

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 20-CVS-02569

2020 OCT -9 P 3:15

CLERK OF COURT, C.S.C.

NORTH STATE DELI, LLC d/b/a LUCKY'S  
DELICATESSEN, 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,

*Plaintiffs,*

v.

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

*Defendants.*

**ORDER DENYING THE RULE  
12(b)(6) MOTION TO DISMISS THE  
SECOND AMENDED COMPLAINT  
FILED BY DEFENDANTS THE  
CINCINNATI INSURANCE  
COMPANY AND THE CINCINNATI  
CASUALTY COMPANY**

THIS MATTER was heard on September 23, 2020, before Senior Resident Superior Court Judge Orlando F. Hudson, Jr., with Gagan Gupta appearing for the plaintiff-restaurants (including North State Deli, LLC d/b/a Lucky's Delicatessen; 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 (collectively, “Plaintiffs”)), and Brian Reid and Drew Vanore appearing for defendant-insurers The Cincinnati Insurance Company and The Cincinnati Casualty Company (collectively, “Defendants”). Defendants brought a Rule 12(b)(6) Motion to Dismiss in Lieu of Answer to Plaintiffs’ Complaint (“Motion”) with respect to Count I (Declaratory Judgment), Count II (Declaratory Judgment), and Count III (Breach of Contract).<sup>1</sup>

THE COURT, having considered the pleadings, the Motion, the briefs filed in support of and in opposition to the Motion, the oral arguments of counsel at the hearing on the Motion, the applicable law, and other appropriate matters of record, DENIES Defendants’ Motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- (1) Plaintiffs state a viable claim for relief under Count I of the Second Amended Complaint, seeking a declaratory judgment against Defendants pursuant to N.C. Gen.

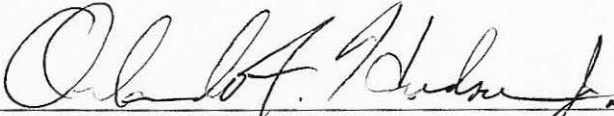
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<sup>1</sup> The operative pleading to which this Order applies is the Second Amended Complaint. For background, the Motion was filed by defendant The Cincinnati Insurance Company on August 7, 2020. After Plaintiffs and The Cincinnati Insurance Company exchanged full briefing on the Motion, the Court granted a Consent Motion for Leave to File Second Amended Complaint, consented to by all the parties captioned herein. The sole amendment made by the Second Amended Complaint was the addition of another defendant-insurer, The Cincinnati Casualty Company. Because Plaintiffs and Defendants jointly stipulated that the Second Amended Complaint resulted in no substantive changes to the Motion or the related briefings and arguments, and that the Motion and related briefings and arguments applied with equal force to the newly-added defendant entity, this Order is entered with respect to Counts I-III as those counts are alleged against both The Cincinnati Insurance Company and The Cincinnati Casualty Company in the Second Amended Complaint.

Stat. § 1-253 *et seq.*, ascertaining entitlement to coverage under insurance policy contracts entered into between Plaintiffs and Defendants.

- (2) Plaintiffs state a viable claim for relief under Count II of the Second Amended Complaint, seeking a declaratory judgment against Defendants pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, ascertaining entitlement to coverage under insurance policy contracts entered into between Plaintiffs and Defendants.
- (3) Plaintiffs state a viable claim for relief under Count III of the Second Amended Complaint, seeking damages and other relief for breach of contract against Defendants pursuant to their failure to provide benefits due under the insurance policy contracts as described in Counts I and II.

This the 17<sup>th</sup> day of October, 2020.

  
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ORLANDO F. HUDSON, JR.  
SENIOR RESIDENT SUPERIOR COURT JUDGE

CERTIFICATE OF SERVICE

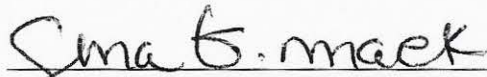
This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

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*Counsel for Defendant, The Cincinnati Insurance Company*

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421 Fayetteville Street, Suite 330  
Raleigh, NC 27601  
*Counsel for Defendant Morris Insurance Agency, Inc.*

This the 9<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
ASSISTANT CLERK OF COURT  
DURHAM COUNTY