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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
DOCKET NO. OCNL 51-05

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

Plaintiffs,

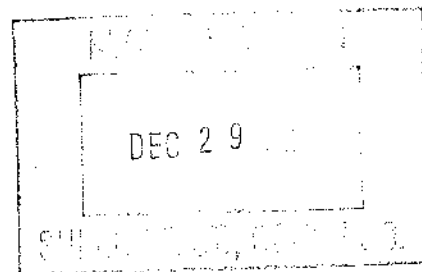
v.

896 FISCHER BOULEVARD
CORPORATION; PAUL BRANDT;
PATRICE BRANDT;
CARMEL REALTY, INC.;
EXACTA CONSTRUCTION COMPANY;
and "JOHN DOES" 1-5 (Names
Fictitious),

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. 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, as a result of the discharge of hazardous substances at the Community Dry Cleaners site in Dover Township, Ocean County. The costs and damages the Plaintiffs seek include the damages 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 Community Dry Cleaners site, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Community Dry Cleaners 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, with the State being the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the 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 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 Paul Brandt is an individual who resides at 39 Williamsburg Drive, Orange, Connecticut, 06477.

6. Defendant Patrice Brandt is an individual who resides at 39 Williamsburg Drive, Orange, Connecticut, 06477.

7. Defendant Carmel Realty, Inc. is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 250 Moonachie Road, Moonachie, New Jersey.

8. Defendant Exacta Construction Company ("Exacta Construction") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 206 Central Avenue, Jersey City, New Jersey.

9. Defendant 896 Fischer Boulevard Corporation is a corporation organized under the laws of the State of New Jersey

with a principal place of business located at 322 Newark Avenue, Jersey City, New Jersey.

10. Defendants "John Does" 1-5, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom may be corporate officers, directors, shareholders or responsible corporate officials of one or more of the named defendants, or are persons who otherwise participated in, or were responsible for, the discharge of hazardous substances at the Community Dry Cleaners site.

AFFECTED NATURAL RESOURCE

Ground Water

11. Ground water 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.

12. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Ground water provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

13. Ground water also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization,

prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

14. Ground water and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

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

GENERAL ALLEGATIONS

16. The Community Dry Cleaners site consists of approximately 1 acre of real property located at 896 Fischer Boulevard, Dover Township, Ocean County, New Jersey, this property being also known and designated as Block 1501.10, Lot 4, on the Tax Map of Dover Township ("the Community Dry Cleaners 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 Nos. G000009535 and G000003287.

17. In or about March 1969, Philip Fried purchased the Community Dry Cleaners property, which he sold in January 1973 to Salvatore and Nancy Caramucci.

18. In October 1975, Horizon Credit Corporation, which held a mortgage for the Community Dry Cleaners Property, acquired the property at a sheriff's sale.

19. Horizon Credit Corporation continued to own the Community Dry Cleaners Property through June 1977, when it sold the property to defendants Paul and Patrice Brandt.

20. Defendants Paul and Patrice Brandt owned the Community Dry Cleaners Property until June 1978, when they sold the property to defendant Exacta Construction.

21. In June 1979, defendant Exacta Construction sold the Community Dry Cleaners Property to defendant Carmel Realty, which sold the property in December 1987 to defendant 896 Fischer Boulevard Corporation, the current owner of record.

22. During the time defendants Paul and Patrice Brandt, Exacta Construction, Carmel Realty, and 896 Fischer Boulevard Corporation owned the Community Dry Cleaners 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., including tetrachloroethene ("PCE" or "perc").

23. From in or about March 1969 through January 1973, Philip Fried operated a dry cleaning business at the Community Dry Cleaners Property, which business Nancy and Robert Caramucci continued to operate there until May 1985.

24. In May 1985, the Caramuccis sold the dry cleaning business to Seymour Herman and Ivan Garilov, who continue to operate the business at the Community Dry Cleaners Property.

25. The dry cleaning operations at the Community Dry Cleaners 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., including PCE.

26. In June 1986, plaintiff DEP investigated the contamination of private potable wells in the Shelter Cove Development, a residential neighborhood less than one mile from the Community Dry Cleaners Property.

27. During its June 1986 investigation, plaintiff DEP sampled the private potable wells, the results of which revealed the presence of PCE, a hazardous substance, at concentrations exceeding the New Jersey Safe Drinking Water Act standards in the ground water.

28. Based on its findings during the June 1986 investigation, plaintiff DEP established a well restriction area ("WRA") and recommending the closure of approximately 120 potable wells in the Shelter Cove residential area near the Community Dry Cleaners Property, the sealing of which wells plaintiff DEP later funded.

29. During its June 1986 investigation, plaintiff DEP also sampled the soils at the rear of the Community Dry Cleaners Property in the vicinity of an abandoned septic field, the results of which revealed the presence of various hazardous substances, including tetrachloroethene ("PCE"), 1,2 dichloroethene, bromoform, trichloroethene ("TCE"), and 1,1,1-trichloroethane at

concentrations exceeding plaintiff DEP's cleanup criteria in the soils.

30. In July 1988, Dover Township and the Toms River Water Department, with funding from the Plaintiffs, extended the public water system to the Shelter Cove development, connected 120 residences to the municipal water supply system, and sealed approximately 120 contaminated wells.

31. In April 1989, plaintiff DEP performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which plaintiff DEP investigated the nature and extent of the contamination at the Community Dry Cleaners Property.

32. Sampling results from plaintiff DEP's remedial investigation revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and groundwater at and underlying the Site, including acetone, PCE, 1,1,2,2-tetrachloroethane, benzene and xylenes in the soils and 1,2-dichloroethene, TCE and PCE in the ground water.

33. In 1996, as part of an expanded site investigation, plaintiff DEP sampled the ground water from a monitoring well on the Community Dry Cleaners Property, the results of which revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria, including 1,2-dichloroethene, TCE and PCE.

34. In January 1997, plaintiff DEP took groundwater samples from ten locations in and around the Community Dry Cleaners. Sampling results from this round of testing revealed the presence of various hazardous substances exceeding the New Jersey Groundwater Quality Standards, including PCE, 1,2-dichloroethene, TCE, toluene, and o-xylene. Plaintiff DEP also determined that a contaminant plume was migrating in an easterly direction from the Community Dry Cleaners Property.

35. In February 1998, plaintiff DEP conducted a Preliminary Assessment and Site Investigation ("PASI") of the Site, including the Community Dry Cleaning Property, which involved additional soils and groundwater sampling.

36. Based upon the PA/SI sampling and modeling it performed, plaintiff DEP identified the Community Dry Cleaners Property as the source of the contamination of the Shelter Cove potable wells, that the contaminant plume was migrating in a southeasterly direction from the Community Dry Cleaners Property toward the Shelter Cove area, and that the plume's vertical extent was increasing as it moved away from the Community Dry Cleaning Property.

37. Although Plaintiff DEP has initiated the remediation of the Site, the soils and groundwater contamination continues.

FIRST COUNT

Spill Act

38. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 37 above as though fully set forth in its entirety herein.

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

40. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Community Dry Cleaners Property.

41. Plaintiff Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, and may continue to approve, other appropriations for the Site.

42. Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost use 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 Community Dry Cleaners Property.

43. 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.

44. Defendants as the owners or operators of the Community Dry Cleaners Property, a property at which hazardous substances

were discharged, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use 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 Community Dry Cleaners Property. N.J.S.A. 58:10-23.11g.c.(1).

45. 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).

46. 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 use 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 Community Dry Cleaners 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 use 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 Community Dry Cleaners 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 Community Dry Cleaners 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 Community Dry Cleaners 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

47. Plaintiffs repeat each allegation of Paragraphs 1 through 46 above as though fully set forth in its entirety herein.

48. Ground water is a natural resource of the State held in trust by the State.

49. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

50. 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.

51. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

52. Until the ground water 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 ground water.

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 use 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 Community Dry Cleaners 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 use 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 Community Dry Cleaners Property;
- c. Enter judgment against the Defendants, 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 Community Dry Cleaners 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 Community Dry Cleaners 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

53. Plaintiffs repeat each allegation of Paragraphs 1 through 52 above as though fully set forth in its entirety herein.

54. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

55. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Community Dry Cleaners Property.

56. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

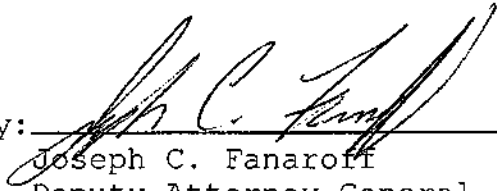
- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Community Dry Cleaners 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 use 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 Community Dry Cleaners Property;
- c. Enter judgment against the Defendants, 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 Community Dry Cleaners 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 Community Dry Cleaners 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: _____


Joseph C. Fanaroff
Deputy Attorney General

Dated: 12-28-04

DESIGNATION OF TRIAL COUNSEL

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

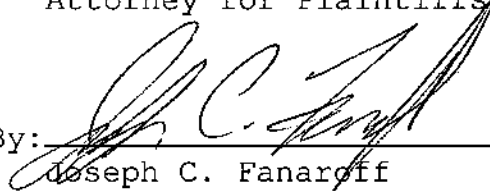
CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley

M. Campbell, et al., Docket No. A-6537-03T3. Otherwise, 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 Plaintiffs at this time, nor is any non-party known to the 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 the 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: _____


Joseph C. Fanaroff
Deputy Attorney General

Dated: 12-28-04