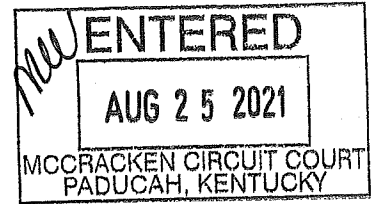


COMMONWEALTH OF KENTUCKY  
McCRACKEN CIRCUIT COURT  
Civil Action No. 20-CI-00389  
Division No. II



CARLA BRADFORD D/B/A  
THE PARTY SHOP

PLAINTIFF

VS.

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

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**ORDER GRANTING SUMMARY JUDGMENT**

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This matter is before the Court on Motion by Defendant State Farm Fire and Casualty for Summary Judgment against Plaintiff, Carla Bradford D/B/A The Party Shop. For the reasons set forth below, the Court GRANTS the Motion for Summary Judgment.

The Party Shop is a party supply store located in Paducah, Kentucky. The shop was temporarily shut down pursuant to an order from the Governor as a result of the spread of the Covid-19 virus in Kentucky. The owner of the Party Shop, Carla Bradford, filed a claim with her insurance company, Defendant State Farm Fire and Casualty Company, which was denied by State Farm. Bradford then filed a complaint for declaratory judgment that her lost income was covered by her policy. After reviewing the relevant policy language, pleadings and relevant case law, the Court finds that Plaintiff cannot establish that her policy provided coverage for the alleged loss because her property did not suffer an accidental direct physical loss as required by the policy and any coverage extended by the policy for lost income is excluded by the policy's virus exclusion.

In Section 1 of the policy, State Farm agreed to pay to “pay for accidental direct physical loss to that covered property at the premises described in the declarations caused by any loss as described under **SECTION 1 - COVERED CAUSES OF LOSS.**” State Farm argues that “accidental direct physical loss to...property” requires some tangible harm or damage to the property covered by the agreement. Although the phrase “accidental direct physical loss to that covered property” is not defined in the policy, the court in *Bluegrass Oral Health Center, PLLC v. Cincinnati Insurance Company*, slip copy (2021) 2021 WL 1069038 at pages 3 and 4, noted that

Meriam Webster’s primary definition of “loss,” however, leads to a different conclusion and better harmonizes the policy language. The primary dictionary definition of loss is “destruction” or “ruin.” Thus, in context, “physical loss” would mean destruction or ruin produced by the forces or operation of physics.

The United States district court judge in *Bluegrass Oral Health Center*, who was interpreting Kentucky contract law, correctly pointed out that “the great weight of decisions recently considering this issue in the midst of the current pandemic have reached the same conclusion” (citations omitted).

Although Plaintiff has alleged that the property was contaminated with the virus thereby causing direct physical loss to Plaintiff’s covered property, there is no proof that Plaintiff’s property was actually contaminated. Even if Plaintiff could somehow prove that its property was contaminated by the virus, the property was not “lost or ruined” because the presence of the virus can be eliminated by routine cleaning and disinfecting. Therefore, there was no accidental direct physical loss to the Plaintiff’s property.

Not only was coverage under the policy not triggered by the Covid-19 virus, but also, even if the covered property had suffered a direct physical loss, the policy's virus exclusion prohibits recovery under the policy:

#### **SECTION I- EXCLUSIONS**

We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

**a. Ordinance or Law...**

**j. Fungi, Virus or Bacteria...**

(2) Virus, bacteria or other microorganism that induces or is capable of inducing physical distress, illness or disease; and


(3) We will also not pay for :

(a) Any loss or use or delay in rebuilding, repairing or replacing covered property...

Despite the Plaintiff's argument to the contrary, there is no factual dispute in this case. It was the threat of the Covid-19 virus which prompted the Governor of Kentucky to issue his Executive Order effectively shutting down Plaintiff's business. The policy is quite clear that damages caused by viruses would not be covered. State Farm is entitled to judgment as a matter of law.

**IT IS HEREBY ORDERED** that Defendant's Motion for Summary is **GRANTED**.

**ENTERED** this 21 day of August 2021.

  
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**W. A. KITCHEN, JUDGE**  
McCracken Circuit Court

Division No. II

CLERK'S CERTIFICATE

The foregoing Order was entered this 25 day of August 2021 and copies were mailed to the following:

Hon. Joseph Roark  
601 Washington Street  
Paducah, KY 42003  
*Counsel for Plaintiff*

Hon. Ronald R. Parry  
150 East Fourth Street, 4<sup>th</sup> Floor  
Cincinnati, OH 45202  
*Counsel for Plaintiff*

Hon. Calvin Fayard  
519 Florida Ave. SW  
Denham Springs, LA 70726  
*Counsel for Plaintiff*

Hon. David T. Klapheke  
400 West Market St., Suite 2300  
Louisville, KY 40402  
*Counsel for Defendant*

KIM CHANNELL, CLERK  
McCRACKEN CIRCUIT COURT

BY: MWalters D.C.