

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

BRENDENA BARDO, Plaintiff	:	NO. 20-0453
	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
	:	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and CARLA FERREIRA, Defendants	:	<i>Preliminary Objections</i>

ORDER

AND NOW, following argument held July 6, 2020 on Defendant State Farm Mutual Automobile Insurance Company's Preliminary Objections, the Court hereby issues the following ORDER.

On March 13, 2020, Plaintiff BrenDena Bardo ("Plaintiff" or "Ms. Bardo") initiated this action against Defendants State Farm Mutual Automobile Insurance Company ("State Farm") and Carla Ferreira ("Ms. Ferreira") by the filing of a Complaint. Pursuant to the well-pled facts in the Complaint, on March 6, 2019, Ms. Bardo and Ms. Ferreira were involved in a motor vehicle accident. Ms. Bardo sustained injuries, particularly to her right foot, which required hospitalization and which have resulted in ongoing pain and ambulatory difficulties.

On March 25, 2020, a State Farm insurance adjuster, Brian Warner, contacted Ms. Bardo. During this conversation, Mr. Warner advised Ms. Bardo that she could receive \$865.20 in lost wages. Ms. Bardo purportedly verbally agreed to this offer with the mistaken understanding that these benefits were available under her own policy with State Farm, as Mr. Warner did not inform her that he was calling on behalf of Ms. Ferreira, who also has a State Farm policy. Ms. Bardo thereafter received a check for \$865.20 from State Farm without a cover letter, and without ever signing a written agreement waiving any claims. Plaintiff's declaratory judgment action seeks to determine the validity of the settlement agreement between State Farm and Ms. Bardo.

State Farm filed Preliminary Objections to the Complaint on May 11, 2020, later supplemented by a Brief in Support. The Preliminary Objections assert that Plaintiff improperly seeks a determination that the underlying tort action against Ms. Ferreira is

not barred by the settlement agreement. Specifically, State Farm asserts that a declaratory judgment action is not the appropriate means by which Plaintiff may litigate an anticipated affirmative defense to a tort action not yet initiated by Plaintiff, namely, the affirmative defense of accord and satisfaction. Plaintiff counters in her Answer to the Preliminary Objections and Brief in Opposition that an action to determine the enforceability of a settlement agreement is within the scope of the Declaratory Judgment Act. Plaintiff further asserts that this action would serve the purpose of the Declaratory Judgment Act by allowing for expeditious determination of a key issue, that once determined would likely lead to the parties' settlement.

The purpose of the Declaratory Judgment Act, 42 Pa.C.S.A. § 7531, *et seq.*, "is to settle and afford relief to any person from uncertainty and insecurity with respect to rights, status and legal relations affected by a statute."¹ While certain actions are explicitly within the scope of the Declaratory Judgment Act, such as actions to construe or address the validity of written documents,² and actions to establish the rights of fiduciaries of a trust or estate,³ the Act also grants courts the general power to enter declaratory relief where a judgment or decree will terminate the controversy or remove an uncertainty.⁴ The Court may refuse to enter declaratory judgment where such judgment would not terminate the uncertainty or controversy giving rise to the proceeding, but the existence of an alternative remedy is not grounds for refusal to proceed under the Declaratory Judgment Act.⁵

¹ *Barros v. Martin*, 92 A.3d 1243, 1252 (Pa. Commw. 2014) (citing *Chester Upland Sch. Dist. v. Com.*, 495 A.2d 981, 983 (Pa. Commw. 1985)).

² See 42 Pa.C.S.A. § 7533.

³ See 42 Pa.C.S.A. § 7535.

⁴ See 42 Pa.C.S.A. § 7536.

⁵ 42 Pa.C.S.A. § 7537; see also 42 Pa.C.S.A. § 7541(b) ("The General Assembly finds and determines that the principle rendering declaratory relief unavailable in circumstances where an action at law or in equity or a special statutory remedy is available has unreasonably limited the availability of declaratory relief and such principle is hereby abolished. The availability of declaratory relief shall not be limited by the provisions of 1 Pa.C.S. § 1504 (relating to statutory remedy preferred over common law) and the remedy provided by this subchapter shall be additional and cumulative to all other available remedies except as provided in subsection (c). Where another remedy is available the election of the declaratory judgment remedy rather than another available remedy shall not affect the substantive rights of the parties, and the court may pursuant to general rules change venue, require additional pleadings, fix the order of discovery and proof, and take such other action as may be required in the interest of justice.").

An action under the Declaratory Judgment Act “must allege an interest by the party seeking relief which is direct, substantial and present, . . . and must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of one's legal rights.”⁶ The Declaratory Judgment Act “is broad in scope and is to be liberally construed and administered, but it is not without its limitation.”⁷ The Pennsylvania courts have consistently held that declaratory relief is unavailable when it is sought merely in anticipation of an action at law by another party.⁸ “To bring a declaratory judgment action, there must exist an actual controversy[, as] [d]eclaratory judgment is not appropriate to determine rights in anticipation of events which may never occur. It is an appropriate remedy only where a case presents antagonistic claims indicating imminent and inevitable litigation.”⁹

State Farm’s Brief in Support cites *OSRAM Sylvania Products v. Comsup Commodities, Inc.* for the proposition that “declaratory relief should be withheld when the request for relief is an attempt to adjudicate the validity of a defense to a potential future lawsuit.”¹⁰ Plaintiff’s Brief in Opposition asserts that this quote taken in isolation is a mischaracterization of the Pennsylvania Superior Court’s ruling in *OSRAM*, arguing that the Superior Court found that OSRAM’s suit for declaratory judgment to determine the validity of a contract was objectionable because OSRAM was attempting to forum shop and to adjudicate its defense against Comsup Commodities, Inc.’s anticipated lawsuit against it. The Superior Court clarified:

Under the theory propounded by OSRAM, any time there is a contract dispute, the defendant could defeat the plaintiff’s choice of forum by winning the race to the courthouse and filing a declaratory judgment action claiming that no contract existed or that the contract was somehow defective. This is not the purpose of a declaratory judgment action. The purpose of a declaratory judgment action is to afford relief from uncertainty and insecurity with respect to legal rights, status and other relations. It is

⁶ *Bowen v. Mount Joy Twp.*, 644 A.2d 818, 821 (Pa. Commw. 1994) (quotation omitted).

⁷ *Cloonan v. Thornburgh*, 519 A.2d 1040, 1046 (Pa. Commw. 1986).

⁸ *Am. Nuclear Insurers v. Metro. Edison Co.*, 582 A.2d 390, 392 (Pa. Super. 1990) (citing *Com., Dep’t of Gen. Servs. v. Frank Briscoe Co.*, 466 A.2d 1336, 1340–41 (Pa. 1983)).

⁹ *Selective Way Ins. Co. v. Hosp. Grp. Servs., Inc.*, 119 A.3d 1035, 1046 (Pa. Super. 2015) (quoting *Bromwell v. Michigan Mut. Ins. Co.*, 716 A.2d 667, 670 (Pa. Super. 1998)).

¹⁰ *OSRAM Sylvania Prods. v. Comsup Commodities, Inc.*, 845 A.2d 846, 848 (Pa. Super. 2004) (citing *Frank Briscoe Co.*, 466 A.2d at 1341 (Pa. 1983)).

not meant to be a vehicle by which a defendant may usurp the plaintiff's right to select jurisdiction.

. . . .

A declaratory judgment proceeding is one in equity. It is true that no hard and fast rules should be established where a trial court automatically dismisses a declaratory judgment action just because it is commenced “in anticipation of litigation.” Situations can easily be envisioned where a declaratory judgment action that is commenced “in anticipation” of a future lawsuit serves the purposes of the Declaratory Judgment Act.¹¹

Plaintiff further asserts that *Commonwealth, Department of General Services v. Frank Briscoe Co., Inc.*, also cited by State Farm for the proposition that a declaratory judgment should not be used to test a defense to a claim, actually stands for the proposition that a party may not attempt to prejudge issues committed for initial resolution by an administrative agency. In *Briscoe*, the Pennsylvania Supreme Court dismissed a declaratory action claim involving issues related to a breach of contract claim already pending before the Board of Claims on the basis that 42 Pa.C.S.A. § 7541(c)(2)-(3) specifically precludes declaratory judgment actions involving proceedings within the exclusive jurisdiction of a tribunal other than a court, and proceedings involving an appeal from an order of a tribunal.¹²

Plaintiff argues that the instant matter is more closely analogous to *Cawthorne v. Erie Insurance Group*. *Cawthorne* similarly involved a motor vehicle accident in which appellantm Beatrice Cawthorne, was struck by a vehicle driven by Paige A. Mays. Ms. Cawthorne filed a declaratory judgment action attempting to enforce a settlement agreement between herself and Ms. May’s insurer, Erie Insurance Group. The trial court considered the action and ultimately determined that Erie had not made a firm offer, and therefore was in its rights to retract the offer before it was accepted. The Superior Court affirmed this ruling on appeal. Plaintiff asserts that like *Cawthorne*, the sole issue is the determination of whether a valid settlement agreement exists. Plaintiff further indicates that even if the value of Plaintiff’s personal injury claim remains to be litigated, the Pennsylvania courts have customarily allowed declaratory judgment actions to determine the extent of underinsured motorist coverage without requiring

¹¹ *OSRAM*, 845 A.2d at 849-50 (citations and quotations omitted).

¹² See *Frank Briscoe Co.*, 466 A.2d at 1340-41.

litigants to also litigate the value of the personal injury.¹³ Plaintiff notes that declaratory judgment actions frequently arise in the insurance context, generally to determine whether an insurer is obligated to defend or indemnify one claiming under a policy,¹⁴ or to determine whether a particular loss is within the scope of an insurance policy.¹⁵

In contrast, State Farm cites *Avrich by Avrich v. General Accident Insurance Co.* as an instance where the Superior Court has dismissed a declaratory judgment action seeking determination of a defendant insurer's obligation to pay prior to the entry of judgment. In *Avrich*, Ginny Avrich and her two children were in an automobile when Leon Rothrock, who had been test-driving a car owned by Daniels Cadillac, Inc., struck their vehicle. Ms. Avrich filed a claim with Daniels Cadillac's insurance carrier, Universal Underwriters Insurance Company, and with Mr. Rothrock's insurance carrier, General Accident Insurance. Universal denied the claim on the basis that because Mr. Rothrock was not a named insured Ms. Avrich's claim fell outside the scope of the policy. General Accident denied her claim on the grounds that it is was the excess carrier and therefore only liable for payments in excess of the coverage provided by Universal. Ms. Avrich filed a declaratory judgment claim to determine the insurers' obligation to pay. The trial court dismissed this claim on the basis that the relief sought fell outside the scope of the Declaratory Judgment Act, as determination of an issue would be rendered moot should Ms. Avrich fail to obtain a judgment against Mr. Rothrock. On Appeal, the Superior Court affirmed, holding that as Ms. Avrich had yet to obtain a judgment her interests were too remote, asserting that she was seeking "to determine rights in anticipation of events which may never occur."¹⁶

Having considered the parties' arguments and reviewed the relevant case law, the Court in exercise of its discretionary powers finds that the validity of the settlement agreement between Ms. Bardo and State Farm is not a suitable subject for a

¹³ See e.g., *Barnard v. Travelers and Marine Ins. Co.*, 216 A.3d 1045 (Pa. 2019).

¹⁴ See e.g., *Warner v. Cont'l/CNA Ins. Cos.*, 688 A.2d 177, 180 (Pa. Super. 1996) (citations omitted) ("A declaratory judgment action is particularly appropriate in construing contracts of insurance in order to determine whether an insurer is obligated to defend and/or indemnify one claiming under the policy.").

¹⁵ See e.g., *Selective Way Ins. Co. v. Hosp. Grp. Servs., Inc.*, 119 A.3d 1035, 1046 (Pa. Super. 2015) (citation omitted) ("[A] party may initiate a declaratory judgment action for the court to make a determination of coverage of a claimed injury under an insurance policy.").

¹⁶ *Avrich by Avrich v. Gen. Acc. Ins. Co.*, 532 A.2d 882, 884 (Pa. Super. 1987) (quoting *Chester Upland Sch. Dist. v. Com.*, 495 A.2d 981, 983 (Pa. Commw. 1985)).

declaratory judgment action.¹⁷ Pursuant to the credo that declaratory judgment should not address issues in anticipation of events that may never occur, the Court finds the possibility that State Farm will raise satisfaction and accord as an affirmative defense to Plaintiff's yet uninitiated tort claim purely notional. Further, consistent with *Avrich*, even if Plaintiff initiates a tort action, the issue of the validity of the settlement agreement may ultimately be rendered moot absent a judgment against Ms. Ferreira. The Court finds that Plaintiff has failed to demonstrate that a tort action is "imminent and inevitable." To the contrary, Plaintiff's counsel has explained that the purpose of this declaratory judgment action is to avoid future litigation by clarifying the rights of the parties in order to facilitate a settlement. While an understandable goal, the Court holds that this is not the purpose of the Declaratory Judgment Act.

Pursuant to the foregoing, State Farm's Preliminary Objections are SUTSAINED. This action is DISMISSED.

IT IS SO ORDERED this 28th day of July 2020.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/crp

cc: Robert J. Muolo, Esq.
Michael J. Ziccollelo, Esq.
Gary Weber, Esq. / Lycoming Reporter

¹⁷ *Ronald H. Clark, Inc. v. Twp. of Hamilton*, 562 A.2d 965, 968–69 (1989) ("We reaffirm the long-standing rule that declaratory judgments are not obtainable as a matter of right. Whether the lower court should exercise jurisdiction over a declaratory judgment proceeding is a matter of sound judicial discretion.").