Circuit Court for Baltimore City
Case No. 24-C-16-006383

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 111

September Term, 2017

MARYLAND HEALTHCARE CLINICS

v.

MARYLAND AUTO INSURANCE FUND

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*Woodward,
Reed,
Beachley,

JJ.

Opinion by Woodward, J.

Filed: August 30, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

In 2016, Maryland Healthcare Clinics ("MHCC"), appellant, treated twenty-one patients ("Patients") for injuries that they sustained in car accidents. All of the Patients had personal injury coverage with Maryland Automobile Insurance Fund ("MAIF"), appellee. After MAIF failed to pay MHCC for treatment of the Patients, MHCC filed a complaint against MAIF in the Circuit Court for Baltimore City. Upon consideration of MAIF's motion to dismiss, the circuit court dismissed two counts of MHCC's complaint and transferred the remaining twenty-one counts to the District Court of Maryland for Baltimore City.

In this timely appeal, MHCC presents three questions for our review, which we have rephrased as follows:[1]

1. Did the circuit court err in dismissing MHCC's "bad faith" cause of action premised on MAIF's alleged violation of Maryland Code (1995, 2017 Repl. Vol.), § 27-303(9) of the Insurance Article ("IN")?

[1] MHCC's questions, as presented in its brief, are as follows:

1. Did the Court err in denying jurisdiction, on the basis that multiple claims do not aggregate, when Plaintiff's Complaint was for payment due for medical services it had performed for individual patients who were each insured by the Defendant?

2. Did the Court err in denying Plaintiff's claim of "bad faith", on the basis that there is a statute that provides additional administrative remedies, when there is case law that allows for recovery for "bad faith" under the conditions of this matter?

3. Did the Court err in denying Plaintiff's claim of "general business practice of unfair claim settlement", on the basis of a statute that provides additional administrative remedies, when the statue [sic] does not preclude causes of action?

2. Did the circuit court err in dismissing MHCC's claim of "general business practice of unfair claim settlement[?]"

3. Did the circuit court err in remanding MHCC's remaining twenty-one counts to the District Court for lack of circuit court jurisdiction?

For the reasons set forth below, we answer MHCC's first and second question in the negative and answer the third question in the affirmative. We, therefore, affirm in part and reverse in part the judgment of the circuit court and remand this case to that court for further proceedings.

BACKGROUND

From January to July of 2016, MHCC treated the Patients, all of whom were covered by MAIF personal injury coverage, for injuries arising out of automobile accidents. According to MHCC, each of the Patients executed the following contractual assignment to MHCC:

> In the event that any insurance company which is obligated by law or contract to make payment for medical services refuses to make such payments, I hereby assign and transfer to [MHCC] a cause of action that exists in my favor against such company and to prosecute such action in their name and to settle or otherwise resolve the claim as [MHCC] deem[s] fit.

On November 29, 2016, MHCC filed a twenty-three-count complaint against MAIF in circuit court, exercising its rights under the above assignment. The first twenty-one counts alleged that MAIF failed to pay the full amount of coverage for each of the Patients' treatment. The balance remaining for each of the Patients' treatment costs ranged from $417.97 to $1,651.75, and the total MAIF allegedly owed MHCC was $20,570.58, plus interest and attorney fees. In addition, Count 22 alleged that MAIF violated IN § 27-303(2)

by failing to pay claims for reasons that were arbitrary and capricious. The last count, Count 23, alleged that MAIF violated IN § 27-303(9) by refusing to pay claims in bad faith.

On January 13, 2017, MAIF filed a motion to dismiss. MAIF first argued that the trial court should dismiss Counts 22 and 23, because IN § 27-303 does not provide for a private cause of action in that Section of the Insurance Article. MAIF then argued that the circuit court did not have jurisdiction to consider MHCC's other claims, because each individual claim of non-payment was less than $5,000. In MAIF's view, each individual claim involved separate factual circumstances, and therefore, the claims could not be aggregated to obtain circuit court jurisdiction.

MHCC filed a response to MAIF's motion to dismiss on January 25, 2017. MHCC argued that IN § 27-303 provided a private cause of action. MHCC further argued that the circuit court had jurisdiction over the case, because MHCC was assigned all of the rights to collect payment from MAIF. MAIF then filed a reply.

A hearing on MAIF's motion to dismiss was held on February 27, 2017. After hearing oral argument from both parties and receiving a memorandum from MHCC, the court held the matter *sub curia*.

On March 17, 2017, the circuit court issued an order granting MAIF's request to dismiss Counts 22 and 23. The court further ordered the case transferred to the District Court for further proceedings, because the court determined that it did not have jurisdiction as to the remaining twenty-one counts.

MHCC noted this timely appeal. Additional facts will be provided as they become necessary to the disposition of this appeal.

DISCUSSION

I. Dismissal of IN § 27-303(9) Claim

The Court of Appeals has instructed:

> In considering a motion to dismiss for failure to state a cause of action pursuant to Maryland Rule 2–322(b)(2), a trial court must assume the truth of all well-pleaded relevant and material facts in the complaint, as well as all inferences that reasonably can be drawn therefrom. To this end, the facts comprising the cause of action must be pleaded with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice. Further, while the words of a pleading will be given reasonable construction, when a pleading is doubtful and ambiguous, it will be construed most strongly against the pleader in determining its sufficiency. Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff. **On appeal, a reviewing court must determine whether the trial court was legally correct, examining solely the sufficiency of the pleading.**

Parker v. Hamilton, 453 Md. 127, 132-33 (2017) (emphasis added) (cleaned up).

MHCC contends that the circuit court erred in dismissing Count 23, its claim of bad faith under IN § 27-303(9), because IN § 27-301 does not prohibit causes of action under subtitle three and therefore, allows a cause of action to be brought under IN § 27-303.[2]

[2] MHCC further argues that IN §§ 27-301 *et seq.*, does not prohibit a common law cause of action for third party bad faith. MAIF responds that MHCC did not plead common law bad faith, because Count 23 states that MHCC's claim is premised on IN § 27-303(9). We agree. MHCC's Count 23 reads as follows:

> Count 23 – Insurance Article § 27-303(9)
>
> 93. Counts 1-21 are incorporated herein.
> 94. From January though [sic] July 2016, [MAIF] failed to act in good faith to pay 21 separate claims.

MAIF responds that Maryland does not recognize a private cause of action pursuant to IN § 27-303, as explained in *Johnson v. Federal Kemper Ins. Co.*, 74 Md. App. 243, 248, *cert. denied*, 313 Md. 8 (1988). MAIF further argues that the plain language of IN § 27-301(b) demonstrates that IN §§ 27-301 *et seq.* does not create a private cause of action. We agree with MAIF.

In *Johnson*, we addressed for the first time whether then Md. Code Art. 48A, § 230A (1986 Repl. Vol.), now codified IN § 27-301 *et seq.*, permitted a private cause of action. 74 Md. App. at 248. In that case, Johnson bought automobile insurance from Federal Kemper Insurance Company ("Kemper"), which required Johnson to pay a premium of $114.50 by May 18, 1982. *Id.* at 244. Having not received $55.40 of the payment by the deadline, Kemper sent Johnson a notice of cancellation on June 9, 1982. *Id.* This notice "prompted Johnson to call the Bailey Insurance Agency" ("Bailey"), an "independent insurance agency through which [ ] Johnson had always dealt with Kemper." *Id.* An agent at Bailey assured Johnson that if she had paid the full amount owed to Kemper, Kemper would not cancel her policy. *Id.* at 244.

In July of 1982, Johnson was in an automobile accident with an uninsured motorist, and Johnson submitted a claim to Kemper. *Id.* at 245. Kemper informed Johnson that she

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> WHEREFORE, [MHCC] requests as additional damages, an amount greater than $75,000.00, and pursuant to § 27-305(c)(3)(ii), attorney fees incurred for prosecuting this claim.

Count 23 thus is not a common law bad faith claim but one premised on IN § 27-303(9). Accordingly, any argument by MHCC that the circuit court erred in dismissing a common law cause of action for bad faith fails for lack of a factual predicate.

no longer had automobile insurance through Kemper because of her failure to pay the full premium. *Id.* Johnson filed suit against Kemper and Bailey, which included claims of bad faith against Kemper. *Id.* Eventually Bailey was dismissed as a defendant, and upon consideration of Kemper's demurrer to Johnson's complaint, the trial court dismissed Johnson's claims of bad faith by ruling "that Maryland does not recognize a tort claim for bad faith failure to pay a first party insurance claim[.]" *Id.* The trial court, however, denied Kemper's demurrer on all other counts, and Johnson's case went to trial. *See id.* at 245-46. After trial, Kemper and Johnson settled, but Johnson was permitted to retain her right to appeal the trial court's dismissal of her bad faith claim. *Id.* at 246.

On appeal, Johnson first argued that her claim of bad faith should have been sustained, because there is a common law cause of action for first party bad faith. *See id.* at 247. This Court rejected such argument, holding that Maryland does not recognize a common law cause of action for first party bad faith. *Id.* We next considered whether Johnson's bad faith claim could survive on the basis that Kemper violated Md. Code. Art. 48A, § 230A. At that time, Md. Code. Art. 48A, § 230A,[3] read in relevant part:

> (c) *Claims constituting violations of section*. – The following actions by an insurer or nonprofit health service plan are unfair claim settlement practices and are violations of this section:
> (1) Misrepresenting pertinent facts or insurance policy provisions relating to the claim at issue;

[3] Art. 48A, § 230A was not enacted until May 13, 1986, after the complaint was filed by Johnson. *See* 1986 Md. Laws, Ch. 442, at 1628-31; *Johnson*, 74 Md. App. at 245. This Court appeared to consider Johnson's argument concerning Art. 48A, § 230A creating a private cause of action for bad faith without deciding whether it could be applied retroactively, because we ultimately held that there was no private action under Art. 48A, § 230A. *Johnson*, 74 Md. App. at 248.

(2) Refusing to pay a claim for an arbitrary or capricious reason based on all available information;

(3) Attempting to settle a claim on the basis of an application which is altered without notice to, or the knowledge or consent of, the insured;

(4) Failing to include with any claim paid to an insured or beneficiary a statement setting forth the coverage under which payment is being made;

(5) Failing to settle a claim promptly whenever liability is reasonably clear, under one portion of a policy in order to influence settlements under other portions of the policy; or

(6) Failing promptly upon request to provide a reasonable explanation of the basis for a denial of a claim.

* * *

(e) *Penalties for violations*. – (1) **The Commissioner may impose a penalty of up to $500 for each violation of subsection (c)** of this section, or of any regulation promulgated under subsection (c) of this section.

* * *

(f) *Administrative remedies provided only*. – (1)(i) **This section provides administrative remedies only**.

(ii) Appeals from orders issued by the Commissioner under this section shall be as provided in § 40 of this article.

(2)(i) Nothing contained in this section is intended to provide or deprive any private right or cause of action to, or on behalf of any claimant or other person in any state, territory, or possession of the United States.

(ii) **It is the specific intent of this section to provide an additional administrative remedy to the claimant for any violation of the provisions of this section or any regulation pertaining to this section.**

(3) This section may not be construed to impair the right of any person to seek redress in law or equity for any conduct which is otherwise actionable.

(Emphasis added).

In considering whether Johnson could pursue a cause of action pursuant to the above section, this Court held:

> The second statutory provision relied on by [Johnson] is Md. Ann. Code art. 48A, § 230A *Unfair claim settlement practices* (1986 Repl. Vol.). **But that provision states that it provides administrative relief only**, *id*., § (f)(1)(i), and that it is not to be construed "to provide or deprive any private right or cause of action to" any claimant. *Id*., § (f)(2)(i). **Therefore, it cannot be said to create a separate cause of action for appellant in this case.**

Johnson, 74 Md. App. at 248 (emphasis added).

Art. 48A, § 230A has undergone some relevant changes that we must explore in addressing MHCC's first question presented, but as will be explained *infra*, these changes do not undermine our holding in *Johnson*. The first such change occurred in 1997 when the General Assembly repealed and replaced Art. 48A, § 230A with IN § 27- 301 *et seq.* 1997 Md. Laws, Ch. 35 at 746. When Art. 48A, § 230A(f) was repealed and replaced by IN § 27-301, it was done so "without substantive change" and currently reads the same as it did after the 1997 replacement:

> (a) *Intent of subtitle*. – **The intent of this subtitle is to provide an additional administrative remedy to a claimant for a violation of this subtitle or a regulation that relates to this subtitle.**
> (b) *Effect of subtitle*. – (1) **The subtitle provides administrative remedies only.**
> (2) This subtitle does not provide or prohibit a private right or cause of action to, or on behalf of, a claimant or other person in any state.
> (3) This subtitle does not impair the right of a person to seek redress in law or equity for conduct that otherwise is actionable.

IN § 27-301 (emphasis added).

Art. 48A, § 230A(c), also repealed and replaced in 1997, was recodified in IN § 27-303 "without substantive change." 1997 Md. Laws, Ch. 35 at 1223. Relevant to the case

sub judice,[4] in 2007, IN § 27-303(9) was added, which is the provision that MHCC now relies on as the authority for its bad faith claim. 2007 Md. Laws, Ch. 150 at 1259. IN § 27-303 endured other amendments in 2012[5] and 2014,[6] but such amendments did not affect IN § 27-303(9). Accordingly, § 27-303 currently reads, in relevant part:

> It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:
>
> * * *
>
> (9) fail to act in good faith, as defined under § 27-1001 of this title, in settling a first-party claim under a policy of property and casualty insurance . . . .

The aforementioned legislative history demonstrates that, although IN § 27-303(9) was not added until after *Johnson*, there have been no amendments to IN § 27-301 *et seq*., that have altered the expressed intent of the General Assembly, which is to provide for administrative remedies only. IN § 27-301. Therefore, in accordance with our holding in *Johnson*, we conclude that IN § 27-301 *et seq*. does not provide a private cause of action

[4] In 1998, the General Assembly amended IN § 27-303(7), (8) to accurately reflect cross references to other sections of the Insurance Article, but such alterations have no bearing on the case *sub judice*. 1998 Md. Laws, Ch. 111 at 1126; Ch. 112 at 1172.

[5] The General Assembly added IN § 27-303(10). 2012 Md. Laws, Ch. 171 at 1118.

[6] The General Assembly added the term "health maintenance organization" to the Subtitle. 2014 Md. Laws, Ch. 355 at 2107-08.

for bad faith.[7] Accordingly, the circuit court did not err in dismissing MHCC's bad faith claim pursuant to IN § 27-303(9).

II. Dismissal of "General Business Practice of Unfair Claim Settlement" Claim

MHCC argues on appeal that the circuit court erred in dismissing its claim of "general business practice of unfair claim settlement" pursuant to IN § 27-304. The complaint, however, does not set forth any claim premised on IN § 27-304. Count 22, the only other count dismissed by the circuit court, sets forth a claim under IN § 27-303(2) for MAIF's alleged refusal to pay claims "for arbitrary and capricious reasons." Accordingly, any argument concerning a dismissal of a claim premised on IN § 27-304 fails for lack of a factual predicate.

III. Circuit Court Jurisdiction

MHCC contends that the circuit court erred in declining to aggregate all twenty-one claims to reach a sufficient amount in controversy for circuit court jurisdiction, because the Patients assigned their right to pursue claims against MAIF to MHCC. In support of this position, MHCC cites *Bullard v. City of Cisco, Texas*, 290 U.S. 179 (1933), for the proposition that assigned claims may aggregate for jurisdictional purposes if such assignments are not solely for collection.

[7] To be sure, MHCC attempts to characterize its claim against MAIF as a third party claim. This characterization, however, is disingenuous, because IN § 27-303(9), applies to bad "faith . . . in settling *a first-party claim*." (Emphasis added). MHCC's complaint is simply devoid of any mention of MHCC being a third party, much less a claim premised on third party bad faith.

MAIF responds that MHCC's claims do not aggregate, because each individual assignment to MHCC is for collection purposes and such purposes forbid the aggregation of claims. MAIF further contends that, because the individual Patients cannot aggregate their claims to meet the amount-in-controversy requirement, MHCC cannot aggregate the Patients' claims. MAIF concludes that, because MHCC's claims do not aggregate and each claim is less than $5,000,[8] the circuit court did not err in remanding the case to the District Court.

MAIF does not challenge the validity of each assignment to MHCC, and we, therefore, accept that MHCC has the authority to bring all twenty-one causes of action. Consequently, the question before us is simple: Where a plaintiff has been assigned rights to pursue a cause of action by multiple individuals, may the plaintiff aggregate multiple distinct claims against a sole defendant? To answer this, both parties cite *Bullard* in support of their respective positions.

[8] Maryland Code (1974, 2013 Repl. Vol.), § 4-405 of the Court and Judicial Proceedings Article ("CJP") provides:

> **The District Court has exclusive jurisdiction over a small claim action**, which, for purposes of this section, **means a civil action for money in which the amount claimed does not exceed $5,000 exclusive of interest, costs, and attorney's fees**, if attorney's fees are recoverable by law or contract; and landlord tenant action under §§ 8-401 and 8-402 of the Real Property Article, in which the amount of rent claimed does not exceed $5,000 exclusive of interest and costs.

(Emphasis added).

Bullard involved several coupon and bondholders who assigned their bonds and coupons to a "bondholders committee." 290 U.S. 179, 181 (1933). The bondholders committee filed a diversity action in the Northern District of Texas to recover the unpaid bonds and coupons from the City of Cisco, Texas. *Id.* at 180-81. The City moved to dismiss the case for lack of federal jurisdiction, because

> the plaintiffs were not actual or beneficial owners of the bonds and coupons sued on but held them solely for purposes of collection on behalf of others who severally were the real owners, and none of whom could sue in the federal court because their respective holdings were not in excess of $3,000.

Id. The U.S. District Court dismissed the case, and the dismissal was affirmed on appeal. *Id.* at 186-87. The United States Supreme Court then granted *certiorari*. *Id.* at 187.

The Supreme Court first held that, if the bondholder's committee did not own the bonds and coupons and the bonds and coupons were transferred to the committee for the sole purpose that the committee would collect on behalf of the bondholders, then federal jurisdiction would not vest. *Id.* The Supreme Court reasoned that at the time, 28 U.S.C. § 80 instructed a federal court to dismiss a case where it appeared "that the parties to said suit have been improperly or collusively made or joined." *See id.* at 188, 189 n.5; 28 U.S.C. § 1359 ("A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court."). The Court then held that the purpose of the agreement creating the bondholders committee

> was not to create a mere collection agency, nor to set up a merely colorable device for circumventing restrictions on federal jurisdiction, but to put the bonds and coupons, the owners of which

> were numerous and widely scattered, into an express trust, to be managed and administered by four trustees, for the purpose of conserving, salvaging, and adjusting the investment; the municipal debtor having become financially embarrassed.

Id. at 189. Accordingly, the bondholders committee was permitted to aggregate its claims to acquire federal jurisdiction. *Id.* at 190.

Both parties' reliance on *Bullard* is misplaced. As indicated above, in *Bullard* the City relied on 28 U.S.C. § 80, now 28 U.S.C. § 1359, as the statutory authority that prohibited the aggregation of the bondholders committee's claims. Hence, the persuasive authority of a case involving federal jurisdiction is only relevant if Maryland has an analogous statute or constitutional provision that prohibits a plaintiff from aggregating claims when a plaintiff acquired the rights to file a cause of action for the sole purpose of collecting on behalf of others where none of the others individually met the amount in controversy required for circuit court jurisdiction. Neither party, however, has directed this Court to any such statute or constitutional provision, nor has our research revealed any such analogous Maryland authority.

The Court of Appeals, however, has explained that, when there are "[m]ultiple claims of the same plaintiff against the same defendant which are less than the jurisdictional minimum, [those claims] may be aggregated." *Pollokoff v. Maryland National Bank*, 288 Md. 485, 492 (1980) (stating that the Court reached such conclusion in *Purvis v. Forrest Street Apartments*, 286 Md. 398, 405 (1979), when the Court aggregated a plaintiff landlord's claims of unpaid rent and right to possession against a single defendant to determine that an appeal was an on the record appeal). Moreover,

"Maryland Rule 2-303(c) permits a party to 'state as many separate claims or defenses as the party has, *regardless of consistency* and whether based on legal or equitable grounds.'" *Kent Cty. Bd. Of Educ. v. Billbrough*, 309 Md. 487, 497 (1987) (emphasis added). In other words, Maryland Rule 2-303(c) permits a party to bring multiple distinct claims in the same cause of action. *Id.* Therefore, MHCC was permitted to aggregate the Patients' claims.

Finally, CJP § 4-402(d)(1)(i) states:

> Except in a case under paragraph (2), (4), (5), or (6) of § 4-401 of this subtitle, **the plaintiff may elect to file suit in the District Court or in a trial court of general jurisdiction**, **if the amount in controversy exceeds $5,000**, exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract.

(Emphasis added). When MHCC's claims are aggregated, the claims amount to $20,570.58, and therefore, exceed the $5,000 minimum necessary to obtain circuit court jurisdiction. Accordingly, we hold that the circuit court erred in remanding the twenty-one individual claims to the District Court because of a lack of jurisdiction.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY APPELLEE.