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CASE SUMMARY: TITLE INSURANCE IS NOT SECONDARY INSURANCE FOR CONSTRUCTION DEFECTS

Title insurance did not cover costs to repair new home with severe water leakage problems later subject to a remediation order.

Insurance law – Homeowner’s insurance – Title insurance – Water damage – Remediation – Interpretation of policy – Practice – Summary judgments

Steer v. Chicago Title Insurance Co., [2019] A.J. No. 565, 2019 ABQB 318, Alberta Court of Queen’s Bench, May 6, 2019, M.H. Hollins J.

The plaintiffs purchased a newly built duplex and discovered severe water leakage shortly after taking possession of the home. The municipality inspected the property and issued a remediation order. The purchasers sought coverage for the cost of repairs from their title insurer, and applied for summary judgment. The Master found that the water leakage issues did not create an unmarketable title within the meaning of the policy and dismissed the plaintiffs’ application.

The plaintiffs’ appeal was dismissed. The court declined to follow the decisions of *MacDonald v. Chicago Title Insurance Company*, 2015 ONCA 842 or *Breen v. First Canadian Title Insurance*, 2018 ONSC 3644. The title insurance policy distinguished between the concepts of ‘land’ and ‘title’. ‘Land’ referred to the physical property apart from any considerations of who owns it. ‘Title’ referred to the legal interest in that specific land. Unmarketability of title did not relate to physical defects in land, like the water leakage.

In addition, there was no remediation order in effect as of the policy date. Based on the wording of the policy, the parties’ express intention was to insure against risks existing at the policy date and a limited number of specific risks that might arise afterwards, which did not include remediation orders. Finally, the court noted generally that the purpose of title insurance is to insure against defects in the ownership interest conveyed via the transfer of title from vendor to purchaser, not as secondary insurance for construction defects where resort cannot be had to the responsible party. Confining title insurance to its stated objective rather than expanding it to cover losses for which specific, alternative insurance is available is consistent with appropriately spreading risk between various service providers.

This case was digested by [Kora V. Paciorek](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Kora V. Paciorek at kpaciorek@harpergrey.com.