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IS A SUN DECK “WITHIN” A DWELLING?

By: Ryan A. Shaw

In a recent decision, the British Columbia Court of Appeal clarified the meaning of “within the dwelling” in a standard form homeowner’s insurance policy. In *Gill v The Wawanesa Mutual Insurance Company*, 2023 BCCA 97, the BCCA unanimously ruled this phrase included a sundeck at the insured’s home overturning the trial judge’s interpretation of the phrase. The decision in *Gill* highlights the importance of considering the entire policy when interpreting any single provision and the risk insurers face if they fail to do so.

THE FACTS

The Gills were the owners of a residential property in Surrey, British Columbia (the “Property”). The Property included a sundeck area located at the basement level of the three-storey home. The sundeck was entirely within the exterior concrete foundation and footings of the home, but had openings to the outdoors around its perimeter. Columns set on the exterior walls of the sundeck supported the structure of the home’s upper level decks. The sundeck contained a drain and was fully furnished and used by the Gills as a living area.

In December 2019, water backed up and escaped from the sundeck drain causing damage inside the home (the “Loss”). The Gills had an all-risks insurance policy (the “Policy”) which excluded coverage for damage caused by the backup or escape of water from a sewer however, pursuant to a “Sewer Backup Endorsement”, coverage was added for a “Sewer Backup” defined as:

... the sudden and accidental backing up or escape of water or sewage within your dwelling or detached private structures... through a sewer on your premises” (emphasis added).

The insurer denied coverage on the basis that the drain on the sundeck was not “within [the Gills’] dwelling”.

THE RULINGS

The Gills brought a summary trial application seeking a declaration of coverage under the Policy. The sole issue before the trial judge was whether the drain on the sundeck was “within the dwelling” as meant by the Sewer Backup Endorsement. The insurer admitted that the sundeck was part of the building and thus formed part of the “dwelling” as defined in the Policy.





The trial judge found that any average person reading the Policy would know and understand that “dwelling” and “building” meant the Gills’ house. He concluded that the sundeck was an outdoors area and not “within the dwelling”. In his analysis denying coverage, the trial judge focused on the word “within”. For the trial judge, an average person would determine whether something was within a dwelling based on its location relative to the exterior walls of the dwelling. The sundeck being outside those exterior walls meant it was not “within” the dwelling.

The BCCA unanimously allowed the appeal and concluded that the Loss fell within the coverage granted under the Endorsement. It found the trial judge committed two errors in his analysis: he misapplied the average person perspective; and did not interpret the Policy as a whole thus arriving at an incorrect conclusion.

Firstly, the court noted that when the trial judge found that the average person would understand that “within your dwelling” meant inside the exterior walls of the house, and would view the sundeck as a patio outside the exterior walls, he appeared to be considering the perspective of an average person engaged in conversation about what was inside their house, not the average person considering the coverage afforded by the Policy. The trial judge’s “average person” was erroneously disconnected from the language of the Policy.

The court then found that other provisions in the Policy shed light on the ordinary meaning of “within your dwelling”. Mainly, the Policy defined dwelling as the building and the building included the sundeck, as the insurer admitted. Further, the trial judge’s focus on one aspect of the dictionary definition of the word “within” was misplaced. The word “within” does not always equate to indoors as opposed to outdoors. The phrase “within your dwelling” expressed a spatial relationship with the dwelling and since the definition of “dwelling” was the “building... wholly or partially occupied as a private residence” the court concluded that an object on the sundeck such as the drain must be within the dwelling. To hold otherwise would result in the sundeck being both part of the dwelling but entirely outside the dwelling, which the court pointed out would be “an inconsistent and nonsensical result”.

PRACTICAL CONSIDERATIONS

Insurers, brokers and claims handlers should be cognizant of the principles of insurance policy interpretation espoused in *Gill*. The language of the policy read as a whole will be used in ascribing the plain meaning to any particular phrase in the policy. This plain meaning must be discerned from the perspective of an average person purchasing insurance rather than an average person having a conversation. Further, courts will consider, as they did in this case, achieving an interpretation that accords with the manner in which a





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building is constructed and used in concluding the parties' reasonable expectations.

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