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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THERESA INGRAM, Plaintiff and Appellant, v. INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, Defendant and Respondent.	B234201 (Los Angeles County Super. Ct. No. BC450091)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elihu Berle, Judge. Affirmed.

Law Offices of Robert S. Gerstein, Robert S. Gerstein; Gianelli & Morris, Robert Gianelli; Law Offices of Douglas Hallett and Douglas Hallett for Plaintiff and Appellant.

Luce, Forward, Hamilton & Scripps and John T. Brooks for Defendant and Respondent.

INTRODUCTION

Plaintiff Theresa Ingram appeals from a judgment entered after defendant Interinsurance Exchange of the Automobile Club of Southern California's demurrer was sustained without leave to amend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Theresa Ingram purchased an automobile insurance policy from defendant Interinsurance Exchange of the Automobile Club of Southern California effective February 24, 2010. She elected to pay in nine installments via automatic withdrawals from her checking account. Her stated premium was $1,477. To pay in installments, she was required to make an initial payment of $295, which is 20 percent of the total cost, with the balance of $1,182 to be paid over time. Defendant set plaintiff's annual interest rate at 17.96 percent pursuant to its longstanding installment fee rates of 18 percent on the first $1,000 and 12 percent thereafter. This brought the total amount to be paid to $1,547.67. Plaintiff made payments under the policy, including the installment fees, during the course of her policy period.

On November 23, 2010, plaintiff brought this action on behalf of herself, all others similarly situated and the general public, for violation of Business and Professions Code section 17200, the unfair competition law (UCL). The sole cause of action alleges that defendant violated the UCL's prohibition against engaging in an unlawful act or practice by "violating the statutes and regulations, including Insurance Code[1] § 1861.01 *et seq.* [also known Proposition 103], prohibiting charging premium that is not approved by the Department [of Insurance (DOI)]." Plaintiff specifically alleged that the installment fees

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1 All further statutory references are to the Insurance Code unless otherwise identified.

were not finance charges for credit and did not represent a time value of money, but rather constituted an unregulated part of the premium which violated the rate regulation regime established by Proposition 103 (§ 1861.01 et seq.). She alleged the "component of Auto Club's premium charge attributable to installment fees" was "excessive" within the meaning of section 1861.05, subdivision (a), and "'unfairly discriminatory' as it penalizes insureds by surcharging them for the privilege of paying over time," and it is based upon credit-scoring related to an insured's ability or willingness to pay on time.

Defendant demurred to the complaint. The trial court sustained the demurrer without leave to amend.

DISCUSSION

In reviewing a judgment following the sustaining of a demurrer without leave to amend, we "review the complaint de novo to determine whether it contains facts sufficient to state a cause of action under any legal theory . . . ," treating "'"'the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.'"'" (*Estate of Dito* (2011) 198 Cal.App.4th 791, 800.) We give "the complaint a reasonable interpretation." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) It is "an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Id*. at p. 967.)

Plaintiff contends defendant's installment charges are in fact unapproved additional premium, imposed discriminatorily solely on persons who pay in installments, in violation of the rate and premium approval regime established by Proposition 103. The parties agree that the core issue is whether defendant's installment interest charge constitutes premium within the plain and ordinary meaning of that word.

Specifically, plaintiff claims that, while the Commissioner of the DOI takes account of defendant's installment fees under section 1861.05, subdivision (a), to ensure

that its rates overall are not excessive, the Commissioner has not considered whether the installment fees constitute, in whole or in part, "unfairly discriminatory" premium under sections 1861.02, subdivision (a), or 1861.05, subdivision (a),[2] or excessive premium under section 1861.05, subdivision (a), as applied to individual insureds making installment payments. Plaintiff asserts that, by charging the fees, defendant imposes a heavier burden on some insureds based on a rating factor which the Commission has not and could not approve. As a consequence, the premiums those insureds are paying are "excessive," within the meaning of section 1861.05, subdivision (a), in that they exceed the premium allowable in accordance with the approved rate.

The question before us is whether installment fees are a component of premium subject to the Proposition 103 rate and premium approval regime. The issue presented is one of statutory interpretation, a question of law to be determined by this court. In interpreting a statute, "'"'[w]e are required to give effect to statutes "according to the usual, ordinary import of the language employed in framing them." [Citations.]'" . . . We have declined to follow the plain meaning of a statute only when it would inevitably have frustrated the manifest purposes of the legislation as a whole or led to

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[2] Section 1861.02, subdivision (a), provides: "Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance: [¶] (1) The insured's driving safety record. [¶] (2) The number of miles he or she drives annually. [¶] (3) The number of years of driving experience the insured has had. [¶] (4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without approval shall constitute unfair discrimination."

Section 1861.05, subdivision (a), provides: "No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income."

absurd results. [Citations.]' [Citation.]" (*Interinsurance Exchange of the Automobile Club v. Superior Court* (2007) 148 Cal.App.4th 1218, 1230 (*Interinsurance Exchange*).)

Generally, the goal of statutory interpretation is to be consistent with the intent of the Legislature in enacting the provision. (*Interinsurance Exchange*, *supra*, 148 Cal.App.4th at p. 1230.) Proposition 103 was approved by voters, rather than enacted by the Legislature. (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 239-240.) It amended the Insurance Code to require that insurers obtain prior approval by the DOI of rates and premiums (*id.* at pp. 242-243) and authorized the DOI to promulgate implementing regulations (§ 1861.02, subd. (e); Cal. Code Regs., tit. 10, § 2641.1).

Other courts have considered whether installment fees or other charges are included in the term "premium." In *Interinsurance Exchange*, *supra*, 148 Cal.App.4th 1218, the court concluded that "the fee [Interinsurance Exchange of the Automobile Club (Exchange)] charges for making payments of the annual premium in installments is interest for the time value of money and the plain and ordinary meaning of the term 'premium,' as used in section 381, subdivision (f), does *not* include interest charged for the time value of money. It is commonly understood that a premium is the amount paid for certain insurance for a certain period of coverage." (*Interinsurance Exchange*, *supra*, at p. 1230, fn. omitted.) Section 381 lists categories of information that a policy must contain. The category specified in subdivision (f) is as follows: "Either: [¶] (1) A statement of the premium, or [¶] (2) If the insurance is of a character where the exact premium is only determinable upon the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid."

The facts of *Interinsurance Exchange*, *supra*, 148 Cal.App.4th 1218 are very similar to the facts of the instant case. In *Interinsurance Exchange*, real party in interest, Tawndra Williams (Williams), alleged Exchange violated section 381, subdivision (f), and the UCL (Bus. & Prof. Code, § 17200), in that the automobile policy issued to her by Exchange did not state "the fee it charges insureds for paying the policy annual premium in installments." (*Interinsurance Exchange*, *supra*, at p. 1221.) The operative facts were

that "[i]n December 2004, Exchange mailed to Williams a renewal declarations page for the Policy and an accompanying billing statement for the renewal period beginning in January 2005. The declarations page set forth the 'total annual' premium due of $913 [before deduction of the dividend of the policyholder] and, after deduction of a policyholder's dividend of $67, required Williams to pay a 'net' premium of $846 to renew her policy for another year. The accompanying billing statement gave Williams the option of paying the $846 annual net premium in either one lump sum or nine monthly installments, subject to additional charges for interest at a rate of 18 percent per year and requiring payment initially of only the first installment of $34.48. Williams again elected to pay the annual premium in installments rather than in one lump sum."[3] (*Id.* at p. 1222 & fn. 3, fn. omitted.)

The *Interinsurance Exchange* court's analysis hinged in part on section 480: "As section 480 confirms, a premium is to be paid on commencement of the period of insurance coverage. Section 480 provides: 'An insurer is entitled to payment of the premium as soon as the subject matter insured is exposed to the peril insured against.' Therefore, in the case of an annual period of renewal of insurance coverage, an insurer is entitled to payment of the annual premium in one lump sum at the beginning of the policy period. (§ 480.) To the extent an insurer provides an insured with the option of paying that one lump sum in installments of partial premium payments together with interest on the unpaid premium balance, the interest charged for the time value of money for the option of making payments of premium over time is *not* considered part of the premium paid for insurance coverage." (*Interinsurance Exchange*, *supra*, 148 Cal.App.4th at pp. 1230-1231, fn. omitted.)

Plaintiff argues that the finance fees defendant charged her were not interest for the time value of money. She does not, however, cite authority defining "time value of

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[3] A noteworthy similarity is that the interest rate for installment fees in *Interinsurance Exchange* was 18 percent, only slightly more than the 17.96 percent interest rate plaintiff claims she was charged.

money" or holding that such finance charges did not qualify as interest for the time value of money. She also does not dispute that money due "today" loses its value over time until it is paid in full. A logical conclusion is that if defendant was entitled to $1,477 on the first day of plaintiff's policy period, but she paid only 20 per cent of that amount, i.e., $295, defendant lost the "time value of money" for the remaining $1,182, spread over the installments.

In the complaint, plaintiff admits that defendant "is entitled to its full premium at the outset of a policy term" under section 480.[4] It is significant that, after her initial payment of $295, plaintiff, not defendant, had the use of the remaining dollars until she paid the last installment. Plaintiff controlled the total cost of her insurance by paying in installments by her own choice, not because defendant required her to pay in that manner. Plaintiff does not explain how including the finance charges in the rating process to determine a premium could avoid, in effect, shifting some of the cost of her choice to pay in installments to the insured who pays the premium in full on the first day of coverage.

The *Interinsurance Exchange* court addressed another issue plaintiff raises in support of her contention that installment fees must be included in the rate-setting and associated premium established under Proposition 103. She claims the installment fees are not interest to cover any credit risk, in that there is no credit risk associated with installment payments. She relies on the fact that defendant cancels a policy if an insured fails to make an installment payment when due and, by that time, defendant has already received payment for the entire time that the policy has been in force. On virtually the same issue, however, the *Interinsurance Exchange* court concluded that "the fact that Exchange may cancel an insurance policy for nonpayment of an installment when due

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[4] Plaintiff does not state the policy period for her insurance for which the stated premium was $1,477. She states that initially she paid 20 percent, and that she paid the premium in nine installments during the course of her policy period. Presumably, the policy period was one year, given the number of installments. In any event, plaintiff does not claim that her policy period was less than the customary one year period for automobile insurance.

does not make that policy 'pay-as-you-go' with a policy period commensurate with each installment period. Rather, the policy period remains as stated in the policy (e.g., one year as in this case)." (*Interinsurance Exchange*, *supra*, 148 Cal.App.4th at p. 1231, fn. 7.) As defendant maintains, the installment fee is consideration for its deferral of payment of the premium over time.

Plaintiff also claims that the *Interinsurance Exchange* holding does not apply in the instant case, in that section 381 is not part of Proposition 103. We disagree. We find the *Interinsurance Exchange* analysis and holding to be very persuasive in relation to the instant case. The legislative purpose of the disclosure requirements in section 381 was to protect consumers by assuring the key information about their policies was clearly set forth. The disclosure would not fulfill its purpose and would be misleading if the term "premium" for the purposes of section 381 were not the same as the term "premium" that results from the rate-setting and premium approval regime required by Proposition 103. Such an interpretation would run afoul of the principle that we should decline to "'follow the plain meaning of a statute . . . when it would inevitably have frustrated the manifest purposes of the legislation as a whole or led to absurd results. [Citations.]' [Citation.]" (*Interinsurance Exchange, supra*, 148 Cal.App.4th at p. 1230.) Some of Proposition 103's provisions incorporated legislatively-enacted sections of the Insurance Code in effect at the time of the proposition's approval by voters. Interpreting the term "premium" in Proposition 103 to have the same meaning as in section 318 is consistent with the principle that words used in a statute "must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844; accord, *Troppman v. Valverde* (2007) 40 Cal.4th 1121, 1135, fn. 10.)

Plaintiff is misguided in her reliance on *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305 in support of her claim that the *Interinsurance Exchange* interpretation of "premium" does not apply to our interpretation of that term for the purposes of the instant case. She quotes a passage in which the *Troyk* court cautions against giving too

broad an interpretation of the word "charges" in the statement in *Interinsurance Exchange* that "the term 'premium,' as used in section 381, subdivision (f), does *not* include interest charged for the time value of money for using the option of making payments of the annual premium in installments." (*Interinsurance Exchange, supra,* 148 Cal.App.4th at p. 1237, fn. omitted.) The *Troyk* court stated, "Because of the factual context of [*Interinsurance Exchange*], that generalized statement should be interpreted narrowly to apply only to interest charged for the time value of money because of an insured's election of an option to pay the premium for a certain period of coverage in installments over time." (*Troyk, supra*, at p. 1327, fn. 11.)

The distinction was important to point out in *Troyk*, in that the service charges at issue in *Troyk* were imposed and required to be paid at the same time as the stated premium for the policy period. Additionally, the *Troyk* policy period was one month rather than one year. Under those circumstances, the service charges were part of the premium required to be disclosed by section 381, subdivision (f). (*Troyk v. Farmers Group, Inc.*, *supra*, 171 Cal.App.4th at p. 1327.) Here, however, the installment fees were analogous to the installment "charges" at issue in *Interinsurance Exchange*. Thus, the warning in *Troyk* is inapplicable here.

Plaintiff acknowledges in her complaint that the DOI promulgated a regulation implementing Proposition 103 which differentiates installment fees from a premium subject to section 1861.02 et seq., recognizing that time value of money charges are considered ancillary income to an insurer outside the rate review process. The regulation provides: "'Projected ancillary income' means projected net income to the insurer . . . not derived from insurance premiums subject to this subchapter . . . . Premium financing revenues . . . shall be included within projected ancillary income. . . ." (Cal. Code Regs., tit. 10, § 2644.13.) In effect, plaintiff admits that installment fees, without regard to whether they are excessive or discriminatory, are not part of premium.

For the foregoing reasons, we conclude that the installment fees plaintiff paid did not constitute unapproved premium and, therefore, they could not constitute excessive or discriminatory premiums in violation of sections 1861.02 or 1861.05. Accordingly, she cannot state a cause of action for unfair business practices, and the trial court did not abuse its discretion in sustaining defendant's demurrer without leave to amend. (*Aubry v. Tri-City Hospital Dist*, *supra*, 2 Cal.4th at p. 967.)

Having reached our decision on the foregoing basis, we decline to address the other arguments raised on appeal.

DISPOSITION

The judgment is affirmed. Defendant shall recover its costs on appeal.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.