

Rider/Real Property Contract: New Jersey Appellate Court Addresses Whether Seller Must Undertake Groundwater Remediation



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The Superior Court of New Jersey – Appellate Division (“Appellate Court”) addressed in a June 10th opinion whether a rider to a real estate contract requiring the Seller to undertake certain environmental remediation was enforceable. See *Miguel A. Hector v. Super Car Wash limited Liability Company, et al.*, 2019 WL 2418917.

The Appellate Court specifically addressed whether the Seller was obligated to undertake groundwater remediation as required by the rider even though there was an alleged absence of consideration.

Super Car Wash limited Liability Company and its managing member, Ali Musa (collectively “Musa”) entered into a real estate contract to sell its commercial lot and carwash business (collectively “Property”) to Miguel A. Hector (“Hector”). The sale of the property was subject to an environmental inspection. Hector could terminate the real estate contract if an inspection revealed contamination.

Hector’s environmental consultant identified contamination in the soil and recommended further investigation. Hector and Musa negotiated a rider to the real estate contract. The Appellate Court described the rider by noting that:

... the buyer's environmental consultants had "determined that there is contamination of the property from hazardous material."

The rider provided that the Seller had “agreed to remediate all such contamination prior to closing. . . at the expense of the Seller.” Further, the Seller agreed to perform the “cleanup of any additional contamination that may be discovered during the course of this remediation.”

Musa discovered that the groundwater was contaminated during his remediation of the soil. He refused to undertake remediation of the groundwater. Hector sued for specific performance and the lower court concluded that the rider was unambiguous and required remediation of the groundwater.

Musa argued on appeal that he should have been able to present evidence that the rider was void because there was neither consideration nor meeting of the minds.

The Appellate Court rejected the argument, referencing the lower court’s receipt of evidence from both Hector and Musa addressing consideration. It noted that Hector as a buyer was going to cancel participation in the real estate contract unless Musa agreed to the rider, noting:

An agreement to refrain from exercising a legal right is a form of consideration.

Hector's willingness to proceed with the transaction (regardless of the environmental contamination) was deemed consideration for the rider.

As to the "meeting of the minds" contention, the Appellate Court concluded that Musa conceded that he signed the rider after his own environmental consultant identified groundwater contamination. He also conceded that the rider addressed "any additional contamination that may be discovered during the course of this remediation." Further, the Appellate Court rejected the argument that he was only required to clean up "whatever I have to report." This was apparently a reference to the originally discovered soil contamination.

The rider did not contain such limitation. The document was deemed unambiguous.

A copy of the opinion can be downloaded [here](#).