

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REVIVED ALIVE, INC.,

Plaintiff,

v.

VALLEY FORGE INSURANCE
COMPANY,

Defendant.

CASE NO. C16-5882-RBL

ORDER ON CROSS-MOTIONS

DKT. ##16, 17

THIS MATTER is before the Court on the Parties' Cross-Motions for Partial Summary Judgment [Dkt. ##16, 17]. Plaintiff Revived Alive, Inc., dba Beyond the Veil, and Defendant Valley Forge Insurance Company contend no disputes of fact exist. They ask the Court to resolve the narrow questions of (1) whether Revived Alive had coverage under its policy's "newly acquired" property endorsement for 549 dresses that it purchased prior to Valley Forge's grant of coverage but within 180 days of its loss and (2) whether Valley Forge violated Washington's Insurance Fair Conduct Act, RCW 48.30.010 (2007), by denying coverage or by failing to bring the endorsement to Revived Alive's attention.

1 **I. DISCUSSION**

2 On April 10, 2014, Revived Alive purchased 380 dresses for resale at its Vancouver
3 bridal shop. It bought 169 more on April 22, 2014. It obtained insurance from Valley Forge for
4 one year, starting June 5, 2014 (57 days after April 10th). Less than three weeks later, the shop
5 was damaged by a fire that had started at a neighboring establishment. Revived Alive had
6 \$116,963.09 in (actual cash value) damage. Valley Forge paid \$100,000—what it claims was the
7 policy’s limit.

8 Revived Alive argues it had \$250,000 in additional coverage under its policy’s “newly
9 acquired” property endorsement because it had purchased its dresses within 180 days of its loss.
10 It claims Valley Forge failed to disclose this coverage, and so violated the IFCA. Valley Forge
11 disagrees, arguing the endorsement only applies to property purchased after a policy has
12 commenced. It also argues it did not (unreasonably) deny coverage. Each asks for partial
13 summary judgment.

14 Summary judgment is proper “if the pleadings, the discovery and disclosure materials on
15 file, and any affidavits show that there is no genuine issue as to any material fact and that the
16 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In determining whether
17 an issue of fact exists, the Court must view all evidence in the light most favorable to the
18 nonmoving party and draw all reasonable inferences in that party’s favor. *See Anderson v.*
19 *Liberty Lobby, Inc.*, 477 U.S. 242, 248–50, 106 S. Ct. 2505 (1986); *see also Bagdadi v. Nazar*,
20 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is
21 sufficient evidence for a reasonable factfinder to find for the nonmoving party. *See Anderson*,
22 477 U.S. at 248. The inquiry is “whether the evidence presents a sufficient disagreement to
23 require submission to a jury or whether it is so one-sided that one party must prevail as a matter
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1 of law.” *Id.* at 251–52. The moving party bears the initial burden of showing no evidence exists
2 that supports an element essential to the nonmovant’s claim. *See Celotex Corp. v. Catrett*, 477
3 U.S. 317, 322, 106 S. Ct. 2548 (1986). Once the movant has met this burden, the nonmoving
4 party then must show the existence of a genuine issue for trial. *See Anderson*, 477 U.S. at 250. If
5 the nonmoving party fails to establish the existence of a genuine issue of material fact, “the
6 moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24.

7 The policy’s “newly acquired” endorsement says in an addendum that Valley Forge will
8 pay for damage to Revived Alive’s business personal property that it newly acquires:

9 **1. Business Personal Property**

10 a. When a Limit of Insurance is shown in the
11 Declarations for Business Personal Property at any
12 described premises, we will pay for direct physical loss of
13 or damage to the following property caused by or resulting
14 from a Covered Cause of Loss:

15 (1) Business Personal Property, including such
16 property that you newly acquire, at a building you
17 acquire by purchase or lease at any premises,
18 including those premises shown in the Declarations;
19 and

20 (2) Business Personal Property that you newly
21 acquire at a described premises.

22 b. The most we will pay for loss of or damage to
23 Business Personal Property under this Additional Coverage
24 in any one occurrence is \$250,000 at each premises.

Dkt. #16 (Bragg Dec.) at Ex. C. This temporary coverage ends when (1) the policy as a whole
expires, (2) the newly acquired property is more specifically insured, (3) Revived Alive reports
the property’s value to Valley Forge, or (4) “180 days expire after [Revived Alive’s acquiring it]
....” *Id.*

Revived Alive argues that because it purchased its dresses before any of these four
terminating conditions occurred, Valley Forge should have covered the entirety of Revived
Alive’s loss. Valley Forge argues the addendum only applies to property purchased after an

1 insurance policy is already in place—that it affords temporary coverage to property the insurer
2 and insured have not yet had an opportunity to value accurately—and Revived Alive’s dresses
3 were “stock” merchandise whose value was already assessed (and covered) when the policy was
4 issued.

5 “An insurance policy is construed as a whole, with the policy being given a ‘fair,
6 reasonable, and sensible construction as would be given to the contract by the average person
7 purchasing insurance.’” *Am. Nat. Fire Ins. Co. v. B & L Trucking & Const. Co.*, 134 Wash. 2d
8 413, 427, 951 P.2d 250, 256 (1998) (quoting *Key Tronic Corp. v. Aetna (CIGNA) Fire*
9 *Underwriters Ins. Co.*, 124 Wash.2d 618, 627, 881 P.2d 201 (1994)). If the policy is clear and
10 unambiguous, a court must enforce it as written and may not modify it or create ambiguity where
11 none exists. *See McDonald v. State Farm Fire & Cas. Co.*, 119 Wash.2d 724, 733, 837 P.2d
12 1000 (1992). Ambiguity exists when a clause, on its face, it is fairly susceptible to two
13 interpretations, both of which are reasonable. *See Morgan v. Prudential Ins. Co.*, 86 Wash.2d
14 432, 435, 545 P.2d 1193 (1976). When analyzing a policy and determining whether an ambiguity
15 exists, a court may not engage in a “‘strained or forced construction’ that would lead to absurd
16 results,” nor may it “interpret [the] policy language in a way that extends or restricts [it] beyond
17 its fair meaning or renders it nonsensical or ineffective.” *Christal v. Farmers Ins. Co. of*
18 *Washington*, 133 Wash. App. 186, 191, 135 P.3d 479, 481 (2006), *as amended* (May 23, 2006)
19 (quoting *Morgan*, 86 Wash.2d at 434–35, 545 P.2d 1193)). It must apply definitions provided by
20 the policy and give any undefined terms their plain, ordinary meaning. *See Overton v. Consol.*
21 *Ins. Co.*, 145 Wash.2d 417, 427–28, 38 P.3d 322 (2002). Any ambiguities are construed against
22 the drafter-insurer and for the insured. *See Am. Nat. Fire Ins. Co.*, 134 Wash.2d at 427.

1 Revived Alive reads the addendum in isolation, which produces absurd results. It forgets
2 that coverage must have an inception point: the date a policy agreement begins. It would make
3 no difference under Revived Alive’s rendering whether it was insured during its neighbor’s fire
4 or not, so long as it obtained insurance within 180 days of purchasing its inventory. The ordinary
5 consumer understands insurance coverage begins when a policy begins and that it does not apply
6 retroactively.

7 Revived Alive’s rendering also creates the absurd situation in which Valley Forge could
8 charge Revived Alive an additional premium for inventory already valued and incorporated into
9 the policy’s limits during the underwriting process. The policy covers property that Revived
10 Alive owns and uses in its business and “stock,” defined as “merchandise held in storage or for
11 sale, raw materials and in-process or finished goods, including supplies used in their packing and
12 shipping” up to \$100,000. Dkt. #16 (Bragg Dec.) at Ex. C. Because Revived Alive owned its
13 dresses and was holding them for resale at the time of the underwriting process, they constituted
14 stock properly falling under the normal grant of coverage. Value Forge valued this property
15 when setting the policy’s limits. To read the addendum as referring to anything other than
16 property purchased after a policy is issued would be to give the policy a strained and nonsensical
17 construction. It is not ambiguous, and Revived Alive did not have coverage under this
18 endorsement for its 549 dresses.

19 Valley Forge argues that because it does not owe Revived Alive coverage under the
20 “newly acquired” endorsement, it did not violate Washington’s IFCA. In response, Revived
21 Alive purports it acquired property between the date coverage began and the fire—additional
22 store equipment totaling approximately \$270, *see* Dkt. #19 (Bragg Dec.) at Ex. G (three
23 invoices)—and that by failing to disclose coverage under the endorsement for these items and the
24

1 dresses, Valley Forge violated the IFCA. Valley Forge points out one invoice was actually dated
2 before coverage began, so only \$210.60 could have been covered by the endorsement.¹ It argues
3 it did not unreasonably fail to mention the endorsement because even Revived Alive's public
4 adjuster did not request coverage besides the \$100,000 policy limit.

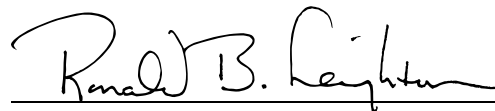
5 The IFCA creates a private right of action against an insurer that unreasonably denies a
6 claim for coverage or payment of benefits. *See generally Perez-Crisantos v. State Farm Fire &*
7 *Cas. Co.*, 187 Wash. 2d 669, 684, 389 P.3d 476 (2017); *see also* RCW 48.30.010. The Court
8 cannot determine, based on a couple invoices submitted in a reply, whether as a matter of law
9 Valley Forge reasonably or unreasonably failed to give Revived Alive approximately \$210 more
10 (assuming a deductible does not apply to newly acquired property). Reasonableness is a question
11 for the jury. The parties' motions for summary judgment on whether Valley Forge violated
12 Washington's IFCA are DENIED. Revived Alive's IFCA claim remains.

13 II. CONCLUSION

14 Revived Alive's Motion [Dkt. #16] is DENIED, and Valley Forge's Motion [Dkt. #17] is
15 GRANTED IN PART AND DENIED IN PART. Revived Alive's claim that Valley Forge owes
16 it additional money for the 549 dresses it purchased prior to coverage is DISMISSED.

17 IT IS SO ORDERED.

18 Dated this 31st day of August, 2017.

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20 

21 Ronald B. Leighton
22 United States District Judge

23 ¹ Revived Alive brought these invoices to the Court's attention in its response [Dkt. #19] to Valley Forge's motion
24 for partial summary judgment. It did not argue in its motion for partial summary judgment that Valley Forge owed it
coverage for this equipment. If it had, it appears \$210.60 worth of the property may have been covered under the
endorsement.