

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
))
Plaintiff,)
))
v.)
))
HERITAGE UNION LIFE INSURANCE CO.,)
))
Defendant.)
))

HERITAGE UNION LIFE INSURANCE CO.,)
))
Counter-Plaintiff,)
))
v.)
))
SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
))
Counter-Defendant,)
))
))
FIRST ARLINGTON NATIONAL BANK, et al.,)
))
Third-Party Defendants.)
))

ELIOT IVAN BERNSTEIN,)
))
Cross-Plaintiff,)
))
v.)
))
TED BERNSTEIN,)
Cross-Defendant,)
))
PAMELA B. SIMON, et al.,)
))
Third-Party Defendants.)
))

)

Case No. 13 C 3643
Judge Amy St. Eve

ORDER

The Court grants the Third-Party Defendants' motion to dismiss and dismisses the Third-Party Defendants from this lawsuit [100].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company ("Defendant" or "Jackson"), as successor in interest to Heritage Union Life Insurance Company ("Heritage"), filed an amended notice of removal pursuant to 28 U.S.C. § 1441, removing the present lawsuit from the Circuit Court of Cook County based on the Court's diversity jurisdiction. *See* 28 U.S.C. § 1332(a). On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. On September 22, 2013, Eliot Ivan Bernstein, a Third-Party Defendant to Jackson's interpleader claim, filed a Third-Party Complaint against Third-Party Defendants Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina (hereinafter "Third-Party Defendants" or "Tescher and Spallina"). Before the Court is Tescher and Spallina's motion to dismiss the Third-Party Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), (2), and (6). For the following reasons, the Court grants the Third-Party Defendants' motion to dismiss pursuant to Rule 12(b)(6) and dismisses the Third-Party Defendants from this lawsuit.

BACKGROUND

In their First Amended Complaint filed on January 13, 2014, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit, the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are all of Simon Bernstein's children, including Eliot, although Eliot did not consent to being a Plaintiff in this lawsuit. (*Id.* ¶¶ 5, 8.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

On September 22, 2013, Eliot filed a pro se Third-Party Complaint against Tescher and Spallina, who are Florida probate attorneys. Construing his pro se allegations liberally, *see Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013), Eliot alleges claims of fraudulent conversion, breach of fiduciary duty, legal malpractice, abuse of the legal process, common law conversion, civil conspiracy, and negligence in connection with the administration of Simon Bernstein's Estate in the Probate Court of Palm Beach County, Florida.

LEGAL STANDARDS

“A motion under Rule 12(b)(6) tests whether the complaint states a claim on which relief may be granted.” *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012). Under Rule 8(a)(2), a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must “give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citation omitted). Under the federal notice pleading standards, a plaintiff’s “factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Put differently, 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, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570). “In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true.” *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013).

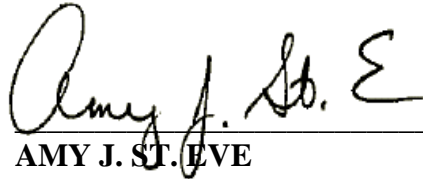
ANALYSIS

The Third-Party Defendants move to dismiss the Third-Party Complaint as improper under Rule 14(a). *See Mizuho Corp. Bank (USA) v. Cory & Assoc. Inc.*, 341 F.3d 644, 649 (7th Cir. 2003). Rule 14(a) sets forth the circumstances in which a defendant may bring a third party into a lawsuit and states in relevant part: “A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Put differently, bringing in a third party “presupposes liability on the part of the original defendant which he is attempting to pass on to the third-party defendant.” *Parr v. Great Lakes Exp. Co.*, 484 F.2d 767, 769 (7th Cir. 1973); *see also* 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 1441 (“Impleader, or third-party practice as it is called in Rule 14, is the procedure by which a defendant can bring in as a third-party defendant one alleged to be liable to defendant for all or part of plaintiff’s claim against defendant.”).

Here, Eliot is not an original Defendant to Plaintiffs’ First Amended Complaint in which they bring a breach of contract claim based on Simon Bernstein’s life insurance policy against Jackson. Instead, Eliot is a Third-Party Defendant in Jackson’s interpleader action. More importantly, because Eliot is a Third-Party Defendant to the interpleader claim, he is not facing any liability in this lawsuit. *See MetLife Investors USA Ins. Co. v. Zeidman*, 734 F.Supp.2d 304, 310 (E.D.N.Y. 2010) (“Rule 14 limits a defendant to joining third parties that share or supersede the defendant’s liability to the plaintiff.”). Instead, Eliot is seeking damages against Tescher and Spallina for other claims, namely, fraudulent conversion, breach of fiduciary duty, legal malpractice, abuse of the legal process, common law conversion, civil conspiracy, and negligence in connection with the administration of Simon Bernstein’s Estate in the Probate

Court of Palm Beach County, Florida. Rule 14(a) does not authorize Eliot to seek any such relief in the present lawsuit because Eliot is not facing any liability in the first instance. The Court therefore grants Tescher and Spallina's motion to dismiss.

Dated: March 17, 2014



AMY J. ST. EVE
United States District Court Judge