DOCKET NO. HHD CV-18-6094809 S	:	SUPERIOR COURT
HERBERT KAMANSKY, ET AL	:	J. D. OF HARTFORD
VS.	:	AT HARTFORD
LIBERTY MUTUAL INSURANCE COMPANY	:	APRIL 30, 2019

MEMORANDUM OF DECISION

In this insurance coverage dispute, the court heard oral argument on March 11, 2019 concerning the parties' cross motions for summary judgment. After consideration, the court issues this decision.

I

Background

The plaintiffs, Herbert and Josephine Kamansky, filed a six-count complaint against the defendant, Liberty Mutual Insurance Company. Each party has moved for summary judgment based on their interpretation and application of General Statutes § 38a-316e, the Connecticut Matching Statute. For the purposes of these motions for summary judgment, the following facts are undisputed.

The plaintiffs reside at a home in Rocky Hill, Connecticut, which was insured under a replacement cost insurance policy issued by the defendant. On December 22, 2017, a vehicle driven by one of the plaintiffs hit the front elevation of the their property and damaged a section of siding near a garage door.[1] On December 23, 2017, the plaintiffs reported the damage to the defendant, and some time before January 24, 2018, hired a public adjuster, Connecticut Claims

[1] In the defendant's motion for summary judgment, it is alleged by way of sworn affidavit, that one of the plaintiffs was driving the vehicle that struck their property. This allegation was not challenged by the plaintiffs.

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Adjusters, LLC (CT Claims) to represent them.

The defendant inspected the property on December 27, 2017. Some time prior to January 3, 2018, the defendant initiated a "siding match report" conducted by ITEL, the purpose of which was to determine the availability and location of siding matching in color and texture to the current siding on the plaintiffs' house. The ITEL report found a product that "is the same as the original color of [the plaintiffs'] siding."

On January 24, 2018, CT Claims requested and received the ITEL report from the defendant. After locating a sample of the product identified in the report, the plaintiffs, through CT Claims, informed the defendant that the color and embossed grain pattern did not match the original siding on the property, which had faded.

On January 25, 2018 the defendant, through its field claims specialist, responded that "the policy and the [Connecticut] matching statute make no consideration for fading. Fading is a natural occurrence." The plaintiffs, through CT Claims, continued to insist that the defendant indemnify the plaintiffs for the full replacement of all the siding on the property.

On January 29, 2018 the defendant sent the plaintiffs a denial letter indicating it would not cover a complete replacement of the property's siding. In this letter, the defendant identified the applicable insurance policy provision, which provides in relevant part: "We insure against risk of direct loss to property . . . only if that loss is a physical loss to property. We do not insure, however, for loss . . . [c]aused by . . . [a]ny of the following: (1) Wear and tear, marring, deterioration; (2) Inherent vice, latent defect, mechanical breakdown." On February 5, 2018 the defendant, through its field claims specialist, reiterated its position that it would not cover the residing of the entire home, adding "[i]t is unfortunate that the siding has faded over time but

that [is] not something that policy can remedy."

In their complaint, the plaintiffs allege the following: (1) breach of contract; (2) violation of the Matching Statute § 38a-316e; (3) intentional misrepresentation; (4) breach of implied covenant of good faith and fair dealing; (5) violations of the Connecticut Unfair Insurance Practices Act, General Statutes §§ 38a-815 and 38a-816; and (6) violations of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a, et seq.

On October 12, 2018, the plaintiffs filed a motion for partial summary judgment (#107) as to Count II, on the ground that § 38a-316e is clear and unambiguous, and by its clear language requires the defendant to replace all the siding on the property. The defendant filed an objection on January 23, 2019, arguing the plain meaning of § 38a-316e only requires the replacement of areas adjacent to the damaged section, not the entire property. On February 27, the plaintiffs filed a reply brief.

As part of its answer and special defenses filed on August 8, 2018, the defendant also filed a counterclaim requesting a declaratory judgment from the court that § 38a-316e does not require a complete residing, but only those areas required to achieve a reasonably uniform appearance. On January 23, 2019, the defendant filed a motion for summary judgment on this counterclaim (#120). The plaintiffs filed an objection on March 1, 2019, reiterating the argument in their motion for partial summary judgment. On March 6, 2019 the defendants filed a reply brief.

As the plaintiffs' motion for partial summary judgment and the defendant's motion for summary judgment address the same issue, namely the interpretation and application of § 38a-

316e, the motions were argued together at short calendar on March 11, 2019.[2] Additional references to the factual background are set forth below.

II

Standard of Review

Under the well-established summary judgment standard, "the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. . . . To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *State Farm Fire & Casualty Co.* v. *Tully*, 322 Conn. 566, 573, 142 A.3d 1079 (2016).

"A material fact is a fact that will make a difference in the result of the case. . . . The facts at issue are those alleged in the pleadings." (Internal quotation marks omitted.) *Morrissey-Manter* v. *Saint Francis Hospital & Medical Center*, 166 Conn. App. 510, 517, 142 A.3d 363, cert. denied, 323 Conn. 924, 149 A.3d 982 (2016). Moreover, "[a] genuine issue has

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[2]In their reply (#122), the plaintiffs referred to evidence from another claim and requested an in camera review. At oral argument, the court stated that this evidence was not part of the evidentiary record on the motions and that it would not be considered by the court.

been variously described as a triable, substantial or real issue of fact . . . and has been defined as one which can be maintained by substantial evidence. . . . Hence, the genuine issue aspect of summary judgment procedure requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred." (Internal quotation marks omitted.) *Rickel* v. *Komaromi*, 144 Conn. App. 775, 790-91, 73 A.3d 861 (2013).

III

Discussion

In matters of statutory interpretation, Connecticut courts follow the plain meaning rule codified in General Statues § 1-2z. "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." General Statutes § 1-2z.

"[S]tatutory interpretation is a question of law . . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 150, 12 A.3d 948 (2011).[3]

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[3]The plaintiffs argue that any ambiguity in a homeowner's insurance policy must be construed in favor of the insured since the policy is drafted by the insurance company. On these motions, the court is not interpreting an insurance contract. The language at issue is statutory, not contractual. The plaintiffs' argument concerning insurance contract interpretation is inapplicable in this context.

Turning to the statute at issue, the Matching Statute attempts to create a standard for the replacement of damaged property by insurance companies and the maintenance of a reasonably uniform appearance. It provides in relevant part: "When a covered loss for real property requires the replacement of an item or items and the replacement item or items do not match adjacent items in quality, color or size, the insurer shall replace *all such items* with material of like kind and quality so as to conform to a reasonably uniform appearance. This provision shall apply to interior and exterior covered losses" (Emphasis added.) See General Statutes § 38a-316e (a). In their reading of § 38a-316e, the parties agree the statute is clear and unambiguous, yet each has moved for summary judgment in their favor.

The plaintiffs place an emphasis on uniformity in appearance. When adjacent existing items do not match replacement items, the plaintiffs argue, the statute requires the insurer to replace all the items, adjacent and not, so as to create a uniform appearance. The defendant, by contrast, reads "all such items" to include only the replacement and adjacent items, and argues the statute only requires insurers to replace these. The defendant contends that it need only replace portions of the siding in the front of the home and agreed to re-side the entire front elevation. The plaintiffs argue that the statute requires re-siding of the entire home.

These conflicting interpretations do not evidence statutory ambiguity; rather, they are opposing arguments. "We recognize that terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise. . . . ; see also General Statutes § 1-1(a) ('[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language'). In addition, [w]e often have stated that, when the ordinary meaning [of a word or phrase] leaves no room for ambiguity . . . the mere fact that the parties

advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Citation omitted; internal quotation marks omitted.) *In re Jusstice W.*, 308 Conn. 652, 660-61, 65 A.3d 487 (2012).

The Supreme Court has discussed the meaning of the term "adjacent." "The term 'adjacent' has no fixed meaning but must, instead, be interpreted in light of the relevant surrounding circumstances. . . . Necessarily relative, the term connotes nonetheless a site which, although not contiguous, will be near to, or in the general vicinity of, the stated point of reference[.]" (Citation omitted.) *Welles* v. *Town of E. Windsor*, 185 Conn. 556, 560–61, 441 A.2d 174, 177 (1981) (notice given by town concerning site of proposed facility at named road adjacent to town highway garage was inadequate to give notice of later plan to construct facility 500 feet away from the town garage, even though both sites were on one tract owned by town). "'Adjacent' means lying near, neighboring." *State* v. *Angus*, 83 Conn. 137, 141, 75 A. 623, 624 (1910).

The court reads the language of § 38a-316e as clear and unambiguous, and agrees with the defendant's interpretation. In this context, the phrase "all such items" refers only to those items previously identified in the sentence, specifically the replacement items and the adjacent items involved in the comparison. Contrary to the plain language of the statute, the plaintiffs' interpretation, that replacing all the siding is required, would involve replacing siding which is not adjacent to the damaged area.

This is not an absurd or unworkable result. In the absence of ambiguity, considering extratextual evidence such as legislative history is not permitted.

CONCLUSION

For the foregoing reasons, the plaintiffs' motion for partial summary judgment is denied and the defendant's motion for summary judgment on its counterclaim for a declaratory judgment as to General Statutes § 38-316e is hereby granted. General Statutes § 38a-316e does not require that the entire house be re-sided.

BY THE COURT

Robert B. Shapiro

ROBERT B. SHAPIRO
JUDGE TRIAL REFEREE

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Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**HERBERT KAMANSKY** **Attorney:** PETERSON ZAMAT LLC (437538) File Date: 05/18/2018 250 STATE STREET UNIT A-2 NORTH HAVEN, CT 06473		Plaintiff
P-02	**JOSEPHINE KAMANSKY** **Attorney:** PETERSON ZAMAT LLC (437538) File Date: 05/18/2018 250 STATE STREET UNIT A-2 NORTH HAVEN, CT 06473		Plaintiff
D-01	**LIBERTY MUTUAL INSURANCE COMPANY** **Attorney:** HOWD & LUDORF LLC (028228) File Date: 06/18/2018 65 WETHERSFIELD AVENUE HARTFORD, CT 061141121		Defendant

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