issues, such as what is the state of the applicant's health or whether the applicant has or has had a specified disease or illness. Courts have been more lenient when reviewing an applicant's misrepresentation made in response to a subjective question than to an objective question.

[*Id.* at 636 (internal quotation marks and citation omitted).]

When an objective question is "unambiguous and calls for a statement of fact, misrepresentation or concealment is inexcusable." *Id.* at 637.

Intent is not an element of equitable fraud and even innocently false statements and omissions may justify rescission. See *id.* at 635 ("Even an innocent misrepresentation can constitute equitable fraud justifying rescission."); see also Formosa, supra, 166 N.J. Super. at 15 (noting that an insurance policy may be rescinded on the ground of equitable fraud "for a misrepresentation of fact even though innocently made"). This rule provides incentive to apply for life insurance truthfully.

Therefore, to rescind Kim's policy, MetLife was required to prove by clear and convincing evidence that his application contained at least one material misrepresentation that "naturally and reasonably" influenced MetLife to issue the policy. Manzo, supra, 122 N.J. at 115. MetLife was not required, however, to prove there was a relationship between any misrepresentation and the risk of premature death. See *id.* at 118 (citing Schafer v. John Hancock Mut. Life Ins. Co., 189 A.2d 234, 237 (Pa. 1963) ("It is of no consequence that the death ensued from a cause unconnected with the false representations.")).

In this case, it is clear that the misrepresentations in Kim's application form naturally and reasonably influenced MetLife's decision to issue the policy as written. As Kosiner certified, had Kim provided truthful responses, "MetLife, pursuant to its relevant underwriting guidelines, would not have issued the Policy based upon the amount of his true income and his undisclosed in-force insurance."

We conclude from our review of the record and the applicable law that the findings and conclusions of the trial court are supported by substantial credible evidence, and the matter was correctly decided. Accordingly, we affirm substantially for the reasons stated by Judge Joseph Conte in his written decision dated December 22, 2011.

Affirmed.

[1] The estate tax return did not value the MetLife policy because it was contested.

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