

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Ina Shtukar Steinberg,

Plaintiff,

vs.

South Carolina Property and Casualty
Insurance Guaranty Association, as a statutory
successor in interest to St. Johns Insurance,
insolvent insurer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL
CIRCUIT

Civil Action No. 2024-CP-46-01308

**ORDER GRANTING DEFENDANT
SOUTH CAROLINA PROPERTY AND
CASUALTY INSURANCE GUARANTY
ASSOCIATION'S MOTION TO
DISMISS IN PART**

RECEIVED

May 01 2025

SC Court of Appeals

This matter comes before the Court upon motion by the Defendant pursuant to the South Carolina Rules of Civil Procedure, and specifically, Rule 12(b)(6) for failure by the Plaintiff to state a claim as to “Count Two” Breach of Good Faith and “Count Three” Declaratory Judgment in the Plaintiff’s Complaint filed on April 1, 2024. The hearing on the Motion was held on September 11, 2024. Present for the Plaintiff was Ina Shtukar Steinberg who is self-represented. Mary D. LaFave appeared as counsel of record for the South Carolina Property and Casualty Guaranty Association (herein “SCGA”).

In addition to oral arguments, the parties submitted briefs and exhibits for the Court’s consideration. Based on the findings of fact and conclusions of law explained further herein, the Defendant’s Motion to Dismiss in Part is GRANTED.

RELEVANT FINDINGS OF FACT

Plaintiff, proceeding *pro se*, initially filed a lawsuit in this court against SCGA alleging claims for 1) breach of contract for failure to pay her hail claim; 2) breach of covenant of good faith for failure to pay her hail claim; and 3) declaratory judgment on claims practices of the insolvent insurer and duties of insurers in South Carolina. *See* Pl.’s Compl., generally.

The facts underlying this litigation involve a hail claim filed by the Plaintiff against her now-defunct insurer, St. Johns Insurance Company, which was denied. Pl's Compl., ¶ 5. After the denial, St. Johns was declared insolvent. *Id.* at ¶ 6. Following the insolvency, Plaintiff renewed her claim with the SCGA that was again denied. *Id.* at ¶ 8. This suit follows and Defendant's Motion to Dismiss under South Carolina Rule of Civil Procedure 12(b)(6) for failure to state a claim is timely and ripe for decision.

CONCLUSIONS OF LAW

Defendant SCGA argues, and this court agrees, that the applicable statutory scheme to the Plaintiff's claim for bad faith as set forth in the Complaint against SCGA is S.C. Code Ann. § 38-59-10 *et seq.*, and specifically § 38-59-20. This section enumerates extracontractual damages are statutorily barred for claims practices of an insolvent insurer. Taking the facts and pleadings of the Complaint in the light most favorable to the Plaintiff, all of the actions upon which Plaintiff relies for her bad faith claim were actions or inactions attributable to St. Johns. The Court observes that this lawsuit is not a *pro forma* first-party insurance action due to the insolvency of St. Johns and, accordingly, South Carolina's recognized tort of "bad faith insurance practices" is not applicable to SCGA.

S.C. Code Ann. § 38-31-60(b) provides that SCGA is considered the insurer only within the confines of a "covered claim" and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. S.C. Code Ann. § 38-31-20(8) defines "covered claim" as one that is afforded coverage under the terms and conditions of the insolvent insurer's policy, but the statute explicitly excludes "any amount awarded as extra-contractual damages unless awarded against the association..." Defendant argues, and this Court agrees, that Bad Faith is an extracontractual, punitive claim for damages outside of the statutory liability of the

SCGA because the pleadings relate to the actions/inactions of the insolvent insurer and would not be encompassed in a “covered claim”. Defendant argues that the legislative intent of the creation of SCGA is to provide residents and owners of South Carolina to have a remedy for an insolvent insurance carrier and not to pay for the bad actions of said carriers. The Court agrees and holds that Plaintiff’s claims for breach of good faith and improper claims practices as espoused in “Count Two” of the Complaint are invalid in this context.

As to the Declaratory Judgment cause of action, the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.* (herein “SCDJA”) governs. The SCDJA is designed for courts to determine the “rights, status, and legal relations” between parties pursuant to a contract. In the insurance context, it is an action to seek declaration of the obligations, if any, that parties have under a policy of insurance. Here, the Plaintiff seeks advisory opinions as to legal arguments she intends to make rather than any declaration of obligations under the subject insurance policy. For example, though Plaintiff makes a variety of similar advisory requests, Plaintiff asks that this Court implement an analysis used in Worker’s Compensation law for implementation of contractual language for her hail claim. *See* Pl’s Compl, ¶ 65. This theoretical use of the SCDJA is improper and the Plaintiff’s plea for declarations do not fall within the scope of the SCDJA. *See Orr v. Clyburn*, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982) *citing Columbia v. Sanders*, 231 S.C. 61, 97 S.E.2d 210 (1957) (SCDJA is not properly invoked for an advisory opinion to be put on ice by the plaintiff for use and it is not a license to fish in the judicial pond for legal guidance or theories).

Pursuant to the SCDJA, S.C. Code Ann. §15-53-70, the court may refuse a request for declaratory judgment or a decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. Defendant argues, and this Court agrees, Plaintiff’s

Declaratory Judgment cause of action does not seek declarations related to the insurance policy, but, rather, requests for advisory opinions on general duties by insurers in South Carolina, improperly asks the Court to rewrite insurance contracts, and will not terminate the uncertainty/controversy in question. Accordingly, “Count Three” of the Complaint is invalid and is dismissed for failure to state a proper claim under SCDJA.

Based upon the foregoing, IT IS HEREBY ORDERED, that Defendant’s Motion to Dismiss in Part is GRANTED as to “Count Two” Breach of Covenant of Good Faith and “Count Three” Declaratory Judgment of the Complaint. This Order does not disturb “Count One” Breach of Contract action filed by the Plaintiff which was neither the subject of the Defendant’s Motion nor encompassed by this Order.

IT IS SO ORDERED.



York Common Pleas

Case Caption: Ina Shtukar Steinberg , plaintiff, et al VS Sc Property And Casualty Insurance Guaranty Association , defendant, et al

Case Number: 2024CP4601308

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge