

By: Michael E. McMahon  
Deputy Attorney General  
(609) 984-0214

NEW JERSEY SCHOOLS DEVELOPMENT  
AUTHORITY,  
  
Plaintiff,  
  
v.  
  
JOSEPH MARCANTUONE; ROBERT  
GIESON; JRM, L.L.C. (d/b/a  
Carriage Trade Cleaners); SANG  
HAK SHIN (a/k/a Joseph Shinn);  
"JOHN DOES" 1 through 10 (Names  
Fictitious); and  
"ABC CORPORATIONS" 1 through 10  
(Names Fictitious),  
  
Defendants.

Plaintiff New Jersey Schools Development Authority, corporate successor to the New Jersey Schools Construction Corporation ("the Plaintiff"), having its principal offices at 1 West State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), says:

### STATEMENT OF THE CASE

1. The Plaintiff brings this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to 23.24, and the common law, for reimbursement of the cleanup and removal costs it has incurred, and will incur, as a result of the discharge of hazardous substances from property located at Block 373, Lot 7, the location of the newly constructed Pre K-12 Cicely Tyson School of Performing Arts & Fine Arts site in the City of East Orange, Essex County, and for such other relief as this court deems appropriate.

### THE PARTIES

2. The Plaintiff is a public body corporate and politic of the New Jersey State government.

3. As a public body corporate and politic, established in, but not of, the Department of the Treasury, formed in accordance with N.J.S.A. 52:18A-237 to 247, N.J.S.A. 18A:7G-45 to 58, with amendments, the Plaintiff is vested with all powers and responsibilities of this Act and the authority to implement the "Education Facilities Construction and Financing Act," N.J.S.A. 18A:17G-1 to 44.

4. The Plaintiff is authorized to acquire lands or rights therein, which it may determine are reasonably necessary for any project, by purchase or otherwise, or by condemnation in the manner provided in N.J.S.A. 20:3-1 to 50, N.J.S.A. 52:18A-238.

5. The Plaintiff, as a state governmental entity, is exempt from liability under the Spill Act for all cleanup and removal costs of pre-existing contamination at a property it acquires by eminent domain, condemnation, or by any means for the purpose of promoting the redevelopment of that property. N.J.S.A. 58:10-23.11(g) (d) (4).

6. The Plaintiff, through a grant award dated December 7, 2004, to the City of East Orange, provided funding for the design and construction of the Cicely Tyson School of Performing Arts and Fine Arts. The City of East Orange on behalf of the Plaintiff acquired the necessary properties for the construction of this facility. Some of these properties were acquired through the exercise of eminent domain.

7. Defendant Joseph Marcantuone is an individual whose dwelling or usual place of abode is 17 Willow Terrace, Verona, New Jersey 07044, and is a person who owned or otherwise participated in, or was responsible for, the discharge of hazardous substances at the subject property.

8. Defendant Robert Gieson is an individual whose dwelling or usual place of abode is 32 Bryant Drive, Livingston, New Jersey 07039, and is a person who owned or otherwise participated in, or was responsible for, the discharge of hazardous substances at the subject property.

9. Defendant JRM, L.L.C. d/b/a Carriage Trade Cleaners is a New Jersey limited liability company with a main business address at 155 Albright Lane, Paramus, New Jersey 07652, and is a person who owned or otherwise participated in, or was responsible for, the discharge of hazardous substances at the subject property.

10. Defendant Sang Hak Shin a/k/a Joseph Shinn is an individual whose dwelling or usual place of abode is 155 Albright Lane #J, Paramus, New Jersey 07652, and is a person who owned or otherwise participated in, or was responsible for, the discharge of hazardous substances at the subject property.

11. Defendants "ABC Corporations" 1 through 10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, or are otherwise related to the named defendants, or are persons who otherwise participated in, or were responsible for, the discharge of hazardous substances at the subject property.

12. Defendants "John Does" 1 through 10, these names being fictitious, are individuals with identities that cannot be ascertained as of the filing of this Complaint, certain of whom are persons who otherwise participated in, or were responsible for, the discharge of hazardous substances at the subject property.

### SITE DESCRIPTION

13. The East Orange School District, Abbott School Demonstration Project, Pre K-12 Cicely Tyson School of Performing Arts and Fine Arts Site (The "Site") consists of approximately 8 acres of real property on North Arlington Avenue, East Orange, Essex County, New Jersey, this property also being known and designated as Block 371, Lots 10 and 11; Block 372, Lots 8.01, 14, 18, 19, 20, 21, 22, 23, 24, 25, 30 and 31; and Block 373, Lots 1, 5, 5.01, 5.02, 6, 7, 21, 22, 22.01, 23 and 24.

14. Block 373, Lot 7, also known as the Carriage Trade Cleaners Property, 25-33 North Arlington Avenue, East Orange, New Jersey, was obtained by the City of East Orange from defendants Joseph Marcantuone, Robert Gieson and JRM, L.L.C. d/b/a Carriage Trade Cleaners, through condemnation.

15. On December 15, 2005, the City of East Orange filed a Declaration of Taking with the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-8779-05, against defendants Joseph Marcantuone, Robert Gieson, JRM, L.L.C. d/b/a Carriage Trade Cleaners and others to acquire the Carriage Trade Cleaners Property by exercising its condemnation power pursuant to N.J.S.A. 20:3-17 et seq., N.J.S.A. 40:14B-20 and N.J.S.A. 40:14B-34.

16. As part of the condemnation proceedings, the Plaintiff estimated the fair market value of the Carriage Trade Property, as

if remediated, at \$365,000.00, which amount the Plaintiff deposited with the Clerk of the Superior Court.

17. On August 28, 2006, the occupant of 25-33 North Arlington Avenue, the operator of Carriage Trade Cleaners, Sang Hak Shin a/k/a Joseph Shinn, entered into a relocation agreement, called a Self Move Agreement, with the City of East Orange, for a total of \$101,950.00.

18. On November 27, 2007, the Superior Court of New Jersey issued an Order for Final Judgment and fixing just compensation in the condemnation action at \$629,407.00. The Court ordered that \$182,035.20 was to be paid from the condemnation action to the Clerk of the Superior Court of New Jersey as an environmental trust-escrow account for the cost of the environmental remediation of the site.

#### GENERAL ALLEGATIONS

19. On or about June 17, 1985, defendants Joseph Marcantuone and Robert Gieson acquired the Carriage Trade Property, from Anthony Aliano.

20. During the time that defendants Joseph Marcantuone, Robert Gieson, one or more of the ABC Corporation defendants and/or one or more of the John Doe defendants, owned the Carriage Trade Property, "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., which substances included tetrachloroethene ("PCE").

21. At all times relevant to this complaint, defendants JRM, L.L.C. d/b/a Carriage Trade Cleaners, Sang Hak Shin, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, operated a dry cleaning facility at the Carriage Trade Property, the operation of which involved the storage 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., which substances included PCE.

22. In March 2004, the PMK Group initiated a site investigation, which investigation revealed that PCE was present in the soil beneath the Carriage Trade Cleaners property.

23. The 2004 site investigation indicated that PCE was introduced to soil beneath the Carriage Trade Cleaners in the basement area where dry cleaning equipment was operated and PCE was stored on a porous floor slab.

24. A Preliminary Assessment/Site Investigation ("PA/SI") was performed at the Site by the PMK Group and submitted to the City of East Orange and the Plaintiff in March 2006 pursuant to N.J.S.A. 58:10-23.11f and N.J.A.C. 7-26E, the result of which revealed four areas of concern ("AOC"), which were:

- A. AOC #1: 275 gallon Above Ground Storage Tank containing No. 2 heating oil used for a boiler system.

B. AOC #2: 550 gallon Underground Storage Tank used for heating oil.

C. AOC #3: Building Floor Drains.

D. AOC #4: Hazardous Material Storage or Handling Areas.

25. The UST identified as AOC #2 was removed and inspected on September 27, 2006, revealing the presence of holes in the UST.

26. Subsequently, the New Jersey Department of Environmental Protection ("DEP") was notified and soil in excess of applicable standards was excavated beneath the UST.

27. Post-excavation soil samples taken by the PMK Group indicated that remediation was adequately completed.

28. Soil samples collected from beneath the floor slab of the basement to further assess AOC#4, indicated the presence of PCE in excess of the DEP's Residential Direct Contact Soil Cleanup Criteria to a depth of 18 feet below the ground surface.

29. The contaminated soil was excavated from the subsurface and properly disposed.

30. Post-excavation soil samples taken by the PMK Group revealed that the remediation was adequately completed.

31. A Remedial Action Report was prepared by the PMK Group, submitted to the DEP, and subsequently approved by the DEP by letter dated March 27, 2007.

32. A final No Further Action ("NFA") determination for the entire school property will be provided by the DEP at a later date.



FIRST COUNT

Spill Act

33. The Plaintiff repeats each allegation of paragraph nos. 1 through 32 above as though fully set forth in its entirety herein.

34. The Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

35. Plaintiff's claim for recovery of costs under the Spill Act is explicitly authorized by N.J.S.A. 58:10-23.11g.c.(1).

36. The Plaintiff has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Site.

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

38. As persons who owned or occupied and otherwise controlled the Carriage Trade Property at the time hazardous substances were discharged there, defendants Joseph Marcantuone, Robert Gieson, JRM, L.L.C. d/b/a Carriage Trade Cleaners and Sang Hak Shin a/k/a Joseph Shinn are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs that the Plaintiff has incurred, and will incur, as a result of the

discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11(g) (c) (1) .

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a. Order the Defendants to reimburse the Plaintiff, jointly and severally, without regard to fault, for all cleanup and removal costs that the Plaintiff has incurred as a result of the discharge of hazardous substances at the Site, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs that the Plaintiff will incur as a result of the discharge of hazardous substances at the Site;
- c. Award the Plaintiff its costs and fees in this action; and
- d. Award the Plaintiff such other relief as this Court deems appropriate..
- e. Order the Clerk of the Superior Court of New Jersey, Trust Fund Unit, to provide payment from the environmental trust-escrow account for the sum of \$182,345.20 to be paid to the Plaintiff for its cleanup and removal costs.

SECOND COUNT

Unjust Enrichment

39. The Plaintiff repeats each allegation of paragraph nos. 1 through 38 above as though fully set forth in its entirety herein.

40. Defendants Joseph Marcantuone, Robert Gieson, JRM, L.L.C. d/b/a Carriage Trade Cleaners and Sang Hak Shin a/k/a Joseph Shinn received fair market value for the Carriage Trade Cleaners Property portion of the Site, as if the property had been remediated.

41. The Defendants, however, have failed to perform, or fund, remedial activities to address the contamination at the Site.

42. The Plaintiff has used public funds to remediate the environmental contamination at the Site, and may use additional public funds to further remediate the Site.

43. The Plaintiff's expenditure of public funds for these purposes, which otherwise are the Defendants' legal obligation to fund or perform, has unjustly enriched the Defendants and, therefore, the Defendants are required by law and by equity to reimburse and indemnify the Plaintiff accordingly.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a. Declare that the Defendants have been unjustly enriched by the Plaintiff's expenditure of public funds to remediate the Site;

- b. Order the Defendants to reimburse and indemnify the Plaintiff for costs the Plaintiff has incurred, and will incur, to remediate the Site, with applicable interest;
- c. Enter judgment against the Defendants for all other compensatory and consequential damages; and
- d. Award the Plaintiff such other relief as this Court deems appropriate.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiff

By:   
Michael E. McMahon  
Deputy Attorney General

Dated: February 1, 2008

DESIGNATION OF TRIAL COUNSEL

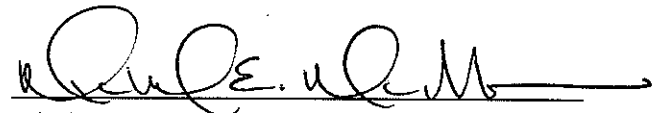
Pursuant to R. 4:25-4, the Court is advised that Michael E. McMahon, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiff in this action.

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 the Plaintiff at this time, nor is any non-party known to the Plaintiff 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 the Plaintiff, 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).

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiff

By:



Michael E. McMahon  
Deputy Attorney General

Dated: February 1, 2008