

2024 WL 5205972

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Connecticut,
JUDICIAL DISTRICT OF NEW HAVEN.
AT NEW HAVEN.

CANDOR CAPITAL LLC
v.
LEEDER REALTY COMPANY, LLC

NNH CV22-6119902 S
|
DECEMBER 20, 2024

MEMORANDUM OF TRIAL DECISION

#435707 [Cesar A. Noble](#) Judge, Superior Court

This matter, involving a claim of breach of contract for the sale of property, came before the court for trial on September 26, 2024. The court received evidence in the form of testimony of Benjamin Meshel, a principal of the plaintiffs, Candor Capital, LLC (Candor Capital) and 75 Leeder LLC (75 Leeder), Howard Goldfarb, a principal of the defendant Leeder Realty Company, LLC (Leeder Realty) and Carla Sylvester, and various exhibits.

As the trier of fact, the court must weigh the evidence and determine the credibility of witnesses. [Connecticut Light & Power Co. v. Proctor](#), 324 Conn. 245, 259, 152 A.3d 470 (2016). “[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness’ testimony.” (Emphasis omitted.) [Palkimas v. Fernandez](#), 159 Conn. App. 129, 133, 122 A.3d 704 (2015), quoting [Stein v. Tong](#), 117 Conn. App. 19, 24, 979 A.2d 494 (2009). The court, mindful that the burden of proof in civil actions is on the plaintiffs to prove the essential elements of his cause of action by a fair preponderance of the evidence; [Gulycz v. Stop & Shop Companies, Inc.](#), 29 Conn. App. 519,

[523, 615 A.2d 1087 \(1992\)](#); makes the following factual findings.

On or about September 29, 2021, Leeder Realty and Candor Capital entered into a Purchase and Sale Agreement (the “PSA”) whereby Leeder Realty agreed to sell Candor Capital certain real property commonly known 75 Leeder Hill Drive, Hamden, Connecticut (the “Property”) for the sum of \$6,790,000.00. The Property was leased by Leeder Realty to Leed-Himmel Industries, Inc. (“Leed-Himmel”), of which Goldfarb was also a principal. Leed-Himmel has engaged, and continues to engage, in the manufacture of architectural aluminum products. In the course of its business it stores chemicals. Pursuant to the PSA, Candor Capital deposited the sum of \$150,000.00 into escrow. Section 3.2 of the PSA afforded Candor Capital the opportunity to conduct, inter alia, environmental inspections of the property. At some point before November 18, 2021, Candor Capital assigned its interest in the PSA to 75 Leeder.

The sale of the property fell within the ambit of the Connecticut Property Transfer Act, [General Statutes § 22a-134, et seq.](#) (Act)¹, and such was acknowledged in the PSA § 14.1 which obliged Leeder Realty 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 of thirty days from the execution of the PSA (executed on September 29, 2021) to conduct any inspection and studies of the Property. This period was extended three times until December 17, 2021. Section 3.11 of the PSA provided that until the expiration of the due diligence period, Leeder Realty reserved “the right, *at its reasonable discretion* at any time before ... the Due Diligence Expiration Date to terminate this [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.” (Emphasis added.)

A Phase I Environmental Site Assessment was performed to investigate and identify potential **Recognized Environmental Conditions** (RECs), Controlled **Recognized Environmental Conditions** (CRECs), and Historical **Recognized Environmental Conditions** (HRECs) associated with the Property. The company that performed the assessment, Middleton Environmental Inc., recommended

CANDOR CAPITAL LLC v. LEEDER REALTY COMPANY, LLC, Not Reported in Atl....

by report² dated October 15, 2021, to 75 Leeder's potential lender, Signature Bank, that a Phase II assessment be conducted. The Phase II assessment was performed, as directed by Signature Bank, by Castleton Environmental. Castleton conducted a geophysical survey, the installation of soil borings, and the collection and laboratory analysis of soil and groundwater samples. By a report dated November 17, 2021, Castleton disclosed that benzo(a)pyrene was present in the soil at a concentration slightly above its CT DEEP RSR Direct Exposure Criteria Industrial/Commercial for soil. Castleton opined that this was likely attributable to the presence of non-native fill material. As to groundwater, methylene [chloride](#) and several metals were reported above acceptable concentrations. The methylene [chloride](#) levels were thought to be unrelated to current and historical usage of the site, and the elevated levels of metals were likely associated with silty or turbid samples rather than current and historical usage of the property.

Following the completion of the Phase II report, Signature Bank requested a \$250,000.00 escrow to ensure compliance with the Act. Candor Capital requested that Leeder Realty hold back this sum from its sale proceeds to satisfy the bank's requirement. Leeder Realty declined. Candor Capital offered a full personal guarantee to Signature Bank in lieu of the escrow, which was accepted by the bank. At that point, Candor Capital was ready to close on the PSA.

In the interim, on the advice of counsel, Goldfarb caused an independent environmental assessment to be conducted. The assessment was performed by Blue River Engineering, which by report dated December 6, 2021, opined that compliance with the Act would cost in excess of \$50,000.00.

On December 6, 2021, Leeder Realty terminated the PSA purportedly pursuant to Section 3.11 of the PSA. Candor Realty rejected the validity of the termination on the ground that no remediation was required, never mind any expense in excess of \$50,000.00. Additional facts will follow as necessary.

Candor Realty commenced the present action on December 13, 2021. In its operative complaint, #198, dated April 18, 2024, Candor Capital and 75 Leeder advance claims of breach of contract and specific performance based upon

the defendant's improper termination, and thus its claimed breach, of the PSA.

The propriety of Leeder Realty's reliance on Section 3.11 of the PSA as a basis for termination of its obligation under the PSA to sell the Property is dependent upon the application of contract principles to the facts as found by the court. "The elements of a breach of contract claim are the formation of an agreement, performance by one party, breach of the agreement by the other party, and damages." (Citation omitted.) *CCT Communications, Inc. v. Zone Telecom, Inc.*, 327 Conn. 114, 133, 172 A.3d 1228 (2017). "A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction If a contract is unambiguous within its four corners, the determination of what the parties intended by their contractual commitments is a question of law When the language of a contract is ambiguous, [however] the determination of the parties' intent is a question of fact, and the trial court's interpretation is subject to reversal on appeal only if it is clearly erroneous." (Citations omitted, internal quotation marks omitted.) *Customers Bank v. CB Associates, Inc.*, 156 Conn. App. 678, 690, 115 A.3d 461 (2015).

The relevant provisions in Section 3.11 provide that the "Seller [Leeder Realty] reserves the right, *at its reasonable discretion* at any time before ... the Due Diligence Expiration Date to terminate this [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." (Emphasis added.) The phrase "Environmental Inspection Reports" is defined as part of Section 3.2 of the PSA which provides that "Purchaser [Candor Capital/75 Leeder] shall provide copies to Seller [Leeder Realty] of its environmental inspection documents, including any Phase I, or ... Phase II reports." The dispositive issue relative to whether the termination of the contract was authorized by the PSA, or whether it was a breach of contract, is whether Goldfarb's termination was in the exercise of reasonable discretion in the context of the findings of the Phase I and II reports. The court finds that it was.

Goldfarb relied upon his counsel, both general and environmental, as well as the report from Carla Sylvester of Blue River Engineering, in deciding to terminate the PSA.

CANDOR CAPITAL LLC v. LEEDER REALTY COMPANY, LLC, Not Reported in Atl....

He, himself, was not qualified in environmental analysis. His attorneys advised him that the potential costs related to compliance with the Act could grossly exceed \$50,000.00.

Blue River Engineering was retained to prepare a Form 3³ and an Environmental Conditions Assessment Form (ECAAF), all of which, imposed on the seller, were required by the Act as a consequence of the findings of the Phase II report. Sylvester, Blue River's principal, was asked to opine on the cost of any further investigation and/or remediation of contaminants on the property. She testified credibly that the Phase I and Phase II assessments would have to be re-performed because they were not conducted by a Connecticut Licensed Environmental Professional and neither of the assessors for the Phase I and II assessments qualified as such; further site assessment was required, there was inadequate review of public files, they failed to identify specific areas of concerns, and the assessment suffered from gaps in data. Moreover, while the Phase II report detected the presence of other contaminants - for which an explanation was given - an appropriate investigation required a determination of

the fluctuation of the concentration over time. The cost to conduct further investigation and assessment, as Sylvester testified credibly, in compliance with the ACT was reasonably expected to exceed \$50,000.00.

This court finds as a matter of fact that Leeder Really, through its principal, Goldfarb, exercised reasonable discretion in the termination of the PSA because the Phase I and II reports documented environmental conditions which may require investigation and/or remediation. The cost of such investigation and/or remediation are reasonably expected to exceed \$50,000.00.

For the foregoing reasons, the court enters judgment in favor of the defendant against the plaintiffs as to both counts of the plaintiff's complaint.

All Citations

Not Reported in Atl. Rptr., 2024 WL 5205972

Footnotes

- 1 [Section 22a-134, et seq.](#) applies whenever an "establishment," defined by subsection (3) of that statute as any real property in which hazardous waste was generated, undergoes a change in ownership. Pursuant to the Act, sellers of commercial property within the ambit of the Act are subject to strict liability "for all clean-up and removal costs and for all direct and indirect damages resulting from any and all hazardous wastes that remained on the subject property at the time of the transfer ..." [Colonnade One at Old Greenwich Ltd. Partnership v. Electrolux Corp., 767 F. Supp. 1215, 1218 \(D. Conn. 1991\)](#).
- 2 The report identified the presence of four storage tanks, at least one of which was underground.
- 3 The purpose and nature of a Form 3 was not described in the testimony.