
INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

OAK POINT PARTNERS, LLC,

Plaintiff Below, Petitioner,

v.

LARRY PACK, in his Official Capacity
as Treasurer of the State of West Virginia,

Defendant Below, Respondent.

From the Circuit Court of Kanawha County, West Virginia
Civil Action No. 2025-C-812

PETITIONER'S REPLY BRIEF

OAK POINT PARTNERS, LLC

By Counsel

/s/ Arie M. Spitz

Edward J. George (WVSB# 5410)

Arie M. Spitz (WVSB #10867)

Clayton T. Harkins (WVSB #13409)

Dinsmore & Shohl LLP

P.O. Box 11887

Charleston, West Virginia 25339-1887

Phone: (304) 357-0900

Fax: (304) 357-0919

edward.george@dinsmore.com

arie.spitz@dinsmore.com

clayton.harkins@dinsmore.com

Table of Contents

Table of Authorities	ii
Argument.....	1
I. Oak Point Did Not Waive Any Argument Regarding The “Appropriate Standard Of Review”.....	1
II. The Act Is Not Unconstitutional.....	2
III. “Original Action” Does Not Mean “Original <i>Appellate</i> Action”	4
IV. The Circuit Court’s Dismissal of Oak Point’s Complaint Was Not Harmless Error.....	6
Conclusion	8

Table of Authorities

Cases:

<i>Charter Communs. VI, LLC v. Eleazer</i> , 412 F. Supp. 2d 588 (S.D. W. Va. 2006)	7
<i>Dan Ryan Builders, Inc. v. Nelson</i> , 230 W. Va. 281, 737 S.E.2d 550 (2012)	7
<i>Danielley v. Princeton</i> , 113 W. Va. 252, 167 S.E. 620 (1933)	4
<i>Hampden Coal, LLC v. Varney</i> , 240 W. Va. 284, 810 S.E.2d 286 (2018)	8
<i>In re Stephen Tyler R.</i> , 213 W. Va. 725, 740, 584 S.E.2d 581, 596 (2003)	5
<i>Lawson v. Kanawha Cty. Court</i> , 80 W. Va. 612, 618, 92 S.E. 786, 789 (1917)	3
<i>State ex rel. McGraw v. Burton</i> , 212 W. Va. 23, 569 S.E.2d 99 (2002)	4
<i>State ex rel. Saylor v. Wilkes</i> , 216 W. Va. 766, 775, 613 S.E.2d 914, 923 (2005)	7

Statutes:

W. Va. Code § 4-5-29A	6
W. Va. Code § 4-6-29A	6
W. Va. Code § 16B-3-6	5
W. Va. Code § 16B-3-7	5
W. Va. Code § 17-22-13	6
W. Va. Code § 19-5-29A	6
W. Va. Code § 19-16A-26	6
W. Va. Code § 19-20D-2	6
W. Va. Code § 22-10-10	6
W. Va. Code § 29-22B-1503	6
W. Va. Code § 29-22B-1504	6
W. Va. Code § 29B-1-7	6

W. Va. Code § 30-13A-24	6
W. Va. Code § 36-8-7	3
W. Va. Code § 36-8-8	3
W. Va. Code § 36-8-10	3
W. Va. Code § 36-8-15	2, 3
W. Va. Code § 36-8-16	1, 2, 3, 4, 5
W. Va. Code § 46A-5-104	6
W. Va. Code § 55-6-1	4
Other Authorities	
6A M.J. Detinue and Replevin § 2-3	4
W. Va. Const. Art. V, § 1	2
W. Va. Const. Art. VII, § 1	3
W. Va. R. Civ. P. 12(b)(6)	2

Petitioner Oak Point Partners, LLC (“Oak Point”) submits this Reply Brief in support of its appeal from the Circuit Court of Kanawha County, West Virginia’s (the “Circuit Court”) *Order Granting Motion to Dismiss* entered on October 28, 2025 (the “Order”).

Argument

I. Oak Point Did Not Waive Any Argument Regarding The “Appropriate Standard Of Review”

The Treasurer argues that Oak Point waived its arguments regarding the “appropriate standard of review” because it did not raise it below. *See* Resp’t’s Br. at 7-8. This argument requires little reply. Oak Point brought an original action to establish its claims in circuit court. *See* Appx. at 3-13. In doing so, Oak Point requested the following relief:

(1) judgment declaring that Oak Point’s Claims have been established; (2) an order directing the Administrator to release the unclaimed property that is subject to Oak Point’s Claims to Oak Point immediately; (3) an award of reasonable attorney’s fees pursuant to W. Va. Code § 36-8-16; and (4) any other relief the Court finds appropriate.

Appx. at 12.

The Treasurer moved to dismiss the Complaint arguing that he has plenary authority to request and require any evidence he deems necessary to determine when a claim for abandoned property has been established, *see* Appx. at 17-19, and that he was well within his authority to deny Oak Point’s claims, *see* Appx. at 19-21. These are merit-based arguments that are inappropriate at the pleading stage. In response, Oak Point argued, in relevant part, that Oak Point’s action against the Treasurer is specifically authorized by the Uniform Unclaimed Property Act (the “Act”). *See* Appx. at 28-29. Nonetheless, since the Treasurer made merit-based arguments, Oak Point addressed those arguments as well. *See* Appx. at 30-32. Nothing in the record remotely

suggests that Oak Point intended to waive any argument regarding the “appropriate standard of review.”

Moreover, Oak Point’s single, colloquial use of the word “appeal” in its Response to the Treasurer’s Motion to Dismiss does not change the plain language of the Act. West Virginia Code §§ 36-8-15 and 36-8-16 permit a person aggrieved by a decision of the Treasurer to maintain an original action to establish its claims in circuit court. The plain language of the Act is dispositive.

Simply put, the only issue before the Circuit Court was, and the only issue before this Court is, whether Oak Point stated a claim upon which relief can be granted. *See* W. Va. R. Civ. P. 12(b)(6). Oak Point submits that it did based on the plain language of West Virginia Code §§ 36-8-15 and 36-8-16, which permits Oak Point to file an action to establish its claims in circuit court and have the circuit court determine whether, or not, Oak Point is the owner of the property.

II. The Act Is Not Unconstitutional.

The Treasurer argues that “Oak Point’s insistence that the Act provides for a *de novo* review would render the Act unconstitutional.” Resp’t’s Br. at 8-13. To be clear, Oak Point’s position is that the Act provides that it may maintain an original action to establish its claims in circuit court. This means that Oak Point may proceed *de novo* in circuit court. It does not mean that Oak Point is entitled to judicial review of the Treasurer’s decision, whether under a *de novo* standard, abuse of discretion standard, or otherwise. It also does not mean that the Act is unconstitutional.

As noted by the Treasurer, the Constitution of West Virginia provides that “[t]he legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time. . . .” W. Va. Const. Art. V, § 1. The Constitution of West Virginia further provides that “[t]he executive department shall consist of a governor, secretary of

state, auditor, treasurer, commissioner of agriculture and attorney general . . .” and “[t]hey . . . shall perform such duties as may be prescribed by law.” W. Va. Const. Art. VII, § 1. The Supreme Court of Appeals has explained that “[t]he phrases, ‘prescribed by law’ and ‘provided by law’, when used in constitutions, generally mean prescribed or provided by statutes.” *Lawson v. Kanawha Cty. Court*, 80 W. Va. 612, 618, 92 S.E. 786, 789 (1917).

Under the Act, the Treasurer’s role is that of a custodian. Property presumed abandoned is required to be reported to the Treasurer. *See* W. Va. Code § 36-8-7. Upon filing the report, the holder of the property is required pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report. *See* W. Va. Code § 36-8-8. Upon payment or delivery of property to the Treasurer, the state assumes custody and responsibility for the safekeeping of the property. *See* W. Va. Code § 36-8-10.

A person claiming property paid or delivered to the Treasurer may file a claim to recover the property. *See* W. Va. Code § 36-8-15. This section, as the title suggests, sets forth the process or procedure for filing a claim with the Treasurer, and the handling of claims by the Treasurer. It requires the Treasurer to allow or deny the claim within 90 days, give written notice of its decision, and if the claim is denied, as is the case here, inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. *See* W. Va. Code § 36-8-15. The claimant then has the option to file a new claim with the Treasurer or maintain an action in circuit court to establish its claim. *See* W. Va. Code §§ 36-8-15, 36-8-16.

Contrary to the Treasurer’s suggestions otherwise, the Legislature’s creation of an independent cause of action to establish a claim in circuit court does not “limit, reduce, transfer, or reassign the duties and powers of the [Treasurer] in such a fashion as to prevent the [Treasurer] from performing [his] inherent constitutional functions.” *See* Resp’t’s Br. at 10 (quoting, in part,

Syl. Pt. 6, *State ex rel. McGraw v. Burton*, 212 W. Va. 23, 569 S.E.2d 99 (2002)). Nor does it “commit to the judiciary powers which are primarily executive.” *See* Resp’t’s Br. at 10 (quoting Syl. Pt. 1, *Danielley v. Princeton*, 113 W. Va. 252, 167 S.E. 620 (1933)). The Treasurer has no duty, power, or “inherent constitutional function” to determine the ownership of property. Rather, this is a traditional judicial function. *See* W. Va. Code §§ 55-6-1, *et seq.* (codifying the common law action of detinue [providing for the recovery of any personal property capable of specific identification, *see* 6A M.J. Detinue and Replevin § 2-3]). As such, the circuit court would not be reviewing the Treasurer’s exercise of discretion or second-guessing policy judgments. Rather, the circuit court would be performing a traditional judicial function: determining ownership of property.

This is exactly what the Act calls for – W. Va. Code § 36-8-16 permits the filing of a civil action by a claimant to establish their ownership of unclaimed property. The Act does not call for the circuit court to perform a review of the Treasurer’s decisions or actions. *See Id.* The Act, therefore, complies with the Constitution’s mandate for the separation of powers between the branches of our state’s government.

III. “Original Action” Does Not Mean “Original *Appellate* Action”

The Treasurer devotes a significant portion of his brief to arguing that “original action” means “original *appellate* action” under the Act. *See* Resp’t’s Br. at 13-17. Despite the attention given to this subject, the Treasurer misses the point. The question is not what the Legislature intended by the term “original action,” but rather, what did the Legislature intend by the phrase “original action *to establish the claim.*” W. Va. Code § 36-8-16.

As the Treasurer correctly notes,

When called upon to discern the meaning of a legislative enactment,
this Court resorts to well-accepted rules of statutory construction.

The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” In order to determine this legislative intent, we must consider the precise language employed by the Legislature in promulgating the statutory provision enactment at issue. “Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.”

Where, as here, a word employed in a statute is not specifically defined by the Legislature, we resort to the commonly accepted usage of that term. “Each word of a statute should be given some effect and a statute must be construed in accordance with the import of its language. Undefined words and terms used in a legislative enactment will be given their common, ordinary and accepted meaning.”

In re Stephen Tyler R., 213 W. Va. 725, 740, 584 S.E.2d 581, 596 (2003) (citations omitted); *see* Resp’t’s Br. at 14.

Here, the Act is clear and unambiguous. It provides that “[a] person aggrieved by a decision of the [Treasurer] or whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the circuit court of Kanawha County, naming the [Treasurer] as a defendant.” W. Va. Code § 36-8-16. The Treasurer’s preferred interpretation of the Act as only providing a limited administrative appeal would render the entire purpose of the action meaningless – that is “to establish the claim.” Moreover, the Treasurer’s preferred interpretation of the Act would also leave a claimant whose claim has not been acted upon without recourse. If the Act was intended to only provide a limited administrative appeal, what decision would there be to appeal if the Treasurer has not acted in the first place?

Had the Legislature intended to create a limited administrative appeal, it would have done so, as it has done in countless other cases.¹ The Act, however, does not say “appeal the Treasurer’s

¹ *See, e.g.*, W. Va. Code § 16B-3-7 (“Any applicant or licensee who is dissatisfied with the decision of the Office of Health Facility Licensure and Certification as a result of the hearing provided in §16B-3-6 of this code may, within

decision” or “seek judicial review of the Treasurer’s decision.” It says, “*original action to establish the claim.*” The Legislature chose specific language creating an independent cause of action, not a limited administrative appeal. Further, the Treasurer’s suggestion that the inclusion of a fee shifting provision in Act indicates that the legislature intended the action to be a limited appeal from the Treasurer’s decision is entirely inconsistent with the law in this state. If anything, it would suggest that the Legislature intended to create an independent cause of action as fee shifting provisions are commonly included in statutes creating such actions.²

IV. The Circuit Court’s Dismissal of Oak Point’s Complaint Was Not Harmless Error

The Treasurer argues that to the extent the Circuit Court was required to conduct a *de novo* review, its failure to do so was harmless error because Oak Point cannot establish its claims as a matter of law. *See* Resp’t’s Br. at 19-21. As an initial matter, this argument is premised entirely on an asset purchase agreement provided to the Treasurer by Oak Point when it submitted its claims to the Treasurer. The document is not a part of the record on appeal, and the Court has denied the

thirty days after receiving notice of the decision, *appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.*”) (emphasis added); W. Va. Code § 17-22-13 (“Any person adversely affected by an order made and entered by the commissioner is entitled to *judicial review* of the order.”) (emphasis added); W. Va. Code § 19-16A-26 (“The owner or custodian of such pesticide has the right to *judicial review* of such order in accordance with the provisions of article five, chapter twenty-nine-a of this code.”) (emphasis added); W. Va. Code § 22-10-10 (“Any person having an interest which is or may be adversely affected, who is aggrieved by an order of the director issued pursuant to this article, or by the issuance or denial of a permit pursuant to this article or by the permit’s terms or conditions, is entitled to *judicial review* thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such *judicial review* with like effect as if the provisions of said section four were set forth in extenso in this section.”) (emphasis added); W. Va. Code § 29-22B-1504 (“The applicant or license holder who filed the petition for administrative review may *appeal the decision* of the commission issued under section 22B-1503 to the Circuit Court of Kanawha County, West Virginia, if the petition for *appeal* is filed no later than thirty days after the date upon which the petitioner receives written notice of the final decision of the commission.”) (emphasis added); W. Va. Code § 30-13A-24 (“Any licensee or certificate holder adversely affected by a decision of the board entered after a hearing may obtain *judicial review* of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may *appeal any ruling resulting from judicial review* in accordance with article six, chapter twenty-nine-a of this code.”) (emphasis added). This list is not intended to be exhaustive, but rather examples of the language that is used in a statute when the Legislature intends to create a right to judicial review as opposed to an independent cause of action. For context, the phrase “judicial review” appears over 100 times just in the title of the statutes in the West Virginia Code.

² *See, e.g.*, W. Va. Code § 19-20D-2; W. Va. Code § 29B-1-7; W. Va. Code § 46A-5-104. Again, this list is not intended to be exhaustive.

Treasurer's Motions to Supplement the Appendix to include the document. As such, the Treasurer's argument on this point should be disregarded.

However, since the Treasurer has publicly filed the document with the Court, despite the fact that the document clearly states that it is "CONFIDENTIAL & PROPRIETARY – NOT TO BE DISSEMINATED WITHOUT ADVANCE NOTICE TO OAK POINT PARTNERS, LLC," Oak point feels compelled to address the Treasurer's argument that Oak Point cannot establish its claims as a matter of law.³ The Supreme Court of Appeals of West Virginia has defined consideration as "some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other." *State ex rel. Saylor v. Wilkes*, 216 W. Va. 766, 775, 613 S.E.2d 914, 923 (2005); *see Charter Communs. VI, LLC v. Eleazer*, 412 F. Supp. 2d 588 (S.D. W. Va. 2006) ("The law concedes to a party her right to make her own contract, if lawful, and will not determine whether her bargain was wise or unwise. The law does not permit a comparison of the pecuniary value of the benefit received with that of the obligation incurred The validity of the party's obligation does not depend on the benefit to her . . . being equal in value to the full amount [of the other party's obligation]. It suffices at law if she was benefitted . . . even though the benefit was slight."). "The formation of a contract with multiple clauses only requires consideration for the entire contract, and not for each individual clause. So long as the overall contract is supported by sufficient consideration, there is no requirement of consideration for each promise within the contract, or of 'mutuality of obligation,' in order for a contract to be formed." Syl. Pt. 6, *Dan Ryan Builders, Inc. v. Nelson*, 230 W. Va. 281, 737 S.E.2d 550 (2012). Consideration can take various forms, including monetary and non-

³ Oak Point notes that it addressed in detail its confidentiality concerns about its confidential commercial information becoming public. *See* Appx. at 31-32. The Treasurer's public filing of the asset purchase agreement further underscores this point.

monetary. For example, mutual agreements to arbitrate have been held to constitute sufficient consideration to support a contract. *See Hampden Coal, LLC v. Varney*, 240 W. Va. 284, 810 S.E.2d 286 (2018).

Here, the asset purchase agreements are supported by sufficient consideration. The seller desired to sell certain property, Oak Point desired to purchase that property, and the seller and Oak Point made certain promises to one another related to the sale of that property. The purchase price is just one of the many forms of consideration supporting the agreement and is not required to allow Oak Point's claims. The unredacted portions of the asset purchase agreements clearly demonstrate the transfer of all right, title, and interest in the sellers' unclaimed property to Oak Point. Moreover, the Treasurer's speculation about what the redacted section might contain is simply improper. Indeed, the fact that the Treasurer approved over one hundred of Oak Point's prior claims using the same documentation with the same redactions further demonstrates that the purchase price is not necessary to establish ownership. Oak Point is permitted to establish its claims in circuit court under the Act, and the Circuit Court's dismissal of Oak Point's Complaint at the pleading stage denied it the opportunity to do so.

Conclusion

For the reasons set forth above, and for any other reasons appearing to the Court, Oak Point respectfully requests that the Court (1) reverse the Circuit Court's Order; (2) remand this case to the Circuit Court for further proceedings consistent with the decision of this Court; and (3) award such further relief as the Court deems necessary and appropriate.

CERTIFICATE OF SERVICE

I, Arie M. Spitz, do hereby certify that the foregoing **Petitioner's Reply Brief** was electronically filed with the Court on March 13, 2026, using the File & ServeXpress System, which will send notification of such filing to the following counsel of record:

Christopher S. Etheredge
Assistant Attorney General
State Capitol Complex
Building 1, Room W-435
Charleston, WV 25305
Counsel for Larry Pack

/s/ Arie M. Spitz

Arie M. Spitz (WVSB #10867)