72.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2281CV02097

LYDIA CARMOSINO

vs.

JAMES MASELAN, Individually and as Trustee of the STEVEN G. MILLER IRREVOCABLE TRUST and STEVEN G. MILLER IRREVOCABLE LIFE INSURANCE TRUST & others[1]

MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Lydia Carmosino ("Carmosino"), brings claims arising from her alleged right to proceeds of several life insurance policies held in trust for which Carmosino claims she is an entitled party.

Carmosino moves pursuant to Mass. R. Civ. P. 56 for partial summary judgment on her claims stated in her Second Amended Complaint ("Complaint") for declaratory judgment (Count I), Specific Performance as to the Trustees of the "2011 Trust" and the "1999 Trust" (Count 3), Specific Performance as to Christi Miller ("Chisti") (Count 4), equitable reformation (Count 5), unjust enrichment as to Christi Miller (Count 6), unjust enrichment as to the "1999 Trust" (Count 7), Breach of contract "between the 1999 Trust and the 2011 Trust") (Count 8), and breach of contract as to North American (Count Fifteen).

All defendants have cross-moved for summary judgment dismissing Carmosino's claims or requesting declaratory judgment in their favor, with the

[1] Robert Miller, individually and as trustee of the Steven G. Miller Irrevocable Trust, Meredith Miller, Elizabeth G. Miller, Christi S. Miller and North American Company for Life and Health Insurance.

exception of defendants Robert Miller and North American, who have filed stipulations stating that they have reached settlement concerning Carmosino's claims against them.

After hearing and consideration of the substantial filings of the parties, Carmosino's motion for partial summary judgment is **DENIED**, and each defendant's cross motion for summary judgment is **ALLOWED**, in substantial part.[2]

BACKGROUND

The following undisputed facts are drawn from the admissible evidence in the summary judgment record, with certain details reserved for later discussion. See Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 674 (2016). All reasonable inferences have been drawn in non-moving party's favor. Id. at 680.

Formation of the 1999 Trust

In 1999, during their marriage, Dr. Miller established an irrevocable life insurance trust ("1999 Trust") for the benefit of his wife, Christi, and two daughters, Elizabeth and Meredith Miller (collectively, the "Daughters"). He funded the 1999 Trust with three $1,000,000 life insurance policies tied to his life that named the 1999 Trust as the sole beneficiary. Under the terms of the 1999 Trust, Christi was to enjoy a lifetime interest in the income and principal distributions to meet her needs, and the Daughters were entitled to any remainder after Christi deceased.[3] The Daughters were minors at the time to 1999 Trust was established. James Maselan ("Maselan") was appointed Trustee of the 1999 Trust and has served in that role to date.

[2] As not all of Carmosino's claims apply equally to all defendants, each defendant cross moves for summary judgment on differing counts, which are detailed in the order that follows this decision.

[3] The 1999 Trust also contained a small bequest to Dr. Miller's parents, but they predeceased him extinguishing that interest.

The Millers' 2001 and 2003 Divorce Agreements

In 2003, Dr. Miller and Christi divorced. They entered into a divorce agreement in two stages, first in 2001 and later in 2003, dividing the marital assets. Those agreements included directives affecting the life insurance and the 1999 Trust.

The first agreement was executed in 2001 ("2001 Agreement"). It provided that "Christi shall sign such documents as are necessary in order to permit the Trustee [of the 1999 Trust] to amend the trust so as to eliminate her as a beneficiary." The "consideration for same [] is [Christi's] receiving the sum of [$400,000] from the sale of the [marital home] to enable her to purchase another home[.]" Christi received that sum and purchased a home. The 2001 Agreement also provided "[Dr. Miller] will agree to maintain life insurance for the children in an amount of $1 million to secure his child support obligations."

The second agreement executed in 2003 ("2003 Divorce Agreement") provided that Dr. Miller provide not less than $1,000,000 of the existing life insurance for the benefit of both Daughters until such time as they became emancipated. It also provided that "[Christi] agrees she will sign whatever documents are necessary in order to permit [Dr. Miller] to transfer existing life insurance policies from a pre-existing trust to a new trust." The 2003 Agreement also provided a release whereby Christi released all claims "which in any way arise out of the marital relationship" other than those specifically provided for in the 2003 Agreement. Further, the 2003 Agreement stated that the contemplated amended trust "be in a form approved in writing by counsel for the Wife and Counsel for the Husband," and that the trustees would be approved by each. Both the Daughters were minors when the 2003 Agreement was executed.

Dr. Miller's relationship with Carmosino and drafting of the 2011 Trust

In 2011, Dr. Miller was in a romantic relationship with Carmosino. Around that time, he had a new trust drafted ("the 2011 Trust"). The Trust was drafted by Maselan and he was named Trustee of the 2011 Trust. The 2011 Trust named Carmosino and the

Daughters as beneficiaries. Under the terms of the 2011 Trust, Carmosino was to receive $1 million in benefits and the Daughters $2 million with Carmosino as remainder beneficiary if both Daughters die. Daughters were entitled to $1 million each in lifetime benefits even after emancipation, upon the funding of the 2011 Trust. This represented a change from the express terms of the 2001 and 2003 divorce agreements, which appeared to capped Dr. Miller's obligation at $1 million for both Daughters until emancipation and only after Christi's death.

Dr. Miller's actions to implement the 2011 Trust

It is undisputed that Dr. Miller had Maselan draft the 2011 Trust. It is also undisputed that Dr. Miller never submitted the draft of the 2011 Trust to Christi or her counsel in order to obtain the written approval required by the 2003 Divorce Agreement for any "new trust" into which the insurance policies were to be transferred. Further, there is no record evidence that Dr. Miller ever requested Christi's approval of the trustee(s) of the proposed 2011 Trust. Carmosino states in her brief that the changes of obligations in insurance amounts and the elimination of Christi's interest in the 1999 Trust stated in the 2011 Trust could not be accomplished without amendment or revocation of the 1999 Trust. See Pl. Memorandum of Law, Paper No. 66.1, at pp. 7.

Attempt to Change Owner and Beneficiary of Life Insurance Policies

Also in 2011, Dr. Miller instructed Maselan, his longtime attorney and the Trustee of the 1999 Trust, to transfer the life insurance policies owned by the 1999 Trust to the 2011 Trust.

On May 10, 2011, Maselan completed and submitted a "Beneficiary and Owner Change Request" ("Change Request") for each of the three original policies. The terms of the Change Request stated that the 1999 Trust was the sole beneficiary, revoked all prior beneficiaries, and requested the ownership and beneficiary status be transferred to the 2011 Trust. The terms of the insurance policies permit the owner (the 1999 Trust) to assign or transfer the policies and to change the beneficiary by following North

American's procedure for doing so. North American required a two-step procedure for an irrevocable trust to change ownership or beneficiaries.

The Change Requests were submitted to North American. North American responded to the requested change by requesting completion of an additional form, a "Certification of Trust Agreement," to confirm the 2011 Trust was an appropriate life insurance trust. North American asserts, and the court agrees having read the policy terms, that the transfer could not be accomplished without the requested Certification.

North American sent the form to Dr. Miller's address, which was the address provided to North American, and not the Trustee's, and the correspondence went unanswered.[4] Receiving no reply, North American considered the request to change owner/beneficiary to be incomplete and never completed the contemplated change. Maselan never requested confirmation that the change was made after sending in the Change Request. There is no dispute that North American's procedure to transfer ownership of the policies held in the 1999 Trust was not complied with in this case.

Dr. Miller's death

Dr. Miller and Carmosino's relationship ended around 2019, three years before his death.

Dr. Miller died in 2022. Maselan states that from May 10, 2011, he believed the insurance policies had been transferred out of the 1999 Trust and into the 2011 Trust. Dr. Miller, Maselan, and Carmosino all behaved from 2011 as if the transfer of policies had been completed and the 2011 Trust would govern distribution of the proceeds. Maselan sent several correspondences to Carmosino between 2011 and 2016 stating that she was the beneficiary of the 2011 Trust and the insurance policies. She also received correspondence in 2021 confirming she was a beneficiary of the life insurance.

[4] Plaintiff contests whether North American's letter was received by Maselan or Dr. Miller, but a copy was produced from his files during litigation, see document no. SJ0343-345.

Following Dr. Miller's death, it was learned from North American that the life insurance policies were still listed as owned by the 1999 Trust and that the Change of Ownership was never completed.

DISCUSSION

A motion for summary judgment must be allowed where the moving party "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law based on the undisputed facts." Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016). To decide whether summary judgment is appropriate, the court must "consider[] evidence presented in the pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits." O'Connor v. Redstone, 452 Mass. 537, 550 (2008), citing Mass. R. Civ. P. 56 (c). The court reviews the evidence in the light most favorable to the nonmoving party, but does not weigh evidence, assess credibility, or find facts. See Psychemedics Corp. v. Boston, 486 Mass. 724, 731 (2021), quoting Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991); O'Connor, 452 Mass. at 550.

The interpretation of an unambiguous written instrument is a question of law ordinarily appropriate for summary judgment. Lumber Mut. Ins. Co. v. Zoltek Corp., 419 Mass. 704, 707 (1995). Summary judgment, when appropriate, may be rendered against the moving party." Mass. R. Civ. P. 56(c).

I. Declaratory Judgment

The declaratory judgment count (Count 1) requiring application of the various contracts at issue in this matter is the central claim and effect most of Carmosino's companion claims. Therefore, I address it first.

Declaratory relief is appropriate where "an actual controversy has arisen and is specifically set forth in the pleadings." G. L. c. 231A, § 1. Where a claim for declaratory judgment has been "properly brought," a judge proceeds to "determining whether the

facts alleged by the plaintiff in the complaint, if true, state a claim for declaratory relief." Buffalo-Water 1, LLC v. Fid. Real Estate Co., LLC, 481 Mass. 13, 18 (2018).

Most, if not all, of Carmosino's claims require (1) Dr. Miller to possess the authority to implement the changes Carmosino claims he communicated to her in drafting and funding the 2011 Trust with the insurance policies held by the 1999 Trust, and (2) the successful transfer of ownership of the Policies from the 1999 Trust to the 2011 Trust. To make such a determination, the court must determine how the 1999 Trust, the final 2003 Divorce Agreement, and the 2011 Trust should be read together, as there is no dispute that the 2003 Divorce Agreement contemplated changes to the 1999 Trust, including the total extinguishment of Christi's rights as a beneficiary of that trust. The court must also apply the terms of the Policies concerning transfer of ownership in determining whether any such transfer was accomplished.

"The interpretation of a contract is a question of law for the court." Eigerman v. Putnam Invs., Inc., 450 Mass. 281, 287 (2007). In interpreting a contract, a court must "construe the contract as a whole, in a reasonable and practical way, consistent with its language, background, and purpose." Bailey v. Astra Tech, Inc., 84 Mass. App. Ct. 590, 594 (2013) (internal quotation omitted). Contract language is considered in the context of the entire contract rather than in isolation. General Convention of the New Jerusalem in the United States of America, Inc. v. MacKenzie, 449 Mass. 832, 835 (2007).

Even assuming that Dr. Miller fully intended to fund the 2011 Trust with the policies held in the 1999 Trust to benefit Carmosino, a plain reading of the 1999 Trust, the Policies at issue, and the 2003 Divorce Agreement demonstrate that (1) Dr. Miller never took the steps contemplated by those agreements to fund the 2011 Trust with the Policies, and (2) the procedure to transfer ownership of the Policies was not complied with and they remained within the 1999 Trust until the time of Dr. Miller's death.

The 2003 Divorce Agreement contemplated two fundamental changes to 1999 Trust. First, it completely extinguished Christi's rights as a beneficiary of the 1999

Trust. That change took effect as soon as the Probate Court ratified the 2003 Divorce Agreement. Second, the 2003 Divorce Agreement contemplated that Dr. Miller may draft a "new trust," but provided that "new trust . . . be in a form approved in writing by counsel for the Wife and Counsel for the Husband," and that the trustees would be approved by each. It is undisputed that Dr. Miller never received written approval for any "new trust," such as the 2011 Trust, to hold the Policies, and never sought or received approval for the trustee(s) of the "new trust." Thus, per the terms of the 2003 Divorce Agreement, no "new trust" authorized to hold the contemplated Policies was ever formed.

Further, as the policies were wholly owned by the irrevocable 1999 Trust, only the Trustee of that trust had authority to alter ownership of those policies, an authority which was never properly exercised according to the terms of the North American Policies. "A mere intention on the part of an insured to change the beneficiary not acted upon in the manner required by the terms of the policy is ineffectual and on the death of the insured the beneficiary named therein acquires a vested right." Henderson v. Adams, 308 Mass. 333, 338 (1941). Here, Carmosino's argument concerning Dr. Miller's alleged transfer of ownership of the Policies fails for two reasons. First, Dr. Miller was not the owner of the Policies, the 1999 Trust was the owner and only its Trustee had authority to request a change in ownership. Second, the trustee began the process to transfer ownership of the Policies but failed to do so "in the manner required by the terms of the policy," rendering the intended transfer "ineffectual." See id. Thus, Dr. Miller's communicated intention to transfer the Policies into a trust that benefitted Carmosino was not sufficient to accomplish the desired transfer. The result is that upon Dr. Miller's death, the 1999 Trust, as the owner and sole beneficiary, acquired the proceeds of the Policies. See id. The 2011 Trust, of which Carmosino is a beneficiary, was, therefore, never funded by the settlor.

Given my conclusions, there is no basis to supply the declaratory relief plaintiff seeks. Carmosino's request for declaratory judgment is therefore **DENIED**. Instead, based upon those same conclusions, it can be declared that the 1999 Trust remains the owner of the Policies and their proceeds should be distributed in accordance with its terms, as modified by the 2003 Divorce Agreement. Specifically, the 2003 Divorce Agreement extinguished any interest of Christi in the 1999 Trust as of its ratification by the Probate Court. Thus, the Daughters are the only remaining beneficiaries of the 1999 Trust.[5]

II. Carmosino's remaining claims

Having determined that the unambiguous language of the Policies and the 2003 Divorce Agreement establish the 1999 Trust as the rightful beneficiary of the Policies, I now briefly address the other claims upon which Carmosino moves for summary judgment.

The court has determined that the 2003 Divorce Agreement extinguished any interest Christi had in the 1999 Trust. Accordingly, Christi will not be unjustly enriched by the 1999 Trust receiving the proceeds of the Policies. See Metro Life Ins. v. Cotter, 464 Mass. 623, 644 (2013) (plaintiff asserting a claim for unjust enrichment must establish not only that the defendant received a benefit, but also that such a benefit was unjust, "a quality that turns on the reasonable expectations of the parties."). Count 6 against Christi is hereby dismissed.

[5] Carmosino argues in her reply brief that the Daughters' rights under the 1999 Trust were waived when their parents, Christi and the decedent, ratified the 2003 Divorce Agreement. The argument is without merit because the 2003 Divorce Agreement did not extinguish the 1999 Trust or the Daughters' rights thereunder. Instead, it contemplated a future action, the drafting of a "new trust," subject to certain conditions and approvals from Christi and her counsel, that never came to pass. Thus, whether analyzed under either the pre-Uniform Trust Code ("UTC") common law regarding irrevocable trusts or the UTC, the record cannot support Carmosino's contention that the 2003 Divorce Agreement effectively waived the Daughters' interest in the 1999 Trust.

The court has also determined that the 1999 Trust held ownership of the Policies through the time of Dr. Miller's death, and that Dr. Miller's professed desire to transfer the Policies into the 2011 Trust never materialized. Accordingly, the 1999 Trust will not be unjustly enriched by receipt of the proceeds of the Policies. See id. Count 7 is, therefore, dismissed.

Carmosino has not produced any "contract" between the 1999 Trust and the 2011 Trust, nor demonstrated any failure on Christi's part to adhere to the terms of the 2003 Divorce Agreement. Accordingly, her claims for "specific performance" stated in Counts 3 and 4 requiring those parties to take actions to effectuate the transfer of the Policies to the 2011 Trust are without merit and are dismissed.

Carmosino's claim for equitable reformation of the 1999 Trust is based upon the alleged unjust enrichment of Christi that she claimed would occur if the 1999 Trust received the proceeds of the Policies. Having determined there is no such unjust enrichment, that basis for equitable reformation has no merit. Further, Carmosino's argument that the transfer of ownership of the Policies was not accomplished due to "mistake" or "accident" is also unsupported by the record. Carmosino also argues that reformation is required to reflect "the intent of the parties." However, the contracts at issue are unambiguous concerning the requirements for transfer of the Policies to a new trust; requirements that were not complied with. Dr. Miller's intent to make changes for Carmosino's benefit without complying with those unambiguous requirements rendered his unilateral intent legally inconsequential. Accordingly, Count 5 is hereby dismissed.

Finally, Carmosino asserts, derivatively, a claim for breach of contract "between the 1999 Trust and the 2011 Trust" in Count 8, asserting that the 1999 Trust "assigned" the Policies to the 2011 Trust. No such contract of assignment is cited to or produced in the record. Instead, Carmosino relies on Maselan's submission of the "Change Request" to North American in 2011. As discussed above, the change of ownership to

the 2011 Trust was never accomplished according to the terms of the Policies and, in any event, would have been forbidden under the terms of the 2003 Divorce Agreement as Dr. Miller never sought or received written approval for the 2011 Trust to serve as a "new trust" to hold the Policies. Carmosino has failed to support her claim for breach of contract brought on behalf of the 2011 Trust. See Bulwar v. Mount Auburn Hosp., 473 Mass. 672, 690 (2016) ("Breach of contract requires a valid contract supported by consideration, that the plaintiff was ready, willing and able to perform its part of the contract, and that the defendant's breach resulted in damages.").

III. Malpractice claims

Carmosino alleges professional negligence/malpractice against Maselan and Maselan and Jones P.C. claiming that they owed her a duty of care as a non-client beneficiary of the 2011 Trust, of which Maselan was the author and Trustee. In light of the court's conclusions that the 2011 Trust was never funded by the settlor, and the attempted transfer of ownership of the Policies to the 2011 Trust was not effective, it is now undisputed that Carmosino, as a beneficiary of the 2011 Trust, has not suffered any damages as the result of any action or inaction by Maselan or his law firm. See Spinner v. Nutt, 417 Mass. 549, 555-556 (1994). Accordingly, Counts 13 and 14 are hereby dismissed.

ORDER

For the foregoing reasons, it is hereby **ORDERED**:

1. Plaintiff's Motion for Partial Summary Judgment is **DENIED**;
2. Christi Miller's Cross-Motion for Partial Summary Judgment dismissing Counts 4 and 6 is **ALLOWED**;
3. Defendants James P. Maselan and Jones, P.C.'s cross motion for summary judgment dismissing Counts 13 and 14 is **ALLOWED**;
4. Defendants Meredith L. Miller and Elizabeth G. Miller's Motion for Summary Judgment on Count 1 (declaratory judgment) is **ALLOWED**; and

5. **DECLARATION**: it is further **ORDERED, ADJUDGED and DECLARED,** pursuant to G. L. c. 231A, § 1, that (i) the 1999 Trust is the rightful owner and beneficiary of the insurance policies in dispute and (ii) the proceeds of the Policies are to be distributed in accordance with the terms of the 1999 Trust, provided that Christi Miller shall receive no financial benefit from the 1999 Trust, as required by the 2003 Divorce Agreement, and her interest in the 1999 Trust shall be treated as if she predeceased Dr. Steven G. Miller. Accordingly, all interest in the insurance proceeds shall be for the benefit of Meredith L. Miller and Elizabeth G. Miller as provided by the terms of the 1999 Trust.

So Ordered,

/s/ William F. Bloomer
William F. Bloomer
Justice of the Superior Court
Date: December 19, 2024