STATE OF NORTH CAROLINA COUNTY OF PITT	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21 CVS 0052
COLUMBUS LIFE INSURANCE COMPANY, Plaintiff, v. WELLS FARGO BANK, N.A., as Securities Intermediary, Defendant.	**ORDER AND OPINION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

THIS MATTER comes before the Court on the parties' cross-motions for summary judgment ("Motions," ECF Nos. 105, 108).

THE COURT, having considered the Motions, the briefs, exhibits, affidavits, arguments of counsel, and all other appropriate matters of record, **CONCLUDES** that Defendant's Motion should be **GRANTED**, in part, and **DENIED** as moot, in part, and that Plaintiff's Motion should be **DENIED**.

Cozen O'Connor, by Travis R. Joyce, Michael J. Broadbent, Philip J. Farinella, Isaac A. Binkovitz, and Gregory J. Star for Plaintiff Columbus Life Insurance Company.

K&L Gates LLP, by Zachary S. Buckheit, Matthew T. Houston, and A. Lee Hogewood III, and Schulte Roth & Zabel, LLP, by Harry S. Davis and Robert E. Griffin, for Defendant Wells Fargo Bank, N.A., as Securities Intermediary.

Davis, Judge.

INTRODUCTION

1. The ultimate issue in this case lies at the crossroads of two well-settled doctrines in North Carolina. First, life insurance policies that are merely "wagering contracts" on the life of the named insured are void from their inception as contrary to public policy. Second, the holder of a valid life insurance policy is free to sell or assign that policy to any third party for any reason following the policy's issuance. Based on the present Motions, the Court must decide whether a life insurance policy taken out by the named insured on his own life solely for the purpose of later selling it to investors is void as an unlawful wagering contract under North Carolina law. For the reasons set forth below, the Court concludes that the insurance policy at issue is legally valid.

FACTUAL AND PROCEDURAL BACKGROUND

2. "The Court does not make findings of fact on motions for summary judgment; rather, the Court summarizes material facts it considers to be uncontested." *McGuire v. Lord Corp.*, 2021 NCBC LEXIS 4, at **1–2 (N.C. Super. Ct. Jan. 19, 2021) (cleaned up).

3. In 2004 or early 2005, Dr. Gordon E. Trevathan, Jr. learned from his friend, Fred Webb, that Webb had made extra money—with no required upfront investment on Webb's part—by allowing a life insurance policy to be taken out on his life that would subsequently be sold to investors. (Trevathan Dep. 7:20–8:15, ECF

Nos. 107.4, 109.2.)[1] Webb informed Dr. Trevathan that if he was interested in likewise doing so, he should meet with an insurance producer named Wesley Chesson—who had assisted Webb with this process. (Trevathan Dep. 8:6–15.)

4. During this time period, Chesson was a principal of the Chesson Company, Inc. (the "Chesson Company"), a brokerage life insurance agency. (Chesson Dep. 21:19–22:5, ECF Nos. 107.5, 109.3.) Chesson also operated a separate entity called E&W, LLC ("E&W"),[2] a licensed North Carolina premium-finance company.[3] (Chesson Dep. 23:14–16, 61:20–63:10; NCDOI Rs., ECF No. 107.28.)

5. Shortly thereafter, Dr. Trevathan met with Chesson at Webb's office to learn more about what the process entailed. (Trevathan Dep. 9:12–10:21.) Chesson stated that in his capacity as an insurance producer he could help Dr. Trevathan obtain a life insurance policy and receive a premium finance loan from E&W to pay the policy premiums for the first two years that the policy was in force. The premium

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[1] For exhibit descriptions that do not lend themselves to easy abbreviations, the Court will simply refer to the applicable exhibit number or letter and omit reference to the exhibit's corresponding brief in an effort to improve readability. *Numerically* marked exhibits accompanied Defendant's Brief in Support of its Motion for Summary Judgment. *Alphabetically* marked exhibits correspond with Plaintiff's Brief in Support of its Motion for Summary Judgment. Descriptions of the unabbreviated exhibits can be found in the Index of Attachments to Brief in Support of Defendant's Motion for Summary Judgment (ECF No. 107), and the Declaration of Philip J. Farinella in Support of Columbus Life Insurance Company's Motion for Summary Judgment (ECF No. 109.1). Furthermore, with the exception of exhibits that are deposition transcripts, the pinpoint citations to exhibits in the record correspond to the Bates numbering employed by the parties, which is stamped on the lower right corners of the exhibit pages.

[2] The Chesson Company and E&W are occasionally referred to herein collectively as the "Chesson Entities."

[3] Premium-finance companies assist individuals or entities seeking to obtain an insurance policy who desire "premium financing," which occurs when an insured takes out a loan to cover the cost of premiums associated with the policy.

finance loan would be secured by the policy itself, which would serve as the sole collateral for the loan—meaning that E&W would not have the right to obtain any other personal property of Dr. Trevathan in the course of seeking repayment of the loan in the event of a default.[4] The premium finance loan would mature after the policy had been in force for two years, at which time Dr. Trevathan would be able to choose one of the following three options: (1) surrender the policy to E&W in full satisfaction of the loan; (2) pay off the loan balance to E&W and continue to retain the policy for himself going forward; or (3) sell the policy and use the proceeds to satisfy the loan balance. (Trevathan Dep. 9:12–10:21, 11:24–17:20; Chesson Dep. 38:24–45:2.)

6. In his 24 November 2020 deposition, Dr. Trevathan testified that he had not been in the market for life insurance prior to his initial discussions with Webb and Chesson. (Trevathan Dep. 14:22–15:3.) Furthermore, when asked if he had any beneficiaries (such as a wife or children) for whom he wished to provide financial benefits by means of life insurance coverage, Dr. Trevathan responded that "[t]hey weren't his thoughts at that time." (Trevathan Dep. 15:4–10.) Instead, Dr. Trevathan testified, he believed that obtaining an insurance policy on his life "looked like an easy way to accumulate some funds." (Trevathan Dep. 15:13–14.) Additionally, Dr. Trevathan testified that at the time the policy was taken out he had no intention of either paying the premiums himself or subsequently paying back the loan and retaining the policy. (Trevathan Dep. 16:9–12.)

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[4] Such an arrangement is known as non-recourse premium financing.

7. On or about 11 February 2005, Chesson submitted an application (the "Application") to Plaintiff Columbus Life Insurance Company ("Columbus Life") for a life insurance policy on behalf of Dr. Trevathan. (Application, ECF No. 109.7; Chesson Dep. 29:16–34:23.) The Application, which was executed by Dr. Trevathan in Greenville, North Carolina, sought a $1 million policy with a $1 million rider, naming himself as the owner of the policy and his estate as the beneficiary. (Application, at 1036–38.) The Application also contained a representation that the policy's benefits would be used for "Personal and Family Protection." (Application, at 1039.) The Application did not disclose the fact that the initial premiums for the policy were being funded through a non-recourse premium finance loan from E&W.

8. On 9 March 2005, Columbus Life issued the life insurance policy (the "Policy") to Dr. Trevathan that is the subject of this lawsuit. (Policy, ECF Nos. 107.1, 109.8.) Dr. Trevathan was 81 years old at the time the Policy was issued. (Policy, at 448.)[5]

9. Chesson sent a letter to Dr. Trevathan memorializing the terms of E&W's non-recourse premium finance loan on 24 March 2005. (Prem. Fin. Agrmt. Letter, ECF Nos. 107.2, 109.4.) This letter confirmed that the premiums for the first two years the Policy was in force would be paid by E&W and that, after two years, Trevathan would have the following options:

> 1. Do not repay loan and relinquish all rights of policy ownership to E & W, LLC. Loan becomes null and void.

[5] As of the date the present Motions were filed, Dr. Trevathan was still alive.

2. Sell the policy in the life settlement marketplace within a two month period after the second policy anniversary. Any gain after loan repayment goes to policyowner.

3. Pay off loan to E&W, LLC and retain all rights of policy ownership.

(Prem. Fin. Agrmt. Letter, at 67.)

10. An addendum to the letter provided an estimate of the amount of money for which the Policy could be sold in the life settlement market after two years and a projection of the amount of the net proceeds Dr. Trevathan could expect to receive if he were to exercise his option to sell the Policy. (Prem. Fin. Agrmt. Letter, at 68.)

11. On 9 May 2005, Hill, Chesson, and Woody—another company with which Chesson was affiliated—submitted to Columbus Life an assignment form that had been completed by Dr. Trevathan. On this form, Dr. Trevathan checked the applicable box signifying that he was merely making a "collateral assignment" of the policy (as opposed to an "absolute assignment") to E&W in connection with the Policy. (Ex. 29, ECF No. 107.30.)[6]

12. On 31 March 2005, Chesson transmitted a check in the amount of $94,190.16 to Columbus Life, which represented the Policy's first annual premium payment. (Ex. 3, ECF No. 107.3, at 1078; Ex. I, ECF No. 109.10.) The check was drawn on the account of E&W. (Ex. 3, at 1078; Ex. I.) Shortly thereafter, the Chesson Company received a check from Columbus Life in the amount of $84,771.14, which constituted Chesson's producer commission with regard to the issuance of the Policy. (Ex. J, ECF No. 109.11, at 133.)

[6] The significance of this distinction is discussed later in this Opinion.

13. The Chesson Company subsequently submitted a check to Webb for $9,419.01, which amounted to 10% of the initial premium on the Policy. (Ex. K, ECF No. 109.12, at 160.)

14. On or about 17 May 2005, Columbus Life wrote to E&W that the collateral assignment to E&W "ha[d] been recorded[.]" (Ex. 29, at 53.)

15. Approximately twenty months later, on 8 February 2007—in anticipation of the sale of the Policy by Dr. Trevathan—E&W executed the "RELEASE" portion of the collateral assignment form, thereby releasing and cancelling its collateral assignment in the Policy. (Ex. 35, ECF No. 107.36.) Four days later, Columbus Life acknowledged to E&W that its records had been "documented to indicate that the assignment to E & W, LLC has been released." (Ex. 36, ECF No. 107.37.)

16. Chesson ultimately began marketing the policy to potential buyers and eventually engaged the interest of seventeen bidders. (Chesson Dep. 80:8–97:5, 115:22–118:16; Ex. 53, ECF No. 107.55; Ex. 54, ECF No. 107.56; Ex. 55, ECF No. 107.57; Ex. 56, ECF No. 107.58; Ex. 57, ECF No. 107.59; Ex. 58, ECF No. 107.60; Ex. 59, ECF No. 107.61.) On or about 30 May 2007, a life settlement broker, Advanced Settlements, sent Chesson a letter informing him that an undisclosed buyer had offered $400,000 to purchase the Policy. (Ex. 58; Ex. L, ECF No. 109.13.) Advanced Settlements also informed Chesson that he could receive $160,000 as a commission resulting from the sale. (Ex. 58; Ex. M, ECF No. 109.14.)

17. On 31 May 2007, the Policy was sold pursuant to a "Purchase and Sale Agreement" to Advanced Settlements' purchaser, LifeTrust, LLC ("LifeTrust"), on behalf of LifeTrust's client, Assured Holdings ("Assured"). By virtue of the transaction, the Policy would be owned by Assured's affiliate, Church Street Nominees Limited ("CSNL"). The ultimate purchase price for the policy was $440,000. (Ex. 6, ECF No. 107.6, at 100; LifeTrust Dep. 11:15–12:15, 28:7–32:2, 46:2–47:3, 80:14–81:18, ECF Nos. 107.7, 109.17.)[7]

18. The Purchase and Sale Agreement provided that the sale proceeds would be delivered to the Chesson Company on Dr. Trevathan's behalf. (Ex. 6, at 109; Ex. O, ECF No. 109.16, at 109.) Additionally, the Purchase and Sale Agreement required certain forms to be completed by Dr. Trevathan, including a "Premium Financing Disclosure" form. On this form, Dr. Trevathan—incorrectly—checked the box that stated: "The Policy is NOT a Premium Financed Policy." (Ex. 6, at 118; Ex. O, at 118; Trevathan Dep. 36:7–37:20; Chesson Dep. 113:4–115:16.)

19. On or around 18 June 2007, Columbus Life received change of ownership and beneficiary forms that sought to change the owner and beneficiary of the Policy to CSNL. (Ex. 37, ECF No. 107.38.) Columbus Life sent CSNL a letter on 22 June 2007 that stated: "We received your recent request to change the ownership and beneficiary on the [Policy]. The changes have been recorded." (Ex. 37, at 81.)

[7] As discussed in more detail later in this Opinion, there is no evidence in the record that either Advanced Settlements, LifeTrust, Assured, or CSNL were involved in any way with the events leading up to the issuance of the Policy to Dr. Trevathan by Columbus Life.

20. On 3 July 2007, CSNL transmitted a check made payable to Dr. Trevathan in the amount of $440,000, for the sale of the Policy. (Ex. 6, at 61; Ex. Q, ECF No. 109.18.) Three days later, Dr. Trevathan sent a check to E&W in the amount of $234,827, accounting for the loan balance, with interest. (Ex. 9, ECF No. 107.10, at 57; Ex. R, ECF No. 109.19.) Dr. Trevathan retained $205,173 for himself, which represented the difference between the sale price and the loan balance. (Chesson Dep. 127:16–128:2; Ex. 6, at 100; Ex. 8, ECF No. 107.9, at 61–62; Ex. 9, at 57.)

21. Approximately five years later, in June 2012, ownership of the Policy was once again changed when the Policy was sold by CSNL to Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), as Securities Intermediary for the owner of the Policy, LSH, Co. ("LSH").[8] (Ex. 18, ECF No. 107.19.)

22. On or around 11 June 2012, Columbus Life received a fax from Wells Fargo enclosing Change of Policy Owner and Change of Beneficiary forms on the Policy, which sought to change the owner and beneficiary of the Policy to Wells Fargo, as Securities Intermediary for LSH. (Ex. 18, at 374–80.) On 2 July 2012, Columbus Life sent a fax to Wells Fargo advising that the change of ownership and beneficiary on the Policy had been recorded on 15 June 2012. (Ex. 19, ECF No. 107.20.)

23. After acquiring the Policy, LSH, through its agents, sought several affirmations from Columbus Life over the next few years that the Policy remained valid. (Ex. 21, ECF No. 107.22; LSH Dep. 100:1–25, ECF No. 107.11 [SEALED], ECF

[8] LSH acquired the Policy on the tertiary market as part of a purchase of a portfolio of policies. (Ex. W, ECF No. 109.24; Ex. X, ECF No. 109.25.)

No. 116.2; CMG Dep. 62:13–22, 81:16–82:7, 201:9–202:22, ECF No. 107.12; Ex. 38, ECF No. 107.39.) On each occasion, Columbus Life responded that the Policy was "in force," "Active," and "Premium Paying." (Ex. 21; Ex. 38.)

24. However, Columbus Life did not disclose to Wells Fargo that in 2011 it had placed the Policy on an internal list of "Potential Investor Owned / Life Settlement Policies." (Noschang Dep. 86:22–103:5, 119:18–122:21, ECF No. 107.33 [SEALED], ECF No. 116.4; Ex. 38; Ex. 39, ECF No. 107.40; Ex. 42, ECF No. 107.44, at Resp. No. 7.) This document listed policies that—based on various "red flags"—Columbus Life suspected could potentially be so-called "stranger-originated life insurance" ("STOLI") policies.[9] (Noschang Dep. 81:13–24.) With respect to Dr. Trevathan's Policy, Columbus Life's concerns were triggered by the fact that the premiums had been paid by E&W, the Policy had been assigned as collateral to E&W, and the Policy's ownership had changed approximately two years after the Policy was issued. (Noschang Dep. 62:1–7.)

25. Eight years after Wells Fargo purchased the Policy, Columbus Life ultimately decided to seek a declaratory judgment as to whether it was legally entitled to void the Policy as having been void *ab initio* as the product of a STOLI scheme. Columbus Life originally initiated a lawsuit against Wells Fargo on 4 May 2020 in the United States District Court for the Eastern District of North Carolina seeking a declaration as to whether the Policy was valid under North Carolina law. On 8 December 2020, the federal court entered an order declining to issue a

[9] The characteristics of STOLI policies are discussed in detail below.

substantive ruling on Wells Fargo's motion to dismiss the action, stating that because the parties' arguments raised unsettled issues of North Carolina law, the dispute should be adjudicated in the state courts of North Carolina. *See Columbus Life Ins. Co. v. Wells Fargo Bank, N.A.*, 2020 U.S. Dist. LEXIS 231414, at *17 (E.D.N.C. Dec. 8, 2020). Accordingly, the federal court dismissed the case without prejudice to Columbus Life's right to refile the lawsuit in state court. *Id*. at *18.

26. On 7 January 2021, Columbus Life initiated the present action by filing a Complaint in Pitt County Superior Court naming Wells Fargo and LSH as defendants.[10] (Compl., ECF No. 3.) The Complaint contained two related declaratory judgment claims. First, Columbus Life sought a declaration from this Court that the Policy is unenforceable as an illegal wagering contract on human life that violates North Carolina public policy. Second, Columbus Life requested a similar declaration that the Policy is likewise void for lack of an insurable interest under the laws of this State. (Compl. ¶¶ 36–45.)

27. This case was designated as a mandatory complex business case on 5 March 2021 and assigned to the Honorable Gregory P. McGuire. (Reassign. Order, ECF No. 7.) The case was subsequently reassigned to the undersigned on 1 July 2021. (Reassign. Order, ECF No. 43.)

28. On 29 September 2021, Wells Fargo filed an Answer (ECF No. 53) containing various affirmative defenses in which it asserted that the Policy is valid and enforceable. However, Wells Fargo also asserted, in the alternative, a

[10] LSH was later dismissed as a defendant by this Court. *See Columbus Life Ins. Co. v. Wells Fargo Bank, N.A.*, 2021 NCBC LEXIS 73, at **31 (N.C. Super. Ct. Sept. 2, 2021).

counterclaim against Columbus Life for "Return of Premiums" under "theories of unjust enrichment, quantum meruit, and/or restitution." (Answer ¶¶ 44–60.) In its counterclaim, Wells Fargo asserted that in the event the Court declared the Policy to be void, Columbus Life should be required to return to Wells Fargo all premiums ever paid on the Policy since its issuance, plus interest. (Answer ¶ 47.)

29. Wells Fargo subsequently filed an Amended Answer, Defenses and Counterclaims ("Amended Answer", ECF No. 92) on 9 May 2022. In this document, Wells Fargo added a new counterclaim for fraud. (Am. Answer, at 24–33.) However, Wells Fargo later took a voluntary dismissal of the fraud counterclaim. (Notice of Partial Voluntary Dismissal with Prejudice, ECF No. 104.)

30. On 11 November 2022, Columbus Life and Wells Fargo filed the present Motions. ("Pl.'s Mot.," ECF No. 108; "Def.'s Mot.," ECF No. 105.) In its Motion, Columbus Life seeks summary judgment in its favor on both of its own claims and as to Wells Fargo's counterclaim and affirmative defenses. (Pl.'s Mot., at 1.) Wells Fargo, in turn, requests in its Motion that the Court grant summary judgment in its favor as to Columbus Life's claims and, in the alternative, as to Wells Fargo's counterclaim. (Def.'s Mot., at 1.)

31. It is undisputed that, as of the date of the filing of the Motions, the amount of premiums collected by Columbus Life since the Policy was originally issued to Dr. Trevathan totaled approximately $2.7 million—$700,000 more than the face value of the death benefit under the Policy. (Fangman Dep. 14:24–17:20, ECF No. 107.29 [SEALED], ECF No. 116.3; Noschang Dep. 15:16–16:10, 63:12–64:11, 74:11–

75:6; Harrison Aff., ECF No. 107.53.) Moreover, because Dr. Trevathan is still alive and the Policy remains in force, Columbus Life is continuing to collect premiums on it.

32. The Court held a hearing on the Motions on 2 March 2023, and they are now ripe for resolution.

LEGAL STANDARD

33. It is well established that "[s]ummary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018) (quoting N.C. R. Civ. P. 56(c)). "[A] genuine issue is one which can be maintained by substantial evidence." *Kessing v. Nat'l Mortg. Corp.*, 278 N.C. 523, 534 (1971). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference." *Daughtridge v. Tanager Land, LLC*, 373 N.C. 182, 187 (2019) (citation and internal quotation marks omitted).

34. On a motion for summary judgment, "[t]he evidence must be considered 'in a light most favorable to the non-moving party.' " *McCutchen v. McCutchen*, 360 N.C. 280, 286 (2006) (quoting *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470 (2004)). "[T]he party moving for summary judgment ultimately has the burden of establishing the lack of any triable issue of fact." *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491 (1985) (citation omitted).

35. The party moving for summary judgment may satisfy its burden by proving that "an essential element of the opposing party's claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of [the] claim[.]" *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (citations omitted). "If the moving party satisfies its burden of proof, then the burden shifts to the non-moving party to 'set forth specific facts showing that there is a genuine issue for trial.' " *Lowe v. Bradford*, 305 N.C. 366, 369–70 (1982) (quoting N.C. R. Civ. P. 56(e)). If the nonmoving party does not satisfy its burden, then "summary judgment, if appropriate, shall be entered against [the nonmovant]." *United Cmty. Bank (Ga.) v. Wolfe*, 369 N.C. 555, 558 (2017) (quoting N.C. R. Civ. P. 56(e)).

ANALYSIS

36. The parties' Motions present two distinct issues. The first issue is whether the Policy is legally valid or, alternatively, whether it was void *ab initio* as an unlawful wagering contract in violation of North Carolina public policy. The second issue is whether—assuming the Policy is, in fact, void—Wells Fargo is entitled to a return of premiums paid on the Policy and, if so, in what amount.

37. Accordingly, the Court need reach the second issue only if it resolves the first issue by determining that the Policy is void.

38. Both parties have moved for summary judgment on the issue of whether the policy is valid. Although the parties offer starkly different analyses regarding the proper application of the relevant legal principles to the facts of this case, they are in

agreement that this issue should be resolved via summary judgment due to the absence of any genuine issue of material fact. The Court agrees with the parties that all material facts regarding the validity of the Policy are undisputed and the Motions only present issues of law.

39. Columbus Life argues that the Policy lacked a legally recognized insurable interest from its inception as it was merely an impermissible wager on Dr. Trevathan's life and therefore void *ab initio*. (Compl. ¶ 33.) Columbus Life asserts that the role played by Chesson and the Chesson Entities with regard to the issuance of the Policy makes this a quintessential example of an unlawful STOLI policy.

40. Wells Fargo, conversely, contends that the Policy is legally valid and enforceable. Wells Fargo asserts that (1) Dr. Trevathan possessed an insurable interest in his own life at the time the Policy was issued; and (2) the mere fact that he viewed the Policy purely as a profit-making venture and received assistance from Chesson and the Chesson Entities in obtaining the Policy in no way renders the Policy invalid.

41. It is appropriate to acknowledge the recent history of STOLI litigation across the country, even though the holdings in such cases are not binding on this Court. Beginning in the 2000s, there was an increase in interest regarding the buying and selling of life insurance policies in the life settlement market, which generated significant investor demand for such policies. The combination of high investor demand and a limited pool of existing policies led to the emergence of STOLI policies.

The circumstances attendant to the creation of a typical STOLI policy have been described as follows:

> In a STOLI transaction, an investor approaches a potential insured, usually an individual who is over seventy years old and in declining health, and suggests a means by which the investor could acquire a policy on the individual's life. The suggestion is often appealing to the individual because of the financial remuneration the investor will pay to the individual for the opportunity.
>
> The investor does not have an insurable interest in the individual, so any direct purchase of a policy on the individual's life by the investor would be void for a lack of insurable interest. As a result, STOLI transactions have historically been structured in the following way: (1) the individual applying for the policy, or someone with an insurable interest in the life of the individual, purchases the policy; (2) the investor pays the premiums on the policy, at least for the first two years (the policy's period of contestability); and (3) at the end of the two-year period, the owner may decide whether to keep the policy (and pay the investor back its advances plus some additional fee) or transfer the policy to the investor, directly or indirectly, in exchange for financial remuneration.[11]

42. Over the past two decades, numerous cases addressing the validity of STOLI policies have been litigated in courts throughout the country. Although these cases address a common issue—that is, whether a valid insurable interest on the life of the named insured existed at the time the alleged STOLI policy was issued—no national consensus has emerged as to when a policy should be declared void on STOLI grounds. The absence of such a consensus is not surprising as each state has its own rules for determining when a valid insurable interest exists in connection with the

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[11] Mary Ann Mancini and Caitlin L. Murphy, *The Elusive Insurable Interest Requirement: Are You Sure the Insured is Insured?*, 46 REAL PROP., TR., & EST. L. J. 409, 439 (Winter 2012); *see also* Life Settlements Task Force, *Staff Report to the U.S. Sec. & Exch. Comm'n* 35 (2010) (providing detailed background on STOLI policies).

issuance of a life insurance policy. The STOLI cases from other jurisdictions are helpful in obtaining a greater understanding of the issues that often arise in this context, and this Court has reviewed many of those decisions in connection with the present Motions. Ultimately, however, the Court must decide this issue based solely upon North Carolina law.

43. Despite the explosion of litigation on this subject since the 2000s, North Carolina's appellate courts have not had occasion to address STOLI-related issues in recent years. Our Supreme Court has, however, decided a number of cases involving the issue of whether a life insurance policy was void as an unlawful wagering contract that amounted to an impermissible wager on human life in violation of North Carolina public policy. This line of cases was decided between the latter part of the 19th century and the first few decades of the 20th century and therefore involved circumstances less sophisticated than modern STOLI schemes. Nevertheless, these cases—as discussed below—establish pertinent legal principles that control the Court's analysis of the present Motions.

44. It is important to note that our Supreme Court has made clear that a life insurance policy is a form of property and that, once lawfully issued, it can be assigned or sold to any third party—for investment purposes or otherwise. *See*, *e.g.*, *Hardy v. Aetna Life Ins. Co.*, 152 N.C. 286, 292 (1910) ("*Hardy I*") (holding that "[a] person insuring his own life may designate any person whatever as beneficiary, irrespective of insurable interest in that beneficiary" and that "a policy of life

insurance, validly issued to one having an insurable interest, becomes in his hands a valuable chose in action, which should be assignable as any other property right").[12]

45. Nevertheless, our Supreme Court has also held that in order for a life insurance policy to be lawfully issued, the party obtaining the policy must possess an insurable interest in the life of the named insured at the time of issuance; otherwise, the policy is void *ab initio* as an unlawful wagering contract. *See*, *e.g.*, *Trinity College v. Travelers' Ins. Co.*, 113 N.C. 244, 248 (1893) (holding that life insurance contracts without an insurable interest "become[ ] what the law denominates a wagering contract" and "all such contracts must be declared illegal and void, no matter what good object the parties may really have in view"); *Burbage v. Windley*, 108 N.C. 357, 361 (1891) ("As the assured had no insurable interest in the life of the *cestui que vie* the contract was simply a wager–it was not founded upon any just and lawful consideration–it was a mere gambling speculation.").

46. This, of course, raises the question of how to determine whether a person taking out a life insurance policy actually possesses such an insurable interest in the life of the insured under North Carolina law. The parties offer competing arguments on this issue as applied to the facts of this case.

47. Although conceding—as it must—the fact that Dr. Trevathan possessed an insurable interest in his own life, Columbus Life argues that this proposition does not end the inquiry. Instead, Columbus Life contends that in assessing whether the

[12] Columbus Life does not dispute the fact that if the Policy had been lawfully issued at its inception, Dr. Trevathan would have been legally entitled to sell it to an investor such as LifeTrust thereafter.

role played by Chesson and the Chesson Entities rendered the Policy a wagering contract, this Court should employ a totality of the circumstances approach. Specifically, Columbus Life asserts that

> North Carolina trial courts must analyze the substance of transactions and not just their form, considering (i) who paid the premiums; (ii) whether the policy was taken out in good faith; (iii) whether the subsequent assignee was "cognizant" of and/or did it "take part in" the original scheme or transaction; (iv) whether—if the insured did not pay the premiums—any meaningful consideration was provided to the party that paid the premiums, such as a ***pre-existing*** debt; and (v) whether, *after looking past form to substance*, the entire transaction was merely a cover for a wager.

(Pl.'s Br. Supp. Mot. Summ. J., ECF No. 109 [SEALED], ECF No. 117.2, at 9–11 (emphasis in original).)

48. Conversely, Wells Fargo offers a bright-line test: "For a policy to be an illegal wager in a circumstance where a person takes out a policy insuring his own life, the insured and stranger must agree prior to the policy's issuance that the insured will acquire the policy and then assign it to the stranger." (Def.'s Br. Supp. Mot. Summ. J., ECF No. 106 [SEALED], ECF No. 116.1, at 21.)

49. Although our General Assembly has enacted a handful of statutes on the subject of insurable interests, none of them specifically address the issue presented here.[13] *See* N.C.G.S. § 58-58-75 (explaining when an insurable interest exists in the life of an employee or agent); *Id.* § 58-58-80 (addressing the existence of an insurable interest in the life of partners in a partnership); *Id.* §§ 58-58-85 (providing trustee with an insurable interest in the life of a person covered by a pension plan); *Id.* § 58-

[13] In some states, unlike North Carolina, the legislature has passed laws expressly addressing STOLI policies.

58-86 (considering when a charitable organization has an insurable interest in the life of an insured). Additionally, Section 58-58-90 provides that

> G.S. 58-58-75, 58-58-80, 58-58-85, and 58-58-86 do not limit or abridge any insurable interest or right to insure now existing at common law or by statute, and shall be construed liberally to sustain insurable interest, whether as a declaration of existing law or as an extension of or addition to existing law.

Id. § 58-58-90 (2022).

50. North Carolina also has a statute prohibiting gaming or betting contracts. *See* N.C.G.S. § 16-1 ("All wagers, bets or stakes made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event whatever, shall be unlawful; and all contracts, judgments, conveyances and assurances for and on account of any money or property, or thing in action, so wagered, bet or staked, or to repay, or to secure any money, or property, or thing in action, lent or advanced for the purpose of such wagering, betting, or staking as aforesaid, shall be void.").

51. None of these statutes provide specific guidance in the present case. Therefore, the Court turns its attention to the case law from our Supreme Court that has addressed the circumstances under which a life insurance policy is deemed to be an unlawful wagering contract. These decisions include *U.S. Fid. & Guaranty Co. v. Reagan*, 256 N.C. 1 (1961); *Allgood v. Wilmington Sav. & Tr. Co.*, 242 N.C. 506 (1955); *Webb v. Insurance Co.*, 216 N.C. 10 (1939); *Wharton v. Home Sec. Life Ins. Co.*, 206 N.C. 254 (1934); *Crump v. Southern-Dixie Life Ins. Co.*, 204 N.C. 439 (1933); *Slade v. Life & Cas. Ins. Co. of Tenn.*, 202 N.C. 315 (1932); *McNeal v. Life & Cas. Ins. Co. of Tenn.*, 192 N.C. 450 (1926); *Howell v. Am. Nat'l Ins. Co.*, 189 N.C. 212 (1925); *Am. Tr.*

Co. v. Life Ins. Co., 173 N.C. 558 (1917); *Johnson v. Mut. Ben. Life Ins. Co.*, 157 N.C. 106 (1911); *Hardy v. Aetna Life Ins. Co.*, 154 N.C. 430 (1911) ("*Hardy II*"); *Hardy I*, 152 N.C. 286 (1910); *Pollock v. Household of Ruth*, 150 N.C. 211 (1909); *Hinton v. Mut. Reserve Fund Life Ass'n*, 135 N.C. 314 (1904); *Powell v. Dewey*, 123 N.C. 103 (1898); *Albert v. Insurance Co.*, 122 N.C. 92 (1898); *Trinity College*, 113 N.C. 244 (1893); and *Burbage*, 108 N.C. 357 (1891).

52. The Court has carefully reviewed each of the above-cited cases. Although none of them are completely on point factually with the circumstances presented here, the Court deems the most instructive to be *Hardy I*, *Johnson,* and *Howell.*[14]

53. In *Hardy I*, the defendant insurance company issued three life insurance policies on the life of the plaintiff's uncle, which were payable to the executors, administrators, or assigns of the uncle. 152 N.C. at 288. At some point after the policies' issuance, the uncle assigned two of the policies to the plaintiff. *Id.* The plaintiff did not have knowledge of, or involvement in, any of the transactions surrounding the procuring of the policies. *Id.* The assignment was made with the approval of the insurance company. *Id.*

54. The Supreme Court concluded that the policy was not an illegal wagering contract and that as long as the assignment was otherwise valid the nephew

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[14] Columbus Life seeks to rely on several other cases in which the Supreme Court found an insurable interest to be lacking, but those cases are materially distinguishable because they involved circumstances in which a person took out a life insurance policy on the life of someone else—which did not occur in the present case. *See Burbage*, 108 N.C. at 360–62; *Hinton*, 135 N.C. at 315–16; *Wharton*, 206 N.C. at 256; *Allgood*, 242 N.C. at 513–14; *Trinity College*, 113 N.C. at 248.

was entitled to the policy's proceeds despite not having an insurable interest in the life of the insured. *Id.* In its opinion, the Supreme Court stated that, as a general proposition, a lawfully issued life insurance policy can subsequently be assigned to a third party lacking an insurable interest in the insured's life.

> [W]here an insurant makes a contract with a company, taking out a policy on his own life for the benefit of himself or for his estate generally, or for the benefit of another, the policy being in good faith and valid at its inception, the same may, with the assent of the company, be assigned to one not having an insurable interest in the life of the insured; provided this assignment is in good faith, and not a mere cloak or cover for a wagering transaction.

Id. at 288–89.

55. The Supreme Court then explained the circumstances under which it had previously invalidated policies taken out by an insured on his own life on the ground that the policies were actually unlawful wagering contracts.

> In several cases, where the opinion apparently upholds the contrary view, it will be found that the cause was correctly decided and sustainable on the ground that the policy, though taken out in the name of the insured, was procured in pursuance of a scheme and purpose to assign to one having no insurable interest, *and that the proposed assignee was cognizant of the arrangement and took part in it*. This was true in the case of *Warnock v. Davis*, 104 U.S. 775, 26 L. Ed. 924, and also in *Cammack v. Lewis*, 82 U.S. 643, 21 L. Ed. 244, 15 Wall. 643. In both of these cases *the assignees were parties to the arrangement by which the policies were procured and assigned*, and having no insurable interest in the life of the insured, the facts disclosed, as far as the assignments were concerned, a clear case of wagering contract on the duration of a human life, forbidden by the law, and the assignments were not allowed to stand.
>
> . . .
>
> Undoubtedly . . . there are decisions which directly hold that a life insurance policy, though valid at its inception, may not be assigned to persons having no insurable interest in the life of the insured; and North Carolina has been referred to as upholding this view both in textbooks and in decisions of other courts. If this is a correct interpretation of our

> cases on this subject, we would not hesitate to hold that they were not well decided; but, while some of them certainly give color to this view, we think that a more careful consideration of our decisions will disclose that *in all of them, where the contract was declared void or set aside, it appeared that the assignment of the policy to one having no insurable interest was made in pursuance of a preconceived purpose, and that the assignee had suggested the arrangement or been a party to it*.

Id. at 290 (emphasis added).

56. In *Johnson*, an individual took out a policy on his own life and subsequently assigned it to a third party. Upon the death of the insured, the insured's administrator contended that the policy was "void as a wagering transaction." *Johnson*, 157 N.C. at 107–09. The jury rejected this argument, finding that the assignee "had nothing to do with the taking out of the policy by [the insured], and that the assignment of the policy was made in good faith, and not as a cloak or cover for a wagering transaction or speculation on the life of [the insured]," and that "[t]he evidence was to the effect that the [assignee] knew nothing about [the insured] taking out the policy until after it was issued[.]" *Id*. at 108. Our Supreme Court affirmed the judgment and determined that "[i]t is impossible to distinguish [the facts of *Johnson*] from *Hardy*[.]" In reaching this conclusion, the Court reaffirmed the rule set out in *Hardy I*, stating that " 'a policy of life insurance, validly issued to one having an insurable interest, becomes in his hands a valuable chose in action, which should be assignable as any other property right, unless such assignment be opposed to some clear rule of public policy.' " *Id*. at 109 (quoting *Hardy I*, 152 N.C. at 289). The Supreme Court ended its analysis by noting that, in light of its prior decision in

Hardy, "the law . . . must now be considered as thoroughly settled in this state, whatever may be the views of other courts." *Id.* at 110.

57. Finally, in *Howell*, the Supreme Court was once again tasked with determining whether the named beneficiary of the deceased insured's life insurance policy could recover the proceeds of the policy despite lacking an insurable interest in the life of the insured. *Howell*, 189 N.C. at 214. The Supreme Court concluded that the beneficiary was entitled to the proceeds because beneficiaries of a policy do not need to possess such an insurable interest. *Id.* In so holding, the Court summarized the law on this subject as follows:

> [E]very person has an insurable interest in his own life, and may lawfully insure it for the benefit of his own estate, or on behalf of any other person. It is not necessary that such beneficiary shall possess an interest in the life insured. . . . In *Hardy v. Ins. Co.*, 152 N.C. 286, 67 S.E. 767, Justice Hoke, writing for this Court, says: "We consider it . . . as established by the great weight of authority that where an insurant makes a contract with a company, taking out a policy on his own life for the benefit of himself or for his estate generally, or for the benefit of another, the policy being in good faith, and valid at its inception, the same may, with the assent of the company, be assigned to one not having an insurable interest in the life of the insured; provided, this assignment is in good faith and not a mere cloak or cover for a wagering contract."
>
> . . .
>
> It is only when a policy has been issued upon the life of another, upon application and for the benefit of one who has no insurable interest in the life insured, and who pays or undertakes to pay the premiums, that the policy is void as against public policy. Such a policy is a wagering transaction. So, although a policy of insurance be issued, payable to the estate of the insured, *if at the inception of the contract, there is an agreement that it shall subsequently be assigned to one who has no insurable interest and who agrees to pay the premiums*, the policy is void, for notwithstanding the form of the transaction, it is in fact a wager upon the life of another, and is therefore condemned by the law as against public policy[.]

Id. at 215 (emphasis added).

58. Based upon a careful reading of these cases from our Supreme Court, it is clear that, under North Carolina law, in circumstances such as those present here in which the policy at issue is taken out by the insured on his own life, the following rule applies: The policy is void as a wagering contract only where there is evidence of an agreement—*prior to the policy's issuance*—that the policy would be assigned to a third party *and that the third party participated in that agreement*. In other words, in order for such a policy to be deemed an unlawful wagering contract in this context, the ultimate assignee must have been a participant in (1) the sequence of events by which the policy was initially obtained, and (2) the agreement that the assignment would occur thereafter.

59. Here, as Columbus Life concedes, there is no evidence in the record of any involvement whatsoever by LifeTrust, Advanced Settlements, Assured, or CSNL relating to the Policy until 2007—which was well after the policy's issuance in 2005. Those entities had nothing to do with the Policy's issuance to Dr. Trevathan and, in fact, did not know it existed until 2007. Thus, Columbus Life is unable to satisfy the test articulated by our Supreme Court with regard to whether the Policy is void as a wagering contract.

60. Columbus Life argues that, even assuming a pre-issuance agreement must be shown in order for it to prevail in this case, such an agreement did, in fact, exist—if not with LifeTrust (and its affiliated entities), then with Chesson. But this argument is fatally flawed for at least two reasons.

61. First, neither Chesson nor the Chesson Entities were the ultimate assignee of the Policy after its issuance. Rather, the Policy was assigned to *LifeTrust*. Columbus Life attempts to argue that the collateral assignment form signed by Dr. Trevathan suffices for this purpose, but this contention is incorrect. As explained in the following testimony from Lisa B. Fangman, a senior vice-president of insurance operations for Columbus Life's parent company, this document merely constituted a "collateral assignment" rather than an "absolute assignment."

> Q. This is a May 9, 2005, letter from Bonnie Miller to Columbus Life client services enclosing a collateral assignment. And then the final page of the document is a May 17, 2005, letter recording the collateral assignment. Are you familiar with this exhibit?
>
> A. I am.
>
> Q. All right. What is it?
>
> A. [I]t is a submission of a collateral assignment form for the Trevathan policy to E & W, LLC, which was received by Columbus Life, determined to be in good order in terms of contractually permissible, and recorded and confirmed.
>
> . . .
>
> Q. The collateral assignment document itself was actually a – a form document, right, entitled Assignment of Policy? This is the second page of the exhibit.
>
> A. Yes.
>
> Q. All right. And there's two options here where the person filling out this form can either check a box for, As Collateral Assignment to the Extent of Assignee's Interest, or As Absolute Assignment. Do you see that?
>
> A. I do.
>
> Q. Okay. What's the difference between a collateral assignment and an absolute assignment?

> A. An absolute assignment is an assignment of the entire policy and any proceeds associated with it, whereas the collateral assignment is only in effect up – up to the amount of – of debt between the assignee and the owner of the policy.
>
> Q. So in this case, the amount of debt between the assignee, E & W, LLC, and the owner of the policy listed here as insured, Gordon Trevathan. Right?
>
> A. Yes.

(Fangman Dep. 95:8–97:24.)

62. Thus, the Policy itself was never actually assigned to Chesson (or the Chesson Entities). The execution of the collateral assignment form did not give them ownership of the Policy, which remained at all times with Dr. Trevathan until his 2007 sale of the Policy to LifeTrust.

63. Second, although Columbus Life attempts to gloss over the significance of the options Dr. Trevathan possessed following the issuance of the Policy to him by Columbus Life, the existence of these options further serves to refute its argument. As mentioned earlier, the documents executed between Dr. Trevathan and Chesson (on behalf of E&W) made clear that Dr. Trevathan retained three options upon the expiration of the two-year period following the Policy's issuance. One of these options was for Dr. Trevathan to pay off the premium loans *and retain his existing ownership of the Policy* going forward. (Prem. Fin. Agrmt. Letter, at 67.) Columbus Life's argument as to the unlikelihood that Dr. Trevathan would have actually chosen that option misses the mark. The point is that Dr. Trevathan was at all times in complete control over the decision as to whether he would keep, abandon, or sell the Policy—which is fundamentally inconsistent with the notion of an insurance policy that is,

from its inception, nothing more than a wagering contract on human life by one lacking an insurable interest in that life.

64. Moreover, the present facts simply do not implicate the public policy concerns discussed in the above-referenced cases from our Supreme Court. Those cases make clear that public policy is violated in circumstances where a third party lacking a legally recognized insurable interest in the insured's life participates in the initial procurement of the policy and, from that point on, stands to benefit from the early death of the insured through its status as the policy's ultimate assignee.

65. No such wager by a "stranger" on the life of Dr. Trevathan existed at the time of the Policy's issuance. Indeed, it is worth noting that—as Columbus Life's counsel conceded at the 2 March hearing in this case—Chesson (and, by extension, the Chesson Entities) would not have profited from Dr. Trevathan's death. To the contrary, Chesson financially benefitted—and continues to do so—from Dr. Trevathan remaining alive. Chesson accrued interest on the premium finance loan until the loan balance was satisfied by proceeds from the sale of the Policy. Additionally, Chesson received a brokerage fee for Dr. Trevathan's life settlement. Moreover, Chesson, as the agent for the Policy, continues to collect annual commissions each time the Policy is renewed.

66. Finally, the Court observes that its holding today is consistent with the following statement from our Supreme Court in *Hardy II*:

> A sound public policy requires the enforcement of contracts deliberately made, which do not clearly contravene some positive law or rule of public morals. It is surely not a sound policy to permit insurers to contract to insure the lives of persons, receive premiums therefor as long as the

> insured, the beneficiary, or the assignee will continue to pay, and then, when the time comes for the insurers to pay what they agreed to pay, allow them to escape their contract on the ground of want of insurable interest in the life of the insured, unless it clearly appears that such contracts are pernicious and dangerous to society. Courts should not annul contracts on doubtful grounds of public policy. In such matters it is better that the Legislature should speak first[.]

Hardy II, 154 N.C. at 436 (quoting *Crosswell v. Ct. Indem. Assn.,* 51 S.C. 103, 117 (1897)).

67. Indeed, it need hardly be said that our General Assembly possesses the authority to pass legislation with regard to STOLI policies that would create a new set of rules for North Carolina courts to apply in addressing challenges to life insurance policies asserted on this ground. *See*, *e.g.*, *Martin v. N.C. Housing Corp.*, 277 N.C. 29, 41 (1970) ("[Q]uestions as to public policy are for legislative determination."). However, unless and until such legislation is enacted, this Court is required to follow the applicable principles that have been articulated by our Supreme Court on this subject, which is exactly what this Court has attempted to do in this Opinion.[15]

CONCLUSION

THEREFORE, IT IS ORDERED as follows:

1. Plaintiff Columbus Life's Motion for Summary Judgment is **DENIED** as to its first and second causes of action for declaratory relief.

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[15] Because the Court has ruled that Dr. Trevathan's Policy is valid and enforceable, it need not—and does not—reach the second issue briefed by the parties regarding whether a refund of premiums to Wells Fargo would be appropriate upon the invalidation of the Policy. That issue is now moot.

2. Defendant Wells Fargo's Motion for Summary Judgment is **GRANTED** as to Columbus Life's first and second causes of action for declaratory relief.
3. The life insurance policy issued by Columbus Life to Dr. Trevathan is legally valid and enforceable.
4. Plaintiff Columbus Life's Motion for Summary Judgment and Defendant Wells Fargo's Motion for Summary Judgment are **DENIED** as moot as to all other issues.

SO ORDERED, this the 4th day of May, 2023.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases