

Landfill Gas Collection System: Federal Appellate Court Addresses Competing Claims for Possession



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The Seventh Circuit Court of Appeals addressed the priority of claims between the City of Peoria, Illinois, and Banco Panamericano, a secured creditor, regarding gas-to-energy conversion infrastructure left behind from a ground lease entered into by Resource Technology Corporation (“RTC”) with the City of Peoria (“Peoria”). See *Banco Panamericano, Inc. v. City of Peoria, Illinois, et al.*, 2018 WL 359628 (January 11, 2018).

The issue was whether Banco Panamericano had a “superpriority” claim in structures and installations originally belonging to RTC that were later possessed by Peoria.

In 1995, Peoria signed a lease with RTC that permitted RTC to install and manage a gas-to-energy conversion project at the city’s landfill.

The lease agreement provided that Peoria had an absolute right to retain, at no cost, the “structures” and “below-grade installations and/or improvements” that RTC installed at the city’s landfill. RTC built a gas collection system of underground wells and pipes that collected and transported the landfill’s gas byproducts to a central location. A plant then converted the gas into electricity, which RTC sold to a local electric utility. The electricity was transmitted from the plant to the electric utility by three miles of utility poles, cables, and associated infrastructure built by RTC (the “interconnect”).

On November 15, 1999, RTC entered involuntary bankruptcy proceedings under Chapter 7 of the Bankruptcy Code. After converting its case to a Chapter 11 petition, Banco Panamericano provided postpetition financing to RTC. RTC continued to operate its business. In March 2000, the bankruptcy court issued an order securing Banco Panamericano’s financing by liens and security interests in essentially all of RTC’s assets. The order granted the bank a “superpriority” claim which conferred a “priority in right of payment over any and all other unsecured obligations, liabilities and indebtedness of the Debtor” and over all administrative expenses and certain priority claims.

In 2004, RTC defaulted on the postpetition loan and the bankruptcy court lifted the automatic stay, allowing Banco Panamericano to pursue available collateral.

In 2008, in a separate action, Banco Panamericano sought permission from the bankruptcy court to assume and assign RTC’s executory contracts, including the gas conversion project at the Peoria landfill. The bankruptcy court denied the motion and the Seventh Circuit affirmed on appeal. See *In re Resource Technology Corp.*, 624 F.3d 376 (7th Cir. 2010).

In the same year Peoria terminated the lease with RTC for failure to cure certain breaches of the 1995 lease. The termination letter stated that Peoria elected to retain all of the “structures” and “below-grade installations and/or improvements” as outlined in paragraph 5(b) of the lease.

Banco Panamericano filed suit in 2013 against Peoria for unjust enrichment. The bank claimed that Peoria unjustly enriched itself by benefiting from the structures and installations that it retained after termination of the RTC lease. It also claimed that its superpriority lien on RTC’s assets gave it a “better claim” than the city to the gas collection system and the interconnect.

The parties filed cross-motions for summary judgment on various issues and the district court granted the city’s motion on the ground that the language of the lease barred the bank’s unjust enrichment claim. Banco Panamericano appealed.

Under Illinois law, where a plaintiff seeks a benefit that was transferred to a defendant by a third party, a defendant’s retention of the benefit is unjust when “the plaintiff for some ... reason had a better claim to the benefit than the defendant.” *Id.*

To determine whether Banco Panamericano had a “better claim” than Peoria, the Seventh Circuit interpreted the relevant portion of paragraph 5(b) of the lease which read:

(b) Within Thirty (30) days after termination of this Lease for any reason, Peoria shall notify RTC of any equipment, structures, and below grade installations and/or improvements that Peoria wishes to retain. Any structures and below-grade installations and/or improvements that Peoria elects to retain shall become Peoria's property at no cost to Peoria. Peoria will purchase any equipment that it elects to retain, and RTC elects to sell to Peoria, at a price mutually agreed upon by Peoria and RTC. Any equipment, structures, and below-grade installations and/or improvements not retained by Peoria shall be removed by RTC at its sole expense. RTC shall restore the premises at its sole expense and to Peoria's satisfaction, and each area in and around a well shall be restored to its condition at the time the well was installed....Plans for removal must be approved by Peoria before removal is begun.... Title to and ownership of any of RTC's property which is not removed within ninety (90) days after termination passes to Peoria. (emphasis added).

The disputed property consisted of the structures (the interconnect) and the below-installations (gas collection system). The Seventh Circuit ruled that reading the paragraph of the lease as a whole gave RTC no post-termination interest in the disputed property at all. The Court affirmed the district court, stating that the lease gave Peoria the absolute right to retain the structures and installations at no cost no matter how the lease terminated. Because the lease gave RTC no post-termination property interest, Banco Panamericano could not have greater rights to the property than those originally held by RTC and therefore did not have a “better claim” than Peoria to the disputed property.

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