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APR - 2 2015

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

Davidson Co. Chancery Court

SAI LEELA, INC.,
Plaintiff,

v.

WESTFIELD INSURANCE
COMPANY,

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No. 13-1273-IV-

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FILED

**ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

This cause came on to be heard on the 27th day of March, 2015 before the Honorable Russell T. Perkins, Chancellor, upon Plaintiff's Motion for Partial Summary Judgment, Defendant's Response in Opposition, statements and arguments of counsel for the respective parties, and the entire record in this cause. Based on the Court's careful consideration of the matter, the Court finds that there are no genuine issues of material fact, that Plaintiff is entitled to partial summary judgment as a matter of law, and that Plaintiff's Motion for Partial Summary Judgment should be GRANTED, as follows:

Undisputed Facts for Purposes of Summary Judgment

As an initial matter, based on the Defendant's Response to Plaintiff's Statement of Undisputed Facts, the Court notes that there are no disputed facts as relevant to its ruling on the summary judgment motion. Although not exhaustive of the undisputed facts, the record reflects no disagreement that Westfield issued an insurance policy on Plaintiff's hotel that insured it against property damage. The policy provided insurance coverage for "direct physical loss of or damage to Covered Property at [the Insured Premises] caused by or resulting from any Covered Cause of Loss," and further defined "Covered Cause of Loss" as all "risks of direct physical loss" unless the loss is otherwise excluded or limited. The phrase "Direct Physical Loss" is not

defined in the policy, and the policy makes no distinction between “functional” loss or damage and “cosmetic” loss or damage.

On or around March 2, 2012, while the insurance policy was in effect, a storm event with wind and hail struck the Insured Premises. Defendant acknowledges that there was some damage by wind and there was some evidence of hail strikes at the Insured Premises, and that the insurance policy covers loss caused by hail or wind. Although Defendant’s 30.02(6) designee, Jeff Horvath, admitted in his deposition that the metal standard seam mansard roof at the Insured Premises has dents that are visible without the aid of chalk, a subsequent Affidavit of Jeff Horvath was filed stating that the dents are no longer visible.

After Plaintiff’s claim, Defendant denied Plaintiff’s claim for hail damage to the metal mansard roof and metal trim on the basis that the “[t]he metal roof panels were not functionally damaged by hail impact” and because “the dents have not affected the aesthetic value of the roof covering.” Defendant later again stated the basis of its denial of the hail damage claim, stating: “[t]he metal roof system and trim of this 3-story motel did not have any visible dents or fractures to the surface without the aid of chalk – only then revealing indentations varying 3/8” to 1/2”. Based on the information outlined above as well as our prior communications, we reaffirm our position that there was not any damage/direct physical loss to the metal roof system or trim and therefore no applicable coverage for same.“

Analysis and Ruling

Based on the undisputed facts, the Court is asked by Plaintiff to rule, as a matter of law, that the hail dents to the metal mansard roofs of the Insured Premises constitute direct physical loss or damage under the subject insurance policy. The interpretation of the insurance policy is a matter of law for determination by the Court. The Court concludes as a matter of law that if

there are hail dents to the metal mansard roofs, no matter whether they are visible from the ground or visible with or without the aid of chalk, then such dents constitute direct physical loss or damage under the insurance policy and therefore constitute a covered claim under the policy. However, the Court finds that Plaintiff must prove at trial the existence of the dents and the amount to which it is entitled under the Policy as a result of such dents.

IT IS SO ORDERED.

ENTER this ____ day of _____, 2015.



RUSSELL T. PERKINS, CHANCELLOR

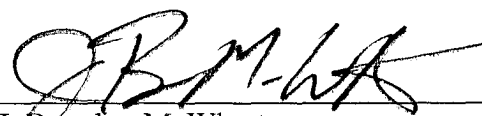
APPROVED FOR ENTRY:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to Mr. James R. Tomkins, Smith & Tomkins, 214 Second Ave. N., Suite 100, Nashville, TN 37201 on this the 2 day of April, 2015.



J. Brandon McWherter