

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TANQ'S INC., D/B/A TANQUERAY'S BAR
AND GRILLE,

Plaintiff,

CASE NO:

vs.

SCOTTSDALE INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

Defendant, SCOTTSDALE INSURANCE COMPANY ("SCOTTSDALE"), by and through its undersigned counsel, hereby files its Notice of the Removal of this cause to the United States District Court for the Middle District of Florida, Orlando Division, and states as grounds for such removal the following:

1. On October 28, 2020, Plaintiff, TANQ'S INC., D/B/A TANQUERAY'S BAR AND GRILLE ("Plaintiff"), filed this action in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, Case No. 2020-CA-010779-O ("State Action").

2. On November 25, 2020, SCOTTSDALE was served with a Summons and copy of the Complaint in connection with the State Action. Pursuant to 28 U.S.C § 1446(a), a copy of all process and pleadings are attached hereto as **Composite Exhibit "1"** as follows:

- A. Notice of Service of Process and Summons;
- B. Civil Cover Sheet;
- C. Complaint;
- D. Defendant's Notice of Appearance and Designation of Email Addresses;

- E. Defendant's Certification and Notice of Filing Notice of Removal; and
- F. Defendant's Notice of Removal to Opposing Counsel.

3. This Notice of Removal is filed in the United States District Court for the Middle District of Florida, Orlando Division, the court for the district and division which embraces the state court where the removed State Action was pending, and is filed within the time provided for the removal of actions to the United States District Court. See 28 U.S.C § 1446(b).

DIVERSITY OF CITIZENSHIP

4. At the time of the lawsuit and the filing of this Notice of Removal, there was and still is complete diversity between Plaintiff (citizen of Florida) on the one hand and Defendant (not a Florida citizen) on the other.

5. Plaintiff, Tanq's Inc., d/b/a Tanqueray's d/b/a Tanqueray's Bar and Grille, is a citizen of Florida. Plaintiff's business is duly organized and incorporated in the State of Florida and licensed to do business in the State of Florida. It is a corporation organized under the laws of Florida, and has its principal place of business in Orange County, Florida. Accordingly, **Plaintiff is a citizen of the State of Florida** for the purposes of determining diversity under 28 U.S.C. § 1332(c)(1).¹

6. Therefore, at all times material to this action, Plaintiff was and is a citizen of the State of Florida.

7. SCOTTSDALE is incorporated in the State of Ohio, and has its principal place of business in the State of Ohio. Accordingly, at all times material to this action, SCOTTSDALE is a citizen of the State of Ohio. SCOTTSDALE is not a citizen of or incorporated in the State of Florida and does not have its principal place of business in the State of Florida. At all times material to this action, SCOTTSDALE has been a foreign

¹ See **Exhibit "2"**, Sunbiz records for "Tanq's Inc."

corporation doing business in Florida. Accordingly, **SCOTTSDALE is a citizen of the State of Ohio** for purposes of determining diversity under 28 U.S.C. § 1332(c) (1).

8. Thus, complete diversity exists between the parties in accordance with 28 U.S.C. §1332.

AMOUNT IN CONTROVERSY

9. Plaintiff brought an action against SCOTTSDALE for Breach of Contract and Declaratory Judgment pursuant to the terms of an existing policy of insurance. See Complaint.

10. Plaintiff contends that it sustained significant loss of business income and other expenses during periods of time that it was shut down due to actions of civil authority issued in response to COVID-19. See Complaint, ¶¶ 5 and 6.

11. Specifically, Plaintiff states that it was closed from March 17, 2020 through June 15, 2020; and again closed from June 26, 2020 through September 16, 2020. Subject to its terms, provisions and exclusions, the insurance policy provides \$200,000.00 limit for loss of business income.² See Policy attached as **Exhibit “3”**. This amount translates into \$60,000.00 per month.

12. Additionally, filed with Plaintiff’s Complaint is a civil cover sheet which states that Plaintiff is seeking in excess of \$100,000.00 in damages for its claim. See **Composite Exhibit “1”**.

13. No payments were issued prior to the filing of the State Action.

14. Thus, the amount in controversy herein is in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests and costs.

15. This Court has diversity jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, as Plaintiff and SCOTTSDALE are citizens of different states and the amount in

² The coverage for Business Income includes a monthly limitation of 1/3 per month.

controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

16. SCOTTSDALE has noticed the adverse party, Plaintiff, of this Removal by notifying Plaintiff's attorney of record.

17. SCOTTSDALE has filed a written notice with the Clerk of the Court of the Ninth Judicial Circuit in and for Orange County, Florida in compliance with 28 U.S.C § 1446 (d).

BUTLER WEIHMULLER KATZ CRAIG LLP

s/ Thomas A. Keller

THOMAS A. KELLER, ESQ.

Florida Bar No.: 0153354

tkeller@butler.legal

DERICKA Y. BURKE, ESQ.

Florida Bar No.: 1000332

dburke@butler.legal

Secondary: lfarrell@butler.legal

hcaraballo@butler.legal

400 N. Ashley Drive, Suite 2300

Tampa, Florida 33602

Telephone: (813) 281-1900

Facsimile: (813) 281-0900

*Attorneys for Scottsdale Insurance
Company*

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2020, the foregoing was filed with the Clerk of the Court via the CM/ECF system. I further certify that a true and correct copy of the foregoing has been furnished this day via Electronic Mail to:

John W. Dill, Esq.
The Law Offices of John W. Dill, P.A.
941 W. Morse Blvd.
Suite 100
Winter Park, FL 32789
john@johnwdill.com
Attorney For: Plaintiff

s/ Thomas A. Keller

THOMAS A. KELLER, ESQ.

Filing # 115719389 E-Filed 10/28/2020 05:28:58 AM

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

TANQ'S INC., D/B/A TANQUERAY'S
BAR AND GRILLE

CASE NO:

Plaintiff

v.

SCOTTSDALE INSURANCE COMPANY,

Defendant.

COMPLAINT

COMES NOW the Plaintiff, **TANQ'S INC., D/B/A/ TANQUERAY'S BAR AND GRILLE ("PLAINTIFF")**, by and through its undersigned attorney, and sues the Defendant, **SCOTTSDALE INSURANCE COMPANY ("DEFENDANT")** and in support thereof, states as follows:

COMMON ALLEGATIONS

1. The Court has jurisdiction over both parties and venue is proper in Orange County, Florida as all of the events set out below occurred within Orange County, Florida.
2. That at all times material to this cause of action, Plaintiff owned and operated a bar located at 100 S. Orange Ave., Orlando, Florida 32801 in Orange County, Florida.
3. That at all times material hereto, Defendant was an insurance company authorized to do business and doing business in Florida.
4. At sometime prior to March 1, 2020, the parties entered into an insurance agreement which among other things provided for Plaintiff to recover for loss of business income and its expenses in certain situations. (Policy attached as Exhibit "A").

5. On March 17, 2020 Plaintiff was denied use of his premises by a state government Order requiring all bars in Orange County to close due to concerns about the spread of the corona virus. On June 15, 2020, Plaintiff was allowed to re-open its business, but then was shut down on June 26,2020 due to a subsequent Order of the Governor through no fault of its own until September 16, 2020.

6. Plaintiff sustained significant loss of business income and has had to continue to pay rent and other expenses during these periods and Defendant has wrongfully and in breach of the parties' agreement refused to pay for these losses despite the losses being covered under the parties' insurance contract.

7. These losses amount to physical damage to the establishment based upon the inability to open to the public for business.

COUNT I - DECLARATORY JUDGMENT

8. Plaintiff re-alleges and incorporates paragraphs 1-6 above.

9. This is an action for declaratory judgment concerning a subject matter with a value exceeding \$30,000, exclusive of interest, costs and attorney's fees.

10. An actual controversy exists between the parties regarding their rights and obligations under the law and insurance contract and whether Plaintiff is entitled to recover his loss of business income and expenses under the insurance policy.

11. The parties are entitled to have this legal uncertainty resolved and adjudicated by this tribunal.

12. The instant action involves a present, ascertained or ascertainable set of facts or present controversy as to the state of facts, and some immunity, power, privilege or right of the parties remains dependent upon the facts or the law applicable to the facts.

13. Each party having an actual, present, adverse and antagonistic interest in the subject matter is properly joined in the action.

14. The relief requested herein is not pursued out of curiosity or any theoretical reason.

15. Because of conflicting claims of the parties, irreparable damage may be done unless the rights of the parties under the law are determined promptly as Plaintiff is extremely burdened by the costs and lack of income of his business which may go out of business soon.

16. Plaintiff respectfully requests an expedited hearing of this case as it pertains to the issue of insurance coverage.

WHEREFORE, Plaintiff requests a declaratory judgment: (a) adjudicating his rights under the parties' insurance contract; (b) declaring he is entitled to recover loss of business income and his expenses under the parties' insurance contract; (c) awarding his attorney's fees and costs; and (d) awarding such relief as may be just or necessary under the circumstances.

COUNT II - BREACH OF CONTRACT

17. This is an action for damages in excess of \$30,000 exclusive of attorneys' fees, costs, and interest.

18. Plaintiff re-alleges paragraphs 1-7 above.

19. As a proximate result of the Defendant's breach of the insurance contract set forth above, Plaintiff has sustained economic damages including loss of business income, profits, and has had to continue to pay out rent, and other business expenses which under the parties agreement he is entitled to be reimbursed for.

WHEREFORE, Plaintiff demands judgment for damages against Defendant for an amount within the jurisdictional limits of this Court to wit; in excess of the sum of Thirty Thousand

Dollars (\$30,000.00), together with attorneys fees, the costs of this action, and interest and further demands trial by jury on all issues so triable as a matter of right.

RESPECTFULLY submitted this 28th day of October, 2020.

The Law Offices of John W. Dill, P.A.

/s/John W. Dill

John W. Dill, Esquire

Florida Bar No. 981680

941 W. Morse Blvd., Suite 100

Winter Park, Florida 32789

Telephone: (321) 214-4798

Fax: (321) 214-4501

Email: John@JohnWDill.com

Attorney for Plaintiff