2022 IL App (1st) 211312-U
Order filed: June 9, 2022

FIRST DISTRICT
FOURTH DIVISION

No. 1-21-1312

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ORTIZ EYE ASSOCIATES, P.C.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 2020 L 000470
	)	
CINCINNATI INSURANCE, INC.,	)	Honorable
	)	Jerry A. Esrig,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Martin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the dismissal of plaintiff's complaint seeking a declaration of coverage under its insurance policy with defendant for business losses allegedly suffered due to the COVID-19 pandemic as well as damages for breach of contract and vexatious denial of coverage.

¶ 2 Plaintiff, Ortiz Eye Associates, P.C., is the owner and operator of an optometry and vision business at 880 Bedford Road in Morris, Illinois. Plaintiff made a claim under its insurance policy with defendant, Cincinnati Insurance, Inc., for business losses that it allegedly suffered due to the COVID-19 pandemic and executive orders issued by Governor Pritzker closing non-essential businesses. Defendant denied plaintiff's claim. Plaintiff then filed a three-count complaint, seeking a declaration of coverage as well as damages for breach of contract and for vexatious denial of

coverage under section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2020)). The circuit court dismissed plaintiff's complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2020)). Plaintiff appeals. We affirm.

¶ 3 Plaintiff purchased an all-risk commercial property insurance policy from defendant effective for the period from December 9, 2019, to December 9, 2020. The policy contained a "Building and Personal Property Coverage Form" stating, "We will pay for direct 'loss' to Covered Property at the 'premises' caused by or resulting from any Covered Cause of Loss." The "premises" was defined as plaintiff's building address at 880 Bedford Road. Covered property was defined as plaintiff's building, outdoor signs, outdoor fences, and business personal property. A covered cause of loss was defined as a "direct 'loss' unless the 'loss' is excluded or limited."[1] "Loss" was defined as "accidental physical loss or accidental physical damage." Construed as a whole, the Building and Personal Property Coverage Form provided coverage to plaintiff's building at 880 Bedford Road, as well as its outdoor signs, outdoor fences, and business personal property for any direct accidental physical loss or direct accidental physical damage.

¶ 4 The policy also provided "Business Income and Extra Expense" coverage for business income that was lost, and extra expenses that were incurred, during a suspension of operations necessitated by a direct loss to covered property at the premises resulting from a covered cause of loss. "Covered property," "loss," and "covered cause of loss" were defined the same as in the Building and Personal Property Coverage Form. Thus, plaintiff was covered for lost business income and extra expenses resulting from a suspension of operations due to a direct accidental physical loss or direct accidental physical damage to its building at 880 Bedford Road, as well as

[1] The limitations and exclusions are inapplicable here.

to its outdoor signs and fences and to its business personal property. The policy provided that defendant would pay for the lost business income and extra expenses only during the "period of restoration," which "begins at the time of direct 'loss'" and ends on the earlier of: "the date when the property at the 'premises' should be repaired, rebuilt or replaced with reasonable speed and similar quality"; or "the date when business is resumed at a new permanent location."

¶ 5 Finally, the policy provided "Civil Authority" coverage for the loss of business income and for the extra expenses incurred when a civil authority prohibits access to the premises due to dangerous physical conditions resulting from a direct accidental physical loss or direct accidental physical damage to property other than plaintiff's property.

¶ 6 On February 9, 2021, plaintiff filed its complaint in the circuit court. Plaintiff alleged that in January 2020, the novel coronavirus, Severe Acute Respiratory Syndrome Coronavirus II (COVID-19), was identified and subsequently declared a pandemic by the World Health Organization. COVID-19 is capable of transmission through contact with submicroscopic molecules in respiratory droplets when an infected host exhales and it can be transmitted through ventilation and HVAC systems while the molecules are in an airborne state. COVID-19 molecules "physically infect surfaces, remain on infected surfaces for considerable periods of time, and can remain on infected surfaces for up to four weeks in low temperatures."

¶ 7 Plaintiff alleged that the COVID-19 contagion attached itself to the surfaces of its premises, causing direct physical damage to: the air quality in the premises; the surfaces in the premises; and plaintiff's laborers and employees. On March 16, 2020, Governor Pritzker issued Executive Order 2020-07 closing all restaurants, bars, and movie theaters to the public in an effort to address the ongoing COVID-19 pandemic. See Exec. Order No. 2020-07, 44 Ill. Reg. 5536 (Mar. 16, 2020). On March 20, 2020, Governor Pritzker issued Executive Order 2020-10 ordering all "non-essential

businesses" to close. See Exec. Order No. 2020-10, 44 Ill. Reg. 5857 (Mar. 20, 2020). In response to the COVID-19 pandemic and the Governor's executive orders, plaintiff suspended its operations and terminated or furloughed the majority of its workforce.

¶ 8 Plaintiff stated that it had submitted a claim to defendant but that defendant has refused to reimburse it under the policy for the direct accidental physical losses/damage resulting from the COVID-19 pandemic and for the business income losses from the closure orders issued by Governor Pritzker.

¶ 9 In count I, plaintiff sought a declaration that its losses incurred in suspending its business operations due to the COVID-19 pandemic and due to the closure orders issued by Governor Pritzker are insured losses under the policy.

¶ 10 In count II, plaintiff alleged that defendant breached the insurance contract by refusing to pay for the covered losses incurred from the COVID-19 pandemic and from the closure orders.

¶ 11 In count III, plaintiff alleged that defendant's denial of coverage was vexatious and unreasonable under section 155 of the Illinois Insurance Code.

¶ 12 Defendant filed a section 2-615 motion to dismiss, arguing that plaintiff failed to allege facts showing that COVID-19 and the related closure orders issued by Governor Pritzker resulted in any direct accidental physical loss or direct accidental physical damage to its covered property as required for coverage under the Business Income and Extra Expense and Building and Personal Property provisions of the policy. Defendant also argued that plaintiff failed to allege facts showing that COVID-19 and the related closure orders resulted in any direct accidental physical loss or direct accidental physical damage to a third party's property as required for coverage under the Civil Authority provision of the policy. In the absence of any coverage, defendant argued that

plaintiff's claims for breach of contract and vexatious denial of coverage also failed to state a cause of action. The circuit court granted defendant's dismissal motion with prejudice. Plaintiff appeals.

¶ 13 A section 2-615 motion challenges the legal sufficiency of the complaint based on defects apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). When reviewing the complaint, we accept as true all well pleaded facts and all reasonable inferences that may be drawn from those facts, and construe the allegations contained in the complaint in the light most favorable to plaintiff. *Id.* We also can consider matters subject to judicial notice, judicial admissions in the record, and exhibits attached to the complaint. *Wells v. State Farm Fire and Casualty Co.*, 2020 IL App (1st) 190631, ¶ 29. A dismissal pursuant to section 2-615 should be granted only where it is clearly apparent that no set of facts can be proved that would entitle plaintiff to recover. *Marshall*, 222 Ill. 2d at 429. Our review is *de novo*. *Id.*

¶ 14 When, as here, an insured sues its insurer over a denial of coverage, the existence of coverage is an essential element of the insured's case and the insured bears the burden of proving that its loss falls within the terms of its policy. *ABW Development, LLC v. Continental Casualty Co.*, 2022 IL App (1st) 210930, ¶ 26. The rules applicable to contract interpretation govern the interpretation of an insurance policy. *Lee v. State Farm Fire and Casualty Co.*, 2022 IL App (1st) 210105, ¶ 15. The primary objective of the court when construing an insurance policy is to ascertain and give effect to the parties' intentions, as expressed in the policy language. *Id.* The insurance policy is construed as a whole, giving effect to every provision, if possible. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). If the words of the policy are clear and unambiguous, they must be applied as written. *ABW Development, LLC* , 2022 IL App (1st) 210930, ¶ 26. If the words of the policy are reasonably susceptible to more than one meaning, they are considered ambiguous and will be construed strictly against the insurer. *Sweet*

Berry Café, Inc. v. Society Insurance, Inc., 2022 IL App (2d) 210088, ¶ 35. However, we will not strain to find ambiguity where none exists, and we will not consider an interpretation that is unreasonable or leads to absurd results. *Id.* ¶ 34.

¶ 15 In the instant case, the plain language of the Building and Personal Property Coverage provision clearly and unambiguously provides coverage for direct accidental physical loss or direct accidental physical damage to covered property at plaintiff's premises, *i.e.*, to plaintiff's building at 880 Bedford Road, as well as to plaintiff's outdoor signs, outdoor fences, and business personal property. The Business Income and Extra Expense provision extends coverage to loss of business income and to extra expenses incurred during a suspension of operations, but only when the suspension is caused by direct accidental physical loss or direct accidental physical damage to the covered property at plaintiff's premises. Finally, the Civil Authority provision extends coverage for the loss of business income and for the extra expenses incurred when a civil authority prohibits access to the premises due to dangerous physical conditions resulting from a direct accidental physical loss or direct accidental physical damage to property other than plaintiff's property.

¶ 16 The primary issue on appeal is whether plaintiff adequately alleged that the damage it suffered from suspending its business operations in response to the presence of the COVID-19 virus inside the covered property at its premises and in response to Governor Pritzker's closure orders constitutes a "physical" loss or "physical" damage so as to fall within the terms of the policy.

¶ 17 Several cases recently have addressed whether a COVID-19-related loss of use constitutes physical loss or damage. See *Sandy Point Dental, P.C. v. Cincinnati Insurance Co.*, 20 F. 4th 327 (7th Cir. 2021); *Lee v. State Farm Fire and Casualty Co.*, 2022 IL App (1st) 210105; *ABW Development, LLC v. Continental Casualty Co.*, 2022 IL App (1st) 210930; *Sweet Berry Café, Inc.*

v. Society Insurance, Inc., 2022 IL App (2d) 210088. We briefly discuss each of those cases as they are dispositive of the instant case.

¶ 18 In *Sandy Point Dental, P.C.*, the plaintiffs were three businesses that effectively shut down their offices pursuant to the closure orders that were issued by Governor Pritzker in an effort to curb the spread of the COVID-19 virus. *Sandy Point Dental, P.C.*, 20 F. 4th at 329. The plaintiffs held materially identical commercial property insurance policies sold by the defendant insurer, which provided coverage for income losses sustained due to a suspension of operations caused by "direct physical loss" to covered property. *Id.*

¶ 19 Each of the plaintiffs filed a claim for coverage under its policy, which the defendant denied. *Id.* at 331. The plaintiffs then brought litigation seeking a declaration of coverage. *Id.* In all three cases, the district court granted the defendant's motion to dismiss for failure to state a claim upon which relief could be granted. *Id.*

¶ 20 On appeal to the Seventh Circuit Court of Appeals (appeals court), the relevant issue was whether the plaintiffs' loss of use of their property due to the presence of COVID-19 and due to the closure orders issued by Governor Pritzker constituted direct physical loss under the relevant commercial property insurance policies. *Id.* at 329-32. The appeals court noted that there was no decision from the Illinois Supreme Court addressing the meaning of the precise policy language before it ("direct physical loss") so it turned for guidance to *Traveler's Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278 (2001), in which the supreme court addressed the meaning of the term "physical injury" used in an excess comprehensive general liability policy. The supreme court held that "the term 'physical injury' unambiguously connotes damage to tangible property causing an alteration in appearance, shape, color or in other material dimension." *Id.* at 312.

¶ 21 In accordance with the supreme court's construction of a "physical" injury as connoting a physical alteration to a tangible property's appearance, shape, color, or material dimension, the appeals court similarly held that "direct physical loss" as used in each plaintiff's commercial property insurance policy necessitates a physical alteration to property.[2] *Sandy Point Dental, P.C.*, 20 F. 4th at 333. As further support for its holding, the appeals court cited the policy's provision of coverage for losses sustained during a "period of restoration," which the policy defined as the date by which the property "should be repaired, rebuilt, or replaced." *Id.* The appeals court concluded that "[w]ithout a physical alteration to property, there would be nothing to repair, rebuild, or replace." *Id.*

¶ 22 The appeals court turned its attention to the plaintiffs' complaints and determined that none of them even attempted to describe how either the presence of the COVID-19 virus or the resulting closure orders physically altered any property. *Id.* at 335-36. In the absence of any physical alteration of property, the COVID-19 virus and resulting closure orders did not cause direct physical loss under the polices and accordingly the appeals court affirmed the dismissal orders. *Id.* at 337.

¶ 23 In *Lee*, the plaintiff was a restaurant that suffered business income losses and other expenses when it closed down pursuant to Governor Pritzker's closure orders in the wake of COVID-19. *Lee*, 2022 IL App (1st) 210105, ¶¶ 4-6. The plaintiff held a businessowners insurance policy issued by the defendant insurer, which provided coverage for income losses sustained due

[2] The appeals court acknowledged there may be scenarios (such as a gas leak) when a property is made so completely uninhabitable as to effectively dispossess the insured, thereby qualifying the insured's loss as a direct physical loss even in the absence of a physical alteration to the property. *Id.* at 334. However, such a scenario was not before it, as the plaintiffs' preferred use of their properties was only partially limited and other uses remained possible such that they were not completely physically dispossessed. *Id.*

to a necessary suspension of operations caused by "accidental direct physical loss." *Id.* ¶ 7. The plaintiff filed a claim for business interruption coverage, which the defendant denied. *Id.* ¶ 8. The plaintiff then brought litigation seeking a declaration of coverage as well as one count for breach of contract relating to the denial of coverage and one count for bad faith denial of coverage. *Id.* The circuit court granted the defendant's section 2-615 motion to dismiss with prejudice. *Id.* ¶ 10.

¶ 24 On the plaintiff's appeal, we affirmed because we were "persuaded by and agree[d]" with *Sandy Point Dental, P.C.*, which interpreted *Traveler's* as holding that a policy insuring against a "physical" injury or loss necessitated a physical alteration to property. *Id.* ¶¶ 16-19. Such a holding accorded with the "plain, ordinary, and popular meaning given to [the phrase 'direct physical loss'] by the average, ordinary, normal, reasonable person." *Id.* ¶ 19. We concluded that the plaintiff's business interruption claim resulting from the COVID-19 closure orders constituted an economic loss and not a physical loss to covered property needed to trigger coverage under the policy. *Id.* ¶ 20. Accordingly, the section 2-615 dismissal of the count seeking a declaration of coverage was proper because "no set of facts can be proved [by the plaintiff] that would entitle it to relief, *i.e.*, an alteration in appearance, shape, color or in other material dimension to covered property." *Id.* Based on our conclusion that coverage was not triggered under the policy, the plaintiff's breach of contract and bad faith denial of coverage counts also failed to state a cause of action. *Id.* ¶ 23.

¶ 25 In *ABW Development, LLC*, the plaintiff was the owner and operator of medical imaging clinics in Illinois and Indiana that suspended much of its business activities due to the COVID-19 closure orders issued by Governor Pritzker and the Indiana Governor. *ABW Development, LLC*, 2022 IL App (1st) 210930, ¶¶ 1, 9. The plaintiff held an insurance policy from the defendant containing a Business Income and Extra Expense endorsement, which provided coverage for business income lost, and extra expenses incurred, as a result of a necessary suspension of its

operations during the period of restoration caused by "direct physical loss of or damage to" covered property. *Id.* ¶¶ 4-6. The policy also included a Civil Authority endorsement, extending coverage for income losses and extra expenses incurred due to civil authority action prohibiting access to covered property, when such action was taken in response to "direct physical loss of or damage to" other property. *Id.* ¶ 8.

¶ 26 The plaintiff filed a claim for coverage under its policy for its COVID-19-related losses, which the defendant denied. *Id.* ¶ 11. The plaintiff then brought litigation seeking a declaration of coverage as well as a claim for bad faith denial of coverage under section 155 of the Illinois Insurance Code. *Id.* ¶¶ 11-12. The circuit court dismissed the plaintiff's complaint with prejudice pursuant to section 2-615. *Id.* ¶ 20.

¶ 27 On the plaintiff's appeal, we affirmed, holding similar to *Lee* that *Traveler's* and *Sandy Point* as well as the vast majority of authority from other jurisdictions compels an interpretation of the terms "physical loss" or "physical damage" as requiring tangible alteration to property. *Id.* ¶¶ 29-32. We held that the plaintiff's complaint, which did not even allege that the COVID-19 virus was present at any of its properties, but only alleged that its presence was "likely," was not sufficient to show that the virus caused physical loss of or damage to property. *Id.* ¶ 35. Further, "even assuming the COVID-19 virus was present at the premises, the mere presence of the virus on surfaces does not constitute 'physical loss of or damage to property' because COVID-19 does not physically alter the appearance, shape, color, structure, or other material dimension of the property." *Id.*

¶ 28 We further found that the policy's reference to paying for the loss of business income due to the suspension of operations during the "period of restoration" supported the conclusion that the plaintiff's alleged losses did not fall within the policy's Business Income and Extra Expense

coverage. *Id.* ¶ 31. The period of restoration was defined as ending when the property at the described premises should be repaired, rebuilt or replaced or when business is resumed at a new permanent location. *Id.* We noted that "[t]he policy's focus on repairing, rebuilding, or replacing property (or moving entirely to a new location), indicates that the 'loss' or 'damage' that gives rise to business income coverage has a physical nature that can be fixed or that the physical loss or damage is so extensive that it requires a complete move to a new location." *Id.*

¶ 29 Next, we considered the dismissal of the count seeking Civil Authority coverage. As with the Business Income and Extra Expense coverage, the trigger for Civil Authority coverage was "direct physical loss of or damage to" property, although the property suffering the loss or damage was that of third parties rather than the plaintiff's property. *Id.* ¶¶ 8, 38. Just as the plaintiff failed to plead sufficient facts showing that the COVID-19 virus caused direct physical loss of or damage to its property that altered its appearance, shape, color, structure, or material dimension, it also failed to allege facts showing that the virus caused such direct physical loss or damage to any other property. *Id.* ¶ 39. Additionally, the Civil Authority endorsement only applies when the action of civil authority "prohibits access" to the described premises. *Id.* ¶ 40. As the owner and operator of medical imaging clinics, the plaintiff was allowed to use its facilities to provide essential services, and therefore access to its facilities was not prohibited so as to fall within the Civil Authority coverage. *Id.*

¶ 30 We also found that the plaintiff failed to state a cause of action for bad faith denial of coverage under section 155 of the Illinois Insurance Code because where no coverage is owed under the policy, there can be no finding that the insurer acted vexatiously or unreasonably with respect to the claim. *Id.* ¶ 41.

¶ 31 In *Sweet Berry Café*, the plaintiff filed a declaratory judgment action seeking coverage, under a "Businessowners Policy" it purchased from the defendant, for losses sustained from restricted operations during the COVID-19 pandemic. *Sweet Berry Café*, 2022 IL App (2d) 210088, ¶ 4. The policy language provided coverage for "direct physical loss of or damage to" covered property. *Id.* ¶ 1. The circuit court granted judgment on the pleadings for the defendant. *Id.* The Second District Appellate Court affirmed, holding in accordance with *Traveler's* and with the dictionary definition of "physical"[3] that the presence of the virus inside the plaintiff's café did not result in direct physical loss of or damage to property because no property was altered such that it needed to be repaired or replaced. *Id.* ¶¶ 40-43. Also, the Governor's closure orders prohibiting in-person dining were not connected to any change in the physical condition of the property, but merely caused an economic loss for the plaintiff that was not covered under the policy. *Id.* ¶ 45.

¶ 32 In the instant case, in accordance with *Traveler's*, *Sandy Point Dental, P.C.*, *Lee*, *ABW Development, LLC*, and *Sweet Berry Café*, we hold that plaintiff failed to state a cause of action for coverage under the Building and Personal Property and Business Income and Extra Expense provisions of the policy. Both of these provisions conditioned coverage on the presence of a direct accidental physical loss or direct accidental physical damage to the described property, meaning that the only direct accidental losses or damage covered are physical ones causing an alteration to the appearance, shape, color, or other material dimension of the property; purely economic losses are not covered. *Id.* The period of restoration clause also supports our conclusion because it

[3] "Physical" is defined as "having material existence: perceptible especially through the senses and subject to the laws of nature" and "of or relating to material things." Merriam-Webster's Online Dictionary, www.merriam-webster.com/dictionary/physical.

provides coverage until the property should be "repaired, rebuilt or replaced" or when business is resumed at a new location, which connotes that the property first must have sustained a physical loss or damage requiring repairs or that the physical loss or damage was so extensive as to require a complete move to a new location. Plaintiff failed to plead any facts showing that the presence of the COVID-19 virus inside the described property caused any direct accidental physical loss or direct accidental physical damage thereto that altered its appearance, shape, color, structure or material dimension necessitating any repairs or requiring a move to a new location. Nor did plaintiff plead any facts showing that its suspension of business operations constituted anything other than an economic loss.

¶ 33 Next we turn to plaintiff's claim for coverage under the Civil Authority provision of the policy. As with the Building and Personal Property and Business Income and Extra Expense provisions, the trigger for civil authority coverage is direct accidental physical loss or direct accidental physical damage to property, except that the property suffering the direct accidental physical loss or damage is that of third parties. Just as plaintiff failed to allege facts showing that the COVID-19 virus caused direct accidental physical loss or damage altering the appearance, shape, color, structure or material dimension of its own property, plaintiff also failed to allege any facts indicating that the virus caused such direct accidental physical loss or damage to a third-party's property. See *ABW Development, LLC*, 2022 IL App (1st) 210930, ¶¶ 38-39.

¶ 34 Additionally, the Civil Authority provision only applies when an action of the civil authority "prohibits access" to the premises. We may take judicial notice that Executive Order 2020-10 issued by Governor Pritzker on March 20, 2020, included eye care centers as "essential businesses" permitted to continue operations consistent with social distancing requirements. Exec. Order No. 2020-10, 44 Ill. Reg. 5857 (Mar. 20, 2020). As plaintiff owned and operated an eye care

center allowed to remain open and accessible to the public during the pandemic, the Civil Authority provision is inapplicable here.

¶ 35 Accordingly, for all the reasons discussed, plaintiff has failed to state a cause of action for coverage under the Building and Personal Property, Business Income and Extra Expense and Civil Authority provisions of the policy. Therefore, we affirm the dismissal of the count seeking a declaration of coverage.

¶ 36 Based on our conclusion that coverage was not triggered under the policy, there can be no breach of the insurance contract premised on the allegation that defendant failed to provide coverage. See *Lee*, 2022 IL App (1st) 210105, ¶ 23. Accordingly, we affirm the dismissal of the breach of contract count.

¶ 37 Finally, we affirm the dismissal of the count alleging bad faith denial of coverage under section 155 of the Illinois Insurance Code, because as no coverage is owed under the policy there can be no finding that defendant acted vexatiously or unreasonably with respect to that claim. *Id.*; *ABW Development, LLC,* 2022 IL App (1st) 210930, ¶ 41.

¶ 38 Before concluding, we note that plaintiff asks us to follow a handful of federal district court cases, which have interpreted similar policy language as covering losses due to the COVID-19 virus or government-imposed COVID-19 closure orders even in the absence of any physical alteration to property. See *e.g.*, *Studio 417, Inc. v. Cincinnati Insurance Co.*, 478 F. Supp. 3d 794 (W.D. Mo. 2020); *Derek Scott Williams PLLC v. Cincinnati Insurance Co.*, 522 F. Supp. 3d 457 (N.D. Ill. 2021). These same cases were considered and rejected in *ABW Development, LLC* and in *Sweet Berry Café*, because they ignored the plain and ordinary meaning of "direct physical loss" and "direct physical damage." Also, federal appellate courts in the same circuits have disagreed with the district court cases and ruled in favor of the insurers for the reasons discussed earlier in

this order. See *e.g.*, *Sandy Point Dental, P.C.*, 20 F. 4th at 335; *Oral Surgeons, P.C. v. Cincinnati Insurance Co.*, 2 F. 4th 1141, 1144 (8th Cir. 2021). Consistent with the majority of cases throughout the country, we hold that the policy language here does not provide coverage for losses due to the COVID-19 virus or government-imposed COVID-19 closure orders in the absence of any showing of a physical alteration to property.

¶ 39 Plaintiff also argues that the policy language here is ambiguous because the policy's use of the disjunctive "or" in the phrase "accidental physical loss or accidental physical damage" suggests that "loss" means something different than "damage." Plaintiff posits that reasonable persons could find that while "damage" connotes tangible alteration to property, "loss" connotes a non-tangible, economic loss, including the deprivation of its property caused by the presence of the COVID-19 virus and the Governor's executive orders restricting its business operations.[4] The Second District Appellate Court rejected this same argument in *Sweet Berry Café*, noting that the word "loss" as used in the policy is modified by the word "physical," so that any loss must be physical in nature, meaning that there must be some tangible alteration of the described property in order for it to fall within the coverage provisions of the policy. *Sweet Berry Café*, 2022 IL App (2d) 210088, ¶ 46. The Second District Appellate Court also took judicial notice that the presence of COVID-19 inside a business is easily remediated by the cleaning off of the surfaces, and therefore was not akin to a scenario such as gas contamination when a property is made so completely uninhabitable as to effectively dispossess the insured. *Id.* ¶ 43. We agree with the analysis employed in *Sweet Berry Café* and similarly hold that plaintiff has failed to plead an "accidental physical loss" covered under the policy.

[4] As discussed earlier in this order, plaintiff was allowed to use its facilities to provide essential services and therefore the Governor's executive orders did not prohibit access to the premises.

¶ 40 Plaintiff argues, though, that the commercial general liability (CGL) portion of the policy defines property damage as including loss of use of property that is not physically altered. Plaintiff contends that since loss of use is included within the policy's CGL coverage for "property damage," then such loss of use also should be found to be included within the policy's coverage for "physical damage" or "physical loss" under the commercial property portion of the policy. Plaintiff's argument fails, as the CGL portion of the policy is distinct from the commercial property coverage and is not at issue here. The CGL coverage has separate terms, conditions, and limits of liability, and by its terms only applies where third parties seek to hold plaintiff liable for certain defined matters, as opposed to the first-party property insurance coverage at issue here. See *e.g.*, *Michael Cetta, Inc. v. Admiral Indemnity Co.*, 506 F. Supp. 3d 168, 180-81 (S.D.N.Y. 2020) (holding that "the business income coverage provision is not part of the commercial general liability section. It is a part of the [p]olicy's commercial *property* section. *** The Court sees no reason to cross wires between different definition sections of the [p]olicy, especially when those sections protect entirely different interests."); *Elite Union Installations, LLC v. National Fire Insurance Co. of Hartford*, 559 F. Supp. 3d 211, 221 (S.D.N.Y. 2021) (holding that "The fact that 'property damage' is defined to include 'loss of use' in the Commercial General Liability Coverage part, but not in the Business Property Coverage part, *** suggests that the parties knew how to refer to the loss of use of property that is not physically damaged when they wanted to and did not refer to such loss of use of property for Business Property Coverage.").

¶ 41 For the same reason, we reject plaintiff's argument that we should look to the definition of "loss" contained in the coverage extension for "Fundraising Event Cancellation Expense[s]." The instant case does not involve the denial of coverage for the cancellation of a fundraising event and therefore any definition of "loss" contained in that particular coverage extension is inoperable here.

¶ 42 For all the foregoing reasons, we affirm the judgment of the circuit court.

¶ 43 Affirmed.