Case Name:

Minox Equities Ltd. v. Sovereign General Insurance Co.

Between
Minox Equities Limited and Winnipeg Condominium Corporation No. 106, (Plaintiffs) Respondents, and
The Sovereign General Insurance Company, (Defendant) Appellant

[2010] M.J. No. 201

2010 MBCA 63

Docket: AI 09-30-07234

Manitoba Court of Appeal

R.J. Scott C.J.M., M.A. Monnin and F.M. Steel JJ.A.

Heard: April 30, 2010.
Judgment: June 16, 2010.

(54 paras.)

Appeal From:

On appeal from 2009 MBQB 203, 243 Man.R. (2d) 111.

Counsel:

J.G. Edmond and B.J. Harris, for the Appellant.

D.G. Hill, and M.E. Low, for the Respondents.

The judgment of the Court was delivered by

1 **M.A. MONNIN J.A.**:-- This is an appeal from a judgment finding that the appellant, The Sovereign General Insurance Company (Sovereign), was liable to the respondents, Minox Equities Limited and Winnipeg Condominium Corporation No. 106 (Minox), under the terms of a broad-form, all-risk policy of insurance to cover the costs of mould remediation and prevention to an apartment complex owned by Minox.

2 More specifically, the appellant alleges that the trial judge erred when he found that the damage caused by the mould was fortuitous, that the exclusion clauses in the policy could not be relied upon to deny coverage, that the damage had occurred within the policy period and finally, that the damages awarded were in excess of what was provided for in the policy.

THE FACTS

3 Minox is the owner of the Apple Meadows Complex, a housing complex of nine buildings, each containing eight apartments (the Complex). Sovereign had first issued an "all-risk" policy of insurance on the Complex to Minox in 1993, which was maintained by Minox up to and including 2003.

4 The Complex was built for Minox in 1977, and certified compliant with the Canadian Mortgage and Housing Corporation and City of Winnipeg by-laws and specifications. Within two years of its completion there were reports of water leaking into some apartments via vents and light fixtures.

5 From 1979 and continuing into 2000, various problems with water leaks, moisture, and high humidity were identified in various apartments and common spaces within the Complex, including: water leaks through bathroom and kitchen vents and light fixtures, water running down walls, bathroom ceilings caving in due to moisture, ice in attics, condensation, steam, frost, and ice build-up on windows, water leaking in through sides of windows and under patio doors, water damage to the drywall and floor below windows and patio doors, frost on ceilings in apartments, mould on the walls and ceilings within apartments, mould inside closets and storage areas, damp and rotting carpeting, mould and mushrooms growing on carpets, and musty and mouldy conditions in crawlspaces of all buildings.

6 During this time period, Minox treated the reports of mould, wet drywall and wet or mouldy carpets as maintenance items. Minox hired contractors to clean the mould with bleach, remove and replace wet and damaged drywall and carpets, treat the area with anti-mould spray, and repaint. These types of repairs were done in a number of the apartments within the Complex by various contractors over this time period. No insurance claims were made of Sovereign or the previous insurer or insurers.

7 During this time period, Minox also hired contractors and consultants to identify the causes of the water and humidity problems, including consulting engineers, civil engineers, energy consultants, a restoration company and a roofing consultant.

8 Various reasons for the condensation, humidity and water problems were put forward by the various contractors and consultants, which included: inadequate insulation in attics and around access hatches, plumbing stacks and light fixtures, exhaust outlets were too low and sloped back into buildings, clothes dryers venting into the building instead of outside, air leakage around windows and patio doors due to inadequate sealing, air leakage through absent or damaged vapour barriers, sump pit defects, defective weeping tiles and poor drainage away from buildings, inoperative or lack of circulating fans, and the lack of an adequate ventilation system to control humidity throughout the buildings.

9 Between 1979 and 2000, Minox implemented some of the recommended repairs aimed at correcting the causes of the humidity and water problems, such as improving the insulation, sealing hatches and improving vents, resealing windows and patio doors, rewiring bathroom fans and adding circulating fans to the crawlspaces, applying a stucco sealant outside patio door areas, and reventing most of the clothes dryers. However, the issues of excess humidity and water seepage were still not resolved by 2000.

10 In March of 2000, Minox retained Crosier Kilgour & Partners Ltd. (Crosier Kilgour), a structural engineering consultant company, to look into a complaint received at the Residential Tenancies Branch of a "health hazard" in Unit 702 due to water leakages, mildew and rot. Crosier Kilgour conducted an inspection of Unit 702 and submitted a report to Minox dated March 16, 2000. In this report, a major area of mould growth and other signs of water damage were observed, leading Crosier Kilgour to believe that the mould was due to a concentrated failure of the building envelope and that there could be more significant mould growth occurring inside the walls. The report recommended further testing, including an air exfiltration test to provide data on air leakage, air pressure and air movement patterns, and a physical inspection inside the walls. These tests, however, would have to wait until the following late winter when the heating system was fully functioning and humidity conditions were at a constant.

11 The Crosier Kilgour report also mentioned that some strains of mould are toxigenic and associated with health problems, thereby making it important to address the conditions observed. While awaiting the tests, Crosier Kilgour recommended cleaning the mould with bleach, and/or removing and replacing the drywall. Use of gloves and a half-mask were recommended.

12 Mould and water leakage problems continued throughout 2000 and 2001 in various parts of the Complex. The usual maintenance regarding the mould (bleach, removal, replace, repaint) was done.

13 On January 29, 2001, Insight Infrared Energy Inspections Inc. (Insight), a roof consulting company, identified a number of causes for roofing leaks at the Complex, and recommended sealing stacks and pipes in the attics, replacing existing vents, and further testing of the entire Complex by Crosier Kilgour. Insight also recommended the installation of a make-up air unit and forced air exchange system to control excess humidity. Repairs to some attics were completed thereafter.

14 On March 29, 2001, Proskiw Engineering conducted air exfiltration tests of three apartments in the Complex to test for air leakage.

15 On April 26 and 27, 2001, Crosier Kilgour conducted inspections of nine attics, 36 apartments and five crawlspaces within the Complex. The subsequent Crosier Kilgour inspection report noted drywall or water damage, some major mould and "very high humidity levels within the Units and the crawlspaces checked primarily due to a lack of any ventilation system." It was recommended that further testing take place to assess mould growth within the walls.

16 In early June 2001, Minox was advised that tenants in Unit 301 had been ill since moving there in May and that their babysitter had been taken to hospital due to asthma. On June 7, 2001, Pinchin Environmental took air and mould samples from Unit 301 and its crawlspace. Crosier Kilgour recommended the use of bleach for any visible mould while awaiting the air test results, but requested that drywall repairs await further investigations. Additionally, Crosier Kilgour visually inspected Unit 301 on June 13, 2001, and recommended some immediate remedial measures as well as further testing to determine the cause of moisture intrusion.

17 On June 21, 2001, Crosier Kilgour reported to Minox that the preliminary results of Pinchin's air tests on Unit 301 revealed toxigenic and other mould in both the crawlspace and bedroom of Unit 301.

18 On July 6, 2001, Minox received the final Pinchin report on Unit 301. The results showed that there were toxigenic moulds species in the crawlspace and bedrooms of Unit 301, and none present in outdoor air samples, indicating that "a mould amplification site is present in the building." The Pinchin report noted that the tests "help confirm if there is contamination of a building and cannot be used solely to assess potential health problems." The report states that "[a]ll moulds require a humid to damp surface at the immediate nutrient base, to germinate and grow" and recommends that "the underlying water source responsible for ... mould growth ... be remedied in conjunction with ... mould remediation in order to prevent mould growth from reoccurring." It was recommended that the crawlspace be cleaned and the mould abated, the sump pit disinfected and further investigations into the source of moisture and presence of mould inside the walls take place.

19 In its report dated July 5, 2001, Proskiw Engineering reported that numerous sources of air leakage (such as windows, baseboards, electrical outlets, pot lights and interior outlets for plumbing, fans, electrical panels, etc.) were identified which could be contributing to air exfiltration and moisture deposition within the building envelope.

20 On July 24, 2001, Minox advised Sovereign, via a telephone call to their insurance broker, of a potential insurance claim due to mould damage, with the reports from Crosier Kilgour, Proskiw Engineering and Pinchin Environmental being sent to Sovereign's adjuster on November 8, 2001.

21 On August 1, 2001, Crosier Kilgour made further recommendations, including a flood test to ascertain water infiltration, the installation of new windows and further mould investigations within the walls.

22 Between October 21 and December 10, 2002, Minox had Crosier Kilgour and Pinchin Environmental conduct further investigations of all buildings within the Complex, to ascertain the presence of mould, including taking samples from inside the walls.

23 On November 13, 2002, Minox submitted a Proof of Loss to Sovereign with respect to Building 301 of the Complex, in the amount of $8,585.68, indicating that the loss was due to toxigenic mould, which occurred June 6, 2001.

24 Crosier Kilgour's investigation report on the entire Complex, dated December 19, 2002, recommended remediation of all existing mould and the elimination of conditions that lead to its propagation. Specifically it was recommended that the windows and patio doors be "replaced to eliminate or minimize condensation ... and therefore mitigate the potential for the reestablishment of mould in the future." It was also stated that "improved ventilation of the suites is also necessary, and could be more fundamental than window replacement in addressing the mould issue." In summary, the report concludes that:

> Due to the possibility of health-related problems, and liabilities resulting from this, mould abatement along with measures to preclude future mould growth should be undertaken without undue delay.
>
> The long term health of the building will be predicated on eliminating future mould growth, and to accomplish this, the current humidity levels within the suites require that ventilation be provided.

25 Pinchin Environmental's mould investigation report on the entire Complex, dated December 19, 2002, reported that mould (both toxigenic and non-toxigenic) was present in the crawlspaces of all buildings, and in some apartments, and that the conditions strongly indicated an underlying moisture problem. The report recommended the removal of drywall below all windows and patio doors, removal of mould-contaminated drywall wherever else it was found, removal of all mould-contaminated materials in the crawlspaces, have mould remediation performed by an experienced mould remediation contractor, and review of tenants' lifestyle practices to minimize humidity levels within the suites.

26 On December 20, 2002, Minox submitted a second Proof of Loss to Sovereign, in respect of loss caused by toxigenic and other mould between October 21, and December 10, 2002. The estimated loss claimed was $646,000, plus GST, possible tenant relocation, and professional and consulting fees.

27 On January 24, 2003, Sovereign denied coverage of both proofs of loss, on the basis that the build-up of humidity causing the mould growth was not the result of a risk or peril; exclusions against latent defect or improper design applied; and exclusions against the seepage of water or dampness of atmosphere applied. Sovereign also stated that Minox failed to report the loss on a timely basis.

28 On February 20, 2003, Minox filed a statement of claim against Sovereign. On April 25, 2003, Sovereign filed its statement of defence. Minox filed a reply to the statement of defence on June 11, 2003.

THE TRIAL DECISION

29 Following a ten-day trial, in which 248 exhibits were filed by consent, which consisted of 247 documents compiled into an agreed chronology of facts, along with other exhibits, the trial judge allowed Minox's claim and awarded it damages in the sum of $554,969.88.

30 In coming to his findings of liability against Sovereign, the trial judge found that the damage caused by the mould was fortuitous. He stated (at para. 73):

> Unlike the conclusions that were reached in **Don-** [**Rich**] [2003 MBQB 231, 5 C.C.L.I. (4th) 53] and **Chandra** [[2006] B.C.T.C. 715], weighing the evidence before me, I find that the growth of mould in the Complex, notwithstanding the various problems resulting in conditions of excessive moisture and humidity, was not inevitable. The growth of mould, either toxigenic or non-toxigenic, was a fortuitous event and therefore a risk covered under the policy.
>
> [emphasis added]

31 He also found that the damage or loss from mould was not excluded under any of the exclusion clauses in the policy. He wrote (at paras. 78, 82-84):

> While the evidence clearly establishes that "seepage, leakage or influx of water derived from natural sources through basement walls, doors, windows or other openings, therein, through foundations, basement floors, sidewalks", or that the "entrance of rain, sleet or snow through doors, windows, skylights or other similar wall or roof openings", or that "dampness or dryness of atmosphere, changes of temperature, freezing, heating, shrinkage" all contributed to the excessive humidity and moisture in the units, I have found the occurrence of mould did not inevitably follow. In addition to the moisture, spores, a source of food, and the appropriate acidity of the water were factors that needed to be present in the right combination to produce mould. Whether or not the mould would or would not be toxigenic was a further uncertainty. I am unable to conclude that the excessive moisture was either a direct or indirect cause triggering the occurrence of mould. My conclusion is the same relative to the "ordinary wear and tear" exclusion.
>
> As with the "seepage" or "wear and tear" exclusions, on the basis of my previous findings, the "inherent vice" or "latent defect" exclusion are similarly inapplicable. Even if they caused the conditions of excessive moisture that were present, that did not result, either directly or indirectly, in the growth of mould for reasons previously expressed.
>
> [Sovereign's expert] opined that the lack of preventative maintenance in the buildings over the years was the cause of the occurrence of mould. He was referring to Minox's failure to eliminate the various factors contributing to the excessive moisture. I preferred the evidence of [Minox's

> expert] who said that moisture in itself did not result in the occurrence of mould but that other essential ingredients were necessary. Even then, the occurrence of mould was not inevitable. On that basis, I find the "wear and tear" exclusion to be inapplicable.
>
> Finally, Sovereign argues faulty or improper design as a basis for excluding coverage. In **Triple Five Corp. et al v. Simcoe & Erie Group et al.** (1994), 159 A.R. 1 (Q.B.), affd. [1997] 5 W.W.R. 1; 196 A.R. 29; 141 W.A.C. 29 (C.A.), and **Simcoe & Erie General Insurance Co. v. Royal Insurance Co. of Canada Federal Insurance Co.**, [1982] 3 W.W.R. 628; 36 A.R. 553 (Q.B.), there were either admissions or findings of design error. Sovereign points to what they say was a similar design error in this case in relation to the clothes dryers being vented into the interior of the units. I alluded to this earlier where I pointed out there was no such admission notwithstanding the entry in the Agreed Chronology. Moreover, the fact that the Complex was constructed in compliance with all of the existing specifications and building codes and that it was properly inspected and approved by various parties is undisputed. There was no other evidence presented to support the contention of faulty or improper design.
>
> [emphasis added]

32 Further, in dealing with the exclusion clauses, the trial judge referred, seemingly with approval, to *Pavlovic v. Economical Mutual Insurance Co.* (1994), 28 C.C.L.I. (2d) 314 (B.C.C.A.), and then came to the following conclusions (at paras. 97, 99-100):

> Given what I have found to be the facts in this case, I would similarly have concluded that the "seepage" exclusion was ambiguous and therefore not applicable.
>
> A similar interpretation could easily be applied to sleet or snow which would render that exclusion clause inapplicable on the basis of its ambiguity.
>
> In conclusion, I find that loss or damage from mould was not excluded coverage under the policy based on any exclusion clause.

33 The trial judge also found that the loss or damage had occurred within the policy period. After having found that there was a meaningful difference between mould and toxigenic mould he went on to state (at para. 129):

> Having assessed all of the evidence and considered the applicable principles, I conclude that the risk associated with toxigenic mould did not arise until the spring of 2001. As there is no evidence to substantiate the existence of toxigenic mould prior to that time period, and as there were no health problems reported such as would normally be associated with the presence of toxigenic mould, I consider it reasonable to infer there was none present prior to that date and I so find. The first proof of loss deals with the loss or damage occasioned by the presence of toxigenic mould in unit 301. The second proof of loss deals with the loss or damage occasioned by toxigenic and other mould throughout the Complex. The remediation recommendations contained within the 1993 New York Protocol include the removal of all mould and the second proof of loss therefore relates to the remediation process associated with the removal of all mould throughout the Complex. On that basis, I find that the loss or damage occurred within the policy as both proofs of loss were filed while the last of the renewal policies was in force.

34 The trial judge then set out, at para. 139, that as he had already determined that the loss occurred within the policy period, he was also finding that both proofs of loss were filed within the required two-year limitation period.

35 Finally, the trial judge found that the amount claimed by Minox was covered under the terms of the policy. With respect to the amount of loss, Sovereign had taken issue with the fact that Minox had replaced all of the windows and patio doors in the Complex with doors and windows that were superior to those in place and further that the required remediation did not need to replace those windows and doors. The judge said (at para. 147):

> Based on the advice received from Pinchin and Crosier, which advice was not undermined or contradicted at trial, I find it reasonable for Minox to have replaced rather than repaired the exist-

> ing windows throughout the Complex. While it is true that some of the units were not contaminated with mould, the experts recommended the replacement of all windows throughout the Complex which was not unreasonable under the circumstances. It should be noted as well that both Crosier and Pinchin were following the remediation guidelines set out in the 1993 New York Protocol.

GROUNDS OF APPEAL

36 As stated earlier, Sovereign argues that the trial judge erred in finding that the loss or damage was fortuitous, that the loss or damage was not excluded by the clear and unambiguous policy exclusions, that the loss or damage occurred within the policy period and occurred less than two years prior to the time the statement of claim was filed and, finally, that he erred in his assessment of damages, specifically in his application of the replacement cost endorsement.

EXCLUSION CLAUSES

37 I deal initially with the issue of exclusions under the policy. The policy provided for the following exclusions:

> **5.B. PERILS EXCLUDED**
>
> This Form does not insure against loss or damage <u>caused directly or indirectly:</u>
>
> .....
>
> (c) (i) by seepage, leakage or influx of water derived from natural sources through basement walls, doors, windows or other openings, therein, foundations, basement floors, sidewalks, sidewalk lights, or by the backing up of sewers, sumps, septic tanks or drains, unless concurrently and directly caused by a peril not otherwise excluded in Clause 5.B. hereof;
>
> (ii) by the entrance of rain, sleet or snow through doors, windows, skylights or other similar wall or roof openings unless through an aperture concurrently and directly caused by a peril not otherwise excluded in Clause 5.B. hereof;
>
> .....
>
> (e) by dampness or dryness of atmosphere, changes of temperature, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, contamination, pollution, change in colour or texture or finish, rust or corrosion, marring, scratching or crushing, but this exclusion does not apply to loss or damage caused directly by "Named Perils", rupture of pipes or breakage of apparatus not excluded under paragraph (m) of Clause 5.A. hereof, theft or attempt thereat or accident to transportation conveyance. Damage to pipes cause[d] by freezing is insured provided such pipes are not excluded in paragraph (m) of Clause 5.A. hereof;
>
> .....
>
> NOR DOES THIS FORM INSURE
>
> (m) wear and tear, gradual deterioration, latent defect, inherent vice, or the cost of making good faulty or improper material, faulty or improper workmanship, faulty or improper design, provided, however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured.... [emphasis added]

38 Sovereign argues that the relevant exclusion clauses are clear and unambiguous and that the trial judge erred in his interpretation of the policy. It further argues that the trial judge erred by applying the wrong test in considering the issue of the exclusion clauses. It argues on this point that the judge was wrong in law when he stated at para. 78 of his reasons that "I have found the occurrence of mould did not inevitably follow," as the proper test to be applied was whether the loss or damage was caused either "directly or indirectly" from one of the listed exclusions. Sovereign also argues that the judge was in error in relying on the decisions in *Pavlovic* and *Rivard v. General Accident Assurance Co. of Canada*, 2002 MBCA 70, 166 Man.R. (2d) 39, to justify his findings as the exclusion clauses in those cases were different than the clauses in the policy in the case at bar. It argues that although in *Pavlovic* the exclusion clause referred to a number of excluding events, the words "directly or indirectly" were not part of the policy exclusions as is the case here.

39 Finally, Sovereign argues that the judge misapprehended some of the evidence that applied to the issue of exclusions and that he erroneously rejected an element of the Agreed Statement of Facts agreed to by the parties.

40 Minox argues initially that the judge's findings with respect to the applicability of the exclusion clauses is a matter of mixed fact and law and that therefore, in order for this court to set aside those findings, it is necessary for us to conclude that the judge made a palpable and overriding error.

41 Minox argues that the exclusion clauses cannot be considered in isolation and that the trial judge correctly considered the entire factual matrix of the case and the extensive expert evidence with respect to the cause of mould.

42 Minox further argues that the trial judge was correct in not accepting fully what was in the Agreed Statement of Facts when dealing with the issue of design flaw as that fact was not supported by other evidence.

43 Finally, as an alternative, Minox argues that if the trial judge committed a palpable error with respect to the issue of the exclusions under the policy the error was not overriding.

44 The trial judge determined that the evidence established that there was seepage of water through doors or windows, that there was the entrance of rain, snow or sleet through doors or windows, and that there was dampness of atmosphere in the Complex, all of which contributed to excess humidity and moisture within the units of the Complex. He also determined that moisture was an essential ingredient for the development of mould. However, because the evidence established that mould would not inevitably result from moisture or humidity problems, the trial judge determined that he was unable to conclude that the excessive moisture was a direct or indirect cause triggering the appearance of the mould.

45 In interpreting the exclusion clauses in a way that damage had to be inevitably caused by the seepage, rain or humidity, I have been persuaded that the trial judge erred by applying the wrong test in considering those clauses. This is an error in law and therefore no deference is owed to his decision.

46 The trial judge's interpretation was that not only must Sovereign prove that seepage, rain or humidity caused the loss or damage, but it must also prove that these events would always cause that loss or damage. In my view, such an interpretation is difficult to sustain upon a literal reading of the clause.

47 It would also be difficult to argue that the intention of the parties upon entering the contract was that the phrase "directly or indirectly caused" would mean "inevitably caused." Furthermore, it is difficult to see how the trial judge's interpretation would give effect to the reasonable expectations of the parties. His interpretation could lead to absurd results. By his interpretation, if the seepage of water through the windows had caused water damage, that damage, although caused directly by the seepage, would not be subject to the exclusion unless Sovereign could prove that the damage was also inevitable; i.e., that it would inevitably occur any time there was seepage.

48 It is useful for us to consider the case of *Consolidated-Bathurst Export Ltd. v. Mutual Boiler & Machinery Insurance Co*., [1980] 1 S.C.R. 888, in looking more closely as to the manner in which the words "directly or indirectly" are to be interpreted. In that case, some heat exchangers failed due to corrosion, and as a result, Consolidated-Bathurst had to shut down part of its facilities, leading to a loss of over $158,000. Consolidated-Bathurst was insured against "accidents," but the policy indicated that "Accident shall not mean ... corrosion" (at p. 896). Consolidated-Bathurst argued that this meant that damage from the event of corrosion was excluded, but did not mean that loss consequential to the event of corrosion was excluded. In other words, the cost of replacing the heat exchangers, damaged by corrosion, was excluded, but the consequential shut-down loss was not.

49 Estey J., for the majority, agreed with this submission. He compared the corrosion clause to the exclusion clauses in the policy which used the words "directly or indirectly caused" to exclude not only the direct losses of an event, but also the consequential losses from the event. Estey J. stated (at pp. 898-99):

> Thus it may be argued that when the draftsman wished to exclude consequences from an event, the words "directly or indirectly" were employed. Had this technique been adopted ... it would have read;
>
> > Accident does not mean that which directly or indirectly results from corrosion.

50 Therefore, the use of the phrase "directly or indirectly" generally connotes that both the direct and consequential losses of an event are captured. Thus, as long as the evidence in the present case indicates that mould was a direct or

consequential result of the seepage, rain and humidity, then the exclusion clauses would apply, absent other issues. In this case, the evidence, as so found by the trial judge, is clear that the seepage, rain and humidity present in the Complex led to the moisture and humidity conditions in the Complex which were so conducive to mould growth.

51 The case of *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, [2001] 3 S.C.R. 398, also mentions the phrase "directly or indirectly causes" with respect to loss caused by concurrent causes. In that case, Major J. for the court stated that if an insurer wishes to exclude coverage where there are concurrent causes (one of which is covered and the other which is excluded), it can use appropriate language to do so. Major J. then referred, at para. 47, to the *Pavlovic* case wherein Finch J.A. indicated, at p. 320, that the use of the phrase "caused directly or indirectly" would exclude coverage where there are concurrent causes. This therefore confirms, in my view, the correctness of Sovereign's argument that the judge was in error in relying on the decisions of *Pavlovic* and *Rivard* because of the very different wording of the exclusion clauses in those decisions.

52 Thus, in this case, even if the mould was the result of concurrent causes, the use of the phrase "directly or indirectly caused" in the exclusion clauses, allows the exclusion clauses to apply. So, in the present case, even though the evidence indicated that the right temperature, adequate food and mould spores needed to be present, the evidence also established that moisture was a prerequisite for mould growth.

53 Therefore, in my view, it is clear that the seepage, rain and humidity problems within the Complex contributed at least indirectly to the growth of mould within the Complex and consequently, the exclusion clauses would apply. As a result, Sovereign is not liable to Minox to cover the costs of mould remediation and prevention.

54 As the error committed by the trial judge is one of law for which the standard of review is that of correctness, I would allow Sovereign's appeal, set aside the judgment and dismiss Minox's action with costs.

M.A. MONNIN J.A.
R.J. SCOTT C.J.M.
F.M. STEEL J.A.

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