

IN THE SUPREME COURT OF NORTH CAROLINA

No. 225PA21-2

Filed 13 December 2024

NORTH STATE DELI, LLC d/b/a @l 7? MĠ: 89@=75H9GG9B; MOTHERS & SONS, LLC d/b/a MOTHERS & SONS TRATTORIA; MATEO TAPAS, L.L.C. d/b/a MATEO BAR DE TAPAS; SAINT JAMES SHELLFISH LLC d/b/a SAINT JAMES SEAFOOD; CALAMARI ENTERPRISES, INC. d/b/a PARIZADE; BIN 54, LLC d/b/a BIN 54; ARYA, INC. d/b/a CITY KITCHEN and VILLAGE BURGER; GRASSHOPPER LLC d/b/a NASHER CAFE; VERDE CAFE INCORPORATED d/b/a LOCAL 22; FLOGA, INC. d/b/a KIPOS GREEK TAVERNA; KUZINA, LLC d/b/a GOLDEN FLEECE; VIN ROUGE, INC. d/b/a VIN ROUGE; KIPOS ROSE GARDEN CLUB LLC d/b/a ROSEWATER; and GIRA SOLE, INC. d/b/a FARM TABLE and GATEHOUSE TAVERN

v.

THE CINCINNATI INSURANCE COMPANY; THE CINCINNATI CASUALTY COMPANY; MORRIS INSURANCE AGENCY INC.; and DOES 1 THROUGH 20, inclusive

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 284 N.C. App. 330 (2023), reversing an order entered on 9 October 2020 by Judge Orlando F. Hudson Jr. in Superior Court, Durham County, and remanding the case. Heard in the Supreme Court on 22 October 2024.

The Paynter Law Firm, PLLC, by Gagan Gupta and Stuart M. Paynter, for plaintiff-appellants.

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when the business must suspend its operations because of a covered loss.²

Starting with the property insurance policy, it says the following: "We will pay for direct loss to Covered Property at the Premises caused by or resulting from any Covered Cause of Loss." The quotations denote a term defined in the policy. "Loss" means accidental physical loss or physical damage, or "accidental," even as it defines dozens of other terms across three pages of definitions.

The policy confirms that it is an "all-risk" policy by defining the scope of its risk coverage only by its exclusions: Covered Causes unless the loss is caused by or resulting from: earthquakes; an ordinance or law that regulates construction, use, or repair of any building or structure; war or military action; certain kinds of flooding or mudslides; fungi;

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policies accordingly. *Cf. Infected Judgment*, at 194-95 (describing insurance as a risk-based product, designed to buffer chance happenings of loss-related events by

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Dictionary 1338.³ Put together, a covered cause of loss must, absent an intervening factor, result in the material deprivation, dispossession, or destruction of property.

Both parties make reasonable arguments about whether that ordinary meaning includes closures due to government orders. The restaurants argue that the orders did immediately result in material deprivation of property. The orders targeted individual conduct on the property, the functions of the property, and how policyholders could physically access and occupy the insured space, including whether and under what conditions the business premises could be open. *See, e.g.*, Exec. Order No. 120, 34 N.C. Reg. 1844 (Mar. 23, 2020). That in turn affected the feasibility of business operations. It is true that these restrictions were temporary, but h\YfY' jg' bc' ÎhchU'Î' cf' ÎdUfh]U'Î' a cX]Z]Yf' that excludes temporary property restrictions from coverage.

7]bW]bbUh]` Wđi bhYfg' h\Uh' ÎX]fYWh' d\mg]WU'` cggî' W]bbch'g]a d'm'a YUb' Î`cgg' cZ d\mg]WU'` i gY"î' 6 mUbU'c[mž it points out that Î`cgg' cZ'U'Wfî' XcYg' bch'a YUb' h\Y'gUa Y' h\]b['Ug'Î`cgg' cZi gY' cZ'U'Wf,î' as any grounded teenager could confirm, quoting *Image Dental, LLC v. Citizens Ins. Co. of Am.*, 543 F. Supp. 3d 582, 590] 91 (N.D. Ill. 2021). Extending that logic, it notes that the COVID-19 virus and corresponding

³ Ironically, K YVghYf]g' H\]fX'U'gc'XYZ]bYg'Î lossî as Îh\Y'Ua ci bhicZUb']bgi fYX]g'Z]bUbWU'` detriment due to the occurrence of a stipulated contingent event (as death, injury, destruction, or damage) in such a manner as to charge the insurer with a liability under the hYfa g'cZh\Y'dc']Wž' k \]W']ZUdd']YX' \YfY' fYbXYfg' h\Y'dc']WihchU'` mWfW'`Uf. Lossž K YVghYf]g' Third New International Dictionary 1338.

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defined as "broadly defined 'property' . . . property." *Damage*, K. V. Ghaffar, H. J. B. Yk International Dictionary 571. The distinct meaning of "loss" could be one of degree, as Cincinnati argues: "loss" is complete destruction or total dispossession, as in an instance of theft, while "damage" is a less-than-complete impairment or alteration. That reading would exclude temporary restrictions under the pandemic-era government orders that barred access to or use of restaurant dining rooms but not restaurant premises. Alternatively, a reasonable policyholder could see these two words in the disjunctive and read "loss" as purposely broader than "damage." A broader definition could encompass dispossession, deprivation, or impairment of use or function, complete or partial. That would include temporary dispossession or deprivation of the businesses' government orders, as the restaurants argue.

Even if the parties' intended meanings overlap, the parties intended overlapping meanings. But a reasonable person in the position of the insured would certainly read the provision to include the latter, and the ambiguity counsels us to find the provision ambiguous. *See Grant*, 295 N.C. at 43.

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at a new permanent location or repairing, rebuilding, or replacing the lost property) do not apply, a reasonable policyholder would expect the twelve-consecutive-month limit to be nothing as to the contours of a direct physical loss.

Looking even further underscore that the restaurants reasonably expected their losses in these circumstances to be covered. Because the policy excludes certain kinds of government zoning regulations, government ordinances, government seizures, and war and military actions that are *not* an excluded cause of loss to be covered under the policy.

Notably, too, the policies contain no exclusions for viruses in general, even as to

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expectation for a restaurant policyholder, since restaurants are accustomed to operating on razor-thin margins and can only do business with use of their physical space.

7]bWbUjzU[U]bžWci `X`Uj Y'dfcj]XYX`U`bUffck Yf`XYZ]b]h]cb`cZ`X]fYVh`d`mg]W` `cgg]`Zcf`h`g`Vi`g]bYgg]bWta`Y`Wj`YfU[Y. It did not. Instead, it opted only to restate its non-definition. Ĩ LossNa`YUbg`UWY`X`Y`b`h`U` `d`mg]W` `cgg]`cf`UWY`X`Y`b`h`U` `d`mg]W` `X`Ua` U[`Y`i` Of course, the more definitions there are, the longer contracts become, and the more difficult they can be for an ordinary policyholder to understand. But an insurance company need not define every term in its policy to define the core provision around which the entire policy operates.

At bottom, a reasonable person in the position of the insured would understand the restaurantg`npolicies to include coverage for business income lost when virus-related government orders deprived the policyholder restaurants of their ability to physically use and physically operate property at their insured business premises. Since Cincinnati`g]`bhYfdYhU]cb`cZ`ĪX]fYVh`d`mg]W` `cgg]` to property is also fYUgcbUV`Yž`B`cfh` `7`Ufc`]bU`g]`VUW`[`fci`bX`df]bW]d`Yg`Wta`dY` `i`g`hc`fYgc`j`Y`h`g` ambiguity in favor of the insured policyholder. *See Accardi*, 373 N.C. at 295. We therefore conclude that the restaurants have stated a claim for coverage due to a ĪX]fYVh`d`mg]W` `cgg]`hc`dfcdYfhmi`bXYf`h`Y]f`dc`]Wes, and they are entitled to partial summary judgment as the trial court concluded.

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damage [or otherwise become uninhabitable].*Id.*); *Conn. Dermatology Grp., PC v. Twin City Fire Ins. Co.*, 288 A.3d 187, 198 (Conn. 2023) (“Direct physical loss of property . . . [requires] some physical, tangible alteration to or deprivation of the property that renders it physically unusable or inaccessible. (cleaned up)”; *Another Planet Ent., LLC v. Vigilant Ins. Co.*, 548 P.3d 303, 307 (Cal. 2024) (“Direct physical damage to property . . . must result in some injury to or impairment of the property”).

Background rules of insurance contract interpretation counsel against this approach. It is the responsibility to define essential policy terms and the North Carolina courts’ intent to enforce those terms. *See Grant*, 295 N.C. at 43. Otherwise, insurance companies are licensed to pitch consumers on an expansive, “all-risk” policy, while hiding behind a narrower definition imposed by judicial fiat when it comes time to pay out. Such a setup contradicts the lodestar for insurance contract interpretation is the reasonable expectation of the policyholder and that ambiguities should be resolved in the policyholder’s favor.

In light of the above, we cannot say that the restaurants’ policies unambiguously bar coverage when government orders and threatened viral contamination deprived the policyholder restaurants of their ability to physically use and physically operate property at their insured business premises. Accordingly, the

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policyholder restaurants have stated a claim for coverage and are entitled to their claim for partial summary judgment. We reverse the judgment of the Court of Appeals and remand this case to the Court of Appeals for further remand back to the trial court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.