



CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

January 6, 2025

Honorable City Council
City Hall
Somerville, MA 02143

Re: Highland CBD v. City of Somerville
Middlesex Superior Court No. 1981CV3057

Dear Honorable City Councilors:

I am writing to inform you of a recent jury verdict in the above-referenced case. The Plaintiff Highland CBD alleged that the City of Somerville water department improperly installed a water meter at 260 Beacon Street in 2018, resulting in about \$1,300,000 in economic and property damages due to a water leak. The Plaintiff claimed that the City of Somerville installed the water meter with the wrong gasket.

The parties both retained expert witnesses. Both experts agreed that the water meter was improperly installed. City documents signed by a former City of Somerville water department employee reflected that the City installed the meter. A current water department employee, whose name appeared on the document, stated that the City of Somerville water department did not install the water meter and that the document was a mistake.

Trial was held starting on December 9, 2024 before a jury. I represented the City of Somerville. The City of Somerville trial theory was that the City of Somerville did not install the water meter.

The law provides that a City document is presumed to be accurate, but this presumption is rebuttable. Where the trial theory was to seek to discredit the City's own documents and former employee testimony, I believe it was a challenging argument before a jury.

There were two claims brought by the Plaintiff: negligence, with a \$100,000 cap on liability by statute, and breach of warranty, with about \$1,300,000 claimed damages. The jury rendered a verdict in favor of the Plaintiff on the negligence claim. At trial, the Court allowed the City motion for directed verdict on the breach of warranty claim, dismissing the claim.



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Prior to trial, the parties agreed to separate the liability and damages portions for the trial, because the need for a damages trial was speculative. Where the jury rendered a verdict in favor of the Plaintiff on the negligence claim, and the Court dismissed the breach of warranty claim, it appears that a trial on the damages claim would be an exercise in futility and a waste of time and resources, because the provable damages exceed \$100,000. After trial, the judge made this exact point on the record.

Typically, these types of cases settle prior to trial. This case was unique because in September, 2022, the judge denied the City's motion for partial summary judgment seeking to dismiss the breach of warranty claim. Given what I saw as a strong basis to dismiss the breach of warranty claim (which the judge eventually agreed with at trial), I did not recommend settling the case for what the Plaintiff was seeking (i.e., over \$600,000). Given that the claim was for over \$1,300,000, and the jury verdict was for \$100,000, I think this is ultimately a good economic result for the City under the circumstances.

I do not see a viable basis for an appeal on the negligence claim. Therefore, even though the Plaintiff may still appeal the dismissal of the breach of warranty claim, \$100,000 is therefore due and payable at this time.

You will be receiving a separate item in connection with a requested appropriation to pay for the negligence claim.

Please notify me if you have any questions, comments, or concerns.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Shapiro', with a long horizontal flourish extending to the right.

David P. Shapiro
Deputy City Solicitor