UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEGACY SPORTS BARBERSHOP LLC, et al.,	)	
Plaintiffs,	)	
v.	)	20 C 4149
CONTINENTAL CASUALTY COMPANY,	)	Judge Charles P. Kocoras
Defendant.	)	

ORDER

Before the Court is Defendant Continental Casualty Company's ("Continental") Motion to Reconsider our Order denying its Motion to Dismiss. For the following reasons, the Court grants the Motion.

STATEMENT

The facts of this case are detailed in our previous Order. Dkt. # 37. Briefly, Plaintiffs seek a declaratory judgment that losses suffered as a result of the COVID-19 pandemic are covered by an insurance policy issued by Continental. Continental moved to dismiss, and the Court denied the Motion. Continental now moves to reconsider the denial of its Motion to Dismiss.

Rule 59(e) motions to reconsider "serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996). A motion to

dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations in the complaint must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A plaintiff need not provide detailed factual allegations, but it must provide enough factual support to raise its right to relief above a speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Plaintiffs allege that alterations to their property—installation of plexiglass and a new outdoor patio, for example—constitute "direct physical loss of or damage to" their properties under their insurance policies. But the Court believes that Plaintiffs have not alleged "direct physical loss of or damage to" their properties. "The plain wording of the phrase requires either a permanent disposition of the property due to a physical change ('loss'), or physical injury to the property requiring repair ('damage')." *Crescent Plaza Hotel Owner L.P. v. Zurich Am. Ins. Co.*, 2021 WL 633356, at *3 (N.D. Ill. 2021) (emphasis in original).

Here, the alleged alterations "are neither physical *losses* nor physical *damage*. The [properties] remain[] in perfect repair, having suffered no loss or damage." *G.O.A.T. Climb and Cryo v. Twin City Fire Ins. Co.*, 2021 WL 2853370, at *4 (N.D. Ill. 2021) (emphasis in original); *see also Crescent Plaza*, 2021 WL 633356, at *3 (rejecting argument that "repairs" to property constitute a direct physical loss). Plaintiffs do not allege that COVID-19 itself caused a physical change or any physical

damage to their properties necessitating repairs. The changes to their properties are more properly classified as improvements to the properties, not losses or damage directly caused by COVID-19. Therefore, Plaintiffs have not alleged a "direct physical loss of or damage to" their properties. As each provision of the insurance policy Plaintiffs rely upon for coverage requires "direct physical loss of or damage to" their property, each claim fails. Accordingly, Plaintiffs' Complaint must be dismissed.

CONCLUSION

For the reasons stated above, the Court grants Continental's Motion to Reconsider (Dkt. # 41). Plaintiffs' Complaint is dismissed with prejudice. Civil case terminated. It is so ordered.

Dated: 08/13/2021

Charles P. Kocoras
United States District Judge