

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE NAIL NOOK, INC.

Plaintiff,

vs.

HISCOX INSURANCE CO., INC., et al.

Defendants

CASE NO. CV-20-933244

JUDGE NANCY A. FUERST

**OPINION AND ORDER
(FINAL)**

NANCY A. FUERST, J:

This matter is before the Court on the September 25, 2020 Civ.R. 12(C) Motion for Judgment on the Pleadings of Hiscox Insurance Company, Inc. (“Hiscox”). For the reasons that follow, the motion is granted.

Plaintiff, the Nail Nook, Inc. (“Nail Nook”), which owns and operates a nail salon in Bratenahl, Ohio, brings this declaratory judgment and breach of contract action, seeking insurance coverage under its Business Personal Property Policy with Hiscox for Nail Nook’s business income losses and extra expenses “resulting from or caused by the coronavirus.” (Complaint at ¶1). Hiscox moves for Judgment on the Pleadings, arguing that Nail Nook has failed to sufficiently allege “direct physical loss of or damage to” Nail Nook’s insured “business personal property” in order to trigger coverage under the Business portion of the policy. Hiscox also argues that Nail Nook has insufficiently plead direct physical loss or damage to the property of that other than the insured and an action of civil authority prohibiting access to the insured’s premises, precluding coverage under the Civil Authority Provision of the policy. Hiscox further argues the virus exclusion contained in

the policy specifically precludes any coverage for damage or loss caused by the coronavirus.

Ohio Civ.R. 12(C) provides that “after the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings.” *Ferchill v. Beach Cliff Bd. of Trustees*, 162 Ohio App.3d 144, 2005-Ohio-3475, 832 N.E.2d 1238, ¶ 6 (8th Dist.), quoting Civ.R. 12(C). A court must limit its determination of a Civ.R. 12(C) motion solely to the allegations in the pleadings and any writing attached to those pleadings. *Id.*, citing *Thomas v. Byrd-Bennett*, Cuyahoga App. No. 79930, 2001 Ohio 4160, 2001 WL 1557516 at *4. Under Ohio Civ.R. 12(C), such a dismissal is appropriate when a court construes the material allegations of the complaint in favor of the nonmoving party as true, along with all reasonable inferences, and finds beyond doubt that the plaintiff can prove no set of facts in support of his claim that entitle him to relief. *Drozeck v. Lawyer Title Ins. Corp.*, 140 Ohio App.3d 816, 820, 749 N.E.2d (2000). Indeed, “Civ.R. 12(C) motions are specificity for resolving questions of law.” *Whaley v. Franklin Cty. Bd. of Comm'rs*, 92 Ohio St. 3d 574, 581 (Ohio 2001).

This Court notes that: “[a]n insurance policy is a contract whose interpretation is a matter of law.” *City of Sharonville v. Am. Emplrs. Ins. Co.*, 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶ 6, quoting *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 7 O.O.3d 403, 374 N.E.2d 146 (1978), paragraph one of the syllabus. Contract terms are to be given their plain and ordinary meaning. *Id.* If policy provisions are susceptible of more than one interpretation, they “will be construed strictly against the insurer and liberally in favor of the insured.” *Id.*, quoting *King v. Nationwide Ins. Co.*, 35 Ohio St.3d 208, 519 N.E.2d 1380 (1988), syllabus. “An exclusion in an insurance policy will be interpreted as applying only to that which is clearly intended to be excluded.” *Id.*, quoting *Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd.*, 64 Ohio St.3d 657, 665,

597 N.E.2d 1096 (1992). A Court cannot “stretch or constrain unambiguous provisions” to import ambiguity if none truly exists. *Sherwin-Williams Co. v. Travelers Cas. & Sur. Co.*, 8th Dist. Cuyahoga No. 82867, 2003-Ohio-6039, ¶ 20 (citing *Gomolka v. State Auto. Mut. Ins. Co.*, 70 Ohio St.2d 166, 168, 436 N.E.2d 1347 (1982)).

At this stage, the Court accepts all material allegations in the complaint as true and draws all reasonable inferences therefrom in favor of Plaintiff. Therefore, without the benefit of evidence, the Court makes no determination at this stage as to whether the coronavirus can cause or result in direct or physical loss to property, as alleged here. This Court finds however, that the clear and unambiguous virus exclusion contained in the insurance policy issued by Hiscox to Nail Nook, specifically excludes coverage for any loss or damage caused directly or indirectly by a virus, such as the coronavirus (SARS-CoV-2).

The exclusion states, in relevant part:

B. Exclusions

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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

j. Virus or Bacteria

(1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

Applying the plain language of the insurance policy, specifically the foregoing virus exclusion, to the allegations contained in Plaintiff’s complaint, the Court finds that Plaintiff can prove no set of facts that would entitle it to coverage under the policy for loss or damage caused by the coronavirus, as alleged. *See Mark's Engine Co. No. 28 Restaurant v. Travelers Indemn. Co.*, C.D.Cal. No. 2:20-cv-04423-AB-SK, 2020 U.S. Dist. LEXIS 188463 (Oct. 2, 2020); *Travelers Cas.*

Ins. Co. of Am. v. Geragos & Geragos, C.D.Cal. No. CV 20-3619 PSG (Ex), 2020 U.S. Dist. LEXIS 196932 (Oct. 19, 2020); *Turek Ents. v. State Farm Mut. Auto. Ins. Co.*, E.D.Mich. No. 20-11655, 2020 U.S. Dist. LEXIS 161198 (Sep. 3, 2020); *Martinez v. Allied Ins. Co. of Am.*, M.D.Fla. No. 2:20-cv-00401-FtM-66NPM, 2020 U.S. Dist. LEXIS 165140 (Sep. 2, 2020).

In its complaint, Nail Nook generally alleges that it sustained losses due to coronavirus. Nail Nook acknowledges the coronavirus is, in fact, a virus (Complaint at ¶ 9, 10, 11, 19) and this virus is capable of inducing physical distress, illness or disease. (Complaint at ¶ 20, 21). The Court finds that under the policy's clear and unambiguous virus exclusion, Nail Nook's alleged losses are excluded from coverage.

Based on the foregoing, the Court finds that Hiscox Insurance Company, Inc. is entitled to judgment on Nail Nook's insurance coverage claims as a matter of law. Accordingly, Nail Nook's claims are hereby dismissed with prejudice.

NO JUST CAUSE FOR DELAY.

IT IS SO ORDERED.

Date: _____

2/23/21



JUDGE NANCY A. FUERST