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12 *CATLIN SYNDICATE LIMITED*

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION
16

17 CATLIN SYNDICATE LIMITED,
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19 Plaintiff,
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21 v.
22 SUGARED AND BRONZED LLC (aka
SUGARED + BRONZED LLC),
23
24 Defendant.

Case No. 8:21-cv-1285
**COMPLAINT FOR
DECLARATORY JUDGMENT**

25 Plaintiff, Catlin Syndicate Limited (“Catlin”), brings this action against
26 Defendant, Sugared and Bronzed LLC, also known as Sugared + Bronzed LLC
27 (“S&B”), and alleges as follows based on personal knowledge as to itself and on
28 information and belief as to other matters based on its counsel’s investigation:

1 **I. NATURE OF THE ACTION**

2 1. This is an insurance coverage action for declaratory relief pursuant to
3 the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and Rule 57 of
4 the Federal Rules of Civil Procedure. The Court has diversity jurisdiction pursuant
5 to 28 U.S.C. § 1332(a)(2).

6 2. Catlin seeks a determination of the parties' rights and obligations under
7 Lloyd's Policy No. MSH011158614 in effect for the period May 17, 2019 to May 17,
8 2020 (the "Policy," attached as Exhibit A), to which it subscribed via its participation
9 in Lloyd's Syndicate 2003.

10 3. The Policy was issued to S&B, and subject to its terms, conditions, and
11 exclusions, provided insurance coverage for property located at (collectively, the
12 "Insured Locations"):

13 (a) 2744 East Coast Highway, Suite 5, Corona Del Mar, California
14 90212;

15 (b) 9873 Santa Monica Boulevard, Beverly Hills, California 60212;

16 (c) 114 4th Avenue, New York, New York 10003;

17 (d) 8106 West 3rd Street, Los Angeles, California 90048;

18 (e) 1083 Aviation Boulevard, Hermosa, California 90254;

19 (f) 1120 Walnut Street, Philadelphia, Pennsylvania 19107;

20 (g) 373 3rd Avenue, New York, New York 10016;

21 (h) 13033 Ventura Boulevard, Studio City, California 91604;

22 (i) 929 Montana Avenue, Santa Monica, California 90403; and,

23 (j) 34241 Coast Highway, Suite 201, Dana Point, California 92629.

24 4. During the Policy period, S&B operated spa and beauty businesses at
25 the Insured Locations.

26 5. A dispute exists about whether Catlin is obligated under the terms,
27 conditions and exclusions of the Policy to pay for business income losses resulting
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1 from governmental restrictions on the operations of the insured's business due to
2 COVID-19.

3 6. Catlin seeks a declaration that:

4 (a) Catlin has no duty to pay any loss amounts to S&B under Insuring
5 Clause 4 of the Policy with respect to the Insured Locations;

6 (b) Catlin has no duty pay any loss amounts to S&B under Section A
7 of Insuring Clause 6 of the Policy with respect to the business income losses
8 at the Insured Locations;

9 (c) Catlin has no duty pay any loss amounts to S&B above \$10,000
10 and subject to a \$1,000 deductible under Section B of Insuring Clause 6 of the
11 Policy with respect to prevention or restriction of access to the premises losses
12 at the Insured Locations; and

13 (d) In the alternative, if Insuring Clause 4 is triggered, Catlin has no
14 duty to pay any loss amounts to S&B because the Seizure of Illegal Property
15 Exclusion precludes coverage under Insuring Clause 4 of the Policy.

16 **II. PARTIES**

17 7. Catlin is a corporation incorporated under the laws of the United
18 Kingdom, with its principal place of business located in London, England. For the
19 purposes of diversity jurisdiction under 28 U.S.C. § 1332(a)(2), Catlin is a citizen of
20 the United Kingdom.

21 8. Catlin is a capital provider to Lloyd's Syndicate 2003, which is an
22 underwriting syndicate properly doing business within the Lloyd's of London
23 insurance marketplace. Catlin provides 100 percent of the capital of Syndicate 2003
24 for the Policy.

25 9. Syndicate 2003 subscribed to 30 percent of Insuring Clauses 4 through
26 6 in the Policy, which are the insuring clauses at issue in this case. Therefore, in the
27 event it were determined that coverage exists for the Insured's insurance claim, Catlin
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1 would be required to pay 30 percent of any covered claims under the Policy, which
2 in this instance would be well in excess of \$75,000.

3 10. By virtue of provisions in the Policy, all other subscribing Lloyd’s
4 syndicates to Insuring Clauses 4 – 6, including their respective capital providers,
5 agree to be bound by any judgment awarded in favor of, and to fund their respective
6 several shares of any judgment against, Catlin by any court of competent jurisdiction
7 in the United States.

8 11. S&B is the named insured under the Policy. S&B is a Maryland limited
9 liability company authorized to do business in California with its principal place of
10 business in Laguna Beach, California. On information and belief, all of the members
11 of S&B are citizens of the United States for the purpose of diversity jurisdiction under
12 28 U.S.C. § 1332(a)(2).

13 **III. JURISDICTION AND VENUE**

14 12. The amount in controversy exceeds \$75,000.00, exclusive of interest
15 and costs, and this is an action between citizens of the United States and citizens of
16 a foreign state. Diversity jurisdiction is proper pursuant to 28 U.S.C. § 1332(a)(2)
17 because Catlin is a citizen of the United Kingdom, a foreign state, and Catlin does
18 not maintain its principal place of business in the United States, and, on information
19 and belief, all of the members of S&B are citizens of the United States.

20 13. Venue is proper under 28 U.S.C. § 1391(b)(1) in this judicial district
21 because S&B resides in this judicial district. Venue is also proper under 28 U.S.C. §
22 1391(b)(2) because a substantial part of the events or omissions giving rise to the
23 claim—namely, the negotiation and issuance of the Policy as well as the location of
24 seven of the ten Insured Locations—occurred in this judicial district.

25 14. The Policy designates California as the law governing interpretation of
26 the Policy.

1 15. An actual controversy exists between the parties within the meaning of
2 28 U.S.C. § 2201 concerning whether Catlin has any obligations to provide coverage
3 to S&B for business interruption.

4 **IV. FACTUAL BACKGROUND**

5 **A. Catlin’s Insurance Policy and Coverage Position to Date**

6 16. Certain Underwriters at Lloyd’s, London subscribed severally to
7 Lloyd’s Policy No. MSH011158614 issued to S&B for a policy period of May 17,
8 2019 to May 17, 2020.

9 17. The Policy is a multiline property and liability policy that provides, in
10 relevant part and subject to its terms and conditions, commercial property and
11 business interruption insurance for the structure and personal property located at the
12 Insured Locations.

13 18. The Insuring Agreement states, in part, as follows: Insuring Clause 4:
14 Commercial Property, Section A: Property Damage: “We agree to reimburse you up
15 to the amount insured stated in the Declarations for the costs of repairing property
16 damage occurring during the period of the policy to your premises[.]”

17 19. Section B: Contents Damage of Insuring Clause 4 provides coverage for
18 “costs of repairing property damage occurring during the period of the policy to the
19 contents at your premises used in connection with your business activities which are
20 owned by you or for which you are legally responsible[.]”

21 20. Insuring Clause 6: Business Interruption and Extra Expense provides
22 coverage, in relevant part, as follows (emphasis in original):

23 **SECTION A: BUSINESS INTERRUPTION**

24 **We agree to reimburse you up to the amount insured** stated in the
25 **Declarations for any financial loss** occurring during the **period of the**
26 **policy** resulting solely and directly from a reduction in **your income** due
to an interruption to **your business activities** caused by:

- 27 a) **insured damage to your premises** or contents or to any other
property used by **you at your premises**;
28 b) **insured damage to any part of your premises** that is being
renovated or under construction;

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- c) **insured damage** at the premises of one of **your** suppliers, other than a supplier of water, gas, electricity or telephone and broadband services; or
- d) failure in the supply of water, gas, electricity, or telephone and broadband services to **your premises** for more than 24 consecutive hours caused by **insured damage** to any property.

SECTION B: PREVENTION OR RESTRICTION OF ACCESS TO PREMISES

We agree to reimburse you up to the amount insured stated in the Declarations for any financial loss occurring during the period of the policy resulting solely and directly from your loss of income and accounts receivable due to an interruption to your business activities caused by:

- a) **insured damage** to property in the vicinity of **your premises** which prevents or hinders **your** access to **your premises**;
- b) prevention or restriction of access to **your premises** by order of a civil or military authority; or
- c) prevention or restriction of access to **your premises** as a direct result of **insured damage** to property located within 1 kilometer of **your premises**, regardless of whether **your premises** has suffered any **insured damage**.

21. The “How Much We Will Pay” section of the Policy provides, in relevant part, as follows (emphasis in original):

The maximum amount payable by us shall not exceed the amounts stated in the Declarations in respect of each **INSURING CLAUSE** unless limited below.

Where more than one **claim** or **financial loss** arises from the same original cause or single source or event, all of those **claims** or **financial losses** shall be deemed to be one **claim** or **financial loss** and only one **limit of liability** shall be payable in respect of all of those **claims** or **financial losses**.

Where cover for any **claim** or **financial loss** is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** only one **INSURING CLAUSE** shall respond to that claim or financial loss and this shall be the **INSURING CLAUSE** with the highest limit of liability.

* * *

In respect of **INSURING CLAUSE 4** only, the amount **we** will pay:

- a) for **SECTIONS A** and **C** only, at **our** option, will be the cost to rebuild, repair or replace **damaged premises** at the nearest available

1 site to **your premises** (whichever incurs the least cost), with material
2 of like kind and quality, without deduction for appreciation;

3 b) for **SECTION B** only, at **our** option, will be the cost to repair or
4 replace **damaged** contents;

5 * * *

6 In respect of **INSURING CLAUSE 6** only, the amount **we** will pay:

7 a) for **SECTIONS A** and **B** only, will be the difference between **your**
8 actual **income** during the **indemnity period** and the **income** it is
9 estimated **you** would have earned during that period, less any savings
10 resulting from:

11 i) the reduced costs incurred during the **indemnity period**;

12 ii) any complete or partial resumption of the operation of **your**
13 business activities;

14 iii) **you** making use of any of **your** merchandise, stock or any
15 other property at **your premises** or elsewhere;

16 iv) any accounts receivable, provided **you** keep a record of all
17 amounts owed to **you** and keep a copy of the record away from
18 **your premises**.

19 * * *

20 22. The Policy’s Commercial Property, Equipment Breakdown, and
21 Business Interruption Declarations include a \$10,000 sublimit for losses related to
22 “prevention or restriction of access to premises.”

23 23. That sublimit is also subject to a \$1,000 deductible to be paid by S&B.

24 24. Insuring Clauses 4 and 6 of the Policy are subject to the Policy’s
25 Commercial Property, Equipment Breakdown, and Business Interruption
26 Declarations.

27 25. The “Your Deductible” section of the Policy provides, in relevant part,
28 as follows (emphasis in original):

**We shall only be liable for that part of each and every claim, financial
loss or medical expenses which exceeds the amount of the Deductible
stated in the Declarations. If any expenditure is incurred by us which
falls within the amount of the Deductible stated in the Declarations, then
you shall reimburse that amount to us upon our request.**

1 26. Insuring Clause 4 is subject to the Seizure of Illegal Property Exclusion,
2 which precludes coverage for any claim “arising out of ... any result of any order of
3 public or government authority which deprives you of the use or value of your
4 property[.]”

5 27. “Amount insured” as defined in the Policy “means the maximum
6 amount payable by us stated in the Declarations.” The amount applies to each
7 incident of financial loss or property damage occurring during the period of the
8 policy.”

9 28. “Business activities” as defined in the Policy “means the Business
10 Activities stated in the Declarations, including: (a) the ownership, repair and
11 maintenance of your property; and (b) provision and management of canteen, social,
12 sports and welfare organizations for the benefit of your employees and medical, fire
13 fighting, and security services; and (c) attendance at conferences and tradeshow as
14 either an exhibitor or visitor; and (d) your attendance at the premises of a third party
15 or travel to or from the premises of a third party.”

16 29. “Financial Loss” as defined in the Policy “means direct financial loss
17 sustained by you.”

18 30. “Income” as defined in the Policy “means the gross revenue, including
19 accounts receivable generated from your business activities less direct costs.”

20 31. “Insured Damage” as defined in the Policy “means property damage to
21 property provided that: (a) the property damage is covered under INSURING
22 CLAUSE 4; or (b) an insurer has paid the claim, or has agreed to pay the claim, under
23 any other insurance covering the property damage.”

24 32. “Overall amount insured,” defined in the Policy “in respect of
25 INSURING CLAUSES 4, 5 and 6 only, means the maximum amount payable by us
26 stated in the Declarations in respect of all incidents of financial loss or property
27 damage occurring during the period of the policy.”

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1 33. “Premises” as defined in the Policy “means the property stated in the
2 Declarations.”

3 34. “Property damage/damaged” as defined in the Policy “means direct
4 physical damage to, destruction of, loss of possession or loss of use of tangible
5 property.”

6 **B. Executive Orders**

7 35. On March 19, 2020, California issued Executive Order N-33-30, which
8 instituted a statewide stay at home order for “all individuals living in California to
9 stay at home or in their place of residence except as needed to maintain continuity of
10 operations of the federal critical infrastructure sectors.” Those sectors did not include
11 spas or beauty.

12 36. On March 19, 2020, Pennsylvania issued an order (attached as Exhibit
13 C) restricting the operation of non-life sustaining businesses (except for telework),
14 regardless of whether the business was open to members of the public.

15 37. On March 22, 2020 the State of New York issued Executive Order 202.8
16 that mandated a reduction of onsite workforce for non-essential businesses by 100
17 percent. Salons, spas, and other personal service businesses were not classified as
18 “essential.” On the same day, New York City issued an executive order that required
19 the closure of all non-essential businesses (together, the New York State and New
20 York City orders are attached as Exhibit D).

21 **C. The Claim**

22 38. On March 23, 2020, S&B submitted its claim for business interruption
23 loss related to the COVID-19 pandemic at all ten of the Insured Locations (the
24 “Claim”).

25 39. Catlin then initiated an investigation of the Claim.

26 40. On April 19, 2021, S&B sent a letter to Catlin (attached as Exhibit E)
27 that requested Catlin reconsider its coverage position with respect to (a) the
28 applicability of Section A of Insuring Clause 6: Business Interruption and Extra

1 Expense to the Claim and (b) the number of limits available under Section B of
2 Insuring Clause 6, and a claim for rental payments and claimed mitigation expenses
3 under Insuring Clause 4. Commercial Property Coverage.

4 41. S&B’s Claim does not seek costs to repair or replace its damaged
5 contents. Rather, S&B seeks costs for its lost business income incurred as a result of
6 its restrictions on its business operations.

7 42. The restrictions on S&B’s business operations do not qualify as “insured
8 damage” to any of the Insured Locations.

9 43. S&B’s Claim falls under Section B of Insuring Clause 6 of the Policy.

10 **V. CAUSES OF ACTION**

11 **COUNT I – DECLARATORY JUDGMENT**

12 **There is No Coverage under Insuring Clause 4**

13 44. Catlin incorporates by reference each allegation in paragraphs 1- 43.

14 45. An actual controversy exists between Catlin and S&B about whether
15 there is coverage afforded under Insuring Clause 4 of the Policy.

16 46. Section A of Insuring Clause 4 provides coverage only for costs paid to
17 “repair” any “property damage” at the Insured Locations.

18 47. Section B of Insuring Clause 4 provides coverage only for costs to
19 “repair” any “property damage” to the “contents” at the Insured Locations.

20 48. “Repair” requires that the property damage be physical in nature.

21 49. “Property damage/damaged” requires direct physical damage to,
22 destruction of, loss of possession, or loss of use.

23 50. “Loss of possession” and “loss of use” of the Insured Locations without
24 physical damage does not trigger coverage under Insuring Clause 4, which insures
25 for the “costs of repairing” damaged property.

26 51. S&B’s Claim for loss does not include a claim for the costs of repairing
27 any property damage.

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1 52. S&B’s Claim for loss does not include a claim for any damage to
2 contents requiring repair.

3 53. Accordingly, Catlin is entitled to a judgment declaring that there is no
4 coverage afforded under Insuring Clause 4 of the Policy.

5 **COUNT II – DECLARATORY JUDGMENT**

6 **There is No Coverage under Section A of Insuring Clause 6**

7 54. Catlin incorporates by reference each allegation in paragraphs 1- 43.

8 55. An actual controversy exists between Catlin and S&B about whether
9 there is coverage afforded under Section A of Insuring Clause 6 of the Policy.

10 56. Section A of Insuring Clause 6 covers financial losses due to
11 interruption of business activities caused by “insured damage” to the premises or
12 contents.

13 57. “Insured damage” means property damage to property covered under
14 Insuring Clause 4.

15 58. “Insured damage” also means property damage to property provided
16 that an insurer has paid or agreed to pay the claim under any other insurance covering
17 the property damage.

18 59. “Loss of possession” and “loss of use” of the Insured Locations without
19 physical damage does not trigger coverage under Section A of Insuring Clause 6.

20 60. S&B’s Claim does not include a claim for any property damage covered
21 under Insuring Clause 4.

22 61. On information and belief, no other insurer has paid or agreed to pay
23 S&B for it Claim under other insurance covering property damage.

24 62. Accordingly, Catlin is entitled to a judgment declaring that there is no
25 coverage afforded under Section A of Insuring Clause 6 of the Policy.

26 **COUNT III – DECLARATORY JUDGMENT**

27 **Coverage under Section B of Insuring Clause 6**
28 **is Subject to a \$10,000 Sublimit for Loss of Income and \$1,000 Deductible**

1 63. Catlin incorporates by reference each allegation in paragraphs 1- 43.

2 64. An actual controversy exists between Catlin and S&B about whether
3 there is a sublimit for coverage afforded under Section B of Insuring Clause 6 of the
4 Policy.

5 65. Section B of Insuring Clause 6 covers losses caused by “prevention or
6 restriction of access to premises.”

7 66. The Policy’s Commercial Property, Equipment Breakdown, and
8 Business Interruption Declarations include a sublimit of \$10,000 for loss of income
9 due to “prevention or restriction of access to premises.”

10 67. The Policy’s Commercial Property, Equipment Breakdown, and
11 Business Interruption Declarations are subject to a \$1,000 deductible for losses due
12 to “prevention or restriction of access to premises.”

13 68. Accordingly, Catlin is entitled to a judgment declaring that any coverage
14 afforded under Section B of Insuring Clause 6 of the Policy is subject to a \$10,000
15 sublimit and \$1,000 deductible.

16 **COUNT IV – DECLARATORY JUDGMENT**

17 **Alternatively, if Insuring Clause 4 is Triggered, the Policy**
18 **Still does Not Provide Coverage because the Seizure of**
19 **Illegal Property Exclusion Negates Coverage**

19 69. Catlin incorporates by reference each allegation in paragraphs 1- 43.

20 70. Alternatively, the Exclusions Relating to Commercial Property section
21 of the Policy becomes applicable if the Insured can show Insuring Clause 4 is
22 triggered.

23 71. The Seizure of Illegal Property exclusion precludes coverage under
24 Insuring Clause 4 for any claim that arises out of any result of any order of public or
25 government authority which deprives S&B of the use or value of its property.

26 72. S&B asserts a loss that arises out of government orders that deprived
27 S&B of the use of its Insured Locations, and the Seizure of Illegal Property Exclusion
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1 applies to negate coverage for those claims. Catline has no duty to indemnify this
2 claim.

3 73. Accordingly, Catlin is entitled to a judgment declaring, in the
4 alternative, that the Seizure of Illegal Property Exclusion precludes coverage under
5 Insuring Clause 4 of the Policy.

6 **VI. PRAYER FOR RELIEF**

7 WHEREFORE, Catlin respectfully requests that the Court enter a judgment as
8 follows:

9 A. On Count I, a declaration that Catlin has no duty to pay any loss amounts
10 to S&B under Insuring Clause 4 of the Policy with respect to the Insured Locations;

11 B. On Count II, a declaration that Catlin has no duty pay any loss amounts
12 to S&B under Section A of Insuring Clause 6 of the Policy with respect to the
13 business income losses at the Insured Locations;

14 C. On Count III, a declaration that Catlin has no duty pay any loss amounts
15 to S&B above \$10,000 and subject to a \$1,000 deductible under Section B of Insuring
16 Clause 6 of the Policy with respect to prevention or restriction of access to the
17 premises losses at the Insured Locations;

18 D. On Count IV, in the alternative, a declaration that that if Insuring Clause
19 4 is triggered, the Policy does not provide coverage because the Seizure of Illegal
20 Property Exclusion precludes it; and

21 E. Providing Catlin any other relief the Court deems appropriate.

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Dated: July 29, 2021

ROBINS KAPLAN LLP

By: /s/ Daniel L. Allender
Daniel L. Allender

Attorneys for Plaintiff
CATLIN SYNDICATE LIMITED