SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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ROBERT GASSMAN and MARTIN SILVER as Executors, of the Estate of STANLEY G. SILVER, deceased,

Plaintiffs,

-against-

METROPOLITAN LIFE INSURANCE COMPANY, THE UNITED STATES LIFE INSURANCE COMPANY, THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK, ARTHUR ROTHLEIN, individually and conducting business under the names, A R AGENCY and ARTHUR ROTHLEIN AGENCY; ARTHUR ROTHLEIN AGENCY, INC., JOAN SANTINI, ETHEL J. GRIFFIN, Public Administrator of New York County, as Administrator of the ESTATE OF GIAN CARLO SANTINI, Deceased, ALAN M. HABERMAN, STEVEN C. KLEINMAN,

Defendants.

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MICHELE M. WOODARD, J.S.C.
TRIAL/IAS Part 16
Index No.: 18130/02
Motion Seq. No.:15

DECISION AND ORDER

Papers Read on this Decision

Plaintiffs' Notice of Motion for Summary Judgement	15
Defendant US Life Insurance Company's Affirmation In Opposition	xx
Defendant Rothlein's Affidavit in Opposition	xx
Plaintiffs' Reply Affirmation	xx

The motion by Plaintiffs for summary judgment as to the U.S. Life Defendants on the fifth and sixth causes of action of the Plaintiffs' Complaint, summary judgment as to the Rothlein Defendants on the sixth cause of action as well as punitive damages as to both U.S. Life Defendants and the Rothlein Defendants is **denied** for the reasons set forth herein.

The herein matter involves a $500,000 life insurance policy issue on the life of Gian Carlo Santini ("Santini") the principle in a restaurant known as Via Otto. Via Otto went out of business in 1990 and 1991. The corporation was dissolved in 1994. Plaintiffs are the executors of Stanley

Silver's estate. Silver, a shareholder in the Via Otto corporation, pre-deceased Santini. At Santini's death, Plaintiffs' by operation of law, owned 14 shares in Via Otto. Santini had 61 shares and Arthur Rothlein ("Rothlein") had 25 shares. Total shares in Via Otto was 100.

Plaintiffs contend as shareholders in Via Otto they had an insurable interest in the life of Santini. They argue (and this court has agreed) that the $500,000 policy was an asset of Via Otto and they, the Plaintiffs, were entitled to some of the proceeds of the U.S. Life policy on the life of Santini.

Basically, Plaintiffs allege Santini as part of a divorce settlement, signed a change of beneficiary and ownership to Joan Santini (Santini's wife) and Joan Santini, in turn, signed the policy over to Rothlein wherein Joan Santini was to receive some of its policy proceeds as was her matrimonial attorney. Plaintiffs contend Rothlein received $350,000, Joan Santini, Santini's then ex-wife received $100,000 and Joan Santini's matrimonial attorney received $50,000. Plaintiffs state they received no monies from the $500,000 policy. Plaintiffs allege no document signed by Santini showing the change of ownership and beneficiary was ever produced. Plaintiffs also allege Santini would not or should not have transferred the U.S. Life policy without the permission of the corporate entity Via Otto and its shareholders including Plaintiffs. Rothlein argues that Santini, as an officer and president of Via Otto, could make the transfer of the policy on behalf of Via Otto. Rothlein denies he had a "deal" with Joan Santini to make payments on the policy and then receive the bulk of the policy proceeds ($350,000) when Santini died. Plaintiffs note that Via Otto should have been given some consideration for an alleged transfer of the $500,000 life insurance policy, an asset of Via Otto, and Plaintiffs allege no such consideration was ever received by Via Otto.

As to Plaintiffs' Complaint against U.S. Life Insurance Company of the City of New York (which claims it is a subsidiary of USLife Corp. and the U.S. Life Insurance Company does not exist; see Exhibit F, Exhibit B, ¶ 2, both annexed to Plaintiffs' motion), this Court, in its previous determination, has dismissed the Plaintiffs' fifth and sixth causes of action as to U.S. Life Insurance Company of the City of New York.

As to the Plaintiffs' sixth cause of action against the Rothlein Defendants as to the $500,000 U.S. Life policy, the Court has reinstated that branch of the sixth cause of action. However, the fact that the branch of the sixth cause of action was reinstated under the CPLR §3211(a)(7) standard does not justify summary determination under CPLR §3212.

Credibility of witnesses, the truthfulness and accuracy of testimony, whether contradicted or not, and the significance of weaknesses and discrepancies are all for the trier of facts (*Pedone v B & B Equipment co., Inc.*, 239 AD2d 397 2d Dept 1997). The Rothlein Defendants contend that Santini as the presiding officer with 61 shares of the corporate entity, Via Otto, had the power to assign/transfer the $500,000 U.S. Life policy. The Plaintiffs allege Santini did not have the power to dispose of a potentially large asset without consulting all the shareholders or at least seek compensation for corporate entity, Via Otto, for such a transfer. The record before this court is complete with allegations only. As noted, it is for the trier of fact to determine if the proceeds of the U.S. Life policy were indeed distributed properly.

The standards for summary judgment are well settled. A court may grant summary judgment where there is no genuine issue of a material fact, and the moving party is, therefore, entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Thus, when faced with a summary judgment motion, a court's task is not to weigh the evidence or to

make the ultimate determination as to the truth of the matter; its task is to determine whether or not there exists a genuine issue for trial (*Miller v Journal-News,* 211 AD2d 626 [2d Dept 1995]). Thus, the burden on the moving party for summary judgment is to demonstrate a *prima facie* entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Ayotte v Gervasio,* 81 NY2d 1062 [1993]). Here, the Plaintiffs have not met their burden as to U.S. Life or the Rothlein Defendants.

As to Plaintiffs' request for punitive damages, a principal goal of punitive damages is to deter future reprehensible conduct by the wrongdoer and others similarly situated; conduct warranting an award of punitive damages need not be intentionally harmful but may consist of actions which constitute wilful or wanton negligence or recklessness where such wantonly negligent or reckless conduct must be sufficiently blameworthy and the award of punitive damages must advance a strong public policy by the State in attempting to deter a future violation of the same conduct (*Randi A.J. v Long Island Surgi-Center*, 46 AD3d 74, [2d Dept 2007]).

The question of whether a party's conduct rose to the level sufficient to support an award of punitive damages presented an issue of fact for the trier of fact to resolve (*Randi A.J. v Long Island Surgi-Center, supra*) as is the amount, if any, of punitive damages to be awarded (*Nardelli v Stamberg*, 44 NY2d 500 [1978]).

It is hereby **ORDERED** that the parties are to appear for a certification conference on February 1, 2008 at 10:00 a.m.

This constitutes the **DECISION** and **ORDER** of this Court.

DATED: January 8, 2008
Mineola, N.Y.

ENTER:

HON. MICHELE M. WOODARD
J.S.C.

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