

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

ACADEMY BANK, N.A., )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. \_\_\_\_\_  
 )  
 AMGUARD INSURANCE COMPANY, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

COMPLAINT

COMES NOW plaintiff Academy Bank, N.A., ("Academy"), for its Complaint against defendant AmGuard Insurance Company ("AmGuard"), alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Academy is a national banking association formed under the laws of the United States with its main office, according to its charter, and principal place of business located in Jackson County, Missouri.

2. Effective October 18, 2019, KCB Bank was merged into Academy. From and after that date, Academy has been the owner and holder of the debt described below, secured by the subject property insured by AmGuard.

3. AmGuard is an insurance business corporation organized and existing under Pennsylvania with its principal place of business located in the State of Pennsylvania. This action seeks recovery upon a policy of casualty insurance issued by AmGuard to Academy's borrower, a Missouri limited liability company, on improved real property located in Clay County, Missouri, naming Academy as loss payee. The debt owed by the borrower and secured by the insured real property each exceed \$75,000.00, exclusive of interest and costs.

4. This Court has subject matter jurisdiction over this action because the parties are citizens of different States and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332.

5. For the foregoing reasons, this Court has personal jurisdiction over AmGuard because AmGuard has submitted to personal jurisdiction in the courts of Missouri through its general contacts with Missouri and by transacting business in Missouri, making the subject insurance and loss payee contracts in Missouri, violating the statute prohibiting vexatious refusal to pay insurance proceeds on a loss occurring in Missouri, and contracting to insure persons, property and risk in Missouri. MO. REV. STAT. § 506.500. As an insurance company, AmGuard may be served with process upon the Missouri Director of the Department of Insurance. MO. REV. STAT. §§ 375.256, 375.261 & 375.906.

6. Venue is proper in this Court because a substantial part of the events and omissions giving rise to the claims occurred and the property that is the subject of the action is located in this district and, alternatively, AmGuard is subject to personal jurisdiction in this district. 28 U.S.C. § 1391(a) & (b).

#### GENERAL ALLEGATIONS

##### Debt Of Insured To Academy

7. On or about January 11, 2017, in exchange for loan proceeds, KCB Bank executed a Commercial Loan and Security Agreement with Shri Ganesai, LLC ("Shri") in the sum of \$1,552,000. A true copy of the Commercial Loan and Security Agreement is attached hereto as **Exhibit 1** and incorporated by this reference.

8. The debt owed by Shri pursuant to the Commercial Loan and Security Agreement was secured by a Deed of Trust of the same date (the "First Deed of Trust") which granted a lien

upon the improved real property located on the premises in Clay County, Missouri, described therein. A true copy of the First Deed of Trust is attached hereto as Exhibit 2 and incorporated by this reference.

9. On or about November 16, 2017, in exchange for loan proceeds, KCB Bank executed a Commercial Loan Agreement with Shri in the sum of \$140,000. A true copy of the Commercial Loan Agreement is attached hereto as Exhibit 3 and incorporated by this reference.

10. The debt owed by Shri pursuant to the Commercial Loan Agreement was secured by a Deed of Trust of the same date (the "Second Deed of Trust") which granted a lien upon the same improved real property covered by the First Deed of Trust located on the premises in Clay County, Missouri. A true copy of the Second Deed of Trust is attached hereto as Exhibit 4 and incorporated by this reference.

11. Section 21 of the First Deed of Trust and the Second Deed of Trust, respectively, each required Shri to obtain insurance on the property covered thereby with a policy included a standard "mortgage clause or lender loss payable clause endorsement naming Academy as mortgagee.

Lender Loss Payee Endorsement by AmGuard

12. Upon information and belief, Shri obtained insurance policy number SHBP061899 from AmGuard (the "Policy"), issued on December 6, 2018, effective January 10, 2019, insuring against casualty loss the property securing the debt owed by Shri to Academy.

13. A Loss Payable Clauses endorsement issued by AmGuard on the Policy provides that payment will be made to Academy for Academy's financial interest up to the Policy's coverage limit and that Academy would be paid regardless of denial of coverage to Shri due to acts of Shri.

Academy was named as Loss Payee therein. A true copy of the endorsement is attached hereto as Exhibit 5 and incorporated by this reference.

14. The debt owed to Academy by Shri remains unpaid and outstanding in the current cumulative sum of the two loan agreements of \$ 1,640,883.69 plus interest on and after March 15, 2021, at the per diem rate of \$295.00 (the "Debt").

Fire Casualty to Subject Property

15. On or about October 2, 2019, the improved real property covered by the Policy was significantly damaged by fire.

16. Both the loss in value of the property and the cost to repair the damage exceed the Debt.

Payment of Premium and Submission of Claim

17. Upon information and belief, the premium required to be paid for coverage on October 2, 2019, was paid to AmGuard prior to that date.

18. Upon information and belief, a claim for the loss suffered by the fire was timely submitted to AmGuard.

Refusal by AmGuard to Pay Claim

19. AmGuard has failed and refused to pay the claim on the basis that the fire was possibly started by arson and the local prosecutor has not made a decision on whether to charge a principal of Shri with arson.

20. However, the acts of Shri as expressly and specifically provided to be irrelevant to the entitlement to Academy, as loss payee, to payment of insurance proceeds when there is no assertion that Academy had any culpability for the fire.

21. Demand was made to AmGuard by Academy on two occasions to make payment to Academy or specify the reason for non-payment that was supported by a provision of the Policy. True copies of the demand letters are attached hereto as Exhibit 6 and Exhibit 7, respectively, and incorporated by this reference.

22. AmGuard did not respond to either demand with a basis on which to deny payment to Academy, as loss payee under the endorsement.

#### COUNT ONE – BREACH OF INSURANCE CONTRACT

23. An insurance contract existed between Academy and AmGuard pursuant to the loss payee endorsement of the Policy.

24. AmGuard received consideration in the form of premiums in exchange for its contractual promise to pay a claim for loss by reason of casualty, such as fire.

25. AmGuard breached the insurance contract by failing and refusing to pay to Academy the claim in the amount of the Debt.

26. AmGuard's breach of the insurance contract has caused monetary damages to Academy equal to the amount of the Debt.

#### COUNT TWO – VEXATIOUS REFUSAL TO PAY INSURANCE CLAIM

27. Academy incorporates by reference the allegations set forth in paragraphs 1 through 26 herein.

28. In any action against an insurance company upon on any contract of insurance delivered in Missouri to a resident of Missouri or a corporation incorporated in Missouri or authorized to do business in Missouri, if the insurer has failed or refused for a period of thirty days after due demand therefor prior to the institution of the action to make payment under and in accordance with the terms and provisions of the contract of insurance and it shall appear from the

evidence that the refusal was vexatious and without reasonable cause, the court or jury may, in addition to the amount due under the provisions of the contract of insurance and interest thereon, allow the plaintiff damages for vexatious refusal to pay and attorney's fees as provided in Mo. Rev. Stat. § 375.420. MO. REV. STAT. § 375.296.

29. In any action against an insurance company to recover the amount of any loss under a policy fire insurance, if it appears from the evidence that such company has refused to pay such loss without reasonable cause or excuse, the court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed twenty percent of the first \$1,500, and ten percent of the amount of the loss in excess of \$1,500 and a reasonable attorney's fee; and the court shall enter judgment for the aggregate sum found in the verdict. MO. REV. STAT. § 375.420.

30. AmGuard has wrongly denied and willfully and without reasonable cause or excuse failed to pay for more than thirty days after demand and prior to commencement of this action the insurance proceeds under the Policy and loss payee endorsement to Academy for the casualty loss arising from the October 2019 fire that damaged the collateral securing repayment of Academy's Debt.

31. The denial and refusal to pay the claim has required Academy to retain counsel to enforce the loss payee endorsement of the Policy. Academy has and will incur reasonable attorney's fees to obtain judgment against AmGuard for recovery of payment of the Debt amount as insurance proceeds.

WHEREFORE, Academy prays that judgment be entered in favor of Academy against AmGuard for the amount of the Debt, plus fifteen percent of the first \$1,500 of the Debt, plus ten percent of the Debt exceeding \$1,500, plus reasonable attorney's fees, plus prejudgment interest thereon to entry of judgment at the lawful rate, and post-judgment interest until payment in full at

the lawful rate, and such other and further relief to which Academy may entitled, at law or in equity.

Respectfully submitted,

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