

**OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION**

N.S.,¹

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Plaintiff,

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v.

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Case No. 27-1001-22-00074

**COVINGTON SPECIALTY
INSURANCE COMPANY,**

*

Defendant.

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DECISION

N.S. (“Plaintiff”) initiated this proceeding under Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Covington Specialty Insurance Company (“Defendant”) breached its contractual obligations by improperly denying her claim for damages under a commercial insurance policy. Specifically, Plaintiff claims that Defendant improperly denied coverage for lost revenue, payroll expenses, and damage to business property caused by an April 5, 2022 storm. (“Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that it lacks jurisdiction to decide the Complaint, as Plaintiff is not a Named Insured under the Policy.

¹ The Maryland Insurance Administration (MIA) uses initials to protect the plaintiffs’ privacy.

I. STANDARD OF REVIEW

Md. Code Ann., Cts. & Jud. Proc., § 3-1701 (2020 Repl. Vol.) authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action pursuant to § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (90) days of the receipt of such a complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

“Good faith” is defined in § 27-1001 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov’t Art., § 10-217 (2020 Repl. Vol.); *Md. Bd. Of Physician v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On October 21, 2022, the Administration received Complaint No. 27-1001-21-00074 (“Complaint”) purportedly stating a cause of action in accordance with § 27-1001. In the Complaint, Plaintiff alleged that Defendant improperly denied a claim for water damage to business property owned by Strada Foods, Inc. d/b/a The Grill at Amore, (“Strada Foods”). Specifically, Plaintiff asserts that heavy rain from the storm caused damage to Strada Foods in the amount of \$134,155. Additionally, Plaintiff asserts that Defendant did not conduct a thorough investigation of the Claim, as the adjuster hired by Defendant was not a roofing specialist and never accessed the roof of the building where Strada Foods is located. Plaintiff further alleges that Defendant’s correspondence denying the claim provided little explanation to support its decision.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on November 2, 2022, by certified U.S. Postal Service mail. On December 1, 2022, the Administration received Defendant’s response to the Complaint, as required by § 27-1001(d)(4).

III. FINDINGS

These findings of fact are based on a complete and thorough review of the Complaint and supporting documents submitted by Plaintiff.

On January 29, 2022, Defendant issued a commercial insurance policy to a restaurant owned by Strada Foods, Inc., d/b/a The Grill at Amore, (policy number ending 68900). (“Policy”) The Policy provided Business Personal Property coverage with a limit of insurance in the amount of \$250,000 and coverage for Business Income with Extra Expense, with a limit of insurance in the amount of \$250,000. The Named Insured under the Policy is Strada Foods, Inc., d/b/a The

Grill at Amore. (“Strada Foods”) The Policy specifically provides that, “[t]hroughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations.” Plaintiff previously signed a lease agreement in 2020, on behalf of Strada Foods, to operate inside of a building owned by Rickman Construction Co., LLC, (“the Landlord”) which is located in Montgomery County, Maryland.

On April 5, 2022, a rain storm caused water damage to the building owned by the Landlord. Strada Foods reported the Claim to Defendant. Thereafter, Defendant engaged an independent general adjuster to investigate the Claim.

On April 11, 2022, Andrew Weems, General Adjuster, Engle Martin (“Adjuster Weems”) conducted an inspection of the building and the specific location where Strada Foods was operated. Adjuster Weems prepared a report of his inspection findings dated April 18, 2022. Specifically, Strada Foods claimed lost revenue and earnings, as well as damage to its business property, including one damaged oven, six damaged refrigerators, and lost inventory. Further, with respect to the loss description, Adjuster Weems noted that standing water, which did not properly drain from the roof, caused the roof to fall in and water to enter the building. Adjuster Weems also noted that utilization of an expert was not anticipated for the adjustment of the loss. Adjuster Weems also noted the following:

We reviewed the attached lease agreement, which confirms the Insured is responsible for the equipment located on site. The Landlord is responsible for repairs to all building related materials.

* * * *

Adjuster Weems also took photographs of the location, including the roof of the building and interior photographs of the location where Strada Foods operated.

Based on the investigation of the loss and the subsequently report prepared by Adjuster Weems, on April 18, 2022, Defendant prepared a denial letter finding that the water damage was not a covered loss under the Policy. On May 19, 2022, Defendant issued a letter to Strada Foods denying coverage for damage caused by water on the roof, which seeped into the building. Specifically, Defendant cited to the following Policy language,

We direct your attention to policy form CP 1030 (04-02) Causes of loss – Special Form, which states in part:

“B. Exclusions

1. We will not pay for loss or damage caused by directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

* * *

2. We will not pay for loss or damage caused by or resulting from any of the following:

d. (1) Wear and tear;

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c. Faulty, inadequate, or defective:

(4) Maintenance;

Of part or all of any property on or off the described premises.

* * *

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated:

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

(1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or

(2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

* * * *

In addition to the above cited Policy language, the May 19, 2022 letter also provided the below explanation for the denial of coverage.

The loss was reported as damage resulting from water. We discovered damage attributable to inadequate maintenance to the roof, which allowed water to seep into the building. The policy language above excludes coverage by these causes of loss. Per the policy language, the exterior of the building must sustain damage due to a covered cause of loss through which water enters in order for coverage to be afforded for the Business Personal Property and the Business Income loss associated with the water that entered the building. For this reason, coverage would not be afforded for this loss. Covington Specialty Insurance Company has confirmed coverage is not afforded for this claim.

* * * *

Plaintiff responded on May 27, 2022, noting her dissatisfaction with Defendant's decision to deny the Claim. Plaintiff also requested an inspection report for the roof of the building. Defendant subsequently retained Mr. Chuck Viores of Envista Forensics, ("Inspector Viores") to inspect the roof of the building. Inspector Viores completed his inspection on July 27, 2022 and a prepared report of his findings on August 5, 2022. Specifically, Inspector Viores found,

"the interior moisture damage sustained within the space occupied by Strada Foods Inc. was the result of water that accumulated atop the roof and exploited openings at the

terminations of the roof covering and at flashing/openings in the roofing. This standing water was the result of the precipitation and was exacerbated by the combined effects (a) a partial or complete blockage of the internal roof drains that serviced the low roof and (b) the diversion of precipitation from the high roof and its deposit onto the low roof.”

* * *

Based on the additional inspection completed by Inspector Vinos, Adjuster Weems prepared a supplement report finding no basis to overturn Defendant’s initial decision to deny the Claim. On September 30, 2022, Defendant issued a second denial letter, stating in part,

Per the carrier’s agreement, we retained the services of Envista Forensics to investigate the cause of the damages. In the report, Mr. Chuck Vinos concluded the standing water on the roof was the result of precipitation that was exacerbated by a partial or completed blockage of the drains and the diversion of precipitation from the high roof and its deposit onto the low roof.

He also reported the low roof, which is the roof that fell on the date of the loss, was bounded on the north side by a wall separating the high roof from the low roof. He confirmed the drain allowed water to pour onto the low roof, which would triple the amount of water collected on the roof.

* * *

We have attached a copy of the report for your review and reference. Based on the findings of this report, Covington Speciality Insurance Company’s position on this matter has not changed and coverage is not afforded for this loss.

* * * *

On October 21, 2022, Plaintiff filed a Complaint with the Administration, in her individual capacity, purportedly alleging a cause of action in accordance with § 27-1001.

IV. DISCUSSION

Section 3-1701 provides “the statutory claim for failure to act in good faith applies to civil actions in which the insured seeks a determination of whether coverage actually exists under an insurance policy.” *St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728,

739 (4th Cir. 2016); *citing* Md. Code Ann., Cts. & Jud. Proc § 3-1701 (2020 Repl. Vol.). Section 1701(b) specifically states that it “applies only to **first-party claims** under property and casualty insurance policies or individual disability insurance policies issued, sold, or delivered in the State.” [*Emph. added.*] Clearly and expressly, §§3-1701 and 27-1001 apply only to “**first-party claims under property and casualty insurance policies.**” [*Emph. added.*] *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.).

In the instant case, Plaintiff has not satisfied her burden of demonstrating that she is a party to the insurance contract, as the Policy provides coverage to Strada Foods, Inc., d/b/a/ The Grill at Amore. The Policy specifically provides that, “[t]hroughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations.” In this instance, the Named Insured shown in the Declarations is Strada Foods, Inc. d/b/a The Grill at Amore. Further, Strada Foods, Inc. d/b/a The Grill at Amore is a corporation, and therefore, must be represented by counsel in this proceeding, pursuant to § 10-206.1 of the State Government Article and § 10-601 of the Business Occupations and Professionals Article. As the evidence does not demonstrate that Plaintiff is admitted to practice law, Plaintiff may not represent the Named Insured under the Policy.

V. CONCLUSIONS OF LAW

As Plaintiff filed the Complaint in her individual capacity, and Plaintiff is not a Named Insured under the Policy, the Complaint does not assert a claim that falls within the scope of § 3-1701 of the Courts and Judicial Proceedings Article and § 27-1001 of the Insurance Article, and thus is not within the Administration’s jurisdiction.

VI. DECISION

Based on the foregoing findings and conclusions, it is the Administration's Decision and Order on this 23rd day of January, 2023, that it is hereby:

ORDERED that the Complaint is DISMISSED; and it is further

ORDERED that pursuant to § 27-1001 (f)(3), this Decision and Order shall take effect as a Final Order of no administrative hearing is requested or appeal is taken in accordance with § 27-1101(f) and (g).

KATHLEEN A. BIRRANE

Insurance Commissioner

/S/ Erica J. Bailey

Erica J. Bailey

Associate Commissioner of Hearings

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f).