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Court Ruling Clears Way For Sale Of Cambridge Development

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A Delaware court has slapped the majority owner of the Cambridge's NorthPoint development project with several million dollars in damages, in a ruling the site's minority owner said should end years of litigation and clear the way for the sale of the 44-acre site.

A rendering of the NorthPoint development "Clearly, B&M [the Boston & Maine Railroad] has the right to appeal the ruling, but we don't think there's anything to appeal," said Peter McGlynn, a partner with the Boston law firm Bernkopf Goodman. "This is the end of the case."

The ruling caps years of litigation between McGlynn's client, Cambridge North Point LLC, and the B&M Railroad, which effectively owns a 75-percent interest in the 44-acre NorthPoint development site. Cambridge North Point, which owns a 25-percent stake in the project, and which acts as the project's manager, is an LLC controlled by executives from the former Boston development firm Spaulding & Slye.

The Delaware case, which was argued in March, was the third courtroom battle between the railroad and Cambridge North Point (CNP). CNP sought enforcement of the settlement agreement that terminated the parties' second lawsuit. That settlement was crafted to allow the sale of NorthPoint to Archon.

However, it included a \$3.5 million breakup fee that B&M



A rendering of the NorthPoint development.

would have to pay CNP in the event the sale fell through. After repeated attempts to lower the project's sale price, Archon eventually did back out of the sale, in the spring of 2008.

B&M never paid the \$3.5 million fee, resulting in the most recent court action. According to court documents, B&M couldn't pay because it was counting on the Archon sale to provide the funds it needed to pay off CNP.

B&M sued to overturn the \$3.5 million settlement, claiming in court that its lawyers didn't understand what they had agreed to. The Delaware court met that argument with a stinging rebuke: "This court's job is not to refashion contracts into the form that parties with the benefit of hindsight wished they had scrawned, or to reward counsel for their own lack of diligence."

The court found that B&M's lawyers hadn't done "the most obvious thing: read

the entire agreement and outline what B&M's obligations were under it."

The Delaware judge awarded CNP, and the development LLC CNP manages, the North Point Cambridge Land Co., damages and fees that could top \$14 million. They include the \$3.5 million Archon breakup fee, \$5.9 million in damages for not complying with other requirements under the previous settlement, attorney fees and interest.

The court voided an easement on the property that B&M had established to provide parking for residents of the two condominium buildings that have been constructed on the site, and ordered B&M to fund a \$7.2 million escrow account to cover maintenance around the condos.

Under the terms of the Delaware ruling, B&M must convey its fee interest in NorthPoint to the development LLC that CNP controls.

CNP is then expected to liquidate the project.

According to industry insiders, the beleaguered \$2 billion project, which is permitted for 2.2 million square feet of commercial space, 150,000 square feet of retail, and 2,700 residential units, still faces several hurdles.

Any potential buyer of the project will still have to contend with mammoth infrastructure costs at the site, including a new Lechmere Green Line station, road improvements, and utilities. Banker & Tradesman reported last July that the project's infrastructure tab is a staggering \$257 million, according to a memorandum obtained through a state public records request.

And while developers are beginning to tentatively begin to explore development acquisitions - the former Polaroid campus in Waltham sold for \$40 million this month - the price CNP was believed to be seeking last year, in the neighborhood of \$100 million, may still be tough for a buyer to swallow. Berkeley Investments walked away from a \$106.5 million purchase of the site in late 2008. Cambridge's office and lab markets have improved since that time, but the queue of potential NorthPoint competitors has also grown: More than 2.6 million square feet of commercial space are already permitted for construction around Kendall Square. ■