

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 11 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LIBERTY CORPORATE CAPITAL, LTD.,
a foreign corporation, as the sole corporate
capital provider of Syndicate 1980,

Plaintiff-Appellee,

v.

STOCKDALE CAPITAL PARTNERS,
LLC,

Defendant-Appellant.

No. 22-56210

D.C. No.

2:22-cv-03561-JFW-KS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted December 7, 2023**
Portland, Oregon

Before: NGUYEN and MILLER, Circuit Judges, and MONTALVO,** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Frank Montalvo, United States District Judge for the
Western District of Texas, sitting by designation.

Stockdale Capital Partners, LLC appeals from the district court’s order granting judgment on the pleadings to Liberty Corporate Capital, Ltd. in this insurance-coverage action. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review de novo a district court’s decision to grant judgment on the pleadings under Federal Rule of Civil Procedure 12(c). *Lyon v. Chase Bank USA, N.A.*, 656 F.3d 877, 883 (9th Cir. 2011). “A judgment on the pleadings is properly granted when, taking all the allegations in the non-moving party’s pleadings as true, the moving party is entitled to judgment as a matter of law.” *Marshall Naify Revocable Tr. v. United States*, 672 F.3d 620, 623 (9th Cir. 2012) (quoting *Fajardo v. County of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999)). “We review the denial of leave to amend for an abuse of discretion, but we review the question of futility of amendment de novo.” *Wochos v. Tesla, Inc.*, 985 F.3d 1180, 1197 (9th Cir. 2021) (quoting *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1172 (9th Cir. 2016)).

1. Stockdale alleges that Covid-19 caused its business losses and that Covid-19 is a “Pollution Condition” under the terms of the Site Pollution Liability Insurance Policy that Stockdale purchased from Liberty. Under the policy, “[t]he Insurer will pay the Insured for Business Interruption and Extra Expense caused directly from a Pollution Condition on, at, under or migrating from the Insured

Property.” We assume without deciding that Covid-19 is a “Pollution Condition” under the policy. To be entitled to coverage, Stockdale would still need to show that its losses were “caused directly” by the presence of Covid-19 “on, at, under or migrating from” its property. It has failed to do so.

Stockdale attributes its losses to “the rampant spread of COVID-19 in the State of Arizona,” “the spread of COVID-19,” “the ongoing COVID-19 threat,” the implementation of Executive Orders GA-14 and 2020-18, and stay-at-home orders in Harris County, Texas. Yet neither Covid-19’s general existence nor state emergency orders establish that the virus’s presence on or at the insured properties *directly caused* Stockdale’s losses. Rather, Stockdale’s own allegations suggest that Stockdale’s losses resulted from the virus’s uncontained spread across countless properties in multiple States.

Nor does the efficient proximate cause doctrine fill the gap in the pleadings. The efficient cause of the shutdowns and emergency orders at issue here was the general spread of the Covid-19 virus throughout Arizona and Texas, not the specific Covid-19 particles on Stockdale’s two properties. *Cf. Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 894 (9th Cir. 2021) (finding that a virus exclusion provision barred coverage because “the spread of the virus throughout [the State]” was the efficient proximate cause of plaintiff’s losses).

2. “When the district court denies leave to amend because of futility of

amendment, we will uphold such denial if ‘it is clear, upon *de novo* review, that the complaint would not be saved by any amendment.’” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 893 (9th Cir. 2010) (quoting *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008)). Before this court, Stockdale offers only generalities about the contents of any future amendments. For instance, Stockdale claims that it “would have pled, even more clearly, that . . . it was the presence of COVID-19 on or at the Properties that caused Stockdale’s losses.” Stockdale’s vagueness supports the district court’s conclusion that Stockdale appears unlikely to ever “successfully allege that its losses were caused by anything other than . . . COVID-19 generally.” Because amendment would be futile, the district court did not abuse its discretion when it determined that there is “no need to prolong the litigation by permitting further amendment.” *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002).

AFFIRMED.