

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

JAMES KIMMELMAN, :  
 :  
 Plaintiff, :  
 :  
 v. : Case No. 18 CV 1041  
 :  
 WAYNE INSURANCE GROUP : Judge SCHNEIDER  
 :  
 Defendant. :

**DECISION AND ENTRY DENYING DEFENDANT’S MOTION FOR JUDGEMENT ON THE PLEADINGS**

SCHNEIDER, J.

The matter is before the court on Defendant Wayne Mutual Insurance Company’s motion for judgment on the pleadings pursuant to Civil Rule 12(C). After full and careful review of the motion, associated memorandum contra, subsequent reply, the court finds Plaintiff’s motion not well taken and DENIES the same.

**I. Background**

In August 2017, Plaintiff James Kimmelman submitted a claim to Defendant Wayne Insurance Group, reporting stolen BitCoin, amounting to approximately \$16,000. Plaintiff’s Complaint, ¶¶ 5-6. Defendant investigated the claim and awarded Plaintiff \$200, as Defendant determined the property was “money” and governed by a sublimit within the insurance contract between the parties. *Id.* at ¶¶ 7-8. Plaintiff then filed the underlying action for breach of contract and bad faith on the part of the Defendant. See Plaintiff’s Complaint. Defendant now moves for judgment on the pleadings, asserting its assessment of BitCoin as “money” was proper and, therefore, Plaintiff has no claim against it for breach of contract or bad faith.

Additionally, Plaintiff moves for judgment on the pleadings, as Plaintiff failed to submit a proof of loss, pursuant to the contract. The Court finds this second argument to be outside the scope of the pleadings, and therefore more suitable for summary judgment. Accordingly, the Court denies this claim as procedurally improper. Defendant is welcome to raise a similar argument in a motion for summary judgment after the proper amount of time for discovery has passed.

## **II. Judgment on the Pleadings Standard**

Civ.R. 12(C) provides that “[a]fter the pleadings are closed but within such times as not to delay the trial, any party may move for judgment on the pleadings.” As under Civ.R. 12(B)(6), in resolving a Civ.R. 12(C) motion, “a court is confined to the averments set forth in the complaint.” *Estate of Sherman v. Milhon*, 104 Ohio App.3d 614, 617 (10<sup>th</sup> Dist.1995). In construing a motion for judgment on the pleadings under Civ.R. 12(C), the court must accept as true all material allegations in the complaint and draw all inferences in favor of the non-moving party. *Corporex Dev. & Constr. Mgt. v. Shook, Inc.*, 106 Ohio St.3d 412, 413 (2005). A complaint may be dismissed under Civ.R. 12(C) only when it appears beyond doubt that the plaintiff can prove no set of facts that would entitle it to relief. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996).

## **III. Discussion**

Defendant asserts BitCoin is recognized as “money” and supports its argument with references to articles from CNN, CNET, and the New York Times. See Defendant’s Motion for Judgment on the Pleadings, pp. 1, 6-7. The only legal reference Defendant makes to support its conclusion that BitCoin is money, is a limited reference to a document the Internal Revenue Service released directly relating to the taxation of

BitCoin. Internal Revenue Service Notice 2014-21. Defendant cites the term the IRS has subscribed to BitCoin and other electronic property, “virtual currency.”

Plaintiff counters Defendant’s argument citing Federal case law and a matter out of the Florida state courts. The Court finds none of these cases are governing or persuasive in the underlying matter, as the federal cases concern the implications of BitCoin on 18 U.S.C. §981 (a statute only pertaining to United States currency, which BitCoin is not, as it is not recognized by the United States), and the Florida case is an unpublished opinion.

Accordingly, the only authority the Court can rely on in determining the status of BitCoin is the Internal Revenue Service Notice 2014-21. Under Notice 2014-21, the IRS states, “For federal tax purposes, virtual currency is treated as property.” Accordingly, the Court finds BitCoin, although termed “virtual currency,” is recognized as property by the IRS and shall be recognized as such by this Court.

#### **IV. Conclusion**

Based on the foregoing analysis, the Court finds Plaintiff has properly plead his Complaint for breach of contract and bad faith. Defendant’s motion for judgment on the pleadings is DENIED. The discovery stay the Court enacted in its July 26, 2018 entry is, hereby, lifted.

**IT IS SO ORDERED.**

#### **Copy via electronic filing:**

All counsel of record.

Franklin County Court of Common Pleas

**Date:** 09-25-2018  
**Case Title:** JAMES KIMMELMAN -VS- WAYNE INSURANCE GROUP  
**Case Number:** 18CV001041  
**Type:** ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to be 'C.A. Schneider'. To the right of the signature is a circular official seal. The seal features a central emblem surrounded by text, likely the name of the court and the state of Ohio.

/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 18CV001041

Case Style: JAMES KIMMELMAN -VS- WAYNE INSURANCE  
GROUP

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0010412018-05-2299970000  
Document Title: 05-22-2018-MOTION FOR JUDGMENT ON  
PLEADINGS - DEFENDANT: WAYNE INSURANCE GROUP  
Disposition: MOTION DENIED