STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 2, 2022]

NASSER BUISIER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2021-07468**
	:	
THE RHODE ISLAND DIVISION OF LOTTERIES, Mark A. Furcolo, in his capacity as Administrator, UTGR, INC., a/k/a TWIN RIVER CASINO d/b/a BALLY'S TWIN RIVER LINCOLN CASINO RESORT, TWIN RIVER MANAGEMENT GROUP, INC., and AMERICAN WAGERING, INC., d/b/a SPORTSBOOK RHODE ISLAND,	:	
	:	
***Defendants*.**	:	

DECISION

STERN, J. Before the Court is Defendants'—The State Lottery Division of the State of Rhode Island Department of Revenue (R.I. Lottery), UTGR, Inc., f/k/a Twin River d/b/a Bally's Twin River Lincoln Casino Resort (TR Lincoln), and Twin River Management Group, Inc. (TR Management) (collectively, Defendants)—Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Superior Court Rules of Civil Procedure. Plaintiff Nasser Buisier (Plaintiff) filed a timely objection. Jurisdiction is pursuant to Rule 12(c) of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

On or about August 2, 2020, Plaintiff purchased multiple sports betting lottery tickets from Defendants. (Pl.'s Compl. ¶ 12.) According to Plaintiff, two of the sports betting lottery tickets purchased were deemed to be winning tickets for specific sports bets, which, pursuant to applicable rules governing sports wagers, Defendants are responsible for paying. *Id*. ¶¶ 13, 15; Defs.' Answer ¶ 13. Sometime between learning about the two winning tickets and attempting to collect the cash prize from those tickets, the alleged winning tickets were "accidentally mutilated, altered, destroyed, or deemed otherwise unreadable, illegible, incomplete, or defective." (Pl.'s Compl. ¶ 16.) Relying on outdated "House Rules" posted online (the Online Rules), Plaintiff took photographs of the winning tickets prior to their accidental destruction and attempted to collect his prize by presenting this photographic evidence to Defendants. *Id*. ¶ 14. According to Plaintiff, the Online Rules provided that "photographic evidence of purchased tickets would be honored." *Id*. ¶¶ 14, 17. Plaintiff claims that he made multiple demands for payment within the applicable one-year timeframe and presented this photographic evidence of his alleged winning tickets to Defendants. *Id*. ¶¶ 17-18. Defendants, however, refused to pay Plaintiff his alleged winnings, citing the updated version of the House Rules which had become effective in May 2019 (the May 2019 House Rules), and which presently govern sports wagers. *Id*. ¶¶ 18-19; Defs.' Answer ¶¶ 18-19.

Based on Defendants' refusal to honor Plaintiff's photographic evidence of his alleged winning tickets, Plaintiff filed suit seeking a declaratory judgment that he purchased two winning sports betting lottery tickets. (Pl.'s Compl. 3-4.) Plaintiff also asserted additional allegations including unjust enrichment, breach of contract, contractual breach of the implied covenant of

good faith and fair dealing, tortious breach of the implied covenant of good faith and fair dealing, contractual bad faith, and bad faith pursuant to G.L. 1956 § 9-1-33, based on Defendants' refusal to honor Plaintiff's photographic evidence. *Id*. at 4-7. After filing an Answer, Defendants filed a joint Motion for Judgment on the Pleadings, arguing that Plaintiff's Complaint fails to state a claim upon which relief can be granted as a matter of law because Plaintiff "undisputedly failed to comply with the sports wagering rules that require him to present his wagering tickets in order to receive payout on a sports wager." (Defs.' Mem. of Law in Supp. J. on the Pleadings (Defs.' Mem.) 1.) In response, Plaintiff filed an Objection, arguing that Plaintiff took a photograph of the tickets "in reliance on the [Online] Rules displayed on Defendant Twin River's website at the time of purchase[,]" which, according to Plaintiff, "offered a remedy for tickets that were 'lost, stolen, or otherwise unreadable.'" (Mem. in Supp. of Pl.'s Obj. to Defs.' Mot. for J. on the Pleadings (Pl.'s Obj.) 1.) Based on this, Plaintiff claims that "Defendants refused to honor [Plaintiff's] winning tickets citing another version of the rules." *Id*. at 2. The Court's decision follows.

II

Standard of Review

A motion for judgment on the pleadings pursuant to Rule 12(c) '"provides [the] trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided."' *Premier Home Restoration, LLC v. Federal National Mortgage Association*, 245 A.3d 745, 748 (R.I. 2021) (quoting *Nugent v. State Public Defender's Office*, 184 A.3d 703, 706 (R.I. 2018)) (further quotations omitted); *see also Chase v. Nationwide Mutual Fire Insurance Co.*, 160 A.3d 970, 973 (R.I. 2017); *Chariho Regional School District v. Gist*, 91 A.3d 783, 787 (R.I. 2014).

When faced with such a motion, the Court "review[s] the granting of a Rule 12(c) motion for judgment on the pleadings under the same test we utilize to review a Rule 12(b)(6) motion to dismiss." *Premier Home Restoration*, 245 A.3d at 748 (citing *Nugent*, 184 A.3d at 706). That is, '"[f]or the purposes of our review[,] a Rule 12(c) motion is tantamount to a Rule 12(b)(6) motion, and the same test is applicable to both []."' *Chase*, 160 A.3d at 973 (quoting *Gist*, 91 A.3d at 787) (further quotations omitted); *see also Collins v. Fairways Condominiums Association*, 592 A.2d 147, 148 (R.I. 1991). "[T]he sole function of a motion to dismiss is to test the sufficiency of the complaint." *Barrette v. Yakavonis*, 966 A.2d 1231, 1234 (R.I. 2009). "Therefore, a judgment on the pleadings 'may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim."' *Premier Home Restoration*, 245 A.3d at 748 (quoting *Nugent*, 184 A.3d at 706-07); *see also Chase*, 160 A.3d at 973.[1]

[1] The parties dispute whether the Court herein can consider the May 2019 House Rules because this particular version of the House Rules was not attached to Plaintiff's Complaint. *See* Pl.'s Obj. 5-6; Defs.' Reply in Supp. of Mot. for J. on the Pleadings (Defs.' Reply) 2-3. While Plaintiff is correct that the May 2019 House Rules are not attached to Plaintiff's Complaint, the May 2019 House Rules were attached to Defendants' Answer as an exhibit. *See* Defs.' Answer Ex. A. Consequently, the Court may properly consider the May 2019 House Rules as an attachment to Defendants' Answer. *See Ingram v. Mortgage Electronic Registration Systems, Inc.*, 94 A.3d 523, 525-27 (R.I. 2014) (demonstrating that considering the plaintiff's complaint and defendant's answer, as well as supporting documentation attached thereto, is proper under a Rule 12(c) motion for judgment on the pleadings; however, considering exhibits attached to papers outside of the pleadings runs contrary to Rule 12(c)).

III

Analysis[2]

A

Count III (Breach of Contract)

Defendants argue that Count III (Breach of Contract) of Plaintiff's Complaint fails to state a claim upon which relief can be granted as a matter of law because taking all of the facts as alleged in Plaintiff's Complaint as true, there is no breach of contract. (Defs.' Mem. 6.) Specifically, Defendants argue that Plaintiff's Complaint fails to demonstrate that Defendants had an affirmative obligation to pay Plaintiff the cash prize from his sports wager because the contract terms require Plaintiff to present his winning wagering ticket to collect the prize. *Id*. at 8. Defendants point to § 1(B) of the May 2019 House Rules which, according to Defendants, are visible on Defendant Twin River Casino's website and at the retail sportsbook where Plaintiff initially placed his wagers. *Id*. at 6, 8. The relevant section of the May 2019 House Rules states that "[n]o winning wager will be paid without the customer copy of the wagering ticket. No reproductions or photos of wagering tickets will be accepted. Management is not responsible for lost, stolen, altered or unreadable tickets." *Id*. at 8. Defendants argue that the May 2019 House Rules govern the terms of the contract and, consequently, Defendants are not obligated to pay Plaintiff because he cannot produce his wagering ticket. *Id*.

Plaintiff opposes Defendants' position, citing an older version of the House Rules—the Online Rules—which, as mentioned above, contained an exception allowing customers to collect their winnings without presenting their wagering ticket. (Pl.'s Obj. 1-2.)

[2] While Plaintiff's Complaint contains seven counts based on the factual allegations above, the Court will first address Count III (Breach of Contract) and will address the remaining counts in turn.

Specifically, according to Plaintiff, the Online Rules "offer[ed] a remedy for tickets that were lost, stolen, or otherwise unreadable" and "afforded an alternative method to claim a prize without the physical tickets" by honoring lost, stolen, or unreadable tickets so long as the claimant could verify his or her ownership of such tickets. *Id*. at 1-2. Plaintiff argues that he took photographs of his winning tickets before they were destroyed in reliance on the exception contained in the Online Rules and, therefore, the Online Rules govern the contract. *Id*. at 1-8. Consequently, Plaintiff argues that Defendants are obligated to honor Plaintiff's destroyed winning tickets because he presented sufficient photographic evidence to establish his ownership of those tickets, as required by the Online Rules. *Id*. at 2.

To establish a viable breach of contract claim, '"the plaintiff must prove both the existence and breach of a contract, and that the defendant's breach thereof caused the plaintiff's damages."' *Vicente v. Pinto's Auto & Truck Repair, LLC*, 230 A.3d 588, 592 (R.I. 2020) (quoting *Fogarty v. Palumbo*, 163 A.3d 526, 541 (R.I. 2017)); *see also Petrarca v. Fidelity and Casualty Insurance Co*., 884 A.2d 406, 410 (R.I. 2005) ("[the plaintiff] must not only prove both the existence and breach of a contract, he also must prove that the defendant's breach thereof caused him damages.")

As a threshold matter, the Court agrees with Defendants that the May 2019 House Rules govern the contract at issue here. As Defendants point out, the Rhode Island Department of Revenue's State Lottery Division is responsible for promulgating the Rhode Island Lottery Rules and Regulations that set forth guidelines for lottery operations, such as prize payments.[3]

[3] Defendants correctly point out that:

> "Under the Rhode Island Constitution, the state has the exclusive right to operate lotteries. *See* R.I. CONST. art. 6, § 15. Casinos–such as [the location where Plaintiff placed his bets in this case], are included within the definition of 'lottery,' as used in Article 6, Section 15. *In Re Advisory Opinion to Governor*, 856 A.2d 320, 329

Those regulations—including the applicable House Rules in the instant matter—carry the force of state law. *See* R.I. CONST. art. 6, § 15; *supra* note 3. When lottery customers place sports wagers, the House Rules become contractual terms, and the wager is subject to those terms. *Valente v. Rhode Island Lottery Commission*, 544 A.2d 586, 590 (R.I. 1988). Plaintiff argues that the Online Rules are controlling because he was not aware of the May 2019 House Rules and believed that the Online Rules were effective when he placed his wager. (Pl.'s Obj. 1-8.) To that extent, the Court finds Plaintiff's argument deeply flawed and agrees with Defendants that "[t]he legal axiom that ignorance of the law is no excuse operates here to extinguish Plaintiff's claims [that the Online Rules are controlling]." [4] (Defs.' Reply 5.) Because the House Rules operate as Rhode Island law, Plaintiff is presumed to have been aware of the May 2019 House Rules when he initially purchased his wagering tickets and is contractually bound by those rules. *See Ronca v. New York State Racing & Wagering Board*, 394 N.Y.S.2.d 386, 387 (N.Y. Sup. Ct. 1977) (holding that a plaintiff is "presumed to know [the applicable wagering] rules and regulations when placing a bet with the defendants"); *Salmore v. Empire City Racing Association*, 123 N.Y.S.2d 688, 692 (N.Y. Sup. Ct. 1953) (finding that a plaintiff was presumed to know that his bet would be subject to "all the then existing rules and regulations prescribed by the State Racing Commission" and that he must abide by those rules); *DePasquale v. Ogden Suffolk Downs, Inc.*, 564 N.E.2d 584, 586 (Mass. App. Ct. 1990) (stating that "[w]hen a person places a bet, he is presumed to know the rules, and his bet is subject to those rules.") (citing

(R.I. 2004) (citing *Narragansett Indian Tribe of Rhode Island v. State*, 667 A.2d 280, 282 (R.I. 1995))." (Defs.' Reply 4.)

[4] Additionally, to the extent that Plaintiff claims he relied on the Online Rules when he placed his bet and/or took photographs of his winning tickets prior to their accidental destruction, Defendants point out that the screenshot of the Online Rules that Plaintiff attached as an exhibit was taken on August 11, 2020—nine days *after* Plaintiff placed his wagers on August 2, 2020. (Defs.' Reply 3.)

Ruggiero v. State Lottery Commission, 489 N.E.2d 1022, 1024 (Mass. App. Ct. 1986)). Thus, there is no question that Plaintiff's sports wagering tickets presently in question were subject to the May 2019 House Rules.

Turning to the question of whether Plaintiff has established a viable claim for breach of contract, the Court finds that Plaintiff failed to point to any facts identifying any obligation breached by Defendants. Defendants had no affirmative obligation to pay Plaintiff the cash prize because Plaintiff was unable to present his wagering tickets, as the May 2019 House Rules unambiguously require. (Defs.' Mem. 6.) As discussed above, the May 2019 House Rules governing the contract require customers to present the physical copy of their winning wagering ticket to collect their prize. Indeed, the May 2019 House Rules expressly state that "[n]o reproductions or photos of wagering tickets will be accepted" and disclaim any obligation to honor lost, stolen, altered, or unreadable tickets. *Id*. Therefore, Plaintiff's attempt to collect his prize by presenting photographs of his allegedly winning tickets did not trigger Defendants' contractual obligation to pay Plaintiff the winnings. *Id*. Defendants were well within their rights pursuant to the May 2019 House Rules to refuse to accept Plaintiff's photographs of his allegedly winning tickets. Importantly, Plaintiff does not allege or point to any facts suggesting that Defendants breached the terms contained in the May 2019 House Rules but nonetheless persists with the argument that the Online Rules govern the agreement and that Defendants breached those terms. (Pl.'s Obj. 1-10.) Based on the Court's finding above that the May 2019 House Rules are controlling, Plaintiff has failed to point to any facts demonstrating a cognizable breach of contract claim.

In conclusion, the Court finds beyond a reasonable doubt that Plaintiff would not be entitled to relief from Defendants under any set of facts that could be proven in support of Plaintiff's breach

of contract claim. Plaintiff has failed to identify any affirmative obligation on the part of Defendants that was breached and failed to identify any damages suffered as a result of Defendants' alleged breach of contract. Consequently, Plaintiff has failed to sufficiently state a cognizable claim for breach of contract and, accordingly, the Court dismisses Count III (Breach of Contract) of Plaintiff's Complaint.

B

Count I (Declaratory Judgement)

As mentioned above, Plaintiff seeks a declaratory judgment that he "purchased two winning sports betting lottery tickets from Defendants, that he timely presented those tickets or sufficient evidence of those tickets for payment, and that Defendants owe Plaintiff the full amount of his winnings for those tickets." (Pl.'s Compl. ¶ 24.) Plaintiff argues that he presented sufficient photographic evidence to verify his allegedly winning tickets in compliance with the terms set forth in the Online Rules. *Id*. ¶¶ 14, 24. Therefore, Plaintiff argues that Defendants are contractually obligated to pay him the cash prize despite the fact that Plaintiff cannot produce the physical tickets. *Id*. ¶ 32. In response, Defendants reiterate their assertion that Plaintiff's breach of contract claim fails to allege any cognizable claim for relief because Plaintiff rests his arguments on the obsolete Online Rules and does not point to any facts alleging that Defendants are otherwise obligated to pay Plaintiff pursuant to the May 2019 House Rules. (Defs.' Mem. 8-10.) Therefore, Defendants argue that Plaintiff's action for declaratory judgment is not justiciable and should be dismissed because Plaintiff fails to point to any "legal hypothesis which will entitle [Plaintiff] to relief." *Id*.

Our Supreme Court has noted that the Uniform Declaratory Judgments Act (UDJA) grants the Superior Court broad jurisdiction to declare parties' contractual rights and responsibilities.

Section 9-30-1; *Canario v. Culhane*, 752 A.2d 476, 479 (R.I. 2000). Specifically, the UDJA provides that:

> "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Section 9-30-2.

However, our Supreme Court has also noted that "[i]t is well established in [Rhode Island] that a necessary predicate to a court's exercise of its jurisdiction under the [UDJA] is an actual justiciable controversy." *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997) (citing *Providence Teachers Union v. Napolitano*, 690 A.2d 855, 856 (R.I. 1997) ("the party seeking declaratory relief must present the court with an actual controversy"); *State v. Cianci*, 496 A.2d 139, 146 (R.I. 1985) ("[t]he main prerequisite to successful prosecution of an action for declaratory judgment is the existence of an actual or justiciable controversy")). This means that "[t]he threshold determination when confronted with a claim under the UDJA is whether the Superior Court is presented with an actual case or controversy." *N & M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1144 (R.I. 2009).

For a claim to be justiciable, two elements must be satisfied: (1) the plaintiff must have standing; and (2) there must be '"some legal hypothesis which will entitle the plaintiff to real and articulable relief."' *Id.* at 1145 (quoting *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008)); *see also McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005). With respect to the second element, where a concrete issue is present and there is a '"definite assertion of legal rights coupled with a claim of a positive legal duty [that is denied by an] adverse party, then there is a justiciable controversy calling for the invocation of the declaratory judgment action."'

N & M Properties, LLC, 964 A.2d at 1145 (quoting 1 Anderson, *Actions for Declaratory Judgments* § 14 at 62 (2d ed. 1951)); *see also Goodyear Loan Co. v. Little*, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970). "If the court determines that there is no justiciable controversy, 'the court can go no further, and its immediate duty is to dismiss the action[.]'" *N & M Properties, LLC*, 964 A.2d at 1145 (quoting 1 Anderson, § 9, at 49-50).

Turning to the instant matter, the Court agrees with Defendants that Plaintiff's declaratory judgment claim does not present a justiciable controversy. (Defs.' Mem. 8-10.) Plaintiff relies on the same flawed reasoning in support of both his breach of contract and declaratory judgment claims: that Defendants are obligated, under the terms of the Online Rules, to honor Plaintiff's photographs of his wagering tickets for pay-out. (Pl.'s Compl. ¶¶ 24, 30-33.) However, because this Court finds that the May 2019 House Rules control the contract and that Defendants are not obligated to pay Plaintiff without the physical copy of his wagering tickets, Plaintiff has failed to identify any legal hypothesis that would entitle him to relief. *Id.* Therefore, based on the Court's above finding that Plaintiff failed to state a cognizable breach of contract claim, Plaintiff's declaratory judgment claim must fail as well because there is no justiciable controversy before the Court. Accordingly, Plaintiff's Count I (Declaratory Judgment) is dismissed for failure to state a claim upon which relief can be granted.

C

Count II (Unjust Enrichment)

Maintaining the argument that he was "wrongfully deprived [of] and denied the winnings he is entitled to receive [according to the Online Rules] and for which he paid valuable consideration," Plaintiff argues that Defendants' refusal to pay Plaintiff the cash prize amounts to

unjust enrichment. *Id*. ¶¶ 28-29. Specifically, Plaintiff argues that "[u]nder the circumstances, it [would be] unjust for Defendants to retain the benefit of Plaintiff's valuable consideration without paying Plaintiff his winnings and giving him the benefit of his bargain." *Id*. In response, Defendants argue that Plaintiff's unjust enrichment allegation fails to state a claim upon which relief can be granted as a matter of law because Plaintiff's contractual relationship with Defendants bars Plaintiff from recovering for unjust enrichment. (Defs.' Mem. 10.)

Claims for unjust enrichment "typically arise when a benefit is conferred deliberately but without a contract." *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210 (R.I. 2015). In cases where "a valid contract defines the obligations of the parties as to matters within its scope," the existence of that contract displaces "any inquiry into unjust enrichment." Restatement (Third) *Restitution and Unjust Enrichment* § 2 (2011).

Here, Plaintiff acknowledges that his relationship with Defendants is contractual in nature but nevertheless maintains his claim for unjust enrichment. (Pl.'s Compl. ¶¶ 29, 31.) However, because Plaintiff entered into a valid contract with Defendants when he purchased his wagering tickets on August 2, 2020, and because this Court finds that the terms of that contract do not permit Plaintiff to collect his alleged winnings without presenting the physical copy of his wagering tickets, Plaintiff has not presented any facts which would allow him to recover under an unjust enrichment theory. Consequently, Plaintiff has failed to sufficiently state a cognizable claim of unjust enrichment, and the Court hereby dismisses Count II (Unjust Enrichment) of Plaintiff's Complaint.

D

Counts IV & V (Breach of the Implied Covenant of Good Faith and Fair Dealing)

In Plaintiff's Complaint, Plaintiff alleges claims for both Contractual (Count IV) and Tortious (Count V) breach of the implied covenant of good faith and fair dealing. (Pl.'s Compl. ¶¶ 34-43.) Specifically, Plaintiff argues that Defendants breached the implied covenant of good faith and fair dealing by refusing to "provide sufficient investigation into the validity of Plaintiff's tickets," refused to "follow [their] own policies posted online," and refused to "properly compensate Plaintiff for his winning tickets," thereby forcing Plaintiff to pursue the instant litigation to recover his winnings.[5] Defendants, however, argue that Plaintiff's failure to state a viable claim for breach of contract effectively extinguishes Plaintiff's subsequent claim for contractual breach of the implied covenant because such a claim cannot stand as an independent cause of action without the existence of a valid breach of contract claim. (Defs.' Mem. 10-11.) Additionally, Defendants argue that Rhode Island law does not recognize a cause of action for breach of the implied covenant sounding in tort, and, therefore, Plaintiff's claim in this regard should be dismissed for failure to state a claim upon which relief can be granted. *Id*. at 12-13.

It is well established in Rhode Island that nearly '"every contract contains an implied covenant of good faith and fair dealing between the parties."' *McNulty v. Chip*, 116 A.3d 173, 185 (R.I. 2015) (quoting *Dovenmuehle Mortgage, Inc. v. Antonelli*, 790 A.2d 1113, 1115 (R.I. 2002)). The purpose of the implied covenant is to preserve the parties' contractual objectives and to ensure that neither party acts in such a way that injures or negatively affects the other party's rights in obtaining the fruits of the contract. *Id*. (citing 17A Am. Jur. 2d *Contracts* § 370 at 356 (2004));

[5] To be clear, Plaintiff's Complaint asserts identical arguments for both contractual and tortious breach of the implied covenant of good faith and fair dealing claims. (Pl.'s Compl. ¶¶ 34-43.)

see also Ide Farm & Stable, Inc. v. Cardi, 110 R.I. 735, 739, 297 A.2d 643, 645 (1972). Notably, however, the *McNulty* Court emphasized that a claim for breach of the implied covenant of good faith and fair dealing "does not create an independent cause of action separate and apart from a claim for breach of contract."[6] *McNulty*, 116 A.3d at 185. Therefore, claims for breach of the implied covenant of good faith and fair dealing are not actionable in the absence of another contractually based claim. *See id*.

Moreover, in *A.A.A. Pool Service & Supply, Inc. v. Aetna Casualty & Surety Co.*, the Rhode Island Supreme Court declined to recognize an independent cause of action sounding in tort for breach of the implied covenant of good faith and fair dealing claims. 121 R.I. 96, 98-99, 395 A.2d 724, 725-26 (1978). In that case, the Court expressly rejected the plaintiff's argument that the defendant's alleged bad faith entitled the plaintiff to sue in tort. *Id*.; *see also Gillette of Kingston, Inc. v. Bank Rhode Island*, No. WC 05-0616, 2006 WL 1314259, at *5 (R.I. Super. May 5, 2006) (stating that "[w]hile a claim for a breach of the covenant of good faith gives rise to a breach of contract claim, it does not give rise to an independent tort") (citing *A.A.A. Pool Service & Supply, Inc.*, 121 R.I. at 99, 395 A.2d at 726).

Here, Defendants rely on the Rhode Island Supreme Court's holding in *McNulty* in arguing that Count IV of Plaintiff's Complaint should be dismissed. (Defs.' Mem. 10-11.) Defendants argue, and this Court agrees, that Plaintiff's claim for contractual breach of the implied covenant must fail because Plaintiff has failed to assert a viable claim for breach of contract, as discussed

[6] In *McNulty*, the Plaintiff asserted independent claims for breach of contract, fraudulent misrepresentation, and breach of the implied covenant of good faith and fair dealing. *McNulty*, 116 A.3d at 185. The Court dismissed both the breach of contract and fraudulent misrepresentation claims, leaving only the plaintiff's claim for breach of the implied covenant. *Id*. As for plaintiff's remaining claim for breach of the implied covenant of good faith and fair dealing, the Court dismissed the claim, reasoning that claims for breach of the implied covenant of good faith and fair dealing do not create an independent cause of action beyond a breach of contract claim. *Id*.

above. *Id*. Additionally, with respect to Plaintiff's claim for tortious breach of the implied covenant, the Court similarly agrees with Defendants that Rhode Island courts do not recognize an independent tort action for breach of the implied covenant. *Id*. at 12; *see also A.A.A. Pool Service & Supply, Inc.*, 121 R.I. at 99, 395 A.2d at 726. Thus, in light of our Supreme Court's rulings in *McNulty* and *A.A.A. Pool Service & Supply, Inc.*, and this Court's finding above that Plaintiff's Complaint fails to state a cognizable breach of contract claim, the Court hereby dismisses Plaintiff's Counts IV and V of Plaintiff's Complaint.

E

Counts VI & VII (Bad Faith)

Counts VI and VII of Plaintiff's Complaint allege that Defendants acted in bad faith by refusing to compensate Plaintiff for his allegedly winning sports betting tickets. (Pl.'s Compl. ¶¶ 44-49.) Plaintiff asserts vague claims for general contractual bad faith and bad faith under R.I.G.L. § 9-1-33. *Id*. ¶¶ 44-46. In response, Defendants argue that Rhode Island courts do not recognize an independent cause of action for general contractual bad faith and that Plaintiff's contractual bad faith claim merely reiterates the flawed arguments Plaintiff asserted in support of his failed claim for breach of the implied covenant of good faith and fair dealing. (Defs.' Mem. 13-14.) Defendants further argue that G.L. 1956 § 9-1-33 has no bearing on the instant case because it specifically applies to claims for bad faith arising under insurance contracts. *Id*. Therefore, Defendants argue that Counts VI and VII of Plaintiff's Complaint should be dismissed for failure to state a claim upon which relief can be granted. *Id*.

As an initial matter, the Court agrees with Defendants that Rhode Island does not recognize an independent cause of action for general contractual bad faith. As Defendants point out, the Restatement (Second) *Contracts* specifically addresses claims for contractual bad

faith in the context of the previously discussed implied covenant of good faith and fair dealing. *Id*. at 13. Considering the Court's previous finding that Plaintiff failed to state a viable claim for breach of the implied covenant, Plaintiff cannot maintain an independent cause of action for general bad faith in contract. Furthermore, the Court agrees with Defendants' assertion that because the agreement at issue here is not an insurance policy, Plaintiff is unable to maintain a cause of action under § 9-1-33. *Id*. That section provides, in relevant part, that "an insured under any insurance policy . . . may bring an action against the insurer issuing the policy when it is alleged [that the insurer acted in bad faith]." Section 9-1-33. In such cases, bad faith is established "when the proof demonstrates that the insurer denied coverage or refused payment without a reasonable basis in fact or law for the denial." *Imperial Casualty & Indemnity Co. v. Bellini*, 947 A.2d 886, 893 (R.I. 2008).

Here, Plaintiff does not allege that he is insured by Defendants or that Defendants acted in bad faith in the context of an insurance policy and, as a result, Plaintiff's claim that Defendants acted in bad faith under § 9-1-33 is wholly unsupported. *See* Pl.'s Compl. ¶¶ 47-49. Accordingly, the Court finds that it is clear beyond a reasonable doubt that Plaintiff would not be entitled to relief from Defendants under any set of facts that could be proven in support of Plaintiff's bad faith claims. Thus, the Court hereby dismisses Counts VI and VII of Plaintiff's Complaint.

IV

Conclusion

Based on the foregoing, Defendants' Motion for Judgment on the Pleadings is granted. Counsel shall prepare and submit the appropriate order for entry consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Nasser Buisier v. The Rhode Island Division of Lotteries, et al.**

CASE NO: **PC-2021-07468**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **May 2, 2022**

JUSTICE/MAGISTRATE: **Stern, J.**

ATTORNEYS:

For Plaintiff: **Meredith L. Thommen, Esq.**

For Defendants: **Kyle Zambarano, Esq.; Brendan F. Ryan, Esq.**