

STATE OF MINNESOTA
COUNTY OF SHERBURNE

DISTRICT COURT
TENTH JUDICIAL DISTRICT

CASE TYPE: BREACH OF CONTRACT

Ridgewood Bay Resort, Inc.

Court File No.: 71-CV-19-1066
Judge: Walter Kaminsky

Plaintiff,

v.

**AFFIDAVIT OF MIKE
PAKKALA**

Auto-Owners Insurance Company,

Defendant.

After swearing to tell the truth, Mike Pakkala, Sr., states as follows:

1. I am the president and co-owner of the public adjusting company, United Claim Service, Inc.
I am familiar with the facts asserted in this affidavit based on my own personal knowledge of adjusting Ridgewood Bay's fire damage claim.
2. I have been involved in the insurance adjusting business for over 50 years. For more than 47 years, I have been a public adjuster.
3. In my 50 years of experience, I have never had an insurance company fail to follow its obligations under the ordinance or law coverage of the its policy like Auto-Owners has done with Ridgewood Bay' claim. Whether it is refusing to pay for code upgrades for which it acknowledged it was responsible, like the septic system, or ignoring its ordinance and code obligations under the policy, like the kitchen and bathrooms, Auto-Owners has failed to fulfill its obligations under the policy.
4. In August 2017, Ridgewood Bay Resort had a fire in its bar area.
5. Greg Sackett, the owner of Ridgewood Bay, retained United Claim Service to assist in adjusting the fire loss on Ridgewood Bay's behalf.

6. United Claim Service set to work to remediate the damage caused by the fire, prepare a claim for reconstruction, and prepare a contents inventory.
7. During the adjusting of the claim, state and county officials required code upgrades to undamaged portions of the building
8. The septic system, kitchen, and bathrooms were undamaged by the fire and each requires significant demolition and reconstruction to bring them up to code.
9. Sherburne County required a compliance test of the septic system. Steinbrecher Companies performed the septic compliance test. Ridgewood Bay's septic system failed the test. The septic system must be brought up to code before Ridgewood Bay can reopen.
10. The Minnesota Department of Health required several upgrades to the kitchen, such as, new surfaces to the floor, wall and ceilings; a new kitchen hood; and an upgraded sewage and septic system.
11. Sherburne County required the existing bathrooms to be accessible according to the Americans with Disabilities Act.
12. On January 30, 2018, I met with Auto-Owners' senior adjuster, Bill Conroy, at the Ridgewood Bay property. Mr. Conroy told me that this was a replacement cost policy. Therefore, Coverage A of the ordinance or law section is key to resolving this claim. At the time we were discussing the bathrooms at Ridgewood Bay, but the reasoning that the bathrooms would fall under Coverage A equally applies to the septic system and the kitchen. In fact, Auto-Owners eventually provided line items for the septic system in one of their estimates.
13. Initially, Auto-Owners had denied the claim solely for the septic compliance testing, despite subsequently having a line item for it. A true and correct copy of the Auto-Owners'

December 28, 2017, letter denying the septic system testing is attached to this affidavit as Exhibit 2.

14. Auto-Owners had hired Moe & Nevin Insurance Adjuster to prepare the claim on Auto-Owners' behalf, the Moe & Nevin's claim adjustment provided coverage under the ordinance and law coverage for the septic system testing and upgrades to the septic system. A true and correct copy of page two of the Moe & Nevin claim dated February 22, 2018, demonstrating that funds for the septic system were identified is attached to this affidavit as Exhibit 1.
15. Approximately two months after the Moe & Nevin estimate which provided coverage for the septic system, Auto-Owners denied the septic system claim. A true and correct copy of Auto-Owners' May 2, 2018, letter denying coverage for the septic system under the ordinance or law coverage is attached to this affidavit as Exhibit 3. This was well after Sherburne County had told Ridgewood Bay that the septic system needed to be upgraded and after I had informed Auto-Owners of this fact.
16. Auto-Owners included no code upgrade line items in its Moe & Nevin's estimate for the kitchen or the bathrooms.
17. Significant demolition is required to bring the kitchen and bathrooms up to code.
18. The kitchen hood clearance is currently too low. Thus, the ceiling surrounding the kitchen hood must be demolished to allow clearance for the new kitchen hood ordered by the Minnesota Department of Health.
19. Greg Sackett lives above Ridgewood Bay in one of the two apartments that are above the business. Directly above the kitchen hood is Mr. Sackett's bathroom. His bathroom and several closets must be demolished to make space for the vent and make-up ducts necessary for the kitchen hood.

20. Fortunately for Mr. Sackett, there is an efficiency apartment next to his. As a result, demolition needs to occur to connect his apartment with the efficiency apartment where he will have access to another bathroom.
21. A stairway must be removed to and an existing bedroom converted and connected with the kitchen.
22. Overall, significant demolition is required to satisfy the Minnesota Department of Health's order for a new kitchen hood.
23. As for the surfaces in the kitchen, the existing walls and ceiling are drywall and must be demolished to install new, cleanable surfaces pursuant to the Minnesota Department of Health's order. The floors are vinyl and must be demolished and replaced with quarry tile, a cleanable floor, to satisfy the Minnesota Department of Health's order.
24. Each of the existing bathrooms must be demolished, including the floors and walls to enlarge the bathroom and install new plumbing to make them ADA compliant.
25. Auto-Owners may point to a subsequent bid from Legacy Services Corporation where it includes some code upgrade items, for the kitchen and bathroom. That estimate, however, limits the code items to \$10,000, which is neither sufficient to cover the code upgrades required by the state and country nor the available coverage under their ordinance and law Coverage A.
26. Ridgewood Bay purchased ordinance or law coverage for its building. Ordinance or law coverage, by its reasonable interpretation, provides coverage for a property that is damaged and undamaged portions of that property must be brought up to code before a certificate of occupancy can be issued. The ordinance or law coverage specifically applies to situations for buildings that were out of code before an event causing damage, and must be brought up to

code as part of the reconstruction process. Ridgewood Bay's policy and the coverage it allows is no different. Auto-Owners must honor their coverage responsibilities.

Pursuant to Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: February 28, 2020.



Michael Pakkala, Sr.

Hennepin County, MN

State and county where signed

MINNESOTA
JUDICIAL
BRANCH



Moe & Nevin Insurance Adjusters

28584 Blue Lake Drive NW
Princeton, MN 55371
Telephone: 651-436-8629 x112
Fax: 612-524-5771

RIDGEWOODBAY2

Main Level

Main Level

| DESCRIPTION | QUANTITY | UNIT PRICE | TAX | O&P | RCV | DEPREC. | ACV |
|---|----------|------------|-------------|-----------------|------------------|-------------|------------------|
| 1. Upgrade electrical wiring fees (Bid Item) | 1.00 EA | 2,750.00 | 0.00 | 540.00 | 3,300.00 | (0.00) | 3,300.00 |
| This item did not previously exist or expands the scope of repairs, but is required by current building codes. The code upgrade cost is payable when incurred, subject to limits. | | | | | | | |
| This is necessary for ADA bathroom design options. | | | | | | | |
| 2. Replace Electrical (Bid Item) Per contractor estimate* | 1.00 EA | 13,995.00 | 0.00 | 2,799.00 | 16,794.00 | (0.00) | 16,794.00 |
| Electrical work to demo damaged wiring, refeed and rewire controls, bathroom fans, fixtures and smoke detectors. | | | | | | | |
| 3. Replace Electrical Low Voltage (Bid Item) Per contractor estimate* | 1.00 EA | 5,990.00 | 0.00 | 1,198.00 | 7,188.00 | (0.00) | 7,188.00 |
| Demo damaged low voltage cabling as well as rewiring and mounting of cameras and speakers. | | | | | | | |
| Total: Main Level | | | 0.00 | 3,997.00 | 23,982.00 | 0.00 | 23,982.00 |

Septic

| DESCRIPTION | QUANTITY | UNIT PRICE | TAX | O&P | RCV | DEPREC. | ACV |
|---|----------|------------|-------------|-------------|-------------|-------------|-------------|
| 1. Sewer (Bid Item) | 1.00 EA | 300.00 | 0.00 | 0.00 | 300.00 | (0.00) | 300.00 |
| This item did not previously exist or expands the scope of repairs, but is required by current building codes. The code upgrade cost is payable when incurred, subject to limits. | | | | | | | |
| 2. Replace Sewerage System Upgrade to Code Upgrade* | 1.00 EA | 4,900.00 | 24.37 | 980.00 | 4,224.37 | (0.00) | 4,224.37 |
| This item did not previously exist or expands the scope of repairs, but is required by current building codes. The code upgrade cost is payable when incurred, subject to limits. | | | | | | | |
| 3. Replace Sewerage System Upgrade to Code Upgrade* | 1.00 EA | 12,000.00 | 24.37 | 2,500.00 | 14,024.37 | (0.00) | 14,024.37 |
| This item did not previously exist or expands the scope of repairs, but is required by current building codes. The code upgrade cost is payable when incurred, subject to limits. | | | | | | | |
| Total: Septic | | | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

Auto-Owners
INSURANCE

LIFE • HOME • CAR • BUSINESS

Lake Elmo Claims Branch

9374 Eagle Point Circle | Lake Elmo MN 55042

PO Box 64358 | St Paul, MN 55164-0358

t. 800.332.2886 | f. 855.378.5174

lakeelmo.clm@aoins.com

December 28, 2017

United Claim Service, Inc
Attn: Mike Pakkala
Oxboro Plaza Building
140 West 98th Street
Suite 215
Bloomington, MN 55420**SENT REGULAR MAIL & CERTIFIED MAIL**

RE: Our Insured : Ridgewood Bay Resort Inc.
 Our Claim No. : 300-234324-2017
 Our Policy No. : 55-16
 Date of Loss : 08/23/2017
 Loss Location : 14255 288th Ave NW Zimmerman, MN 55395
 Subject : **Coverage Position Letter**

Ridgewood Bay Resort Inc:

This correspondence is in regard to the above referenced fire loss claim to your property located at 14255 288th Ave NW Zimmerman, MN 55395. Auto-Owners Insurance insures Ridgewood Bay Resort Inc. under policy number 55-16 with effective dates of 12/15/2016 to 12/15/2017.

Auto-Owners Insurance Company ("Company") received your claim on August 23, 2017. As we understand the facts of the loss, the loss location sustained damage as a result of a fire in the ceiling above the bar area. Auto-Owners has received the report and supporting testing/design invoice regarding the septic compliance within your property. Unfortunately, your policy does not provide coverage to cover such fees for testing performance.

Please see the following language from your Tailored Protection Policy form 64020 (12-10):

ORDINANCE OR LAW COVERAGE

Pursuant to Minnesota Statute... "A person who submits an application or files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime."

Serving our policyholders and agents since 1916

*Auto-Owners Insurance***E. Coverages****3. Coverage C - Increased Cost Of Construction Coverage**

a. With respect to a covered building that has sustained covered direct physical damage, we will pay the increased cost to:

- (1) Repair or reconstruct damaged portions of that building; and/or
- (2) Reconstruct or remodel undamaged portions of that building, whether or not demolition is required when the increased cost is a consequence of enforcement

However:

- (1) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
- (2) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

The Coinsurance Additional Condition does not apply to Increased Cost of Construction Coverage

b. When a building is damaged or destroyed and Coverage C applies to that building in accordance with 3.a. above, coverage for the increased cost of construction also applies to repair or reconstruction of the following, subject to the same conditions stated in 3.a.:

- (1) The cost of excavations, grading, backfilling and filling,
- (2) Foundation of the building,
- (3) Pilings; and
- (4) Underground pipes, flues and drains. The items listed in b.(1) through b.(4) above are deleted from Property Not Covered, but only with respect to the coverage described in this Provision, 3.b.

As stated above, unfortunately your policy does not have coverage for such performance testing. Therefore, we must respectfully deny your claim for reimbursement. With regard to Ordinance and Law claims, please provide us with the written enforcement of local code or ordinance prior to the completion of any related work or repairs. If you have or obtain any information which may be relevant or may change the facts or circumstances of the loss as stated above, please forward the information to my attention immediately.

All rights, terms, conditions, and exclusions in your policy are in full force and effect and are completely reserved. No action by any employee, agent, attorney or other person on behalf of Company; or hired by Company on your behalf; shall waive or be construed as having waived any right, term, condition, exclusion or any other provision of the policy.

Sincerely,

Paul Fee

AUTO-OWNERS INSURANCE COMPANY
Paul Fee, AAI
Field Claims Representative
Fee.Paul@aoins.com
651-777-8172 Extension 4188

Enclosed: Coverage Position Letter

CC: Ridgewood Bay Resort Inc.

Pursuant to Minnesota Statute... "A person who submits an application or files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime."

May 2, 2018

United Claim Service, Inc
Attn: Mike Pakkala
Oxboro Plaza Building
140 West 98th Street
Suite 215
Bloomington, MN 55420

RE: Insured : Ridgewood Bay Resort Inc.
Claim No. : 300-234324-2017
Our Policy No. : 55-16
Date of Loss : 08/23/2017
Loss Location : 14255 288th Ave NW Zimmerman, MN 55395
Subject : Coverage Position Letter Addendum

LETTER SENT VIA REGULAR & CERTIFIED MAIL

Ridgewood Bay Resort Inc:

This correspondence is in regard to the above-referenced fire loss claim to your property located at 14255 288th Ave NW Zimmerman, MN 55395. Auto-Owners Insurance Company insures Ridgewood Bay Resort Inc. under policy number 55-16 with effective dates of 12/15/2016 to 12/15/2017.

Auto-Owners Insurance Company ("Company") is in receipt of the septic replacement proposal that was provided to us by United Claim Service. No other documentation was provided with the proposals. Please see the following language from the Ordinance or Law coverage form 64020 (12-10):

ORDINANCE OR LAW COVERAGE

C. Application Of Coverage(s)

The Coverage(s) provided by this endorsement apply only if both **C.1.** and **C.2.** are satisfied and are then subject to the qualifications set forth in **C.3.**

1. The ordinance or law:

- a.** Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- b.** Is in force at the time of loss.

However, coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.

2.
 - a. The building sustains direct physical damage that is covered under this policy and such damage results in enforcement of the ordinance or law; or
 - b. The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.
 - c. However, if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this endorsement even if the building has also sustained covered direct physical damage.
3. In the situation described in C.2.b. above, we will not pay the full amount of loss otherwise payable under the terms of Coverages A, B, C and/or D of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage. However, if the covered direct physical damage, alone, would have resulted in enforcement of the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages A, B, C and/or D of this endorsement.

At this time, you have not presented documentation to support that the septic work is being enforced due to an ordinance of law. Therefore, at this time, we must deny your claim to replace the septic system under Ordinance & Law coverage. Please refer to the Coverage Position letter dated December 28, 1017.

If you have or obtain any information which may be relevant or may change the facts or circumstances of the loss as stated above, please forward the information to our attention immediately.

All rights, terms, conditions, and exclusions in your policy are in full force and effect and are completely reserved. No action by any employee, agent, attorney or other person on behalf of Company; or hired by Company on your behalf; shall waive or be construed as having waived any right, term, condition, exclusion or any other provision of the policy.

Sincerely,

Paul Fee

AUTO-OWNERS INSURANCE COMPANY

Paul Fee, AAI

Field Claims Representative

Fee.Paul@aoins.com

Extension 4188

MINNESOTA
JUDICIAL
BRANCH