

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

GARY L. NUNN

Plaintiff

v.

OHIO DEPARTMENT OF INSURANCE

Defendant

Case No. 2014-00879

Judge Patrick M. McGrath
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

{¶1} On June 12, 2015, defendant filed a motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(6). On June 25, 2015, plaintiff filed a response.

{¶2} Because defendant filed its motion to dismiss after the pleadings were closed, the motion is construed as one for judgment on the pleadings pursuant to Civ.R. 12(C). "Civ.R. 12(C) may be employed by a defendant as a vehicle for raising the several defenses contained in Civ.R. 12(B) after the close of the pleadings. * * * Pursuant to Civ.R. 12(C), the pleadings must be construed liberally and in a light most favorable to the party against whom the motion is made along with the reasonable inferences drawn therefrom. * * * A Civ.R. 12(C) motion presents only questions of law, and it may be granted only when no material factual issues exist, and the movant is entitled to a judgment as a matter of law." *Burnside v. Leimbach*, 71 Ohio App.3d 399, 402-403 (10th Dist.1991). "In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ.R. 12(B)(6)), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus.

{¶3} According to the complaint, plaintiff was involved in an automobile accident on September 18, 2013. The complaint provides that plaintiff was dissatisfied with subsequent actions taken by three insurance companies in relation to that accident, including his insurer (Motorists Mutual), the insurer of the automobile he was operating (Geico), and the insurer of a shop where the automobile had been serviced before the accident (Westfield). Plaintiff especially takes exception with decisions by Motorists Mutual to require that he submit to a physical examination and to later cancel his policy, as plaintiff, who relates that he was 70 years old at the time, contends that Motorists unfairly discriminated against him on the basis of age.

{¶4} Plaintiff alleges that he subsequently registered numerous complaints with defendant concerning all three insurance companies. Specifically, it is alleged that plaintiff “sent over 40 letters and 37 certified letters” to defendant and the Lieutenant Governor “in the hopes of getting some sort of resolution or a hearing in this matter.” According to the complaint, however, “[a]ll attempts were ignored or denied.”

{¶5} The harm that plaintiff alleges in the complaint includes the fact that he now pays higher insurance premiums with another insurer, as well as mental anguish. Plaintiff seeks to recover \$1,000,000 for “punitive and emotional damages.”

{¶6} Defendant argues that plaintiff’s complaint raises generalized complaints about private insurance companies that are not parties to this case, and that the factual allegations concerning defendant are not sufficient to sustain a claim for relief. Relying upon the public duty rule codified at R.C. 2743.02(A)(3)(a), defendant further asserts that under any theory of relief that might arise from plaintiff’s factual allegations, defendant is immune from liability. “[U]nder R.C. 2743.02(A)(3)(a), the state is generally immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty.” *Legacy Academy for Leaders v. Mt. Calvary Pentecostal Church*, 10th Dist. Franklin No. 13AP-203, 2013-Ohio-4214, ¶ 9;

see also *Conner v. Wright State Univ.*, 10th Dist. Franklin No. 13AP-116, 2013-Ohio-5701, ¶ 11.

{¶7} As defined in R.C. 2743.01(E)(1), “[p]ublic duty’ includes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following:

{¶8} “(a) Permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity;

{¶9} “(b) Supervising, rehabilitating, or liquidating corporations or other business entities.”

{¶10} Here, plaintiff claims that defendant did not sufficiently investigate his complaints or monitor the insurance companies about which he complained. Plaintiff’s complaint refers to language that allegedly appears on defendant’s website, stating that defendant “monitors insurers’ compliance with Ohio Insurance laws and regulations by examining those companies’ business practices, such as underwriting, marketing, and claims.” Plaintiff also argues in his response to defendant’s motion that defendant “has done nothing to protect me as a consumer.”

{¶11} As a threshold matter, plaintiff has not identified any particular cause of action in his complaint nor in his response to defendant’s motion. While plaintiff does assert in a broad sense that defendant has failed in its duties toward him, as an insurance consumer in the state of Ohio, plaintiff’s complaint does not identify a violation of any particular statute or other breach of duty on the part of defendant, much less a statute or other authority that would give an aggrieved individual a private claim for relief against defendant. See *Bungard v. Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 07AP-447, 2007-Ohio-6280, ¶ 7; *Welty v. Dept. of Ins.*, 10th Dist. Franklin No. 99AP-1367 (Aug. 15, 2000). Indeed, upon review of the complaint, it does not appear that the facts alleged therein, if proven, would entitle plaintiff to recover

monetary damages in this court under any theory, whether or not the public duty is applicable.

{¶12} Regardless, it is apparent that the public duty rule would immunize defendant for any potential claim that might arise from the complaint. The essence of the complaint is that defendant did not sufficiently investigate plaintiff's complaints or monitor the insurance companies in question. Investigating and monitoring are specifically enumerated as public duties under R.C. 2743.01(E)(1), and in this case defendant's decision to investigate or not investigate plaintiff's complaints, as well as its general monitoring of insurers doing business in this state, clearly fall under the definition of public duty. See *Wiltz v. Accountancy Bd. of Ohio*, 10th Dist. Franklin No. 14AP-645, 2015-Ohio-2493, ¶ 28. Moreover, the facts of the complaint do not permit an inference that a "special relationship" existed as that term is used in R.C. 2743.02(A)(3)(b) to render the public duty doctrine inapplicable.

{¶13} Based upon the foregoing, the court concludes that defendant is entitled to judgment as a matter of law. As a result, defendant's motion is GRANTED and judgment is hereby rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

James P. Dinsmore
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Gary L. Nunn
810 Althea Drive
Miamisburg, Ohio 45342

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