STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: February 13, 2015)

PAUL SIKORSKYJ	:	
	:	
V.	:	**C.A. No. PC-13-5619**
	:	
AMICA MUTUAL INSURANCE COMPANY	:	

DECISION

MATOS, J. Plaintiff Paul Sikorskyj (Plaintiff) petitions this Court for a declaratory judgment regarding a right to non-binding arbitration pursuant to G.L. 1956 § 27-10.3. Defendant AMICA Mutual Insurance Company (AMICA or Defendant) counterclaims for declaratory judgment with respect to the same matter. Jurisdiction is pursuant to G.L. 1956 §§ 9-30-1 et seq.

I

Facts and Travel

On April 9, 2013, Plaintiff was involved in a motor vehicle accident with Lee Hastings (Mr. Hastings or Insured). Stipulated Set of Facts ¶ 1. Plaintiff alleges that Mr. Hastings caused the accident. Id. at ¶ 2. At the time of the accident, Mr. Hastings was insured by AMICA. Id. at ¶¶ 1, 4. Mr. Hastings' AMICA insurance policy (Insurance Policy) provided liability coverage for "bodily injury" and "property damage," with property damage defined as "physical injury to, destruction of, or loss of use of tangible property." Id. at ¶¶ 5, 6.

The alleged cost of repair to Plaintiff's vehicle was $18,364.26. Id. at ¶ 7. Defendant paid $18,364.26 to Plaintiff pursuant to Mr. Hastings' Insurance Policy. Id. at ¶ 8. Plaintiff subsequently presented Defendant with a claim for the diminution in value of his motor vehicle as a result of the accident. Id. at ¶ 9. On October 17, 2013, Plaintiff requested non-binding

arbitration pursuant to § 27-10.3-1 to resolve the diminution in value claim. Id. at ¶ 10. On October 24, 2013, Defendant declined the request for arbitration on grounds that a diminution in value claim is not arbitrable under § 27-10.3-1. Id. at ¶ 11.

On November 5, 2013, Plaintiff filed a declaratory judgment action in Superior Court. Plaintiff's action requests that this Court: (1) "Determine that diminution of value is a cause of action that arises out of property damages"; and, "Order [AMICA] to submit said controversy to non-binding arbitration pursuant to R.I.G.L. § 27-10.3." Pl.'s Compl. 2. On November 29, 2013, Defendant answered Plaintiff's Complaint while also filing a declaratory judgment counterclaim. See Def.'s Answer and Countercl. Defendant's counterclaim asks this Court to declare that: (1) "[Plaintiff] is not entitled to recover any alleged 'diminution in value' pursuant to the plain language of Mr. Hastings' Policy with AMICA"; (2) "[Plaintiff] has failed to state a viable claim under Rhode Island law"; and (3) "[Plaintiff] is not entitled to non-binding arbitration pursuant to R.I. Gen. Laws § 27-10.3-1." Id. at 5. Plaintiff answered Defendant's counterclaim on November 29, 2013. See Pl.'s Answer.

Defendant filed a Memorandum in Support of Motion for Summary Judgment.[1] Thereafter, Defendant filed an additional Memorandum in Support of Motion for Summary Judgment. Defendant requests judgment as a matter of law on principles of contract interpretation. Conversely, Plaintiff filed a Memorandum in Support of Request for Declaratory Judgment. Although Defendant styled their memoranda as summary judgment pleadings, the parties filed a Stipulated Set of Facts pursuant to the declaratory judgment procedure provided by R.P. 2.3(d)(1).

[1] The Docket Sheet for PC-2013-5619 lists only Memorandum in Support of Motion for Summary Judgment and does not list the presumably underlying Motion for Summary Judgment. See id.

II

Standard of Review

The Uniform Declaratory Judgments Act (UDJA) vests the Superior Court with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. Because the UDJA exists to "'facilitate the termination of controversies,'" it is liberally construed by courts so as to realize that goal. Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999)). A declaratory judgment petition is justiciable only where a party "present[s] the court with an actual controversy." Millett v. Hoisting Eng'rs Licensing Div. of Dep't of Labor, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977). A plaintiff must therefore suffer both some "injury in fact, economic or otherwise" and maintain a "legal hypothesis [by] which [he, she, or it is] entitle[d] [ ] to real and articulable relief." Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008) (citations omitted).

III

Analysis

The question presented concerns the scope of the right to arbitration for damages arising from motor vehicle accidents. Sec. 27-10.3-1. Plaintiff asks this Court to declare that the statutory term "property damages" includes the "diminution of value" of a motor vehicle. Plaintiff asserts that the legislature intended to provide broad recourse for damages to motor vehicles and that the term "property damage" should be construed as such. Defendant counterclaims, asking this Court to declare that Rhode Island law provides for damages for the cost of repair of a motor vehicle *or* the diminution of value of a motor vehicle, but not both. Defendant further contends that its Insurance Policy defines "property damage" as "physical

injury to, destruction of, or loss of use of tangible property." Defendant therefore maintains that Plaintiff has no right to arbitration under § 27-10.3-1 because the "diminution of value of a motor vehicle" is not a "physical injury" to "tangible property."

A

Scope of Ruling

This Court will first address the scope of its jurisdiction. Here, Defendant argues that Plaintiff is entitled to either cost of repair or the diminution of value, does not have a viable claim under Rhode Island law, and has already been adequately compensated for damages to his motor vehicle. These arguments, however, go to the merits of Plaintiff's—not yet proffered—legal claims for motor vehicle damages. Currently, however, only declaratory judgment actions are before this Court. See § 9-30-1; see also Bowen, 945 A.2d at 317 (requiring a viable legal controversy to satisfy the UDJA's threshold standing requirement); see also Bradford Assocs., 772 A.2d at 489 (construing the UDJA liberally). This Court's jurisdiction under the UDJA is consequently restricted to a declaration of the legal rights conferred by § 27-10.3-1 with respect to the availability of arbitration.

Moreover, despite arguing that Plaintiff failed to state a claim upon which relief may be granted, and submitting a memorandum in support of summary judgment, Defendant did not file a Super. R. Civ. P. 12(b)(6) (Rule 12(b)(6)) or Super. R. Civ. P. 56 (Rule 56) motion. A declaratory judgment ruling therefore remains the most appropriate procedural vehicle as the facts on record supply the necessary information to determine the parties' legal rights. See Bradford Assocs., 772 A.2d at 489 (providing that the UDJA exists to "facilitate the termination of controversies"); see also § 9-30-1 (providing Rhode Island Superior Court with the "power to

declare rights, status, and other legal relations *whether or not further relief is or could be claimed*") (emphasis added).

B

AMICA Insurance Policy

In support of its position that "diminution of value" does not constitute "property damage" per the language of its Insurance Policy, Defendant relies upon the out-of-jurisdiction cases of Given v. Commerce Ins. Co., 796 N.E.2d 1275 (Mass. 2003) and O'Brien v. Progressive N. Ins. Co., 785 A.2d 281 (Del. 2001). Each case deals with a first party claim for damages via contractual rights secured through a mutually agreed upon insurance policy. See Papudesu v. Med. Malpractice Joint Underwriting Ass'n of R.I., 18 A.3d 495, 498 (R.I. 2011) ("An insurance policy is contractual in nature.") (citing Town of Cumberland v. R.I. Interlocal Risk Mgmt. Trust, Inc., 860 A.2d 1210, 1215 (R.I. 2004)).[2] Yet Defendant's reliance is misplaced as this case concerns the statutory, not contractual, rights of a third party.

While AMICA's Insurance Policy may limit the term "property damage" to exclude diminution of value damages, Plaintiff has not contracted with AMICA for motor vehicle insurance. The Insurance Policy is a contract between only Mr. Hastings, the insured, and AMICA, the insurer. See Papudesu, 18 A.3d at 498. Thus, irrespective of its language, the Insurance Policy neither governs Plaintiff nor dictates his legal rights. See O'Donnell v. O'Donnell, 79 A.3d 815, 820 (R.I. 2013) ("It is well settled that in order to form an enforceable agreement, '[e]ach party must have and manifest an objective intent to be bound by the

[2] Plaintiff similarly cites to the Rhode Island Superior Court case of Cazabat v. Metro. Prop. & Cas. Ins. Co., 2000 WL 1910089 (R.I. Super. Apr. 24, 2000). Cazabat provides that "an insured would be less than whole after any repairs to the automobile since the value of an automobile decreases by virtue of the fact that the vehicle was in an accident in the first place." Id. at *6. Nonetheless, in addition to being non-binding authority, this case concerns first party contractual rights.

agreement.'") (quoting Opella v. Opella, 896 A.2d 714, 720 (R.I. 2006)). The narrow question before this Court is exclusively one of statutory interpretation: whether § 27-10.3-1 provides Plaintiff with a right to submit a claim for the "diminution of value" of his motor vehicle to non-binding arbitration.

C

Section 27-10.3-1

Section 27-10.3-1 provides, in pertinent part, that

> "(a) Every contract of motor vehicle liability insurance, issued in the state by an insurance carrier authorized to do business in the state, shall contain the following provisions:
>
> "(1) Any person, referred to in this section as "the plaintiff," suffering a loss, allegedly resulting out of the ownership, maintenance, or use of a motor vehicle by an insured or self-insured, and allegedly resulting from liability imposed by law for property damage, bodily injury, or death, may, at his or her election, whenever the claim is for fifty thousand dollars ($50,000) or less, submit the matter to arbitration pursuant to chapter 3 of title 10[.]" Sec. 27-10.3-1 (emphasis added).

Here, the question is whether diminution of value damages may be recovered as a component of "liability imposed by law for property damage." Id.

"It is well settled that when the language of a statute is clear and unambiguous, [a court] must interpret the statute literally and [ ] give the words [ ] their plain and ordinary meanings." Providence & Worcester R.R. Co. v. Pine, 729 A.2d 202, 208 (R.I. 1999) (quotations and citations omitted). "When confronted with statutory provisions that are unclear and ambiguous, . . . [a court must] examine statutes in their entirety in order to 'glean the intent and purpose of the Legislature.'" Id. (quoting State v. Flores, 714 A.2d 581, 583 (R.I. 1998)). A court should not myopically focus on one particular area, aspect, or sentence of a statute. Providence and Worcester R.R. Co., 729 A.2d at 208. Instead, a court shall "consider [a statute] as a whole;

individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Id. (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)); In re Brown, 903 A.2d 147, 149 (R.I. 2006); Park v. Ford Motor Co., 844 A.2d 687, 692 (R.I. 2004) (stating "[s]tatutory construction is a holistic enterprise").

The Court, therefore, begins its consideration of legislative intent by examining the Motor Vehicle Reparation Act (MVRA). The MVRA's "declaration of purpose" states that:

> "The legislature is concerned over the rising toll of motor vehicle accidents and the suffering and loss inflicted by them. The legislature has determined that it is a matter of grave concern that motorists shall be financially able to respond in damages for their negligent acts, so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them." G.L. 1956 § 31-47-1(b).

The MVRA thus mandates that victims of motor vehicle accidents be compensated for "injury and financial loss." See id.; see also Quality Court Condo. Ass'n v. Quality Hill Dev. Corp., 641 A.2d 746, 751 (R.I. 1994) (holding that "shall" indicates a mandatory action); 3 Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 57:1 (7th ed.) ("The word 'shall' in the absence of language in the statute showing a contrary intent on the part of the legislature, should be afforded a mandatory connotation."). Therefore, when enacting the MVRA, the legislature clearly stated its intent to make financial recourse for victims of motor vehicle accidents readily available.

That intent is further gleaned from reading § 27-10.3-1 in context with the MVRA. See Providence and Worcester R.R. Co., 729 A.2d at 208 ("[I]ndividual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections."). The section itself, particularly its inclusive language of "every contract" and "any person," is consistent with the MVRA's purpose because it effectuates broad recourse for motor

vehicle accidents. The section limits the extent of damages that may be recoverable only to those "resulting from liability **imposed by law for property damage**." Sec. 27-10.3-1(a)(1) (emphasis added). Hence, the analysis turns on whether financial loss resulting from a claim of alleged diminution of value is a financial loss that may be recovered as a matter of law. However, a review of existing case law does produce an entirely consistent picture.

In Rhode Island, the preferred standard for measuring motor vehicle damages—cost of repair, diminution of value, or both—has not been squarely addressed by our Supreme Court. The Supreme Court has also not articulated whether it generally considers diminution of value to be property damage. See e.g., R.I. Interlocal Risk Mgmt. Trust, Inc., 860 A.2d at 1210 (declining to rule on whether diminution of value constitutes property damage in the context of real property). Moreover, while some courts recognize a relationship between property damage and diminution of value, others do not. See Restatement (Second) Torts at § 928; D. Dobbs, Law of Remedies at § 5.10; see also e.g., Farmers Ins. Co. of Arizona v. R.B.L. Inv. Co., 675 P.2d 1381 (Ariz. Ct. App. 1983) (upholding an award for the diminished value of a repaired vehicle in a negligence action); Am. Serv. Ctr. Assocs. v. Helton, 867 A.2d 237 (D.C. 2005) (permitting a grant of damages for the diminution of value with respect to a repaired motor vehicle); but see also e.g., Down Under Masonry, Inc. v. Peerless Ins. Co., 950 A.2d 1213 (Vt. 2008) (holding that adverse "aesthetic impact" is not "property damage"); Standard Fire Ins. Co. v. Chester-O'Donley & Assocs., Inc., 972 S.W.2d 1, 9 (Tenn. Ct. App. 1998) ("diminution in value of the project caused by the insured's defective work are the sort of economic losses that do not fit within the definition of 'property damage.'").

However, the more persuasive legal authority supports the recovery of diminution of value damages. Restatement (Second) Torts provides that

> "[w]hen one is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for (a) the difference between the value of the chattel before the harm and the value after the harm or, at his election in an appropriate case, the reasonable cost of repair or restoration, with due allowance for any difference between the original value and the value after repairs, and (b) the loss of use." Restatement (Second) Torts § 928 (1979) (emphasis added); see also Black's Law Dictionary (9th ed. 2009) (defining a "chattel" as "[m]ovable or transferable property").

Professor Dobbs comments similarly in his well-known treatise on remedies:

> "There seems no warrant at all for insisting that the owner content himself with the repair costs if they are less than the depreciation, provided depreciation can be and is adequately proven. However satisfactory the repairs may be in, say, the operation of a car, the owner may quite possibly find that the trade-in value of his car is less when he seeks to purchase a new automobile, or that its cash sale value is less throughout the immediate life of the car. If this sort of depreciation is real, and can be established, there seems no reason at all to deny full compensation by limiting recovery to cost of repairs." D. Dobbs, Law of Remedies, § 5.10 (1973) (emphasis added).

Other commentators concur. "[T]he proper measure of damages of the total destruction of a motor vehicle is its fair market value immediately before destruction, less any residual salvage value of the wreckage." Jerome Nates et al, Damages in Tort Actions § 37:06 (Lexis 2014). "When repair of a vehicle is possible, the reasonable cost of repairs has been adopted by numerous jurisdictions as the proper measure of damages." Id. at 37:06[1][b][ii]. See e.g., Coursey v. Broadhurst, 888 F.2d 338 (5th Cir. 1989); Bullington v. Moats, 694 S.W.2d. 897 (Mo. Ct. App. 1985); Checker Leasing, Inc. v. Sorbello, 382 S.E. 2d 36 (W. Va. 1989). "In some states, [however,] the owner may recover additional damages to compensate for any disparity resulting from the market value of the vehicle being lower after repairs than it was prior to the accident." Nates, supra, at § 37:06.

"Jurisdictions that employ a [diminution of value] standard have applied it even when the damaged vehicle could be returned to its pre-injury condition at a cost lower than the diminution of value." Id. at 37:06[1][b][i]. See e.g., Robbins v. Voight, 191 So.2d 212 (Ala. 1966); Brennen v. Aston, 84 P.3d 99 (Okla. 2003). The prevailing logic is that the "[f]ailure to award additional damages would violate the basic principle of tort law that the injured party should, insofar as possible, be restored to his original position before the accident." Id.

This Court, likewise, finds that in order to allow the Plaintiff to pursue damages that may return him to his original position prior to the accident, his claim for loss resulting from diminution of value to his vehicle may be submitted to arbitration under § 27-10.3-1. [3] Such an interpretation is consistent with the weight of authority and, critically, the underlying legislative mandate of the MVRA, that victims of motor vehicle accidents be compensated for "injury and financial loss," Sec. 31-47-1. A narrow interpretation of the statute could limit Plaintiff's compensation for his "financial loss," thereby controverting the intent of the legislature.[4]

IV

Conclusion

After consideration of the law and facts, the Court finds a claim for "loss . . . resulting from liability imposed by law for property damage" that includes a claim for diminution of value may be submitted to arbitration pursuant to the MVRA and § 27-10.3-1.

Counsel shall submit the appropriate judgment for entry.

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[3] The extent to which such a claim may be proven is obviously a question that will be posed during the arbitration.

[4] Diminution of value is by definition a "financial loss." See generally Nates, supra, at § 37:06 (describing cost of repair and diminution of value as damages utilized to restore the fair market value of a motor vehicle).

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 13, 2015**
JUSTICE/MAGISTRATE:	**Matos, J.**
ATTORNEYS:	
For Plaintiff:	**Jina N. Petrarca-Karampetsos, Esq.**
For Defendant:	**John A. Donovan, III, Esq.** **Matthew P. Cardosi, Esq.**