

Who's Liable for Cleaning up Spill from Removal of Underground Oil Tank?



SITUATION

A couple signs a contract to buy a house subject to a home inspection, which reveals an underground heating oil tank near the house's foundation. The seller of the house hires a company to remove the tank. The sale of the house is then completed. But less than two months later, the couple smells petroleum fumes in the basement and discovers soil contaminated with petroleum in the area where the underground tank had been located. An investigation determines that the soil had been contaminated by oil that was spilled when the tank was removed. But the contamination wasn't visible on the surface. The couple pays for the contaminated soil to be remediated. They then sue the seller and the tank removal company for the remediation costs. They also file a claim with their property insurance company, although their policy has a pollution exclusion. The contract for the house sale stated that the seller wasn't aware of any 'material latent defects' in the property—that is, defects that can't be found through a reasonable inspection. And the seller denies knowing about the contamination. The removal company says it wasn't negligent when it removed the tank. Under the province's environmental law, persons who cause a site to become contaminated are responsible for remediation.

QUESTION

Who's liable for the remediation costs'

- A. The couple, because they own the property that was contaminated.
- B. The tank removal company, because it caused the contamination.
- C. The seller, because he misrepresented the property's condition.
- D. The insurance company, but only if none of the above are liable.

ANSWER

B. Because the contamination was caused by an oil spill when the company removed the tank, the company is liable for the costs of cleaning it up.

EXPLANATION

This hypothetical is loosely based on a BC case in which the court found that the property was contaminated by heating oil spilled when the underground tank was removed. The couple wouldn't have proceeded with the purchase if they'd known about this spill. So the court ordered the removal company, which caused the spill, to pay the couple more than \$13,000 in damages to cover the remediation costs. But it also held that the seller didn't know about the tank before the inspection and wasn't responsible for the spill.

WHY WRONG ANSWERS ARE WRONG

A is wrong because current property owners are often excluded from responsibility for remediating contamination on their property, especially if the land was polluted *before* they owned it. Most environmental laws spell out who's considered 'responsible parties' that can be liable for cleaning up contamination. But these laws usually exclude current property owners from such liability under certain conditions, such as if the land was already contaminated before they bought it, they didn't know about the contamination and they conducted appropriate inquiries about possible contamination. Here, the house's property was contaminated before the couple bought it. They'd conducted appropriate environmental inquiries'in fact, their home inspection revealed the presence of the underground tank in the first place. And they didn't know about the spill until about two months after they took possession. Thus, the couple shouldn't be held responsible for cleaning up the contaminated soil.

C is wrong because it doesn't appear that the seller lied about the property's condition. Yes, the land had been contaminated by oil spilled during the removal of the underground oil tank and while he still owned the property. But the contamination wasn't visible on the surface. It only came to light a few months after the tank was removed when fumes from it started to seep into the house's basement. Thus, it's unlikely the seller would have learned about it, even through a reasonable inspection.

D is wrong because even if the other parties aren't liable, the insurance company wouldn't have to cover the remediation costs. The couple's property insurance has a pollution exclusion. And such exclusions are intended to bar claims for coverage when the insured is, say, sued for releasing a contaminant or wants reimbursement for the costs of cleaning up contamination. In this case, the couple's claim would fall squarely within the pollution exclusion in their insurance policy.

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Connolly v. Jones et al., [2014] BCPC 149 (CanLII), July 15, 2014