

2021 NY Slip Op 30471(U)**FRED ALSTON AS TRUSTEE OF THE LOCAL 272 WELFARE FUND, Plaintiff,****V.****SALVATORE GOLFO and DENISE GOLFO, Defendants.**

Docket No. 653591/2018, Motion Seq. Nos. 003, 004.

Supreme Court, New York County.

Motion April 1, 2019.

Motion May 30, 2019.

February 17, 2021.

DECISION + ORDER ON MOTION

LOUIS L. NOCK, J.S.C.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 2, 63, 64, 65, 66, 67, 72, 73, 86, 114 were read on this motion to DISMISS THIRD-PARTY CLAIMS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 were read on this motion for SUMM JUDGMENT PLAINTIFF (AFTER JOINDER).

Upon the foregoing documents, and upon due deliberation, it is ordered that the instant motion practice is determined as follows:

BACKGROUND

This action was commenced by a labor union welfare fund (the "Fund") in July 2018 against one of its enrollees, Salvatore Golfo ("Salvatore"), and his former wife, defendant Denise Golfo ("Denise"), for restitution of health benefits wrongly paid out by the Fund on account of Denise in the aggregate sum of \$77,317.43 during a period spanning April 2011 through January 2018. The basis for the action is the simple fact that Denise was not Salvatore's spouse (eligible dependent) during that time period, contrary to Salvatore's inaccurate insurance plan enrollment form submission in 2011 representing that she was his spouse (see, Local 272 Welfare Fund Garage Employees Enrollment Form [NYSCEF Doc. No. 31]). In fact, Denise had been divorced from Salvatore as far back as 2007 (see, Judgment of Divorce [NYSCEF Doc. No. 33]). The complaint asserts three causes of action, all focused on Salvatore's inaccurate enrollment form entry concerning his and Denise's spousal status: one for fraud; a second for conversion; and a third for breach of contract.

After the commencement of this action, Salvatore commenced what is essentially a third-party action naming Denise (more precisely, a cross-claim-defendant) and her father, Joseph Mattesi ("Matesi"), one of the Fund's trustees, sounding in fraud and in "contribution and/or indemnification," alleging that Mattesi acquiesced in Salvatore's submission of the inaccurate enrollment form and that Denise had caused Salvatore to innocently believe that she was still his spouse, despite the 2007 Judgment of Divorce issued in a New York matrimonial action titled *Salvatore Golfo v Denise Ann Golfo* (index No. 012038/2006 [Sup Ct Bronx County]) (see, NYSCEF Doc. No. 33; Answer [NYSCEF Doc. No. 46] ¶ 56).

By order dated March 13, 2019 (NYSCEF Doc. No. 55), this court granted plaintiff a default judgment against Denise in the principal amount of \$77,317.43 plus interest thereon from July 19, 2018, the date of filing of this action. Plaintiff now moves for summary judgment against Salvatore. In addition, third-party defendant Mattesi cross-moves to dismiss the third-party claims for fraud and for contribution and/or indemnification asserted against him by Salvatore.

DISCUSSION

Plaintiff's Summary Plan Description (NYSCEF Doc. No. 14) expressly informed all union members, including Salvatore, that the union's accommodation to its members for the provision of health insurance benefits is "as a result of collective bargaining agreements between the Union and your employer" (*id.*, at 4) and that "the Plan is governed by official Plan documents" (*id.*). Members, including Salvatore, were "urge[d] ... to read this booklet carefully and keep it handy for future reference" (*id.*). That governing document expressly informs all members, including Salvatore, that "[b]enefits under this Plan are for the sole use of you and your eligible dependents. No one (including an employer, Union representative, supervisor or shop steward) other than the Board of Trustees has any authority to interpret this SPD [Summary Plan Description] or other Plan documents..." (*id.*, at 5.) Moreover, that document expressly refers members, including Salvatore, to call the Fund at its designated telephone number "if you have any questions" (*id.*). Salvatore never did that. Instead, he alleges that he relied on Denise's belief that they were still married — despite the 2007 Judgment of Divorce — and on Mattesi's acquiescence to Salvatore's submission of the inaccurate enrollment form. "Eligible Dependents" is expressly defined in that document as "[t]he spouse to whom you are legally married" or certain categories of unmarried children (*id.*, at 8-9). That document also expressly instructs members, including Salvatore, to "notify the Fund Office promptly if: you marry[,] a child is born[,] [or] you get divorced" (*id.*, at 10-11). Salvatore never informed the Fund Office of his 2007 Judgment of Divorce which severed his spousal relationship with Denise four years prior to his submission of his inaccurate enrollment form. Moreover, the Summary Plan Description informs that coverage terminates any time a member's "dependents" "no longer meet the definition of `dependent' (*id.*, at 12).

Despite all the foregoing notifications from the Fund, and despite the 2007 Judgment of Divorce, Salvatore submitted his Plan enrollment form, dated February 2, 2011, wrongly identifying Denise as his spouse, and even certifying that said information "IS TRUE AND CORRECT" (NYSCEF Doc. No. 31 at 1). That inaccurate information was repeated by Salvatore in a confirmation document which further misrepresented that Denise was, as of February 2, 2011, his spouse (included in NYSCEF Doc. No. 31).

Under any reasonable reading of the Summary Plan Description, which explicitly refers to its interdependence on the union's "collective bargaining agreements" and "official Plan documents" (NYSCEF Doc. No. 14 at 4), a binding contract existed between Salvatore and the Fund involving Salvatore's continued employment (*id.*, at 5) and his providing accurate "Eligible Dependent" information to the Fund (see, *id.*, at 8-12) in exchange for health insurance benefits. Nothing in that document conditions coverage on any good faith belief (however credible or incredible) regarding the spousal status of a named beneficiary. Simply put, an eligible spouse is, and only is, "[t]he spouse to whom you are legally married" (*id.*, at 8). In this case, regardless of Salvatore's state of belief, Denise was undoubtedly and irrefutably not Salvatore's "spouse to whom [he was] legally married" (*id.*). Therefore, there is absolutely no issue of fact or law which could possibly impede the conclusion that neither Salvatore or Denise were entitled to health insurance benefits benefitting Denise. Consequently, there is no issue of fact or law which could possibly impede the conclusion that plaintiff is entitled to restitution of its health benefit payouts on account of Denise.

Salvatore's counsel maintains that issues of fact exist in connection with the cause of action sounding in fraud, focusing on "when the Fund became aware of the alleged fraud" by Salvatore, and citing the court to CPLR 213(8), requiring fraud claims to be commenced within six years of the fraud or two years from the date on which the fraud could reasonably have been discovered, whichever is later (see, NYSCEF Doc. 90 at 10). However, the success of the plaintiff's claims does not rest solely with the cause of action sounding in fraud, or any asserted issues regarding its discovery, or, most pointedly, whether Salvatore intended to defraud the Fund in the first place. Rather, as noted above, irrespective of Salvatore's state of mind, or state of belief, at the time he submitted his inaccurate enrollment form, or thereafter during the seven-year period he allowed the Fund to cover Denise's expenses to the tune of \$77,317.43, the Fund had no contractual obligation whatsoever to pay those expenses because of the indisputable fact that Denise was not Salvatore's legally married spouse during any part of that seven-year period. It bore no contractual obligation to do so and, thus, is entitled to restitution.

As for the statute of limitations governing breach of contract: while a six-year limit measured from the time of accrual of the cause of action generally applies (CPLR 213[2]), the Summary Plan Description explicitly placed Salvatore under a continuing obligation to keep the Fund accurately informed of spousal or other dependent status, which he did not do for all of those seven years in which the Fund made payments on account of Denise. Moreover, he never inquired of the Fund Office regarding any questions he might have been harboring regarding Denise's spousal status, as contractually instructed to do in the Summary Plan Description; but, instead, he states that he relied solely on Denise's representations to him and Mattesi's acquiescence.^[1] Thus, Salvatore's continuing breach of his contractual duty to accurately inform the Fund of Denise's spousal status, and, at a bare minimum, to inquire about it by calling "the Fund Office" (NYSCEF Doc. No. 14 at 4),

render's said breach actionable with regard to all Fund payments made during a full six-year period immediately preceding the July 19, 2018, commencement date of this action (*see, e.g., Bulova Watch Co., Inc. v Celotex Corp.*, 46 NY2d 606 [1979]; *Meadow Brook Farm Homeowners Assn., Inc. v JZG Resources, Inc.*, 105 AD3d 820 [2d Dept], *appeal dismissed* 21 NY3d 1024 [2013]; *New York Cent. Mut. Fire Ins. Co. v Glider Oil Co., Inc.*, 90 AD3d 1638 [4th Dept 2011]; *King v 870 Riverside Drive Housing Dev. Fund Corp.*, 74 AD3d 494 [1st Dept 2010]; *Westchester County Correction Officers Benev. Assn., Inc. v County of Westchester*, 65 AD3d 1226 [2d Dept 2009]; *DeCintio v Cohalan*, 18 AD3d 872, 873 [2d Dept 2005] ["where a duty imposed prior to a limitations period is a continuing one, the statute of limitations is not a defense to actions based on breaches of that duty occurring within the limitations period"].

Thus, the limitations analysis under the foregoing continuous duty doctrine, as applied to this case, will render Salvatore liable for Fund payments on account of Denise for the period beginning July 19, 2012 through the date of commencement of this action on July 19, 2018.^[2]

Third-party defendant Mattesi cross-moves for dismissal of Salvatore's claims for fraud and for contribution and/or indemnification. As for fraud: in order to make out such a claim, any reliance by Salvatore on any alleged misrepresentation by Mattesi to Salvatore concerning Salvatore's own marital status must have been justifiable (*Eurycleia Partners LP v Seward & Kissel, LLP*, 12 NY3d 553 [2009]) and not discoverable "by the exercise of ordinary intelligence" (*ACA Fin. Guar. Corp. v Goldman, Sachs & Co.*, 25 NY3d 1043, 1044 [2015]). Salvatore cannot meet that threshold because of the Judgment of Divorce and because he was under a Plan instruction to bring any questions to the attention of the "Fund Office" at its designated telephone number (NYSCEF Doc. No. 14 at 4). He did not.

As for indemnification: Salvatore would have to show that any judgment against him in this action was due solely to Mattesi's negligence or nonperformance in connection with an act solely within Mattesi's province (*Corley v County Squire Apartments, Inc.*, 32 AD3d 978 [2d Dept 2006]; *Murphy v M.B. Real Estate Dev. Corp.*, 280 AD2d 457 [2d Dept 2001]). No such circumstances exist here. As the union member participating in, and enrolling in, the Plan which paid out benefits to Denise, Salvatore was under an independent and exclusive duty to accurately identify Denise as his legally married spouse — which he could not rightly do. Mattesi bore no independent, let alone sole, obligation in said regard.

As for contribution: Salvatore would have to be able to show that Mattesi was "liable at least partially because of [Mattesi's] own negligence" (*Fox v County of Nassau*, 183 AD2d 746, 747 [2d Dept 1992]). But as discussed above throughout, Salvatore was under his own independent and sole duty, per the Plan, to accurately identify his dependents or, if he could not on his own, to raise the question with the Fund Office. Any possible misunderstanding on Mattesi's part as to Denise's spousal connection or non-connection to Salvatore — even in the face of the Judgment of Divorce — does not play any role in wresting any part of Salvatore's contractual duties as Plan participant away from Salvatore and onto Mattesi. Thus, contribution cannot lie.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted to the extent set forth herein; and, therefore, it is further

ORDERED that plaintiff shall submit an affidavit (via the NYSCEF system and to the Clerk of this Part at rwoody@nycourts.gov), within 20 days of the date hereof, calculating the amount of benefit payments made on behalf of Denise Golfo for the period commencing July 19, 2012, through the date of commencement of this action — July 19, 2018; and it is further

ORDERED that the cross-motion by third-party defendant Joseph Mattesi to dismiss Salvatore Golfo's claims against him is granted, and said claims are hereby dismissed.

This will constitute the decision and order of the court.

[1] Salvatore's answer alleges that he "questioned Defendant Denise Golfo about why the enrollment form stated that they were married" (NYSCEF Doc. No. 46 ¶ 65), clearly admitting that he was doubtful about their marital status, to say the least. His contractual obligation per the Summary Plan Description was to discuss the matter with the Fund Office. He did not. Instead, he alleges that he "relied upon Defendant Denise Golfo's representation that they were still married" despite the 2007 Judgment of Divorce which Salvatore expressly acknowledges (*id.*, ¶¶ 56, 68).

[2] The time period of the Fund's payments for Denise was April 2011 through January 2018. So, to be clear, it is the holding of this court that plaintiff's claim is actionable going back to payments beginning with a time period of July 19, 2012 — not back to April 2011 — because this action was commenced July 19, 2018.

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