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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1046-16T2

ANNETT RUFFIN and DENNIS RUFFIN,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY and NEW JERSEY
PROPERTY-LIABILITY INSURANCE GUARANTY
ASSOCIATION (NJPLIGA),

Defendants-Respondents,

and

DELROY CLARKE, NEW JERSEY INDEMNITY
INSURANCE COMPANY, DHIANA DIAZ,
NJM INSURANCE GROUP, and NEW JERSEY
MANUFACTURERS COMPANY,

Defendants.

Argued November 28, 2017 - Decided December 15, 2017

Before Judges Carroll, Leone and Mawla.

On appeal from Superior Court of New Jersey,
Law Division, Passaic County, Docket No. L-
3574-15.

Eldridge Hawkins argued the cause for
appellants (Eldridge Hawkins, LLC, attorneys;
Eldridge Hawkins and Cecile D. Portilla, on
the briefs).

Mark M. Tallmadge argued the cause for respondent NJPLIGA (Bressler, Amery & Ross, PC, attorneys; Mark M. Tallmadge and Michael J. Morris, on the brief).

Eleanor Heck, Deputy Attorney General, argued the cause for respondent State of New Jersey (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Eleanor Heck, on the brief).

PER CURIAM

On February 6, 2012, Dennis Ruffin was parked in front of his Paterson home in a vehicle owned by his sister, Annett Ruffin. Delroy Clarke, riding a bicycle, struck the driver's door of the Ruffin vehicle, which was slightly ajar. Clarke thereafter filed suit in Somerset County seeking damages from the Ruffins for injuries he suffered in the collision. The Ruffins failed to appear and defend the action. Consequently, on April 14, 2014, following a proof hearing, the court assigned 100% liability to the Ruffins for the injuries Clarke sustained, and entered judgment against them for \$75,000.

Because Annett Ruffin had no bodily injury liability insurance coverage, and failed to satisfy the judgment, Clarke asserted a claim against the New Jersey Property-Liability Insurance Guaranty Association ("NJPLIGA"), as statutory administrator of the Unsatisfied Claim and Judgment Fund ("UCJF"). Created pursuant to the New Jersey Property-Liability Insurance

Guaranty Act, N.J.S.A. 17:30A-1 to -20 (the "Act"), NJPLIGA is "a private, nonprofit, unincorporated" Association. N.J.S.A. 17:30A-6; Thomsen v. Mercer-Charles, 187 N.J. 197, 205 (2006).

The purpose of this [A]ct is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment, to minimize financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, to provide an association to assess the cost of such protection among insurers, and to provide a mechanism to run off, manage, administer and pay claims asserted against the Unsatisfied Claim and Judgment Fund [and other funds.]

[N.J.S.A. 17:30A-2.]

The UCJF Law, N.J.S.A. 39:6-61 to -90, was enacted to compensate persons who are injured or suffer property damage "as the result of a motor vehicle accident who through no fault of their own have no recourse to any insurance coverage. . . ." Cynthia M. Craig & Daniel J. Pomeroy, New Jersey Auto Ins. Law § 30:1 at 529 (2017). Since 2003, NJPLIGA has administered the UCJF's claims. N.J.S.A. 17:30A-2.1(g).

On September 2, 2014, the court in the Somerset County action entered a consent order pursuant to which NJPLIGA agreed to pay Clarke \$12,500. In return, Clarke agreed to execute a release and stipulation of dismissal as to NJPLIGA. NJPLIGA then paid Clarke \$12,500 from the UCJF, and took an assignment of Clarke's

unsatisfied \$75,000 judgment against Annett Ruffin as required by N.J.S.A. 39:6-77, which provides:

The association shall not pay any sum from the fund, in compliance with an order made for that purpose, in any case in which the claim is founded upon a judgment, except a judgment obtained against the association under this act, until the applicant assigns the judgment to the association and, thereupon, the association shall be deemed to have all the rights of the judgment creditor under the judgment and shall enforce and collect the same for the full amount thereof with interest and costs and if more money is collected upon any such judgment than the amount paid out of the fund, the association shall pay the balance, after reimbursing the fund, to the judgment creditor.

On December 15, 2014, NJPLIGA, as assignee, sent a demand letter to the Ruffins seeking payment of the \$75,000 judgment. The Ruffins subsequently moved to vacate the default judgment. On June 1, 2015, the court vacated the judgment against Dennis Ruffin and allowed him to file an answer, but denied the motion as to Annett Ruffin. On June 24, 2016, the Somerset County litigation was resolved by way of a stipulation of dismissal with prejudice as to Dennis Ruffin.

In the interim, on October 16, 2015, the Ruffins filed a declaratory judgment action in Passaic County against NJPLIGA, the State of New Jersey, Clarke, and others, challenging the constitutionality of the Act. Pertinent to this appeal, Count II

of the Ruffins' amended complaint alleged that N.J.S.A. 17:30A-6: (1) is a special private law in violation of Article IV, Section VII of the New Jersey Constitution; (2) improperly delegates powers to NJPLIGA in violation of Article III, Section 1; (3) created an entity that is neither an administrative agency nor a temporary commission, contrary to Article V, Section IV, paragraph 1; and (4) grants NJPLIGA an "exclusive franchise" in violation of those provisions.

Count III of the amended complaint alleged that, because NJPLIGA was unconstitutionally created, the provisions of the UCJF legislation governing assignment of claims to UCJF (N.J.S.A. 39:6-77) and subrogation (N.J.S.A. 39:6-85) are unenforceable. Count IV alleged that N.J.S.A. 17:30A-6 violates Article IV, Section VII, paragraph 5, which prohibits the citation of one statute in another. Count V asserted a violation of the New Jersey Civil Rights Act (CRA), N.J.S.A. 10:6-1 to -2, in that "NJPLIGA unconstitutionally and unlawfully acted under color of state law by settling its claim against [the Ruffins] with . . . Clarke. . . ."

Defendants Clarke, NJPLIGA, and the State filed separate motions to dismiss the Ruffins' Passaic County complaint pursuant to Rule 4:6-2(e), and the Ruffins in turn moved for summary judgment. On March 21, 2016, the court entered companion orders

dismissing the complaint against NJPLIGA, the State, and Clarke, and denying the Ruffins' motion for summary judgment.

Judge Bruno Mongiardo issued a detailed written opinion explaining his decision. The judge began his analysis by noting:

The NJPLIGA Act creates a "private, nonprofit unincorporated legal entity" known as NJPLIGA. N.J.S.A. 17:30A-6. By passing this Act in 1974, the Legislature sought to bring our State within a nationwide network of individual insurance guaranty association statutes designed to spread equitably the risk of insurer insolvency among the states. Carpenter Tech. Corp. v. Admiral Ins. Co., 172 N.J. 504 (2002). The Legislature patterned the NJPLIGA Act on a national model law promulgated by the National Association of Insurance Commissioners. It is remedial legislation deserving of liberal construction. [Thomsen, 187 N.J. at 211].

Judge Mongiardo concluded "[t]he NJPLIGA Act and its statutory charge to administer the UCJF do not constitute special or private legislation proscribed by the New Jersey Constitution." Citing New Jersey State Bar Ass'n v. State of New Jersey, 382 N.J. Super. 284 (App. Div. 2005), the judge noted "[t]he question of whether a legislative act is unconstitutionally 'special' or 'private' is answered by judicial scrutiny of whether the Legislature acted with a rational basis." The judge found "[t]he creation of NJPLIGA was a rational means of addressing a legitimate legislative purpose" and "[t]he rational basis of the Legislature for enacting the NJPLIGA Act is clear on the face of the statute.

See N.J.S.A. 17:30A-2." The judge further found the Act "includes all members of the class it is intended to protect" and "does not exclude any persons who should be included within the classification it created."

Next, Judge Mongiardo rejected the Ruffins' argument that the Act violates constitutional separation of powers and delegation doctrines. He reasoned:

NJPLIGA is not a legislative or executive agency. It is a private nonprofit unincorporated legal entity comprised of member insurers. N.J.S.A. 17:30A-6. The New Jersey Legislature which maintains principal authority to regulate the insurance market in New Jersey has delegated certain functions of the inherently private automobile insurance market to be administered by NJPLIGA for the sake of efficiency. See N.J.S.A. 17:30A-2.1, [-]2.2, and [-]6.1.

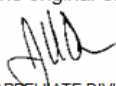
Judge Mongiardo also rejected the Ruffins' remaining claims. He found "N.J.S.A. 17:30A-6 does not violate the prohibition against inserting statutory citations into the statutes. The purpose of the constitutional provision is to suppress deceptive and fraudulent legislation. The citations in N.J.S.A. 17:30A-6 have just the opposite purpose." The judge also found the Ruffins' challenge to the assignment of Clarke's claim to NJPLIGA "baseless," and their "unsupported allegation that the State has violated a provision of the [CRA] . . . utterly without merit."

On appeal, the Ruffins renew the arguments they presented to the trial court. They also contend the Act violates Article IV, Section VII, paragraph 10 and the equal protection and due process clauses of the New Jersey Constitution, and attack the validity of the assignment statute, N.J.S.A. 39:6-77, as a special law.

Having reviewed the record in light of the applicable legal standards, we conclude that Judge Mongiardo's decision was correct, and we affirm for the reasons stated in his comprehensive opinion issued on March 21, 2016. We add only that assignment of Clarke's claim to NJPLIGA did not deprive the Ruffins of any defenses they had not already forfeited as a result of the default judgment Clarke obtained against them. Plaintiff's remaining appellate arguments are without sufficient merit to warrant further discussion here. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION