STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: May 15, 2012)

MERRIMACK MUTUAL FIRE INSURANCE COMPANY	:	
V.	:	**C.A. NO. PC 09-3120**
MICHAEL COLETTA and MICHAEL ROSSI	:	

DECISION

PROCACCINI, J. This is a Declaratory Judgment action brought by the Plaintiff, Merrimack Mutual Fire Insurance Company ("Merrimack Mutual"), against the Defendants, Michael Coletta ("Mr. Coletta") and Michael Rossi ("Mr. Rossi"). The Plaintiff seeks a declaratory judgment that Mr. Coletta's homeowners insurance is not available to cover damages for injuries to Mr. Rossi. Jurisdiction is pursuant to G.L. 1956 § 9-30-1, the Uniform Declaratory Judgments Act.

I

FACTS AND TRAVEL

On May 31, 2008, Mr. Coletta and his longtime friend and sometimes-employee, Mr. Rossi, were working at Mr. Coletta's home at 23 Longmeadow Road in Lincoln, Rhode Island. The two men were in the backyard dismantling an above-ground swimming pool and a deck as well as clearing large rocks and debris. Mr. Coletta, who owned a backhoe, was using it that day to assist in the clearing and removal process. At or around 11:00 a.m., Mr. Rossi was attempting to roll a large boulder into the backhoe

while Mr. Coletta manned the controls. As Mr. Rossi rolled the boulder into the bucket of the backhoe, which was resting on the ground at the time, Mr. Coletta hit the lever to lift and curl the bucket up slightly in an effort to guide the boulder into the bucket. Mr. Rossi's right hand was still on the boulder, and as the bucket moved upward it crushed Mr. Rossi's hand against the boulder. Upon realizing that Mr. Rossi's hand was caught between the bucket and the boulder, Mr. Coletta triggered the bucket to reopen, freeing Mr. Rossi's hand. As a result of this incident, Mr. Rossi sustained injuries to his hand and was immediately taken to the Veterans Administration Hospital for treatment.

In October of 2008, Mr. Rossi initiated a claim against Merrimack Mutual for the injuries he sustained during the May 31, 2008 incident. Mr. Coletta reported this claim to his insurance agent, who in turn reported it to the insurer. Upon receiving notice of Mr. Rossi's claim, Merrimack Mutual retained an adjuster to conduct an investigation. On October 8, 2008, the adjuster met with both Mr. Coletta and Mr. Rossi at Mr. Coletta's home to obtain their statements regarding the incident. Both men told the adjuster they were removing an above-ground swimming pool and moving large rocks around in Mr. Coletta's yard. The Defendants indicated that while moving and rolling the boulders, Mr. Rossi's right hand became caught between two boulders. Both men asserted that this was what caused the injury to Mr. Rossi's right hand.

Subsequent to the October 8 meeting with the adjuster, Mr. Rossi obtained legal counsel, James Bigos ("Attorney Bigos"). After receiving this news, Merrimack Mutual's adjuster contacted Attorney Bigos. While discussing the liability issues of the claim, Attorney Bigos told the adjuster that Mr. Coletta had been operating a backhoe at the time of Mr. Rossi's injury. Based on this new information, the adjuster contacted Mr.

Coletta again and inquired about the use of a backhoe at the time of the accident. Clearly, Attorney Bigos' story was inconsistent with the stories Mr. Coletta and Mr. Rossi had given earlier. Mr. Coletta denied the suggestion that any backhoe was involved.

A third attempt was made by Merrimack Mutual's adjuster to contact Mr. Coletta to clarify the facts surrounding the incident. Mr. Coletta refused to discuss the issue of whether a backhoe was involved in Mr. Rossi's injury, and he further informed the adjuster that he was having his attorney, Domenic Mosca, Jr. ("Attorney Mosca"), review his homeowners policy with Merrimack Mutual. Attorney Mosca thereafter contacted the adjuster and requested that the adjuster take a second recorded statement from Mr. Coletta, to which the adjuster agreed. During his second recorded statement, Mr. Coletta admitted that some parts of his initial statement were untrue. He conceded that he deliberately made no mention of the use of a backhoe, instead replacing that aspect of the incident with the story of two boulders crushing Mr. Rossi's hand. Mr. Coletta further explained that he initially changed the story because he mistakenly supposed that if he told Merrimack Mutual that a backhoe was involved, it would impair his coverage and Mr. Rossi's claim would be denied.[1] Mr. Coletta also admitted to instructing Mr. Rossi to omit from his statement any reference to the use of a backhoe.

[1] The section of the policy that gave rise to Mr. Coletta's concern and subsequent misrepresentation—Section II(f)—excludes coverage for any bodily injury arising out of "the ownership, maintenance, use, loading or unloading of motor vehicles or all motorized land conveyances, including trailers, owned or operated by or rented or loaned to an insured," but that section exempts "a vehicle or conveyance not subject to motor vehicle registration which is used to service an insured's residence." Here, the vehicle involved is a backhoe, a vehicle not subject to motor vehicle registration. As such, Mr. Coletta's fears, while not unfounded, were unnecessary pursuant to this section of the policy.

Merrimack Mutual has requested a declaratory judgment against Mr. Coletta and Mr. Rossi to void Mr. Coletta's policy coverage. After Merrimack Mutual filed this action, both Mr. Coletta and Mr. Rossi gave sworn depositions recounting the true rendition of the story—including the use of the backhoe—and admitted to initially giving false statements concerning how the accident transpired.

II

STANDARD OF REVIEW

The Uniform Declaratory Judgments Act grants the Superior Court "power to declare rights, status, and other legal relations." Sec. 9-30-1. In fact, the Superior Court may grant additional affirmative relief "based on the declaratory judgment 'whenever necessary or proper' provided subsequent 'supplementary proceedings' are brought pursuant thereto." Secs. 9-30-8 and 9-30-12; Capital Properties, Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999).

The decision to issue declaratory relief is addressed to the broad and sound discretion of the trial justice. Cruz v. Wausau Ins. Co., 866 A.2d 1237, 1240 (R.I. 2005); Imperial Casualty and Indemnity Co. v. Bellini, 888 A.2d 957, 961 (R.I. 2005) (quoting Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005)). It is the function of the trial justice to make all findings of fact without a jury, then decide whether declaratory relief is appropriate. Providence Lodge No. 3, Fraternal Order of Police v. Providence External Review Authority, 951 A.2d 497, 502 (R.I. 2008); Fleet National Bank, Trustee v. 175 Post Road, LLC, 851 A.2d 267, 273 (R.I. 2004) (quoting Casco Indemnity Co. v. O'Connor, 755 A.2d 779, 782 (R.I. 2000)). It is axiomatic that the findings of fact of a trial justice, sitting without a jury, "will be given great weight and will not be disturbed

absent a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong." Casco Indemnity Co., 775 A.2d at 782.

III

ANALYSIS

Merrimack Mutual issued a homeowners insurance policy to Mr. Coletta which included the following provision:

> "Under Section II—Liability Coverage, [Merrimack Mutual does] not provide coverage to one or more 'insureds' who, whether before or after a loss, have:
> (1) Intentionally concealed or misrepresented any material fact or circumstance;
> (2) Engaged in fraudulent conduct; or
> (3) Or made false statements; relating to this insurance."

Agreed Statement of Facts at 1. The instant matter, therefore, turns on whether the false statements initially made by the Defendants (including the insured), to the Plaintiff (the insurer) constitute "material" facts for purposes of determining whether the loss is covered by the policy.

Merrimack Mutual argues—and the Defendants do not deny—that Mr. Coletta and Mr. Rossi knowingly lied to the insurance adjuster during the initial investigation. Merrimack Mutual posits that this intentional and fraudulent misrepresentation of facts operates to defeat a recovery on the policy because it was materially related to Mr. Coletta's coverage at the time of the investigation. In this way, the Plaintiff contends, the Defendants misrepresented material facts, and this misrepresentation of material facts is in violation of the concealment or fraud provision of the policy. Such misrepresentation consequently renders the policy void.

The Defendants concede that there was an initial misrepresentation of the facts

which was later corrected while the investigation of the claim was still underway. Nevertheless, they submit that the misrepresentations were not "material." The Defendants contend that the false statements had no bearing on Merrimack Mutual's obligation to cover the accident, and thus they should be considered immaterial.

The Defendants' admissions that each initially lied about the circumstances giving rise to the injury provide clear proof that the Defendants made false statements to the insurer. Even so, it is unclear to this Court whether these omitted and misrepresented facts were "material" to the insurance company's investigation. In fact, it is precisely this issue that the Court must now examine and resolve. Because Rhode Island law is unsettled on the issue of determining the materiality of a statement for purposes of assessing insurance coverage, the Court must look elsewhere for guidance. This Court has looked to other jurisdictions for insight, but the Court's survey of those jurisdictions yielded conflicting discussions and approaches to this issue: determining the materiality of a fact involves complex inquiries and varies from jurisdiction to jurisdiction.

Fundamentally, the issue of materiality is a mixed question of law and fact and is usually decided by the trier of fact. Wagnon v. State Farm, 146 F.3d 764, 768 (10th Cir. 1998) (quoting Turley v. State Farm Mut. Auto. Ins. Co., 944 F.2d 669, 672 (10th Cir. 1991); Long v. Insurance Co. of N. Am., 670 F.2d 930, 934 (10th Cir. 1982)). Only when it is so clear to reasonable minds that the misrepresentation was material can materiality be decided as a matter of law. Id. (citing Long, 670 F.2d at 943). Conversely, it follows that the materiality of a misrepresentation is a question of fact for the jury when reasonable minds could differ on the issue of whether a misrepresentation was material.

A statement is material only if it is reasonably relevant to an insurance company's

determination as to whether there has been a loss, whether a loss is covered by the policy, and/or the amount of damages to be paid under the policy. See, e.g., Dadurian v. Underwriters, 787 F.2d 756, 759 (1st Cir. 1986); Employers Liability Assurance Corp., Ltd. v. Valla, 321 N.E.2d 910, 913 (Mass. 1975). Indeed, the First Circuit has emphasized that a misrepresentation need not "relate to a matter or subject" which in the end would be decisive so long as the statement would be considered relevant to the insurance company's investigation of the claim. Dadurian, 787 F.2d at 759 (citing Fine v. Bellefonte Underwriters Insurance Co., 725 F.2d 179, 183, 184 (2d Cir. 1984), cert. denied, 469 U.S. 874, 105 S. Ct. 233 (1984)).

Similarly, the Second Circuit in Fine stated that

> "false sworn answers are material if they might have affected the attitude and action of the insurer. They are equally material if they may be said to have been calculated either to discourage, mislead or deflect the company's investigation in any area that might seem to the company, at that time, a relevant or productive area to investigate."

Fine, 725 F.2d at 184. Additionally, the Second Circuit has articulated the following standard: "the materiality requirement is satisfied if the false statement concerns a subject relevant and germane to the insurer's investigation as it was then proceeding." Pacific Indem. Co. v. Golden, 985 F.2d 51, 56 (2d Cir. 1993). However, the court in Golden underscored that when a party fails to demonstrate that the insurer's investigation would have proceeded differently, that party has failed to prove materiality. Id. at 56, 57. The court therefore determined that "if there is insufficient evidence in the record to determine whether misrepresentations either affected [the insurer's] 'attitude and action' or discouraged, misled or deflected its investigation," materiality has not been demonstrated. Id. at 57. To that end, the Second Circuit resolved that the materiality of

the statement in that matter was an issue to be decided by a jury. Id.

In reaching its conclusion in Golden, the Second Circuit noted with approval its agreement with the outcome in Watkins v. Continental Ins. Companies, a Fifth Circuit decision indicating that in looking at the materiality of a statement, the statement itself "must be read in context of the facts to which it applied." 690 F.2d 449, 452 (5th Cir. 1982). The court there determined that while information sought by an insurer certainly may be relevant to an investigation, the relevance of the "misinformation" provided can be "far from clear." Id. at 452 n.3. "The significance and materiality, if any, of the omission" of facts is, "at the least, an issue for the jury to determine." Id. at 452.

Meanwhile, other authority reasons that to ascertain the "materiality" of intentional misrepresentations, the false statement must be examined to determine "whether its truth would preclude or provide" the insurer with a defense to coverage under its policy. See, e.g., Dean v. State Farm Mut. Auto. Ins. Co., 975 So. 2d 126, 133 (La. Ct. App. 4th Cir. 2008). "Materiality simply embodies the understanding that the misrepresentation concerns a fact that significantly affects the rights and obligations of the insurer." Id. To that end, the court in Dean determined that "if an insurer's rights and obligations are not significantly affected, then the misrepresentations cannot be deemed to satisfy the 'materiality' requirement as a matter of law." Id.

In view of these approaches and interpretations of "materiality" as it pertains to representations made to insurers, it is not "so clear" to this Court that the misrepresentations made by the Defendants to the insurance company were material. Wagnon, 146 F.3d at 768 (citing Long, 670 F.2d at 943) (reasoning that materiality can be decided as a matter of law only when so clear to reasonable minds that the

misrepresentation was material). Here, the Court finds that reasonable minds could differ on the materiality of the representations made.

The Court is mindful that the Defendants deliberately left out the use of a backhoe and intentionally misreported that fact to the adjuster. Even so, the Court is not persuaded that this misrepresentation would have significantly affected the insurance company's investigation, and Merrimack Mutual has not demonstrated that its investigation would have proceeded differently had the Defendants initially given a true account of the accident. Watkins, 690 F.2d at 452; Fine, 725 F.2d at 184; Golden, 985 F.2d at 56, 57. Instead, the Defendants' misrepresentations likely would not have altered the insurance company's obligation to indemnify under the homeowners insurance policy: pursuant to Section II(f) of the policy, the involvement of a backhoe in the ultimate injury does not preclude recovery for that injury. In other words, the misrepresentation would not "significantly affect the rights and obligations of the insurer," but rather Merrimack Mutual was obligated to indemnify regardless of the misrepresentation. Dean, 975 So. 2d at 133.

Thus, there is insufficient evidence in the record to determine whether the Defendants' misrepresentations affected either Merrimack Mutual's investigation or its "attitude or action" toward its insured. Fine, 725 F.2d at 184. Moreover, this Court is not convinced that the misrepresentations were in fact material, and therefore relief is not warranted. At the very least, whether the omissions were "material" is an issue for the jury to determine. Watkins, 690 F.2d at 452; Golden, 985 F.2d at 57.

IV

CONCLUSION

The issue of materiality is a mixed question of law and fact that is usually decided by the trier of fact unless reasonable minds could not differ on the matter. This Court finds that reasonable minds certainly could differ on this issue. Thus, the significance and materiality of the omission, if any, is an issue for the jury to determine. Accordingly, the Court exercises its discretion in this matter and declines to issue delaratory relief at this time. Plaintiff's request for declaratory judgment is denied.