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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3363

LORI A. SCOTT,

Appellant

v.

PNC BANK, NATIONAL ASSOCIATION

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-18-cv-00619)
District Judge: Honorable Nora B. Fischer

Argued June 18, 2019

Before: AMBRO, RESTREPO, and FISHER, Circuit Judges

(Opinion filed August 20, 2019)

Kenneth D. Perkins (Argued)
301 Grant Street, Suite 4300
Pittsburgh, PA 15219

Counsel for Appellant

Justin J. Kontul (Argued)
Brian J. Willett
Reed Smith
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222

Counsel for Appellee

OPINION*

AMBRO, Circuit Judge

Lori Scott appeals from the District Court’s dismissal of her three-count complaint against PNC Bank, N.A., based on PNC’s alleged interference with her receipt of the proceeds of her husband’s life insurance policy. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. Background

In 2001 Scott’s husband obtained a \$1 million life insurance policy from Transamerica Life Insurance. (App. 23 ¶ 6.) He listed Scott as the beneficiary of the policy but in 2003 assigned, via an Assignment of Policy as Collateral Security, its proceeds to RBC Centura Bank, a bank headquartered in North Carolina, as collateral for a loan by RBC to Marathon Holdings, LLC, a company he controlled. (*Id.* ¶¶ 6–7; *see also* App. 33–36 (Assignment Agreement).)

The RBC loan was fully repaid in 2004, which Scott claims “effectively negat[ed] the assignment of the [p]olicy.” (App. 23 ¶ 7.) However, neither Scott’s husband nor RBC notified Transamerica about the repayment, so Transamerica’s records still showed the assignment. (*Id.*)

After repaying the RBC loan in 2004, Scott’s husband had no further dealings with RBC. Eight years later, RBC was acquired by PNC. Another five years then passed with

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

no dealings between Scott's husband and PNC until, in March 2017, it made a \$500,000 business loan to AccuDoc Solutions, Inc., another entity Scott's husband controlled. (App. 24 ¶ 13.) According to Scott, the loan was not linked to the Transamerica insurance policy or the assignment in any way. (*Id.*)

A few months later, in August 2017, Scott's husband died, leaving Scott full beneficial and legal ownership of AccuDoc. (*Id.* ¶ 14.) Scott and PNC then began discussions about AccuDoc's repayment of the March 2017 loan. (*Id.* ¶ 15.) During those discussions, PNC used the RBC assignment as leverage to pressure Scott to repay immediately that loan. (App. 24–25 ¶¶ 15–16.)

On January 31, 2018, Scott and PNC reached an agreement concerning the insurance proceeds and the March 2017 loan. (App. 25 ¶ 16.) Specifically, PNC agreed to release the insurance proceeds as soon as Scott contributed \$500,000 in cash to AccuDoc so that it could repay its loan. (*Id.*) The agreement also provided that Scott's \$500,000 contribution to AccuDoc would be in the form of a loan that was subordinated to AccuDoc's debt to PNC to the extent of \$500,000. (*Id.*)

In keeping with this agreement, Scott wired \$500,000 to AccuDoc and caused it to transfer \$497,523.15 to PNC in repayment of debt. (*Id.* ¶ 17.) She provided PNC scanned copies of the relevant documentation. (*Id.*) Later that day, a PNC representative sent Scott's counsel a boilerplate subordination agreement that did not reflect the agreement between the parties; it did not have a cap on the extent to which Scott's \$500,000 loan to AccuDoc would be subordinated to AccuDoc's debt to PNC. (*Id.* ¶ 18.) When Scott's attorney objected to that inconsistency, PNC responded that the boilerplate

was “a standard PNC doc,” and that Scott should “[p]roceed as you see fit.” (App. 26 ¶ 19.)

After further communications with Scott, PNC did two things. It communicated to Transamerica that it was “withdrawing its claim to the [life insurance] benefits” so that Transamerica would release the insurance proceeds to Scott. (App. 27 ¶ 23.) Then it sent Scott a revised subordination agreement that correctly reduced the extent of the subordination to \$500,000, but also added a new provision releasing PNC’s liability in connection with its negotiations with Scott. (*Id.* ¶ 24.) She refused to sign that agreement. (App. 28 ¶ 26.)

Scott received the \$1 million of insurance proceeds on February 9, 2018, more than five months after her husband passed away. (*Id.* ¶ 25.) Five days later, PNC waived the signing of the subordination agreement. (*Id.* ¶ 26.)

Based on these alleged facts, Scott asserts claims under Pennsylvania law for conversion, fraud, and breach of the covenant of good faith and fair dealing. She alleges damages in the form of “emotional distress, loss of opportunity, financial damages, loss of earnings, and damage to her credit standing.” (*Id.* ¶ 27.)

Scott initially filed her claims in Pennsylvania state court, but PNC removed the action to the District Court based on diversity jurisdiction. After removal, the Court granted PNC’s motion to dismiss all three claims under Federal Rule of Civil Procedure 12(b)(6). Scott appeals to us.

II. Analysis¹

Scott appeals the District Court's dismissal of her claims for conversion, fraud, and breach of the covenant of good faith and fair dealing. We address each claim in turn.

A. Conversion

To prove a claim for conversion under Pennsylvania law, a plaintiff must show (1) the deprivation of her right of property in or use or possession of a chattel or other interference therewith, (2) without her consent, and (3) without lawful justification.

Pioneer Commercial Funding Corp. v. Am. Fin. Mortg. Corp., 855 A.2d 818, 827 (Pa. 2004).

The District Court dismissed Scott's conversion claim on two grounds. First, it held the 2003 assignment of insurance proceeds gave PNC a contractual right to receive those proceeds, which implied that Scott did not have an "immediate right" to possess them. (App. 12–13.) Second, it held that insurance proceeds never can be the subject of a conversion claim under Pennsylvania law. (App. 13.) We disagree with both conclusions.

1. The Continuing Validity of the Assignment

The District Court was correct to review and consider the written life insurance assignment in ruling on PNC's motion to dismiss, as it was expressly mentioned by, and integral to, the allegations in the complaint. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). But we part with its rejecting Scott's

¹ The District Court had jurisdiction under 28 U.S.C. § 1332(a), and we have jurisdiction under 28 U.S.C. § 1291.

contention that the assignment was negated when her husband repaid the RBC loan in 2004.

To make that assessment, we first determine the law that governs the validity of the assignment agreement. “As a federal court sitting in diversity, we apply the choice-of-law rules of the forum state, which is Pennsylvania in this case.” *Pac. Emps. Ins. Co. v. Glob. Reins. Corp. of Am.*, 693 F.3d 417, 432 (3d Cir. 2012) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). “Pennsylvania applies the flexible, ‘interests/contacts’ methodology to contract choice-of-law questions.” *Id.* (quoting *Hammersmith v. TIG Ins. Co.*, 480 F.3d 220, 226–27 (3d Cir. 2007)) (internal alterations omitted). Under this approach, we first determine the possible bodies of law that might apply, and next examine those bodies of law for relevant differences. *See id.* If there are “actual, relevant differences between the laws,” then we conduct a further inquiry to choose between them. *Id.*

Here the two candidates are Pennsylvania (where the dispute arose) and North Carolina (where the assignment agreement has its center of gravity, as both Scott’s husband and RBC resided there). However, as concerns the validity of the assignment agreement, we do not discern an “actual, relevant difference[.]” between these two bodies of law. Under both, the default rule is that, when a debtor discharges a secured obligation, the security automatically expires on the obligation’s discharge. *See, e.g., Smith v. Durham*, 37 S.E. 473, 473 (N.C. 1900); *Rozen v. N. Carolina Nat’l Bank*, 588 F.2d 83, 86 (4th Cir. 1978); *Dalfonso v. Benson*, 2016 WL 6803836, at *4 (Pa. Super. Ct. Nov. 17, 2016). Indeed, this is a well-established background principle of secured

transactions in the United States. *See, e.g., Wilbur v. Almy*, 53 U.S. 180, 196–97 (1851) (rejecting claim based on security interest where party asserting claim had already received payment of the underlying debt); *Roberts v. Welch*, 43 N.C. 287, 291 (1852) (noting that “the whole benefit” of a “collateral security . . . sinks with the extinguishment of the debt”). As Judge Posner once colorfully explained, a security interest is “parasitic” on a debt obligation. If the obligation is discharged, “poof! the lien is gone.” *Unisys Fin. Corp. v. Resolution Tr. Corp.*, 979 F.2d 609, 611 (7th Cir. 1992). Under this background principle, the natural result of Scott’s husband repaying the RBC loan in 2004 is the automatic extinguishment of the assignment.

To be sure, one could argue that the assignment agreement overrides this background principle. In relevant part, it states:

This assignment is made and the Policy is to be held as collateral security for any and all liabilities of [Scott’s husband] or Marathon Holdings, LLC[,] to the Assignee, both those now existing and those that may hereafter arise in the ordinary course of business between . . . the undersigned and the Assignee

(App. 35 ¶ D.) Thus, PNC could argue, the assignment survived the repayment of the RBC loan and applied, thirteen years later, as collateral for PNC’s loan to AccuDoc. The District Court appears to have implicitly adopted this line of reasoning. (App. 12–13.)

However, we believe it was premature to rule that the assignment survived the repayment of the RBC loan, persisted for another thirteen years (during which RBC happened to be acquired by PNC), and then applied as collateral to PNC’s unrelated loan to AccuDoc. Based on the complaint’s allegations, we cannot conclude that PNC’s 2017 loan to AccuDoc was “within the ordinary course of business” established in the 2003

assignment between Scott's husband and RBC. Indeed, in these circumstances we believe the "ordinary course of business" between Scott's husband and RBC must have expired within some reasonable time after he repaid the RBC loan in 2004 and had no further dealings with RBC or PNC. Nonetheless, for purposes of this appeal, we need not rule whether or when that expiration occurred. Discovery will presumably clarify this issue. For now we merely hold the complaint alleges sufficiently that PNC had no right to invoke the assignment in 2017 to gain negotiating leverage over Scott in the wake of her husband's death.

2. Conversion of Insurance Proceeds

The District Court dismissed the conversion claim for a second reason. It concluded that, under Pennsylvania law, a claim for conversion cannot be based on the alleged non-payment of insurance proceeds. (App. 13.) For this proposition, it cited federal district court cases and a decision by the Superior Court of Pennsylvania. (*Id.*) But we do not read those cases so broadly. In each of them, the court held that a claim for conversion cannot stand when there is a contract between the parties that governs the same disputed funds. Courts have denied claims for conversion in that situation because the dispute is better handled as a breach of contract. *See, e.g., Leonard A. Feinberg, Inc. v. Cent. Asia Capital Corp., Ltd.*, 974 F. Supp. 822, 845 (E.D. Pa. 1997) ("These decisions refused conversion claims because they felt that the true remedy for the harm alleged lay in contract and not in tort."); *Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co.*, 860 A.2d 1038, 1043 (Pa. Super. Ct. 2004) ("[T]he essence of [plaintiff's] claim is a breach of contract action.") (citing *Feinberg*, 974 F. Supp. at 845), *rev'd on other*

grounds, 905 A.2d 462 (Pa. 2006). In the absence of a contract claim between Scott and PNC concerning its initial invocation of the assignment, we see no reason her conversion claim must be dismissed as duplicative under the authorities cited by the District Court.

We note, however, that Scott's claim that PNC wrongfully interfered with her receipt of the insurance proceeds might conform more naturally to a claim for interference with contract. *See Daniel Adams Assocs., Inc. v. Rimbach Pub., Inc.*, 519 A.2d 997, 1000 (Pa. Super. Ct. 1987). Scott should have an opportunity on remand to amend her complaint to add that claim.

B. Fraud

The elements of fraud under Pennsylvania law are (1) a representation or omission, (2) that was material to the transaction, (3) made falsely with the requisite mental state, (4) with the intent of misleading another into relying on it, (5) justifiable reliance on the misrepresentation, and (6) injury proximately caused by the reliance. *Bortz v. Noon*, 729 A.2d 555, 560 (Pa. 1999). The District Court dismissed Scott's fraud claim because she alleged neither a misrepresentation nor justifiable reliance. (App. 14–15.)

This claim does not deserve a long discussion. The District Court was correct: the complaint does not allege justifiable reliance by Scott on any false or misleading statement or omission by PNC. To the contrary, the basis of her conversion claim is that she knew PNC did not have a right under the assignment to interfere with her receipt of the insurance proceeds. Hence the complaint does not adequately allege a claim of fraud, and we affirm its dismissal.

C. Breach of the Duty of Good Faith and Fair Dealing

Pennsylvania law does not recognize a distinct claim for breach of the duty of good faith and fair dealing. *See Burton v. Teleflex Inc.*, 707 F.3d 417, 432 (3d Cir. 2013). Recognizing this, the District Court construed Scott’s good-faith claim as a claim for breach of contract. (App. 16–17.) Nonetheless, it concluded the complaint failed to allege a contract claim because Scott “has not even identified what contract was breached.” (App. 16.)

We diverge from our District Court colleague on this point. The complaint expressly alleges that Scott and PNC reached an agreement on January 31, 2018, to resolve their ongoing dispute over the insurance proceeds and the March 2017 loan. (App. 30 ¶¶ 44–46.) The terms of the agreement were that (i) Scott would make a loan of \$500,000 to AccuDoc, (ii) Scott’s loan to AccuDoc would be subordinated to AccuDoc’s debt to PNC to the extent of \$500,000, (iii) once the loan was made, AccuDoc would use the funds to repay its debt to PNC, and (iv) once AccuDoc transferred the funds to PNC, it would instruct Transamerica to release the insurance proceeds to Scott. (App. 25 ¶ 16.)

Scott performed her part of the bargain by transferring \$500,000 to AccuDoc and causing it to repay its debt to PNC. (*Id.* ¶ 17.) But PNC did not initially perform its end of the bargain; instead it continued to obstruct, although briefly, her receipt of the insurance proceeds and demanded subordination terms for their agreement. (App. 26 ¶ 19.) When Scott cried foul about the new terms, PNC demanded that she sign a revised agreement that purported to absolve it of liability stemming from its negotiations with her. (App. 27 ¶ 24.) Scott did not sign that release. (App. 28 ¶ 26.)

Given these allegations, the District Court should not have concluded that Scott did not allege the existence of a contract. Yet, in oral argument Scott conceded that none of the damages alleged in her complaint arose from PNC's alleged deviations from the January 31, 2018 agreement in the few days before it released the insurance proceeds on February 9. Thus we affirm the dismissal of that claim.

* * * * *

We affirm the District Court's dismissal of Scott's claim for fraud and breach of the duty of good faith and fair dealing, but we reverse the dismissal of her claim for conversion. The case is remanded for further proceedings consistent with this opinion.