

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Case No.: 2021-CP-23-04140
)	
Charlotte Muxlow and Gregory Muxlow,)	
)	
)	ORDER
Plaintiffs,)	
)	
v.)	
)	
Scottsdale Insurance Company; South Wind Ranch Holdings, LLC; Ronald Hakala; and Ashley Black,)	
)	
Defendants.)	
)	

This matter came before the Court on two Motions to Dismiss, one filed by Scottsdale Insurance Company and the other filed by South Wind Ranch Holdings, LLC; Ronald Hakala; and Ashley Black. After considering the pleadings, briefs, affidavits, exhibits, arguments of counsel, and other evidence, the Court grants both motions and dismisses Plaintiffs’ claims without prejudice, as more fully explained below.

BACKGROUND

A. The Underlying Action

In January 2021, Plaintiffs Charlotte Muxlow and Gregory Muxlow, along with Christian Wienands (“Wienands”), filed a lawsuit against Defendants South Wind Ranch Holdings, LLC, Ronald Hakala, and Ashley Black (Case No. 2021-CP-23-00416) (the “Underlying Action”). The Court has reviewed the Complaint in the Underlying Action in considering the present motions and the facts set forth below are as alleged within this document:

As set forth in the Complaint to the Underlying Action, Plaintiffs, a bride and groom, allege that they contracted with Scottsdale’s insureds, Defendants South Wind Ranch Holdings, LLC,

Ronald Hakala, and Ashley Black (“the Insureds”) for venue rental and services related to Plaintiffs’ wedding. Plaintiffs and Wienands, the father of the bride, paid deposits pursuant to the wedding venue contract. Then, in July 2020, due to the COVID-19 pandemic, Plaintiffs contacted Insureds about postponing their wedding. Shortly thereafter, Plaintiffs requested new dates to reschedule the postponed wedding and were provided dates. However, Plaintiffs ultimately chose to cancel the venue rental and requested that their deposits be returned. Upon cancellation, Plaintiffs requested that their non-refundable deposits be returned to them. Insureds refused to refund the deposits, noting that the contracts specified that the deposits were non-refundable. Plaintiffs then brought the Underlying Action against Insureds.

B. The Declaratory Judgment Action

Through the course of discovery in the Underlying Lawsuit, Plaintiffs learned that the Insureds maintained a Commercial General Liability Policy (“the Policy”) with Scottsdale. See Declaratory Judgment Complaint, ¶ 10. On August 4, 2021, Plaintiffs sent a letter entitled “Official Notice of Nationwide’s Bad Faith” to Scottsdale. See id. at ¶ 10. In that letter, Plaintiffs “inform[ed] [Scottsdale] of its duty to defend its insureds and its duty to put its insureds’ interest ahead of its own.” See id. On August 23, 2021, Scottsdale sent a letter to Plaintiffs denying their claim for Scottsdale to tender a defense to its Insureds in the Underlying Lawsuit. See id. at ¶ 11. As a result of Scottsdale’s denial letter, on August 26, 2021, Plaintiffs filed this Declaratory Judgment action.

In the Declaratory Judgment action, Plaintiffs 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, Plaintiffs 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. Defendants then filed Motions to Dismiss, based on Rules 12(b)(6) and 12(b)(7), SCRCP.

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).

DISCUSSION

Plaintiffs admit that they are not insureds under the contract of insurance with Scottsdale and are not party to the contract of insurance (the “Contract”). They nonetheless assert that they may seek the relief requested in the Declaratory Judgement Complaint based on the language of the Uniform Declaratory Judgments Act (the “Act”). Plaintiffs’ reading of the Act is too broad and their claims fail as their action is not ripe and they lack standing.

A. Direct Claims by Third Parties Prohibited

It is well-established in our case law 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 insured 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.

Plaintiffs argue that, despite this case law, they are nonetheless permitted to effectively assert claims against Scottsdale through the Act. See Declaratory Complaint, ¶ 17. Plaintiffs stated in the Declaratory Complaint:

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."

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

B. Plaintiffs Lack Standing

As will be discussed below, Plaintiffs read the Act too broadly. However, even setting this issue aside, Plaintiffs overlook that that basic elements of justiciability 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 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.

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 Plaintiffs are not party to the contract of insurance at issue, and therefore lack standing to bring this action. The claims Plaintiffs attempt

to assert belong to Insureds, not Plaintiffs, and absent any assignment of the same, Plaintiffs have no more standing to assert them than a stranger to this matter.

C. Plaintiffs' Claims Are Not Ripe for Adjudication

Plaintiffs claim further fail to meet justiciability requirements as the claims are not ripe. Even assuming *arguendo* that Plaintiffs had standing to bring this action, Plaintiffs claims are not established. 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 Plaintiffs’ claims in the Underlying Action remain pending. Therefore, the claims Plaintiffs assert have not yet materialized and this action is premature.

D. Plaintiffs Read Declaratory Judgment Act Too Broadly

In addition to the above, the Court will not permit Plaintiffs to conduct an “end run” around well-established statutory law and case law through an overly-broad construction of the Act. Plaintiffs 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.”

Plaintiffs misread 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. Second, Plaintiffs

have not established that they are parties “affected by” any declaration of rights under the Policy, as Plaintiffs have not established that they will be able to obtain a judgment against Insureds or that Insureds will not be able to pay the same in such instance.¹ Third, the Plaintiffs’ 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 Plaintiffs propose would essentially negative the well-established case law, including Kletchley and Trancik, and long-established principles of justiciability. Our Legislature indicated no such intention in passing the Act.² 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

For the reasons set forth above, Plaintiffs’ claims are dismissed. Whether Plaintiffs would be able to bring such an action in the event that they obtain a judgment in the Underlying Action is not an issue presently before this Court, and the Court therefore dismisses this action without prejudice, but makes no ruling as to whether Plaintiffs might meet the elements of standing, ripeness, and justiciability in the future.

IT IS SO ORDERED.

_____, 2022
_____, South Carolina

Hon. Edward R. Miller
Circuit Court Judge

¹ Plaintiffs’ counsel remarked during arguments that his clients would be benefitted by Scottsdale being forced to provide a defense to Insureds in the Underlying Action as this would potentially motivate the insurer to pay a settlement in the Underlying Action. This is plainly not within the scope of what constitutes those “affected by” a declaratory action.

² The Court also notes that, to read the Act as Plaintiff proposes would effectively do away with privity of contract.



Greenville Common Pleas

Case Caption: Gregory Muxlow , plaintiff, et al vs. Scottsdale Insurance Company ,
defendant, et al
Case Number: 2021CP2304140
Type: Order/Other

So Ordered

s/ Edward W. Miller