UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAUL M. SORBERA, Plaintiff,	:	
v.	:	CIVIL NO: 3:17-CV-01653 (AVC)
NEW YORK LIFE INSURANCE COMPANY, Defendant.	:	

RULING ON THE DEFENDANT'S MOTION TO DISMISS

This is an action for damages in which the plaintiff, Paul M. Sorbera (hereinafter "Sorbera"), alleges that the defendant, New York Life Insurance Company (hereinafter "New York Life"), wrongfully failed and refused to provide Mr. Sorbera with the disability benefits required by his disability insurance policy.[1] This action is brought pursuant to the Connecticut Unfair Trade Practices Act (hereinafter "CUTPA")[2], the Connecticut Unfair Insurance Practices Act (hereinafter "CUIPA")[3], and common law tenets concerning breach of contract and bad faith.

The defendant has filed the within motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), on the grounds that each of plaintiff's claims were untimely, and that even if all

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[1] This is plaintiff's second action on this claim, as his first action, Sorbera v. New York Life Ins. Co., 14-cv-901-PAC, brought in the Southern District of New York, was dismissed in 2016 "for want of prosecution."
[2] Conn. Gen. Stat. §§ 42-110a et seq.
[3] Conn. Gen. Stat. §§ 38a-815 et seq.

claims were timely, plaintiff has not alleged facts sufficient to state each claim.

The issues presented are: 1) whether the breach of contract and bad faith claims are untimely; 2) whether the CUTPA/CUIPA claim is untimely; and 3) whether the complaint sufficiently alleges a claim of bad faith or a violation of CUTPA/CUIPA.

For the following reasons, the motion to dismiss counts one through three (document 8) is DENIED.

FACTS

Examination of the complaint and the accompanying exhibits, discloses the following facts:

The plaintiff, Sorbera, resides in the State of Connecticut. The defendant, New York Life, is a New York insurance corporation duly licensed to do business in all fifty states, with its headquarters and principle place of business in New York, New York.

In July 2001, Sorbera purchased and continuously paid all applicable premiums for a disability insurance policy ("the policy") from New York Life. The policy provided "monthly income benefits for disability," which "means that the Insured cannot do the substantial and material duties of his or her regular job." The policy contained the following contractual limitation provision: "Legal Actions[.] With respect to any claim under this policy, no legal action may be taken against us during the

60 days after receipt of the written proof, or after 3 years from the date proof is required to be given." The policy also set forth the following date proof of loss should have been given: "Proof of Disability or Loss[.] This policy provides for periodic payment for a continuing disability. You must give us written proof of disability within 90 days after the end of each period for which a benefit is payable." The "period for which a benefit is payable" is explained as follows: "Monthly Income Benefit for Total Disability[.] This benefit becomes payable as follows: . . . the elimination period must be satisfied." The Elimination Period is specified as "[t]he number of days the Insured must be disabled before monthly income benefits can become payable." The policy specifies that the elimination period is "90 days[.]"

On October 29, 2010, Sorbera suffered a stroke and was disabled until November 21, 2011, at which time he returned to work on a part-time basis. At the time of his stroke, Sorbera owned and managed Alliance Consulting, an employment placement firm. He worked approximately 60-80 hours per week and earned $775,228.00 for his work at Alliance.

The complaint alleges that since his stroke, Sorbera is unable to perform the main functions of his job and his income has greatly reduced. As a result, on September 10, 2011, Sorbera filed an individual disability claim with New York Life to recover benefits pursuant to the policy he purchased from New York Life. On February 23, 2012, New York Life closed Sorbera's claim without paying benefits.[4] Sorbera sued New York Life in the instant action for failing to provide benefits. The complaint alleges that Sorbera provided complete and timely responses to all reasonable and appropriate requests for information and documentation, requested by New York Life, in its review of his claim. Furthermore, the complaint alleges that despite Sorbera's timely responses, "New York Life wrongfully failed and refused to provide Mr. Sorbera with complete and/or residual disability benefits" required by the policy.

In count one, the complaint alleges that "a contract was formed when the [p]olicy was purchased on or about July 1, 2001" and that New York Life breached the policy by not paying his benefits after his stroke. Specifically, the complaint alleges that the policy contained provisions for "New York Life to make certain monthly payments to Mr. Sorbera in the event he became totally disabled, which payment would commence after a 90 day 'non-payable elimination period'" in addition to "monthly

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[4] The February 23, 2012 letter states "[w]e are unable to proceed with our evaluation of your claim, as the information outlined in this letter has not been received within the timeframe specified. Without this information, we are not able to evaluate your claim for eligibility of benefits under the Residual Disability provision of your policy, nor are we able to evaluate current restrictions and limitations, as we do not have medical certification beyond October 7, 2011. As such, no further follow ups will be sent and your claim will be closed."

payments to Mr. Sorbera in the event he had a 'residual disability,' if and when the total disability payments were no longer applicable."

In count two, the complaint alleges that New York Life "acted in bad faith because it had no reasonable basis to withhold payment from Mr. Sorbera for disability benefits for which he paid." Specifically, the complaint alleges that New York Life "knew or recklessly disregarded the fact that it had no reasonable basis to withhold payment from Mr. Sorbera for which he paid."

In count three, the complaint alleges that New York Life's acts "constitute unfair and/or deceptive trade practices or acts in the conduct of trade or business, in violation of [CUTPA], which is codified in Conn. Gen. Stat. §42-110a, et seq. in that they violate [CUIPA], Conn Gen. Stat. §38a-816(6) which prohibits unfair claim settlement practices."

STANDARD

The court must grant a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure if a plaintiff fails to establish a claim upon which relief may be granted. A motion to dismiss "assess[es] the legal feasibility of the complaint, [but it does] not . . . assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc., 748

F.2d 774, 779 (2d Cir. 1984). When ruling on a motion to dismiss, the court must accept that the well-pleaded facts alleged in the complaint are true and draw all reasonable inferences from those facts in favor of the plaintiff. See Sykes v. James, 13 F.3d 515, 519 (2d Cir. 1993).

The issue at this juncture is not whether the plaintiff will prevail, but whether he should have the opportunity to prove his claim. See Conley v. Gibson, 355 U.S. 41, 45 (1957). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)); see also Gibbons v. Malone, 703 F.3d 595, 599 (2d Cir. 2013). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678; see also Twombly, 550 U.S. at 555 (stating that a complaint must provide more than "a formulaic recitation of the elements of a cause of action"). In its review of a 12(b)(6) motion to dismiss, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local

504, 992 F.2d 12, 15 (2d Cir. 1993).

DISCUSSION

I. Timeliness

New York Life argues that each of Sorbera’s claims (breach of contract, bad faith, and violations of CUTPA/CUIPA) is untimely. Specifically, New York Life argues “the breach of contract and bad faith claims are governed by a contractual limitation provision in [Sorbera’s] disability policy that mandated the filing of any litigation under the policy no later than May 26, 2014. New York life also argues that “[t]he CUTPA/CUIPA claim had to be filed within three years of the occurrence of the violation” due to a three-year statute of limitation period.

Sorbera responds that the denial of his benefits “was not based on a substantive reason but rather because certain information requested by NY Life from Mr. Sorbera was not received in NY Life’s arbitrarily-imposed time frame.” With respect to the breach of contract and bad faith claims, Sorbera specifically argues that the rule of strict contractual compliance should not apply since New York Life “is not prejudiced by the alleged delayed filing of the lawsuit because it was put on notice when Mr. Sorbera originally filed his claim (which was denied on Febuary 23, 2012) and when he filed the New

York Action, which was dismissed without prejudice." With respect to the CUTPA/CUIPA time bar issue, Sorbera specifically argues that "the grounds for dismissal . . . are premature without allowing discovery on the issue" and that a statute of limitations defense is not properly adjudicated on a motion to dismiss.

The statute of limitation defense "may be raised in a motion to dismiss if the running of the statute is apparent from the face of the complaint." Collin v. Securi Int'l, 322 F. Supp. 2d 170 (D. Conn. 2004)(Fitzsimmons, M.J.), citing Velez v. City of New London, 903 F. Supp. 286, 289 (D. Conn. 1995) (Dorsey, C.J.). Although the defense is typically an affirmative defense, "it may be raised by a pre-answer motion to dismiss under Rule 12(b)(6) without resort to summary judgment procedure, if the defense appears on the face of the complaint." Pani v. Empire Blue Cross Blue Shield, 152 F.3d 67, 74 (2d Cir. 1998).

In this case, the complaint alleges that Sorbera "provided complete and timely responses to all reasonable and appropriate requests for information and documentation requested by New York Life relative to their review of his [September 10, 2011] claim." The complaint also alleges that in the policy, New York Life promised that it would "make certain monthly payments to Mr. Sorbera in the event he became totally disabled." The facts and contractual provisions New York Life relies on as evidence to support its motion to dismiss are outside of the four corners of the complaint, and thus beyond the scope of a motion to dismiss. Therefore, New York Life must affirmatively plead its statute of limitations defense. The issue of whether the statute of limitations presents a bar to the plaintiff's claims in this case is more appropriately decided at a later stage of the proceedings, after the close of discovery. As a result, the motion to dismiss counts one through three, based upon contractual limitations and the expiration of the statute of limitations, is denied.

II. Failure to State a Claim

New York Life next argues that Sorbera does not allege conduct that constitutes a claim for bad faith or for violation of CUTPA/CUIPA. Specifically, New York Life argues "[e]ven if allegations of wrongful, negligent or reckless conduct could suffice to state a claim for bad faith, [the] plaintiff has not pleaded any facts that would support a plausible conclusion that NY Life acted in that manner." Similarly, the defendant argues Sorbera's claim for violation of CUTPA/CUIPA "does not allege facts, only conclusions."

Sorbera responds, "given the case law surrounding Fed. R. Civ. P. 8 in conjunction with bad faith and CUTPA/CUIPA, Mr. Sorbera concedes that the Complaint requires an amendment to flush out the facts and allegations that would give rise to bad faith and CUTPA/CUIPA violations.” Specifically, Sorbera seeks leave to amend the complaint pursuant to Fed. R. Civ. P. 15(2) “to provide a more robust explanation of the allegations to support [his] claims” since “the statute of limitations has not run on any of the causes of action.”

Federal Rule of Civil Procedure 15 provides that parties may either amend once as a matter of course, or once the time period has elapsed, move for leave to file an amended complaint. Parties who fail to file an amended complaint within 15(a)(1)’s time period, or who seek additional amendments, may seek the consent of their opposing party or the court’s leave to amend. Federal Rule of Civil Procedure 15(a)(2) requires that the court “should freely give leave when justice so requires.” The decision to grant leave to amend is within the discretion of the court, but the court must give some “justifying reason” for denying leave. Forman v. Davis, 371 U.S. 178, 182 (1962). Reasons for denying leave to amend include “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” Id. Typically, “leave to amend will only be denied as futile if the proposed amended complaint cannot withstand a Rule 12(b)(6) motion to dismiss for failure to state a claim. Simmons v. Charter Comm.

Inc., 222 F. Supp. 3d 121, 133 (D. Conn. 2016).

In this case, the complaint alleges that "New York Life acted in bad faith because it had no reasonable basis to withhold payment" and that "[t]he acts... by New York Life constitute[d] unfair and/or deceptive trade practices or acts" in violation of CUTPA/CUIPA. Because evaluating contractual provisions is a fact-intensive endeavor, it is inappropriate to dismiss Sorbera's claims at this preliminary stage without granting an opportunity to amend. Thus, the court grants leave to amend the complaint only to enable Sorbera to cure deficiencies with respect to his allegations of bad faith and CUTPA/CUIPA violations. Consequently, the court concludes that defendant's motion to dismiss based on failure to state a claim is denied with respect to counts two and three and plaintiff's request for leave to amend is granted.

CONCLUSION

For the foregoing reasons, the defendant's motion to dismiss the plaintiff's complaint (doc. no. 8) is denied.

It is so ordered, this 1st day of August 2018, at Hartford, Connecticut.

______/s/____________________
Alfred V. Covello
United States District Judge