

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO:

ESCAPE ROOMS FL, LLC

Plaintiff,

v.

MESA UNDERWRITERS SPECIALTY
INSURANCE COMPANY

Defendant,

COMPLAINT

COMES NOW, Plaintiff, ESCAPE ROOMS FL, LLC (hereinafter "Plaintiff"), by and through the undersigned attorneys, brings this action against the Defendant, MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY (hereinafter "Defendant"), and alleges the following:

JURISDICTION, VENUE, AND PARTIES

1. This is an action for damages in excess of \$30,000.00 but less than \$75,000.00, exclusive of interest, costs, and attorney fees.
2. The subject Policy of insurance involved herein was issued by the Defendant to Plaintiff in Broward County, Florida, and covers real property located in Broward County, Florida. Additionally, the cause of action arose in Broward County, Florida. As such, venue is proper in Broward County, Florida, pursuant to Fla. Stat. § 47.051.
3. At all material times relevant to this Complaint, Plaintiff has owned and operated Escape Rooms FL located at 4937 Coconut Creek Parkway, Coconut Creek, FL 33063 (hereinafter

the "Subject Property"), voted as one of South Florida's top rated family friendly premier escape rooms, and is otherwise *sui juris*.

4. Defendant has been and is now a Surplus Lines Insurance Carrier incorporated in the State of New Jersey governed by Chapter 626, Florida Statutes, is authorized to insure all properties located in the State of Florida including properties located in Broward County, Florida, and is otherwise *sui juris*.

THE INSURANCE POLICY

5. In consideration for the premiums paid to it, Defendant issued Plaintiff a valid, binding, and enforceable policy of insurance bearing Policy Number MP0048001002518 (hereinafter the "Subject Policy") that insured the Subject Property between the effective dates of coverage listed on the declarations page of the Subject Policy. A true and correct copy of the Subject Policy is attached hereto and incorporated herein as **Exhibit "A."**

6. The Subject Policy is an "all risk" policy that covers all direct physical losses to the Subject Property that are not otherwise expressly excluded.

7. The Subject Policy was and is effective between the dates of September 4, 2019, and September 4, 2020.

THE CORONAVIRUS PANDEMIC

8. "Coronaviruses are a family of viruses that can cause illnesses such as the common cold, severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS). In 2019, a new coronavirus was identified as the cause of a disease outbreak that originated in

China” designated as SARS-CoV-2 also known as the 2019 Novel Corona Virus or COVID-19 (hereinafter “COVID-19”).¹

9. On March 9, 2020, Florida Governor Ron DeSantis, on the recommendations of the Centers for Disease Control and Prevention (“CDC”), the State Surgeon General, and the State Health Officer, declared that a State of Emergency exists in Florida as a result of the COVID-19 outbreak.²

10. On March 10, 2020, Broward County issued a Declaration of Emergency due to the presence of COVID-19 posing “a clear and present threat to the health and welfare of the people of Broward County.”³

11. On March 11, 2020, the World Health Organization announced that, due to “the alarming levels of spread and severity,” the COVID-19 outbreak rose to the level of a pandemic.⁴

12. On March 13, 2020, President Donald J. Trump declared that the “COVID-19 outbreak constitutes a national emergency” and applied same retroactively to March 1, 2020.⁵

13. On March 22, 2020, Broward County issued Emergency Order 20-01 ordering the closure of all nonessential retail and commercial businesses due to “the propensity of [COVID-

¹ Mayo Clinic, Coronavirus Disease 2019 (COVID-19), <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>.

² Office of the Governor of Florida, Executive Order Number 20-52 (March 9, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/eo_20-52.pdf.

³ Bertha Henry, Broward County Administrator, Declaration of Emergency (March 10, 2020), <https://www.broward.org/coronavirus/documents/declaration-of-emergency-1.pdf>.

⁴ World Health Organization, WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁵ President Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

19] to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”⁶

THE CLAIM

14. On or about March 9, 2020, COVID-19 caused direct physical loss and resultant/ensuing damages to the Subject Property (hereinafter the "Loss").

15. Additionally, as a result of the Loss, Plaintiff sustained a loss of business income.

16. To compound issues, the closure of all nonessential retail and commercial businesses as mandated in Broward County Emergency Order 20-01 caused additional lost business income.

17. Direct, resultant, and/or ensuing damages and/or loss of business income caused by the COVID-19 pandemic and Emergency Order 20-01 are covered under the Subject Policy.

18. Direct, resultant, and/or ensuing damages and/or loss of business income caused by the COVID-19 pandemic and Emergency Order 20-01 are not excluded from the Subject Policy.

19. Plaintiff timely notified Defendant of the Loss.

20. Defendant responded to the Loss by opening claim number 22094499 (hereinafter the "Claim").

21. Through its adjustment of the Claim, Defendant has been afforded the opportunity to fully inspect the Loss, investigate the cause of the Loss, and quantify the amount of the Loss.

22. Ultimately, Defendant denied coverage for the Claim without inspection or investigation. A copy of the denial correspondence is attached hereto as **Exhibit "B."**

⁶ Bertha Henry, Broward County Administrator, Emergency Order 20-01 (March 22, 2020), <https://www.broward.org/coronavirus/documents/berthahenryexecutiveorder20-01.pdf>.

23. Plaintiff has complied with all prerequisites, whether denominated conditions precedent, duties after loss, or otherwise, to receive benefits or proceeds under the Subject Policy, or maintain the instant suit for the breach or declaration of the Subject Policy; alternatively, Defendant has waived or never had standing to assert any prerequisites, whether denominated as conditions precedent, duties after loss, or otherwise.

COUNT I – DECLARATORY RELIEF

24. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 23 as if fully set forth herein and further state:

25. This is an action for declaratory relief brought pursuant to Fla. Stat. § 86.011.

26. The denial letter states, in pertinent part, that “the Claim is otherwise excluded from coverage because any loss arises from a virus and the Policy expressly excludes coverage for loss or damage caused directly or indirectly by a virus.” *See* Exhibit “B.”

27. However, the despite citing to policy conditions in support of other assertions in the denial letter, no policy provision is cited to in support of the conclusory statement.

28. As such, Plaintiff is in doubt as to its rights under the Subject Policy and whether the Subject Policy specifically excludes any and all losses “caused directly or indirectly by a virus.”

29. Defendant's actions and positions taken demonstrate an actual, present practical need for declaration from this Honorable Court.

30. This Honorable Court is permitted to determine the existence or non-existence of any right, duty, power, or privilege, or of any fact upon which the legal relationship between the parties depends.

31. The Plaintiff is entitled to have this Honorable Court remove all doubts raised by Defendant concerning the application of the facts of the Claim to the Subject Policy.

32. The declaration sought with regard to the instant controversy is of a justiciable nature, does not amount to an advisory decree, and will assist in the resolution of the controversy between the parties.

33. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action, plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 626.9373, Florida Statutes.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Take jurisdiction of the subject matter and parties thereto;
- B. Determine applicable laws that apply to the Subject Policy;
- C. Declare that the provisions of the Subject Policy, including any ambiguities, be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to affect the dominant purpose of coverage and/or indemnification;
- D. Declare that the Subject Policy does not blanketly exclude coverage for loss caused by viruses;
- E. Declare that the Plaintiff is entitled to a claim for attorneys' fees and costs against Defendant, and to determine the amount of such fees and costs to be paid to the Plaintiff inclusive of a contingency fee multiplier; and
- F. Determine and declare any other material matters pertaining to the respective rights and responsibilities under the Policy, as needed to do complete justice in this case.

COUNT II - BREACH OF CONTRACT

34. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 23 as if fully set forth herein and further state:

35. Defendant has failed and/or refused to honor the contractual coverage in the Subject Policy by failing and/or refusing to compensate Plaintiff and/or pay benefits owed under the Subject Policy for the Claim based on the Loss.

36. Plaintiff has suffered damages including, but not limited to, insurance benefits under the Policy and damages from Defendant's breach of the insurance Policy.

37. Defendant's failure to timely and promptly pay all amounts due and owing under the Policy is a breach of the insurance contract.

38. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 626.9373, Florida Statutes.

39. Should Plaintiff prevail in this action, Plaintiff shall be entitled to interest as prescribed by Florida law.

40. Plaintiff respectfully requests that this Honorable Court enter an Award of general compensatory damages, consequential damages, interest, attorneys' fees and costs including a contingency fee multiplier, and any and all other relief deemed just and proper.

WHEREFORE Plaintiff respectfully requests this Court enter an Award of all:

- A. General compensatory damages;
- B. Consequential damages;
- C. Interest;
- D. Attorneys' fees associated with the instant litigation, including a contingency fee multiplier;
- E. Costs incurred as a result of the instant litigation; and
- F. Any such other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, ESCAPE ROOMS FL, LLC, demands a trial by jury on all issues so triable.

NOTICE OF DESIGNATION OF EMAIL ADDRESS
PURSUANT TO 2.516, FLA. R. JUD. ADMIN.

Plaintiff, ESCAPE ROOMS FL, LLC, by and through the undersigned counsel, and pursuant to Rule 2.516, Fla. R. Jud. Admin., hereby designates the following e-mail address for the purpose of service of all documents required to be served in this proceeding:

Primary E-Mail Address: pleadings@cassel.law

Respectfully submitted this day, May 26, 2020.

CASSEL & CASSEL, P.A.
Attorneys for Plaintiff
4000 Hollywood Blvd.
Suite 685-S
Hollywood, FL 33021
t: (954) 589-5504
f: (954) 900-1768
Service: pleadings@cassel.law

BY: /s/ Michael A. Cassel
Michael A. Cassel, Esq.
Florida Bar No. 97065
Hillary B. Cassel, Esq.
Florida Bar No. 31005

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