

# **Bond Case Briefs**

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## **ASSESSMENTS - RHODE ISLAND**

### **Roadepot, LLC v. Home Depot, U.S.A., Inc.**

**Supreme Court of Rhode Island - June 23, 2017 - A.3d - 2017 WL 2709435**

Commercial landlord brought action against tenant seeking declaratory judgment that tenant was responsible under lease to pay fast track assessment for sewer infrastructure costs.

Tenant filed counterclaim for breach of contract, seeking to recover amounts it had already paid city for the assessment. The Superior Court granted tenant's motion for summary judgment on issue of liability for assessment payment, and later entered judgment awarding tenant value of assessments paid. Both parties appealed.

The Supreme Court of Rhode Island held that:

- Under lease, landlord was solely responsible for payment of assessment;
- Court could not apply equitable principles of restitution and unjust enrichment to tenant's breach of contract counterclaim;
- Voluntary payment doctrine did not bar tenant from recovering payments from landlord; and
- Tenant could not recover late fees which city imposed on tenant's late sewer assessment payments.

Under commercial lease, landlord was solely responsible for payment of fast track assessment to construct sewer line and connect premises to sewer treatment facility. While lease assigned tenant the responsibility for paying "Real Estate Taxes," which, as defined in the lease, included "assessments for betterments and improvements that are levied or assessed by any lawful authority," lease excluded from real estate taxes "any fees or other sums paid to a governmental authority in consideration of obtaining any of the [a]pprovals or utility service," and assessment was a one-time fee which landlord's predecessor had elected to pay over 20 years.

Trial justice could not apply equitable principles of restitution and unjust enrichment to commercial tenant's breach of contract counterclaim seeking to recover sewer assessment payments it made to city under lease, which in fact required landlord, rather than tenant, to make assessment payments, without first affording the parties an opportunity to address the issues. Counterclaim did not assert any claims for equitable relief, nor did tenant amend complaint to add claim under equity, and although landlord defended on some equitable grounds, it did not defend on restitution or unjust enrichment grounds.

Voluntary payment doctrine did not bar commercial tenant from recovering from landlord fast track sewer assessment payments tenant made to city sewer line to connect property to sewer treatment plant, which were landlord's responsibility under lease. Tenant's initial payments were made without full knowledge of the facts, as payments had been made by a vendor and there was some confusion as to whether the bills were for usage, for which vendor would have been responsible, rather than infrastructure, and tenant's later payments were made in order to avoid adverse consequences of nonpayment and imposition of lien and protect its leasehold interest.

Commercial tenant could not recover from landlord late fees which city imposed on tenant's late

sewer assessment payments, even though landlord, rather than tenant, was responsible under lease for those payments, as failure to make timely payments was due to tenant's own lack of reasonable diligence, and landlord had nothing to do with the imposition of the late penalties.

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