



Sides et al v. Athene Annuity and Life Company

2020 | Cited 0 times | W.D. North Carolina | May 4, 2020

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

CHARLOTTE DIVISION

3:19CV703-GCM JASEN GLENN SIDES and KENNETH) SCOTT SIDES, as the Co-Trustees of the)
Trust under the Will of Betty Query Sides;) and as the Co-Executors of the Estate of Betty) Query
Sides,) Plaintiffs,) v.) ORDER ATHENE ANNUITY AND LIFE COMPANY,) Defendant.)

_____) This matter is before the Court upon Defendant
Athene Annuity and Life Compan Motion to Dismiss the Complaint pursuant to Rule 12(b)(6) of the
Federal Rules of Civil

Procedure. The motion has been fully briefed and is ripe for disposition.

I. FACTUAL BACKGROUND

annuities issued by a predecessor of Athene. Compl. ¶ 5. The beneficiary of the annuities was the
Trust and also the co- Id.

Pursuant to the terms of the annuities, upon the death of the annuitant, Defendant was See Annuity
Contract, Doc. No. 8-1, at p.1. 1

1

- Inc., 190 F.3d 609, 618 (4th Cir. 1999). In this case, the annuity contract, death benefit claim form,
and death benefit check are all documents that are integral to, and explicitly relied upon throughout
the Complaint. See, e.g., Compl. Defendant for the \$54,459.56

death benefit under the annuities by completing the form that Defendant provided. Compl. at ¶¶ 7-8.

The Deferred Annuity Claim Form for Entity Beneficiaries 2

requires the claimant to provide certain information to process the death benefit request. Under the
5 Lochinuar Drive, Charlotte, NC 28227 as the



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Claim Form, Doc. No. 8-2, Section 3. Plaintiffs identified the Address of 8615 Lochinuar Drive, Charlotte, NC 28227. Id. Plaintiffs selected a lump sum

payment for the death benefit, Id. at Section 4, 5. The Mailing Address

provided in Section 3 was 8615 Lochinuar Drive, Charlotte, NC 28227. Id. at Section 3. Plaintiffs were also required to verify certain information regarding the Trust, including that they were the Trustees of the Trust and that, under the Trust, they both must sign in Section 9 to authenticate the Claim Form. Id. at Section 7; see also Compl. at ¶¶ 32-36. On April 30, 2018, consistent with the authentication requirements, both Plaintiffs signed and submitted the Claim Form to Defendant. Doc. No. 8-2, Section 9.

¶¶ 5, 6, 7, 8, 19, 29, 30 (relying on the annuity contract); ¶¶ 8, 32, 33, 34, 35, 36 (relying on and purporting to quote the death benefit claim form); ¶¶ 10, 11, 12, 14, 16, 17, 29, 30, 37, 38, 39, 40, 73, 74, 75, 76, 77 (relying on the death benefit check). The Defendant has attached these documents to its Memorandum in support of its Motion to Dismiss. 2 Defendant attached a copy of the Claim Form to its Memorandum in support of its Motion to Dismiss. See Doc. No. 8-2)

On May 7, 2018, Defendant asserts that it issued the Death Benefit Claim Check (the in accordance with the Claim Form submitted by Plaintiffs. 3

The Check was issued to the Trust Under Will of Betty Query Sides (the Beneficiary designated in the Claim Form), care of Jasen Glenn Sides, Trustee (the Claimant identified in the Claim Form), and mailed to 8615 Form). Doc. No. 8-3; see also Compl. at ¶ 38.

According to the Complaint, Plaintiffs never received the Check. Compl. at ¶ 10. When they contacted Defendant about the missing Check, Defendant instituted an investigation and informed Plaintiffs that the Check was cashed in Daytona Beach, Florida by an unknown individual who had purportedly assumed one of the Pla Id. at ¶¶ 11, 12, 14, 40. After its fraud investigation revealed that the Check was fraudulently cashed, Defendant made a formal request to recover the stolen funds from the intermediary financial institution. Id. at ¶ 18. Id. at ¶ 19. Defendant contacted Plaintiffs and advised that it would be transmitting replacement funds to the Plaintiffs. Id. at ¶¶ 21-23. When the funds did not arrive, Plaintiffs contacted the Defendant and were told that Check. Id. at ¶¶ 25-26.

Plaintiffs allege that the theft of the Check by the unknown identity thief renders Defendant in breach of its obligations under the annuity contracts to deliver the death benefit Id. at ¶¶ 28-31. Plaintiffs also contend that Defendant to send the Plaintiffs replacement funds for the proceeds stolen by this unknown individual

3 Defendant also attached a copy of the Check to its Memorandum. See Doc. No. 8-3. amounts to unfair and deceptive trade practices and was done in bad faith. Id. at ¶¶ 43-61, 65- 80.



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II. DISCUSSION

A motion to dismiss tests whether the plaintiff has properly stated a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). While the court must accept well-pleaded factual allegations and draw reasonable inferences in favor of the plaintiff, the court need not accept the truth of legal conclusions merely because they are cast in the form of factual allegations. See *Bell Atl. Corp. v. Twombly*, 556 U.S. 662, 678-78 (2009) (quoting *Iqbal*, 556 U.S. at 678).

Twombly, 556 U.S. at 678. -pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged Id. at 679 (citing Fed. R. Civ. P. 8(a)(2)).

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[t]he facts constituting the breach, and the amount of damages resulting to plaintiff from such Sports Med Props., LLC v. Talib, 2019 WL 3403372, at *3 (W.D.N.C. Jul. 26, 2019) (citation omitted). Defendant asserts that while Plaintiffs generally plead the existence of the annuity contracts between their mother and the Defendant, they fail to plead any facts identifying the specific contractual provision allegedly breached, or the facts constituting any alleged breach.

Plaintiffs contend Check to the Plaintiffs and for failing to list both Trustees as payees on the check, thereby reducing the risk of fraud. there appears to be no contractual language imposing a requirement upon Defendant to ensure the physical receipt of a death benefit check that was mailed to the address provided on the Claim Form. Pursuant to the express terms of the annuity contract, Defendant See Doc. No. 8-1, at p. 1. The Check

itself shows that it was issued to the designated beneficiary at the mailing address provided on the Claim Form. See Doc. Nos. 8-2, 8-3. Plaintiffs do not allege that Defendant failed to issue or



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4 In support of their argument, Defendant cites *Affiliated Health Group, Ltd. v. Devon Bank*, 58 N.E.3d 772 (Ill. App. Ct. 2016), a case from Illinois applying the same provision. However, all claims that were dismissed in that case were alleging violations of the UCC. mail the check or that it was somehow mailed to the wrong address. Absent such allegations, the law presumes that the Check was delivered to 8615 Lochinaur Drive, Charlotte, NC 28227, and received by Plaintiffs. See *Atlantic & E. Carolina Ry. Co. v. Southern Outdoor Advertising, Inc.*, 501 S.E.2d 87, 89 (N.C. - and stamped is presumed received by the addressee). Thus, there can be no breach based upon a failure to deliver the Check.

Plaintiffs likewise fail to identify any contractual provision that would require Defendant to list both Trustees as payees on the Check. In support of their argument, Plaintiffs refer to a section of the Claim Form relating to Trust Information. However, the Claim Form is not a contract; it is merely an administrative form used to process the death benefit. Regardless, nowhere in the Claim Form does it obligate Defendant to list both Trustees on the Check. The Trustees sign the Claim Form to authenticate the request. See Doc. No. 8-2

It appears to the Court that Plaintiffs have failed to allege any breach of specific provisions of the contract. Accordingly, they have failed to state a plausible claim for breach of contract.

C. Unfair and Deceptive Trade Practices Act To plead a claim for violation of the North Carolina Unfair and Deceptive Trade Practices A or affecting commerce, and (3) which proximately caused injury to plaintiffs. See *Williams v.* , 364 F. Supp. 3d 605, 614 (W.D.N.C. 2019) (citation omitted). Although N.C. Gen. Stat. § 58-63-15(11), defining unfair settlement practices in the context of insurance, does not include a private right of action, a plaintiff may allege violations of § 58-63- 15(11) under the UDTPA. *Barbour v. Fidel* , 361 F. Supp. 3d 565, 573 (E.D.N.C. 2019) (citation omitted).

In this case, Plaintiffs purport to assert a claim for general violation of the UDTPA based on Defendant -45), and also a secondary UDTPA claim under § 58-63-15(11)(f) based on Defendant Id. at ¶ 46. Because Plaintiffs fail to state a claim for breach of contract, to the extent their UDTPA claim relies on breach of contract, it must likewise fail.

In support of their allegations under § 58-63-15(11)(f), Plaintiffs specifically allege that en funds after the fraudster cashed the Check constitutes an unfair claim settlement practice. See id. at ¶¶ 46-48. While Plaintiffs allege that Defendant was able to subsequently hold up the proceeds after it was discovered that the Check was cashed under false pretenses, they contend that it ultimately released the funds to the check-cashing agency that had accepted and cashed the Check based on obligations under Florida law. 5

See id. at ¶¶ 26, 48, 54, 56. tions in investigating the fraud and assisting Plaintiffs in recovering the stolen money do not constitute a claims settlement practice. Even if could be considered a claims settlement practice, Plaintiffs do not plausibly demonstrate that liability to them was reasonably



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clear. The Complaint expressly alleges that, following the theft, Defendant determined that the check-cashing entity

5 Defendant explains that while it was able to investigate the fraud following the Check cashing, it did not recover, and was not in possession of, the stolen money as Plaintiffs suggest. It was simply able to delay the depositing bank from honoring the obligation pending a review of entitlement to the proceeds as a holder in due course of the draft under various laws governing negotiable instruments. Plaintiffs argue that liability was reasonably clear because an employee of the Defendant admitted Plaintiffs were owed the money and informed them that they would receive replacement funds by wire transfer. See *id.* at ¶ 21. However, the Complaint also alleges that Defendant subsequently

the check. See *id.* at ¶ 26. While Plaintiffs may disagree with s assessment, this does not transform their dispute into a UDTPA claim. See *Universal Underwriters Ins. Co. v. Lallier*, 334 F. Supp. 3d 723, 738 (E.D.N.C. 2018) (dismissing UDTPA claim where insured failed to plausibly allege that was reasonably clear); *Clear Creek Landing Home Owners*, 2012 WL 6641901, at *4 (W.D.N.C. Dec. 20, transform a run of the

mill insurance dispute the Court finds that Plaintiffs have failed to sufficiently state a claim for violation of the UDTPA.

D. Bad Faith or bad faith. A claim for bad faith refusal to pay an insurance

faith. , 911 F. Supp. 2d 331, 337 (E.D.N.C. 2012); see also -38 (4th Cir. 2001) (unpublished). Bad faith refusal to pay a claim requires: (1) a refusal to pay after recognition of a valid claim; (2) bad faith; and (3) aggravating or outrageous conduct. *Cleveland Topsail Reef Homeowners tted*).

Id. *plaint*, 2012 WL 6641901, at *2.

Similar to their allegations supporting the UDTPA claim, Plaintiffs allege that Defendant conducted a fraud investigation in an attempt to recover the stolen proceeds, but ultimately committed bad faith by failing to provide Plaintiffs with replacement funds, instead, releasing the money to the financial institution that cashed the Check. *Compl.* at ¶¶ 69-70, 80. These allegations do not allege the sort of aggravated conduct required to state a claim for bad faith.

More importantly, the Defendant did not refuse to pay the claim it approved the claim and issued the Check to Plaintiffs at the address they provided on the Claim Form. Plaintiffs do not dispute that Defendant authorized payment on the original death benefit claim. Rather, they argue that Defendant engaged in bad faith with respect to the manner in which it conducted its fraud investigation after the Check was stolen from Plaintiffs. a matter of law and must likewise be dismissed.



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GRANTED.

Signed: May 1, 2020

