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Case Number 437,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARIO DE LOS SANTOS,	:	Case No.: 437, 2024
	:	
Appellant,	:	Court Below: Superior Court of
	:	the State of Delaware,
v.	:	C.A. No. N22C-08-418 MAA
	:	
ALLSTATE PROPERTY AND	:	
CASUALTY INSURANCE	:	
COMPANY AND STATE FARM	:	
MUTUAL AUTOMOBILE	:	
INSURANCE COMPANY,	:	
	:	
Appellees.	:	

ANSWERING BRIEF OF APPELLEE-DEFENDANT BELOW STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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NATURE OF PROCEEDINGS

On April 23, 2022, Appellant/Plaintiff below, Mario De Los Santos, ("Plaintiff") filed a Complaint alleging that he was injured as a result of an October 7, 2021, motor vehicle accident involving vehicles operated by Plaintiff and Shantell C. Pritchett, an alleged uninsured motorist. Plaintiff claims that on October 7, 2021 he held automobile insurance policies issued by Defendants State Farm Mutual Automobile Insurance Company ("State Farm") and Allstate Property and Casualty Insurance Company ("Allstate"). Plaintiff asserts Uninsured Motorist claims against State Farm and Allstate, averring that the insurers stand in the shoes of the tortfeasor, Ms. Pritchett.

In their respective Answers to Plaintiff's Complaint, Defendants State Farm and Allstate each denied Plaintiff's claims on the basis Plaintiff was not covered by any active policy at the time of the accident.

At the close of discovery, Defendants moved for summary judgment. Defendant Allstate filed a Motion for Summary Judgment on April 11, 2024. Defendant State Farm filed a Motion for Summary Judgement on April 26, 2024. Plaintiff filed a joint opposition to both Motions for Summary Judgement on June 3, 2024.

On October 1, 2024, the Superior Court issued an Order granting both State Farm's and Allstate's respective Motions for Summary Judgment finding that

Plaintiff did not have an active policy in effect on the date of the accident with either insurer. The Superior Court found that Plaintiff cancelled his policy with State Farm prior to the accident and he failed to pay the premium for his Allstate policy, resulting in its cancellation.

On October 17, 2024, Plaintiff filed a Notice of Appeal. On December 3, 2024, Plaintiff filed his Opening Brief on Appeal.

This is Appellee State Farm's Answering Brief.

SUMMARY OF ARGUMENT

1. Denied. The Superior Court correctly determined that Plaintiff cancelled his State Farm automotive insurance policy prior to the date of the subject accident and accordingly no State Farm policy was in place on the date of the accident, October 7, 2021. The Superior Court also correctly determined that 18 *Del. C.* § 3915 did not preclude the cancellation of Plaintiff's policy of insurance until unearned premium amounts were refunded.
2. This argument is directed solely at Allstate and accordingly State Farm takes no position on this issue. To the extent a response is required, denied.

STATEMENT OF FACTS

This case stems from an October 7, 2021 motor vehicle accident involving vehicles operated by Plaintiff and Shantell Pritchett. (Appendix ("App.") A20-23). Ms. Pritchett was allegedly an uninsured motorist at the time of the accident. *Id.* At the time of the accident, Plaintiff identified himself as the holder of an automotive policy of insurance issued by Allstate Property and Casualty Insurance Company. (App. A331).

Prior to the subject accident, Plaintiff held a policy of insurance issued by State Farm Mutual Automobile Insurance Company. (App. A109-110, A113-114). State Farm policy number 049 8101-C27-08, issued to Plaintiff, originated on January 5, 2018. (App. A109, A113). After the original policy period of January 5, 2018 to March 27, 2018, Plaintiff's policy renewed until it was cancelled at Plaintiff's request. (App. A109-110). Plaintiff's policy last renewed on September 27, 2021. (App. A110, A122-125).

Plaintiff paid premium amounts for the State Farm policy through the State Farm Payment Plan. (App. A110, A122). Plaintiff's policy premiums were paid by recurring monthly credit card payments pursuant to payment plan number 1261-3534-21. (App. A110, A127). Following the September 27, 2021 policy renewal, Plaintiff's premium amount of $134.55 was due and paid on October 5, 2021. *Id.*

Plaintiff's State Farm policy[1] terms provided for Plaintiff to cancel the policy. Specifically, in relevant parts, the policy states:

> **8. Cancellation**
> **a. How You May Cancel**
> ***You*** may cancel this policy by providing to ***us*** advance notice of the date cancellation is effective. ***We*** may confirm the cancellation in writing. (emphasis in original).

App. A168.

On October 4, 2021, Plaintiff cancelled his State Farm policy through his agent at the office of David Soleye Insurance Agency Inc. (App. A57 at 71:3-23, A58 at 76:6-12, A109-110, A120). Plaintiff reported to State Farm that he purchased a policy of insurance with another company. (App. A110, A120). In order to ensure coverage throughout the entirety of October 4, 2021 and per the terms of the policy, the effective date of Plaintiff's cancellation was October 5, 2021, the same day as his prearranged premium payment. (App. A129, A168).

After cancelling his policy at his agent's office, Plaintiff never communicated with State Farm to request a reinstatement or continuation of the policy. (App. A58 at 74:2-16; 76:6-12).

An October 7, 2024 letter from State Farm to Plaintiff acknowledged Plaintiff's cancellation of his policy, effective October 5, 2021 at 12:01 a.m. (App.

[1] *See* Certified State Farm Policy, App. A140-169.

A129). The letter stated that any applicable premium refund would be handled through the State Farm Payment Plan Department. *Id.*

Regarding the return of premium amounts upon cancellation, the State Farm policy states:

> **8. Cancellation**
> **c. Return of Unearned Premium**
>
> If ***you*** cancel this policy, then premium may be earned on a short rate basis. A cash refund of unearned premium will not be made until ***you*** have completed an affidavit as required by law. The affidavit must be on a form ***we*** furnish and be returned to ***us***. (emphasis in original).
> . . .
>
> Any unearned premium may be returned within a reasonable time after cancellation. Delay in the return of any unearned premium ***does not affect the cancellation date***." (emphasis added).

App. A168.

An October 14, 2021 letter from State Farm to Plaintiff confirmed that Plaintiff's policy was cancelled at his request. (App. A131). The letter further stated that per the requirements of 18 *Del. C.* § 3915, a cash refund form was required to process any premium refund. *Id.* On November 1, 2021, State Farm received Plaintiff's executed Certification in Support of Cash Refund dated October 26, 2021. (App. A110, A163-165). Upon receipt of Plaintiff's executed certification, a premium refund draft, dated October 7, 2021, in the amount of Two Hundred Nineteen Dollars and Twenty-Nine Cents ($219.29) was issued by State Farm.

(App. A111, A137). Plaintiff endorsed the draft and deposited such into a PNC Bank checking account on December 17, 2021. (App. A138, A205-06).

Plaintiff did not have any State Farm issued policy of insurance active on October 7, 2021. (App. A137).

ARGUMENT

I. THE SUPERIOR COURT CORRECTLY DETERMINED THAT 18 *Del. C.* § 3915 DID NOT PRECLUDE THE CANCELLATION OF PLAINTIFF'S POLICY OF INSURANCE UNTIL UNEARNED PREMIUM AMOUNTS WERE REFUNDED AND PROPERLY GRANTED SUMMARY JUDGMENT FOR STATE FARM.

A. Question Presented.

Whether the Superior Court erred in granting summary judgment for Defendant State Farm by determining that 18 *Del. C.* §3915 did not preclude the cancellation of Plaintiff's policy until the premium was refunded.

B. Scope of Review.

The scope of review of the grant of a motion for summary judgment is *de novo*. *Ramirez v. Murdick*, 948 A.2d 395, 399 (Del. 2008). The Court views all facts in the light most favorable to the non-moving party and will adopt the factual findings of the court below unless clearly wrong. *Kaufman v. C.L. McCabe & Sons, Inc.*, 603 A.2d 831, 833 (Del. 1992). Factual issues which are irrelevant or are unnecessary are not material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986).

In resolving questions of law, the Court will determine whether the court below erred in formulating or applying legal precepts. *Kaufman,* 603 A.2d at 833. In deciding questions of statutory construction, the Court must determine whether the court below erred as a matter of law in formulating or applying legal principles.

Leatherbury v. Greenspun, 939 A.2d 1284, 1288 (Del. 2007); *Delaware Ins. Guar. Ass'n v. Christiana Care Health Services, Inc.*, 892 A.2d 1073, 1076 (Del. 2006) (quotations omitted).

C. Merits of Argument.

It is undisputed that on October 4, 2021, Plaintiff cancelled his State Farm policy of insurance, effective October 5, 2021, two days prior to the subject accident.[2] It is also undisputed that after cancelling his policy, Plaintiff never communicated with State Farm to request a reinstatement or continuation of the policy.[3] Accordingly, there is no issue of material fact and the Superior Court properly held that there was no State Farm policy of insurance in effect covering Plaintiff on the date of the subject accident, October 7, 2021.

i. 18 *Del. C.* §3915 is not ambiguous and does not impose a requirement on State Farm to receive an affidavit attesting to other automobile insurance coverage before canceling a policy of insurance at an insured's request.

Plaintiff contends that summary judgment in favor of State Farm is not warranted on the basis that the purpose of 18 *Del. C.* §3915 is to protect consumers during transitions between automobile policies of insurance. Plaintiff further contends that 18 *Del. C.* §3915 requires an insurer verify other coverage prior to cancelling a policy of insurance at an insured's request. In essence, Plaintiff's

[2] *See* Appellant's Opening Brief on Appeal, Filing ID No. 75127986 at p. 9
[3] App. A58 at 74:2-16.

position amounts to a requirement that an insured provide their carrier with an affidavit attesting to other coverage prior to cancelling a policy of insurance. Section 3915 imposes no such requirement. The statute addresses the process for the refund of unearned premiums on a cancelled policy of insurance. In advocating for an expansive interpretation of the statute, Plaintiff goes beyond the unambiguous statutory text and imposes nonexistent requirements on State Farm regarding its supposed obligation to continue coverage after Plaintiff cancelled his policy of insurance.

In examining a statute, a court looks "to ascertain and give effect to the intent" of the legislature. *Chase Alexa, LLC v. Kent County Levy Court*, 991 A.2d 1148, 1151 (Del. 2010). The initial step in interpreting a statute is to determine whether a statute is ambiguous. *Id.* (citing *Director of Revenue v. CNA Holdings, Inc.*, 818 A.2d 953, 957 (Del. 2003)). Disagreement between parties about the meaning of a statute does not create ambiguity. *Chase Alexa,* 991 A.2d at 1151 (citing *Centaur Partners, IV v. National Intergroup, Inc*., 582 A.2d 923, 927 (Del 1990)). Where a statute is not ambiguous, "the plain meaning of the statutory language controls." *Chase Alexa,* 991 A.2d at 1151 (quoting *Director of Revenue,* 818 A.2d at 957.)

As aptly noted by this Court,

> It is well-settled that unambiguous statutes are not subject to judicial interpretation. "If the statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the court's role is limited to an application of the literal meaning of those words."

> Accordingly, the first step in any statutory construction requires [a Court] to examine the text of the statute to determine if it is ambiguous. Under Delaware law, a statute is ambiguous if: first, it is reasonably susceptible to different conclusions or interpretations; or second, a literal interpretation of the words of the statute would lead to an absurd or unreasonable result that could not have been intended by the legislature.

Leatherbury, 939 A.2d at 1288 (citations omitted).

The Superior Court properly determined that 18 *Del. C.* §3915 addresses an insured's demand of a cash refund. Absent ambiguity, section 3915 is not subject to the expansive interpretation suggested by Plaintiff on public policy grounds.

Interpretation of section 3915 consistent with Plaintiff's position would alter the statue beyond its plain, unambiguous language. Subsection (a) of section 3915 states that "[n]o insurer shall honor a request for **a cash refund on** cancellation of a policy by the insured until such time as the insured has provided sufficient evidence" that one of several possibilities has occurred, one of which being that an insured has secured alternate insurance coverage. *See* 18 *Del. C.* §3915(a)(emphasis added). Subsection (b) of section 3915 sets forth that the "sufficient evidence" requirement under subsection (a), expressly for a cash refund, is satisfied by an insured providing an insurer with an affidavit certifying that one of the conditions required for the return of unearned policy premiums has been met. *See* 18 *Del. C.* §3915(b).

Plaintiff's position, that a policy of insurance cannot be cancelled by an insured until the insured has provided their insurer with an affidavit attesting to other

insurance, would render the statutory text "cash refund on" as surplusage. As recognized by this Court, "words in a statute should not be construed as surplusage if there is a reasonable construction which will give them meaning, and courts must ascribe a purpose to the use of statutory language, if reasonably possible." *Chase Alexa*, 991 A.2d at 1152 (quoting *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 900 (Del. 1994)). *See also DeMatteis v RiseDelaware Inc.*, 315 A.3d 499, 513 (Del. 2024)(Courts presume the legislature chose particular statutory language and construe statutes to avoid surplusage).

Looking to 18 *Del. C.* §3915, if the legislature sought to require an insured to provide sufficient evidence, in the form of an affidavit, of other coverage prior to being allowed to cancel a policy, it could have simply omitted the words "cash refund on" from the statutory text such that the statute would read "[n]o insurer shall honor a request for a cancellation of a policy by the insured until such time as the insured has provided sufficient evidence…" By including the phrase "cash refund on," the legislature intended for the statute to apply to instances where an insured demands a cash refund of premium amounts *after the cancellation* of a policy, as correctly held by the Superior Court.

Plaintiff's interpretation of section 3915 also fails to account for or consider the plain and unambiguous text of subsection (b) which mandates that an insurer

notify an insured who requests a premium refund "*on cancellation*" of the requirements for a refund. *See* 18 *Del. C.* §3915(b).

Plaintiff's contention that the purpose of section 3915 is to prevent coverage lapses during transitions between insurers is further belied by a full reading of the statute. Beyond the situation where an insured acquires other insurance, subsection (a) of section 3915 address other circumstances, *i.e.*, instances where a vehicle is sold, where a vehicle is no longer operable, or where an insured becomes self-insured. *See* 18 *Del. C.* §3915(a)(2)-(4). In those circumstances, the requirements for a policy refund set forth in the statute still apply, even though none involve a transition between different insurers.

Plaintiff relies upon a public policy argument to support his contention that the Superior Court incorrectly interpreted section 3915 by failing to broaden its scope beyond policy premium refund procedures. Plaintiff's subjective interpretation of the purpose of the statute incorrectly presupposes that the statute is ambiguous, without ever addressing the plain language of the statute. Here, the statute is unambiguous and accordingly controls, without the need for the Court to look to public policy considerations. *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)(Where statutory language is plain and unambiguous a court need not engage in an unnecessary exercise of statutory interpretation). Regardless, the cases cited by Plaintiff do not change the analysis.

Plaintiff relies on two decisions in support of his expansive interpretation of the statute. Both decisions address notice requirements in instances where an insurer cancels an insured's policy of insurance. In *State Farm Mut. Auto. Ins. Co. v. Mundorf*, 659 A.2d 215 (Del. 1995), the court found that the cancellation of an assigned risk policy based on an insured's failure to pay premiums was invalid because the insurer failed to send a notice of cancellation that complied with notice requirements mandated by the plain terms of the Delaware Assigned Risk Plan. While the court did address public policy considerations, such was in the context of an insurer's cancellation of an assigned risk plan, noting that proper notice of a cancellation was required so that a policyholder could look to procure alternate insurance. *Id.* at 221. In this matter, the issue of notice is not material as it was not State Farm that cancelled Plaintiff's policy, rather, it was Plaintiff who affirmatively cancelled his policy. Moreover, prior to cancelling his State Farm policy, Plaintiff had communicated and coordinated with Allstate to procure alternate insurance and at the time he cancelled his policy, reported to State Farm that he procured other coverage.

Rather than supporting an expansive reading of section 3915 based on public policy considerations, *Mundorf* reinforces the Superior Court's sound ruling that Plaintiff cancelled his State Farm policy in advance of the subject accident. As noted by the *Mundorf* court, "As a general rule, the means and method of effecting the

renewal or cancellation of an insurance policy is determined by the provisions of a particular policy" provided the policy is consistent with the law. *Id.* at 217. Plaintiff's State Farm policy[4] allowed for him to cancel the policy and he did so.[5]

Similarly, in the other decision relied upon by Plaintiff, *Dimenco v. Selective Ins. Co. of America*, 833 A.2d 984 (Del. 2002), the court was concerned with whether an insured was fairly on notice of a policy being cancelled by an insurer. Upon a determination that the plaintiffs were properly on notice that their policy was subject cancellation for nonpayment, the court declined the invitation to find coverage the plaintiffs believed they were entitled to. *Id.* at 989-90. Likewise, this Court should decline to extend coverage to Plaintiff under his cancelled State Farm policy based on his subjective belief about the status of his coverage. As noted *supra*, Plaintiff was on notice the policy was cancelled since he cancelled the policy.

In the present case, there is no ambiguity in section 3915 and it cannot be twisted to impose burdens and requirements for a policy's cancellation that are conspicuously absent. As the Court observed in *Leatherbury*, "[this Court does not] sit as a super legislature to eviscerate proper legislative enactments. If the policy or wisdom of a particular law is questioned as unreasonable or unjust, then only the elected representatives of the people may amend or repeal it. Judges must take the

[4] *See* App. A168 - Certified State Farm Policy, Form 9808A at p. 28, Clause 8, "Cancellation", subsection a, "How You May Cancel".
[5] *See* App. A057 at 71:3-23.

law as they find it . . . ." *Leatherbury,* 939 A.2d at 1292. Thus, the Superior Court properly found that there was no State Farm policy in effect on the date of the subject accident.

ii. The payment of policy premiums on October 5, 2021 per Plaintiff's State Farm Payment Plan has no impact on the validity of Plaintiff's cancellation of his State Farm policy.

Plaintiff contends that the payment of a policy premium on October 5, 2021, the same day as the effective date of the policy cancellation, alters the analysis as to whether Plaintiff's policy was cancelled. Plaintiff does not cite any legal authority to support his position. However, the payment of the premium does not alter the date of cancellation of Plaintiff's policy.

On October 4, 2021, Plaintiff cancelled his State Farm policy through his then agent and notified State Farm he obtained coverage through another insurer.[6] In order to ensure coverage throughout the entirety of the day and consistent with policy terms, the effective date of Plaintiff's cancellation was October 5, 2021.[7] By virtue of the date Plaintiff cancelled his policy, the effective date of the cancellation and the timing of a pre-arranged, authorized credit card premium payment coincided on October 5, 2021.[8]

[6] App. A109-110, A120.
[7] App. A129, A168.
[8] App. A127.

After cancelling his State Farm policy, Plaintiff requested and was provided with a refund of the policy premium.[9] Per the requirements of section 3915, on receipt of Plaintiff's executed Certification in Support of Cash Refund, State Farm refunded premium amounts that were unearned based on the policy cancellation date of October 5, 2021.[10] Plaintiff accepted the premium refund and deposited the proceeds into his bank account.[11]

The timing of the October 5, 2021 premium payment has no bearing on Plaintiff's argument that his policy cancellation could not be finalized until State Farm received his executed Certification in Support of Cash Refund. Regardless of whether a premium payment was made on October 5, 2021, Plaintiff was due a premium refund by virtue of cancelling the policy. The fact that the premium refund did not process until after the date of the subject accident does not alter date of the policy cancellation.

In *Dimenco,* the court declined to wade into issues relating to the timing of paperwork related to the policy cancellation noting such was irrelevant to the issues before the Court. 833 A.2d at 987. However, the court did note that once the policy was cancelled, the insurer was obligated to return the unused premium. *Id.* Similarly, in this matter, the timing of State Farm's return of Plaintiff's premium

[9] App. A135, A137.
[10] *Id*.
[11] App. A138, A205-06.

does not impact the validity or date of Plaintiff's cancellation of his policy. The clear language of Plaintiff's policy states that the date of the premium refund "does not affect the cancellation date."[12] As noted *supra*, this Court has observed that as a general rule, the method of cancelling an insurance policy is determined by the provisions of the policy. *Mundorf*, 659 A.2d at 217. The record plainly reflects that consistent with his policy's terms, Plaintiff cancelled his State Farm policy on October 4, 2021, with an effective date of October 5, 2021. Accordingly, the Superior Court properly held there was no State Farm policy in effect on October 7, 2021.

[12] *See* App. A168 - Certified State Farm Policy, Form 9808A at p. 28, Clause 8, "Cancellation", subsection c, "Return of Unearned Premium".

II. APPELLANT CONTENDS THAT THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR DEFENDANT ALLSTATE BECAUSE THERE EXISTS A GENUINE ISSUE OF MATERIAL FACT IN DISPUTE AS TO THE CAUSE OF THE FAILURE OF DE LOS SANTOS'S ALLSTATE PREMIUM TO BE PAID ON SEPTEMBER 29, 2021.

A. Question Presented.

Whether the Superior Court erred in granting summary judgment in favor of Defendant Allstate on the basis that an issue of material fact exists as to the reason Plaintiff's initial premium payment to Allstate was not processed.

B. Scope of Review.

The scope of review of the grant of a motion for summary judgment is *de novo*. *Ramirez v. Murdick*, 948 A.2d 395, 399 (Del. 2008). Appellee incorporates by reference the standard of review as set forth more fully in section **I.B.**, *supra*.

C. Merits of Argument.

Plaintiff's argument is directed to co-Appellee/Defendant Below Allstate and not State Farm. The reasons for Plaintiff's failure to properly pay premium amounts due to Allstate are not material to fact that Plaintiff cancelled his State Farm policy prior to the subject accident and accordingly State Farm takes no position on Plaintiff's arguments regarding the applicability of the Allstate policy.

CONCLUSION

The Superior Court properly granted summary judgment and in holding that Plaintiff cancelled his State Farm policy of insurance, effective October 5, 2021, and accordingly there was no State Farm policy of insurance active on October 7, 2021.

The Superior Court also correctly held that 18 *Del. C.* §3915 pertains to an insured's demand of a cash refund of policy premiums, thereby rejecting Plaintiff's contention that the purpose of the statute is to ensure an insured has valid coverage when seeking to switch insurers as being unsupported by the law. Accordingly, Plaintiff's policy was properly cancelled, effective October 5, 2021, and was not conditioned upon the return of policy premiums.

For these reasons, summary judgment in favor of Appellee-Defendant Below State Farm Mutual Automobile Insurance Company was appropriate and should be affirmed.

Respectfully submitted,

/s/ *Daniel P. Daly*

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