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CASE SUMMARY: OIL LEAKING TO THE SOIL UNDER THE PREMISES WAS NOT AN IMMINENT PERIL

Insurance law – Property insurance – Vandalism – Remediation – Policies and insurance contracts – Interpretation of policy – Exclusions – Building – definition – Imminent peril – definition

Garden View Restaurant Ltd. v. Portage La Prairie Mutual Insurance Co.

An insured landowner's appeal seeking insurance coverage for remediation costs resulting from an oil spill on its property was dismissed.

[2016] N.S.J. No. 55

2016 NSCA 8

Nova Scotia Court of Appeal

February 11, 2016

D.P.S. Farrar, J.E. Scanlan and E. Van den Eynden JJ.A.

The insured landowner discovered that a copper pipe connecting an outside oil tank had been vandalized, causing oil to discharge on the property. The insured immediately commenced the soil remediation and sought to recover the sum from the insurer. An extension provision in the policy provided the insurer with limited coverage for the clean up of pollutants in the amount of \$10,000. This was paid out by the insurer.

The insured brought a motion for a declaration that the costs identified with the remediation of the oil spill were covered under the policy. The motion judge held that the damage to the insured property did not invoke coverage under the policy and that the doctrine of imminent peril did not apply.

On appeal, the lower court's decision was upheld. The definition of "building" in the policy did not include soil underneath the building. Although the drain tiles were removed as part of the remediation of the contaminated soil, there was no evidence that the drain tiles were actually damaged. The doctrine of imminent peril, which would have allowed an insured to recover damages from preventative action taken to stop what would otherwise be an imminent peril (for which coverage is provided under the policy) from occurring, did not apply in the circumstances. The court found that the landowner did not discharge its burden of proof in proving that, had it not done something, damage that would have ensued was inevitable and imminent. Having already made the finding that the imminent peril doctrine did not apply and that the definition of building did not include the land under the building, the Court of Appeal declined to address the issue of whether the pollution exclusion applied.

This case was digested by [Kora V. Paciorek](#) and edited by [David W. Pilley](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at kpaciorek@harpergrey.com or dpilley@harpergrey.com or review their biographies at <http://www.harpergrey.com>.