FILED

January 27, 2021

Christopher D. Rafano, J.S.C.

JIAN SHEN, HUI ZHU, and J&H ELITE INVESTMENT GROUP, Plaintiffs, v. HYUNDAI MARINE & FIRE INSURANCE CO., LTD., Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO.: MID-L-3099-20 CIVIL ACTION **ORDER**

THIS MATTER having initially been opened to the Court upon motion of defendant Hyundai Marine & Fire Insurance Co., Ltd. ("Hyundai"), for an Order dismissing the Complaint, with prejudice, and the Court having considered the papers filed by counsel, oral argument, and the reasons on the record and set forth herein and good cause having been shown;

It is on this 27th Day of January, 2021;

ORDERED that Hyundai's motion to dismiss, with prejudice, be and hereby is **GRANTED**; and it is further

ORDERED that a copy of this Order is to be served upon all counsel within 7 days of receipt by the moving party.

/s/ Christopher D. Rafano, J.S.C.
Hon. Christopher D. Rafano, J.S.C.

__X__ Opposed
____ Unopposed

STATEMENT OF REASONS

HON. CHRISTOPHER D. RAFANO, J.S.C.

Presently before the Court is a motion to dismiss filed by Defendant, Hyndai Marine & Fire Insurance Company, and a cross-motion for summary judgment filed by Plaintiffs, Jian Shen et. al. This matter involves a dispute over insurance coverage where Hyundai has denied Plaintiff coverage after a fire badly damaged a building previously owned by her individually. Defendant's position is that Plaintiff's complaint should be dismissed because Plaintiff did not have an insurable interest at the time of the fire. Defendant argues that Plaintiff lost her insurable interest because she transferred ownership rights to an LLC some time before the fire, and did not notify Hyundai, which lapsed her coverage. Plaintiff's position is that Hyundai's recission of the policy was improper because as a matter of public policy and based on reasonable expectation Ms. Shen still had an insurable interest on the property despite transferring ownership to an LLC. Plaintiff argues that under New Jersey law, legal title is not required to have an insurable interest, thus Ms. Shen never lost hers.

This matter was originally returnable on September 11, 2020. Oral argument was first heard on September 18, 2020. Counselors were given an extension of time to produce additional information related to the Hyundai insurance policy. Counselors were then given a second extension on December 18, 2020 when Plaintiff requested leave to file a late certification. Both motions are now currently returnable on January 8, 2021 and oral argument was heard before Judge Rafano on January 11, 2021.

DISCUSSION

Defendant argues that Plaintiff's claim must be dismissed as a matter of law as Shen – without advising Hyundai at any time – transferred ownership of the property to "J&H Elite Investment Group, LLC" ("J&H"). Once Hyundai learned of the transfer to a business entity, the Policy was rescinded *ab initio* as Hyundai would not have insured this risk if owned by a

business entity. Furthermore, because Ms. Shen did not possess an "insurable interest" in the property, the Complaint must be dismissed.

Hyundai's rescission *ab initio* was proper. The Policy specifically provides that "assignment of this policy will not be valid unless we give our written consent". (*See* Exhibit "A" of Defendant's Motion to Dismiss). This language is required by N.J.S.A. 17:26-5.19. Ms. Shen did not seek consent to transfer the Policy, nor was it provided.

Defendant argues that "a misrepresentation is material if, had it been revealed, the insurer would either not have issued the policy or would have insured only at a higher premium." *Palisades Safety & Ins. Assn v. Bastien*, 175 N.J. 144 (2003). As such, rescission of an insurance policy is appropriate if the insured's application for coverage included a misrepresentation of the fact that materially affects the insurer's decision to enter the contract, the estimation of the risk or the rate of the premium. *First Am. Title Ins. Co. v. Lawson*, 177 N.J. 125 (2003). Here, Defendant has clearly stated in their moving papers and during oral argument that their policies vary based on whether the insured is an individual or a business. Furthermore, Hyundai stated they would not have issued this policy to Shen under the business entity that it was transferred to. Therefore, under prevailing New Jersey law, transferring ownership to an LLC without even notifying Hyundai clearly presents a misrepresentation that can be the basis of rescission.

Additionally, Defendant asserts that Hyundai's denial of coverage was proper as Shen – the named insured – did not maintain an insurable interest in the Property once she transferred ownership to a business entity. To support this position, Defendant relies on *Shotmeyer v. N.J. Realty Ins. Co.*, 195 N.J. 72 (2008), a Supreme Court case that involved two brothers who initially created a general partnership to purchase real estate and, in connection with same, title insurance was purchased for a 24-acre farm. Approximately ten years later, the two brothers formed a limited partnership, with a similar name to the general partnership, that consisted of three partners: the two brothers individually as limited partners and a new corporation that was

also formed and owned by the brothers. About ten years later again, the brothers noticed their plot size was reduced from 24 acres to 12 acres on the tax bill and they learned that two judgments had been filed, declaring that 12 of the acres belonged to a neighbor and not the partnership.

A claim was filed against their title insurance company which denied coverage based on the lack of an insurable interest. Of note, the Supreme Court held that the transfer of the property to a limited partnership was a "deliberate and voluntary conveyance to a separate legal entity," so that the property belonged to the limited partnership, and not the brothers. The Court also found that individual insureds, and limited liability companies they own, are separate entities from each other. The Court explained that the transfer of assets to a corporation offered particular business and personal advantages to the brothers such as protection from personal liability. As such, the Court held that the brothers could not recover as named insureds under the title insurance policy. See also *Harleysville v. Burnett*, 2014 WL 3557692, at *4 (App. Div., July 21, 2014)(noting that a corporate entity is "an entity separate and distinct" from its sole owner).

As was the case in *Shotmeyer*, Shen purchased the insurance in her personal name and then transferred the property to a business entity, thereby taking advantage of certain protections even though, like the brothers in *Shotmeyer*, she retained an interest in the business entity. However, as the Supreme Court noted, Shen effectuated a transfer to a "separate legal entity" and the property therefore belongs to J&H, and not Shen.

This Court is satisfied that an insurance policy is personal to the purchaser. The policy is not assignable, pursuant to both the policy language and New Jersey statutes. Thus, under *Shotmeyer*, Jian Shen lost her insurable interest in the property when she conveyed her right, title and interest to the corporation, then subsequently failed to notify Hyundai of the change. The Court finds that Jian Shen did not have an insurable interest at the time of the fire. Therefore, the Court finds that Plaintiff does not have a claim for which relief can be granted.

Additionally, this Court is not persuaded by Plaintiff's supplemental argument in opposition of Defendant's motion to dismiss and in support of Plaintiff's cross-motion for summary judgment. Specifically, Plaintiff argues that Hyundai issued a dwelling policy in a different case being heard by the Supreme Court of the State of New York where the plaintiff was not required to notify Hyundai of a deed transfer. Under the language of that policy there is nothing that gives Hyundai the right to deny a claim when there is a change of deeded ownership. However, the policy in question bears no authority on Jian Shen's case before us now.

In fact, Defendant directly contests the assertion of Plaintiff by citing to *N.J.S.A.* 17:36-5.19, which states that a dwelling policy cannot be assigned by the insured to anyone else, except with the written consent of the insurer. The Court agrees with Defendant that Plaintiff lost her insurable interest in the property when she conveyed her right, title and interest to the corporation. Defendant further points to the "owner-occupancy" clause that is also in the New York policy. This clause clearly states that a personal insured, such as Jian Shen, loses coverage under this basis.

Therefore, Defendant's motion to dismiss is **GRANTED** and Plaintiff's cross-motion for summary judgment is **DENIED**.