Agents & Brokers

Statute of Limitations for Fraud in the Sale of Insurance Policies Is 3 Years, and It Begins No Sooner than When the Purchaser of the Policy Sustains Damages

Agent's Action against Insurer for Inducing Agent to Sell Fraudulent Policy Accrued When Insured Sued Agent, Not When Agent Sold Policy

Bullard v. Guardian Life Ins. Co. of Am., __ So.2d __, 2006 WL 3094125 (Miss. Nov. 2, 2006)

Case at a Glance

In 1990 a couple bought life insurance from Guardian and its agent Terry Bullard. The couple alleged that they were assured that they would have to pay only one premium. Years later in 2000, Guardian sought more premium money and the couple sued both Guardian and the agent for fraud in that year. The purchasers settled with the defendants. The defendant agent then cross- claimed against the defendant insurer in 2002. The insurer moved for summary judgment on the cross-claim based on the statute of limitations, and the district court granted that motion. The Mississippi Supreme Court reversed and remanded, holding that the 3-year statute of limitations on the agent's cross-claim started to run when the couple filed suit in 2000, not when the agent sold the policy.

Summary of Decision

Facts & Procedure Below. A physician and his wife purchased life insurance from Guardian through its agent Bullard in 1990. They claim Bullard assured them that there would be a "single premium" only. It was $96,132. The insurer and the agent settled with the purchasers. Thereafter, the agent cross-claimed. The agent had been accused of fraud, fraudulent concealment, misrepresentation, negligence, conspiracy, breach of fiduciary duty, and breach of the duty of good faith and fair dealing. The agent alleged that "Guardian induced him to sell the [plaintiffs] a life insurance policy based upon false and misleading sales presentations, policy illustrations, and other marketing and sales material." In an amended cross-claim, the agent alleged that the insurer had injured his reputation after the purchasers filed their suit, and that it "'appeared to the community that Guardian's 'vanishing premium' concept caused him to betray his policyholders.'"

The plaintiffs settled in 2001. The agent then filed a cross claim in early 2002, and the plaintiffs were dismissed from the lawsuit later in 2002. Shortly thereafter, the insurer moved for summary judgment, and it was granted. Notice that no summary judgment motion based upon the issue of statute of limitation was filed against the purchasers of the policy.

Appeal. The agent appealed on two grounds. First, did the trial court err in holding that the statute of limitations barred his claim? Second, was the statute of limitations tolled by fraudulent concealment? There was a huge majority, which produced a short opinion, and a tiny dissent, that produced a longer opinion. The majority considered only the first question, which it answered affirmatively: the trial court had erred in holding that the statute of limitation barred the agent's claim.

Majority Reasoning. One Justice wrote the opinion; six concurred in the decision and the reasoning; one concurred in the result only (and hence neither the holding nor the reasoning; one dissented.

The majority opinion stated that a tort is not actionable before he suffered damages. "In the absence of damage, no litigable claim arose." Causes of action do not exist before they accrue, and they do not accrue before they can be filed. The Guardian agent could not have suffered monetary damages (or any other form of damage) before the purchasers sued him—since, for example, he had incurred no attorney's fees—and his reputation could have suffered damage for what happened in 1990 only when the purchasers "went public" with their complaint. In this case, there was no publicity before the filing.

Dissent Reasoning. A long line of Mississippi cases hold that the statute of limitation in a fraud case begins to run at the time of the sale of whatever is crucial (in this case, an insurance policy). That would be 1990. This limitation period can be extended only by acts of fraudulent concealment. This proposition

is established by Mississippi statute, Miss. Code §15-1-67 (Rev. 2003).

Cases interpreting the statute articulate conjunctive criteria for determining whether there has been fraudulent concealment. There must be both "'(1) some affirmative act or conduct [that] was done [and which] prevented discovery of a claim, and (2) due diligence was performed [by the person alleging fraud] to discover it.'" *Stephens v. Equitable Life Assurance Co.* 850 So.2d 78, 84 (Miss. 2004). "'Merely alleging that the other side has complete control of [information] simply will not suffice.'" *Sanderson Farms, Inc. v. Ballard,* 917 So.2d 783, 790 (Miss. 2005). Bullard was not able to prove either (1) or (2). He should, therefore, lose his case.

Comment

The opinion of the dissent is unsound. Suppose *A* sells an investment to *B* in 1990 and states unequivocally that worth of the investment will quadruple in 10 years. Suppose further that *A* knows that his assertion is false when he makes it, but remains silent. Finally suppose that the investment doubles in size by 2000, but no more. The view of the dissent is that *B* could not sue *A* after 1993, if there is a three year statute of limitation. What is plainly false about this is that *A*'s assertion cannot be judged until 2000, and only then will the statute of limitations begin to run. Analogously the statute of limitation in a "single payment"/"vanishing premium" life case will not start running until a second payment is demanded.

Could the following have been argued in the *Bullard* case? Guardian cannot raise the statute of limitation issue against the agent, because it did not raise it against the purchaser, and if the argument was good against the agent, it was good against the purchaser. One wonders why the statute of limitations was not raised against the original plaintiffs.

Finally, there is a plausible speculation. In the end, this case was a mixed subrogation and personal interest case. To the extent the agent participated in settling with the purchasers, his E & O carrier is subrogated and is trying to get its money back from Guardian. To the extent that the agent is complaining about injury to his reputation, the case is his, and not the carrier's. // Quinn