NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3704-10T1

LAUREN KAUFMAN, BETTINA FREELAND, PHILLIP T. BURRUS, VANGA STOILOV, and ANTHONY ROSETTI,

Plaintiffs-Appellants,

v.

ALLSTATE NEW JERSEY INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY,[1] and GOVERNMENT EMPLOYEES INSURANCE COMPANY,[2]

Defendants-Respondents.

Argued May 2, 2012 – Decided September 7, 2012

Before Judges Axelrad and Sapp-Peterson.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-5667-07.

Eric D. Katz argued the cause for appellants (Mazie, Slater, Katz & Freeman, LLC, and Keefe Bartels, attorneys; Mr. Katz, John E. Keefe, Jr., and Stephen T. Sullivan, Jr., of counsel; Mr. Katz, John D. Gagnon, and Mr. Sullivan, on the brief).

David J. D'Aloia argued the cause for respondent Allstate New Jersey Insurance Company (Saiber, LLC, and Richard L. Fenton

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[1] Improperly pled as Liberty Mutual Insurance Company.

[2] Improperly pled as GEICO Insurance Company.

(SNR Denton US, LLP) of the Illinois bar, admitted pro hac vice, attorneys; Mr. Fenton, of counsel; Mr. D'Aloia, on the joint and supplemental briefs).[3]

Thomas F. Quinn argued the cause for respondent Liberty Mutual Fire Insurance Company (Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, and Mark G. Arnold and Carol A. Rutter (Husch, Blackwell, Sanders, LLP) of the Missouri bar, admitted pro hac vice, attorneys; Mr. Arnold and Ms. Rutter, of counsel; Mr. Quinn, on the joint brief).

David F. Swerdlow argued the cause for respondent Government Employees Insurance Company (Windels, Marx, Lane & Mittendorf, LLP, and Meloney Cargil Perry (Meckler, Bulger, Tilson, Marick & Pearson, LLP) of the Texas bar, admitted pro hac vice, attorneys; Ms. Perry, of counsel; Mr. Swerdlow, on the joint brief).

PER CURIAM

In Kieffer v. High Point Insurance Co., 422 N.J. Super. 38 (App. Div. 2011), we held that plaintiffs could not maintain first-party claims against their insurers for alleged diminution in value to their motor vehicles involved in collisions. In the present matter, plaintiffs, Lauren Kaufman, Bettina Freeland, Phillip T. Burrus, Vanga Stoilov, and Anthony Rosetti, appeal

[3] A joint brief was submitted on behalf of all defendants. However, a supplemental brief, submitted on behalf of Allstate, dealt solely with the issue of Allstate's contention that "plaintiffs' UM/UIM claims are barred by the terms and provisions of a class action settlement involving the very same claims and class of Allstate New Jersey insureds that Kaufman seeks to represent here."

from the trial court order dismissing their class action complaint in which they sought prospective injunctive relief that would prevent defendants, Allstate Insurance Company (Allstate), Liberty Mutual Fire Insurance Company (Liberty Mutual), and Government Employees Insurance Company (GEICO), from denying coverage for alleged diminution in value of their vehicles under the uninsured motorist (UM) and underinsured motorist (UIM) provisions of their respective policies in the future, should their vehicles be involved in an accident with an uninsured or underinsured motorist that causes diminished value to their automobile. The motion judge found the claims were "barred by res judicata in [Lauglin] v. Allstate Insurance Company," the claims for relief "are infuturo," and to seek relief presently "would not be proper, because they are claims that are not ripe for . . . decision." We affirm.

On appeal, plaintiffs raise the following points for our consideration:

> POINT I
> DEFENDANTS' INSURANCE POLICIES PROVIDE UM/UIM COVERAGE FOR DIMI[]NUTION OF VALUE DAMAGES.
>
> POINT II
> PLAINTIFFS HAVE STANDING TO SEEK INJUNCTIVE/DECLARATORY RELIEF UNDER THEIR UM/UIM COVERAGE FOR DIMI[]UTION OF VALUE DAMAGES.

A. PLAINTIFFS HAVE STANDING TO BRING DECLARATORY AND INJUNCTIVE RELIEF CLAIMS.

B. RES JUDICATA IS INAPPLICABLE TO PLAINTIFFS' CLAIMS.

POINT III

PLAINTIFFS ABANDON THEIR CLAIMS FOR DIMINUTION OF VALUE DAMAGES IN THE FIRST-PARTY CONTEXT IN LIGHT OF THIS COURT'S DECISION IN Kieffer.

Plaintiffs originally sought relief against defendants in the context of first-party claims as well as third-party claims. In light of our decision last term in Kieffer, plaintiffs have abandoned their claims for diminution of value damages solely as it pertains to first-party claims. As to the remaining claims, it is undisputed that alleged damages to plaintiffs' vehicles arose out of accidents occurring in 2007. It is also undisputed that plaintiffs have not alleged that following the accidents, they submitted claims based upon diminution of value under their respective UM/UIM coverages with defendants. Indeed, before the motion judge, plaintiffs' counsel represented that plaintiffs "were not involved in a UM/UIM claim" and they were "not making a claim for damages" under their UM/UIM coverages. Thus, the essence of the relief plaintiffs sought below and in this appeal is that they are entitled to assert such claims under their UM/UIM coverages against defendants in the future, should they ever be involved in an accident with an uninsured or

underinsured motorist that causes diminished value to their automobiles.

New Jersey jurisprudence has traditionally applied a liberal standard in determining whether a litigant has standing to assert a cause of action. In re Camden Cnty., 170 N.J. 439, 451 (2002). Nonetheless, a plaintiff must satisfy the essential elements in order to maintain a cause of action: (1) "sufficient stake in the outcome of the litigation"; (2) genuine adverseness regarding the subject matter of the action; and (3) "a substantial likelihood that the plaintiff will suffer harm in the event of an unfavorable decision." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409-10 (App. Div. 1997), appeal dismissed, 152 N.J. 361 (1998).

It is undisputed that Burrus is no longer insured with GEICO, Freeland voluntarily terminated her policy with Liberty Mutual, and Kaufman also voluntarily terminated her policy with Allstate. Hence, Burrus, Freeland, and Kaufman have absolutely no stake in this litigation, no adverseness, and are not likely to suffer any harm in the event of an unfavorable decision.

As to the remaining plaintiffs, they may have a sufficient stake in the outcome, if for no other reason than the fact that they are policyholders with UM/UIM coverage. However, because, as they assert in their brief, "[t]here simply is no question

that for more than eighty-five (85) years, our courts have recognized diminution of value as a valid component of damages recoverable from a third-party tortfeasor[,]" the issue is not whether a third-party action for diminution in value may be maintained. Rather, plaintiffs seek a declaration that at some date in the future, should their vehicles still suffer a diminution in value, notwithstanding the repair of their vehicles or compensation for their loss based upon the fair market value of the vehicles immediately prior to sustaining damage, defendants will pay their diminution in value claims.

A claim based upon such a theory is purely speculative and lacks adverseness, an essential element for establishing standing. See Premier XXI Claims Mgmt. v. Rigstad, 381 N.J. Super. 281, 284 (App. Div. 2005) (explaining that "when the cost to repair a vehicle is proven, but there exists additional proof showing that even with the repair, the vehicle has depreciated, plaintiff is entitled to the reasonable cost of repair plus the depreciation, if any"). Plaintiffs' vehicles have not been involved in an accident. As such, repairs have not been undertaken. Therefore, plaintiffs cannot submit proof that the value of their vehicles was diminished after the repairs. Nor can they submit proof that they submitted claims under their UM/UIM coverages to recover diminution in value damages that

defendants thereafter refused to honor. Plaintiffs' claims are premised upon a hypothetical situation which does not establish the requisite adverseness needed to seek the declaratory relief and injunctive relief they seek.

Plaintiffs' reliance upon In re Environmental Insurance Declaratory Judgment Actions, 149 N.J. 278 (1997), and Government Employees Insurance Company v. Butler, 128 N.J. Super. 492 (Ch. Div. 1974), to assert that their contractual relationship with defendants affords them the right to bring an action seeking a judicial determination of their rights under the policy is misplaced. In both decisions, there was real adverseness. In re Environmental Insurance involved claims submitted to the insured's insurers for environmental remediation costs, which the insurers rejected as not being covered. 149 N.J. at 288. Government Employees Insurance Company resolved the question of which court, the Chancery Division or Law Division, the latter division being the forum where a liability action was pending, should resolve an ancillary uninsured motorist coverage issue. 128 N.J. Super. at 494. Thus, neither case involved parties who were seeking a determination based upon some speculative cause of action or issue. As was stated in Independent Realty Co. v. Township Of North Bergen, 376 N.J. Super. 295, 302 (App. Div. 2005):

> declaratory judgment is not an appropriate way to discern the rights or status of parties upon a state of facts that are future, contingent, and uncertain. Civil Serv. Comm'n v. Senate, 165 N.J. Super. 144, 148 . . . (App. Div.), certif. denied, 81 N.J. 266 . . . (1979). "It is clear that relief by way of a declaratory judgment should be withheld when the request is in effect an attempt to have the court adjudicate in advance the validity of a possible [claim or] defense in some expected future law suit." Donadio v. Cunningham, 58 N.J. 309, 325 . . . (1971).

"The issue of standing is a matter of law as to which we exercise de novo review." People For Open Gov't v. Roberts, 397 N.J. Super. 502, 508 (App. Div. 2008) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). As such, we owe no deference to the motion judge's legal determinations. Manalapan, supra, 140 N.J. at 378. In this instance, however, we are in complete agreement with the trial judge that plaintiffs lacked standing to bring the present action.

Finally, Kaufman's claims are barred for yet another reason, the settlement reached in Lauglin v. Allstate Insurance Company, Case No. 02-2-10380-0 (Wash. Sup. Ct. March 7, 2000). In Lauglin, the plaintiffs filed a multi-state putative class action on behalf of themselves and other Allstate insureds, including Allstate New Jersey insureds whose vehicles suffered damages arising out of collisions with uninsured or underinsured

motorists. The plaintiffs alleged that Allstate failed to pay for the diminution in value of their vehicles under the plaintiffs UM/UIM endorsements. The parties reached a settlement that covered insureds, including New Jersey insureds, maintaining UM/UIM coverages who reported valid property damages claims between August 20, 1996 and October 19, 2007.

Under the terms of the settlement, each class member released all claims against Allstate based upon diminution in value arising under their UM/UIM coverages, and the settlement not only covered prior and concurrent claims but also expressly included subsequent litigation brought individually or on behalf of any class member regarding claims for diminution of value arising under UM/UIM coverage provisions of the class members' respective policies. Additionally, anyone who fell within the definition of the class who did not specifically request to be excluded from the settlement would be bound by the settlement. Given the clear and unambiguous language of the settlement, Kaufman's contention that the settlement did not bar future claims is therefore without merit. Kaufman meets all of the requirements for class membership, and there is no evidence that she requested to opt out of the class. The motion judge therefore properly concluded, as a matter of law, Kaufman's claims were barred by principles of res judicata. See Simmermon

v. Dryvit Sys., Inc., 196 N.J. 316, 331-32 (N.J. 2008) (dismissing suit because full faith and credit must be given to class action settlement rendered by Tennessee court).

To the extent not specifically discussed, the remaining arguments advanced by plaintiffs are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.