

DOCKET NO. WWM-CV23-6026713-S

:

SUPERIOR COURT

FILED

TARA McCULLOUGH-MURPHY

APR 29 2024

J.D. OF WINDHAM
AT PUTNAM

VS.

SUPERIOR COURT
JUDICIAL DISTRICT OF WINDHAM

EQUITABLE LIFE INSURANCE CO. F/K/A

:

AXA EQUITABLE LIFE INSURANCE CO., ET AL

:

APRIL 29, 2024

MEMORANDUM OF DECISION GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (#117); DENYING DEFENDANT BRIAN K. MURPHY'S MOTION FOR SUMMARY JUDGMENT (#123); AND GRANTING DEFENDANT EQUITABLE LIFE INSURANCE COMPANY'S MOTION FOR INTERLOCUTORY JUDGMENT OF INTERPLEADER (#124)

This ruling concerns three related motions: (1) the plaintiff's motion for summary judgment (Docket No. 117) on the counts for declaratory judgment and/or constructive trust on the grounds that there is no genuine issue of material fact as to (a) the rightful beneficiaries of an annuity contract death benefit, and (b) the plaintiff's entitlement to some or all of that death benefit; (2) defendant Brian Murphy's motion for summary judgment (Docket No. 123) on the ground that that the doctrine of res judicata bars the plaintiff's claim for the entirety of the death benefit; and (3) the motion for interlocutory judgment of interpleader (Docket No. 124) filed by defendant Equitable Life Insurance Co. ("Equitable") seeking direction on distribution of the death benefit proceeds and attorney's fees and costs associated with the interpleader and its involvement in this action.

For the reasons set forth below, the plaintiff's motion for summary judgment is granted in part, but only so as to her entitlement to 40% of the death benefit at issue; the court declines to impose a constructive trust. Defendant Brian Murphy's motion for summary judgment is denied. Defendant Equitable's motion for judgment of interpleader is granted, including its request for its reasonable costs and attorneys' fees associated with its involvement in this matter.

J.D. No Sent to all Counsel of Record on 4/29/2024. J. Sullivan, Jr.

FACTS

This action arises out of a contractual relationship that existed between Arthur Murphy (“the annuitant”) and Equitable pursuant to an annuity issued on or about June 18, 2003. Brian Murphy (hereinafter, “defendant”) was designated by the annuitant (his father) as owner of the annuity.¹ On March 28, 2021, the annuitant died. On May 11, 2023, Tara McCullough-Murphy, the plaintiff (defendant’s former spouse and mother of the three beneficiary grandchildren), filed a two-count complaint. See Docket No. 100.31.

Specifically, the plaintiff alleges in count one that: the annuitant named the plaintiff as sole primary beneficiary, the annuitant named three of his grandchildren as contingent beneficiaries, and that the plaintiff is entitled to claim the entire death benefit proceeds payable under the Annuity Contract. Further, the plaintiff alleges in count two: that the court should impose a constructive trust on the grounds that the defendant caused an improper withholding or delay of the death benefit; that under the constructive trust the defendant should relinquish any and all ownership interest in the annuity death benefit; and that the plaintiff is entitled to a constructive trust in her favor over the Annuity Contract death benefit proceeds. See Docket No. 100.31.

The plaintiff seeks a declaratory ruling that she is entitled to the entire death benefit; a judgment directing Equitable to pay the plaintiff the entirety of the death benefit proceeds; the imposition of a constructive trust as to the Annuity Contract or the proceeds thereunder; money

¹ Three of the annuitant’s grandchildren (plaintiff and defendant Brian Murphy’s three children) are additional named defendants in the present action. Plaintiff and defendant Brian Murphy conceded at oral argument that there is no genuine issue of material fact in dispute as to these grandchildren’s designation as beneficiaries and that each is entitled to a 20% share of the death benefit (60% total), payable by defendant Equitable. For purposes of clarity in this ruling, “defendant” without further designation hereinafter refers to Brian Murphy only, and the remainder of this ruling addresses only distribution of the remaining 40% of the death benefit.

damages, punitive damages, reasonable attorney's fees, costs, post-judgment interest, and such other relief the court may find just and equitable. See Docket No. 100.31.

On June 20, 2023, Equitable filed an answer to the plaintiff's complaint, and a counterclaim and crossclaim for interpleader, as to who should receive the payments due and owing under the Annuity Contract issued to the annuitant on the grounds that conflicting claims exist regarding the payment due. See Docket No. 105. The plaintiff filed an answer to Equitable's counterclaim and asserted a claim of set-off against the defendant. See Docket No. 108. On July 18, 2023, the defendant filed an answer and three-count counterclaim asserting breach of contract, breach of the covenants of good faith and fair dealing, and promissory estoppel. See Docket No. 109.

On October 27, 2023, the plaintiff filed a motion for summary judgment on the grounds that no genuine issues of material fact exist as to the designated beneficiaries pursuant to the Annuity Contract. See Docket No. 117. On December 7, 2023, the defendant filed an objection to the plaintiff's motion for summary judgment and a memorandum in support of his objection. See Docket No. 120. On December 12, 2023, the plaintiff filed a reply memorandum to the defendant's objection, Docket No. 122.

On December 14, 2023, the defendant filed a motion for summary judgment and memorandum in support as to the plaintiff's affirmative claims and the counterclaims of Equitable. See Docket No. 123. Specifically, the defendant argues that: the marital settlement agreement is a final judgment, presumptively valid and favored against collateral attacks; the doctrine of res judicata bars the plaintiff's claims seeking disposition of the annuity benefit; and the plaintiff's actions constitute a breach of contract pursuant to the marital settlement agreement. See Docket No. 123.

On December 15, 2023, Equitable filed a motion for interlocutory judgment of interpleader. See Docket No. 124. Specifically, Equitable argues that it is unable to determine who is entitled to payment of the annuity death benefit proceeds, and requests judgment pursuant to General Statutes § 52-484 and Practice Book §§ 23-43 and 23-44. Further, Equitable seeks discharge from any and all liability as to the funds and an award of its attorneys' fees and other proper costs. On January 9, 2024, the plaintiff filed a reply to the defendant's objection to plaintiff's motion for summary judgment. See Docket No. 127. On January 19, 2024, the plaintiff objected to the defendant's motion for summary judgment, Docket No. 128, on the grounds that the plain meaning of the terms and conditions of the Annuity Contract precludes Summary Judgment. The court, *Lohr, J.*, held a hearing on January 29, 2024, on the present motion for summary judgment and opposition thereto.

DISCUSSION

“In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact . . . but rather to determine whether any such issues exist.” (Internal quotation marks omitted.) *RMS Residential Properties, LLC v. Miller*, 303 Conn. 224, 233, 32 A.3d 307 (2011). “Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Graham v. Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018).

“The test [for summary judgment] is whether a party would be entitled to a directed verdict on the same facts.” (Internal quotation marks omitted.) *Fernandez v. Mac Motors, Inc.*,

205 Conn. App. 669, 673, 259 A.3d 1239 (2021). “The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . .” (Internal quotation marks omitted.) *Doe v. West Hartford*, 328 Conn. 172, 191–92, 177 A.3d 1128 (2018). “Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue.” *Rieffel v. Johnston-Foote*, 165 Conn. App. 391, 400, 139 A.3d 729, cert. denied 322 Conn. 904, 138 A.3d 289 (2016).

There Is No Genuine Issue Of Material Fact As To The Death Benefit Beneficiaries.

The plaintiff argues that she is entitled to summary judgment, and contends that no genuine issues of material fact exist that she is the designated beneficiary as to the 40% of the death benefit proceeds still at issue. Specifically, the plaintiff argues that the defendant had no legitimate claim to the death benefit proceeds upon the death of the annuitant, pursuant to the Annuity Contract terms. The court agrees.

Part A of the Annuity Contract, dated June 18, 2003, provides in relevant part: “‘Beneficiary’ means the person or persons . . . you name, by written notice in a form, satisfactory to use, to receive the death benefit, if any, payable when the Annuitant dies,” Docket No. 119, Ex. B, P. 6 ¶5, and that “[o]wner’ means the person shown on the data pages, or any successor owner who may be named according to our rules then in effect and subject to any endorsement hereto, who has the rights described in this Contract *while the Annuitant is living.*” (Emphasis added.) Docket No. 119, Ex. B, P. 7 ¶11.

Part B further provides in relevant part: “You may request a withdrawal of the entire Cash Value at any time on or before the Annuity Commencement date *while the Annuitant is living.*” (Emphasis added.) Docket No. 119, Ex. B, P. 8 ¶1. “We will pay a death benefit to the Beneficiary upon receiving proof that the Annuitant died before the Annuity Commencement Date. The death benefit will be equal to the Annuity Value as of the date the Annuitant dies.” Docket No. 119, Ex. B, P. 8 ¶2. The Data Pages section of the Annuity Contract lists the plaintiff as a “beneficiary.” See Docket No. 119, Ex. B, P. 3. The court further notes that the Request of Ownership Change dated February 4, 2012, lists the defendant as owner and the plaintiff as the designated primary beneficiary as to 40% of the death benefit. See Docket No. 17, Exhibit A, P. 3.

At oral argument, plaintiff and defendant both conceded that the 60% portion of the death benefit to the annuitant’s designated three grandchildren (their children) is not in dispute. However, the plaintiff also asserts that there is no genuine issue of material fact that the Annuity Contract designates her as the sole beneficiary of the remaining 40% of the death benefit proceeds. The defendant objects on the ground that the plaintiff’s motion for summary judgment supposedly presents serious and material questions of fact.

Specifically, the defendant argues that the Marital Settlement Agreement between plaintiff and defendant raises a genuine issue of material fact as to whether the plaintiff may seek to divest the defendant of Annuity Contract rights. In addition, the defendant argues that the plaintiff fails to establish, beyond mere allegation, the absence of issues of material fact concerning the plaintiff’s complaint. The court concludes that the salient question here is whether there exists any genuine issue of material fact as to the plaintiff’s entitlement to 40% of the death benefit presently at issue in the summary judgment motions now before this court.

The court therefore will look to the intent and terms of that annuity contract, as modified by the parties' subsequent dissolution Marital Settlement Agreement.

A. The Annuity Contract Intent Was To Make Plaintiff A 40% Beneficiary Upon Death Of The Annuitant.

“A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity.” (Internal quotation marks omitted.) *Tallmadge Brothers, Inc. v. Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 498, 746 A.2d 1277 (2000).

“In determining a motion for summary judgment involving the construction of contractual language, a court should accord that language its plain meaning giving due consideration to the surrounding circumstances [and] apparent purpose which the parties sought to accomplish. . . . Where contractual language is ambiguous and subject to varying reasonable interpretations, intent becomes an issue of fact and summary judgment is inappropriate. . . . Ambiguity resides in a writing when – after it is viewed objectively – more than one meaning may reasonably be ascribed to the language used. . . . A court may only grant summary judgment where the language is unambiguous.” (Citations omitted; internal quotation marks omitted.) *Richard Manufacturing Co., Inc. v. Richard*, 513 F. Supp. 3d 261, 278 (D. Conn. 2021). “[A]ny ambiguity in a contract must emanate from the language used in the contract rather than from

one party's subjective perception of the terms." *Id.*, 281; see *O'Connor v. Waterbury*, 286 Conn. 732, 743, 945 A.2d 936 (2008) ("A contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself.").

The relevant facts are as follows: The defendant was designated by the annuitant as the owner of the Annuity Contract on February 4, 2012. See Docket No. 117, Exhibit A. The annuitant designated the plaintiff as beneficiary in the amount of 40% of the death benefit in the same designation. Subsequently, a stipulated dissolution judgment as to the plaintiff and the defendant was rendered on January 19, 2016. The plaintiff and defendant acknowledged before that court, *Graziani, J.*, that the defendant's obligation under Section 9.4.1 to the incorporated Marital Settlement Agreement stated that the plaintiff's designation as 40% beneficiary under the Annuity Contract was irrevocable, and that the defendant retained the right to exhaust the annuity funds during the life of the annuitant.

The plaintiff was notified of the annuitant's death by Equitable via letter dated January 20, 2023. See Docket No. 100.31, Exhibit A. The parties do not dispute that the annuitant did not change any of the designated beneficiaries under the Annuity Contract prior to his death; thus, the Plaintiff has presented evidence sufficient to support this court's conclusion that a purpose of the Annuity Contract was to designate the Plaintiff as beneficiary of 40% of the annuity death benefit.

B. The Plaintiff's Death Benefit Interest Vested Upon Entry of the Stipulated Dissolution Judgment, Pursuant To § 9.4.1 Of The Marital Settlement Agreement.

Defendant's memorandum in support of summary judgment (Docket No. 123) asserts that the plaintiff is precluded from raising her claims for judgment as to her entitlement to 40% of the annuity death benefit. In support of this argument, the defendant cites to our Supreme Court, which held that "[f]inal judgments are . . . presumptively valid . . . and collateral attacks on their validity are disfavored." *Sousa v. Sousa*, 322 Conn. 757, 771, 143 A.3d 578 (2016). Furthermore, the defendant contends that the plaintiff's claims are extinguished under the doctrine of res judicata on the ground that the plaintiff is attempting to relitigate the claims in the action for divorce. Finally, the defendant argues that the plaintiff's actions constitute a breach of contract under Section 9.4.1 of the Marital Settlement Agreement and that the defendant is entitled to summary judgment on his claims. The court disagrees with all of these arguments.

Specifically, the court concludes that there is not a dispute of facts; rather, there exists a dispute as to how the facts should be interpreted by this court. It is undisputed that plaintiff and defendant voluntarily entered into a Marital Separation Agreement, and that it was approved by the family court presiding over their divorce proceedings. Section 9.4.1 clearly articulates the requirement that the defendant irrevocably maintain plaintiff's designation as a death beneficiary under the terms of the Annuity Contract. It also is undisputed that no change of beneficiary was effectuated between the time of the parties' divorce and the death of the annuitant.

It further is undisputed that the defendant could have, during the lifetime of the annuitant, exhausted the funds in the annuity if he so chose; however, he elected not to do so, thus those funds automatically converted into a death benefit upon the passing of the annuitant. Section 9.4.1 of the Marital Separation Agreement and the Annuity Contract, when read together in

concert, therefore dictate that the plaintiff is entitled to 40% of said death benefit, with the remaining 60% going to the parties' three children in equal shares.

“Where . . . the signatories execute a contract which refers to another instrument in such a manner as to establish that they intend to make the terms and conditions of that other instrument a part of their understanding, the two may be interpreted together as the agreement of the parties. . . . When parties execute a contract that clearly refers to another document, there is an intent to make the terms and conditions of the other document a part of their agreement, so long as both parties are aware of the terms and conditions of that other document.” (Citations omitted; internal quotation marks omitted.) *Allstate Life Ins. Co. v. BFA Limited Partnership*, 287 Conn. 307, 315, 948 A.2d 318 (2008). A review of the file reveals that the Marital Settlement Agreement was incorporated into a dissolution settlement judgment stipulated between the Plaintiff and the Defendant. See Docket No. 123, Exhibit A.

Our Supreme court has instructed that “interpretation of a separation agreement incorporated into a dissolution decree is guided by the general principles governing the construction of contracts. . . . [A]ny ambiguity in a contract must emanate from the language used in the contract rather than from one party’s subjective perception of the terms.” (Citation omitted; internal quotation marks omitted.) *Eckert v. Eckert*, 285 Conn. 687, 692, 941 A.2d 301 (2008).

Section 9.4.1 of the Marital Settlement Agreement provides in relevant part: “Defendant shall retain his 100% interest in a certain Equitable Life Annuity . . . and shall maintain Plaintiff as irrevocable beneficiary under this annuity. While the Defendant shall be required to maintain the Plaintiff as irrevocable beneficiary of the annuity, it is expressly acknowledged and agreed by the parties that the Defendant is free to expend a portion or all of said annuity during his

lifetime.” The Marital Settlement Agreement permitted, but did not require, the defendant’s expenditure of a portion or all of the death benefit. Furthermore, the defendant’s claim is not supported by the undisputed fact that the defendant was the owner of the annuity and was not a designated beneficiary. Accordingly, the issue that the court must examine is whether the plaintiff’s interest in the death benefit vested upon entry of the dissolution judgment.

In *ING Life Ins. & Annuity Co. v. Caswell*, Superior Court, judicial district of Hartford, Docket No. CV-13-6041632-S (September 14, 2015, *Scholl, J.*) (60 Conn. L. Rptr. 901), the defendant was the spouse and sole primary beneficiary of her husband’s individual retirement account (IRA). Subsequently, the defendant’s husband designated three additional primary beneficiaries. Approximately one year later, the marriage between the defendant and the account holder was dissolved. The court ordered that the former husband shall convey the entire balance of, and the rights to designate the beneficiaries to, the former husband’s IRA. Subsequently, the former husband executed the required change of ownership designating the defendant. Upon her death, the defendant did not designate a beneficiary to the account.

The Superior Court construed the terms of the dissolution judgment between the parties requiring the maintenance of a beneficiary to an individual retirement account. The court reasoned that “[a] settlement of property rights arising from a contemplated divorce is satisfactory consideration for the acquisition of such a vested interest in a policy designation. . . . Whatever the legal rights between the insurer and the insured, the separation agreement vested in the first wife an equitable interest in the insurance policies then in force. An agreement for sufficient consideration, including a separation agreement, to maintain a claimant as a beneficiary of a life insurance policy *vests in the claimant* in the policies designated.” (Emphasis added; internal quotation marks omitted.) *Id.*

In a separate action, the Superior Court stated: “*If sufficient consideration appears to support the insured’s promise to make the claimant the beneficiary of his interest therein, the claimant takes a vested interest in the proceeds.*” And this is true regardless of the fact that the policy gives the insured the right to change the designation. . . A settlement of property rights arising from a contemplated divorce is satisfactory consideration for the acquisition of a vested interest in a policy designation.” (Emphasis in original.) *Gabianelli v. Germain*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-10-5010664-S (February 8, 2011, *Hiller, J.*).

In the present motion, Section 9.4.1 of the Marital Settlement Agreement is incorporated in the stipulated dissolution judgment. See Docket No. 123, Exhibit A, Page 1. Thus, sufficient consideration supports the defendant’s contractual promise to maintain the plaintiff as an irrevocable beneficiary to the Annuity Contract death benefit. The plaintiff’s death benefit rights therefore vested on January 19, 2016, the date of the parties’ stipulated dissolution judgment. The defendant has presented no evidence contradicting the plaintiff’s evidence in this regard. Accordingly, under the terms of the Annuity Contract, the plaintiff is entitled to judgment as a matter of law that she is entitled to 40% of the death benefit, payable under the existing terms of the Annuity Contract.

C. The Court Declines To Impose A Constructive Trust.

“A constructive trust arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. . . . The issue raised by a claim for a constructive trust is, in essence, whether a party has committed actual or constructive

fraud or whether he or she has been unjustly enriched.” (Internal quotation marks omitted.) *Mitchell v. Redvers*, 130 Conn. App. 100, 112–13, 22 A.3d 659 (2011).

“Judge Cardozo wrote: A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee. . . . The imposition of a constructive trust by equity is a remedial device designed to prevent unjust enrichment. . . . Thus, a constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.” (Citations omitted; internal quotation marks omitted.) *Cohen v. Cohen*, 182 Conn. 193, 203, 438 A.2d 55 (1980). In an equitable proceeding, “the trial court may examine all relevant factors to ensure that complete justice is done.” *Reynolds v. Ramos*, 188 Conn. 316, 320, 449 A.2d 182 (1982).

In the present action, the rights of the plaintiff emanate from a stipulated dissolution judgment, thus the plaintiff’s 40% irrevocable interest in the death benefit vested at the time the court entered the parties’ stipulated judgment in that case. This court need only enforce the agreement previously reached and still in effect between the parties. Accordingly, this court declines to impose a constructive trust here because it concludes that such an equitable device is wholly unnecessary to resolve the parties’ differences.

CONCLUSION

The court concludes that no genuine issue of disputed material fact exists as to the following: (1) the clear and unambiguous apparent purpose under the plain language of the Annuity Contract, in light of the surrounding circumstances, was to designate the Plaintiff as a beneficiary of the annuity death benefit; and (2) the plaintiff’s irrevocable right to 40% of the death benefit fully vested upon the entry of the parties’ stipulated dissolution judgment.

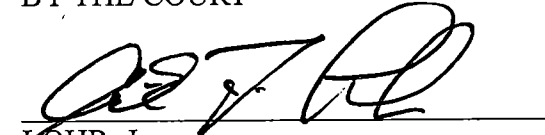
Accordingly, the Plaintiff's motion for summary judgment (Docket No. 117) is **GRANTED IN PART** only with respect to her entitlement to a 40% share of the death benefit; the Defendant's objection thereto (Docket No. 120) correspondingly is **OVERRULED**. Defendant Brian K. Murphy's motion for summary judgment (Docket No. 123) is **DENIED**, and Plaintiff's objection thereto (Docket No. 128) correspondingly is **SUSTAINED**.

The Plaintiff and Defendant Brian K. Murphy, mother and father to their three children in common—Defendants Kyla McCullough-Murphy, Lexi McCullough-Murphy and Kaden McCullough-Murphy—mutually agreed on the record during oral argument before this court that said children each were entitled to a 20% share of the death benefit (60% total). The court now concludes that the Plaintiff is entitled to judgment as a matter of law concerning the remaining 40% of the death benefit being payable to her. Defendant Equitable has raised interpleader and counterclaim/crossclaims as to how the annuity death benefit should be distributed. Defendant Equitable's motion for interlocutory judgment of interpleader (Docket No. 124) is **GRANTED**, and the court hereby orders that, within 14 days of the date of this order, Equitable shall submit a bill of costs and claim for attorney's fees for approval by the court, which shall be placed onto the next available short calendar docket for which all parties will have sufficient time to receive adequate notice thereof.

Once all applicable costs and fees are determined and approved by the court, Equitable then shall pay out the annuity death benefit in accordance with its present internal and applicable policies with respect to deductions, costs and attorney's fees, in accordance with the percentages set forth immediately above (i.e., 40% to plaintiff and 20% to each of annuitant's three designated beneficiary grandchildren), or as otherwise consented to in writing to the satisfaction of all parties. Finally, all operative pleadings having been addressed and dispositive claims

resolved, this ruling shall constitute a final judgment as to all parties in this action, effective upon determination and approval of Equitable's costs and fees by the court, as outlined above.

BY THE COURT



LOHR, J.