Environmental Transactional Issue: New Jersey Appellate Court Addresses Contractual Dispute Over Responsibility for Petroleum Remediation Costs

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The Superior Court of New Jersey, Appellate Division ("Appellate Court") addressed in a May 11th Opinion a breach of contract claim concerning remediation of multiple environmental conditions including removal of a leaking underground storage tank ("UST") and contaminated soil. See Paradigm Hedge, LLC v. Cerlione, No. A-1161-21.

A key issue on appeal was whether the property owners ("Sellers") breached the contract by failing to reimburse purchaser Paradigm Hedge, LLC ("Paradigm"), a land acquisition and development company for remediation costs.

Sellers owned an 11-acre property described as having historical uses such as:

- Farming
- Orchards
- Farm Equipment Sales

Paradigm retained EcolSciences to conduct an environmental site assessment. It identified multiple recognized environmental conditions on the property. The environmental assessment estimated that $110,000 would be incurred to remediate and remove three USTs and remediate contaminated soil.

A report from Lawes Environmental Services, LLC confirmed the presence of gasoline in the soil and recommended removal and remediation. Additionally, the company received an estimate from ECC Horizon for removing the gas UST and soil replacement. The estimate stated:

If corrosion holes are observed in the UST or subsurface gasoline impacts contamination is found . . . the responsible party will be required to retain a Licensed Site Remediation Professional ("LSRP") to investigate and remediate the conditions in accordance with New Jersey's environmental regulations . . . the associated costs could range between $50,000.00 and $150,000.00+.

The contract provided that Sellers would be responsible for the remediation costs of certain environmental matters.

The agreement allotted responsibility as follows:

. . . costs and expenses of the Remediation Work shall be solely the responsibility of Seller but shall be paid by the Buyer Parties and shall be a credit against the amounts due under the Mortgage Note."

The lower court held that Paradigm owed $200,000. An important factor in the lower court's decision was Paradigm's knowledge of the nature and extent of the property's environmental conditions and the fact that they proceeded with the transaction.

The Appellate court held on appeal that Paradigm failed to establish a breach on the part of the Sellers.

First, they noted that the closing agreement, prepared by Paradigm's own counsel, established that the Sellers' credit obligations were limited to removal of the UST and remediation of the surrounding soil, not the entire purchased site.

Second, the company had a duty to proceed with the remediation work before they were credited. They had not done so.

A copy of the Opinion can be downloaded here.