

DOCKET NO. TTD-CV-23-6027058-S : SUPERIOR COURT
JENNIFER BRECKMAN : J.D. OF TOLLAND
V. : AT ROCKVILLE
ROBERT D THIVIERGE AND
DAIRYLAND INSURANCE COMPANY : MAY 3, 2024

MEMORANDUM OF DECISION

SCHIBLEY, J. Pending before the court is a partial motion for summary judgment (Docket No. 121) filed on December 18, 2023, by the defendant Dairyland Insurance Co. (Dairyland). The court has reviewed the objection of the plaintiff, Jennifer Breckman (Docket No. 126), Dairyland's reply (Docket No. 129), the parties' memoranda of law, and all other relevant filings. For the reasons that follow, the court concludes that there is no genuine issue of material fact with respect to count three of the plaintiff's complaint and, accordingly, GRANTS Dairyland's motion for summary judgment on that count.

I. BACKGROUND

The present action arises out of a motor vehicle accident on Route 171 in the town of Woodstock on April 24, 2022. (Docket No. 125.) On May 17, 2023, the plaintiff filed a three-count complaint against the defendant Robert D. Thivierge and Dairyland alleging the following facts. The plaintiff alleged that, on April 24, 2022, she was a passenger on a motorcycle traveling in a westerly direction being driven by an individual named Richard Pippin. Thivierge was traveling in the opposite direction when he allegedly crossed the center line, entered the westbound lane of travel, and struck a number of motorcycles, including the motorcycle on which the plaintiff was a passenger. An amended complaint, filed on December 20, 2023, further alleges that a separate, unidentified vehicle that had been traveling in the same direction as Thivierge contributed to the accident in an unspecified manner. (Docket No. 125.)

The plaintiff's amended complaint presently contains four counts. The first and second count allege, respectively, negligence and recklessness against Thivierge. The third count seeks recovery against Dairyland, pursuant to the terms of a policy issued

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to Pippin, under a theory that Thivierge was underinsured at the time of the accident. The fourth count seeks recovery against Dairyland based on the involvement of the unknown vehicle.

On December 18, 2023, Dairyland filed a motion for summary judgment with respect to count three. In support of its motion, Dairyland argues that in light of the definition of “underinsured motor vehicle” set forth in both Pippin’s policy and General Statutes § 38a-336, it is entitled to judgment on that count as a matter of law. The plaintiff filed her objection on February 1, 2024, arguing that the multiplicity of parties injured by Thivierge’s alleged negligence warrants denial. The court held oral argument remotely on April 30, 2024, and reserved decision.

II. STANDARD OF REVIEW

“Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” *Dunn v. Northeast Helicopters Flight Services, LLC*, 346 Conn. 360, 369–70, 290 A.3d 780 (2023). A material fact is defined simply “as a fact which will make a difference in the result of the case.” *United Oil Co. v. Urban Redevelopment Commission*, 158 Conn. 364, 379, 260 A.2d 596 (1969). As the movant, Dairyland bears the initial burden on the motion. See *Larobina v. McDonald*, 274 Conn. 394, 399, 876 A.2d 522 (2005).

III. DISCUSSION

Uninsured and underinsured motorist coverage is governed by General Statutes § 38a-336. General Statutes § 38a-336 (e) provides in relevant part that “an ‘underinsured motor vehicle’ means a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the uninsured motorist portion of the policy against which claim is made”¹

¹Pippin’s insurance policy, which was attached as an exhibit to Dairyland’s motion for summary judgment, likewise provides: “Underinsured motor vehicle’ means a motor vehicle that has a bodily injury liability bond or policy available at the time of the accident for which the sum of the limits of liability of all applicable policies or bonds at the time of the accident is less than the limit of liability for Uninsured

In the present case, there is no dispute between the parties that both Thivierge's liability coverage, under the terms of an insurance policy issued by American Commerce Insurance Company, and Pippin's uninsured/underinsured motorist coverage, under the terms of the policy issued by Dairyland, were both subject to limits of \$100,000 per person and \$300,000 per accident. Because the policies provide equal coverage, Thivierge's car does not constitute an "underinsured motor vehicle" as that term is defined in General Statutes § 38a-336 (e). See *Florestal v. Government Employers Ins. Co.*, 236 Conn. 299, 305–306, 673 A.2d 474 (1996); *American Motorists Ins. Co. v. Gould*, 213 Conn. 625, 632–33, 569 A.2d 1105 (1990). That conclusion forecloses, as a matter of law, the claim of liability asserted against Dairyland in count three of the operative complaint.

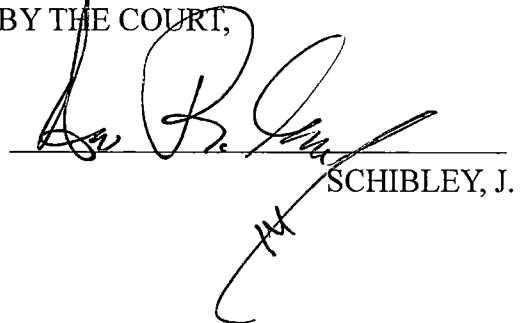
The plaintiff urges this court to reach the opposite conclusion, arguing that the holdings of the Connecticut Supreme Court in *Florestal* and *Gould* were abrogated by certain legislative amendments to § 38a-336 in 2014. The court observes, however, that this same argument was squarely rejected by Judge Elgo in *Bouchard v. Wheeler*, 224 Conn. App. 611 (2024). This court is bound by that ruling; further discussion of the matter here would serve no useful purpose.

IV. CONCLUSION

For the reasons set forth, the court concludes that no genuine issue of material fact exists with respect to count three of the operative complaint and that Dairyland is entitled to prevail thereon as a matter of law. Dairyland's partial motion for summary judgment is GRANTED, and the plaintiff's objection is OVERRULED.

SO ORDERED.

BY THE COURT,



SCHIBLEY, J.

Motorist Coverage under this policy.” (Docket No. 123, p. 18.) This provision does not differ from the language of the statute in any relevant respect.