

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

NATHANIEL REALTY, LLC and
HOWARD L. SHACKELFORD, MD,
PLAINTIFFS,

RECEIVED
CLERK OF COURT

v.

CIVIL ACTION NO. 18-C-116

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant.

**ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND CONTINUING THE JANUARY 19, 2021 TRIAL SCHEDULED IN THIS CASE.**

The plaintiffs seek a partial summary judgment regarding their breach of contract claim against the defendant, State Farm Fire and Casualty Company. When deciding whether the plaintiffs are entitled to partial summary judgment, the Court must first focus on whether there is a genuine issue regarding any material fact. The undisputed critical facts supporting the plaintiffs' motion are:

1. Plaintiffs and the defendant are parties to an "all-perils" a contract of insurance, policy number 95-CJ-J 527-4. An "all-perils" insurance contract is more commonly referred to as an "all-risks" policy, and it is one in which the insurer undertakes the risk for all losses of an incidental nature, which, in the absence of fraud or other intentional misconduct of the insured, is not expressly excluded in the policy.
2. There is no argument in this case that the loss incurred by the plaintiffs was a loss excluded explicitly in the insurance policy.

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3. The plaintiffs lost the home they owned in Ohio because the home became infested with bats.
4. When the plaintiffs discovered the problem, they immediately filed a claim with the defendant. The defendant refused to come to the home to inspect it. The defendant's excuse was that it was too dangerous to inspect the home infested with bats.
5. When State Farm refused to come to the home, plaintiffs tried to solve the problem by hiring outside contractors to remove the bats. That ultimately failed, and they paid \$14,500 to the company that attempted to remove the bats. State Farm refused to cover that expense and instead canceled the insurance policy covering the property.
6. State Farm ignored the language in the policy that specifically covered "accidental direct physical loss to the property" and a policy that defined "property damage" as "physical damage to or destruction of tangible property, including the loss of use of the property."
7. It is uncontested that plaintiffs incurred the loss of use of the property in question and incurred expenses of \$14,500 to minimize their loss. Their loss was ultimately much more significant than that because they lost the property's use due to the bat infestation. The defendant does not challenge the plaintiff's assertion that the plaintiffs lost the property's use due to the bat infestation.

These uncontested facts establish that the plaintiffs' loss included coverage loss under the insurance policy that is the subject of the litigation in this lawsuit. The plaintiffs purchased a first-class insurance policy that covered all risks and not a cheaper policy that would not have protected them from their home's damages caused by bats'

infestation. It was the protection of the type not ordinarily present under other types of insurance. They wanted protection against risks of direct physical loss or damages from any external cause, which was fortuitous.

The Court's finding is that defendant State Farm breached the contract of insurance with plaintiffs. There is no genuine issue regarding any material fact, and the plaintiffs are entitled to judgment as a matter of law.

Therefore, it is **ORDERED** that the plaintiff's motion for partial summary judgment is granted. State Farm Fire and Casualty Company must pay the plaintiffs \$14,500 plus prejudgment interest and court costs in this litigation.

Because this is a partial summary that may be challenged in the West Virginia Supreme Court of Appeals, and because of the existing danger to all jurors in Ohio County of participating in a civil trial during this challenging period of an increasing number of coronavirus victims in Ohio County, the Court has decided to continue the trial scheduled in this case that was to begin on January 19, 2021. IT IS SO ORDERED.

Enter this 21st day of December 2020.


Ronald E. Wilson, Judge

The clerk is requested to send an attested copy of this order to the counsel of record.

A copy, Teste:


Brenda L. Miller
Circuit Clerk

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