

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
GENERAL CIVIL LAW DIVISION**

MIRABELLA FASHIONS, LLC

Plaintiff,

CASE NO.:

vs.

DIVISION:

FIRST COMMUNITY INSURANCE COMPANY,

Defendant.

_____ /

COMPLAINT

PLAINTIFF, MIRABELLA FASHIONS, LLC (“Mirabella”), by and through its undersigned counsel, hereby files this Complaint against Defendant, FIRST COMMUNITY INSURANCE COMPANY (“First Community”) and alleges as follows:

1. This is an action for declaratory judgment and breach of contract for failure to make insurance payments in Pinellas County, Florida.

2. The amount in controversy is in excess of Thirty Thousand Dollars (\$30,000.00), exclusive of fees, taxable costs, and interest.

3. At all times material hereto, Plaintiff, Mirabella, was a Florida corporation with its principal place of business in Pinellas County, Florida.

4. At all times material hereto, First Community was a foreign insurance company authorized to and conducting business in Pinellas County, Florida.

5. First Community issued a Business Owners Insurance Policy bearing policy number 09 0005805055 8 04 naming as its insured Mirabella for the primary operations as a retail store that remained in force and effect at all material times (“the Policy”). A copy of the Policy is attached hereto as Exhibit “A”.

6. Mirabella timely presented a claim for all payments due under the Policy resulting from business income loss, remediation costs, personal protective equipment, civil authority closings, and all other insured damages arising from the business impact of the Novel Coronavirus (“Virus”) and associated disease, COVID-19.

7. On March 17, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-68 that required all restaurants to limitations on building occupancy and required adherence to CDC social distancing guidelines. The Governor then issued Executive Order Number 20-71 on March 20, 2020 that prevented retail establishments from conducting on-premise operations. Executive Order Number 20-91 was subsequently issued on April 1, 2020 that required all individuals to stay at home with the exception of essential services.

8. The actual or reasonably possible physical presence of the Virus at or on the insured premises and personal property renders the insured’s use as a retail store unreasonably dangerous under the prevailing scientific community’s knowledge rendering a complete or partial loss of the use of the insured property and causes “direct physical loss or damage to” the insured premises and personality, as those terms are used in the Policy.

9. First Community, however, has denied Mirabella’s claim for benefits in its entirety. First Community contends:

- a. The possible or actual presence of Coronavirus at the insured premises does not constitute “direct physical loss or damage to property”; and
- b. The Policy’s Silica or Silica-Related Dust Exclusion applies to silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds, even though the exclusion does not specifically include “virus” within its scope.

10. The Virus is not a Silica or Silica-Related Dust. Rather, it is a complex molecule that is not capable of being viewed in a lighted microscope. Merriam-Webster defines “virus” as: **Definition of *virus* 1a:** any of a large group of submicroscopic infectious agents that are usually regarded as nonliving extremely complex molecules, that typically contain a protein coat surrounding an RNA or DNA core of genetic material but no semipermeable membrane, that are capable of growth and any multiplication only in living cells, and that cause various important diseases in humans, animals, and plants.

11. Mirabella has at all times complied with and performed all of the covenants, conditions and obligations that Mirabella was required to perform under the insurance contract; additionally, or alternatively, any covenants, conditions and obligations not performed by Mirabella has been waived.

12. Mirabella has employed the undersigned law firm to represent it in this action and has agreed to pay it a reasonable fee for its services herein.

COUNT I: DECLARATORY JUDGMENT

13. Mirabella re-alleges allegations contained in Paragraphs one (1) through twelve (12), as if fully set forth herein.

14. The parties’ disagreement over whether coverage exists for the loss arises out of differing constructions of the Policy. Mirabella asserts the loss is covered under the Policy, including, without limitation, due to the following:

- a. The Coronavirus/COVID-19 pandemic constitutes “direct physical loss or damage to property”; and
- b. The Policy’s Silica or Silica-Related Dust Exclusion is inapplicable to viruses.

15. The refusal of First Community to cover the loss has placed Mirabella in doubt of its rights under the Policy and there exists a present and actual controversy capable of judicial resolution.

WHEREFORE, for the foregoing reasons, **PLAINTIFF**, Mirabella Fashions, LLC respectfully requests the Court to enter Judgment in its favor and against First Community declaring that:

- a. The actual or possible presence of the Virus at or on the insured premises or personality meet the Policy's "direct physical loss or damage to property" language;
- b. The Policy's Silica or Silica-Related Dust Exclusion is inapplicable to the Virus;
- c. The Policy affords Coverage for loss of income and other benefits set forth by the applicable terms and condition of the Policy;
- d. Mirabella is entitled to an award of attorney's fees as the prevailing party in this cause of action; and,
- e. Such other and further relief as this court may deem just and proper.

COUNT II: BREACH OF CONTRACT

16. Mirabella re-alleges allegations contained in Paragraphs one (1) through twelve (12), as if fully set forth herein.

17. First Community has breached its obligations under the Policy by:

- a. Improperly denying coverage;
- b. Failing to properly adjust, investigate, evaluate, and/or settle the loss as required by the Policy; and/or

c. Failing to pay Plaintiff amounts owed under all applicable coverages.

WHEREFORE, Plaintiff, Mirabella Fashions, LLC demands judgment against the Defendant, First Community Insurance Company for compensatory damages, pre-judgment interest, post-judgment interest, taxable costs, reasonable attorneys' fees, and such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF, MIRABELLA FASHIONS, LLC does hereby demand a trial by jury of all issues so triable as of right to a jury.

/s/SCOTT A. ARTHUR, ESQ.

LEE D. GUNN IV, ESQ.

Florida Bar No.: 367192

lgunn@gunnlawgroup.com

SCOTT A. ARTHUR, ESQ.

Florida Bar No.: 0015889

sarthur@gunnlawgroup.com

GUNN LAW GROUP, P.A.

401 East Jackson Street, Suite 3600

Tampa, FL 33602

(813) 228-7070 TELEPHONE

(813) 228-9400 FACSIMILE

Counsel for Plaintiff