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The Ontario Court of Appeal rules on the coverage exclusion of faulty workmanship by a contractor

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On December 23, 2015, the Ontario Court of Appeal[1] set aside a decision of the motion judge[2] which had granted a motion for summary judgment brought by the insurer to dismiss a claim by its insured.

Facts

The insured had entered into an agreement with a contractor to restore the exterior cladding of her home. The restoration process involved the use of water jets. The contractor was first required to seal all areas where water might enter the interior of the home. The insured submitted a claim to her insurer for water damage caused to the interior of her home by the contractor resulting from the exterior restoration work. The insurer denied coverage based on the "making good faulty workmanship" and "property being worked on" exclusions.

Motion judge

The motion judge interpreted the "making good faulty workmanship" and "property being worked on" exclusions broadly to exclude coverage for all damages caused directly or indirectly by the contractor and damages caused to the property being restored, thereby rendering ineffective the specific exception for resulting damages the restoration work. According to the motion judge, the exception was overridden by the two general exclusions.

The insured had contracted a Security Plus "all-risks" homeowner's insurance policy. The first of the two aforesaid exclusions, under the heading "Losses Excluded", read as follows:

> We do not insure:
>
> [...]
>
> 2. the cost of making good faulty material or workmanship;

The second exclusion, under the heading "Property Excluded", read as follows:

> We do not insure loss or damage to:
>
> [...]
>
> 4. property :
>
> (ii) while being worked on, where the damage results from such process or work (but resulting damage to other insured property is covered);

The decision

The Court of Appeal totally dismissed the motion judge's reasoning, based on the following principles of interpretation[3]:

a) Exclusions are to be interpreted narrowly

b) Exceptions are to be interpreted broadly

c) Ambiguities in the interpretation of the clauses of an insurance contract are to be resolved in favour of the insured

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1 *Monk* v. *Farmers' Mutual Insurance Company*, 2015 ONCA 911.

2 *Monk* v. *Farmers and Muskoka Inc.*, 2014 ONSC 4956.

3 *MacDonald* v. *Chicago Title Insurance Company of Canada*, 2015 ONCA 842, para. 66.

The damages suffered by the insured resulted from the contractor's work and fell within the scope of the exception which maintains insurance coverage for resulting damage to "property being worked on". The exclusion for "making good faulty workmanship" and the exclusion for "property being worked on" could not be construed in a manner that rendered a clear exception ineffective.

If the insurer had clearly wished to exclude all damages resulting directly or indirectly from a contractor's work, it would not have stipulated an exception to an exclusion in this all-risks type of insurance policy. Therefore, the insured was entitled to coverage.

It is noteworthy that the Supreme Court of Canada[4] has agreed to hear an appeal from the Alberta Court of Appeal[5] which, among other things, should establish an analytical process that will clarify the distinction between the concepts of "making good faulty workmanship" and "resulting damage" in the context of a builder's risk insurance policy.

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[4] *Ledcor Construction Limited, et al.* c. *Société d'assurance d'indemnisation Northbridge, et al.*, 2015 CanLII 60494 (CSC).

[5] *Ledcor Construction Limited* v. *Northbridge Indemnity Insurance Company*, 2015 ABCA 121.

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