

IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT

CHAPPARELLS INC.	)	CASE NO.: CV-2020-06-1704
	)	
Plaintiff	)	JUDGE KATHRYN MICHAEL
-vs-	)	
	)	
THE CINCINNATI INSURANCE	)	<b><u>ORDER</u></b>
COMPANY	)	
	)	
Defendant	)	

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This matter comes before the Court on the Defendant’s Motion to Dismiss, filed on August 27, 2020. The Plaintiffs filed a response in opposition on September 8, 2020.

The Defendant seeks dismissal of the complaint against it pursuant to Civ. R. 12(B)(6). This Motion was made prior to any other responsive pleading and is in procedural compliance with Civ. R. 12(B).

**STANDARD OF REVIEW UNDER CIV. R. 12(B)(6)**

Civ. R. 12(B)(6) allows courts to dismiss a complaint for failure to state a claim upon which relief can be granted. The court is limited to a review of the complaint and any material included with the complaint in its review of a motion to dismiss pursuant to Civ. R. 12(B)(6). *Fisher v. Ahmed* (2020), 2020-Ohio-1196, ¶9, citing *State ex rel. Crabtree v. Franklin Cty. Bd. of Health* (1997), 77 Ohio St.2d 247, fn.1. A challenge under Civ. R. 12(B)(6) is a simply test of the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey County Bd. of Commr.* (1992), 65 Ohio St.3d 545, 548. The Court, however, must be convinced “beyond doubt” that the Plaintiff can prove no set of facts entitling them to recovery before the dismissing the complaint pursuant to this section. *Id.*, citing *O’Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 141.

A complaint’s sufficiency is measured by the standards set forth in Civ. R. 8(A), which require a short and plain statement of the claim showing that the party is entitled to relief and

a demand for judgment for the relief to which the party claims to be entitled. The Court must also presume that all factual allegations in the complaint are true and must make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190.

**ANALYSIS OF COMPLAINT AGAINST CIV. R. 12(B)(6) and CIV. R. 8(A)**

The Plaintiffs' complaint, as filed on June 11, 2020, alleges three counts: (1) declaratory judgment; (2) breach of contract; and (3) breach of the duty of good faith and fair dealing.

First, an action for declaratory judgment is a method by which parties can receive certainty regarding their legal rights and obligations. *Chojnacki v. Mohr* (9<sup>th</sup> Dist., 2018), 2018-Ohio-1167, ¶14, citing *Mid-Am Fire & Cas. Co. v. Heasley* (2007), 113 Ohio St. 3d 133, ¶8. In ruling upon a declaratory judgment, a court must either declare the rights of the parties or dismiss the complaint, which the court must do if no justiciable issue exists between the parties or if the judgment will not terminate the uncertainty. *Id.*, citing *Velasquez v. Ghee* (9<sup>th</sup> Dist., 1994), 99 Ohio App.3d 52, 53-54. As the Court is not called to rule upon the merits of the declaratory judgment in a review under Civ. R. 12(B)(6), the Court simply uses this guidance as a tool by which to review the complaint. With this view to the complaint, the Court finds that the Plaintiffs made a short and plain statement regarding the existence of an actual case or controversy for declaratory judgment and that the Plaintiffs made a demand for judgment and relief under its claim.

Second, the Plaintiffs claim a breach of contract between the parties. To establish a breach of contract, a plaintiff must prove: (1) the existence of the contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) damages or loss resulting from the breach. *Lucarell v. Nationwide Mutual Insurance Company* (2018), 152 Ohio St.3d 453, 463. The Plaintiffs' Complaint reflects that the Plaintiffs assert a brief statement of their claim: that a contract for insurance services existed between the parties; that the Plaintiffs performed

by paying premiums in exchange for a policy issued by the Defendant; that the Defendant breached by denying coverage under the policy; and that the Plaintiffs suffered damages.

Finally, the court considers the Plaintiffs' claim for breach of the duty of good faith and fair dealing. Case law acknowledges this duty of an insurer to act in good faith and that the failure to do so will give rise to a cause of action against the insurer. *Ohio Natl. Life Assur. Corp. v. Satterfield* (9<sup>th</sup> Dist., 2011), 2011-Ohio-2116, ¶13, citing *Hoskins v. Aetna Life Ins. Co.* (1983), 6 Ohio St.3d 272, 276. The Plaintiffs allege in the Complaint that the Defendant is bound by a requirement of good faith and fair dealing and that the Defendant breached this duty.

Upon review of the Complaint, the Court finds that the Plaintiffs meet the minimum requirements of sufficiency in each of their claims to defeat a challenge under Civ. R. 12(B)(6). Therefore, the Plaintiffs has alleged sufficient factual information in their pleadings to satisfy Civ. R. 8(A).

### **CONCLUSION**

The Court finds that the Complaint meets the minimum requirements of sufficiency to survive a challenge under Civ. R. 12(B)(6). The Court cannot find beyond doubt that there is no set of facts that Plaintiffs can prove that would entitle them to recovery.

THEREFORE, the Defendant's Motion to Dismiss the Plaintiff's Complaint pursuant to Civ. R. 12(B)(6) is hereby DENIED.

This matter shall be scheduled for a Telephone Status Conference by separate order.

IT IS SO ORDERED.



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JUDGE KATHRYN MICHAEL

CC: ATTORNEY RONALD K. STARKEY  
ATTORNEY ADAM M. RUNKLE

ATTORNEY GREGORY H. COLLINS  
ATTORNEY SCOTT D. STEPHENSON

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