

11/25/14
2014

IN THE SUPERIOR COURT FOR THE
COUNTY OF RICHMOND, STATE OF GEORGIA

L. WAYNE GRIFFIN, and all)	CIVIL ACTION NO.
other persons similarly)	
situated,)	
)	
Plaintiffs)	
v.)	
)	COMPLAINT
AMERICAN DEFENDER LIFE)	
INSURANCE COMPANY,)	
)	
Defendant)	

NOW COMES the named plaintiff, for himself and all persons similarly situated, and brings this his complaint against the defendant and shows as follows.

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Richmond County, Georgia.
2. The defendant, American Defender Life Insurance Company, is an insurance company authorized to do business in the State of Georgia and sells credit life and credit disability or accident insurance (hereafter "credit insurance") in the State of Georgia.
3. The defendant is subject to the jurisdiction of this Court. The contract of insurance out of which the claim of the named plaintiff arose was made in Richmond County, Georgia, and the defendant has an agent or place of conducting business in Richmond County, Georgia. Venue is proper pursuant to the provisions of O.C.G.A. Sec. 33-34-1(2) and 33-34-1(3).

II. FACTUAL BACKGROUND

4. In connection with a credit transaction on April 2,

1986, in Richmond County, Georgia, defendant sold to the named plaintiff credit insurance and charged premiums therefor in excess of the amounts permitted by Georgia law.

5. In connection with the selling of credit insurance to plaintiff and others similarly situated, the defendant has caused commissions to be paid to its agents or those affiliated with its agents in excess of the amounts permitted by Georgia law and by regulations promulgated by the Insurance Commissioner of the State of Georgia.

6. In selling credit insurance in the State of Georgia, defendant is regulated as to the premiums it may charge and the commissions it may pay by the regulations of the Georgia Insurance Commissioner at Chapter 120-2-27, a copy of which is attached hereto as Exhibit "A" and which have been interpreted in Directive No. 77-PF-1 of the Insurance Commissioner, attached hereto as Exhibit "B."

III. CLASS ACTION ALLEGATIONS

7. Plaintiff brings the claims set forth in this case on behalf of himself and all other persons similarly situated as a class action pursuant to Rule 23 of the Georgia Civil Practice Act, O.C.G.A. Sec. 9-11-23. The persons constituting this class are so numerous as to make it impractical to bring all of them before the Court. There are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; and the representative party will fairly and adequately represent the interests of the class.

8. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

9. The persons who make up the class alleged in this case and for whom a class action should be certified by the Court are those persons who meet the following criteria:

(a) Persons who have purchased either credit life insurance, credit disability insurance, or credit accident and sickness insurance (hereinafter referred to as "credit insurance") from the defendant within ten years prior to the filing of this complaint; and

(b) Persons who were residents of the State of Georgia at the time they purchased said insurance, or who purchased the insurance in the State of Georgia.

IV. CAUSES OF ACTION

COUNT ONE

10. All previous allegations of this complaint are incorporated into this count by reference.

11. By charging insureds higher premiums than permitted by law, by paying commissions, either directly or indirectly, in excess of those permitted by law, and by using rates where the actuarially anticipated loss on claims incurred as against the premium earned from the sale of the policies will be less than 50%, defendant has obtained funds unjustly and by fraud from the named plaintiff and all persons similarly situated.

12. Plaintiff and the members of the plaintiff class are entitled to the establishment of a constructive trust on all funds held by the defendant in an amount no less than 50% of the gross premiums charged on the sale of credit insurance in any of the last ten years in the State of Georgia less that amount of money paid by defendant in any such year for claims on credit insurance, plus that amount by which defendant paid commissions, directly or indirectly, in excess of the 40% limit imposed by Georgia law in any of the last ten years.

COUNT TWO

13. All previous allegations of this complaint are incorporated into this count by reference.

14. In the sale of credit insurance by defendant and its agents in the State of Georgia, the terms and provisions of existing law and regulations then in effect were a part of the contract of sale of credit insurance to the named plaintiff and all persons similarly situated.

15. Defendant has breached its contracts with the named plaintiff and with all other persons similarly situated by charging premiums at rates that unlawfully allow defendant to pay commissions, either directly or indirectly, in excess of 40% of the total premium charged.

16. Defendant has also breached its contract by charging credit insurance premiums at a rate in excess of the debt owed and so high as to cause defendant to fail to pay out at least 50% of

the premiums collected and earned in benefits to policyholders or beneficiaries.

17. Plaintiff and all persons similarly situated are therefore entitled to recover of defendant not less than the difference between 50% of the gross premiums charged on the sale of credit insurance in Georgia for the last six years and the amount of money paid by defendant in claims for benefits on said insurance. Plaintiffs are also entitled to recover of defendant the amount of commissions paid by defendant in excess of the 40% limit permitted by law for a period of six years prior to the filing of this lawsuit.

COUNT THREE

18. All previous allegations of this complaint are incorporated into this count by reference.

19. The contracts of credit insurance sold by defendant to the plaintiff and all persons similarly situated have charged excessive and unfair premiums and have generated excessive and unfair commissions so as to render the contracts unconscionable.

20. The Court should therefore enter a declaratory judgment that the premiums charged to policyholders and the commissions paid to defendant's agents are unconscionable; should require the defendant to reduce said premiums and commissions to a level in compliance with Georgia law; and should enter a judgment requiring that the defendant refund to the plaintiffs all premiums which have been collected by defendant in excess of conscionable premiums for the insurance which was sold.

COUNT FOUR

21. All previous allegations of this complaint are incorporated into this count by reference.

22. The conduct of the defendant complained of herein by plaintiff has been in violation of the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. Sec. 16-14-1, et. seq. (RICO), in that the defendant, in concert with others, has carried out a pattern of racketeering activity as prohibited by O.C.G.A. Sec. 16-14-3.

23. In particular, defendant has acted willfully and intentionally to unlawfully obtain the property of plaintiff and others similarly situated by deception, deceitful means and artful practices in violation of O.C.G.A. Sec. 16-8-3; and by converting to its own use premiums to which it was not entitled in violation of the prohibitions against theft by conversion in O.C.G.A. Sec. 16-84-; and by committing unlawful acts prohibited by O.C.G.A. Sec. 16-14-3(3)(A)(xxix) specifically mail and wire fraud in violation of 18 U.S.C. Secs. 1341 and 1343. Said acts have been committed by defendant on hundreds of occasions beginning when defendant first began to sell credit insurance in the State of Georgia and continuing to the filing of this lawsuit.

24. Defendant's illegal activities have included entering into agreements with creditor institutions and individual agents whereby defendant has set credit insurance premium rates in excess of the debts owed, which allowed it to pay back in excess of 40% of the premiums charged as direct or indirect commissions,

and which caused defendant to fail to return in benefits at least 50% of the premiums charged, all in knowing and willful violation of Georgia law and regulations promulgated by the Georgia Insurance Commission.

25. Defendant has, through a pattern of racketeering activity or the proceeds derived therefrom, acquired or maintained, directly or indirectly, an interest in or control of an enterprise, real property or personal property, including money, and has been associated with an enterprise to conduct or participate in, directly or indirectly, the pattern of racketeering activity alleged herein.

26. As a direct result of defendant's violation of Georgia RICO in connection with paying and agreeing to pay commissions in excess of the maximum legal limit, and in setting rates which do not at any time provide that at least 50% of every premium dollar be returned to the insureds as benefits, defendant has injured the named plaintiff and members of the class.

27. Plaintiffs, pursuant to the provisions of O.C.G.A. Sec. 16-14-6 are entitled to, and specifically request that the Court:

(a) Order the defendant to divest itself of an interest in any enterprise, real property or personal property, including all profits made by defendant which are in direct violation of the regulations promulgated by the Insurance Commissioner of Georgia in Chapter 120-2-27;

(b) Impose reasonable restrictions upon the future

activities or investments of the defendant, including prohibiting the defendant from engaging in the sale of credit life and credit disability or accident insurance in the State of Georgia, or prohibiting the defendant from paying out commissions, either directly or indirectly, in excess of 40% of premiums or charging premiums which do not allow at least 50% of every premium dollar to be paid as benefits under said policies;

(c) Order the dissolution or reorganization of all agreements with agents of the defendant so as to prohibit the charging of unlawful rates or the payment of unlawful commissions;

(d) Order the suspension or revocation of any license issued to the defendant permitting it to sell credit insurance in the State of Georgia;

(e) Order the forfeiture of any charter of the defendant or the revocation of any certificate authorizing it to do business in the State of Georgia; and

(f) Require the defendant to pay back to the class as a whole all monies it has paid as commissions in excess of 40% of premiums, either directly or indirectly, and all sums of money equalling the difference between 50% of the premiums collected and the aggregate of all benefits paid under said policies, and that said sum be trebled as damages to the plaintiff as provided by law.

WHEREFORE, plaintiff prays:

A) That process issue requiring the defendant to be and appear in this Court to answer the allegations contained in this complaint;

B) That this Court impose an implied trust on all monies held by the defendant which the defendant has collected from the sale of credit insurance in Georgia in the last ten years equal to the difference between 50% of all premiums collected and the aggregate of all monies paid out in benefits under said policies; and an amount equal to all commissions paid, directly or indirectly, in excess of 40% of the total premiums;

C) That the plaintiffs be awarded damages for breach of contract, together with interest on said sums;

D) That this Court declare that the rates charged by defendant for credit insurance and the commissions paid to its agents are unconscionable, and require the defendant rebate to plaintiffs all amounts that are in excess of a conscionable or fair amount for premiums and commissions;

E) That this Court grant to the plaintiffs those available civil remedies for violation of the Georgia RICO statute, as prayed for herein, including treble damages, punitive damages and attorney's fees, and requiring defendant to divest itself of any interest in any enterprise, real property or personal property gained as a result of its violation of the Georgia RICO statute, imposing reasonable restrictions on the future activities or investments of the defendant such as ordering the dissolution or reorganization of any enterprise and/or ordering the suspension or revocation of the defendant's license to sell credit insurance in Georgia;

F) That this Court enter an order certifying that this action shall proceed as a class action;

G) That the Court grant such additional relief and costs as are permitted by law.

Respectfully submitted this 23 day of August,
1989.

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