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Emma K. Tourgee,
Plaintiff,
Against
The Equitable Assurance Society
of the United States,
Defendant.

Complaint.

The Plaintiff in the above-entitled action alleges as a cause of action against said Defendant:

1--That she is a resident of the State of New York and that the Defendant is a corporation existing and operating under and by virtue of a charter granted by said State.

2--That on the thirteenth day of September, 1883, the said Defendant entered into contract with Albion W. Tourgee whereby it agreed in consideration of the said Albion W. Tourgee taking out a certain Policy of Life Assurance at a specified annual premium, to pay the said Albion W. Tourgee a sum of money to be ascertained in a specified manner at the expiration of a term of twenty years after the said 13th day of September, 1883.

3--That in accordance with said agreement, the said Defendant made and executed to said Albion W. Tourgee, a Policy of Assurance on the life of said Tourgee, whereby it agreed to pay to him, his "executors, administrators or assigns "the sum of Fifteen Thousand Dollars". Said Policy was numbered 264,580, dated September 13, 1883 and signed by the Secretary and President of said Society. A Copy of the same is hereto annexed marked "Exhibit A" and prayed to be taken as a part of this comlaint.

4--That on another fold of the sheet of paper on which the contract of Assurance on the life of said Albion W. Tourgee, is printed also the terms of another and wholly different contract to wit, a "Tontine Agreement" by which the said Society agreed

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to pay to the said Albion W. Tourgee the sum of Fifty-nine hundred and ninety-five one hundredths dollars and certain other sums, the amount of which could not be ascertained or stated until the lapse of the "Tontine Period" of twenty years and of which Plaintiff has no knowledge and can obtain no information from the Defendant who alone controls the date from which the same can be determined.

5--That Plaintiff is informed and believes that on the 25th day of September, 1883, the said Albion W. Tourgee executed an assignment of the said Policy, No. 264,580, in the words and figures following, to wit:

"FOR ONE DOLLAR to me in hand paid and for other valuable considerations (the receipt of which is hereby acknowledged) I hereby assign, transfer, and set over all my right, title and interest in Policy No. 264580 on the life of myself (A.W. Tourgee) issued by THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, and all money which may be payable under the same to Joseph E. Temple of the City of Philadelphia, Pa., and for the consideration above expressed, I do also guarantee the validity and sufficiency of the foregoing assignment to the above named assignee, /.....executors, administrators and assigns; and their title to the said Policy will forever warrant and defend.

IN WITNESS WHEREOF I have hereunto set my hand and seal this twenty-fifth day of September, 1883.

In presence of
Aug. H. Moore.

A.W. TOURGEE, (SEAL).

State of Pennsylvania, :
Philadelphia, County of Philadelphia. : ss.

On this twenty-fifth day of September in the year of our Lord, 1883, before me personally came A.W. Tourgee, to me known to be the individual who executed the foregoing assignment, and acknowledged that he executed the same.

F.F. Brightly, (SEAL).
Notary Public."

6--That Plaintiff is advised ~~and believes~~ that such assignment being absolute in terms, was sufficient to convey to the assignee named, all the interest of the said Albion W. Tourgee, in the said Policy of Assurance and in default of protest on the

part of the other heirs or assigns of said Albion W. Tourgee, would have authorized the payment of the full amount of said Policy with the dividends accruing thereon after the lapse of the "Tontine Period" to said assignee or his legal representatives, but is not sufficient to convey any interest in the "Tontine Agreement" which was not an essential part of the contract of Assurance, but merely an inducement offered by the said Societ for the taking out of such Assurance.

7--That the Plaintiff is advised that not only are the said contract of Assurance and the said Tontine Agreement distinct and separate in character and terms, but are so mutually subversive in import and conditions that they may be said to have only three things in common,--that they are between the same parties, of even date and printed on different folds of the same piece of paper--the one being conditioned on the life of the said Albion W. Tourgee and the other on ~~the~~ his death, ~~of the same.~~

8--That the interest of the said Albion W. Tourgee in the contract of Assurance was distinct and positive accruing at once on the issue of said Policy, while his interest in the Tontine Agreement was hypothetical and contingent on an event which would not occur under twenty years.

9--That up to the end of the "Tontine Agreement" period, viz September 13, 1903, the said Albion W. Tourgee had no interest in said Tontine which could in case of death have passed to ~~the~~ his heirs, executors or administrators.

10--That there is no reference in said "Tontine Agreement" to the "heirs, executors, administrators or assigns" of said Tour Tourgee as in the Policy of contract of Assurance, ~~assignable~~ and this is advised

and that the said Tourgee had no assignable right thereunder until the 13th day of September, 1903, when a heritable interest in said Tontine accrued. Up to that date he had only a contingent hope that an interest might accrue.

11--That she is advised that at the date of the assignment of the Policy to Joseph E. Temple, the said Albion W. Tourgee had a didtinct and positive "right, title and interest" in said Polic and in "all money which may be payable under the same" to wit, to the sum of $15,000 payable "to his executors, administrators or assigns" on the death of said Albion W. Tourgee, the "cash surrender value" of the same, and the dividends accruing thereon after the lapse of the "Tontine Period", and that these interests and moneys were included by the terms of said assignment and not the Tontine Agreement.

12--That she is advised that the option to receive either cash, paid up Assurance or an annuity in discharge of said Tontine Agreement, was a valuable constituent of said contract pertaining especially to the said Tourgee, not a part of the contract of Assurance and could only be assigned by an instrument authorizing another to act in his behalf or in his name in choosing such option and that the assignment to Temple neither contains such authorization nor is any such authority inferable from its terms.

13--That she is informed and believes that said Albion W. Tourgee never assigned any interest in said Tontine Agreement to any person nor authorized any one to act in his name, by his authority or in his behalf in choosing one of the four options which constituted essential conditions of the fulfillment of

of said Tontine Agreement previous to the thirteenth day of September,1903.

14--That on the said 13th day of September,1903,on which day the right to demand fulfillment of said Tontine Agreement first accrued to said Albion W.Tourgee,he assigned the same to this Plaintiff and authorized her to make election of the options provided for in said Tontine Agreement and receive and receipt the proceeds thereof;and on the next day said Albion W.Tourgee appeared before the Vice-Consul of the United States of America at Bordeaux,and officer duly qualified to take acknowledgements of such instruments and duly acknowledged the execution of the same.

15--That said instrument was executed in duplicate,one of which was transmitted by the first mail leaving for the United States,to her agent in New York,by whom she is informed that he presented the same to the proper officer of said Equitable Assurance Society on the 26th day of September,1903.

16--That said Defendant by its proper officers refused to recognize said assignment to Plaintiff,alleging that they had paid over said Tontine to the heirs of Joseph E.Temple on the 15th of September,1903,part in cash and part in an annuity on the life of said Albion W.Tourgee;that said payments known by said Defendant to have been without the knowledge or consent of said Albion W.Tourgee and without specific authority to any one to act for him in the election of the option which might be conformable to his interest or [illegible] See Exhibit No.

17-- That she is informed and believes that said assignment of Policy No.264,580,to Joseph Temple while in form absolute

was in fact as security for liability of said Albion W. Tourgee as endorser of a note of OUR CONTINENT PUBLISHING COMPANY, a part of which note represented usurious interest; that the exact amount of said liability has never been ascertained by judgment or otherwise, and that said Defendant corporation was informed before the maturity of said Tontine Agreement that the interest of the heirs of Temple in said Policy was as security only, and that the said Albion W. Tourgee claimed a contingent interest therein.

18--That she is advised that said assignment to Temple being intended only as security, could not have embraced the Tontine Agreement, which though conditional on the maintenance of the Policy during a specific period, was no part of said Policy and could not reasonably have been designed to give the assignee or his representatives power to choose in his name or in his behalf, since to do so would be to give a creditor power ~~to choose in what manner a debtor should be discharged~~ to prescribe the way and manner in which a debtor might discharge his obligations.

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

1--That said Defendant be required to fully disclose to said Plaintiff the actual composition and value of said Tontine under each of the said options embraced in said Contract, to the end that she may make election between the same.

2--That an order be granted requiring the Defendant to pay over to the Plaintiff such sum of money and deliver such insurance or annuity as the Plaintiff may elect under the options by which said Tontine Agreement is conditioned with interest and damages for

the detention of the same since the 13th day of September,1903

3--For the costs of this action.

4--For such other and further relief as the Court may accor

curi[illegible], the Plaintiff in the above-entitled action

EMMA K. TOURGEE, the Plaintiff in the above-entitled action being duly sworn deposes and says that the facts set forth in the foregoing as of her own knowledge are true and those set forth on information and belief to be true.

Emma K. Tourgée

Subscribed and sworn to in my presence
this 17th day of October.

Vice and Deputy Consul of the United States of America at Bordeaux, France.

CHAUTAUQUA COUNTY HISTORICAL SOCIETY

KNOW ALL MEN:

That I, Emma K. Tourgee of Mayville, Chautauqua County in the State of New York, temporarily residing in Bordeaux, France

BY THESE PRESENTS do nominate and appoint

Mr WALTER S. CARTER,

Attorney at Law of the City of New York, my true and lawful attorney for me and in my name and for my behoof, to collect, prosecute or adjust all claims which I have or may have against the Eqitable Life Assurance Society of the United States and receipt for all monies payable thereon, hereby according to my said Attorney full power of substitution and revocation and ratifying and confirming all that my said Attorney or any substitute may lawfully do by virtue of these presents, the same as if I were present and did the same myself.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 17th day of October, 1903.

Emma K. Tourgée

THE UNITED STATES OF AMERICA,

CONSULATE OF BORDEAUX, ss.

REPUBLIC OF FRANCE.

Personally appeared before me Louis J. Fricot, Vice Consul of the United States of America in for said Consulate, Emma K. Tourgee, to me well-known as the person who signed the foregoing Power of Attorney, and acknowledged to me that she executed the same of her own accord to effect the purposes therein set forth.

WITNESS my hand and the seal of this Consulate this 17th day of October, 1903.

Vice Consul of the United States of America at Bordeaux, France.