

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA**

CASE NUMBER:

HARVEST MOON DISTRIBUTORS LLC,

Plaintiff,

vs.

SOUTHERN-OWNERS INSURANCE COMPANY,

Defendant.

COMPLAINT

COMES NOW the Plaintiff, by and through the undersigned attorney, and hereby sues the Defendant, Southern-Owners Insurance Company (hereinafter sometimes referred to as “Southern-Owners”), and alleges as follows:

JURISDICTION AND VENUE

1. At all material times hereto, Plaintiff is a Florida limited liability company with its principle place of business in Orange County, Florida.
2. Defendant corporation was and is a Florida corporation with principal place of business in Florida, and the policy of insurance written by Southern-Owners was issued by Southern-Owners in the State of Florida.
3. At all material times relevant hereto, Defendant Southern-Owners was a corporation duly licensed to transact insurance business in the State of Florida. Defendant does business, has offices, and/or maintained agents for the transaction of its customary business in Orange County, Florida.
4. Jurisdiction and venue are proper in Orange County, Florida.

5. This is an action for breach of contract with damages greater than Thirty Thousand Dollars (\$30,000.00), exclusive of interest, costs, and attorney's fees.
6. This action also seeks coverage for a declaratory judgment action in excess of the jurisdictional limits of this Court, Therefore, this Court has jurisdiction over this action for declaratory judgment pursuant to Fla. Stat. §86.011.

NATURE OF ACTION

7. This is an action for breach of an insurance contract due to Defendant's failure to pay insurance proceeds that were due and owing to Plaintiff under a policy of insurance issued by Defendant to Plaintiff.
8. This is also an action for Declaratory Judgment pursuant to Fla. Stat. §86.011 to determine questions of insurance coverage under the policy of insurance issued by Defendant to Plaintiff.
9. Plaintiff sought Commercial Property Coverage insurance from Defendant Southern-Owners to cover its property, and a policy of insurance, including but not limited to coverages to protect against loss of Business Income, Extra Expense, Inventory, and Accounts Receivable was issued by the Defendant.
10. Plaintiff is a named insured under Policy No.: 124682-72075137-19. A true and correct copy of the insurance policy is in control of Defendant and will be provided through discovery.
11. Plaintiff faithfully paid insurance policy premiums to Defendant, Southern-Owners.
12. The insurance policy between Defendant and Plaintiff specifically provided additional coverages for loss of Business Income, Extra Expense, Inventory, and Accounts Receivable.

13. On or about March of 2020, the United States of America became infected with SARS-CoV-2 (commonly and hereinafter referred to as “COVID-19”) which resulted in a nationwide pandemic. As a result of this pandemic, Harvest Moon Distributors LLC’s property sustained direct physical loss or damages and will continue to sustain direct physical loss or damages covered by the policy issued by Defendant.
14. Policy coverages include, but are not limited to Business Income, Extra Expense, Inventory, and Accounts Receivable. As a direct result of this pandemic, Harvest Moon Distributors LLC’s property has been damaged and cannot be used for its intended purpose.
15. Plaintiff’s loss of use of the insured property and insured property’s inability to function as contemplated and intended by Plaintiff and Defendant is a direct physical loss. As a result of this direct physical loss, Plaintiff has suffered loss of Business Income, Inventory, Accounts Receivable, has incurred Extra Expenses to minimize the suspension of business and continue its operations, and has suffered other losses and damages.

COUNT I-BREACH OF CONTRACT AGAINST
DEFENDANT

16. Plaintiff realleges paragraphs 1-15 and incorporates the same by reference herein.
17. This is an action for breach of contract with damages greater than Thirty Thousand Dollars (\$30,000.00), exclusive of interest, costs, and attorney’s fees.
18. Plaintiff’s Commercial Property Insurance with Defendant, Southern-Owners, was in full force and effect as to Harvest Moon Distributors LLC when its property was

damaged, and it is a named insured under Policy Number 124682-72075137-19. A true and correct copy of the policy is in control of Defendant, Southern-Owners, and will be provided through discovery. Defendant is not prejudiced by the failure to attach a policy at this time because Defendant is already in possession of the complete policy upon which this suit is based.

19. During the Policy period, Plaintiff sustained a direct physical loss to its covered property from a covered cause of loss. Plaintiff also sustained a loss of Business Income, Extra Expense, Inventory, and Accounts Receivable, in addition to other consequential losses and damages.
20. Plaintiff duly notified Defendant of the loss and allowed for all necessary inspections and evaluations to be made at the insured premises.
21. This is an action related to Defendant's failure to place the insured premises in its pre-loss condition and adequately compensate Plaintiff for loss of Business Income, Extra Expense, Inventory, and Accounts Receivable, and other losses and damages contemplated by the insurance contract between Plaintiff and Defendant.
22. Plaintiff has complied or substantially complied with all conditions to entitle Plaintiff to recover under the policy, the conditions have been waived, or the language of the policy created an impossibility for the conditions to be complied with.
23. Defendant Southern-Owners has failed to provide coverages for Plaintiff's losses, and has failed to pay the reasonable value of Plaintiff's losses needed to place the insured in its pre-loss condition.
24. Defendant's refusal to provide coverages to and to reimburse Plaintiff adequately

for the damages that resulted, and otherwise make Plaintiff whole, is a breach of contract.

25. Plaintiff has been damaged as a result of Defendant's breach in the form of insurance proceeds that have not been paid, interest, costs, and attorney's fees.
26. As a result of Defendant's breach of contract, it has become necessary that Plaintiff retains the services of the undersigned attorney. Plaintiff is obligated to pay a reasonable fee for the undersigned attorney's services in bringing this action, plus necessary costs.
27. Plaintiff has been and remains fully prepared to comply with the obligations pursuant to the aforesaid contract of insurance.
28. Plaintiff is entitled to recover attorney's fees and costs under F.S. § 627.428, F.S. § 626.9373, F.S. §57.041, and F.S. § 92.231.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, consequential damages, interest, costs, and attorney's fees pursuant to F.S. § 627.428, F.S. § 626.9373, F.S. §57.041, and F.S. § 92.231. Plaintiff further demands trial by jury.

COUNT II – DECLARATORY JUDGMENT

29. Plaintiff realleges paragraphs 1-15 and incorporates the same by reference herein.
30. This is an action for declaratory relief brought pursuant to Fla. Stat. § 86.011. Plaintiff is entitled to have any doubt regarding the existence or nonexistence of any right or duty under the insurance policy in question removed.
31. Plaintiff is unsure of Plaintiff's right to coverage for direct physical loss, loss of Business Income, Extra Expense, Inventory, and Accounts Receivable. Plaintiff believes the Policy provides coverage for all of its COVID-19 related injuries, damages, and losses. Plaintiff has therefore filed this instant action seeking a

determination whether the Policy provides coverage to the Plaintiff for its injuries, damages, and losses.

32. On or about March 1, 2020, Florida Governor DeSantis issued Executive Order No.: 20-51 and declared a state of emergency in Florida as a result of COVID-19.
33. On or about March 15, 2020, Walt Disney Parks & Resorts US Inc. choose to close its doors to the public in an effort to help “stop the spread” amidst concerns of the growing COVID-19 pandemic.
34. Plaintiff operates as a wine and beer distributor, supplying its products to certain Vendors, including Walt Disney Parks and Resorts US Inc.
35. Plaintiff received insurance from Southern-Owners which consists of coverage for loss of Business Income, Extra Expense, Inventory, Accounts Receivable, and Additional Insured-Vendor coverage, one of the vendors being Walt Disney Parks and Resorts US Inc.
36. The Policy “Building and Personal Property Coverage Form” provides coverage for Harvest Moon Distributors LLC. Specifically:

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.

1. Covered Property

b. Your Business Personal Property located in or on the building described in the Declarations or in open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in

the Declarations or on the Your Business Personal Property – Separation of Coverage form:

(3) “Stock”

37. The Policy contains an extra endorsement for Business Income and Extra Expense, which provides:

a. Business Income

Subject to the Limit of Insurance provisions of this endorsement, 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.”

b. Extra Expense

Subject to the Limit of Insurance provisions of this endorsement, we will pay necessary Extra Expense you incur during the “period of restoration.”

38. The Policy also contains an endorsement for Accounts Receivable:

1. Under **A. COVERAGE 4. Additional Coverages**, the following Additional Coverage is added:

Accounts Receivable

We will pay:

1. all amounts your customers owe you that you cannot collect;
2. interest charges on loans you secure to offset impaired receipts until we pay these amounts;
3. collection costs in excess of normal; and
4. Other expenses you reasonably incur to re-establish your records;

which result from direct physical loss of or damage to your records of accounts receivable;

1. caused by or resulting from any Covered Cause of Loss; and
2. which occurs on the premises described in the Declarations.

39. Plaintiff had purchased South African Beers specifically in accordance with its contract with Walt Disney Parks & Resorts US Inc.
40. Due to Walt Disney Parks & Resorts US Inc.'s voluntary closure, in an effort to minimize risk and help "stop the spread" of the COVID-19 pandemic, Harvest Mood Distributors LLC lost Business Income, Extra Expense, Inventory, and Accounts Receivable, and sustained other consequential damages and losses.
41. On or about March 19, 2020, Plaintiff submitted its claim to Defendant for Loss of Business Income, Extra Expense, Inventory, and Accounts Receivable due to the COVID-19 pandemic in compliance with the terms and conditions of the Policy.
42. On or about April 15, 2020, Plaintiff submitted its sworn proof of loss for loss of business income due to spoilage of its product, loss of inventory, and loss of profit.
43. Thereafter, Defendant denied Plaintiff's claim, a copy of the claim determination letter is attached hereto as "Exhibit A."
44. There is a bona fide, actual dispute between the parties. Plaintiff is unsure of its rights and obligations under the insurance policy in question and is entitled to have the doubt removed. There is a present and ascertainable state of facts, and the Court is not being asked to merely give legal advice.

45. As a result of the dispute, it has become necessary that Plaintiff retains the service of the undersigned attorney. Plaintiff is obligated to pay a reasonable fee for the undersigned attorney's services in bringing this action, plus necessary costs.

WHEREFORE, Plaintiff requests this Court to:

- a. Take jurisdiction of the subject matter and parties thereto;
- b. Declare that Plaintiff has suffered a direct physical loss;
- c. Declare that Plaintiff's loss is a covered loss which is not excluded or limited under the Policy.
- d. Declare that Plaintiff has sustained loss of Business Income, Extra Expense, Inventory, Accounts Receivable, and other consequential damages due to the damage to its covered property.
- e. Order full disclosure of all documents and allow full and liberal discovery of all facts that may lead to admissible evidence relevant to the determination herein, including but not limited to, production of the complete policy of insurance, and a complete copy of the written materials in the possession of the Defendant that would shed light on the issues involved herein;
- f. Determine applicable law, including the provisions of Florida Statutes that apply to the policy and to the parties;
- g. Declare each policy provision not in conformity with Florida law be amended to comply with Florida law;
- h. Declare that any ambiguities in the statute or policy be construed in favor of insurance coverage;

- i. Declare that the statutes and policy provisions be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to affect the dominant purpose of indemnity or payout to the insured;
- j. Declare that the policy of insurance covering the insured provides coverage for the claim submitted by the insured;
- k. Declare that the Plaintiff is entitled to a claim for attorney's fees and costs against Defendant under Fla. Stat. §627.428, §92.231, §57.104, §626.9373, and §57.041 and determine amounts thereunder;
- l. Determine and declare any other material matters pertaining to the respective rights and responsibilities under the policy, as needed to do complete justice in this case.

Plaintiff further demands trial by jury on all issues so triable in accordance with Florida Statutes, Chapter 86, as well as for entry of judgment for Plaintiff as to all issues to be raised in this declaratory action, and against Defendant for insurance proceeds, consequential damages, attorney's fees, and costs pursuant to Fla. Stat. §627.428, §92.231, §57.104, §626.9373, and §57.041.

Dated May 19, 2020.



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