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Frazier v. Liberty Mutual Insurance Co., 229 A.3d 56 (R.I. 2020)

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Tort Law. *Frazier v. Liberty Mutual Insurance Co.*, 229 A.3d 56 (R.I. 2020). In a personal injury action in Rhode Island the plaintiff generally has three years from the date of the injury to file suit, otherwise the suit is barred by the statute of limitations.[1] However, Rhode Island does have a saving statute that can, depending on the circumstances, allow a plaintiff to re-file a claim within one year after the termination of the original suit.[2] Under the saving statute, the plaintiff can bring the second claim against the alleged tortfeasor's insurer.

FACTS AND TRAVEL

The plaintiff, Timothy Frazier, alleged that, on November 11, 2013, he fell and was injured in the restroom of a Pizza Hut that was owned by Mita Enterprises, LLC (Mita).[3] Frazier filed suit against Mita on November 2, 2016, and ultimately sought a default judgment against Mita when it had failed to respond to the complaint.[4] Mita later moved to vacate the entry of default and dismiss the case on the grounds that Frazier had incorrectly served process.[5] On August 4, 2017, the first trial justice granted Mita's motions.[6] Notably, at this hearing, Mita was represented by attorneys "engaged by Liberty Mutual," Mita's insurer.[7] In July of 2017, Frazier filed a new complaint against Mita, however, the complaint was returned *non est inventus*.[8] Thus, on April 9, 2018, Frazier moved to amend his complaint and substitute Liberty

1. *See* 9 R.I. GEN. LAWS § 9-1-14 (2012).
2. *Id.* § 9-1-22.
3. Frazier v. Liberty Mut. Ins. Co., 229 A.3d 56, 57 (R.I. 2020).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* The term "*non est inventus*" is Latin for "he or she is not found" and in law is "[a] statement in a sheriff's return indicating that the person ordered arrested could not be found in the sheriff's jurisdiction." BLACK'S LAW DICTIONARY (11th ed. 2019).

Mutual as the defendant.[9] Following the amendment Liberty Mutual moved to dismiss the new complaint on the grounds that the three-year statute of limitations barred Frazier's action against it.[10] The second trial justice agreed with Liberty Mutual and granted summary judgment in its favor to which Frazier appealed.[11]

Frazier argued on appeal that the ruling that the claim was barred by the statute of limitations was flawed because the trial justice was incorrect in holding that the state's saving statute, Rhode Island General Laws section 9-1-22, did not protect Frazier's action.[12] The saving statute provides that if an action is timely commenced and is terminated in any manner other than voluntary discontinuance, dismissal for failure to prosecute, or a final judgment upon the merits, then the plaintiff "may commence a new action upon the same claim within one year after the termination."[13] The trial justice determined that the savings statute did not apply because Liberty Mutual was a "stranger" to Frazier's first action against Mita.[14] Frazier, however, argued that his claim should have been preserved by the saving statute.[15]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court first clarified that it is correct that, "deprived [of] the benefit of the savings statute," Frazier's claim against Liberty Mutual would be barred by the statute of limitations.[16] This is because, in Rhode Island, an injured party has three years to file their suit beginning on the day they are injured.[17] Here, Frazier was allegedly injured on November 11, 2013, which meant he could file suit against Mita anytime until November 11, 2016.[18] However, because the service against Mita was returned *non est inventus*, this gave Frazier an additional one

9. *Frazier,* 229 A.3d at 58.
10. *Id.*
11. *Id.*
12. *Id.*
13. 9 R.I. GEN. LAWS § 9-1-22 (2012).
14. *Frazier,* 229 A.3d at 58.
15. *Id.*
16. *Id.*
17. *Id.* (citing Rivers v. Am. Com. Ins. Co., 836 A.2d 200, 204 (R.I. 2003)).
18. *Id.* at 59.

hundred and twenty days to file suit directly against Liberty Mutual.[19] Although Frazier timely filed his second complaint against Mita on November 2, 2016, Frazier did not substitute Liberty Mutual as the defendant until April 9, 2018, and thus did not timely file against it.[20]

Although the Court conceded this point, the majority held that the savings statute *does* actually apply in these circumstances; thus, Frazier's action against Liberty Mutual was in fact timely, and summary judgment should not have been granted in favor of Liberty Mutual.[21] Liberty Mutual argued that the Court's prior holding in *Luft v. Factory Mutual Liability Insurance Company of America*,[22] prevented the savings statute from applying to the facts at hand.[23] In *Luft*, the Court held that "a savings statute could not be employed to extend the statute of limitations for actions against a party who was a 'stranger to the original action.'"[24] Notably, in *Luft,* the Court held that the defendant insurance company *was* a stranger to the original action, and, therefore, the savings statute could not be employed.[25]

Here, however, the majority held that although they agree with the principle holding in *Luft*, eighty-nine years have since passed and "modern society and evolving jurisprudence present a different view" of whether an insurer like Liberty Mutual who makes an appearance on behalf of its insured is a "stranger" to the original action against its insured.[26] The majority held that because the "insurance company and its insured are sufficiently linked, an insurance company is not, under these circumstances, a stranger to the original action against its insured."[27] The majority felt that this *sufficient link* between the insurer, Liberty Mutual, and its insured, Mita, was evident in the fact that Liberty Mutual employed lawyers

19. *Id.*
20. *Id.*
21. *See id.* at 61. "We therefore agree with Frazier that the second trial justice erred in holding that the savings statute did not apply to Frazier's claim against Liberty Mutual. Thus, it is our opinion that summary judgment should not have been granted in favor of Liberty Mutual." *Id.*
22. Luft v. Factory Mut. Liab. Ins. Co, 155 A. 526 (1931).
23. *Frazier*, 229 A.3d at 59 (citing *Luft*, 155 A. at 527).
24. *Id.* (quoting *Luft*, 155 A. at 527).
25. *Id.*
26. *Id.* at 60.
27. *Id.*

to ask the lower court to dismiss the original action against Mita, thus it "cannot be disputed that Liberty Mutual was aware of the lawsuit."[28]

The majority further rested their opinion on support from the Supreme Court of Iowa in *Beilke v. Droz,*[29] where a plaintiff in a wrongful death action first sued the tortfeasor's insurance company and then, upon dismissal, sued the alleged tortfeasor.[30] The court in *Beilke* held that, although the plaintiff's claim against the tortfeasor would be barred by the statute of limitations, the state's saving statute preserved it.[31] The court reasoned that "when a third party . . . obtain[s] judgment against the insured, the insurer must pay it to the extent of the policy limits," thus the two share an identical interest.[32] Here, the Rhode Island Supreme Court found the reasoning in *Beilke* persuasive and held that the "insurance company and its insured share a sufficient commonality of interest" because authorizing direct action against the insurance company "places the injured person precisely in the same position with relation to the insurer that the insured would have held had he paid the judgment and thereafter sought indemnity."[33] Thus, the two are sufficiently linked and within the reach of the savings statute.[34]

Justice Indeglia authored a dissenting opinion in which he stressed the importance of adhering to *stare decisis,* specifically to the holding in *Luft*.[35] Although Justice Indeglia wrote that he agreed with the majority's "characterization" of the holding in *Luft*, he felt as though the majority was discarding precedent and was not appropriately considering the term "stranger."[36] Justice Indeglia argued that the Court's jurisprudence and the plain meaning of the term "stranger" suggest that it should be interpreted as meaning someone who is not a party to the action which, in this case, includes Liberty Mutual.[37]

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28. *Id.*
29. Beilke v. Droz, 316 N.W.2d 912 (Iowa 1982).
30. *Frazier,* 229 A.3d at 60 (citing *Beilke*, 316 N.W.2d at 912).
31. *Id.*
32. *Id.* (quoting *Beilke*, 316 N.W.2d at 914).
33. *Id.* at 61.
34. *Id.*
35. *Id.* (Indeglia, J., dissenting).
36. *See Id.*
37. *Id.* at 63.

COMMENTARY

Prior to this decision, if a plaintiff failed to name the insurer in the original action, then the plaintiff could not bring suit against the insurer once the statute of limitations expired. Pursuant to the Court's holding, however, now the plaintiff's claim will be "saved" because an insurance company will likely never be considered to be a "stranger" to the original action. On one hand, this allows plaintiffs to be made whole in circumstances under which they would not be able to otherwise and, as the majority notes, simply puts the insurer in the place it would be in had the insured sought indemnification later on.[38] On the other hand, this decision could have negative impacts on consumers. As Justice Indeglia points out in his dissent, the potential increase in liability of insurance companies could result in companies passing along the risk through higher rates to consumers.[39]

Ultimately, this decision may not have a substantial impact at all as Rhode Island generally does not allow an injured party or their estate to bring an action directly against the alleged tortfeasor's insurer unless service of process was *non est inventus*,[40] the alleged tortfeasor has filed for bankruptcy,[41] or the alleged tortfeasor has died and probate has not yet been initiated.[42] Thus, the practical implications of this decision—and whether it is helpful or harmful—are difficult to anticipate.

CONCLUSION

The Rhode Island Supreme Court held that an insurer is not considered to be a "stranger" to an original action between an injured party and the insured where the insurer and the insured had a "sufficient commonality of interest." Thus, a claim by an injured party against the insurer that would normally fall to the statute of limitations can be saved by the state's saving statute.

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38. *Id.* at 61 (majority opinion).
39. *Id.* at 63 (Indeglia, J., dissenting).
40. 27 R.I. GEN. LAWS § 27-7-2 (2013).
41. *Id.* § 27-7-2.4.
42. *Id.* § 27-7-2.