COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Tremblett v. TD Insurance Direct Agency Ltd.,* 2024 BCCA 358

Date: 20241018
Docket: CA49209

Between:

Carl Tremblett also known as Carl Tremblet

Appellant
(Plaintiff)

And

TD Insurance Direct Agency Ltd., Primmum Insurance Company, Primmum Insurance Company dba TD General Insurance Company, TD General Insurance Company and Meloche Monnex Financial Services Inc. dba TD Insurance Meloche Monnex

Respondents
(Defendants)

Before: The Honourable Madam Justice Saunders
The Honourable Justice Dickson
The Honourable Justice Griffin

On appeal from: An order of the Supreme Court of British Columbia, dated June 22, 2023 (*Tremblett v. TD Insurance Direct Agency Ltd.*, 2023 BCSC 1366, Penticton Docket 46672).

Counsel for the Appellant:	J.R. Kitsul
Counsel for the Respondents:	J. Hodes
Place and Date of Hearing:	Vancouver, British Columbia March 15, 2024
Place and Date of Judgment:	Vancouver, British Columbia October 18, 2024

Written Reasons by:
The Honourable Justice Dickson

Concurred in by:
The Honourable Madam Justice Saunders
The Honourable Justice Griffin

Summary:

Appeal from an order dismissing the appellant's application for a declaration that the respondent from whom the appellant purchased an insurance policy was liable to compensate the appellant for loss and damage to his home. Held: Appeal dismissed. Coverage for the loss and damage in question is excluded under the policy's terms, and no exceptions to the exclusions apply in this case.

Reasons for Judgment of the Honourable Justice Dickson:

Introduction

[1] This appeal concerns the interpretation of a homeowner's insurance policy issued by the respondent, Primmum Insurance Company, to the appellant, Carl Tremblett (the "Policy"). Primmum denied Mr. Tremblett's claim for loss and damage caused by subsidence of the soil beneath his home, resulting in foundation cracking and other damage to the property. In the court below, Mr. Tremblett sought an order declaring that Primmum is liable under the Policy to pay and make good on the loss and damage. However, the judge concluded that the Extended Water Damage Endorsement upon which Mr. Tremblett relied did not apply and that the loss was excluded by another provision of the Policy. As a result, she dismissed the application.

[2] Mr. Tremblett appeals the dismissal order. In his submission, the judge erred in her interpretation of the Policy, which, properly interpreted, provides coverage for the loss.

[3] For reasons that follow, I would dismiss the appeal.

Background

[4] Mr. Tremblett's home is located in Okanagan Falls, British Columbia. Upon returning from a brief vacation, he discovered sink holes in his yard and damage to his home.

[5] Mr. Tremblett reported the damage to Primmum and claimed for the loss under the Policy, which was in force at the time.

The Policy

[6] The Policy that Mr. Tremblett purchased from Primmum is an all-risk homeowner's insurance policy. It includes a Coverage Summary Page, Policy Wordings, and an Extended Water Damage Endorsement. As outlined below, those documents contain several salient terms.

[7] Coverage A of the Policy provides:

> PROPERTY DAMAGE COVERAGES
>
> We insure only occurrences that arise while this insurance policy is in force.
>
> …
>
> Coverage A – Dwelling Building
>
> 1) We insure the dwelling building described on the Coverage Summary page and the structures attached to the dwelling building, as well as appliances, furniture and equipment forming part thereof.
>
> [Emphasis omitted.]

[8] The Policy defines an "occurrence" for property damage purposes as "[a]n event causing loss or damage; all loss or damage having the same origin will be considered as one occurrence".

[9] Under the heading "Insured Perils", the Policy provides:

> You are insured against all risks of direct loss or damage to insured property. However, all exclusions and limitations contained in this insurance policy apply.

[10] The Policy contains a set of "Common Exclusions", concerning which it provides:

> The following exclusions apply to Coverage A, B and C, as well as to Extensions of Coverage. They apply in addition to all other exclusions indicated in this insurance policy.

[11] Exclusions 3, 4, and 17 of the Policy are particularly relevant for present purposes. They provide:

> (3) Earthquake, Erosion and Other Geological Phenomena
>
> WE DO NOT INSURE loss, damage or expenses caused directly or indirectly by earthquake, volcanic eruption, avalanche, landslide, subsidence, tidal

> wave, tsunami or soil erosion. However, you are still insured for ensuing loss or damage which results directly from fire, explosion or smoke.
>
> This exclusion applies whether or not there is another cause or occurrence (whether covered or not) that contributes concurrently or in any sequence to the occasioning of the loss, damage or expenses.
>
> …
>
> (4) Other Ground Movement
>
> WE DO NOT INSURE loss or damage caused by compaction, expansion, settling or any other ground movement attributable to:
>
> - the drying out, irrigation or drainage of the ground;
> - cold, heat, freezing or thawing;
> - the weight of a building, backfill or any other installation.
>
> However, we insure loss or damage caused directly:
>
> - to insured property by an insured peril resulting from such ground movement;
> - to swimming pools, spas, hot tubs, whirlpool tubs or saunas, located outside the dwelling on the premises, by freezing or thawing of the ground.
>
> …
>
> (17) Settling
>
> WE DO NOT INSURE loss or damage caused to property by its settling, expansion, contraction, moving, bulging, buckling or cracking, except where such loss or damage results from an insured peril.
>
> However, we insure loss or damage caused directly to insured property by an insured peril resulting therefrom.
>
> We also insure damage to the building glass.
>
> [Emphasis omitted.]

[12] Exclusions 25 and 26 of the Policy exclude most types of water damage, including loss or damage caused by ground or surface water entering or seeping into the building, or from the water table. However, where, as here, the policy holder purchases an Extended Water Damage Endorsement, those exclusions are modified in accordance with its terms.

[13] The Extended Water Damage Endorsement provides:

> This endorsement amends the insurance policy to which it is attached. It applies to locations for which a specific mention is written on the Coverage Summary page.

…

Insured Perils

You are insured against sudden and accidental loss or damage caused directly to insured property, including animals, by:

1) Water originating from escape, overflow or backing up of:

- French drains or weeping tile;
- sewer connections;
- sewers;
- storm drains;
- septic tanks, drain fields and other wastewater treatment systems;
- ditches;
- sumps, retention tanks or holding ponds.

For the purpose of this endorsement, "ditches" means a man-made trench, usually dry, to help and channel drainage.

2) Ground or surface freshwater that suddenly and accidentally enters or seeps into the building through walls, foundations, basement floors or other means, or through openings therein.

…

All provisions or sections of the insurance policy not amended by this endorsement continue to apply.

[Emphasis omitted.]

Rock Glen Consulting Report

[14] After receiving Mr. Tremblett's report, Primmum arranged for an inspection of the property and engaged a firm of geotechnical engineers, Rock Glen Consulting, to investigate the cause of the damage. Rock Glen attended repeatedly at the property and issued a report setting out its conclusions, which included the following:

- Subsidence is pervasive throughout the rear yard. There is no confirmed subsidence in the front yard where the septic field is located.

- Groundwater flow appears to have undermined a substantial portion of the subject property.

- Groundwater flow sources are both natural, from Shuttleworth Creek, and human-induced, from significant irrigation water application onto the Keogan Sport fields.

- Foundation cracking and a preliminary interior level survey showing floor slopes to the north and northwest indicates subsidence is affecting the northwest quadrant of the house more than other areas.

[15] Given Rock Glen's conclusions, Primmum denied Mr. Tremblett's claim based on Exclusions 17 and 26. Subsequently, it also relied on Exclusion 3 in denying the claim.

Summary Trial

[16] In the underlying action, Mr. Tremblett brought an application pursuant to Rule 9–7 of the *Supreme Court Rules* seeking declaratory relief in connection with Primmum's refusal of his claim. In particular, he sought an order declaring that Primmum is liable under the Policy to pay and make good on the loss and damage in accordance with the terms of the Policy, together with an order adjourning the balance of the notice of civil claim.

[17] At the summary trial, the parties filed and relied on an Agreed Statement of Facts, Issues and Document Agreement. Among other things, the Agreed Statement identified the issues for determination and the parties' competing positions as to whether the loss was covered under the Policy by the Extended Water Damage Endorsement, as Mr. Tremblett argued, or excluded by one or more of Exclusions 3, 4, or 17, as Primmum argued. It also confirmed that the conclusions in the Rock Glen report were not in dispute and attached the relevant Policy documents.

Reasons for Judgment: 2023 BCSC 1366

[18] The judge began her oral reasons by outlining the background facts and the issues. After finding the matter suitable for determination under Rule 9–7, she quoted from the Extended Water Damage Endorsement and discussed three relevant cases, namely, *Buchanan v. Wawanesa Mutual Insurance Company*, 2010

BCCA 333, *Pavlovic v. Economical Mutual Insurance Co.*, (1994) 99 B.C.L.R. (3d) 298 (C.A.), and *Leahy v. Canadian Northern Shield Insurance Company*, 2000 BCCA 408:

> [23] Based upon these cases, in order for the plaintiff to succeed, I conclude he must show three interrelated things:
>
> 1. that the extended water damage exclusion (*sic*) in the Policy could apply to his loss;
> 2. that none of the exclusions in the Policy unambiguously apply to his loss; and
> 3. if some exclusions appear to apply and create ambiguity, that the Policy as a whole is ambiguous as to their meaning.

[19] The judge described Mr. Tremblett as "an extremely sympathetic litigant": at para. 24. Nevertheless, based on the language of the Policy and this Court's guidance in *Pavlovic*, she concluded the case favoured Primmum:

> [25] … There are two reasons for this. Firstly, the extended water damage exclusion (*sic*) in the Policy only covers loss or damage "directly caused" by water, whereas in this case, the water caused the loss or damage indirectly. Second is that the exclusion clause (3) is worded very similarly to what Finch J.A. suggested how an unambiguous exclusion clause should be worded in *Pavlovic*.

[20] The judge went on to explain her conclusion. Dealing first with the Extended Water Damage Endorsement, she found that it did not apply because water was an indirect cause of the damage and the water did not enter the house:

> [28] … the introductory passage states clearly that it applies to "loss or damage caused directly to the insured property." As I already noted above, the water is an indirect cause in this case because the water did not cause the damage itself, but rather caused the subsidence, which in turn caused the damage. Finch J.A. spoke on factually similar situation in *Pavlovic* as follows at paragraph 21:
>
> > [21] In these circumstances, I do not think one can fairly say that the appellants' loss and damage were "caused by" the leakage of water below the ground. At most all one can say is that the leakage of water was an indirect cause of the loss, and one of many other contributing causes.
>
> [29] Upon significant consideration, I cannot see a way past this issue given Finch J.A.'s direct statement on this point. There is simply no viable means, in my view, to legally distinguish this authority, which of course is binding on this Court.

> [30] The second issue with respect to the application of the extended water damage policy *(sic)* is that none of the enumerated types of water clearly fit within the factual matrix as I have detailed above. The water did not originate from escaping, overflowing, or backing up. The water did not enter the residential dwelling on the Property at all. There was thus not an overflowing or rising of a water in a stream, at least in the traditional sense.
>
> [Emphasis added.]

[21] Next, the judge considered whether any of the exclusions contained in the Policy were applicable and unambiguous. She summarised the key facts and interpretive principles discussed in *Pavlovic*, *Leahy,* and *Buchanan*, including: the *contra proferentum* rule; the requirement that exclusions are to be interpreted narrowly; and the primacy of the specific over the general. Then she considered how those interpretive principles apply on the facts of this case.

[22] The judge stated that Exclusions 3, 4, and 17 are all cause-dependent, which meant this Court's decision in *Pavlovic* was "especially on point": at para. 41. Moreover, she noted, Exclusion 3 adopts "language extremely similar to what Finch J.A. stated [in *Pavlovic*] would be unambiguous in its interpretation": at para. 41. She found that Exclusion 3 was fatal to Mr. Tremblett's claim because "[i]t is unambiguous and unfortunately renders the plaintiff's loss excluded under the Policy": at para. 42. She also found that Exclusions 4 and 17 are ambiguous when read together with the Extended Water Damage Endorsement, but stated that "any analysis of this issue would be *obiter dicta* given my primary conclusion that [E]xclusion 3 unfortunately excludes coverage for the plaintiff's loss under the Policy": at para. 42.

Issue On Appeal

[23] The issue for determination is whether the judge erred in concluding that coverage was excluded under the Policy.

Discussion

Standard of Review

[24] The appeal concerns the interpretation of a standard form contract of insurance. The interpretation at issue is of precedential value and there are no facts

specific to the parties that assist the interpretation process. Accordingly, the appeal involves a question of law subject to the correctness standard of review: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at para. 24.

Principles of Interpretation

[25] The principles that apply to interpretation of a contract of insurance are well-known and well-settled. First among them is the principle that the court should read the contract as a whole and, in the absence of ambiguity, give effect to its clear language: *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33 at para. 22.

[26] As a general rule, "contracts are to be interpreted so as to carry out the parties' intentions as reflected by the entire contract": *Buchanan* at para. 31. In *Economical Mutual Insurance Company v. Gill*, 2017 BCCA 351, Frankel J.A. summarised several interpretive principles that apply specifically to insurance contracts:

> [27] The general principles of insurance policy interpretation are well-established. They were summarized as follows by Justice Rothstein in *Progressive Homes Ltd.*:
>
> > [22] The primary interpretive principle is that when the language of the policy is unambiguous, the court should give effect to clear language, reading the contract as a whole (…).
> >
> > [23] Where the language of the insurance policy is ambiguous, the courts rely on general rules of contract construction (…). For example, courts should prefer interpretations that are consistent with the reasonable expectations of the parties (…), so long as such an interpretation can be supported by the text of the policy. Courts should avoid interpretations that would give rise to an unrealistic result or that would not have been in the contemplation of the parties at the time the policy was concluded (…). Courts should also strive to ensure that similar insurance policies are construed consistently (…). <u>These rules of construction are applied to resolve ambiguity. They do not operate to create ambiguity where there is none in</u> <u>the first place.</u>
> >
> > [24] When these rules of construction fail to resolve the ambiguity, courts will construe the policy *contra proferentem* — against the insurer (…). One corollary of the *contra proferentem* rule is that coverage provisions are interpreted broadly, and exclusion clauses narrowly (…).
> >
> > [Emphasis added; citations omitted.]

> See also: *Ledcor Construction Ltd.* at paras. 49–51; *Sabean v. Portage La Prairie Mutual Insurance Co.*, 2017 SCC 7 at para. 12, 406 D.L.R. (4th) 623.
>
> [28] Courts must be cautious against searching for or creating an ambiguity where none exists: *Pacific Rim Nutrition Ltd. v. Guardian Insurance Co. of Canada* (1998), 54 B.C.L.R. (3d) 111 at para. 22 (C.A.); *Riordan v. Lombard Insurance Co.*, 2003 BCCA 267 at para. 20, 13 B.C.L.R. (4th) 335. "An ambiguity can be said to exist only where, on a fair reading of the agreement as a whole, two reasonable interpretations emerge such that it cannot be objectively said what agreement the parties made": *Water Street Pictures Ltd. v. Forefront Releasing Inc.*, 2006 BCCA 459 at para. 26, 57 B.C.L.R. (4th) 212 (*per* Lowry J.A.).

[27] Other relevant principles include the principle that exclusion clauses in insurance contracts should be interpreted in light of the initial grant of coverage. As Rothstein J. explained in *Progressive Homes*, "[e]xclusions do not create coverage – they preclude coverage when the claim otherwise falls within the initial grant of coverage": at para. 27. Nor do exceptions to exclusions create coverage; rather, "they bring an otherwise excluded claim back within coverage, where the claim fell within the initial grant of coverage in the first place": *Progressive Homes* at para. 28.

[28] The consistent interpretation principle is also relevant to the interpretation of insurance contracts. That principle recognises that "[c]ertainty and predictability are in the interests of both the insurance industry and their customers": *Gill* at para. 33. Consequently, courts should strive for interpretive continuity "where issues arise in a similar context and where policies are similarly framed": *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59 at para. 27.

Positions of the Parties

Mr. Tremblett

[29] Mr. Tremblett contends the judge erred in concluding that coverage for the loss and damage was excluded under the terms of the Policy. In his submission, Exclusion 17 was the only exclusion that could possibly apply on the facts; however, properly interpreted, it did not unambiguously exclude coverage for the loss. In other words, Mr. Tremblett submits the judge erred in finding that Exclusion 3 was applicable, unambiguous, and fatal. This is so, he says, because the salient damage for Policy purposes was subsidence (also described in the policy as settling), the

subsidence was caused directly by groundwater, and groundwater is an insured peril under the Extended Water Damage Endorsement and Exclusion 17. Moreover, he says, Exclusion 3 is ambiguous when read together with Exclusion 17 (as he interprets it), and that ambiguity should have been resolved against Primmum.

[30] In advancing his submission, Mr. Tremblett relies on two key propositions: first, that "settling" and "subsidence" are synonymous and used interchangeably in the Policy; second, that groundwater is an "insured peril" pursuant to its terms.

[31] In support of his submission, Mr. Tremblett emphasises the fact that the Policy does not define either "settling" or "subsidence". That being so, he says, those words must be interpreted in accordance with their ordinary meaning.

[32] Mr. Tremblett goes on to say that the words "settling" and "subsidence" are commonly understood as synonyms and refer to ground movement. For example, he notes, "subsidence" is defined in Maurice Waite and Sara Hawker eds., *Oxford Paperback Dictionary and Thesaurus (3rd Edition)* (Oxford University Press, 2009) as "… the gradual caving in or sinking of an area of land …" (p. 927), and in Collins Dictionaries, *Collins Canadian Dictionary (2nd Edition)* (Harper Collins, 2016) as an "… act or process of subsiding", with "subside" defined as "… sink to a lower level …": at p. 596. In addition, "settlement" is defined in the *Collins Canadian Dictionary* as "… subsidence (of a building)…": at p. 546. Further, in Collins Dictionary, "Synonyms of 'settle' in British English", Online: www.collinsdictionary.com/dictionary/english-thesaurus/settle (October 15, 2024), the word "sink" is described as a synonym of "subside" and the word "settle" as "… (*verb*) in the sense of subside…".

[33] According to Mr. Tremblett, the word "settling" in Exclusion 17 must refer to a type of possible damage, not to an insured peril. He says this is so because the word "settling" appears in the first sentence of Exclusion 17 in a list of types of possible damage that may result from an insured peril. He goes on to submit that "[t]he inclusion of 'settling' in the list of possible damage precluded it from being interpreted as a peril which directly or indirectly could have caused the damage to

[Mr. Tremblett's] property by the groundwater". It follows, he says, that "the only possible insured peril that could have caused all of the damage types enumerated in the first paragraph of Exclusion [17] would be groundwater as 'settling' was precluded from being interpreted as a peril".

[34] Based on the foregoing analysis, the synonymous nature of "settling" and "subsidence", and his reasonable expectations having purchased the Extended Water Damage Endorsement, Mr. Tremblett argues that the settling/subsidence in question here should not be treated as an excluded peril under Exclusion 3. This is so, he submits, because: "subsidence" in Exclusion 3 means "settling", which is a type of damage per Exclusion 17; the insured peril is groundwater per the Extended Water Damage Endorsement, which peril is not excluded; and groundwater directly caused the settling and other damage described in the Rock Glen report.

[35] Moreover, Mr. Tremblett argues that, when read together with Exclusion 17, Exclusion 3 is ambiguous. In particular, he says, "the exclusion set out in Exclusion 3 contains no language to exclude coverage to [Mr. Tremblett] under Exclusion 17 with respect to 'settling' because 'settling' was not a direct or indirect cause of the loss and damage suffered by [Mr. Tremblett] but rather just another aspect of the damage inflicted by the groundwater".

Primmum

[36] Primmum acknowledges that Mr. Tremblett's loss was the result of an "occurrence", as defined in the Policy. It also acknowledges that Exclusion 17 is worded awkwardly and "not ideal". However, Primmum says, contrary to Mr. Tremblett's submissions: "subsidence" and "settling" are not synonymous for purposes of the Policy; Exclusion 17 refers to causes (i.e., perils), not types, of damage; and coverage is precluded, not granted, by Exclusion 17.

[37] According to Primmum, on a plain reading, Exclusions 3, 4, and 17 apply to and preclude coverage for all damage caused by different specific perils. In addition, it says, the words "subsidence" in Exclusion 3 and "settling" in Exclusion 17 refer to different types of events: "subsidence" to ground movement, and "settling" to

movement of the building. Further, Primmum submits that, properly interpreted, Exclusion 3 is unambiguous and, given the facts, excludes coverage. Moreover, it says, as the judge correctly found, the Extended Water Damage Endorsement does not apply by its clear terms.

Analysis

[38] The Policy adopts an alternating structure typical of all-risk insurance policies. It sets out the initial grant of coverage, followed by specific exclusions to that coverage, and then allows for exceptions to the exclusions, which bring otherwise excluded claims back within coverage. As Rothstein J. observed in *Progressive Homes*, it is generally advisable to interpret such policies in the same order, namely, coverage, exclusions, and exceptions: at para. 28. Accordingly, that is the interpretive approach I will follow in this case.

[39] As I have noted, Primmum concedes that Mr. Tremblett's loss was the result of an "occurrence" and, as such, falls within the initial grant of coverage. However, it argues, the judge correctly concluded that Exclusion 3 unambiguously excludes coverage for the loss and that the Extended Water Damage Endorsement does not apply.

[40] I agree with Primmum on both counts.

[41] To repeat, Exclusion 3 provides:

> WE DO NOT INSURE loss, damage or expenses caused directly or indirectly by … subsidence …
>
> This exclusion applies whether or not there is another cause or occurrence (whether covered or not) that contributes concurrently or in any sequence to the occasioning of the loss, damage or expenses.

[42] As the judge recognised, Exclusion 3 is cause-dependent. By its clear language, it excludes coverage where the subsidence in question contributes causally to the loss, damage, or expense for which a claim is brought. This is so whether the subsidence contributes causally directly or indirectly, and whether it

does so solely, concurrently, or in sequence with other causes as part of a chain of events.

[43] In my view, Exclusion 3 is not amenable to any other reasonable interpretation. This conclusion aligns with Finch J.A.'s guidance in *Pavlovic*, where he considered an exclusion clause in an all-risk policy when determining a claim for property damage caused by a chain of events. He concluded that the clause in question was ambiguous, but, by way of contrast, described the meaning of a clause that excludes coverage for loss and damage caused "directly or indirectly" by a specified peril as not "open to doubt": at paras. 23–24. In other words, he stated, such a clause would be unambiguous. As noted, Exclusion 3 is such a clause.

[44] Contrary to Mr. Tremblett's submission, Exclusion 3 is not rendered ambiguous when it is read together with Exclusion 17. Exclusion 17 limits coverage, it does not create coverage; therefore, his contention that "the exclusion set out in Exclusion 3 contains no language to exclude coverage to [Mr. Tremblett] under Exclusion 17" is, at best, difficult to understand: see *Progressive Homes* at para. 27. Moreover, when the Policy is read fairly and as a whole, it is clear that the words "settling" and "subsidence" refer to causes, not types, of damage, and that, regardless of their treatment in dictionaries or thesauruses, the words "settling" and "subsidence" are not used synonymously in the Policy. Rather, as Primmum submits, in Exclusion 3 the word "subsidence" refers to ground movement, and in Exclusion 17 the word "settling" refers to movement of the building.

[45] Several features of the Policy support the foregoing conclusion. For example, Exclusion 3 is headed "Earthquake, Erosion and other Geological Phenomena" (emphasis added), each excluded cause of damage involves a geological cause external to the property, and Exclusion 3 is followed by an exclusion headed "Other Ground Movement" (emphasis added). In contrast, Exclusion 17 refers to "… loss or damage caused to property by its settling…" (emphasis added) and each excluded cause of damage relates to movement of the building itself. In addition, there would be no need for two exclusions if both Exclusion 3 and Exclusion 17 referred to ground movement. Further, while exclusion clauses sometimes treat settlement as a

type of property damage, where, as here, an exclusion clause includes the words "caused by", settlement will be treated as an excluded peril: *Engle Estate v. Aviva Insurance Company of Canada*, 2010 ABCA 18 at paras. 12–13.

[46] The uncontested facts lead inexorably to the result reached by the judge, however reluctantly. As stated in the Rock Glen report, a chain of events set in motion by the flow of groundwater beneath Mr. Tremblett's property undermined the soil and caused it to subside, which in turn caused damage to the foundation of his home. In other words, the loss and damage in question were occasioned by several contributing causes, one of which was subsidence. It follows that Exclusion 3 applies and unambiguously excludes coverage for the loss.

[47] As to the Extended Water Damage Endorsement, in my view it is manifestly inapplicable. As the judge observed, the water did not directly cause the damage or enter Mr. Tremblett's home. Accordingly, Mr. Tremblett could not reasonably have expected that the Extended Water Damage Endorsement would extend coverage on these facts.

Conclusion

[48] For the foregoing reasons, I would dismiss the appeal.

"The Honourable Justice Dickson"

I AGREE:

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Justice Griffin"