

Privy Council Appeal No. 45 of 1978

Far East Hairgoods Manufactory Company Limited - - *Appellants*

v.

Grand Union Insurance Company Limited - - - - *Respondents*

FROM

THE COURT OF APPEAL OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 16TH APRIL 1980

Present at the Hearing:

LORD DIPLOCK
LORD EDMUND-DAVIES
LORD FRASER OF TULLYBELTON
LORD SCARMAN
SIR WILLIAM DOUGLAS

[*Delivered by* SIR WILLIAM DOUGLAS]

The appellants are manufacturers of plastic handbags and at material times occupied factory blocks on two separate floors of the King Wan Factory Building at No. 54 Hung To Road, Kwan Tong, Kowloon. In August, 1974, the respondents, as insurers, issued two policies of insurance covering the appellants' stock-in-trade and other property described in the policies against destruction or damage by fire or lightning.

On the 1st January, 1975, a fire broke out at the King Wan Building causing damage to the appellants' property on the 2nd floor as well as on the 5th floor. The appellants claimed the amounts settled by the loss adjusters but the respondents refused to pay on the ground that the appellants were in breach of various warranties set forth in the policies.

The appellants sued. In the Supreme Court they failed in respect of their claim under the policy relating to the 2nd floor, and that claim has not been further pursued. In respect of the policy relating to their factory block on the 5th floor, the appellants obtained judgment for \$170,873.13, the quantum not being in dispute. From this judgment the respondents appealed to the Court of Appeal where the appeal was allowed and judgment entered for the respondents with costs in the Court of Appeal and in the Court below.

The narrow point upon which this appeal comes before their Lordships' Board is whether the appellants were in breach of warranty 9 in the policy relating to the 5th floor. Warranty 9 reads as follows:—

“STORAGE WARRANTY (INDUSTRIAL RISKS) Warranted that during the currency of this policy no waste materials or goods of any description whatsoever whether belonging to the insured or not shall

be stored temporarily or otherwise on any staircase or landing or in any passageway within or in common use with the premises described in the policy.

Warranted also that all waste materials will be kept in metal receptacles and removed from the building daily.”

The premises insured are described in the policy as “ No. 54, Hung To Road, ‘ King Wan Fty. Bldg.,’ 5th floor, Block ‘ B ’, Kwun Tong, Kowloon ”. Block “ B ”, like the other three factory blocks on that floor, opens on to a rectangular area described at the trial as a lift lobby, and measuring 15 feet by 20 feet. Two factory blocks occupy each of the 15 foot sides. Two lifts occupy one 20 foot side and access to stairs is provided on the side opposite the lifts. It is not disputed that before the fire broke out the appellants had placed some bags of waste P.V.C. and certain items of discarded iron machinery in this area.

The learned trial judge held that the lift lobby was neither a “ staircase ”, “ landing ” nor “ passageway ”, and observed that the word “ landing ” properly connotes a stop or resting place in a staircase. The Court of Appeal on the other hand took the view that the lift lobby could properly be described as a “ passageway ”, because a person wishing to reach any of the four factory blocks, the two lifts or the staircase had to pass through this space and to that extent that person would be using a “ passageway ”.

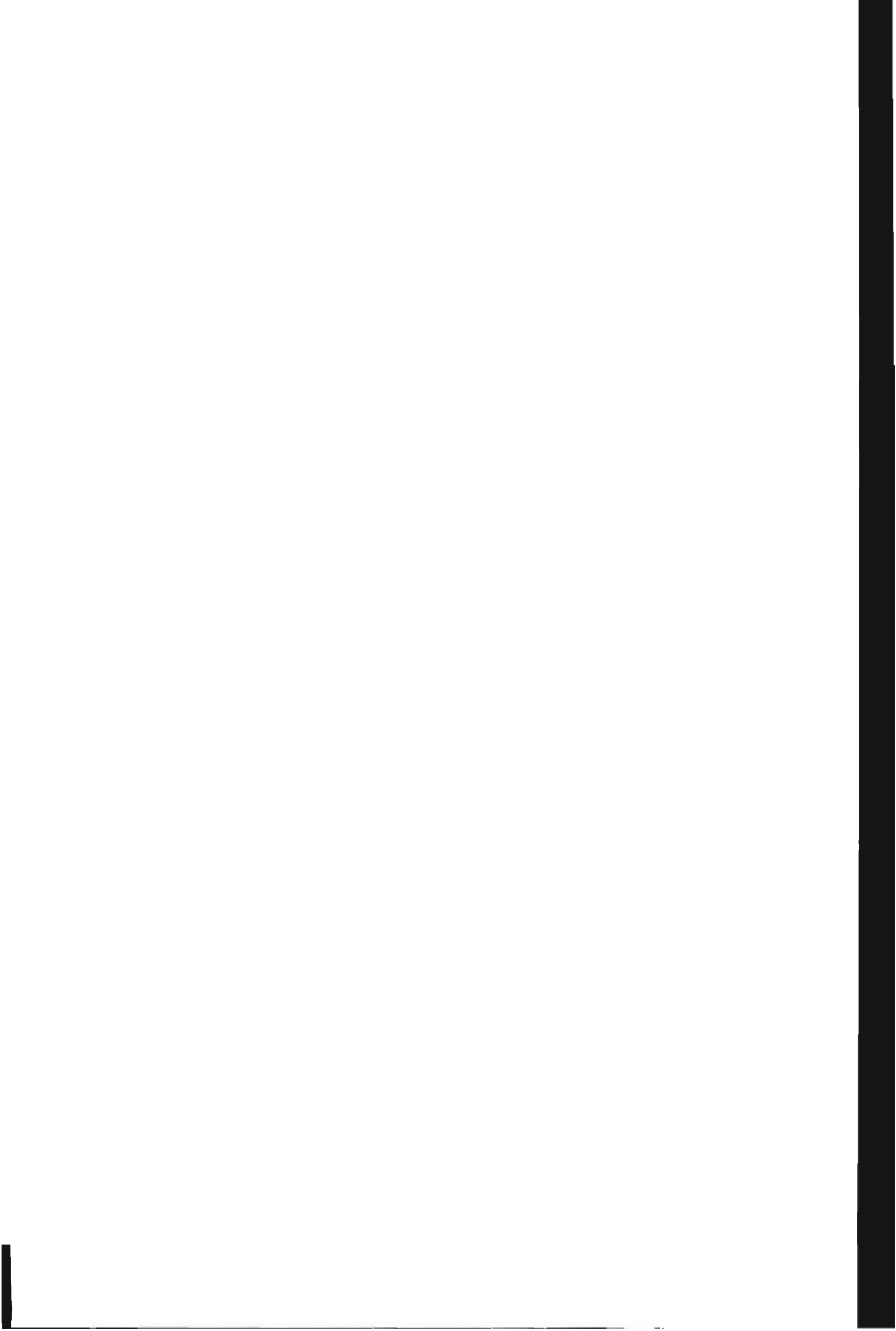
In construing words in an insurance policy, their Lordships must give them their ordinary and natural meaning. According to the Oxford English Dictionary the word “ landing ” is defined as, *inter alia*, “ a platform in which a flight of stairs terminates; a resting-place between two flights of stairs ”, and an example of its usage in 1882 is given in the sentence, “ The five bedrooms all opened on a square landing ”. As to the word “ passageway ”, that term is defined as “ a way affording passage; a path by which a person or thing may pass through, in or out; a passage especially in a building ”.

In construing the policy, regard must be had to the purpose for which the area was used (see per Diplock L. J. in *Thornton v. Fisher and Ludlow Ltd.* [1968] 1 W.L.R. 655). It was used to provide access to the factory blocks, to the lift and to the stairs. The ordinary man coming into that part of the building would in all likelihood consider it a landing if he were entering or leaving one of the lifts or if he were coming up or going down the stairs. The same man would probably consider the area a passageway if he were going from one factory block to another, or from a factory block to either a lift or the stairs or vice versa.

In regard to the second part of the warranty, learned counsel for the appellants submits that in accordance with its terms, there would be a breach if waste materials were stored in other tenants’ factory blocks over which the appellants would have no control and about which they need have no knowledge. On the facts of this case, it is not disputed that the appellants placed waste material and discarded machinery in the lift lobby so that the situations referred to in counsel’s submission do not arise.

Finally, it is contended on behalf of the appellants that the word “ building ” in the second part of the warranty refers merely to the factory block occupied by the appellant. There is nothing in the context of the warranty to support such a conclusion and on this issue, as on the other issues arising in this appeal, their Lordships are of opinion that the view taken by the Court of Appeal is the correct one.

For the reasons stated above, their Lordships will humbly advise Her Majesty that the appeal should be dismissed with costs.



In the Privy Council

FAR EAST HAIRGOODS
MANUFACTORY COMPANY LIMITED

v.

GRAND UNION INSURANCE
COMPANY LIMITED

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