



Beware of Contractual Statutes of Limitation Affecting Claims for Deficient Environmental Services

Publication:

Riker Danzig Environmental Update December 2017

The Appellate Division of the Superior Court of New Jersey recently upheld a provision in an environmental services contract that reduced the time to bring a claim under the contract to one year. Elar Realty Co. v. Environmental Risk Limited, Docket No. A-2201-15 (N.J. App. Div. Oct. 11, 2017). As a result, the property owner was unable to bring a claim against its environmental contractor for deficient work in performing remediation.

In Elar Realty, a property owner, Elar Realty Company ("Elar Realty"), entered into a written contract with an environmental contractor, Environmental Risk Limited, for work relating to the remediation of its property. While Environmental Risk Limited initially began the work, it subsequently sold its assets and open contracts, including the contract with Elar Realty, to another environmental contractor, GZA GeoEnvironmental, Inc. ("GZA"). GZA then performed services in connection with the Elar Realty's property, and Elar Realty paid GZA for these services. GZA performed under the contract until December 24, 2008 when Elar Realty terminated the contract because of "deficiencies in GZA's work." Elar Realty Co., (slip op. at 2-3).

Approximately two years later, Elar Realty sued GZA and Environmental Risk Limited in connection with these deficiencies. GZA and Environmental Risk Limited both argued that Elar Realty's claims were barred by a one-year statute of limitations that it had agreed to in the written contract for environmental services. Elar Realty challenged the applicability of the one-year statute of limitations, but the Appellate Division summarily upheld the shortened statute of limitations and dismissed Elar Realty's claims. Elar Realty Co., (slip op. at 7). By way of explanation, the Appellate Division cited other cases, which held that "[c]ontract provisions limiting the time parties may bring suit have been held to be enforceable, if reasonable." See, e.g., Mirra v. Holland Am. Line, 331 N.J. Super. 86, 91, 751

A.2d 138, 140 (App. Div. 2000).

This is not the first time that the New Jersey courts have upheld a strict contractual provision in a contract for environmental services. For example, in 66 VMD Associates, LLC v. Melick-Tully and Associates, the Appellate Division upheld a provision limiting the liability of an environmental contractor for breach of contract to a mere \$25,000. Docket No. A-4008-09 (N.J. App. Div. Aug. 11, 2011). In so doing, the Appellate Division acknowledged that courts generally enforce a contract as written, with few exceptions.

In light of the above, environmental contractors and anyone contracting for services from such a company should carefully review their contracts in order to adequately protect their respective interests. Contractual statutes of limitation are commonly included in environmental services agreements that can and should be closely considered and negotiated.

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