

# Sale of Industrial Facility/Environmental Assessment: Connecticut Court Addresses Whether Seller was Reasonable in Terminating Transaction



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The Superior Court of Connecticut (“Court”) in a December 20th Memorandum of Trial Decision (“Memorandum”) addressed an issue arising out of the proposed sale of an industrial facility. *See Candor Capital LLC v. Leeder Realty Company, LLC*, 2024 WL 5205972.

The question addressed was whether the seller exercised reasonable discretion in terminating the transaction because of certain environmental conditions.

Leeder Realty Company, LLC (“Leeder”) entered into a Purchase and Sale Agreement (“PSA”) to sell Candor Capital, LLC (“Candor”) certain real property in Hamden, Connecticut (“Property”). The Property is stated to have been leased by Leeder to Leed-Himmel, LLC (“LH”). Howard Goldfarb, a principal of both Leeder and LH. LH has and continues to engage in the manufacture of architectural aluminum products.

Section 3.2 of the PSA provided Candor the opportunity to conduct environmental inspections of the Property. However, at some point Candor its assigned interest in the PSA to an entity known as 75 Leeder. Because the sale of the Property was encompassed by the Connecticut Property Transfer Act, Leeder was required to perform:

...all necessary environmental investigations, filings, and remediations as required under the Act.

Section 3.1 of the PSA provided for a due diligence period to conduct any inspections and studies of the property. Section 3.1 of the PSA provided that until the expiration of the due diligence period, Leeder reserved the right at its reasonable discretion at any time before the Due Diligence Expiration Date to terminate the PSA:

...in the event the Environmental Inspection Reports indicate environmental conditions which may require investigation and/or remediation the cost of which are reasonably expected to exceed \$50,000.00.

A Phase I Environmental Site Assessment was performed which recommended to 75 Leeder’s potential lender that a Phase II Assessment be conducted. The Phase II Assessment was conducted which identified certain contaminants which were above or slightly above state standards.

Goldfarb undertook, due to advice of counsel, an independent environmental assessment. The assessment was performed by Blue River Engineering, which opined that compliance with the previously

referenced Connecticut statute would exceed \$50,000.00. Leeder then terminated the PSA pursuant to Section 3.11.

Candor responded that the termination was not valid because remediation would not be required and therefore would not exceed \$50,000.00. It commenced an action alleging breach of contract and requesting specific performance arguing improper termination.

The question addressed by the Court was whether the termination of the contract was authorized by the PSA.

The Court noted that Goldfarb relied upon both his attorneys and environmental consultants in deciding to terminate the PSA. It recognized that Goldfarb was not qualified in environmental analysis and that these professionals had advised him that the potential costs related to compliance with the previously referenced Connecticut statute could grossly exceed \$50,000.00.

Blue River had been retained to perform what is described as a "Form 3" and an Environmental Conditions Assessment Form ("ECAAF"), which, imposed on the seller certain requirements under Connecticut law. Such additional assessments were alleged to be required to be performed by a Connecticut Licensed Environmental Professional. This had not been undertaken. The costs of this and other requirements for compliance would exceed \$50,000.00. Therefore, there was a reasonable termination.

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