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Transactional Issues: Federal District Court (New Jersey) Addresses Allocation of Environmental Liability in a Real Property Purchase Contract

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A United States District Court (New Jersey) addressed in a May 19th opinion whether the seller of a parcel of property containing environmental contamination was relieved from liability by release language in the sale contract. See *North River Mews Associates, LLC and 38 Coah Associates, LLC v. Alcoa Corp., et al.*

Plaintiffs, North River Mews Associates, LLC and COAH Associates, LLC, purchased property from Defendants, Alcoa, Inc. and Alcoa Domestics, LLC ("collective Alcoa").

The property had been vacant since 1978. Plaintiffs planned to redevelop the property. A manufacturing facility had been operated on the property by Alcoa from 1917 to 1968.

Plaintiffs hired Enviro-Sciences, environmental consultants to investigate the property for contaminants. The Plaintiffs believed the property had been properly investigated and remediated through a plan approved by the New Jersey Department of Environmental Protection.

In October 2013, two additional underground storage tanks were discovered. The tanks contained oil contaminated with Polychlorinated Biphenyls ("PCBs") and other hazardous materials. The surrounding ground was also contaminated. After this discovery, the Borough of Edgewater served a stop work order on Plaintiffs. Plaintiffs had no prior knowledge of the tanks.

Plaintiffs retained a site remediation professional to develop a plan to remediate the site. The stop work order on the site was lifted, but because the remediation plans had not been approved, development on the site was halted.

As part of the sale of the property, Alcoa had agreed to pay for the costs of remediation and disposal of certain PCB contaminated material on the site.

Plaintiffs filed an action against Alcoa, including cost recovery under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), common law tort claims, breach of contract, and unjust enrichment. Moving Defendants filed a motion to dismiss all claims.

Alcoa argued that the purchase contract and a subsequent agreement with Plaintiffs released them from liability for all non-contract claims. The release language in the purchase contract states:

Buyer expressly releases Seller and agrees to waive all rights that it may have to seek contribution from Seller for any response costs or claims that may arise as a result of the actions or inactions of Seller and any previous owner, operator, or third party on or with respect to the Property relating to Hazardous Substances.

The court found the language ambiguous as to whether it released only the right to seek contribution, or whether it constituted a total release. Also, the court found ambiguities in a subsequent agreement.

Defendants also argued the common law tort claims should be dismissed because they were brought after the six year statute of limitations expired. The court disagreed, holding Plaintiffs did not know about the underground tanks until 2013. It further concluded there was no evidence Plaintiffs had reason to know of their existence earlier because they were not listed on environmental reports prior to their discovery in 2013.

Finally, Defendants argued the unjust enrichment claim was preempted by CERCLA. The court agreed, holding federal preemption precluded unjust enrichment in CERCLA's environmental cleanup context. The court dismissed the unjust enrichment claim.

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