

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Western Division

Civil Action No.: 5:20-cv-254

SUMMIT HOSPITALITY GROUP, LTD.,)
)
) Plaintiff,)
)
) v.)
)
) THE CINCINNATI INSURANCE)
) COMPANY,)
)
) Defendant.)

Exhibit 1

**Summons, Complaint, and Letter of
Service from Department of Insurance**



May 20, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED


The Cincinnati Insurance Company
PO Box 145496
Cincinnati, OH 45250-5496

Re: Summit Hospitality Group, Ltd.
vs.
The Cincinnati Insurance Company

Dear Corporate Secretary:

Enclosed herewith are documents entitled **Civil Summons and Complaint**, which this Department received through the mail on May 14, 2020.

MIKE CAUSEY
Commissioner of Insurance


Courtney H Ethridge
Special Deputy for
Service of Process

Enclosures

Received
MAY 27 2020



Summit Hospitality Group, Ltd.

vs.

The Cincinnati Insurance Company

I, Courtney H Ethridge, a Special Deputy duly appointed for the purpose, do hereby accept service of the **Civil Summons** of Plaintiff's Summit Hospitality Group, Ltd. and adding The Cincinnati Insurance Company as a Defendant, and acknowledge receipt of a copy of the same, together with a copy of the **Complaint**, under the provision of the North Carolina General Statute Section 58-16-30 as process agent for The Cincinnati Insurance Company.

This the 14th day of May, 2020.

MIKE CAUSEY
Commissioner of Insurance

Courtney H Ethridge
Special Deputy for
Service of Process

STATE OF NORTH CAROLINA

File No

20 05560

WAKE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: Summit Hospitality Group, Ltd.
Address: c/o Gregg McDougal, 316 W. Edenton St., Suite 100
City, State, Zip: Raleigh NC 27603

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s): The Cincinnati Insurance Company

Date Original Summons Issued: 05/07/2020
Date(s) Subsequent Summons(es) Issued:

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: The Cincinnati Insurance Company, c/o Mike Causey, Commissioner, NC Dept. of Insurance, 1201 Mail Service Center, Raleigh NC 27699-1201

Name And Address Of Defendant 2:



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Gregg E. McDougal, McDougal Worrell LLP, 316 W. Edenton Street, Suite 100, Raleigh NC 27603

Date issued: 05/07/2020 Time: PM
Signature: [Handwritten Signature]
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time: AM PM
Signature:
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

STATE OF NORTH CAROLINA

File No. 20 05560

WAKE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: Summit Hospitality Group, Ltd.
Address: c/o Gregg McDougal, 316 W. Edenton St., Suite 100
City, State, Zip: Raleigh NC 27603

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s): The Cincinnati Insurance Company

Date Original Summons Issued: 05/07/2020
Date(s) Subsequent Summons(es) Issued:

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: The Cincinnati Insurance Company, c/o Mike Causey, Commissioner, NC Dept. of Insurance, 1201 Mail Service Center, Raleigh NC 27699-1201

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IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
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Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Gregg E. McDougal, McDougal Worrell LLP, 316 W. Edenton Street, Suite 100, Raleigh NC 27603

Date Issued: 05/07/2020 Time: PM
Signature: [Handwritten Signature]
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time: AM PM
Signature:
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

STATE OF NORTH CAROLINA THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE 2020 OCT - 7 P.M. 33 20 CVS _____

SUMMIT HOSPITALITY GROUP, LTD.,)
)
)

Plaintiff,)
)

v.)

COMPLAINT

THE CINCINNATI INSURANCE COMPANY,)
)
)

Defendant.)

NOW COMES Plaintiff Summit Hospitality Group, Ltd. ("Plaintiff") and complaining of Defendant The Cincinnati Insurance Company ("Defendant"), alleges and says as follows:

INTRODUCTION

1. This is a civil action by Plaintiff for a declaratory judgment arising from the recent COVID-19 outbreak and its detrimental effects on Plaintiff's business. Plaintiff timely submitted claims for business interruption related to COVID-19 seeking to recover damages under its insurance policy issued by Defendant. Though the insurance policy provides coverage for Plaintiff's claims, Defendant has yet to accept coverage for the claims, which has and is causing injury to Plaintiff. Accordingly, Plaintiff seeks a declaration of the rights, duties, and obligations of the parties under the insurance policy with respect to Plaintiff's underlying claims for coverage.

PARTIES

2. Plaintiff Summit Hospitality Group, Ltd., (“Plaintiff” or “Summit Hospitality”) is a North Carolina corporation with its principal office located in Raleigh, North Carolina.

3. Defendant The Cincinnati Insurance Company (“Defendant” or “Cincinnati Insurance”) is an Ohio corporation with its principal office located in Cincinnati, Ohio, upon information and belief.

4. Defendant is or has been licensed and authorized to conduct business in North Carolina pursuant to Chapter 58 of the North Carolina General Statutes, upon information and belief.

5. Defendant is or has been engaged in the business of insuring risks located in North Carolina throughout the period relevant to this action, and Defendant is or has been transacting such business on an admitted basis, upon information and belief.

6. Pursuant to N.C. Gen. Stat. § 58-16-30, Defendant will be served with legal process by service upon its registered agent in North Carolina, upon its agent as designated by the insurance policy, and/or upon the North Carolina Insurance Commissioner.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 1-253 and N.C. Gen. Stat. § 7A-243.

8. This Court has personal jurisdiction over Defendant because, within the time period relevant herein, Defendant has been licensed to transact insurance business in North Carolina, has in fact transacted business in North Carolina, and/or has maintained a substantial presence in North Carolina, upon information and belief.

9. Venue in Wake County is proper pursuant to, *inter alia*, N.C. Gen. Stat. §§ 1-79 and 1-82, because Plaintiff's principal place of business is located in Raleigh, Wake County, North Carolina.

10. All conditions precedent as to Plaintiff set forth in the applicable insurance contract have been performed.

FACTUAL BACKGROUND

11. Summit Hospitality is a hotel management and development firm, which owns and operates approximately eighteen (18) hotels throughout North Carolina (which each include restaurants therein) and other facilities related thereto, representing approximately \$250 million in assets, with over seven hundred (700) employees.

The Insurance Policy

12. On or about May 1, 2019, Cincinnati Insurance entered into a contract of insurance with Summit Hospitality numbered ECO 053 49 29 (the "Policy"), whereby Summit Hospitality agreed to make premium payments to Cincinnati Insurance in exchange for Cincinnati Insurance's promise to indemnify Summit Hospitality for losses

including, but not limited to, business income losses at “covered locations,” with a stated policy period effective from May 1, 2019 to May 1, 2022.

13. The Policy defines “covered locations” as including those particularly listed in an “Endorsement” to the Policy, which sets forth approximately twenty-two (22) business locations throughout North Carolina, including Summit Hospitality’s various hotels, restaurants, and related facilities.

14. The Policy is currently in full effect and provides for property and business interruption coverages.

15. The Policy is an “all-risks” policy, insofar as it provides that the Policy covers risks of loss unless the loss is caused by a peril that is excluded.

16. The Policy includes an “Income Endorsement” that provides for particular business interruption coverage.

17. The “Income Endorsement” does not contain an exclusion for “virus” or viral pandemic.

18. The “Income Endorsement” provides for “Interruption by Civil Authority,” which “extend[s]” coverage for the loss of business income Summit Hospitality sustains due to the slowdown of its business activities while access to Summit Hospitality’s business locations is interrupted by an order of civil authority that is a “result of loss or damage to property” at non-Summit Hospitality locations.

19. Unlike other coverage provisions in the Policy, the “Interruption by Civil Authority” coverage does not include the qualifying term “physical” in describing the “loss or damage to property.”

20. The Policy provides that the “extension” of coverage for “Interruption by Civil Authority” covers “30 consecutive days from the date of the [civil authority] order.”

21. The “Income Endorsement” and “Interruption by Civil Authority” specifically includes coverage for “earnings and extra expense” and includes loss of “rents,” which is defined in the Policy in part as the loss of net income that would have been earned or incurred as rental income from tenancy occupancy of Summit Hospitality’s locations.

COVID-19 Outbreak

22. On or about January 21, 2020, the United States experienced its first reported case of the virus COVID-19. Since then, outbreak of the virus has reached the level of a global pandemic.

23. The Centers for Disease Control and Prevention (“CDC”) and studies have concluded that COVID-19 survives and remains infectious on surfaces and objects for days. Thus a person can get COVID-19 by touching a surface or object that has the virus on it and, as such, COVID-19 physically affects and damages all with which it comes in contact.

24. COVID-19 has quickly spread around the country, including areas in which Summit Hospitality's business locations are located.

25. Various civil authorities have recognized the presence of COVID-19 and the life-threatening dangers it has caused and have issued orders that have interrupted access to Summit Hospitality business locations, which include its restaurants and hotels.

26. For example, in North Carolina, Governor Cooper issued an executive order regarding COVID-19 to, *inter alia*, "limit access to facilities that sell food and beverage." N.C. Exec. Order No. 118 (Mar. 17, 2020).

27. For example, on March 27, 2020, North Carolina Governor Cooper issued Executive Order No. 121 requiring individuals to stay at home and prohibiting non-essential travel.

28. As a result of the above, Summit Hospitality has experienced and is continuing to experience substantial losses to its business income, including losses in rents from its hotel tenancies and losses in sales from its restaurants.

29. Summit Hospitality has also had to substantially reduce its business activities and lay off numerous employees.

30. In accordance with the terms of the Policy, Plaintiff timely submitted notice of its business interruption insurance claims, and has complied with the conditions precedent to liability as set forth in the Policy.

31. Defendant has yet to accept or approve Plaintiff's claims and, given the very substantial and timely nature of its claims, Plaintiff seeks immediate relief.

Declaratory Judgment

32. Plaintiff re-alleges and incorporates all paragraphs herein by reference.

33. Under N.C. Gen. Stat. § 1-253 *et seq.*, the Court may declare rights, status, and other legal relations in order to settle and to afford relief from uncertainty and insecurity with respect thereto, whether or not further relief is or could be claimed.

34. An actual controversy exists between Plaintiff and Defendant regarding the parties' respective rights, duties, and obligations concerning the Policy.

35. Plaintiff contends, *inter alia*, that the Policy provides insurance coverage for Plaintiff's insurance claims, and that Cincinnati Insurance is required to cover the claims.

36. In particular, Plaintiff contends that the Policy provides business interruption coverage because access to Summit Hospitality business locations has been interrupted by civil authorities as a "result of loss or damage to property" at non-Summit Hospitality locations by COVID-19.

37. Under the express terms of the Policy, such "loss or damage to property" at non-Summit Hospitality locations does not have to be "physical" in nature.

38. Though Plaintiff has complied with conditions precedent in the Policy and has submitted notice of its claims, Defendant has yet to accept or approve of Plaintiff's claims.

39. Upon information and belief, Defendant disputes that coverage is afforded under the Policy, as set forth above.

40. A declaratory judgment will resolve the above disputes and will determine the parties' respective rights, duties, and obligations in this matter, and will alleviate the parties' uncertainty regarding Defendant's liability and Plaintiff's rights under the Policy.

41. Resolution of the duties, responsibilities, and obligations of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

42. Therefore, pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, Plaintiff is entitled to a declaration that the Policy provides coverage for Plaintiff's claims.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff requests that the Court award the following relief:

1. Judgment declaring that, pursuant to the Policy, Defendant Cincinnati Insurance, as a matter of law, must provide coverage for Plaintiff's claims as set forth herein;
2. A jury trial on all issues so triable; and
3. Such other and further relief as the Court deems just and proper.

This the 6th day of May, 2020.

MCDUGAL WORRELL LLP

By: _____


Gregg E. McDougal NCSB # 27290
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Lawrence R. Duke, NCSB #49726
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lawrence@mcdougalworrell.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiff's Complaint and Civil Summons was filed the 7th day of May, 2020 with the Clerk of Court of Wake County, North Carolina. I have also mailed a copy to the Commissioner of the North Carolina Department of Insurance via certified US Mail as follows:

North Carolina Department of Insurance
c/o Mr. Mike Causey, Commissioner
Attn: Courtney Ethridge, Special Deputy for Service of Process
Albemarle Building
325 N. Salisbury Street
Raleigh, NC 27603-5926

This the 7th day of May, 2020.

McDOUGAL WORRELL LLP

By:



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H. Denton Worrell, NCSB # 49750
Lawrence R. Duke, NCSB # 49726
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Attorneys for Plaintiff