

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Type of Case: Contract

Fitzgeralds LLC d/b/a The Fitz,

Court File No. _____

Plaintiff,

vs.

SUMMONS

Midwest Mutual Family Insurance
Company,

Defendant.

THIS SUMMONS IS DIRECTED TO DEFENDANT MIDWEST MUTUAL FAMILY
INSURANCE COMPANY

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a written response called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

Kelly S. Hadac
HKM, P.A.
30 East 7th Street, Suite 3200
St. Paul, MN 55101

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: June 19, 2020

HKM, P.A.

/s/ Kelly S. Hadac

Kelly S. Hadac #0328194

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Attorneys for Plaintiff

4818-3585-4272, v. 1

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Type of Case: Contract

Fitzgeralds LLC d/b/a The Fitz,

Court File No. _____

Plaintiff,

vs.

**COMPLAINT IN DECLARATORY
JUDGMENT**Midwest Mutual Family Insurance
Company,

Defendant.

Comes now the Plaintiff, Fitzgeralds LLC d/b/a The Fitz ("Fitzgeralds" or "Plaintiff") for its Complaint in Declaratory Judgment against Defendant Midwest Mutual Family Insurance Company ("Midwest" or "Defendant"), states and alleges as follows:

PARTIES

1. Fitzgeralds is a Minnesota limited liability company with a principal place of business in Ramsey County, Minnesota. Fitzgeralds operates the restaurant The Fitz, located at 173 Western Avenue N., St. Paul, MN 55102 ("Restaurant").

2. Upon information and belief, Defendant is a domestic insurance company licensed and authorized to issue insurance and conduct business in the State of Minnesota.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to Minn. Stat. §§ 484.01 and 555.01 *et seq.*

4. This Court has personal jurisdiction over Defendant because Defendant is a Minnesota company and venue is proper in Ramsey County pursuant to Minn. Stat. §

542.09 because Plaintiff's cause of action or some part thereof arose in Ramsey County.

FACTS

5. On information and belief, on March 5, 2020, the first Minnesota case of COVID-19, the disease caused by the novel coronavirus, was reported.

6. On March 13, 2020, Governor of Minnesota, Tim Walz (the "Governor") issued Executive Order 20-01 declaring a State of Emergency in the State of Minnesota related to COVID-19.

7. On March 16, 2020, the Governor issued Executive Order 20-04, which, among other things, prevented bars and restaurants from offering dine-in service and instead limited them to delivery and carryout service ("Dine-In Prohibition Order"). The order became effective March 17, 2020 at 5:00 p.m. and initially continued until March 27, 2020 at 5:00 p.m.

8. By later Executive Orders, multiple extensions were made to the limitations and prohibitions set forth in the Dine-In Prohibition Order, which ended on June 1, 2020.

9. Effective June 1, 2020, the limitations and prohibitions in the Dine-In Prohibition Order were replaced by Executive Order 20-63, which permitted bars and restaurants to provide outdoor on-site dining service subject to the development of a COVID-19 Preparedness Plan, placing tables at least six feet apart, and limiting capacity to 50 customer at any given time ("Outdoor Dining Order").

10. Effective June 10, 2020, the limitations and prohibitions in the Outdoor Dining Order were replaced by Executive Order 20-74, which permitted bars and

restaurants to provide both indoor and outdoor on-site dining service subject to the development of a COVID-19 Preparedness Plan, limiting indoor capacity to half of normal capacity, not to exceed 250, placing outdoor tables at least six feet apart, and limiting outdoor capacity to 250 people (if the space could provide for that many people at tables six feet apart) ("Limited Dining Order").

11. In compliance with the Dine-In Prohibition Order, the Restaurant fully suspended operations starting on March 17, 2020 and later reopened after evaluating the economic feasibility of operating the Restaurant as a carry-out/delivery only establishment while the Dine-In Prohibition Order was in effect.

12. While the Restaurant's operations were suspended and due to limited sales even after it reopened, it was unable to use certain food inventory before the date by which such inventory could be safely used ("Expired Food Inventory").

13. Additionally, Plaintiff sustained lost business income while the Restaurant's operations were suspended, continued to lose income when it was operating under the Dine-In Prohibition Order's restrictions, and will continue to lose income while operating under the Limited Dining Order's restrictions.

14. At all times relevant hereto, Plaintiff was insured under a Midwest Businessowners' Policy, No. *****2641 (the "Policy"). As relevant here, the Policy provided \$1.5 million in coverage for Personal Property/Contents, with a deductible of \$2,500. A true and correct copy of the Policy is attached hereto as Exhibit 1.

15. Among other things, the Policy covers Plaintiff's "Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle within 100 feet of the described premises, including . . . [p]roperty you own that

is used in your business.” The Policy identifies the Restaurant’s location as the “described premises.”

16. The Policy’s insuring agreement as to property provides as follows:

SECTION I – PROPERTY

A. Coverage

We will pay for direct physical loss of our damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

17. The definition of Covered Property includes Business Personal Property as described in the Policy unless such property falls within Paragraph 2. Property Not Covered.

18. The Expired Food Inventory falls within the Policy’s description of Business Personal Property noted above in Paragraph 15 of this Complaint and does not fall within any of the categories set forth in Paragraph 2. Property Not Covered within Section I – Property in the Policy. Therefore, the Expired Food Inventory is Covered Property under the Policy.

19. The applicable scope of Covered Cause of Loss is as follows:

3. Covered Causes of Loss

Risks of direct physical loss unless the loss is:

- a. Excluded in Paragraph **B**. Exclusions in Section **I**; or
- b. Limited in Paragraph **4**. Limitations in Section **I**.

20. The expiration of the Expired Food Inventory is a direct physical loss that does not fall within any applicable exclusions or limitations in the Policy.

21. The Policy also provides compensation for loss of Business Income, as that term is defined in the Policy. This coverage applies in relevant part where the insured's business operations experience a suspension "caused by direct physical loss or damage to property at the described premises. The loss or damage must be caused by a Covered Cause of Loss."

22. Plaintiff's loss of business income while the Restaurant's operations have been suspended and continuing loss of income under the Limited Dining Order were caused by "direct physical . . . damage" to the covered property housing the Restaurant, namely the Governors' various Executive Orders' imposition on the property of restrictions on the Restaurant's ability to offer dine-in service.

23. Because the Policy covers Plaintiff's losses, Plaintiff notified Defendant of Fitzgeralds' claim for coverage for the Expired Food Inventory and lost business income on March 20, 2020 (the "Claim").

24. On or about March 24, 2020, Defendant sent a letter to Fitzgeralds assigning claim number xxxxx948 to the Claim and denying coverage for the Claim on various grounds set forth in the letter ("Denial Letter"). A true and correct copy of the Denial Letter is attached hereto as Exhibit 2.

25. The grounds cited in the Denial Letter do not support Defendant's denial of coverage in this case. Therefore, Fitzgeralds now brings this action to obtain coverage for its loss.

COUNT I: BREACH OF CONTRACT

26. Plaintiff incorporates by reference Paragraphs 1-25 of this Complaint.

27. The Policy is a valid enforceable contract whereby Defendant agreed to provide certain benefits to and coverages to Plaintiff.

28. The Policy was in full force at all times relevant to Plaintiff's claim.

29. Under the Policy, Defendant was required to provide coverage to Plaintiff for the Claim.

30. Defendant breached the Policy by failing to provide the coverage for the Claim and instead denying coverage.

31. Plaintiff is entitled to the amount of coverage which Defendant owes Plaintiff under the Policy for the Claim, with an amount to be determined at trial but not less than \$50,000.

COUNT II – DECLARATORY JUDGMENT

32. Plaintiff incorporates by reference Paragraphs 1- 31 of this Complaint.

33. Plaintiff brings this cause of action pursuant to the Minnesota Uniform Declaratory Judgment Act, Minn. Stat. § 555.01, *et seq.*

34. An actual controversy now exists between Plaintiff on the one hand and Defendant on the other hand as to whether Defendant owes Plaintiff coverage for the Claim.

35. Plaintiff seeks a declaration from this Court that Defendant owes Plaintiff coverage for the Claim.

36. Plaintiff further seeks declaratory relief, costs, and all other relief permitted by law.

DEMAND FOR JURY TRIAL

Fitzgeralds LLC d/b/a The Fitz demands a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fitzgeralds LLC d/b/a The Fitz prays for a judgment against Defendant Midwest Mutual Family Insurance Company as follows:

- a. Judgment against Defendant for an amount to be determined;
- b. Awarding Plaintiff its pre-judgment interest, costs, and disbursements;
- c. Awarding declaratory judgment declaring that Defendant has an obligation to cover Plaintiff for the Claim; and
- d. Any other relief as the Court deems just and equitable.

HKM, P.A.

Dated: June 19, 2020

/s/ Kelly S. Hadac

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Attorneys for Plaintiff Fitzgeralds LLC d/b/a
The Fitz

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211 against the attorney, law firm, or party that has violated or is responsible for the violation of Minn. Stat. § 549.211, subd. 2.

/s/ Kelly S. Hadac

Kelly S. Hadac