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EXCLUSION FOR THE INSURED'S WORK: THE COURT FINDS THE EXCLUSION CLAUSE CLEAR

By Vincent Lemay

In a recent case[1], the Court of Quebec had to interpret one of the typical exclusion clauses found in commercial general liability policies, namely, the clause about work performed by the insured.

In this case, the insured – Ferblanterie de Matane Inc. (hereinafter "Ferblanterie") – had installed a roof on a client's store. A few years later, the client noticed abnormal wrinkling on the roof, which required remedial work. The remedial work was limited to the roof that Ferblanterie had installed.

Ferblanterie was sued for the cost of the remedial work. It was reproached of various deficiencies in its installation of the roof, in particular failure to comply with the architectural plans. Ferblanterie promptly filed a claim with its civil liability insurer, which denied coverage based on an exclusion for work performed by the insured.

Accordingly, Ferblanterie mounted its own defence against the action, submitting, among other things, that the roof had been installed in accordance with industry standards. It added that the damage to the roof was instead due to extreme weather conditions, which could be likened to an event of superior force. Towards the end of the trial, an amicable settlement was reached, with Ferblanterie paying the sum of $35,000.

In a separate action against its insurer, Ferblanterie claimed the settlement amount it had paid, minus the deductible stipulated in the policy. It maintained that these damages were covered under the provisions of its insurance policy.

After finding that the damage to the roof was due to faulty workmanship on the part of Ferblanterie, the Court interpreted the exclusion clause raised by the insurer, which reads as follows:

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[Translation]

2. Exclusion

The following are excluded from coverage:

j) "Property damage" to "your works" resulting therefrom, in whole or in part, to the extent they are contemplated by the "products/completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Ferblanterie, relying primarily on the *Constructions GSS Gauthier*[2] decision, argued that the clause was ambiguous and consequently should be interpreted against the insurer. The Court rejected that argument, finding instead that the wording of the exclusion clause was clear and unequivocal. It also added in an *obiter* that if it had found the exclusion clause ambiguous, it would have applied the same interpretation as the Supreme Court in *Ledcor*[3] and *Progressive Home*[4], thus excluding the costs of redoing the defective work from the insurance coverage. The Court added that [translation] "it is logical to exclude the costs of redoing defective work from an insurance policy"[5].

Accordingly, the Court dismissed Ferblanterie's claim, concluding that it was not covered under the commercial general liability insurance policy it carried.

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1 *Ferblanterie de Matane inc.* v. *Compagnie d'assurances commerce et industrie du Canada (Compagnie d'assurances AIG du Canada inc.)*, 2017 QCCQ 14996.
2 *Scaffidi Argentina* v. *Constructions GSS Gauthier 2000 inc.*, 2012 QCCS 5417, affirmed by 2014 QCCA 991.
3 *Ledcor Construction Ltd*. v. *Northbridge Indemnity Insurance Co*., [2016] 2 R.C.S. 23.
4 *Progressive Homes Ltd.* v. *Lombard General Insurance Co. of Canada*, [2010] 2 R.C.S. 245.
5 *Supra*, note 1, at para. 72.