

Fuel Tank/Leasehold Contamination: Mississippi Appellate Court Addresses Liability Question



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The Mississippi Court of Appeals addressed in a May 31st opinion a dispute over responsibility for environmental contamination between a lessor and a lessee. See *Biloxi Dock & Ice, LLC v. Back Bay Fuel and Ice, LLC*, 2022 WL 1743238.

The dispute was complicated by the fact that a definitive source of the diesel fuel contamination could not be identified.

R.A. Lesso Seafood Inc. (“Lesso”) purchased a parcel of land near the bay in Biloxi, Mississippi, in 1978.

Lesso leased the land to Back Bay Fuel and Ice, LLC (“Back Bay”) in 1997. Back Bay used the leased premises as a commercial icehouse facility, fuel dock, and a facility for storing and dispensing fuel. A fuel tank was utilized to store fuel. Such equipment had not been present on the property prior to 1997.

Michael Cooper (“Cooper”) purchased Back Bay in 2006.

Lesso sold the property to Biloxi Dock & Ice, LLC (“BDI”) in 2019. BDI undertook certain environmental assessment work on the property prior to its purchase. The assessment determined that soil on the property was contaminated with fuel in a concentration that exceeded the Mississippi Department of Environmental Quality’s (“MDEQ”) standards.

BDI sent Back Bay a letter requesting that the situation be addressed. Back Bay never responded. Nevertheless, BDI purchased the property.

BDI had the contaminated soil remediated for about \$75,000. It subsequently notified Back Bay that it was in default of the lease and liable for the \$75,000 that had been expended. Back Bay rejected this demand.

BDI subsequently filed suit in Harrison County Court against Back Bay for unlawful detainer and other relief. Back Bay’s response argued that it:

- Was not responsible for the soil contamination
- Had not violated any federal or state laws or regulations

The County Court dismissed BDI’s complaint. Therefore, the County Court concluded there was no proof that Back Bay caused any leakage of fuel.

The dismissal was based on the County Court’s conclusion that:

- Since Cooper's ownership of Back Bay the fuel tank had been inspected by the U.S. Coast Guard
- The fuel lines had been tested for leaks the past two years
- The source of the contamination could not be determined
- Back Bay had operated a fuel tank on the property for 20 years without contention of the lessor

BDI appealed the judgment to the Harrison County Circuit Court. The Circuit Court agreed with the County Court that there was no evidence in the record that the fuel originated from Back Bay's tanks.

BDI appealed this judgment to the Mississippi Court of Appeals ("Court of Appeals").

The Court of Appeals upheld the County Court and Circuit Court. It held that the burden was on BDI to establish that Back Bay had violated the MDEQ regulations rendering it in default of the lease.

The County Court, as the fact-finder, was deemed to have had sufficient evidence to conclude that BDI was in compliance with the relevant MDEQ regulations. Further, it noted that BDI was aware of this issue and regardless acquired the property.

Back Bay was therefore not in default of the lease's terms.

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