

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

(FILED: September 27, 2023)

SOSCIA HOLDINGS, LLC

:

VS.

:

C.A. No. KC-2020-0769

:

THE TOWN OF COVENTRY

:

:

**DECISION**

**VAN COUYGHEN, J.** This matter is before the Court on what Plaintiff has termed “Plaintiff’s Motion for Immediate Mandatory Injunction or Temporary Restraining Order to Enforce Lease Contract Provisions” Plaintiff seeks to have this Court issue an order requiring Defendant to provide a policy of insurance which it alleges is required pursuant to paragraph 6 of the Lease Agreement (Lease) between the parties. In the alternative, Plaintiff seeks an order halting all recreational use of Johnson’s Pond and the upland real estate which is described in the Lease.

Defendant denies these allegations and argues that it has complied with the Lease provision in question by including Plaintiff as an insured with the Town of Coventry’s coverage provided by the Rhode Island Interlocal Risk Management Trust. Jurisdiction is pursuant to Rule 65 of the Superior Court Rules of Civil Procedure.

**I**

**Facts and Travel**

This case has been the subject of contentious litigation since its inception. The case is assigned to another justice of this court who is temporarily indisposed. This Court is handling this

matter due to Plaintiff's claim for immediate relief. This matter was heard by this Court on June 8, 2023.

This Court will only recite the facts relevant to resolution of the claim for injunctive relief presently before the Court.

In January 2009, the Town of Coventry (Lessee or Town) entered into a Lease Agreement with the Quidnick Reservoir Company (Quidnick) leasing Johnson's Pond and certain upland real estate owned by Quidnick. The Lease is scheduled to expire on March 31, 2024. In the Lease, Quidnick reserved the right to control waterflow rights which control the level of water in the pond, subject to certain specifications contained in the lease. In March 2020, Soscia Holdings, LLC (Soscia or Lessor) purchased the premises as described in the Lease, and Quidnick assigned the Lease to Soscia. Douglas Soscia is a member of Soscia, a Rhode Island limited liability company.

A copy of the Lease was admitted into evidence and marked as Defendant's B, full by agreement. Section 6 of the 2009 Lease is entitled, "Indemnity and Public Liability Insurance" and sets forth certain obligations regarding Lessor's right to be indemnified and Lessee's obligation to maintain a policy of comprehensive general liability insurance.

Section 6A is essentially an indemnity agreement and states as follows:

A. Lessee agrees to indemnify and save Lessor harmless from and against all claims of whatever nature arising out of or resulting from any and all recreational or other use of the Premises by Lessee, or Lessee's contractors, licenses, invitees, customer[s], guests, residents, permitted users, agents, servants or employees, or from any act, omission, negligence and/or failure to adequately supervise or monitor the recreational use of the Premises by Lessee, or arising from any accident, injury or damage whatsoever relating to bodily injury or property damage occurring during the term hereof relating to Lessee's use of the supervision of the Premises, or arising from any accident, injury or damage occurrence outside the Premises, where such accident, damage or injury results from an act or

omission on the part of Lessee or Lessee's licensees, invitees, customers, agents, servants or employees, except to the extent the same results from the negligence or willful act or omission of Lessor. This indemnity and hold-harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceedings brought thereon, and the defense thereof.

This language clearly requires that the Lessee indemnify Lessor for any claims or liability against the Lessor as a result of the Lessee's, or its agent's, misfeasance or wrongful act. The clause specifically excludes liability from negligence or willful act or omission of the Lessor.

Section 6B sets forth the Lessee's obligation to provide insurance protecting Lessor from liability based on Lessee's action or inaction as set forth in Section 6A above and states as follows:

B. Lessee agrees to maintain in full force at all times during the term hereof a policy of comprehensive general liability insurance (including personal injury) under which Lessor (and such other persons as are in privity of estate with Lessor as may be set out in notice from time to time) and Lessee are named as insureds, and under which the insurer agrees to indemnify and hold Lessor, and those in privity of estate with Lessor, harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages mentioned in section 6A above. Each such policy shall be non-cancelable with respect to Lessor and Lessor's said designees without ten (10) days prior written notice to Lessor, and a duplicate original or certificate thereof shall be delivered to Lessor at any time or from time to time upon Lessor's request. The limits of such insurance shall be maximum amount of comprehensive general liability insurance maintained by the Lessee from time to time during the Term of the Lease.

This clause specifies that the insurance covers all claims, accidents, and damages set forth in Section 6A above (including personal injury). The clause also requires that the Lessor and the Lessee are named as insureds. Black's Law Dictionary defines "insured" as "[a person] who is covered or protected by an insurance policy."

Section 6C is also an indemnity provision which provides for the indemnification of Lessee caused by flooding. Section 6C states as follows:

C. Lessor agrees to indemnify and hold Lessee harmless from and against any claim whatever nature arising out of or resulting from any flooding caused by the flow of water from and through the Control Gates into the Pawtuxet River. This indemnity and hold-harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof, excluding herefrom, any claim, cost, expense or liability caused by the Lessee's negligence or failure to maintain the Dam in accordance with the provisions of this Lease.

As stated, the clause excludes any liability caused by Lessee's failure to maintain the dam in accordance with the obligations contained in the Lease.

The Lease Agreement also contains a section entitled "Statistics Section" at the beginning of the Lease. Insurance is also mentioned on page ii of the Statistics Section. The relevant paragraph states as follows:

Liability Insurance: Lessee shall maintain in full force and effect during the term of this Lease, general comprehensive public liability insurance naming Lessor as an additional insured party, covering the Lessor and the real estate identified in Schedules A and A1, on such terms and conditions, including the amount of insurance as set forth in Section 6 of this Lease.

This paragraph also requires that Lessee provide general comprehensive public liability insurance for the benefit of Lessor. It specifically requires that Lessee name Lessor as an "additional insured" on any such policy.

The parties also introduced other exhibits by agreement, which primarily consist of insurance documents which include the liability insurance policy in question (Pl.'s Ex. 5 ), the insurance certificate for both the property and liability insurance (Pl.'s Ex. 4), which specifies the various limits of liability, the certificate of insurance issued in 2012 adding Quidnick as an

additional insured (Pl.'s Ex. 3) and the most recent certificate of insurance naming Soscia as assignee of Quidnick as the current certificate holder (Pl.'s Ex. 2). As stated above, the policies and the other insurance documents were issued by the Rhode Island Interlocal Risk Management Trust.

Lessor also called Douglas Soscia as a witness. As stated above, Mr. Soscia is a member of Soscia. He testified that since 2016 he has been a licensed public insurance adjuster in the State of Rhode Island. He explained that as a public adjuster, he is hired by individuals to proceed against their insurance companies for claims that his clients may have. There is no evidence that Mr. Soscia has any experience in the insurance industry other than that as a public adjuster. There is no evidence that he has any experience underwriting, writing, or interpreting policies.

Mr. Soscia testified that based on his review of the above-referenced exhibits, Soscia does not have coverage through the Town's policy which he alleges is a violation of the Lease.

## II

### Standard of Review

In reviewing a request for a preliminary injunction under Rule 65 of the Superior Court Rules of Civil Procedure, the Superior Court applies a four-factor test and “determine[s] whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” *Iggy's Doughboys, Inc. v. Giroux*, 729 A.2d 701, 705 (R.I. 1999). However, “[w]hen a preliminary injunction is mandatory in nature in—that it commands action from a party rather than preventing action—a stricter rule applies and such injunctions should be issued only upon a showing of very clear right and great

urgency.” *King v. Grand Chapter of Rhode Island Order of Eastern Star*, 919 A.2d 991, 995 (R.I. 2007) (internal quotation omitted).

Lessor is seeking a mandatory injunction in that it is requesting that this Court order Lessee to purchase an insurance policy naming Soscia as the named insured. Lessor’s claim must fail for a variety of reasons, all of which will be discussed below.

### **III**

#### **Clear Right/Likelihood of Success on the Merits**

In order for Soscia to succeed with a mandatory injunction, Soscia must prove that it possesses a clear right to the relief sought. Soscia claims it has the right to have its own policy and be a “named insured.” It appears from the exhibits presented that Soscia has failed to sustain its burden in that regard. The Statistics Section of the Lease clearly states that “Lessee shall maintain in full force and effect during the term of this Lease, general comprehensive public liability insurance naming Lessor as an additional insured party.” Black’s Law Dictionary defines additional insured as “[a person] who is covered by an insurance policy but who is not the primary insured. An additional insured may, or may not, be . . . named in the policy.” *See* Defendant’s Ex. B, § ii. Section 6B of the Lease requires that the Town maintain comprehensive general liability insurance in which it and the Lessor be named as insureds. The Lease does not require that the Lessee be a named insured, it only requires that the Lessor be named as an insured. The obvious intent of the Lease is to make sure that the Lessor is covered by insurance to protect it from liability caused by the wrongful acts or omissions of the Lessee.

Plaintiff’s Exhibit 2 is a certificate of insurance effective through June 30, 2023, which names Soscia as assignee of Quidnick as the certificate holder. The top of the document includes the words “Evidence of Insurance.” The description section states that the trust is obligated to pay

Soscia for liability caused by the action of the Town. Certificate of insurance is defined in Black's Law Dictionary as "[a] document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers." It appears to this Court that Exhibit 2 applies the Town's insurance coverage to Soscia.

Plaintiff's Exhibit 5 is the liability insurance policy issued by the trust. Plaintiff's Exhibit 4 is the insurance certificate which sets forth the applicable policy limits for the various coverages. It appears from the evidence that Soscia has not established that the insurance policy provided to the Town fails to satisfy the requirements of the Lease. It also appears from the evidence that the certificate of insurance as set forth in Plaintiff's Exhibit 2 extends that insurance to Soscia. Based upon the evidence before this Court, Soscia has failed to establish that it has a clear right to the relief sought.

This evidence also reflects that Soscia has failed to establish the likelihood of success on the merits based upon the record before this Court.

#### **IV**

#### **Irreparable Harm**

A party seeking injunctive relief must prove that it stands to suffer some irreparable harm that is imminent and for which no adequate legal remedy exists to restore the party to its original position. *National Lumber and Building Materials Co. v. Langevin*, 798 A.2d 429, 434 (R.I. 2002). In the case before the Court, Soscia is alleging that it may be exposed to monetary loss if sufficient insurance coverage is not provided. Soscia's argument lacks merit for several reasons.

The predicate to Soscia's exposure is that its liability be caused by some action or inaction of the Town. The Lease contains a very clear indemnity provision which allows Soscia to seek

compensation from the Town which stems from the Town's wrongful action. Thus, Soscia clearly has a viable legal remedy in the event the Town's actions impute liability to Soscia.

Further, Soscia has recently filed an Amended Complaint seeking monetary damages from the Town for allegedly failing to provide the insurance required by the Lease. If Soscia believes that the Town has breached its insurance obligations under the Lease, Soscia could obtain its own insurance and add the cost of the premiums to its damages alleged in its Amended Complaint.

Finally, there is no evidence before the Court that there is a pending claim or any potential claim against the Town. The current insurance relationship has been in existence since Quidnick entered into the Lease in 2009 and has never been contested. In fact, this issue did not arise until at least two years after Soscia acquired the Lease from Quidnick. The evidence before this Court does not establish any imminent present harm for which no remedy exists.

The Court need not address the remaining elements for the issuance of a mandatory injunction as the issues discussed above are dispositive. Soscia's prayer for injunctive relief is denied. Defense counsel shall prepare and submit the appropriate form of order.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** **Soscia Holdings, LLC v. The Town of Coventry**

**CASE NO:** **KC-2020-0769**

**COURT:** **Kent County Superior Court**

**DATE DECISION FILED:** **September 27, 2023**

**JUSTICE/MAGISTRATE:** **Van Couyghen, J.**

**ATTORNEYS:**

**For Plaintiff:** **Patrick J. Dougherty, Esq.**

**For Defendant:** **Stephen J. Angell, Esq.**  
**Michael T. Eskey, Esq.**