SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Total Asset Recovery Services LLC v. MetLife, Inc.

2020 NY Slip Op 07480 (App. Div. 2020) · No. Appeal No. 12589-12589A; Case Nos. 2019-3806, 2019-3807; Index No. 115336/10 · Decided December 10, 2020

SUMMARY

The Appellate Division, First Department reversed the dismissal of a qui tam action alleging that life insurers failed to escheat unclaimed life-insurance proceeds under New York's Abandoned Property Law. The court held that insurers may have obligations to escheat such proceeds without notice or proof of death and that alleged false reports could support a New York False Claims Act reverse-false-claim theory. The court found the complaint insufficiently particular but granted leave to amend, while holding that the NYFCA's 10-year limitations period barred claims based on reports filed more than ten years before the relevant complaints.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Kapnick, J.; Webber, J.; Singh, J.
JURISDICTION	New York
DECIDED	December 10, 2020
DOCKET	Appeal No. 12589-12589A; Case Nos. 2019-3806, 2019-3807; Index No. 115336/10
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Qui tam action under the New York False Claims Act alleging that life insurers knowingly filed false reports and failed to escheat unclaimed life-insurance proceeds. The plaintiff appealed from a judgment dismissing the second amended complaint and from the underlying order granting defendants' motions to dismiss.
STANDARD OF REVIEW	De novo review of the legal sufficiency of the complaint and the grant of defendants' motions to dismiss.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Total Asset Recovery Services LLC, on behalf of the State of New York v. MetLife, Inc., its subsidiaries and affiliates, Brighthouse

Financial, Inc., its subsidiaries and affiliates, State of New York, nonparty respondent

TOPICS

life insurance litigation | insurance | statutory interpretation | pleadings | statute of limitations

PRACTICE AREAS

insurance | false claims litigation | commercial litigation | civil procedure | appellate procedure

QUESTIONS PRESENTED

1. Whether New York's Abandoned Property Law required life insurers to escheat unclaimed life-insurance proceeds without prior notice and proof of the insured's death.
2. Whether the complaint adequately alleged that defendants knowingly filed false reports or statements that concealed or avoided an obligation to transmit property to the State under the New York False Claims Act.
3. Whether the complaint pleaded the alleged fraud with sufficient particularity.
4. Whether the New York False Claims Act's ten-year statute of limitations barred claims based on allegedly false reports filed more than ten years before the commencement of the relevant action.
5. Whether plaintiff should be granted leave to amend despite the pleading deficiencies.

HOLDINGS

1. The Abandoned Property Law requires life insurers to escheat unclaimed life-insurance proceeds even in the absence of notice and proof of the policyholder's death.
2. A life insurer's filing of a false report certifying that it has no abandoned property to escheat may support a New York False Claims Act reverse-false-claim action if the insurer had the requisite knowledge of the report's falsity, even without notice and proof of the policyholder's death.
3. The complaint adequately alleged the knowledge element by asserting facts supporting reckless disregard and actual knowledge, including deficient records and evidence that defendants knew particular policyholders were deceased.
4. The complaint failed to plead the alleged fraud with sufficient particularity because it attributed all alleged conduct to all defendants in general terms.
5. The NYFCA's ten-year statute of limitations bars claims based on allegedly false reports made more than ten years before commencement of the applicable action; the limitations period begins with the initial allegedly false report and is not restarted by a continuing duty to report.

KEY QUOTATIONS

> *"First, contrary to Supreme Court's holding, Moore clearly recognized that the Abandoned Property Law requires life insurers to escheat unclaimed life insurance proceeds even in the absence of notice and proof of*

> *death."* (*3)

> *"Thus, if a life insurer files a false report with the State certifying that it has no abandoned property, within the meaning of Abandoned Property Law § 700, to escheat in a given year, and has the requisite level knowledge, within the meaning of State Finance Law § 188(3)(a), as to the falsity of that report, then the filing of that false report may properly serve as the basis for a NYFCA claim, even if the life insurer has not been presented with notice and proof of the policyholder's death."* (*3)

> *"Because NYFCA's 10-year statute of limitations starts from, as applicable here, the making, using, or causing to be made or used a false record or statement (State Finance Law § 189[1][g]), it is still the initial allegedly false report that starts the clock on NYFCA's statute of limitations."* (*5)

FACTUAL BACKGROUND

The State investigated whether life insurers were adequately identifying deceased policyholders and escheating unclaimed life-insurance proceeds. The relator alleged that defendants failed to escheat proceeds despite evidence such as incorrect or missing policyholder information, returned mail, customer-service logs, and separate escheatment of demutualization payments. The alleged conduct involved reports filed from approximately 1986 through 2017, but the court held that the NYFCA limitations period restricted the claims that could be repleaded.

PROCEDURAL HISTORY

The Supreme Court, New York County, granted defendants' motions to dismiss the second amended complaint and entered judgment dismissing the action. The Appellate Division reversed the judgment, vacated it, granted plaintiff leave to file a third amended complaint and replead its NYFCA cause of action to the extent not time-barred, and dismissed the appeal from the underlying order as subsumed in the appeal from the judgment.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The judgment is reversed and vacated. Plaintiff may file a third amended complaint and replead its NYFCA cause of action with sufficient specificity, but must limit the claims to allegedly false reports made within ten years before the filing of the initial complaint as to MetLife, Prudential, and AXA, and within ten years before the filing of the first amended complaint as to Genworth, Guardian, John Hancock, MassMutual, NY Life, and TIAA.

CASES CITED

- Connecticut Mut. Life Ins. Co. v. Moore, 187 Misc. 1004 (Sup. Ct., N.Y. County 1946), aff'd 271 App. Div. 1002 (1st Dep't 1947), mod. 297 N.Y. 1 (1947), aff'd 333 U.S. 541 (1948)
- Anonymous v. Anonymous, 165 A.D.3d 19, 27 (1st Dep't 2018)

- State of New York ex rel. Seiden v. Utica First Ins. Co., 96 A.D.3d 67, 71-72 (1st Dep't 2012), lv. denied, 19 N.Y.3d 810 (2012)
- United States v. United Healthcare Ins. Co., 848 F.3d 1161, 1179 (9th Cir. 2016)
- Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co., 84 A.D.2d 736, 736 (1st Dep't 1981)
- Abdale v. North Shore-Long Is. Jewish Health Sys., Inc., 49 Misc. 3d 1027, 1043 (Sup. Ct., Queens County 2015)
- United States ex rel. Grenadyor v. Ukranian Vil. Pharm., Inc., 895 F. Supp. 2d 872, 882 (N.D. Ill. 2012)