

COURT OF APPEAL FOR ONTARIO

CITATION: 699982 Ontario Limited v. Intact Insurance Company,  
2012 ONCA 268  
DATE: 20120426  
DOCKET: C54484

Armstrong, Blair and Hoy JJ.A.

BETWEEN

699982 Ontario Limited, James P. Chin, On W. Lau,  
Yu K. Chu, and Keow Y. Lee

Applicants/Appellants

and

Intact Insurance Company

Respondent

Ramon Andal, for the appellants

Jason P. Mangano and W. Colin Empke, for the respondent

Heard and released orally: April 23, 2012

On appeal from the order/judgment of Justice Lois B. Roberts of the Superior Court of Justice, dated October 3, 2011.

ENDORSEMENT

[1] This is an appeal from an order dismissing an application for, *inter alia*, a declaration that the respondent insurance company had a duty to defend a third party claim against the appellants. The third party claim is in respect of property damage allegedly caused by pollution from the dry cleaner tenants of a shopping plaza owned by 699982 Ontario Limited during the period January 28 to April 28, 1987. The application judge held that under the insurance policy in issue, the

claims asserted in the third party claim are not within the scope of coverage or are excluded from coverage and therefore there is no duty to defend.

[2] The policy only covers property damage which is defined as restricted to injury or destruction which occurs during the policy period January 28, 1987 to January 28, 1988.

[3] The exclusions in question provide that the policy does not apply to property owned by the insured (600 King Street East, Oshawa) or to property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants at or from the premises owned by the insured.

[4] We are of the view that the application judge correctly concluded that the claims asserted in the third party claim are not within the scope of coverage or fall within the exclusions and therefore the respondent was not obliged to provide a defence.

[5] The appeal is therefore dismissed. The respondent shall have its costs on a partial indemnity scale fixed in the amount of \$15,000 inclusive of disbursements and applicable taxes payable by the appellants.

“Robert P. Armstrong J.A.”

“R.A. Blair J.A.”

“Alexandra Hoy J.A.”