

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
(804) 786-2259

Granted Appeal Summary

Case

SUMNER PARTNERS LLC v. VENTURE INVESTMENTS LLC
(Record Number 181259)

From

The Circuit Court of Stafford County; V. Willis, Judge.

Counsel

Michael R. Shebelskie, William H. Wright, Jr., Jonathon L. Caulder (Hunton Andrews Kurth LLP) for appellant.

William E. Glover (Glover & Dahnk) for appellee.

Assignments of Error

1. The trial court erred in finding in favor of Venture on its counterclaim and entering judgment for Venture on the same, because Sumner did not default by not closing and had otherwise fully performed. The petroleum contamination on the property excused Sumner's obligation to close. The trial court's ruling rests on its erroneous interpretation that oil, petroleum products, and their byproducts are neither "hazardous wastes or substances" nor "hazardous materials" under the parties' contract.
2. The trial court erred in finding in favor of Venture on Sumner's claims and dismissing those claims with prejudice, because the parties' contract gives Sumner the right to postpone closing and remediate the petroleum contamination before closing. The trial court's ruling rests on its erroneous interpretation that oil, petroleum products, and their byproducts are neither "hazardous wastes or substances" nor "hazardous materials" under the parties' contract.
3. The trial court erred in holding that Venture did not breach §§ 5.6, 17.1 (h) and 17.1 (i) of the parties' contract, because the petroleum contamination on the property comprises "hazardous wastes or substances" and "hazardous materials" under the parties' contract. The trial court's holding contradicts the contract's plain terms and is contrary to the evidence.
4. The trial court erred in denying in part Sumner's motion for reconsideration and not altering its final order, to enter judgment for Sumner instead of Venture. Because oil, petroleum products, and their byproducts are "hazardous wastes or substances" under § 5.6 of the parties'

contract, Sumner had the right to postpone the closing, remediate the contamination, and then close, irrespective of whether those contaminants also are “hazardous materials” under § 17.1(h).