

Property Redevelopment/Environmental Remediation: Massachusetts Appellate Court Addresses Approval Right



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The Appeals Court of Massachusetts addressed in a November 3rd opinion an issue arising out of environmental remediation associated with a property redevelopment project. See *Starr Cap. Partners, LLC v. Toll Bros., Inc.*, 101 Mass. App. Ct. 1123 (2022).

The issue considered was whether the seller of a property with a history of environmental issues could reallocate the scope of its burden to the buyer for providing funds to offset the costs of environmental regulatory compliance.

Starr Capital Partners LLC (“Starr”) entered into an agreement with Toll Brothers Inc. (“Toll”) to sell eight parcels of land in Belmont, Massachusetts. The land had a history of significant environmental issues stemming from previous uses as a gas station and dry-cleaning business.

Oil and other contaminants were present in the soil and groundwater. Massachusetts law required that Starr perform remediation work on the property until the land was placed in “remedy operation status.” Further, for the property to be developed, additional remediation work had to be done.

Toll agreed to purchase the property.

Starr was granted an option to purchase the designated retail unit of the planned land development. However, to exercise that option, Starr was required to pay Toll the costs it incurred to produce the specific unit of the land. This was defined as the cost of remediation of the existing environmental conditions and any other unknown conditions.

Starr’s tentative cost was estimated to be roughly \$1.44 million. However, Starr acknowledged that the remediation budget may exceed the initial estimate. Starr agreed to extend the scope of their obligation. Failure to pay any costs exceeding \$2.5 million would cost Starr the option.

After the purchase was finalized, relations soured as the costs of environmental remediation totaled more than \$4 million. Starr objected to the increases and brought an action alleging that Toll breached the contract by changing the scope of the remediation work without approval.

Toll subsequently sent Starr an invoice for payment of remediation costs that represented some of the total \$3.6 spent to date on remediation. Starr refused to pay. It asked for an injunction to prevent requests for payment.

Toll submitted an affidavit from Starr's environmental remediation expert to attest that the initial estimate presented at the contract's negotiations was the result of numerous errors that resulted in additional excessive costs. The injunction request was denied. Starr was ordered to make the payment. Further, the option was forfeited. Toll moved for summary judgment and the Superior Court of Massachusetts granted the motion.

Starr appealed.

The Appellate Court of Massachusetts first held that the original contract terms did not give Starr the right to approve or deny additional increases in the remediation costs. Rather, the agreement expressly contemplated that Toll would accomplish remediation for environmental compliance. Such a cost was not then known and might increase. Starr had approval rights only over the scope of the work and associated costs.

The issue of the exact approval rights over the scope of the work was held to be ambiguous. The lower court in ruling on the motion for summary judgment was deemed to have erroneously left out extrinsic evidence that would assist in defining Starr's rights. Thus, summary judgment on Starr's breach of contract and covenant of good faith and fair dealing claims were improper.

A copy of the Memorandum and Order can be downloaded [here](#).