

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

CARROT LOVE, LLC d/b/a
CARROT EXPRESS,

Plaintiff,

vs.

ASPEN SPECIALTY
INSURANCE COMPANY,

Defendant.

_____ /

PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, CARROT LOVE, LLC d/b/a CARROT EXPRESS, files this Complaint for Declaratory Relief against the Defendant, ASPEN SPECIALTY INSURANCE COMPANY, and as grounds therefore alleges as follows:

1. This is an action pursuant to Chapter 86 of the Florida Statutes, for a declaration of rights and duties of parties to a contract, under that contract and under Florida law and for declaratory relief.

2. At all times material hereto, Plaintiff, CARROT LOVE, LLC d/b/a CARROT EXPRESS, was and is a Florida corporation conducting business and located in Miami Dade County, Florida.

3. At all times material hereto, the Defendant, ASPEN SPECIALTY INSURANCE COMPANY, was and is an insurance company licensed to do business in the State of Florida and doing business in Miami-Dade County, Florida.

4. The Court has jurisdiction of the instant matter pursuant to Florida Statute §86.021, and this action is otherwise within the jurisdiction of this Court as the rights and status in controversy amount in excess of Thirty Thousand Dollars (\$30,000.00).

The Subject Policy

5. The Insurance Company issued to Plaintiff an insurance contract/policy, bearing policy number HPH136090, with effective dates of coverage from April 1, 2019 through April 1, 2020 (hereinafter “the Policy”). The Policy provides certain coverages, such as, but not limited to, business income and extra expense coverages, to three (3) health food restaurants located at: 1) 7145 Collins Avenue, Miami, Florida 33141; 2) 2530 NE 186th Street, Miami, Florida 33182; and, 3) 259 Miracle Mile, Miami, Florida 33134. A copy of the policy is attached hereto as **Exhibit “A.”**

6. One of the purposes of the Policy was to pay Plaintiff for business income loss and extra expenses as well as other losses due to a covered loss.

7. The Plaintiff has performed all conditions precedent to recovery under the Policy and to the bringing of the instant action or said conditions have been waived by Insurance Company.

The Loss and Claim at Issue

8. On or about March 17, 2020, Plaintiff’s premises and businesses suffered and continues to suffer a business income loss as well as other consequential losses due to COVID-19, the resulting pandemic and the ordered closure of the insured premises and businesses by the government. The losses and damages suffered by Plaintiff was due to a covered peril under the Policy with the Insurance Company.

9. The Insurance Company acknowledged the claim, which is the subject of this action, and assigned it claim number PB1970091869.

10. On July 9, 2020, the Insurance Company improperly denied the claim by citing to various exclusions contained within the policy. A copy of the denial letter is attached hereto as **Exhibit “B.”**

11. Due to the Insurance Company’s conduct, Plaintiff has been obligated to retain undersigned counsel to bring this action, and, pursuant to Fla.Stat. §627.428, 626.9373, 626.911 and others, the Plaintiff is entitled to a reasonable attorneys’ fee in this matter to be paid by the Insurance Company.

COUNT I - PETITION FOR DECLARATORY RELIEF

Plaintiff readopts and re-alleges paragraphs 1 through 11 stated above, as if fully set forth herein and further states:

12. This is an action for declaratory relief pursuant to Florida Statutes Chapter 86 and the Court’s general equity powers.

13. Plaintiff wants the Insurance Company to be in compliance with the Policy of insurance and Florida law and does not want to be subjected to the whim of the Insurance Company or its attorneys in regard to alleged Policy interpretation and requirements.

14. The Policy includes improper coverage exclusion(s) or limitation(s) used by Insurance Company to reduce benefits, as follows:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

2. We will not pay for loss or damage caused by or resulting from any of the following:

b. Delay, loss of use or loss of market.

a. Improper denial of coverage based on ambiguous language of exclusion claimed by Insurance Company to apply to Plaintiff's claim;

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

2. We will not pay for loss or damage caused by or resulting from any of the following:

b. Delay, loss of use or loss of market.

b. Incorrect/improper and/or ambiguous interpretation by Insurance Company related to coverage and/or exclusion(s) for Plaintiff's loss and damages;

A. Coverage

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

We refer you to the following sections of the CAUSES OF LOSS - SPECIAL

FORM, CP 10 30 reads in pertinent part as follows:

Causes Of Loss

.. shown in the Declarations, Covered Causes of Loss means direct physical loss... is excluded or limited in this policy.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

2. We will not pay for loss or damage caused by or resulting from any of the following:

b. Delay, loss of use or loss of market.

Lastly, we refer you to the following sections of the BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM, CP 00 30 (10/12) which reads in pertinent part as follows:

A. Coverage

1. Business Income

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action

of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

c. Incorrect, improper, ambiguous and unfair interpretation of Policy terms below;

A. Coverage

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

We refer you to the following sections of the CAUSES OF LOSS - SPECIAL FORM, CP 10 30 reads in pertinent part as follows:

Causes Of Loss

.. shown in the Declarations, Covered Causes of Loss means direct physical loss... is excluded or limited in this policy.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

2. We will not pay for loss or damage caused by or resulting from any of the following:

b. Delay, loss of use or loss of market.

Lastly, we refer you to the following sections of the BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM, CP 00 30 (10/12) which reads in pertinent part as follows:

A. Coverage

1. Business Income

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

15. The Insurance Company is incorrect in its interpretation of the policy of insurance.

16. The interpretation of the policy of insurance, as made by the Insurance Company in regard to the issues herein, creates at least an ambiguity in regard to policy

interpretation and as such, Plaintiff is entitled to an interpretation in its favor and in favor of coverage.

17. The Plaintiff is in doubt as to the meaning of the terms of the Policy in this case, due to Insurance Company's actions, which it believes should fairly be interpreted in favor of coverage and in its favor and against exclusion(s) or limitation(s), and wishes that the uncertainty be removed by the Court.

18. At the present time, the Plaintiff is unsure of the rights, obligations, and duties of both parties under the Policy herein and Florida law, as well as the construction of same, and wishes the Insurance Company to be in compliance with same. Additionally, the Plaintiff believes the Insurance Company is incorrectly interpreting the Policy herein and seeks the Court's declaration of rights thereunder.

19. It is necessary in the interest of justice that the Court determines the matters herein and the interpretation of the Policy so that the Plaintiff knows how to proceed and so that Insurance Company is required to act in accordance with the correct interpretation.

20. Pursuant to the Declaratory Judgment Statute, the Court has the jurisdiction and power to construe relations that are affected by the construction of contract/policy of insurance and issue a declaratory decree/judgment in regard to same.

21. Accordingly, Plaintiff has filed this request for declaratory relief seeking the Court's construction of the policy of insurance, as well as Florida law, and asks that the Court retain jurisdiction of this matter thereafter, pursuant to Fla. Stat. §86.061.

WHEREFORE, Plaintiff prays (i) for a declaration of the parties' rights, duties, and obligations under the Policy of insurance on all issues in dispute as set forth above; (ii) for

declaration that the Insurance Company cannot raise any new defenses to coverage not raised prior to the institution of this suit; (iii) for an order that the court will retain jurisdiction of this matter, pursuant to Fla. Stat. §86.061 and/or during the loss payment stage so that if the claim is not paid in accord with the Insurance Company's obligations under the policy, Plaintiff may amend for the Court to assist it in obtaining damages due; (iv) for an award of reasonable attorney's fees and costs relative to the necessity of Plaintiff having to retain counsel and file the present declaratory judgment action; and (v) for an award of such other and further relief as this Court deems just, proper and equitable.

DEMAND FOR JURY TRIAL

22. Plaintiff demands a trial by jury on each issue so triable.

Dated this ____ day of _____ 2020.

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By: _____ /s/
Candise L. Shanbron
Florida Bar No. 630470