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Our File No. 2271 B

ANGEL LESTON CORPORATION d/b/a  
CASA D'PACO,

Plaintiffs,

VS.

BERKSHIRE HATHAWAY GUARD  
INSURANCE COMPANIES

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX County  
Docket No. ESX-L-\_\_\_\_\_-20

Civil Action

**DECLARATORY JUDGMENT COMPLAINT**

Plaintiff Angel Leston Corporation d/b/a Casa D'Paco, residing at 73 Warwick St., Newark, New Jersey, by way of complaint against the defendants says:

**COUNT I**

**BREACH OF CONTRACT AND BAD FAITH**

1. This is an action for declaratory relief, pursuant to NJ.S.A. 2A:16-50 to 16-62, for the purposes of determining the scope and amount of insurance coverage due and owing to plaintiff under the policy issued by Berkshire Hathaway Guard Insurance Companies.

2. At all times relevant hereto, Plaintiff was a restaurant operating at 73 Warwick St, Newark, county of Essex, New Jersey.

3. At all times relevant hereto, defendant was an insurance company licensed to write insurance in the State of New Jersey and actually issued a comprehensive "All Risk" policy of insurance to plaintiff under policy number XXXXXX5940 for the period February 12, 2020 to February 12, 2021. In exchange for premiums paid by plaintiff, defendant promised to indemnify plaintiff for all covered losses, including but not limited to Business Income, Extra Expenses, Civil Authority, Supplemental Business Income and other losses.

4. In response to the Coronavirus Worldwide Pandemic, Governor Philip D. Murphy, in his official capacity as Governor of New Jersey, issued Executive Order 103 declaring a Public Health Emergency and State of Emergency in New Jersey.

5. In response to the Coronavirus pandemic, on March 21, 2020, Governor Philip D. Murphy, in his official capacity as Governor of New Jersey, issued Executive Order No. 107 which among other things, banned restaurants from serving patrons on site but permitted the restaurants to offer food delivery and take out services and closed all "non-essential service and businesses."

6. As a direct and proximate result of these Orders, the insured premises had become uninhabitable and/or contaminated as a result of a covered cause of loss, resulting in "loss of use."

7. At all times relevant hereto, plaintiff made a claim under various policies of insurance issued by the defendants, and/or administered by defendants pursuant to various policies of insurance for coverage as it related to the subject property.

8. Each of the above-referenced defendants have wrongfully denied insurance coverage and/or failed or refused to provide the totality of coverage available under the various policies of insurance, constituting separate and distinct acts of Breach of Contract and Bad Faith.

9. Such conduct has breached the terms and conditions of the policies of insurance, and as such, plaintiff has been significantly damaged.

**WHEREFORE**, plaintiff demands judgment against defendants, jointly and severally in the form of an Order:

- a. Awarding plaintiff compensatory and consequential damages due to defendant's failure to provide the totality of insurance coverage under the applicable policies of insurance;
- b. Awarding plaintiff consequential damages as a result of the insurer's and/or their agents continued acts of bad faith together with attorneys fees, interests, and costs of suit, as well as such other relief as the Court may deem proper and just.
- c. Awarding plaintiff counsel fees as a component of bad faith cause of action for having to bring this suit in violation of the New Jersey

Unfair Claims and Settlement Practices Act N. J. S. A. 17:29B-1 et seq. and N. J. A. C.11:2-17.8;

**COUNT II**

**VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**

**N.J.S.A. 56:8-1, ET SEQ.**

1. Plaintiff repeats and reiterates the previous paragraphs as if set forth hereinafter at length.
2. Defendants, together with their agents, servants and/or employees have engaged in unconscionable commercial practices, deception, fraud, false pretense, false promise and/or misrepresentation in providing insurance coverage to the plaintiff's property, and by failing to provide such insurance coverage for damages sustained wherein.
3. Such practices, as referenced in the previous paragraph, relate as to the sale of the insurance, the marketing of the insurance, the failure of the various insurance carriers to provide an explanation of coverages, and in the adjustment of the claim, as well as the requirements to use certain contractors over other contractors and limitations of coverages, all constitute a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1, due to defendant's joint and severally willful, knowing and wantonly reckless behavior.

**WHEREFORE**, plaintiff demands judgment against the defendants in the form of an Order:

- a. Awarding plaintiff compensatory and consequential damages for the injuries due to defendant's failure to provide proper insurance coverage;
- b. Awarding plaintiff a refund of all monies acquired by means of the Consumer Fraud Act, N.J.S.A. 56:8-2.11;
- c. Awarding plaintiff punitive and treble damages together with attorneys fees, interests, costs of suit, and such other relief as the Court may deem just and proper.

**COUNT III**

**VIOLATION OF THE UNFAIR CLAIMS SETTLEMENT PRACTICES ACT,**

**N.J.S.A. 17:29B-1 AND N.J.A.C. 11:2-17.1.**

1. Plaintiff repeats and reiterates the previous paragraphs as if set forth hereinafter at length.
2. Defendants jointly and severally, were acting as and held themselves out to the public as insurance companies, offering policies of insurance to protect against the accidental and sudden damage to covered property.
3. Such representations were made by and through the general public, marketing agents, and advertising and mass media dissemination, throughout the State of New Jersey, upon which the general public relied upon, to their detriment.

4. Such representations of insurance coverage being made by the various defendants constituted a violation of the New Jersey Consumer Fraud Act.

5. Additionally, these defendants jointly and severally, held themselves out as insurance companies, licensed in the State of New Jersey to provide insurance coverage and indemnification for sudden and accidental damage to covered property, and upon claims being submitted thereof, they refused to honor their obligations under the policies of insurance and violated the Unfair Claims Settlement Practices Act, N.J.S.A. 17:29B-1 and N.J.A.C. 11:2-17.1.

6. These defendants jointly and severally violated this Act by making misrepresentation of policy provisions, violated the rules for fair and equitable settlement and reasonable explanation applicable to all insurance, as well as violated the rules pertaining to the replying of pertinent communication and other statutory and regulatory conditions of the Unfair Claims Settlement Practices Act.

7. Defendant violated this act by making misrepresentation of policy provisions, violated the rules for fair and equitable settlement and reasonable explanation applicable to all insurance as well as violated the rules pertaining to the replying of pertinent communication and other statutory and regulatory conditions of the New Jersey Unfair Claims and Settlement Practices Act.

**WHEREFORE**, plaintiff demands judgment against the defendants in the form of an Order:

- a. Awarding plaintiff compensatory and consequential damages for the injuries due to defendant's failure to provide proper insurance coverage;
- b. Awarding plaintiffs a refund of all monies acquired by means of the Consumer Fraud N.J.S.A. 56:8-2.11;
- c. Awarding plaintiff counsel fees as a component of bad faith cause of action for having to bring this suit in violation of the New Jersey Unfair Claims and Settlement Practices Act N. J. S. A. 17:29B-1 et seq. and N. J. A. C.11:2-17.8;
- d. Awarding plaintiff punitive and treble damages together with attorneys fees, interests, costs of suit, and such other relief as the court may deem just and proper.

**NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17-4(c)**

**PLEASE TAKE NOTICE** that the undersigned attorneys do hereby demand, pursuant to the above-cited Rules of Court, that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories, and all documents, papers and other materials referred to therein, received from any party, upon the undersigned attorneys, and TAKE NOTICE that this is a CONTINUING demand.

**JURY DEMAND**

The plaintiff demands trial by a jury as to all issues.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to the provision of Rule 4:25-4, the Court is advised that Jared E. Stolz, Esq. is designated as trial counsel.

**CERTIFICATION OF NO OTHER ACTIONS**

I hereby certify that the matter in controversy in the within action is not the subject of any other action pending in any court or of any pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I further certify that there is no other party who should be joined in this action.

**STOLZ & ASSOCIATES, LLC**

Attorney for Angel Leston Corporation d/b/a  
Casa D'Paco



By: \_\_\_\_\_  
Jared E. Stolz, Esq.

DATED: July 24, 2020