

BELMONT CITIZEN-HERALD

Pending lawsuit causing delay in renting of retail space at The Bradford in Belmont

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Published 2:51 p.m. ET Mar. 22, 2021 | Updated 6:36 p.m. ET Mar. 26, 2021

Cushing Square retailers, like Erin Brown, owner of The Blue Butterfly, opened her store at 113 Trapelo Road in Belmont in September 2019 with high hopes that The Bradford mixed use development located directly across the street would revive the area and make it a shopping destination, similar to Belmont Center. She never anticipated the COVID-19 pandemic which forced her to shut down six months later. She also wasn't aware there was a lawsuit for \$30 million filed against Toll Brothers, Inc., the developers, by Starr Capital Partners, LLC, former property owners in September 2017 over the retail portion of the property.

The Bradford Development consists of three buildings, the Winslow, Pomona and Hyland, which each have luxury apartments on the top floors and a total of 37,977 square feet of retail space on the first floors. When Starr Capital Partners sold the property to Toll in October 2016 for \$14,260,000, Toll agreed to grant Starr the option to purchase back the retail portion of the property as completed based on payment of certain remediation costs. Prior tenants of the property, including a dry cleaners and gas station, caused the release of oil and hazardous material.

According to court documents, the parties agreed on a remediation budget of \$1,310,000. Starr's attorneys, Peter Haley and Francis Powell of Nelson Mullins Riley and Scarborough LLP, argue Toll deprived Starr of its bargained for contractual rights to approve the scope of environmental remediation of the property by permitting the agreed upon remediation budget to balloon from \$1.3 million to \$10 million and then "purporting to impose that \$8.7 million error on Starr as the cost of exercising its option right to acquire the retail portion of the property."

Status of lawsuit

The lawyers representing Toll, Lisa Arrowood, Jed DeWick and Margaret Strauss of Arrowood LLP, have made a motion for summary judgement to dismiss the claims of Starr on Dec. 28, 2020, arguing the agreement of the sale was that Starr pay the remediation costs in excess of \$2.5 million. On April 2, 2018, Toll invoiced Starr \$2,211,016.65 representing the actual remediation costs above the agreed upon threshold of \$2.5 million.

According to court documents, Starr did not pay the invoice despite the fact it meant they would forfeit their retail option. Instead, they moved for a preliminary injunction to prevent Toll from demanding payment of the invoice. The court denied Starr's motion but extended the deadline for payment by two weeks to May 31, 2018. Instead of paying the invoice at that point, Starr moved for reconsideration which the court denied. Starr did not pay the invoice and as a result, on June 4, 2018, Toll sent a notice the retail option was forfeited due to the failure to pay the actual remediation costs incurred.

The only current retail tenant of The Bradford development is Starbucks located on the first floor of the Winslow building. Starbucks was located on the original site and its lease was included as part of the sale

At a hearing on March 24, Toll's lawyer, DeWick, argued the contract does not include any language that Toll needed Starr's approval on the remediation budget, therefore there is no breach.

Starr's lawyer, Powell, said the issue is deceptive conduct because with Starr out of the way, Toll stands to profit in excess of eight figures because they are going to get a Brownfields tax credit on the cost for remediation of up to 50% and the retail portion of the property is worth \$30 million.

"They have every incentive to get Starr out of the way," said Powell.

DeWick said the retail unit is worth \$28 million, but has cost over \$10 million in environmental costs as well as over \$15 million in construction costs.

"The idea that there's a giant pot at the end of the rainbow? Believe me, these are not the economics Toll wanted as part of this project." he said.

DeWick also argued Toll no longer has a case because they forfeited their rights by not paying the invoice by the deadline.

Powell counter-argued that because Starr is disputing in good faith the amount of the option price, they can breach the contract with impunity.

Middlesex Superior Court Judge Patrick Haggan said he will take the matter under advisement.

Toll Brothers will not comment on pending litigation.

Chris Starr of Starr Capital Partners told the Citizen-herald, if the judge does not rule in their favor, they will go to trial which means the lawsuit will take years to be resolved.

“I feel very helpless in this situation. I am only in control of half the solution. Toll is in charge of the other half,” said Starr.

Residents and retailers weigh in

Doug Koplou, who lives in the Cushing Square neighborhood, said even with ongoing litigation, there should be ways to realize the benefits of cash flows from commercial leases and increased foot traffic and both parties should be working towards that end.

“Mr. Starr has been associated with enormous delays in repurposing the central parcels in Cushing that he and his family controlled. Despite his litigation, he should be actively engaged in finding commercial tenants,” said Koplou.

Karen Kostigen, owner of Zia’s Clothing Outlet, 91 Trapelo Road, said empty store fronts look depressing and potentially turns people off who travel through the square.

“A vibrant square full of businesses will attract energy, thus business,” she said.

Vicki Lee Boyajian, owner of Vicki Lee’s bakeshop, said she will breath a huge sigh of relief when the whole project finally comes to fruition.

“I always believed in business breeds business. It brings more activity and more exposure to those of us surrounding the site,” she said.

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