

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502016AP900304CAXXMB
L.T. No.: 502013CC013297XXXXMB

MARIE MARTHA BALTAZAR,
Appellant,
v.
THE BALTIMORE LIFE INSURANCE
COMPANY,
Appellee.

Opinion filed: FEB 02 2018

Appeal from the Palm Beach County Court,
Judge Ted Booras

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PER CURIAM.

Appellant, Marie Baltazar ("Baltazar"), appeals the trial court's order granting Appellee's, The Baltimore Life Insurance Company's ("Baltimore Life Insurance") Motion for Summary Judgment. We find that the trial court erred by entering summary judgment in favor of

Baltimore Life Insurance because it relied on an application for life insurance that the parties disputed and which presented genuine issues of material fact.

On June 15, 2011, an application for life insurance on the life of Germilia Louis (“the decedent”) was submitted to Baltimore Life Insurance. Baltimore Life Insurance allowed English- and Spanish-speaking applicants to apply for life insurance by phone and electronic signature. Applicants who did not speak fluent English or Spanish could not apply by phone, and were required to submit two years of medical records at the time of the application. English- and Spanish-speaking applicants who applied by phone met with an agent of Baltimore Life Insurance who made a call to an automated call center which recorded the applicant’s answers to questions regarding personal and medical history and generated an application based entirely on those responses. During the phone call with the automated call center, the application was electronically signed and automatically underwritten.

Stephen Levy (“Levy”), an insurance agent with Baltimore Life Insurance, met with the applicant who applied for life insurance on the life of the decedent. While Levy was present with the applicant, the applicant answered questions regarding the decedent’s personal and medical history, and the answers were contemporaneously recorded by a third-party vendor during the recorded phone interview. The application indicated “no” in response to the question of whether the decedent had, in the past two years, been diagnosed with or been treated or hospitalized for “uncontrolled high blood pressure, uncontrolled diabetes or blood sugars, diabetic coma, or any diabetes requiring the use of insulin.”¹ The application listed “Mathel Cunningham – daughter” as the sole beneficiary. The last page of the application instructed

¹ The parties disagree as to which documents constitute the application for life insurance. For purposes of this opinion, “the application” refers to the three-page “Simplified Application.”

applicants that false or incomplete answers could result in denial of benefits. Below that provision was the typed name of “Germilia J. Louis,” and the words “Signed Electronically – 06/15/2011.”

On July 4, 2011, Baltimore Life Insurance issued a policy on the life of the decedent, collecting monthly premiums from the decedent’s bank account until her death in November 2011. On September 12, 2012, Baltazar, the insured’s only daughter, submitted a claim for benefits and an authorization to obtain medical information. Baltimore Life Insurance investigated and subsequently denied Baltazar’s claim, giving two reasons in support thereof: (1) that the insured made a material misrepresentation in the application for insurance, and (2) that Baltazar was not the beneficiary because the application listed “Mathel Cunningham” (“Cunningham”) as the “daughter” of the insured and as the policy’s only beneficiary.

After receiving Baltazar’s claim, Baltimore Life Insurance sent a letter to Cunningham advising her that there were material misrepresentations in the application because the application indicated that the decedent did not have diabetes, but an investigation by Baltimore Life Insurance revealed that she did. The letter further advised Cunningham that Baltimore Life Insurance would not have issued the policy had the application disclosed that the decedent had diabetes requiring the use of insulin. As a result, Baltimore Life Insurance voided the policy and mailed a premium check to Cunningham who then cashed the check.

On January 30, 2014, Baltazar filed a Second Amended Complaint against Baltimore Life Insurance for a breach of contract claim arising out of Baltimore Life Insurance’s failure to pay death benefits upon the death of the decedent. Baltazar joined Cunningham to the lawsuit as an indispensable party. Cunningham did not respond to the lawsuit, and a default judgment was entered against her.

On August 23, 2016, Baltimore Life Insurance filed a Motion for Summary Judgment (“Motion”) arguing that there were no genuine issues of material fact because the decedent either made a material misrepresentation requiring rescission of policy or the decedent was not the person who applied for the policy and therefore the policy did not exist. The Motion also argued that Baltazar did not have standing because she was not named as the beneficiary under the policy.

On November 9, 2016, the trial court held a hearing on Defendant’s Motion. At the hearing, no witnesses testified, and the parties’ counsel argued over the admissibility of the application and the phone recording. Deposition testimony was introduced attesting that the decedent spoke only Creole and that the voice on the recording was not that of the decedent. The trial court admitted the application but declined to rule on whether the phone recording was admissible. Instead, the trial court expressly stated that it would enter summary judgment in favor of Baltimore Life Insurance without considering the phone recording because the phone recording had not been authenticated and presented a genuine issue of material fact.

Although the trial court found that there was an issue of fact as to whether the phone recording memorialized the decedent’s voice or some other individual’s voice, the court nonetheless held that summary judgment was appropriate as a matter of law, reasoning that either (1) the decedent was on the recording and therefore made a material misrepresentation necessitating rescission of the policy, or (2) the decedent was not on the recording and therefore some other individual signed the application rendering the policy invalid. The trial court also entered summary judgment in favor of Baltimore Life Insurance on the ground that Baltazar lacked standing to sue because she was not the named beneficiary and she did not bring the

action on behalf of the decedent's estate. On December 14, 2016, Baltazar timely filed a Notice of Appeal.

This Court agrees with Baltazar that the application generated during the phone interview raised genuine issues of material fact which should have precluded summary judgment. The trial court erred in reasoning that the policy was void regardless of whether the decedent did or did not sign the application because such reasoning was necessarily premised on the assumption that the three-page application was not in dispute, despite the fact that the trial court stated that the phone recording upon which the application derived presented genuine issues of material fact. Further, the trial court's decision overlooked the possibility advanced by Baltazar that the decedent, who spoke only Creole, applied for life insurance by means of a different application, as was the means by which non-English- and Spanish-speaking individuals applied for life insurance.

Although Baltazar stipulated that the three-page application included misrepresentations which would void the policy, Baltazar did not stipulate that the phone recording and subsequently-generated application were the decedent's true application for insurance; thus, this fact was in dispute. Moreover, without the three-page application, which was the only document listing Cunningham as the beneficiary, summary judgment was improper because an issue of fact existed regarding the identity of the intended beneficiary. As a result, it was also unclear whether or not Baltazar had standing to sue. Therefore, both the phone recording and three-page application presented genuine issues of material fact.

Accordingly, we **REVERSE** the lower court's grant of summary judgment in favor of Baltimore Life Insurance. Baltazar's Motion for Appellate Attorney's Fees is **GRANTED** conditioned upon its prevailing in the lower court, and the lower court's determination that the

policy is valid and that Baltazar is a named beneficiary under the policy. *See Allstate Ins. Co. v. De La Fe*, 647 So. 2d 965, 965 (Fla. 3d DCA 1994) (reversing an award of appellate attorney's fees under section 627.428 because such award "should have been conditioned upon the insured ultimately prevailing with a recovery on the policy").

J. MARX, GILLEN, and FRENCH, JJ., concur.

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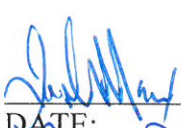
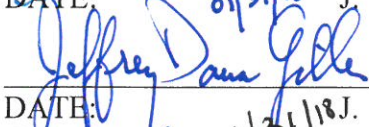

Date of Appeal: December 14, 2016

DATE OF PANEL: DECEMBER 12, 2017

PANEL JUDGES: J. MARX, GILLEN, FRENCH

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
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