

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 55

20STCV17169

**P.F. CHANG'S CHINA BISTRO, INC. vs CERTAIN
UNDERWRITERS AT LLOYD'S OF LONDON**

February 4, 2021

8:30 AM

Judge: Honorable Malcolm Mackey
Judicial Assistant: S. Ontiveros
Courtroom Assistant: M Kinney

CSR: Michelle Cooper #13572
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Heather W Habes (Telephonic); Jeffrey Alan Kiburtz (Telephonic); Reynold Lloyd Siemens (Telephonic)

For Defendant(s): Jayme C Long (X) and Alanna Clair & Shari L. Klevens (x) appearing Pro Hac Vice on Court Connect (Telephonic); Brendan V Mullan (Telephonic); Justin Reade Sarno (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion for Judgment on the Pleadings

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Michelle Cooper #13572, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

Matter is called for hearing.

The Court has read and considered all documents filed hereto regarding the above-captioned Motion. Counsel have been provided a copy of the court's written tentative ruling by email. Counsel is given the opportunity to argue.

After hearing from the parties, the Court adopts its tentative ruling set forth below as the Final Ruling:

The motion is denied.

The complainants' interpretation of policy provisions is reasonable, and supports denying the motion for judgment on the pleadings, as exemplified by the following excerpts:

53. On information and belief, American Guarantee contends that its promise to pay for, and as a result of, "physical loss of or damage to" qualifying property is strictly limited to property that

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undergoes a tangible, permanent alteration or transformation as a result of an external force, as might be the case when a fire burns a piece of wood. But the coverage provided under the Property Policy is not so narrowly circumscribed: its coverage expressly extends to any "physical loss of . . . property" unless excluded, including the inability to access or use all or a portion of qualifying physical premises.

54. The requirement of "physical loss of or damage to" property has been met in one or more ways, including by virtue of the "physical loss of or damage to" P.F. Chang's dining rooms or other qualifying property caused by (i) the actual or potential presence of virus in the air (whether in droplet nuclei, aerosols, droplets, or otherwise) in the vicinity of P.F. Chang's restaurants or other qualifying buildings; (ii) the necessity of modifying physical behaviors through the use of social distancing, avoiding confined indoor spaces, and/or not congregating in the same physical area as others, whether such practices were mandated by government order or not, in order to reduce or minimize the potential for viral transmission;⁵ (iii) government orders requiring that physical spaces such as P.F. Chang's dining rooms be shut-down; and/or (iv) the need to mitigate the threat or actual physical presence of virus on door-handles, tables, silverware, surfaces, in heating and air conditioning systems and any other of the multitude of places virus has or could be found.

(First Amended Complaint, ¶¶ 53- 54.)

Courts defer to plaintiffs' reasonable interpretations of contracts, in ruling upon motions addressing pleading insufficiencies. *Performance Plastering v. Richmond American Homes of Cal., Inc.* (2007) 153 Cal.App.4th 659, 672 (lack of essential terms in agreement not properly resolved on demurrer where related to complainants' reasonable interpretations); *Aragon-Haas v. Family Security Services, Inc.* (1991) 231 Cal.App.3d 232, 239; *Davies v. Sallie Mae, Inc.* (2008) 168 Cal. App. 4th 1086, 1091. "On a demurrer, the court must consider the sufficiency of the allegations, including any parol evidence allegations, to determine whether the contract is reasonably susceptible to the plaintiff's alleged interpretation." *George v. Automobile Club of So. Cal.* (2011) 201 Cal.App.4th 1112, 1128. A motion for judgment on the pleadings involves the same type of procedures that apply to a general demurrer. *Richardson-Tunnell v. School Ins. Program for Employees* (2007) 157 Cal.App. 4th 1056, 1061; *Burnett v. Chimney Sweep* (2004) 123 Cal. App. 4th 1057, 1064.

Most cited authority does not control here. California courts are not bound to follow decisions of lower federal courts. *People v. Sup. Ct.* (2002) 103 Cal. App. 4th 409, 431. A treatise is "not binding law." *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1393. State trial

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court rulings are not binding precedent. E.g., Schachter v. Citigroup, Inc. (2005) 126 Cal.App.4th 726, 738.

Notice is waived.