

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 9335610
2020L000547
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JK

IT'S NICE, INC. d/b/a)
HAROLD'S CHICKEN SHACK #83.)
an Illinois Corporation,)
)
Plaintiffs,)
)
v.)
)
STATE FARM FIRE AND CASUALTY)
CO.)
)
Defendant.)

Case No. 2020L000547

**VERIFIED COMPLAINT FOR BREACH OF CONTRACT
AND DECLARATORY JUDGMENT**

NOW COMES Plaintiff IT'S NICE, INC. d/b/a HAROLD'S CHICKEN SHACK #83 ("It's Nice"), by and through its attorneys, Franklin Law Group, for its Verified Complaint for Breach of Contract and Declaratory Judgment against STATE FARM FIRE AND CASUALTY CO. ("State Farm"), and in support thereof hereby states as follows:

PARTIES

1. Plaintiff It's Nice is an Illinois Corporation with a principal place of business at 3577 E. New York St., Suite #103, Aurora, DuPage County, IL (the "Property").
2. Upon information and belief, Defendant State Farm is an insurance company with a principal place of business at 1 State Farm Plaza, Bloomington, IL.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 735 ILCS § 5/2-209 as Defendant transacted business and contracted to insure Plaintiff and the Property in the State of Illinois.

4. Venue is proper in this Court pursuant to 735 ILCS § 5/2-101(2) as the Policy insures the Property located in DuPage County, Illinois, out of which this cause of action arose.

FACTUAL ALLEGATIONS

Restaurant Operations and Closure

5. It's Nice owns a restaurant doing business as Harold's Chicken Shack #83. It's Nice operates only one of a number of Harold's Chicken Shack franchises which are centered in Chicago and its outlying suburbs.

6. During 2019, the last full year of operation, It's Nice had an average revenue of \$19,080.59 per month. During the first two months of 2020, it was generating a similar amount of monthly revenue.

7. It's Nice operates exclusively through pick up orders made via telephone. It's Nice does not offer dine-in, curbside pickup, drive-through, or other delivery options.

8. It's Nice prepares all food to order, so customers call their orders ahead of time and are provided a lead time for their order to be picked up. It is not unusual for customers to ignore lead times and arrive early, which often creates a significant crowd in the restaurant, which has a small lobby.

9. On March 15, 2020, Illinois Governor J.B. Pritzker (the "Governor") announced in a press conference briefing that he was ordering food service establishments and restaurants in Illinois to close, but that restaurants could continue to offer delivery or curbside pickup dining options. (A copy of a news publication memorializing the announcement is attached as Exhibit A).

10. Due to the Governor's announcement, It's Nice was forced to close its restaurant because it did not offer delivery, drive-through, or curbside pickup dining options and it lacked the capacity to offer these.

11. On March 16, 2020, the Governor published Executive Order 2020-07, which reiterated his prior statements regarding mandatory restaurant closure. (A copy of Executive Order 2020-07 is attached as Exhibit B).

12. On March 20, 2020, the Governor published Executive Order 2020-10, which, *inter alia*, closed non-essential businesses while allowing essential businesses to remain in operation while complying with Social Distancing requirements. (A copy of Executive Order 2020-10 is attached as Exhibit C).

13. Executive Order 2020-10 stated specifically as to restaurants that "[t]his Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020."

14. Executive Order 2020-10 has subsequently been extended by Executive Orders 2020-16 and 2020-33, with a current end date of May 29, 2020 (copies of the Executive Orders are attached as Exhibits D and E)(The four aforementioned Executive Orders are collectively referred to hereafter as the "Closure Orders")

15. Due to the Closure Orders, It's Nice has remained closed since the March 15, 2020 Order. It's Nice has experienced a significant Loss of Income due to this closure. It remains uncertain whether restaurants will be allowed to reopen after May 29, 2020 or if further extensions to the Closure Orders will be made.

The Policy

16. In order to protect its business, It's Nice purchased businessowners insurance from State Farm (policy number 93-KH-H667-1)(the "Policy"). A copy of the Policy is attached as Exhibit F.

17. The Policy was issued to It's Nice for its property located at 3577 E. New York St., Suite #103, Aurora, IL.

18. The Policy provides that State Farm will: "insure for accidental direct physical loss to Covered Property unless the loss is: 1. Excluded in Section I - Exclusions; or 2. Limited in the Property Subject to Limitations provision." The Policy therefore provides coverage for any accidental direct physical loss unless the loss is expressly excluded or limited by the terms of the Policy.

19. The Policy also contains Endorsement CMP-4075, providing for payment of "the actual 'Loss of Income' you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration.'"

20. On March 16, 2020, It's Nice contacted State Farm regarding a claim under the Policy for Loss of Income sustained by It's Nice as a result of the Governor's Closure Orders.

21. Subsequently on March 16, 2020, State Farm issued a letter declining coverage to It's Nice, claiming that "Losses resulting from or caused by COVID-19 (Coronavirus) are excluded under the Policy (the "Declination Letter"). Therefore, in the absence of a covered cause of loss, coverage for loss of income would not apply." (A copy of the March 16, 2020 letter is attached as Exhibit G)

22. The Declination Letter did not provide any further coverage analysis or make any attempt to refer to the specific situation that applied to It's Nice. Instead, the declination letter

simply issued a blanket declination for any claim relating to Coronavirus and inserted policy language pertaining to several exclusion without specifying which provision or provisions State Farm actually relies upon.

23. Even if Defendant had properly articulated in the Denial Letter the Exclusion upon which it relied in denying coverage, none of the Exclusions under the Policy provide a basis for the declination of coverage for the Loss.

24. Section I of the Policy covers exclusions and states as to exclusions generally that:

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 other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) 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:

25. The Policy contains an exclusion for Fungi, Virus or Bacteria excluding coverage for:

(1) Growth, proliferation, spread or presence of “fungi” or wet or dry rot; or

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

(3) We will also not pay for:

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

including any associated cost or expense, due to interference at the described premises or

location of the rebuilding, repair or replacement of that property, by “fungi”, wet or dry rot, virus, bacteria or other microorganism;

(b) Any remediation of “fungi”, wet or dry rot, virus, bacteria or other microorganism, including the cost or expense to:

i. Remove the “fungi”, wet or dry rot, virus, bacteria or other microorganism from Covered Property or to repair, restore or replace that property;

ii. Tear out and replace any part of the building or other property as needed to gain access to the “fungi”, wet or dry rot, virus, bacteria or other microorganism;
or

iii. Contain, treat, detoxify, neutralize or dispose of or in any way respond to or assess the effects of the “fungi”, wet or dry rot, virus, bacteria or other microorganism; or

(c) The cost of any testing or monitoring of air or property to confirm the type, absence, presence or level of “fungi”, wet or dry rot, virus, bacteria or other microorganism, whether performed prior to, during or after removal, repair, restoration or replacement of Covered Property.

This exclusion does not apply if “fungi”, wet or dry rot, virus, bacteria or other microorganism results from an accidental direct physical loss caused by fire or lightning.

26. The exclusion recited in paragraph 25 does not apply to It’s Nice’s claim. The loss It’s Nice sustained was not caused by the presence of Coronavirus, it was the result of the Governor’s Closure Orders. Nothing even indicates the presence of Coronavirus in property belonging to It’s Nice nor did it infect any It’s Nice’s employees.

27. The Policy also contains an exclusion for Ordinance or Law which excludes:

(1) The enforcement of any ordinance or law:

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

(b) Requiring the tearing down of any property, including the cost of removing its debris.

(2) 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.

28. The exclusion recited in paragraph 27 does not apply to It's Nice's claims. While ordinance or law is not defined in the Policy, Closure Orders issued by the Governor are neither ordinances nor laws.

29. The Policy also contains an exclusion for Governmental Action which excludes "Seizure or destruction of property by order of governmental authority."

30. The exclusion recited in paragraph 29 does not apply to It's Nice's claims. None of It's Nice's property has been seized or destroyed by order of governmental authority. It's Nice has instead been prohibited from operating its restaurant business.

COUNT I – BREACH OF CONTRACT

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. State Farm issued to It's Nice the Policy providing insurance coverage in accordance with the terms of the Policy.

33. The Policy remains in effect and operates as a valid and enforceable contract between It's Nice and State Farm.

34. The Policy provides insurance coverage for direct physical loss to the Property from any source which is not expressly excluded or limited by the terms of the Policy.

35. It's Nice made a timely claim under the Policy for a direct physical loss pertaining to the Property, which is not covered by any exclusion or limitation and is therefore covered under the Policy.

36. State Farm has improperly denied coverage for the loss and thereby is in breach of the terms of the Policy.

37. It's Nice has complied with all terms and conditions of the Policy, including payment of premiums.

38. As a result of State Farm's breach of the Policy, It's Nice has been denied the benefit of insurance coverage for which State Farm has collected substantial premiums.

39. While full damages cannot be calculated due to the ongoing nature of the Closure Orders, It's Nice has incurred substantial Loss of Income of approximately \$19,000 per month as a result of State Farm's breach of the Policy.

WHEREFORE, Plaintiff, It's Nice, Inc., prays this Honorable Court enter judgment on behalf of Plaintiff and against Defendant, State Farm Fire and Casualty Company, as follows:

A. Award It's Nice damages sustained as a result of State Farm's breaches of the Policy in an amount to be determined at trial.

B. Award It's Nice pre-judgment and post-judgment interest; and

C. Any further relief as this Court may deem just and equitable.

COUNT II – DECLARATORY JUDGMENT

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.
41. The Policy is an insurance contract in which State Farm was paid premiums in exchange for its agreement to pay It's Nice's losses for claims covered by the Policy.
42. An actual controversy of a justiciable nature presently exists between It's Nice and State Farm concerning the obligation of State Farm to reimburse It's Nice for the full amount of Loss of Income incurred by It's Nice in connection with the necessary interruption of its business due to the Closure Orders.

WHEREFORE, Plaintiff, It's Nice, Inc., prays this Honorable Court enter judgment on behalf of Plaintiff and against Defendant, State Farm Fire and Casualty Company, as follows:

- A. Determine and adjudicate the rights and obligations of State Farm with respect to It's Nice's losses and claim for insurance coverage;
- B. Declare that, pursuant to the Policy, It's Nice has insurance coverage for the full amount of its Loss of Income;
- C. Declare that, pursuant to the Policy, State Farm must pay It's Nice for the full amount of the claim for Loss of Income;
- D. Award It's Nice pre-judgment and post-judgment interest; and
- E. Award It's Nice such further relief as this Court may deem just and appropriate.

Respectfully submitted,
IT'S NICE, INC.



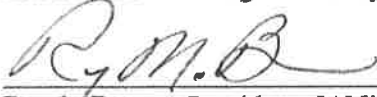
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VERIFICATION BY CERTIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certify as aforesaid that they verily believe the same to be true.

A handwritten signature in cursive script, appearing to read 'R. M. B.', is written over a horizontal line.

Randy Brown, President, It' Nice, Inc.