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Insurance contract terminology: the Court of Appeal clarifies the scope of the word ”building”

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In insurance law, as well as in other areas of contract law, the precise definition and scope of the terminology used in a contract are very important since they have a direct effect on the obligations of the parties and, in the case under review, the scope of the insurance coverage.

On February 11, 2016, the Nova Scotia Court of Appeal[1] issued two judgments while it analyzed the scope to be given to some expressions inherent to insurance contracts. This terminology analysis led the Court to conclude that contaminated soil under an insured building does not constitute insured property within the usual meaning of the terms “dwelling”, “premises” and “building”.

The Snow Case facts

The members of the Snow family obtained from the trial judge[2] a court order against the insurer pursuant where it was required to pay them an indemnity for the hydrocarbon contamination of the soil under their residence resulting from an oil spill from the neighbouring property.

The reasoning of the trial judge relied on his broad interpretation of the terms “*dwelling*“, “*premises*“ and “*building* “ contained in a property insurance contract (*home owner’s policy*).

The Snow judgment

The Court of Appeal[3] disagreed with the interpretation of the trial judge who gave a broad interpretation to the term “building”, which included the soil under the residence of the insured from the definition of insured property in the insurance contract. Moreover, the insurance policy was covering the specified peril of damages caused by hydrocarbons (“*escape of fuel oil*“).

Under the principles of interpretation of an insurance contract stated in the case of *Progressive Homes Ltd.* v. *Lombard General Insurance Company of Canada*, 2010 SCC 33 (para. 21 à 24), applied to the expressions contained in Coverage A and Coverage B of the contract, the Court of Appeal concluded that the term “dwelling” referred to the residential building as described in the declarations, while the term “premises” was defined as the residential building and the items of property located within the limits of the land where the building was erected.

The Court noted that one must not mix up the three concepts of “*insured property*”, “*insured perils*” and “*specified perils*”. The term “*premises*” did not constitute insured property in and of itself, even if the loss was a covered specified peril, for the latter only served to define the location where the

items of property had to be located in order to be included in the definition of insured property in the insurance contract.

In the case under review, the residential building of the insured included the earth floor of the crawl space located immediately below the residence, in the same manner as the concrete floor of a basement would naturally be included in the definition of insured property, including the insured building ("*dwelling*" and "*building*"). If "*dwelling*" and "*building*" may be synonyms defining the insured property, the word "premises" is not a synonym. This last term simply establishes the limits of the land on which the residence is located and cannot be used to include the soil under the residence as insured property under the insurance contract. The word "building" cannot be interpreted as broadly, in a way to require the insurer to indemnify its insured for the hydrocarbon contamination of the soil of the crawl space down to an infinite depth, as if the soil under the insured building was also an item of insured property.

The land ("premises") and the building ("dwelling") are two separate concepts in insurance law. The word "building" was clear in its common meaning and required no interpretation. The specified peril of damages caused by hydrocarbons ("*escape of fuel oil*") could not include the soil under the residence as insured property.

The obligation of the insurer

The cases of Snow and Garden View Restaurant Ltd. show that the words "*dwelling*", "*premises*" and "*building*", taken in their usual meaning, do not implicitly include the soil under an insured building located within the limits of the insured location, although it may constitute a specified peril. Therefore, the insurer had no obligation to indemnify its insured for the hydrocarbon contamination in the soil within the limits of the insured location.

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1. *Royal & Sun Alliance Insurance Company of Canada* v. *Snow*, 2016 NSCA 7; *Garden View Restaurant Ltd.* v. *Portage La Prairie Mutual Insurance Company*, 2016 NSCA 8.
2. *Snow* v. *Royal & Sun Alliance Insurance Company*, 2015 NSSC 44.
3. *Royal & Sun Alliance Insurance Company of Canada* v. *Snow*, 2016 NSCA 7.