

Contaminated Soil/Sewer Contractor: New York Appellate Court Addresses Breach of Contract/Unjust Enrichment Claims Against Natural Gas Company



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The Supreme Court, Appellate Division, Second Department, New York (“Appellate Court”) addressed in a September 13th Opinion issues arising out of a sewer contractor’s discovery of contaminated soil in the course of installing a box storm sewer. See *Bedford-Carp Construction, Inc. v. Brooklyn Union Gas Company, etc.*, 2023 WL 5943709.

The question addressed was whether the contractor could assert claims for breach of contract and unjust enrichment against a natural gas company.

Bedford-Carp Construction, Inc. (“Bedford”) contracted with the New York City Department of Design and Construction (“NY”) to install a box storm sewer in Brooklyn. Bedford is stated to have discovered approximately 45,000 tons of soil and subsoil at the construction site which was contaminated. An environmental consultant approved by NY determined that Brooklyn Union Gas Company (“Brooklyn Gas”) facilities caused the contamination.

NY ordered Brooklyn Gas to remove and remediate the contaminated soil. Brooklyn Gas refused to do so. Therefore, Bedford was required to remediate the soil contamination in order to complete the sewer project.

Bedford filed a judicial action against Brooklyn Gas alleging:

- Breach of contract
- Declaratory Judgment requiring compensation for the soil removal
- Unjust enrichment

The lower court granted Brooklyn Gas’s motion to dismiss the alleged breach of contract and Request for a Declaratory Judgment.

The basis for this holding was the absence of contractual relationship or privity between Bedford and Brooklyn Gas.

The Appellate Court determined that the lower court erred in granting Brooklyn Gas’s motion to dismiss cause of action alleging unjust enrichment.

The Appellate Court noted that unjust enrichment:

. . . lies as a quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties.

To recover under a theory of unjust enrichment the Appellate Court states that it must be shown that:

1. the other party was enriched,
2. at that party's expense, and
3. that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.

The Appellate Court stated that if the complaint is afforded a liberal construction, that Bedford sufficiently alleged that Brooklyn Gas was unjustly enriched. Such enrichment is stated to be at Bedford's expense because of its remediation of contaminated soil:

. . . and that it would be against equity and good conscience to permit the defendant to retain what was sought to be recovered.

Further, the Appellate Court found that the lower court was in error by determining that the connection between the parties is too attenuated to support a claim for unjust enrichment. Consequently, the Appellate Court held that the lower court should have denied Brooklyn Gas's motion to dismiss the cause of action alleging unjust enrichment.

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