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TEAM #1

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SUPERIOR COURT OF NJ
COUNTY OF HUDSON
CIVIL DIVISION #7

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.

Hud-L-200-06

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

BRONZE REALTY, LTD; and
FERGUSON PROPELLER, INC.,

Defendants.

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants (collectively, "the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, ("the Spill Act"), and the common law, for reimbursement of the cleanup and removal costs they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ferguson Propeller, Inc. site located in Hoboken City, Hudson County, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharges of hazardous substances at the Ferguson Propeller site.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for damages to the natural resources of this State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Bronze Realty, Ltd. is a corporation organized under the laws of the State of New Jersey, with a last known principal place of business located at 1132 Clinton Street, Hoboken, New Jersey.

6. Defendant Ferguson Propeller, Inc. is a corporation organized under the laws of the State of New Jersey, with a last known principal place of business located at 1132 Clinton Street, Hoboken, New Jersey.

AFFECTED NATURAL RESOURCE

Groundwater

7. Groundwater is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

8. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

9. Groundwater provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

10. Groundwater provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

11. Groundwater is a unique resource that supports the State's tourism industry and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

12. There are more than 6,000 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

GENERAL ALLEGATIONS

13. The Ferguson Propeller, Inc. site consists of approximately 5.6 acres of real property located at 1132 Clinton Street, Hoboken City, Hudson County, which property is also known and designated as Block 151, Lots 1, 2, 3, 4, 5, 6.1, 6.2 and 7, Block 156, Lot 6, on the Tax Map of Hoboken City ("the Ferguson Propeller Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 000318.

14. From 1962 through 1997, defendant Bronze Realty owned the Ferguson Propeller Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b.

15. From 1888 through approximately 1995, defendant Ferguson Propeller, Inc. operated a propeller molding foundry at the Ferguson Propeller Property, which involved the use of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b.

16. On October 9, 1990, a 1,000 gallon underground kerosene storage tank was removed from the Ferguson Propeller Property. Upon removal of the tank, visual evidence of a kerosene discharge was observed and DEP was notified. Approximately 10 tons of visually contaminated soil was removed from the Site. Five post excavation soil samples were collected and the results indicated the presence of petroleum hydrocarbons at concentrations up to 17,600 parts per million.

17. Three groundwater monitoring wells were subsequently installed at the Ferguson Propeller Property. The monitoring wells were sampled in July and August 1992, and the results revealed the presence of elevated concentrations of various hazardous substances in the soils and groundwater at and underlying the Site, including

benzene, 1,1-dichloroethane, 1,2-dichloroethene and trichloroethene.

18. In March 1996, a remedial investigation of the Ferguson Propeller Property was conducted pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the nature and extent of the contamination at the Ferguson Propeller Property was investigated.

19. Three potential areas of concern were identified at the Site, including, inactive and previously removed underground storage tanks, pits located in a former machine shop area, and historic fill material located throughout the Site.

20. Sampling results from the remedial investigation revealed the presence of various hazardous substances including arsenic, lead and copper at concentrations exceeding plaintiff DEP's cleanup criteria in the groundwater and soils at the Site.

21. On May 3, 1996, a Remedial Action Workplan for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action for the Site, was submitted to plaintiff DEP by Bellemead Development Corporation.

22. The proposed remedial action for the Site primarily provided for the capping of underlying contaminated fill material and soils, the removal of all hazardous material at the Site, and the installation and sampling of additional groundwater monitoring wells.

23. Plaintiff DEP established three Classification Exception Areas ("CEA"), which excludes designated ground water from use as a potable water source, for the Site.

24. Although the soil contamination at the Site has been remediated, the ground water remains contaminated.

FIRST COUNT

Spill Act

25. Plaintiffs DEP and Administrator repeat each allegation of Paragraphs 1 through 24 above as though fully set forth in its entirety herein.

26. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

27. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property.

28. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

29. Defendant Ferguson Propeller is the discharger of hazardous substances at the Ferguson Propeller Property, and is jointly and severally liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and

reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property. N.J.S.A. 58:10-23.11g.c.(1).

30. Defendant Bronze Realty as the owner of the Ferguson Propeller Property at the time hazardous substances were discharged there, is a person in any way responsible for the discharged hazardous substances, and is jointly and severally liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property. N.J.S.A. 58:10-23.11g.c.(1).

31. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any

other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

32. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property;

- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Ferguson Propeller Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

33. Plaintiffs repeat each allegation of Paragraphs 1 through 32 above as though fully set forth in its entirety herein.

34. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

35. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

36. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and

substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

37. As long as the groundwater remains contaminated due to the Defendants' conduct, the public nuisance continues.

38. Until the groundwater is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean groundwater.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as

a result of the discharge of hazardous substances at the Ferguson Propeller Property;

- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Ferguson Propeller Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

39. Plaintiffs repeat each allegation of Paragraphs 1 through 38 above as though fully set forth in its entirety herein.

40. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

41. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Ferguson Propeller Property.

42. As long as the groundwater remains contaminated, the Defendants' trespass continues.

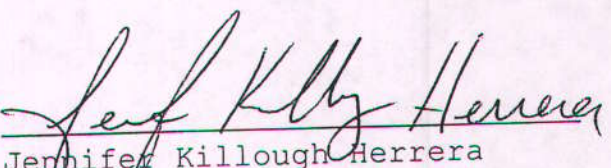
PRAYER FOR RELIEF

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- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property;

- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Ferguson Propeller Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Ferguson Propeller Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Jennifer Killough Herrera
Deputy Attorney General

Dated: 11/1/06

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Jennifer Killough Herrera, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to plaintiffs at this time, nor is any non-party known to plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jennifer Killough Herrera
Jennifer Killough Herrera
Deputy Attorney General

Dated: 11/11/06