

SUPREME JUDICIAL COURT OF MAINE

Sultan Corporation v. Department of Environmental Protection

2022 ME 21 (2022) · No. And-21-262 · Decided April 5, 2022

SUMMARY

The Maine Supreme Judicial Court vacated in part a decision affirming a Department of Environmental Protection cleanup order against Sultan Corporation. The court held that the Board of Environmental Protection had to first determine whether the third-party defense under 38 M.R.S. § 1367(3) is available in proceedings challenging a cleanup order issued under 38 M.R.S. § 1365. The matter was remanded for further proceedings limited to that threshold issue.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Mead, J.; Stanfill, C.J.; Jabar, J.; Humphrey, J.; Horton, J.; Connors, J.
JURISDICTION	Maine
DECIDED	April 5, 2022
DOCKET	And-21-262
DISPOSITION	vacated
PROCEDURAL POSTURE	Sultan Corporation appealed a Superior Court judgment affirming the Board of Environmental Protection's decision upholding, with modifications, a Commissioner of Environmental Protection cleanup order issued under 38 M.R.S. § 1365. The Supreme Judicial Court vacated in part and remanded for the Board to decide whether the third-party defense under 38 M.R.S. § 1367(3) is legally available in proceedings challenging a section 1365 order.
STANDARD OF REVIEW	When the Superior Court acts as an intermediate appellate court, the Supreme Judicial Court reviews the Board's decision directly for abuse of discretion, error of law, or findings unsupported by substantial evidence in the record. The court may not affirm an agency decision on grounds other than those invoked by the agency.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Sultan Corporation v. Department of Environmental Protection, et al.

TOPICS

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QUESTIONS PRESENTED

1. Whether the Board was required to determine, as a threshold legal matter, whether the third-party defense under 38 M.R.S. § 1367(3) is available to a party challenging a Commissioner's cleanup order issued under 38 M.R.S. § 1365.
2. Whether the court could affirm the Board's decision on the ground that Sultan failed to prove the elements of the defense when the Board had declined to decide whether the defense was legally available.

HOLDINGS

1. The Board must first determine whether the third-party defense afforded by 38 M.R.S. § 1367(3) is legally available in proceedings challenging a Commissioner's order issued under 38 M.R.S. § 1365.
2. The court may not affirm the administrative action by substituting a more adequate or proper basis for the grounds invoked by the agency; because the Board failed to determine the availability of the defense, the court was powerless to affirm the administrative action on that issue.

KEY QUOTATIONS

“[I]n dealing with a determination or judgment [that] an administrative agency alone is authorized to make, a court must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis.” (¶ 9)

“The question of whether the defense is available is thus a threshold issue that must be determined before the Board or the court can proceed to consider the merits of the defense.” (¶ 10)

FACTUAL BACKGROUND

Sultan purchased a property in 2003 that had previously housed a dry-cleaning facility. Testing conducted in 2013 revealed perchloroethylene, trichloroethylene, and related breakdown products contaminating the soil, groundwater, soil gas, and indoor air at the property and nearby buildings. The Commissioner designated the property an uncontrolled hazardous substance site and ordered Sultan, as the owner and a responsible party, to implement a remediation alternative. Sultan did not dispute the presence of hazardous substances, the site's designation, the health threat, or its status as a responsible party, but asserted that it qualified for the statutory third-party defense.

PROCEDURAL HISTORY

The Commissioner designated Sultan's property an uncontrolled hazardous substance site and ordered Sultan to submit a remediation plan. Sultan appealed to the Board and asserted the section 1367(3) third-party defense. The Board upheld the order but declined to decide whether the defense was legally available, concluding that Sultan had not proved its elements even assuming availability. The Superior Court affirmed, and Sultan appealed to the Supreme Judicial Court.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the portion of the Board's order declining to address the availability of the section 1367(3) third-party defense. Remand to the Superior Court for remand to the Board of Environmental Protection for further proceedings limited initially to whether the defense is available to other subsections within Title 38, chapter 13-B. Once the Board determines availability and adequately states the basis for its decision, it need go no further unless the defense is found available.

CASES CITED

- Angell Family 2012 Prouts Neck Tr. v. Town of Scarborough, 2016 ME 152, ¶ 3, 149 A.3d 271
- City of Old Town v. Expera Old Town, LLC, 2021 ME 23, ¶ 13, 249 A.3d 141
- Me. Motor Rate Bureau, 357 A.2d 518, 527 (Me. 1976)
- SEC v. Chenery Corp., 332 U.S. 194 (1947)
- Gashgai v. Bd. of Registration in Med., 390 A.2d 1080, 1085 (Me. 1978)
- Rossignol v. Me. Pub. Emps. Ret. Sys., 2016 ME 115, ¶ 6, 144 A.3d 1175
- Palian v. Dep't of Health & Hum. Servs., 2020 ME 131, ¶ 41, 242 A.3d 164
- Avangrid Networks, Inc. v. Sec'y of State, 2020 ME 109, ¶ 37 n.11, 237 A.3d 882