**CITATION:** 2749978 Ontario Ltd. v. United States Liability Insurance Company, 2026 ONSC 3434
**COURT FILE NO.:** CV-23-029318-00
**DATE:** 2026-06-10

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

| | | |
|---|---|---|
| **BETWEEN:** | ) | |
| 2749978 ONTARIO LTD. | ) | |
| Plaintiff | ) | *M. Simaan*, for the Plaintiff |
| **– and –** | ) | |
| UNITED STATES LIABILITY INSURANCE COMPANY | ) | *C. Empke and A. Gatensby*, for the Defendants |
| Defendants | ) | |
| | ) | **HEARD:** December 4, 2025, at Sault Ste. Marie, Ontario |

**The Honourable Madam Justice C.M. Brochu**

**Reasons for Judgment**

**Overview**

[1] The plaintiff, 2749978 Ontario Ltd. (the "Plaintiff") is the owner of vacant property known as the former St. Veronica School located at 309 Balfour St. West, Sault Ste. Marie, Ontario (the "Property").

[2] On September 17, 2022, a fire destroyed the Property. The cause and origin of the fire was left undetermined.

[3] The defendant, United States Liability Insurance Company ("USLI"), issued a commercial property insurance policy to the Plaintiff in respect to the Property (the "Policy") which was in force for the period between October 16, 2021, and October 16, 2022.

[4] It is USLI's position that there is no insurance coverage available for the fire loss because the Plaintiff failed to properly secure the building, as required by the terms and conditions of the Policy.

[5] USLI brings a summary judgment motion requesting a declaration that it has no obligation to indemnify the Plaintiff for the fire loss and that any payments made to a lost payee are repayable by the Plaintiff.

[6] The issue to be determined centres around the interpretation of the warranty clause contained in the Policy. The parties agreed that the narrow issue was the interpretation of "shall remain fully secured and protected from all forms of unauthorized entry", with a focus on the meaning of "fully secured".

[7] The Plaintiff advances that it maintained the Property "fully secured" in compliance with the conditions and warranty of the Policy. Unfortunately, despite the Property being "fully secured", someone cut through the fencing on the night of September 17, 2022, and started a fire that led to this insurance loss.

[8] The Plaintiff states that this is precisely the type of event for which it purchased the Policy, and the loss should be covered.

[9] For the reasons that follow, the summary judgment motion is granted.

[10] Consequently, I find that USLI has no obligation to indemnity the Plaintiff for the September 17, 2022, fire loss at the Property.

**The Facts**

*The Parties*

[11] The Plaintiff, 2749978 Ontario Ltd., is a corporation owned and controlled by Mr. Ferrari. The Plaintiff was, at all material times, the registered owner of the Property, having purchased the Property on April 29, 2020.

[12] The Property is the former St. Veronica School, which, at the time of the events in question, was a vacant building awaiting redevelopment.

[13] USLI is an insurer and issued the insurance policy covering the Plaintiff's Property.

*The Policy*

[14] USLI issued a commercial property insurance policy to the Plaintiff in respect to the Property. The Policy was in force for the period between October 16, 2021, and October 16, 2022.

[15] The insured location was the Property, described as a one story, 12,000 square foot vacant commercial building noted in the Policy as "Vacant Building without Renovation", with a $600,000 limit for commercial property coverage, based on actual cash value recovery, only.

[16] The two endorsements central to this motion are the following:

a. The "Vacant Building Protection Warranty" which provides as follows:

---

> The insured acknowledges that this Policy was issued based on the following representation and warranty. Furthermore, the insured agrees to maintain the following Warranty for the entire term of the Policy and any renewals thereof, as a condition of coverage.
>
> In consideration of the payment of premium and the issuance of this Policy by the Company, the insured represents and warrants that:
>
> 1. All windows, doors and passageways for ingress an egress to a building or portion of a building covered by this policy of insurance that is vacant or partially vacant are and shall remain fully secured and protected from all forms of unauthorized entry.

b. The Protective Devices or Services Provisions Schedule (the "PSP) provides that as a condition of the insurance the Plaintiff was required to maintain certain protective devices or services. One such requirement was that the "Premises [be] Fully Secured and Locked". The PSP also excluded coverage for any fire loss if the insured knew of a suspension or impairment in those safeguards and failed to notify USLI, or if the insured failed to maintain them.

*The Property's History*

[17] It is acknowledged by the Plaintiff that there was a history of problems at the Property, including trespass incidents and a fire in 2018.

[18] Many of these incidents were referred to in USLI's factum and in the documents they included as exhibits. These are acknowledged and predate the Plaintiff's ownership of the Property. For the purpose of my Reasons, I will not get into the details of those incidents. I will concentrate on the issues that arose while the Plaintiff was the owner and in particular, the events arising in the months leading up to the indexed fire loss.

[19] On July 5, 2022, the City of Sault Ste. Marie (the "City") conducted an inspection of the Property and noted that the vacant building was accessible. It was noted that plywood walls were being removed and that the protective barrier/wall was collapsing. The photos show incomplete boarding without safety fencing in place. The front wall of the building is collapsing, and the

orange fencing is partially collapsed and unattached in some areas. One of the photos also shows someone inside the building and exposed areas in the wall.

[20] On July 6, 2022, the City issued an "Order to Remedy Violation of Standards of Maintenance and Occupancy" for the Property. The order cited multiple breaches of the City's by-law including failure to secure the building against unauthorized entry, failure to inspect monthly, and failure to keep records of inspections. It required the remedial work be completed by August 8, 2022.

[21] On August 9, 2022, the City's by-law officer reinspected the Property and noted that the work had not been completed and that the structure was more accessible than at the previous inspection. The photos show a partially collapsed wall with the orange fencing having fallen in some parts. It is noted that the collapsing wall is in a further state of collapse than in the photographs of July 5, 2022. There is also boarding missing on the south-east wall of the building, providing an unobstructed entrance into the building. There are also other areas where there is no boarding, allowing entrance into the building. It is further noted that the orange fencing does not extend to the entire building and leaves entire areas of the walls exposed, without boarding and without fencing.

[22] On August 11, 2022, the City's by-law enforcement officer wrote to the municipal prosecutor and requested that an information and summons be prepared in relation to the Property.

[23] On September 15, 2022, the City's by-law officer posted a copy of the July 6, 2022, "Order to Remedy" on the front door. The officer took pictures of the notice on the door to the Property. Additional pictures taken continue to show unobstructed access into the interior where there is no

boarding. The previous pictures showing the collapsing wall, now shows the wall having collapsed to the ground. The previously seen orange fencing remains in the same area. It does not extend around the entire building, including in the areas where there is no boarding, leaving an unobstructed entry into the building.

*Evidence of Mr. Ferrari, Mr. Guindon and Mr. Greco*

[24] It is the Plaintiff's position is that their representatives attended the Property on September 16, 2022, and repaired the deficiencies. They advance that on September 17, 2022, the boarding had been installed and the fencing repaired.

[25] Mr. Ferrari is the President of the Plaintiff corporation. He resides in Woodbridge, Ontario, and as a result, he mainly delegated to others the inspection and securing of the Property.

[26] It was his evidence that he retained staff to regularly inspect the Property. He confirmed that he did not keep logs or records of the maintenance and that there were no security cameras or security personnel monitoring the Property.

[27] There was one door to the building which was located at the front of the Property. It had a lock and key to which Mr. Willie Greco had access. All windows had been boarded up. They had removed a wall to allow construction equipment in the building – this was the wall to the right of the door if you are looking at the building. It is in this area where they had installed the orange fencing. He confirmed that this was the only area where orange fencing was installed around the building.

[28] He maintained that all doors and windows were locked and secured and that damage to the protective fencing was immediately repaired as needed. It was clear from his evidence that he

relied on his staff to deal with these issues. He specifically stated at his cross-examination that incidents or repairs at the Property were not necessarily brought to his attention or reported to him. He basically expected that his staff on the ground would do what was required.

[29] He indicated that his contractor, Mr. Paul Guindon, was working on the clearing of the building in advance of its redevelopment and had been on site on Friday, September 16, 2022. Mr. Ferrari acknowledged in his affidavit that the orange construction fence had been broken through, however, he asserts that Mr. Greco repaired it that day.

[30] It should be noted that USLI accepts that the front door to the building appears to have been locked and secured prior to the fire. They further acknowledge that the Policy did not require security cameras or full-time security on site.

[31] Mr. Guindon is the director of RSG General Contracting Limited. He indicated having been hired to look at a redevelopment project for the Property. He stated having attended at the Property on September 16, 2022, to check on the status and what work had been done to ready it for the redevelopment project. He was in attendance at the Property at the same time as another employee of the Plaintiff's, Mr. Greco.

[32] He recalled that the orange construction fencing was not secure and had been torn or cut. He confirmed that there was no one (other than Mr. Greco) at the Property upon his attendance. He stated that he did not witness the repair to the fencing, but to the best of his recollection when they left the Property that day, it appeared that the broken construction fencing was repaired.

[33] In his cross-examination, he stated that he conducted one, maybe two, quick drive-by site visits of the Property prior to the fire loss. He did not take any pictures of the Property during

these visits. He confirmed that he was there on September 16, 2022, and happened to be there at the same time as one of Mr. Ferrari's employees or associates (Mr. Greco), and that they looked in the building where the fence was. The visit was quick, perhaps five minutes.

[34] He confirmed there was no access through the front door of the building as it was locked. He recalled the orange fencing to the right of the building when looking at it from the front. It was his evidence that the fencing did not cross the entire front of the building, only the part of the building that was open and exposed, and specifically in the area where the wall had collapsed.

[35] When asked about the back and the left side of the Property, it was his evidence that there was no fencing but that sheeting was placed on any openings. Despite the foregoing, he stated that he did not walk around the building and made his observations from his standing position in front of the Property. And when asked if he was able to observe any visible openings in the sides and the back walls, he indicated that he did not remember, he was just doing a quick drive-by.

[36] Mr. Greco is an employee of one of the companies owned by Mr. Ferrari. One of his duties is looking after investment lands and buildings in the Sault Ste. Marie area, including the Property.

[37] In his affidavit, Mr. Greco indicated that he regularly attended the Property, and, on several occasions, there had been break ins and he had to conduct minor fixes such as restoring window coverings, boarding and repairing the orange construction fence that covered the opening at the side the Property that was used by construction personnel.

[38] He recalled attending the Property on the Friday prior to the fire that destroyed the building. He attended with Mr. Guindon. He noted that a portion of the orange construction fence had been

knocked down. He fixed it. He went around the building to see if there were any other problems and there were none that he recalled.

[39] He stated that when Mr. Guindon was finished with his inspection, they left through the front door which he locked after they left.

[40] In his cross-examination, he indicated having knowledge that there had been issues with trespassing on the property. He further indicated that at one point the Plaintiff had installed plywood on the entire building.

[41] He described the fencing as being between six and a half to seven feet tall. It was being held down by posts about every ten feet that were anchored in the ground, and the fence was secured to the posts with tie wraps and hanging wire.

[42] He confirmed that the fence did not surround the entire building – it went around to the block, side wall, of the school where it attached.

[43] During his attendance at the Property on September 16, 2022, other than fixing the snow fence, he did not fix anything else, including any plywood. He stated that he did not observe any other problems.

**Parties' Positions**

*USLI*

[44] USLI takes the position that there is no insurance coverage available for the fire loss because the Plaintiff failed to properly secure the building at all times, as required by the terms and conditions of the Policy.

[45] It is submitted that the evidence shows chronic and ongoing failure by the Plaintiff to meet the security requirements under the Policy. USLI indicates that the municipal inspection records, orders to remedy, and the Sault Ste. Marie Fire Department's incident report, all confirmed that the Property was accessible to trespassers in the years, months and days leading to the fire and, remained open to entry on the date of loss.

*The Plaintiff*

[46] The Plaintiff submits that the insurance company did not define or otherwise explain what is required by the statement "fully secured". It is advanced that USLI is now seeking to capitalize on the ambiguity of this requirement in order to exclude the Plaintiff's insurance claim.

[47] It is argued that the Plaintiff maintained a locked front door at all times. This was the only passageway for ingress and egress. As the Plaintiff began readying the site for development, a portion of the side of the building was torn down and the entire area surrounding Property was secured with construction fence, such that there was no way of accessing the Property without breaking and entering through the construction fence or the locked front door.

[48] Consequently, it is stated that the Plaintiff was in compliance with the warranty and the summary judgment motion should be dismissed.

**The Law**

[49] As this case deals with contractual interpretation, I will first review the legal principles pertaining to same. I will then discuss the law on summary judgments. Having granted the summary judgment motion, it is not necessary to address the issue of the "boomerang" summary judgment advanced by the Plaintiff.

---

*Contractual Interpretation*

[50] Generally, contractual interpretation involves issues of mixed fact and law. In light of the factual matrix, the principles of contractual interpretation are applied to the words of the written contract. The main goal is to ascertain the intention of the parties by looking at the meaning of words derived from contextual factors, the purpose of the agreement, and the nature of the relationship created by the agreement: see *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53, at paras. 47-48, and 50. A decision maker must therefore read the contract as a whole, "giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract": *Sattva,* at para. 47.

[51] Turning to insurance policies in particular, the Supreme Court of Canada has reviewed the principles of insurance policy interpretation on numerous occasions.[1] The primary interpretive principle is this: when the language of the policy is ***unambiguous,*** the court should give effect to clear language, reading the contract as a whole: see *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada,* 2010 SCC 33, at para. 22, citing *Non-Marine Underwriters, Lloyd's of London v. Scalera,* 2000 SCC 24, at para. 71.

[52] Where the language of the insurance policy is ***ambiguous***, the courts rely on general rules of contract construction. Rothstein J. summarized the guiding principles in *Progressive Homes Ltd.,* at paras. 23-24 [citations omitted]:

---

[1] See for example *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59, at paras. 20-28; *Brissette Estate v. Westbury Life Insurance Co.*, [1992] 3 S.C.R. 87, at pp. 92-93; *Consolidated-Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Co.*, [1980] 1 S.C.R. 888, at pp. 899-902; *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, at paras. 27-30.

- 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

[53] The Supreme Court further noted that these rules of construction are applied to resolve ambiguity – they do not operate to create ambiguity where there is none in the first place: *Progressive Homes Ltd.,* at para. 24.

[54] However, courts will construe the policy *contra proferentem* – against the insurer – when the rules of construction fail to resolve the ambiguity. The *contra proferentem* rule requires that coverage provisions be interpreted broadly, and exclusion clauses narrowly: *Progressive Homes Ltd.,* at para. 24.

*Summary Judgment*

[55] Rule 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, outlines the applicable rules with respect to summary judgment in Ontario. In particular, r. 20.04(2) allows the court to grant summary judgment if it is satisfied that there is no genuine issue requiring a trial. The rule states:

> (2) The court shall grant summary judgment if,
>
> (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or
>
> (b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

[56] The purpose of summary judgment is to increase access to the civil justice system. Writing for the Supreme Court in *Hryniak v. Mauldin,* 2014 SCC 7, Karakatsanis J. stated that the summary judgment rules "must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims": at para. 5.

*The Summary Judgment Test*

[57] When determining if summary judgment is appropriate, the key question is whether there is a "genuine issue *requiring* a trial": *Hryniak,* at para. 43. This is a significant departure from the pre-amended rules, where trials were seen as the default procedure. In making this determination, r. 20.04(2.1) provides judges with the following powers:

> (2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:
>
> 1. Weighing the evidence.
>
> 2. Evaluating the credibility of a deponent.
>
> 3. Drawing any reasonable inference from the evidence.
>
> [Emphasis added.]

[58] These fact-finding powers are discretionary and are presumptively available, unless the interest of justice requires them to be exercised at trial: *Hryniak,* at para. 45.

*(1) Whether there is a genuine issue requiring a trial?*

[59] The Supreme Court was clear in its approach: there will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment: *Hryniak,* at para. 49. The standard for fairness is whether the process gives

the judge confidence that he or she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute: *Hryniak,* at para. 50.

[60] As outlined by Karakatsanis J., no genuine issue requiring a trial will be the case when the process (1) allows the judge to make the necessary findings of fact; (2) allows the judge to apply the law to the facts; and (3) is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak*, at para. 50.

*(2) Whether it is supported by the interests of justice?*

[61] The interests of justice must account for proportionality, timeliness and affordability. It is not enough to consider the advantageous feature of a conventional trial: *Hryniak*, at para. 56. The judge must be confident that he or she can fairly resolve the dispute with the evidence presented on a summary judgment motion: *Hryniak*, at para. 57.

[62] This is a comparative inquiry – what is fair and just turns on the nature of the issues, the nature and strength of the evidence, and the proportional procedure. Taken one step further, the interest of justice also considers the consequences of the motion in the context of the litigation as a whole: see *Hryniak*, at paras. 58-60.

*(3) Whether oral evidence needs to be called?*

[63] Rule 20.04(2.2) gives the motion judge power to hear oral evidence to assist him or her in making findings under r. 20.04(2.1). It reads:

> (2.2) A judge may, for the purposes of exercising any of the powers set out in subrule (2.1), order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

[64] This decision rests with the motion's judge. In exercising this power, the Court of Appeal for Ontario suggested, with approval from the Supreme Court, that the judge can consider evidence gathered by a small number of witnesses, any issues which may significantly impact the granting of summary judgment, and any narrow or discrete issue: *Hryniak*, at para. 62. Notably, these rules are not absolute, and this power should be employed when it allows the judge to reach "a fair and just adjudication on the merits and it is the proportionate course of action": *Hryniak*, at para. 63.

[65] Finally, the party seeking to lead oral evidence should be prepared to demonstrate *why* such evidence would assist the motion judge by providing a "will say" statement or another document of the like. The judge must also keep in mind that it is not a full trial on the merits, merely a tool designed to determine if there is a genuine issue requiring a trial: *Hryniak*, at paras. 64-65.

[66] I note that none of the parties sought to lead oral evidence.

[67] I considered whether it would be appropriate and/or necessary in the circumstances to order that oral evidence be provided and, concluded that it was not.

**Analysis**

*The Policy and Meaning of "fully secured" is not Ambiguous*

[68] The Plaintiff indicates that USLI did not define or otherwise explain what is required by the statement "fully secured" in the warranty. It argues that the defendant provided no details or directions to the insured as to what security requirements it would deem as satisfactory in order to be in compliance with the warranty and is now seeking to capitalize on the ambiguity of this requirement in order to exclude the Plaintiff's insurance claim.

[69] The Defendant takes the position that the Policy language is unambiguous and that the plain meaning of the words should be adopted.

[70] USLI references the by-law enacted by the City which was in force during 2022. This property standards by-law is said to directly address the need to protect against unauthorized entry, which USLI states is equivalent to the obligations of the Policy. It is advanced that the breach of the Policy conditions follows directly from the Plaintiff's failure to comply with the Property standards by-law governing the same subject matter.

[71] This argument is countered by the Plaintiff in stating that should USLI have wanted the by-law incorporated into the Policy, specific reference to the by-law or reference that in order to comply with the warranty there should be compliance with the by-law, should have been specifically stated within the Policy. In other words, the Policy should have specifically said, as part of the warranty, that the terms and protection noted in the by-law specifically applied.

[72] I agree, should the insurer have wanted specifics on how to "fully secure" the building, or that it had to be done in accordance with the City's by-laws, then such should have been specifically stated.

[73] However, the lack of specific criteria does not mean that the language is ambiguous.

[74] Both parties reference *Lloyd's Underwriters v. Jagoe,* 2022 NBCA 7 (*"Jagoe (NBCA)"*), a case where LeBlond J.A. of the Court of Appeal of New Brunswick reviewed the contractual interpretation of an insurance policy. The application judge held that the word "suitable" in the warranty was not defined and too vague to be enforceable: *Jagoe (NBCA),* at para. 14, citing *Lloyd's Underwriters v. Jagoe,* 2021 NBQB 220, at para. 23. The application judge held that the

onus was on the insurance company to establish a breach by Mr. Jagoe, and the insurance company failed to establish same: *Jagoe (NBCA),* at para. 22. In dismissing the appeal, LeBlond J.A. referenced many of the principles outlined herein and held that an obvious ambiguity arose in the interpretation of "suitable": *Jagoe (NBCA),* at para. 26.

[75] That case can be distinguished, as the term "suitable" was found to be ambiguous. In my view, the Policy here is not ambiguous. It requires that the building be fully secured.

[76] The plain meaning of these words is that all potential access to the building is to be secured to prevent unauthorized entry into the building.

[77] It was known to everyone that this building was vacant, and the Policy provided insurance for this type of building. What is required to fully secure a vacant building will depend on the state of the Property. If it is a vacant building that is intact, then it would be fully secured by locking all doors, windows, and ensuring that there are no accessible entrances that are not locked.

[78] In the circumstances where there is a vacant building, in different stages of demolition and/or repair, then other means must be utilized in order to fully secure the Property.

[79] In this case, there was a lock on the door which prevented individuals from opening the door and walking in. This is obviously not sufficient if there are other entrances to the building that are available. As a result, the Plaintiff secured the remainder of the building by using an orange fence at the front of the Property where there was an open area. It also boarded up other areas of the building to cover any exposed areas in the walls of the building.

[80] Where it was impossible to board up the gaping space, for example where the collapsing wall was located, fencing was installed.

---

[81] The Plaintiff rightly pointed out that it is impractical when working on the building and in the midst of construction to remove and replace the boarding on a daily basis. In those instances, fencing would be installed to protect from entry.

[82] There was some discussion as to whether the orange fencing utilized by the Plaintiff was sufficient to secure the Property. There was mention of the previous owner having used a chain link metal type fence as opposed to the plastic orange fencing. As we are aware, given the noted history of the Property, that did not deter trespassers either.

[83] In my view, the issue of what kind of fencing ought to have been used is moot. The real issue is whether there was fencing around all areas where there was no boarding. That is where the real dispute lies.

[84] The Plaintiff understood this obligation. In fact, the position advanced was that there was either boarding and/or fencing where entry would have been possible. They did not argue that leaving the building exposed and accessible – as it was seen in the photographs – amounted to it being "fully secured". They argued that it had been repaired and "fully secured" the day prior to the fire. The issue is whether the facts and the record before the Court support such a finding. In this case, it does not.

[85] If I am wrong, and it is found that the language is ambiguous, applying common sense and the rules of *contra proferentem* would amount to the same result. The issue is quite simple, was the Property "fully secured" prior to the fire? On the facts of this matter, the issue is narrow and really turns on a finding of whether there was a fence and/or boarding where the walls were open.

---

*The Property was not "fully secured"*

[86] As mentioned, it was advanced that the Plaintiff always maintained a locked front door and that the front door was the only passageway for ingress and egress. As the Plaintiff began readying the site for development, a portion of the side of the building was torn down and that area was secured with a construction fence, such that there was no way of accessing the Property without breaking and entering through the construction fence or the locked front door.

[87] The Plaintiff, having been aware of the prior history of trespassing on this Property, put in place protective safeguards in order to mitigate against further problems and to comply with the warranty and the Policy.

[88] The following are the safeguards that are said to have been in place:

a) A locked front door – which was the main point of entry to the building;

b) protective construction fencing around the building; and

c) regular security inspections, through personal attendances at the Property in order to ensure that there was no one breaking into the Property and that there was no suspension or impairment of the protective fencing and locking devices.

[89] The Plaintiff acknowledges that from time-to-time people did break and enter through the construction fencing and it had to be repaired. It is their position, that the evidence is clear and undisputed that the day before the fire, the fence was repaired, and the Property was returned to a "fully secured" state.

[90] There is no dispute, that the Plaintiff was required to secure the Property as a condition of insurance. The Plaintiff understood this requirement; they put in place safeguards to comply with these conditions.

[91] The evidence offered by the Plaintiff, on its compliance with these safeguards, was vague and unspecific. The evidence of Mr. Ferrari was obtained through his employees as he is not on site.

[92] The only information as to the state of the Property prior to the fire is from Mr. Guindon and Mr. Greco, who happened to attend at the Property on September 16, 2022. According to his evidence, Mr. Guindon was briefly at the Property. He noted fencing at the front of the Property that was damaged. He did not observe the fencing being repaired; however, by the time he left the Property, within approximately five minutes, the fencing had been repaired. He only observed the Property/building from standing at the front of the Property. That is inconsistent with Mr. Greco's evidence that they would have exited through the front door which he locked after they left. This would imply that they were in the building.

[93] Mr. Greco's statements are that he fixed the construction fence located at the front of the building. He confirmed that the fencing did not go all around the building. He then makes a bold assertion that all the sheeting was up. There are, however, no specifics as to what he means by all the sheeting was up. And there was no evidence that he did anything else but fix the fencing on the day in question. During his cross-examinations, he confirmed that he did not have to fix and/or replace the boarding that day.

[94] There are a series of photographs taken at different times of the Property. All of the photographs depict the orange fencing at the front of the building. In none of those photographs do we see fencing in any other locations. Multiple photographs clearly show entire sections of the wall at the back of the Property exposed with no boarding and no fencing.

---

[95] Most telling are the photographs taken by the City's by-law officer on September 15, 2022, the day before Mr. Greco attends at the Property and two days prior to the fire. These clearly show the areas of the building that are properly boarded. However, they also show an entire area, at the back of the Property, where the lower half of the boarding has been removed. Based on the size of the exposed area, it would have taken Mr. Greco some considerable time and effort to repair and/or replace the missing boards the next day.

[96] Further, it was Mr. Greco's evidence that when he attended the Property on September 16, 2022, he did not repair and/or replace any of the boarding. All he did was ensure that the orange fencing had been adequately restored.

[97] Although Mr. Greco states that all the sheeting was in place, this does not accord with the photographic or any other evidence.

[98] There were also a series of photographs provided as an undertaking at the cross-examination of Mr. Greco. These were taken by him on various dates. They show for example, on July 15, 2022, a gapping hole, where it looks like someone ripped part of the boards covered with graffiti to presumably gain access inside the building. A subsequent photograph of that same area taken on July 16, 2022, shows that this area has now been covered with a new board.

[99] Included were photograph taken by Mr. Greco on August 27, 2022, showing the same wall, located at the back of the Property, where the lower half of the boarding is nonexistent. When you compare these photographs with the photographs taken by the City's by-law officer on July 5, 2022, August 9, 2022, and September 15, 2022, the same areas remain uncovered. There are no

photographs that show that this area was ever boarded up prior to the fire, nor is there any evidence to that effect. There is also clearly no fencing in this area either.

[100] I find that the reasonable inference which can be made on the record before the Court is that there was no fencing other than at the front of the Property. The photographs depict the boarding that was up, showing that several areas of the walls are open at the back of the building.

[101] Whichever way someone chooses to interpret the Policy, an entire section of a wall that is open, does not by any stretch of imagination fit the description of being "fully secured".

[102] Consequently, I find that the Property was not "fully secured" as required by the Policy, resulting in a breach of the warranty.

[103] There was no dispute that finding a breach of the warranty contained in the Policy would result in the defendant having no obligation to indemnify under that said Policy.

**Conclusion**

*Summary Judgment is Appropriate*

[104] At the start of the hearing and in agreement, the parties indicated that this matter was appropriate for a summary judgment motion. Hence, it was agreed that there was no genuine issue for trial as it related to liability.

[105] It was also agreed that if I granted the defendant's summary judgment motion, I was to make the following order:

a. USLI has no obligation to indemnify the Plaintiff for the September 17, 2022, fire loss at 309 Balfour Street, St. West, Sault Ste. Marie, Ontario under Commercial Package Policy No. CP 6223963A.

[106] There was a discussion regarding the order being sought by the defendant that any amounts paid by USLI to any loss payee in respect of the fire loss would be repayable by the Plaintiff. I raised concerns that an order for repayment should not be so vague and should reference the amount to be repaid. There was no evidence provided in relation to any monies paid to anyone under the Policy for this loss. In fact, counsel was unaware whether any amounts had been paid to the Plaintiff.

[107] It was determined that counsel would need to address this issue, and perhaps it could be resolved on consent, should it be necessary.

[108] To the extent that there may be an issue regarding repayment of funds paid on this loss, this results in a partial summary judgment.

[109] Consequently, I have not made an order dismissing the action.

[110] Should there be a need to address any further issues in relation to the repayment of funds and/or anything else arising from these Reasons (see Costs below), counsel can reach out to the Trial Co-ordinator's office and obtain a date for a case management conference before me.

[111] In the event there are no further issues to be addressed, counsel can include, on consent, in the final order, the dismissal of the action.

---

**Costs**

[112] The parties indicated at the start of the motion that they had agreed on costs in the all-inclusive sum of $17,500.

[113] It is not clear to me whether the costs agreed to were for the action or only the motion. I note the draft order included the wording "costs of this action and of this motion". However, it became apparent at the hearing that the parties could not address the second relief sought for repayment for monies potentially advanced under the Policy.

[114] Furthermore, whichever way I decided this matter, it would not have entirely disposed of the action. In this regard, even if I had dismissed the defendant's summary judgment motion, the granting of the boomerang summary judgement motion would have also left the issue of compensation to be agreed upon or determined by the Court at a later date.

[115] At the close of the motion, it became clear that counsel had not turned their minds to these issues which would remain outstanding after a decision on the granting of the defendant's summary judgement, or in the alternative, the granting of the Plaintiff's boomerang summary judgement motion. This resulted in the understanding that this was a partial summary judgment.

[116] Considering the above, clarification is required before I can make the order for costs. The parties can include costs in an order on consent or otherwise address this issue at the same time and/or in the same fashion as I suggested above, in which they may address any other remaining issues.

---

**Order**

[117] The defendant's motion for summary judgment is granted.

[118] The defendant has no obligation to indemnify the Plaintiff for the September 17, 2022, fire loss at 309 Balfour Street, Sault Ste. Marie, Ontario, under the commercial package insurance policy numbered CP 6223963A.

The Hon. Madam Justice C.M. Brochu

**Released:** June 10, 2926

**CITATION:** 2749978 Ontario Ltd. v. United States Liability Insurance Company, 2026 ONSC 3434
**COURT FILE NO.:** CV-23-029318-00
**DATE:** 2026-06-10

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

2749978 ONTARIO LTD.

**-and-**

UNITED STATES LIABILITY INSURANCE COMPANY

---

**REASONS FOR JUDGMENT**

---

Brochu J.

**Released:** June 10, 2026