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Cause No. 09cv 2052

BALINESE INC., SCOTT ARNOLD AND § IN THE DISTRICT COURT OF
ARNOLD PROPERTIES INC. §
§
V. § GALVESTON COUNTY, TEXAS
§
TEXAS WINDSTORM INSURANCE §
ASSOCIATION § 56th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs BALINESE INC, SCOTT ARNOLD and ARNOLD PROPERTIES, INC. ("Plaintiffs") file this Original Petition against Defendant TEXAS WINDSTORM INSURANCE ASSOCIATION ("TWIA") and would respectfully show the following:

Discovery Control Plan

1.1 Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

Parties

2.1 Plaintiffs are residents and citizens of the State of Texas.
2.2 TWIA is a domestic insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. TWIA has no designated agent for service. TWIA may be served with service of process by certified mail, return receipt requested, **Texas Windstorm, Insurance Association, Executive Director: Jim Oliver, 5700 S. Mopac Expressway, Building E, Suite 530, Austin, Texas 78749.**

Venue & Jurisdiction

3.1 Venue is proper in Galveston County under Tex. Civ. Prac. & Rem. Code Section 15.002(a)(1), as all or a substantial part of the events or omissions giving rise to this claim occurred in Galveston County and the property at issue is located in Galveston County, Texas. In particular, the insurance policy at issue and of which covers the property at issue was to be performed in Galveston County, Texas and the losses under the policy (including payments to be made under the policy) were required to be made in Galveston County, Texas. Further, investigation, including communications to and from Defendants and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiffs), acts and omissions occurred in Galveston County, Texas.

3.2 Venue is also proper in Galveston County under Tex. Civ. Prac. & Rem. Code Section 15.002(a)(2) as the property at issue was located in Galveston County at the time of the basis of this action.

3.3 Venue is further proper in Galveston County under Tex. Insurance Code. Section 2210.552.

3.4 Plaintiffs sue for damages in excess of \$125,000, and jurisdiction is proper in this Court.

Factual Background

4.1 The Balinese Room was an iconic part of Galveston history for decades until its destruction during Hurricane Ike. The 79-year old Balinese Room, began as a restaurant in the 1920's. The restaurant went through several name changes

and remodeling eventually becoming the Balinese Room in 1942. This remodeling included the 600 foot pier at 21st and Seawall that stretched out over the Gulf of Mexico.

4.2 The restaurant eventually became the casino and dance hall and often featured entertainers Frank Sinatra, Bob Hope, Jack Benny and was frequented by Howard Hughes and oil magnates.

4.3 After having narrowly survived Hurricanes Carla and Alicia, the Balinese Room remained vacant for almost 20 years. Scott Arnold and Arnold Properties Inc. breathed new life in the Balinese Room, and after investing well over a million dollars in its renovation, Arnold reopened the Balinese Room in 2001. Prior to its reopening, the Balinese Room was listed on the National Register of Historic Places in 1997.

4.4 During the early morning hours of Saturday, September 13, 2008, Hurricane Ike made landfall on the coast of Texas. At the time of its landfall, Hurricane Ike was a massive, Category 2 storm with maximum sustained winds of 110 mph at the time of landfall. Hurricane Ike has been classified as the third most destructive storm to make landfall in the United States and has been estimated to have caused damage to the U.S. coastal and inland areas of \$24 billion dollars. The Balinese Room and the 600 foot pier were completely destroyed, its remnants strewn across Seawall by the storm.

4.5 This suit arises from Defendant's wrongful acts in handling of Plaintiffs' claim under its Insurance policy (the "Policy") for damages caused by Hurricane Ike. A Policy was sold by TWIA to Plaintiffs.

4.6 Like thousands of others, Plaintiffs' property was completely destroyed by Hurricane Ike. After the storm, Plaintiffs filed an insurance claim under the Policy with the insurance company, TWIA, for the damages caused by Hurricane Ike.

4.7. Plaintiffs submitted a claim to TWIA under the Policy. Plaintiffs have asked that TWIA cover the cost of repairs pursuant to the Policy. However, TWIA has denied the claim.

4.8. TWIA wrongfully denied Plaintiff's claim for property repairs. Furthermore, TWIA has underestimated damages during their investigation.

4.9 As a result of Defendant's acts and/or omissions, Plaintiffs have been unable to rebuild the business or have repairs conducted to the property since Hurricane Ike's destruction. Defendant has refused to pay for the fair value of the structure, further causing harm to Plaintiffs' business.

4.10 Defendant has chosen to continue to deny timely payment of the damages. As a result, Plaintiffs have been unable to rebuild or have repairs conducted to its property since Hurricane Ike's destruction. As a result, Plaintiffs were required to retain an attorney to prosecute its claim for insurance benefits.

4.11 Unfortunately, TWIA has delayed payment for Plaintiffs' necessary and covered repairs under its insurance policy. Given the repeated delays of payment, Plaintiffs have been subjected to significant economic impact, worry, distress, and

continuing economic and physical damage. In addition, Plaintiffs have suffered financial harm and damage as a result of Defendant's acts and/or omissions.

4.12. The significant effect of Defendant's wrongful and unjustified delays, however, is that Plaintiffs are still uncompensated.

FIRST CAUSE OF ACTION--Violations of Texas Insurance Code

5.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-4.12 of this Petition as if fully set forth herein.

5.2 TWIA failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A) (formerly Art. 21.21 §4(10)(ii)).

5.3 TWIA failed to adopt and implement reasonable standards for prompt investigation of claims arising under its policies.

5.4 TWIA failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3) (formerly Art. 21.21 §4(10)(iv)).

5.5 TWIA refused to pay a claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code Section 541.060 (a)(7) (formerly Art. 21.21 §4(10)(vii)).

5.6 TWIA misrepresented the insurance policy under which it affords property coverage to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1) (formerly Art. 21.21 §4(11)(a)).

5.7 TWIA misrepresented the insurance policy under which it affords property coverage to Plaintiffs, by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2) (formerly Art. 21.21 §4(11)(b)).

5.8 TWIA misrepresented the insurance policy under which it affords property coverage to Plaintiffs, by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact, and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) (formerly Art. 21.21 §4(11)(c) and Texas Insurance Code Section 541.002 (1) (formerly Art. 21.21 §4(11)(e)).

5.9 TWIA knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code Section 541.002 (1) (formerly Art. 21.21 §2(c)).

SECOND CAUSE OF ACTION--Prompt Payment of Claim

6.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-5.9 of this Petition as if fully set forth herein.

6.2 TWIA failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

6.3 TWIA failed to timely commence investigation of the claim or to request from Plaintiffs any additional items, statements or forms that TWIA reasonably believes to be required from Plaintiffs in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

6.4 TWIA failed to notify Plaintiffs in writing of the acceptance or rejection of the claim not later than the 15th business day after receipt of all items, statements and forms required by TWIA in violation of Texas Insurance Code Section 542.056(a).

6.5 TWIA delayed payment of Plaintiffs' claim in violation of Texas Insurance Code Section 542.058(a).

THIRD CAUSE OF ACTION---Statutory Interest

7.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-6.5 of the Petition as if fully set forth herein.

7.2 Plaintiffs make a claim for penalties of 18% statutory interest on the amount of the claim along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

FOURTH CAUSE OF ACTION---Breach of Contract

8.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-7.2 of the Petition as if fully set forth herein.

8.2 TWIA breached its contract with Plaintiffs. As a result of TWIA's breach, Plaintiffs suffered legal damages.

FIFTH CAUSE OF ACTION---Breach of duty of good faith & fair dealing

9.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-8.2 of the Petition as if fully set forth herein.

9.2 TWIA, as Plaintiffs' property coverage insurer, had a duty to deal fairly and in good faith with Plaintiffs in the processing of the property claim. TWIA

breached this duty by refusing to properly investigate and effectively denying insurance benefits. TWIA knew or should have known that there was no reasonable basis for denying or delaying the required benefits. As a result of TWIA's breach of these legal duties, Plaintiffs suffered legal damages.

SIXTH CAUSE OF ACTION---Punitive Damages for Bad Faith

10.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-9.2 of this Petition as if fully set for herein.

10.2 TWIA acted fraudulently and with malice (as that term is legally defined) in denying Plaintiffs' claim for property coverage benefits. Further, TWIA had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs.

SEVENTH CAUSE OF ACTION---Violations Of Texas DTPA

11.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-10.2 of this Complaint as if fully set forth herein.

11.2. The Deceptive Trade Practices-Consumer Protection Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendant's violations of the Texas Insurance Code create a cause of action under the DTPA. Defendant's violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well.

EIGHTH CAUSE OF ACTION---Fraud

12.1 Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-11.2 of this Complaint as if fully set forth herein.

12.2. TWIA acted fraudulently as to each representation made to Plaintiffs concerned material facts for the reason they would not have acted and which TWIA knew were false or made recklessly without any knowledge of their truth. The representations were made with the intention that they be acted upon by Plaintiffs, who relied on those representations, thereby causing injury and damage to Plaintiffs.

KNOWLEDGE

13.1 Each of the actions described herein were done “knowingly” as that term is used in the Texas Insurance Code and were a producing cause of Peanut Butter Warehouse’s damages.

RESULTING LEGAL DAMAGES

14.1 Plaintiffs are entitled to the actual damages resulting from the Defendant’s violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denial and delay of benefits; the mental anguish and physical suffering resulting from this wrongful denial of benefits, and continued impact on Plaintiffs; lost credit reputation; and the other actual damages permitted by law. In addition, Plaintiffs are entitled to exemplary damages.

14.2 As a result of Defendant’s acts and/or omissions, Plaintiffs have sustained damages in excess of the minimum jurisdictional limits of this Court.

14.3 Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

14.4 Defendant's knowing violations of the Texas Insurance Code and DTPA entitle Plaintiffs to the attorneys' fees, treble damages, and other penalties provided by law.

14.5 Plaintiffs are entitled to statutory interest on the amount of its claim at the rate of 18% per year as damages under the Texas Insurance Code 542.060(a).

14.6 As a result of Defendant's acts and/or omissions, Plaintiffs have sustained damages in excess of the jurisdictional limits of this Court.

14.7 Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

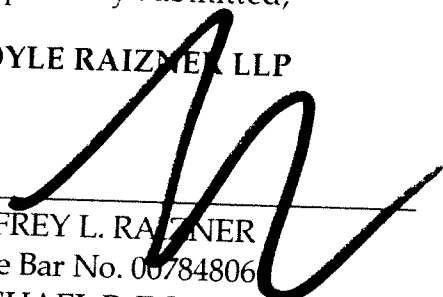
14.8 Plaintiffs are also entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, the Texas Insurance Code 542.060(a)-(b), the Tex. Bus & Commerce Code §17.50 and Tex. Civ. Prac. & Rem. Code §37.009.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Plaintiffs have judgment against Defendant for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

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JURY DEMAND

Plaintiffs hereby demand a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.



JEFFREY L. RAINNER