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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge
Case No.: 2021-CP-23-04140

Appellate Case No. 2022-000576

Gregory Muxlow and Charlotte Muxlow,

Appellants,

v.

Scottsdale Insurance Company; South Wind Ranch Holdings, LLC; Ronald Hakala; and Ashley Black;

Respondents.

INITIAL BRIEF OF RESPONDENTS SOUTH WIND RANCH HOLDINGS, LLC; RONALD HAKALA; AND ASHLEY BLACK

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE CASE

A. The Underlying Action

In January 2021, Appellants Charlotte Muxlow and Gregory Muxlow, along with Christian Wienands ("Wienands"), filed a lawsuit against Respondents South Wind Ranch Holdings, LLC, Ronald Hakala, and Ashley Black (collectively "Respondents") (Case No. 2021-CP-23-00416) (the "Underlying Action"). South Wind Ranch is an event venue located in Travelers Rest, South Carolina. See Underlying Complaint, ¶ 4. After getting engaged, Appellants began looking for locations to have their wedding and visited South Wind Ranch. See id. at ¶ 12. They booked the venue and signed contracts with South Wind Ranch and also with Ashley Black, a wedding planner who worked with South Wind Ranch. See id. at ¶ 12-13.

In July 2020, due to the COVID-19 pandemic, Appellants contacted Respondent South Wind Ranch, through Ronald Hakala, about postponing their wedding. See id. at ¶ 16. Shortly thereafter, Appellants requested new dates to reschedule the postponed wedding and were provided dates. See id. at ¶ 18 – 20. However, Appellants ultimately chose to cancel the venue rental and requested that their deposits be returned. See id. at 21. When South Wind Ranch refused to return the deposit, Appellants filed the Underlying Action against South Wind Ranch and also against Ronald Hakala (an owner), individually, and against Ashley Black, the wedding planner.

B. The Declaratory Judgment Action

Through the course of discovery in the Underlying Lawsuit, Appellants learned that the Insureds maintained a Commercial General Liability Policy ("the Policy") with Scottsdale. See Declaratory Judgment Complaint, ¶ 10. On August 4, 2021, Appellants sent a letter entitled "Official Notice of Nationwide's Bad Faith" to Scottsdale. See id. at ¶ 10. In that letter, Appellants demanded that Scottsdale provide Respondents with a defense in the Underlying Action. See id.

On August 23, 2021, Scottsdale sent a letter to Appellants denying their claim for Scottsdale to tender a defense to Respondents South Wind Ranch, Hakala, and Black in the Underlying Lawsuit. See id. at ¶ 11. Following Scottsdale's denial letter, Appellants filed this Declaratory Judgment action.

In the Declaratory Judgment action, Appellants alleged that Scottsdale had a duty to defend Insureds against the allegations set forth in the Complaint in the Underlying Action. See, e.g., Declaratory Complaint, ¶ 15. In their Prayer for Relief, Appellants asked that the Court (1) issue a declaration that Scottsdale must provide a defense for Insureds in the Underlying Action and pay any settlement or verdict as to its insureds; (2) issue a declaration that Scottsdale "acted in bad faith and that its policy limit is now opened"; and (3) to award costs, including attorney's fees, as "[i]t should not have been necessary to file this action." See id. Respondents and Scottsdale then filed Motions to Dismiss, based on Rules 12(b)(6) and 12(b)(7), SCRCP.

C. Dismissal of the Declaratory Judgment Action

After hearing arguments and considering the briefs and other evidence, the Court granted Respondents' motion and dismissed the Declaratory Judgment action. Among the reasons for the dismissal, Judge Edward Miller noted that Appellants had not established a claim to any damages or judgment. See Transcript, p. 23-24. As a result, Judge Miller concluded that any claims which Appellants might potentially have in relation to the insurance policy were not ripe. See id. He allowed that his ruling would not necessarily preclude Appellants from bringing such an action in the future, after obtaining a judgment. See id. at p.24.

D. Disposition of Plaintiffs' Claims in the Underlying Action

Finally, it must be noted that this appeal has been impacted by a development since the dismissal in this action. In the Underlying Action, following the completion of discovery, South

Wind Ranch, Ronald Hakala, and Ashley Black filed a Motion for Summary Judgment. After a hearing, the Court granted Respondents' motion. Appellants have filed a Motion to Reconsider but, at present, the underlying claims on which this declaratory action are based have been ended by the Court.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim should be granted if the facts and inferences therefrom would not entitle a plaintiff to any relief on any theory of the case. See Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (internal citations omitted). In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. See id., citing Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001).

DISCUSSION

I. THE PRESENT APPEAL SHOULD BE DISMISSED AS MOOT

As an initial matter, this appeal should be dismissed as the grant of summary judgment against Appellant's claims in the Underlying Action renders the issues in this appeal moot. It is well-established that South Carolina's appellate courts will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. See Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861 (1995). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." Id., citing Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Id.

Appellants' claims in the Declaratory Judgment action are based on the premise that Appellants have valid claims against Respondents in the Underlying Action. As the grant of summary judgment dissolves those claims, any ruling by this Court in this matter would be purely academic. As a result, this appeal is moot.

Respondents take the position that, as this matter is now moot, analysis in this appeal need go no further. However, Respondents will address the remaining points out of caution.

II. THE TRIAL COURT CORRECTLY DISMISSED THE ACTION AS SOUTH CAROLINA CASE LAW PROHIBITS DIRECT CLAIMS AGAINST INSURERS BY THIRD PARTIES

It is undisputed that Appellants are not parties to the contract of insurance on which they base their claims in this action. Yet, in filing this action, Appellants assert direct claims against Respondent Scottsdale Insurance. Our case law makes clear that such claims are impermissible.

Our courts have addressed claims like that of Appellants and found that injured third parties to an insurance contract may not sue insurers directly for claims against the insured. See, e.g., Kleckley v. Northwestern Vat'l Cas. Co., 338 S.C. 131, 526 S.E.2d 218 (2000) ("[a] tort action for an insurer's bad faith refusal to pay benefits does not extend to third parties who are not named insureds"); Trancik v. USAA Ins. Co., 354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003). "Under the common law, no privity of contract exists between an injured person and the tortfeasor's liability insurer, and the injured person has no right of action at law against the insurer." Trancik, 354 S.C. at 554, 581 S.E.2d at 861. The Court in Trancik further explained:

> Third-party-liability insurance contracts are generally indemnity contracts whereby the insurer, or the first party, agrees to pay the insured, or the second party, the amount of any damages the insured may become legally liable to pay a third party . . . . Thus, the third party, or the incidental beneficiary, does not have a contractual relationship with the insurer and cannot maintain an action against the insurer for breach of the insurance contract.

Id.

Given this, the trial court correctly held that the Declaratory Judgment action should be dismissed as Appellants' claims within the action are plainly not permitted under South Carolina case law.

III. THE TRIAL COURT CORRECTLY HELD THAT APPELLANTS LACK STANDING

Despite the above case law prohibiting direct claims against insurers by third parties, such as Appellants, Appellants contend that their claims are permitted under the South Carolina Uniform Declaratory Judgments Act (the "Act"). Yet, Appellants' reading of the Act is much too broad and overlooks key requirements of justicability and standing.

In the Declaratory Judgment Complaint, Appellants state as follows:

> while a private right of action does not exist under the Improper Claims Practices Act or for a third party in a bad faith context, any party affected by an insurance policy may file a declaratory judgment action. S.C. Code Ann. § 15-53-80 governs proper parties for a declaratory judgment action and reads, in pertinent part, "When declaratory relief is sought **all persons shall be made parties who have or claim any interest which would be affected by the declaration**."

See Declaratory Judgment Complaint, ¶ 17 (emphasis in Complaint). Appellants further cite to S.C. Code Ann. § 15-30-130, which provides that the Act is to be liberally construed and administered. Id.

A. No Justiciable Controversy

Even before considering the Appellant's broad reading of the Act, it must first be noted that Appellants fail to satisfy basic elements of justiciability, which are required even for a declaratory action. As they are not party to the contract of insurance and as they have not obtained a judgment against Defendants, their claims here fail due to a lack of a justiciable controversy, lack of standing, and as their claims are not ripe for adjudication.

"Despite the Act's broad language, it has its limits." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). The Act should not be used to address abstract matters and where an adjudication would not settle the rights of the parties or would be advisory in nature, such an action would be beyond the intended purpose and scope of the Act. See id.

Given this, Appellants' claims in the Declaratory Judgement action do not meet basic elements of justiciability due to the lack of a justiciable controversy. Appellants' underlying claims have been ended by the grant of summary judgment in the Underlying Action and so a ruling from this Court would be merely advisory.

B. Lack of Standing

Appellants also lack standing to assert the claims set forth in the Declaratory Judgment Action. To be entitled to declaratory relief, the pleadings and evidence must demonstrate a justiciable controversy. See id. (citing Power v. McNair, 255 S.C. 150, 153, 177 S.E.2d 551, 553 (1970)). The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. Holden v. Cribb, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002).

A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing. See Sloan v. Sch. Dist. of Greenville County, 342 S.C. 515, 518, 537 S.E.2d 299, 301 (Ct. App. 2000). Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. See Michael P. v. Greenville Cnty. Dep't of Soc. Servs., 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). To have standing, a party must have a personal stake in the subject matter of a lawsuit. See Newman v. Richland County Hist. Preserv. Comm'n, 325 S.C. 79, 82, 480 S.E.2d 72,74 (1997).

Under South Carolina law, "an action on a contract must be brought by the party in whom the legal interest is vested, and this legal interest is ordinarily vested only in the promise or promisor. Consequently, they or those in privity with them are generally the only persons who can sue on the contract." Prof'l Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362, 364-65 (Ct. App. 1985). In the matter at hand, it is undisputed that Appellants are not party to the contract of insurance at issue, and therefore lack standing to bring this action. The claims Appellants attempt to assert belong to Respondents, not Appellants.

At the hearing on Respondents' Motion to Dismiss, Appellants' counsel admitted that Appellants' interest in the Declaratory Judgment action was to essentially force the insurance company to pay settlement funds in the Underlying Action, since Respondents had thus far been unwilling to do so:

> And that affects settlement. That's another reason why we need to have a declaration is because whether or not they're going to indemnify and defend affects settlement.
>
> Ron Hakala's not going to – he's already said he's not going to make a decision and pull money out of his pocket because he's, you know, feels righteously indignant that he was right. If we have an adjuster who's making a business decision, that case very well might settle, probably will.

Transcript, p. 16. Plainly, Appellants' frustration at the Respondents' refusal to pay their settlement demands does not constitute a legitimate interest so as to provide standing to Appellants in this matter.

C. Lack of Ripeness

Appellants' claims further fail to meet justicability requirements as the claims are not ripe. Even assuming *arguendo* that Appellants had standing to bring this action, their claims are not established. This is particularly true given that the claims have been ended by the grant of summary judgment to Respondents. As noted in Trancik, "[t]hird-party-liability insurance

contracts are generally indemnity contracts whereby the insurer, or the first party, agrees to pay the insured, or the second party, the amount of any *damages the insured may become legally liable to pay* a third party . . . ." See Trancik.

Third-party-liability insurance contracts are generally indemnity contracts whereby the insurer, or the first party, agrees to pay the insured, or the second party, the amount of any damages the insured may become legally liable to pay a third party . . . ." Trancik, 354 S.C. at 554, 581 S.E.2d at 861. It is undisputed that Appellants' claims in the Underlying Action have not been established and, in fact, have been ended by the grant of summary judgment. Therefore, the lower court correctly determined that Appellants' claims in the Declaratory Judgment action are not ripe.

D. Appellants Read Declaratory Judgment Act Too Broadly

In addition to the above, Appellants' reading of the Act is simply too broad. Appellants asserted in their Complaint that "any party affected by an insurance policy may file a declaratory judgment action" and cited to S.C. Code Ann. § 15-53-80 for the proposition that "[w]hen declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration." See Declaratory Judgment Complaint, ¶ 17.

This is not a proper reading of the statute. First, the statement that persons shall be made parties to an action is not the equivalent of the Legislature granting a right to *bring an action*. This instead speaks to whether parties may be added to a pending action if they are truly interested, hence the language "shall be made parties . . . ." Second, Appellants have not established that they are parties "affected by" any declaration of rights under the Policy. After all, not only have Appellants not established that they will be able to obtain a judgment against Respondents, but their claims have been ended through summary judgment. Third, the Appellants' action does not accomplish any purpose of the Act, which is meant to provide for declaratory judgments without

awaiting a breach of existing rights. See Sunset Cay, LLC, 357 S.C. at 423, 593 S.E.2d at 466. Finally, to read the Act in the way that Appellants propose would essentially negate well-established case law, including Kletchley and Trancik, and long-established principles of justiciability. Our Legislature indicated no such intention in passing the Act. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 579 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature") (internal citations omitted).

CONCLUSION

As noted by Judge Miller at the hearing, the claims in Declaratory Judgment action brought by Appellants were entirely based in contract – a contract to which Appellants were not a party. Appellants failed to meet the most basic justiciability requirements at the time of the hearing, when their claims in the Underlying Action were pending. They most certainly fail to meet those elements now that the lower court has granted summary judgment against such claims. Given this, Appellants' appeal is moot and, considering the merits of the appeal, Judge Miller did not err and instead correctly applied well-established South Carolina law in dismissing this case. The dismissal should therefore be affirmed.

Respectfully Submitted,

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