

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES E. PAPPAS, M.D. : CIVIL ACTION
 :
 v. :
 :
 THE EQUITABLE LIFE ASSURANCE SOCIETY : No. 97-CV-6586

O R D E R - M E M O R A N D U M

AND NOW this 18th day of September, 1998 plaintiff Charles E. Pappas, M.D.'s motion for partial summary judgment is denied. Fed. R. Civ. P. 56.¹

On October 6, 1997 Pappas filed a complaint in the Philadelphia Court of Common Pleas, for payments alleged to be due under a disability income policy. On October 24, 1997 the action was removed to federal court. 28 U.S.C. § 1446. Jurisdiction is diversity. 28 U.S.C. § 1332.

Pappas seeks to compel Equitable to issue him two additional monthly disability income policies.² On September 7, 1982 defendant sold plaintiff a disability income policy. Compl., ¶ 4;

¹"[S]ummary judgment should be granted if, after drawing all reasonable inferences from the underlying facts in the light most favorable to the non-moving party, the court concludes that there is no genuine issue of material fact to be resolved at trial and the moving party is entitled to judgment as a matter of law." Kornegay v. Cottingham, 120 F.3d 392, 395 (3d Cir. 1997) (quoting Spain v. Gallegos, 26 F.3d 439, 446 (3d Cir. 1994) (citations omitted)).

²It is doubtful whether Pappas would gain from an order compelling Equitable to process his option applications. Plaintiff appears ineligible for option benefits after June 28, 1994 because the option does "not cover a period of total disability which starts before the option date." Resp., ex. B. On June 28, 1994 plaintiff became totally disabled. Compl., ¶16.

Mot., ¶ 1; Answer, ¶ 4. Defendant subsequently issued plaintiff disability income policy number N82704605, which included an option to purchase additional monthly income policies. Mot. ¶¶ 1,2, resp., ¶¶ 1,2.

Plaintiff contends that prior to two option deadlines, he "advised Defendant that he wished to exercise his Option to buy additional monthly income." Compl. ¶ 79, mot., ¶ 6.³ Specifically, he asserts that in 1994 he mailed an option request form to Equitable, and in 1994 and 1996, spoke with two representatives of Equitable regarding his option. Pappas affidavit. Both representatives advised him that he was ineligible to exercise the disability income option. Id.

Defendant's position is that it has no record of Pappas' alleged request to exercise the option. Resp., at 1. According to Scott J. Williams, who administers the Equitable's disability business:

There is no written documentation from Dr. Pappas in either 1994, 1995 or 1996 applying for the new policy(ies) under the Option to Purchase Additional Monthly Income Rider. Furthermore, there is no record of any request by Dr. Pappas to Equitable or by Equitable to Dr. Pappas in 1994 or 1996 relating to Dr. Pappas' claim that he wished to exercise his Option to purchase Additional Monthly Income.

Resp., app. C.

³The complaint alleges that Pappas attempted to buy additional disability income in 1995 and 1996. Compl., ¶ 79. According to the motion, Pappas attempted to buy additional disability income in 1994 and 1996. Mot., ¶ 6.

There is a genuine issue whether plaintiff attempted to exercise an option to purchase additional disability income. This question cannot be resolved at this stage and will have to be submitted to a fact-finder.

Edmund V. Ludwig, J.