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Lost Water is Not Property Damage and the Continued Narrowing of Products Claims for Pure Economic Loss

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In its recent decision in *Ottawa Community Housing Corporation v. Sloan Valve Company*, 2025 ONCA 586, the Ontario Court of Appeal continued to confirm that there are limited avenues to claim against a manufacturer for the cost of repairing, maintain and replacing an allegedly shoddy product.

The two key takeaways are:

1. A claim for an implied warranty of quality under section 15 of the *Sale of Goods Act* runs only against the seller in the contract of sale, not the upstream manufacturer.
2. Courts continue to push back early on creative "property damage" theories. Here, "leaking water" was not damage to property—the claim was, in substance, about higher water bills from inefficient flow.

What Happened

The plaintiff, OCHC, retrofitted thousands of toilets with a pressure-assist system manufactured by the defendant Sloan and supplied by the defendant Wolseley. Years later, OCHC alleged cartridge failures caused excess water usage and sued for $7.67M+ in excess water costs, internal labour, and remediation expenses.

On a Rule 21 motion to strike the pleading at the outset, the motion judge:

- Struck the SGA implied warranty claim against Sloan (manufacturer) without leave; and
- Struck the negligence claim (pure economic loss) with limited leave to fold certain allegations into negligent misrepresentation.

OCHC appealed. The Court dismissed the appeal.

Key Holdings

1) Implied Warranties under the *Sale of Goods Act* are Seller-Facing Only

- The court treated its decision in *Arora v. Whirlpool*, 2013 ONCA 657, as controlling: privity is essential. A manufacturer not party to the contract of sale is not a "seller" and cannot be liable under s. 15.
- Pre-sale communications and assurances did not convert Sloan into a seller. Any alleged collateral contract remains a different, non-SGA theory (e.g., express warranty or negligent misrepresentation), but s. 15 doesn't apply.

Why it matters: Ontario manufacturers who distribute through third-party retailers or wholesalers can take continued comfort that statutory implied warranties under the SGA are unlikely reach them unless they are the actual seller.

2) "Leaking Water" Is Not Property Damage Here

- To overcome the bar to recovering in negligence for pure economic loss, OCHC framed the loss as damage to "property" (lost water), but the court looked at the claim as a whole. The damages were increased water costs from a non-dangerous defect.
- That is pure economic loss, not recoverable in negligence absent a recognized exception (and no "real and substantial danger" was pleaded).

Why it matters: At the pleadings stage, courts are weeding out inventive "property damage" labels that re-package financial consequences of non-dangerous defects. Plaintiffs should expect early resistance to such reframing.

Practical Takeaways

- For manufacturers:
    - If you sell through intermediaries, Ontario's SGA implied warranty exposure remains limited. Maintain clear distribution structures and contractual warranties tailored to your risk profile.
    - Keep marketing and technical communications accurate; while SGA claims may not attach, express warranty or misrepresentation theories can.
- For sellers/distributors:
    - You are the potential SGA target. Ensure terms and conditions, disclaimers, and allocation of risk/indemnities with manufacturers are current.

- For plaintiffs considering tort claims:
    - Where the product is non-dangerous and the alleged harm is higher bills/repair costs, expect pure economic loss challenges and possible early strikeouts.
    - Consider focusing on contractual routes (seller-facing SGA, sale contract terms) or misrepresentation/express warranty (with particulars), rather than stretching “property damage.”