IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

RICHARD W SULLIVAN, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	**Case No. 23-00169-CV-W-GAF**
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER

Now before the Court is Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") Motion to Dismiss Plaintiff's Class Action Complaint. (Doc. 8). Plaintiff Richard Sullivan ("Plaintiff") opposes. (Doc. 15). State Farm has also filed a reply brief. (Doc. 34). For the following reasons, State Farm's Motion to Dismiss is GRANTED.

DISCUSSION

I. BACKGROUND

A. The Policy

At all relevant times, State Farm insured Plaintiff's vehicle, a 2020 Kia Optima, under Policy Form 9825A (the "Policy"). (Doc. 1, pp. 1-9 ("Compl."), ¶ 11; Doc. 1, pp. 10-41 ("Policy")). Pursuant to the Policy's "Insuring Agreements—Comprehensive Coverage" section, State Farm is obligated to pay "for **loss**, except **loss caused by collision**, to a **covered vehicle**." (Policy, pp. 18-19). "Loss" includes the "total or partial theft of a **covered vehicle**" and "does not include any reduction in the value of any **covered vehicle** after it has been repaired, as compared to its value before it was damaged." (*Id.*). In relevant part, "covered vehicle" is defined as "your

car," which in turn means "the vehicle shown under 'YOUR CAR' on the Declarations Page." (*Id.* at pp. 5, 18). In addition, State Farm agrees to pay for certain other enumerated expenses incurred in connection with the loss of a covered vehicle. (*Id.* at pp. 19-21). However, the Policy does not provide for, or even mention, the payment of costs related to a replacement vehicle, such as sales tax or fees. (*See generally id.*).

Under the "Limits and Loss Settlement—Comprehensive Coverage and Collision Coverage" section, the Policy provides that, when a loss occurs, State Farm can either pay the cost to repair the covered vehicle or "[p]ay the actual cash value of the **covered vehicle** minus any applicable deductible." (*Id.* at p. 21). The Policy does not define "actual cash value." (*See generally id.*). Additionally, the Policy includes a nonduplication clause that states State Farm will not pay for any loss which has already been paid for or someone else is legally liable to pay. (*Id.* at p. 22). The choice of law provision designates Missouri law as controlling. (*Id.* at p. 31).

B. The Claim

On or about November 11, 2022, Plaintiff's vehicle was stolen. (Compl., ¶ 12). On or about November 22, 2022, State Farm declared it a total loss. (*Id.* at ¶ 13). State Farm then hired a third-party vender to provide a market valuation report. (*Id.* at ¶ 21; Doc. 1, pp. 42-53 ("MVR")). In its assessment, the third-party vendor determined that Plaintiff's vehicle had a: (a) "base vehicle value" and "adjusted vehicle value" of $24,835.00; (b) estimated sales tax of $2,135.81; (c) "value before deductible" (base value + sales tax) of $26,970.81; (d) deductible of $500.00; and (e) "total" of $26,470.81. (MVR). State Farm paid Plaintiff $24,357.50, which is $22.50 more than the "base vehicle value" less the deductible. (Compl., ¶ 22).

Plaintiff does not challenge the valuation of his stolen vehicle. (*Id.* at ¶¶ 23-26). Instead, he alleges State Farm should have additionally paid him the estimated sales tax and any fees for a

replacement vehicle. (*Id.*). Plaintiff has not alleged he has purchased a replacement vehicle or actually paid any sales tax or fees as a result of the loss. (*See generally id.*).

II. LEGAL STANDARD

Rule 12(b)(6) governs dismissal motions for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss, a court treats all well-pleaded facts as true and grants the non-moving party all reasonable inferences from the facts. *Richter v. Advance Auto Parts, Inc.*, 686 F.3d 847, 850 (8th Cir. 2012). However, courts are "not bound to accept as true a legal conclusion couched as a factual allegation" and such "labels and conclusions" or "formulaic recitation[s] of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotation marks omitted). A Rule 12(b)(6) motion should be granted only if the non-moving party fails to plead facts sufficient to state a claim "that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim is facially plausible where the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Wilson v. Ark. Dep't of Human Servs.*, 850 F.3d 368, 371 (8th Cir. 2017).

III. ANALYSIS

Plaintiff brings one claim against State Farm: breach of contract. (Compl.). The Policy's choice-of-law provision dictates that Missouri law governs the dispute. (Policy, p. 31). Under Missouri law, a breach of contract claim has four elements: "(1) the existence and terms of a contract; (2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff." *Keveney v. Mo. Mil. Acad.*, 304 S.W.3d 98, 104 (Mo. 2010) (en banc). State Farm argues Plaintiff has not plausibly alleged each required element of his breach of contract claim. (Doc. 30).

The interpretation of an insurance contract is a question of law for the Court. *Mendenhall v. Prop. & Cas. Ins. Co. of Hartford*, 375 S.W.3d 90, 92 (Mo. 2012) (en banc). "When interpreting an insurance policy, this Court gives the policy language its plain meaning, or the meaning that would be attached by an ordinary purchaser of insurance." *Doe Run Res. Corp. v. Am. Guar. & Liability Ins.*, 531 S.W.3d 508, 511 (Mo. 2017) (en banc). Courts "start with the language contained within the policy to determine its meaning." *Franklin v. Lexington Ins. Co.*, 652 S.W.3d 286, 295 (Mo. Ct. App. 2022)). When a term is defined in the policy, courts ascertain the term's meaning from that definition and nowhere else. *Id.* Undefined terms are given "their ordinary meaning, which is the meaning that the average layperson would reasonably understand." *Id.* (quotation omitted); *see also Burns v. Smith*, 303 S.W.3d 505, 509 (Mo. 2010) (en banc).

When policy language is clear and unambiguous, courts construe it as written. *Doe Run Res.*, 531 S.W.3d at 511. An ambiguity exists if a provision is "reasonably open to different constructions," *Mendenhall*, 375 S.W.3d at 92, or if "there is duplicity, indistinctness, or uncertainty in the meaning of words used in the [policy]". *Kromback v. Mayflower Ins. Co., Ltd.*, 827 S.W.2d 208, 210 (Mo. 1992) (en banc); *see also Johnson v. Safeco Ins. Co. of Ill.*, 983 F.3d 323, 330 (8th Cir. 2020). Any ambiguity is resolved against the insurer-drafter. *Allen v. Cont'l W. Ins. Co.*, 436 S.W.3d 548, 554 (Mo. 2014) (en banc).

Under Missouri law, the relevant provisions of the Policy contain no ambiguities. The Policy provides comprehensive coverage for a "loss" to a "covered vehicle." (Policy, p. 19). The Policy defines "loss" in relevant part as "total . . . theft of a covered vehicle." (*Id.*). The definition of "covered vehicle" does not include a replacement car. (*See id.* at pp. 5, 18-19). Rather, "covered vehicle" means "your car," a "newly acquired car," a "temporary substitute car," a "non-owned car," and certain campers and trailers. (*Id.*).

Obviously, a replacement car is not a camper or trailer. And a replacement car does not fall under any of the Policy's definitions for "your car," a "newly acquired car," a "temporary substitute car," or a "non-owned car." (*See id.* at pp. 4-5). It is not "your car" because it is not listed on the Declarations page. (*Id.* at p. 5). A hypothetical replacement car is not a "newly acquired car" because the Policy does not provide any coverage for it until after the newly acquired car is delivered. (*Id.* at p. 4). Nor is a replacement car a "temporary substitute car" or a "non-owned car" because Plaintiff did not have possession of it at the time of the loss. (*Id.* at pp. 4-5). Consequently, the unambiguous definitions and provisions demonstrate the Policy does not cover any costs, including sales tax and fees, associated with a replacement car. Based on these provisions alone, Plaintiff's claim that the Policy entitles him to the sales tax and fees for a hypothetical replacement car is without merit.

Despite this, Plaintiff argues the provision that limits State Farm's comprehensive coverage to the "actual cash value of the covered vehicle minus any applicable deductible" establishes State Farm must pay him sales tax and fees. (Doc. 15, pp. 3-8). Specifically, Plaintiff argues the phrase "actual cash value" is ambiguous, citing a 2022 Missouri Court of Appeals, Western District, decision. (*Id.*) (citing *Franklin*, 652 S.W.3d 286). Plaintiff asserts *Franklin* stands for the proposition that, when an insurance policy does not define "actual cash value," the method used to calculate the value that favors the insured must be utilized. (*Id.*). There are two issues with Plaintiff's argument: (1) he relies on a limitation on liability, rather than a promise of coverage, for coverage; and (2) Plaintiff's argument is rebutted by the *Franklin* opinion itself.

First, the purported ambiguous phrase of "actual cash value" does not appear in the provisions describing the coverages promised to Plaintiff. (Policy, pp. 19-21). Instead, it is located in the section describing the limits on liability. (*Id.* at pp. 21-22). Courts have noted limitations

on liability do not expand coverage. *See Coleman v. Garrison Prop. & Cas. Ins. Co.*, 839 F. App'x 20, 21 (7th Cir. 2021) (policy did not promise to pay actual cash value and limitation to actual cash value was "simply the *maximum* the insurer would pay) (emphasis in original); *Sigler v. GEICO Cas. Co.*, 967 F.3d 658, 660 (7th Cir. 2020) ("[Plaintiff] mistakes a liability ceiling for a floor."); *Barlow v. GEICO Ins. Co.*, No. 19-CV-3349 (PKC)(RML), 2020 WL 5802274, at *4 (E.D.N.Y. Sept. 29, 2020) (Limits section "imposes a *limit* on GEICO's loss liability and not an obligation on GEICO to cover the [actual cash value] or all 'replacement costs.'") (emphasis in original). The same reasoning applies here. State Farm did not promise to pay "actual cash value." Instead, the Policy's limits section caps the maximum amount State Farm would pay at "actual cash value" of the covered vehicle.

Next, Plaintiff's argument is rebutted by the *Franklin* opinion itself. The *Franklin* court explicitly qualified the reach of its holding, stating: "This opinion should not be read to suggest that [actual cash value] should be determined by [replacement cost less depreciation] in all cases where 'actual cash value' is undefined in a first-party property insurance policy." 652 S.W.3d at 303, n.19. Further, the court reiterated that "the term 'actual cash value' has an *unambiguous* meaning under Missouri law—the difference in the fair market value of the damaged property immediately before and after the loss." 652 S.W.3d at 296 (emphasis added) (quotation omitted). Missouri courts have long held the phrase "actual cash value" as used in insurance policies means fair market value. *See DeWitt v. Am. Family Mut. Ins. Co.*, 667 S.W.2d 700, 708 n.6 (Mo. 1984) (en banc) ("fair market value" and "actual cash value" are "essentially synonymous" in a personal property context); *Wells v. Mo. Prop. Ins. Placement Facility*, 653 S.W.2d 207, 214 (Mo. 1983) (en banc) (damages are "the difference in value of the property immediately before and immediately after the loss"). *Franklin* reaffirmed this precedent. 652 S.W.3d at 296. The

appellate court merely recognized that the parties to an insurance policy may agree to define how to calculate "actual cash value" and, if that definition contains ambiguous terms, those terms are construed against the drafter-insurer. *Id.* at 296-97, 302-03 (finding parties agreed to calculate "actual cash value" as replacement cost with a deduction for depreciation and the term "depreciation" was undefined and ambiguous and then construing "depreciation" against the insurer).

Here, the Policy does not provide a calculation method for "actual cash value" or otherwise define the term. (*See generally* Policy). Plaintiff argues this creates an ambiguity and the Court must consequently use the method (i.e., replacement costs) that favors him. (Doc. 15, pp. 3-10). The *Franklin* court did observe courts have used three different methodologies to measure actual cash value: (1) market value; (2) replacement cost minus depreciation; or (3) the broad evidence rule. 652 S.W.3d at 297 (citing J.A. Tyler, *Test or criterion of "actual cash value" under insurance policy insuring to extent of actual cash value at time of loss*, 61 A.L.R.2d 711 (1958)). It must be noted, however, that the periodical cited covers all United States jurisdictions and even some Canadian case law. *See generally* 61 A.L.R.2d 711. When searching specifically for automobile loss, the periodical only cites cases using a market value test or the broad evidence rule; courts generally do not recognize replacement cost as an applicable measure for vehicle loss. *Id.* at § 6. And none of the cases cited by Plaintiff, including *Franklin*, involve vehicle losses. *See generally Franklin*, 652 S.W.3d 286 (homeowner's insurance); *Boss v. Travelers Home & Marine Ins. Co.*, No. 2:16-cv-04065-NKL, 2016 WL 3983833 (W.D. Mo. July 25, 2016) (same); *Mills v. Foremost Ins. Co.*, 511 F.3d 1300 (11th Cir. 2008) (same); *Beard v. Allstate Indem. Co.*, No. 09-14644, 2011 WL 3330567 (E.D. Mich. Aug. 3, 2011) (same); *Holden v. Farmers Ins. Co. of Wash.*, 239 P.3d 344 (Wash. 2010) (en banc) (renter's insurance). Thus, even if the Policy is ambiguous

regarding how to calculate "actual cash value," Missouri law, as well as case law in general, does not support using replacement costs alone to assess actual cash value when the loss is under an auto insurance policy. *See Sharaga v. Auto Owners Mut. Ins. Co.*, 831 S.W.2d 248, 253 (Mo. Ct. App. 1992) (Replacement costs "are not the figures of fair market value.")

Missouri has recognized for well over 50 years that "actual cash value" is synonymous with "fair market value" in cases involving automobiles. *See Pannell v. Mo. Ins. Gaur. Ass'n*, 595 S.W.2d 339, 354 (Mo. Ct. App. 1980). Although the Missouri Department of Insurance has defined "actual cash value" as "replacement cost of property minus depreciation," it also recognizes that "[a]ctual cash value can also be determined by market value." Missouri Dep't. of Ins., *Glossary of Terms (Categorized)*, https://insurance.mo.gov/consumers/glossaryCAT.php (last visited Nov. 13, 2023). The lack of any factually-similar case law supporting Plaintiff's position demonstrates that replacement cost is not the default measure of "actual cash value" under auto insurance policies in Missouri. Nothing Plaintiff has argued or cited is persuasive otherwise.

Instead, as used in auto insurance, "actual cash value" remains defined as the difference between the property's before and after "fair market value." "Fair market value" is, in turn, defined by the Missouri Approved Jury Instructions ("MAI") as "the price that the property in question would bring when offered for sale by one willing but not obliged to sell it and when bought by one willing or desirous to purchase it but who is not compelled to do so." MAI 16.02 (8th ed.). The fact that these meanings have remained unchanged for so long is evidence that Missouri courts still recognize that ordinary purchasers of insurance understand "actual cash value" to be the difference between fair market value of the property before and after the loss. *See Doe Run Res.*, 531 S.W.3d at 511 ("When interpreting an insurance policy, this Court gives the policy language its plain meaning, or the meaning that would be attached by an ordinary purchaser of insurance.");

see also Franklin, 652 S.W.3d at 295 (Undefined terms are given "their ordinary meaning, which is the meaning that the average layperson would reasonably understand.").

The Court certainly understands Plaintiff's frustration. The report State Farm produced to demonstrate the validity of its market valuation included a sales tax estimation. (MVR). Under these circumstances, it makes sense why Plaintiff expected State Farm to include the sales tax amount in the payment. However, neither Missouri law nor the Policy itself requires State Farm to pay the sales tax (or associated fees) of a replacement vehicle.[1] And Plaintiff does not quarrel with the valuation itself.[2] (*See generally* Compl.; Doc. 15). Thus, there is no legal or contractual remedy available to him.

CONCLUSION

The Policy is unambiguous. Under the plain terms of the Policy's coverage provisions, Plaintiff is not entitled to replacement costs, including those for sales tax and fees. The limits section does not expand coverage; it merely sets the maximum amount of liability. Even if the limits section did expand coverage, "actual cash value" is unambiguous under Missouri law. In cases involving vehicle loss, "actual cash value" is the difference between the fair market value of the property just before and after the loss. Plaintiff does not dispute that State Farm accurately calculated his stolen vehicle's fair market value. Therefore, he is without recourse. For these

[1] Indeed, Missouri law provides that, when a loss is certified by an insurance company, sales tax on a replacement car shall be credited against its purchase price if purchased within 180 days of payment by the insurance company. Mo. Rev. Stat. § 144.027.1. And if Plaintiff purchased a replacement car within 180 days, the duplication clause would bar him from recovering sales tax from State Farm due to this statute.

[2] The Policy provides a procedure for circumstances when State Farm and the policy holder disagree about the actual cash value. (Policy, pp. 21-22). There are no allegations that Plaintiff initiated these procedures.

reasons and the reasons stated above, State Farm's Motion to Dismiss is GRANTED and this case is hereby DISMISSED.[3][4]

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: November 17, 2023

[3] Plaintiff requested leave to amend if the Court found "his claim had not been pled properly." (Doc. 15, p. 15). Plaintiff does not specify what amendments he would make. Given the law, the Court believes any amendment would be futile and therefore DENIES his request.

[4] Because the case is dismissed, State Farm's Motion to Strike Plaintiff's Class Allegations is DENIED as moot.