

Selling your house is an insured personal activity

By Bernard Larocque

In a recent case, *Assurances générales des Caisses Desjardins v. Groupe Commerce*¹, Insurer-Plaintiff (Desjardins) sued the former owners of the building (Riccio and Marcone) and their insurer (Groupe Commerce) in subrogation for compensation paid following a fire in the building insured by Desjardins. The fire was caused by a latent defect in the electrical system.

Groupe Commerce denied coverage to its insured and filed a motion to dismiss the principal action filed against it arguing, firstly, that the claim is based on the contractual liability for the legal warranty imposed on the vendor which is not covered under the policy and secondly, that because of the presumption that the vendor was aware of the latent defect, the fault is intentional and as a result the insurer has no obligation to defend its insured.



It was admitted that at the time of the fire, Riccio and Marcone did not have an insurable interest in the building sold and only the “liability insurance” portion of their current owner’s insurance contract was applicable.

The Liability Insurance Guarantee reads as follows:

“Personal Liability

We cover financial consequences of Civil Liability which can be incumbent to you as a result of bodily harm, property damage or loss of use, caused to third parties due to:

- 1. any personal activity, anywhere in the world;**
- 2. insured premises, including liability of third persons contractually assumed by you and incidental to said premises.”**

¹ J.E. 2001-41 (C.S.);

The policy also includes the following exclusion for tenants' legal liability only:

"We do not cover:

- damages you must answer for solely because you have assumed liability by contract."**

The following definitions are also relevant:

"Property damage, any deterioration or destruction of property or substance.

Loss, any event generating damages, specifying that all damages having the same origin are incumbent to a single loss, whatever the number of injured third persons."

Justice Crête resumes the Groupe Commerce position as follows:

"Damage insurance is not meant to protect contractual consequences resulting from the operation of the law. By selling their house, Defendants have assumed a legal warranty protecting the buyers against latent defects which could affect the house. Asking the insurer to compensate its insured in implementation of the warranty against latent defects amounts to have it assume the contractual obligations of legal warranties not covered by the policy."

However, the judge notes that the Personal Civil Liability warranty does not differentiate between tort liability and contract liability and that the exclusion only addresses tenants legal liability. Furthermore, it is essential to differentiate between the "latent defect" itself and the "loss caused by latent defect".

Therefore, the repairs of the latent defect discovered after the sale would not be covered (Art. 2465 C.C.Q.), but the damage caused to other property by the loss resulting from the latent defect is covered.

Justice Crête adds the following:

“... following the argument of Groupe Commerce would be like saying that the vendor of a house would be without any insurable protection for his civil liability when the property he has just sold is all of a sudden destroyed as a consequence of a latent defect affecting the property in question, even if the loss includes the furniture of not only the new owner but also of the tenant, a neighbour, etc.”

The judge also dismisses the argument where the remedy required under legal warranty is not compensatory damages but rather an action in resolution of the sale or in reduction of the price since, in this case, the allegations of the action clearly indicate that it is an action in damages for the loss of the house.

Finally, on the issue of the presumed intentional fault, the judge feels that it is impossible to rule on this issue without proof and that the insurer cannot deny defending its insured at this stage of the proceedings.

It is important to note that this ruling was rendered within the bounds of preliminary motions and that the judge acknowledges not being able to give final and conclusive ruling on the actual contention; the judge who will give his ruling on the main issue of the case may revise this decision.

It is therefore a matter to follow up but until a final decision is made, the analysis of the coverage of “Personal Civil Liability” is innovative and stands to be cited by policy holders who have actions brought against them for latent defects in order to force insurers to take up their defense.

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