

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

MARY GARASOLO,

Plaintiff,

vs.

Case No. 2018-000370-CK

BENJAMIN HUDSON, AXA ADVISORS,  
LLC, AXA FINANCIAL, INC,

Defendants.

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OPINION AND ORDER

This matter is before the Court on defendant Benjamin Hudson's ("Hudson") motion for summary disposition under MCR 2.116(C)(7) and (C)(8).

**I. Factual and Procedural Background**

Plaintiff Mary Garasolo ("Plaintiff") brings a breach of contract and a breach of fiduciary duty claim against Hudson and co-defendants AXA Advisors, LLC and AXA Financial, Inc. Hudson explains that he was the broker of record for a retirement plan for which Herbert F. Jones was eligible and that in May 2017, Hudson went to Herbert F. Jones, Jr's home in order to open a new account/consolidate two of Mr. Jones' accounts. Plaintiff alleges in her complaint that Mr. Jones directed Hudson to make Plaintiff the beneficiary of a life insurance policy. Mr. Jones has since died. Plaintiff was not listed as the beneficiary of the policy, but rather Thomas Larsen is listed as the beneficiary. Plaintiff thus asserts her claim that Hudson's failure to make the beneficiary change in accordance with Mr. Jones' alleged verbal representations was a breach of contract and a breach of fiduciary duty.

**II. Standard of Review**

A motion for summary disposition under MCR 2.116(C)(8) must be granted where “[t]he opposing party has failed to state a claim on which relief can be granted.” Where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery” summary disposition should be granted. *Wade v Dept of Corr*, 439 Mich 158, 163; 483 NW2d 26 (1992). A motion brought under this court rule tests the legal sufficiency of the plaintiff’s claim and the result is the determination of whether or not the plaintiff has established a prima facie case. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A motion under this court rule is decided solely on the pleadings. MCR 2.116(G)(5). “Conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action.” *Churella v Pioneer State Mutual Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003).

### **III. Arguments**

Hudson argues that because there is no ambiguity in the beneficiary designation, Plaintiff may not present extrinsic evidence to show that Mr. Jones had a different intent.

Plaintiff responds that Mr. Jones’ intent was to direct all of his assets to Plaintiff and this is demonstrated by extrinsic evidence such as the disposition of other assets and text messages referencing the subject account. Plaintiff further argues that summary disposition is premature prior to the close of discovery.

Co-defendant AXA Advisors, LLC responds that written notice of a change to a listed beneficiary was required, and that it received no such written notice from Mr. Jones. Thus, the listed beneficiary remained Thomas Larsen at the time of Mr. Jones’ death. AXA Advisors, LLC seeks dismissal of the claims with prejudice, or direction from the court on how to distribute the account.

#### **IV. Law and Analysis**

It is well settled that a court must construe a contract based on its plain terms alone; only where there is ambiguity may the court look to extrinsic evidence to determine meaning. *In re Matter of Kremlick's Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983). Here, Plaintiff argues that though the account designates Thomas Larsen, only, as beneficiary on the account, the court should review extrinsic evidence to create an ambiguity. There is no patent or latent ambiguity in identifying a single individual, who is not Plaintiff, by name as the sole beneficiary of the account. See *id.* Plaintiff is legally unable to show that Mr. Jones had a different intent than the one expressed in writing. Based on the pleadings alone, then, Plaintiff's complaint does not state a claim on which relief may be granted.

**V. Conclusion**

For the reasons set forth above and as stated in Defendant Hudson's motion and brief, Defendant Hudson's motion is GRANTED and Plaintiff's claims against him are dismissed. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* does not resolve the last pending claim and this case remains open.

IT IS SO ORDERED.

DATED:

**JENNIFER FAUNCE**  
CIRCUIT JUDGE

JUN 18 2018

A TRUE COPY  
COUNTY CLERK

BY: *Stelana Hund* Court Clerk

Hon. Jennifer M. Faunce

cc: Robert H. Fortunate  
Natalia Kujan Gentry  
David M. Saperstein  
Moheeb Murray