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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY-
DOCKET NO. Som-L-01-05

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

Plaintiffs,

v.

OFRA DIMANT;
RITA LAPINSKI;
CHOUCHAN SAMMAN;
RIAD SAMMAN;
SUE'S CLOTHES HANGER, INC;
CHARLES ZACCARDI;
EVELYN ZACCARDI;
GARY C. ZACCARDI;
MICHAEL ZACCARDI; and
ZACCARDI'S CLEANERS, a New
Jersey Partnership,

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, as a result of the discharge of hazardous substances at two sites in Bound Brook Borough, Somerset County, which contributed to the Longwood Avenue groundwater contamination in Bound Brook Borough, Somerset 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 Bound Brook Borough sites, 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 Bound Brook Borough sites.

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 Rita Lapinski is an individual whose dwelling or usual place of abode is 307 Thompson Avenue, Bound Brook, New Jersey.

6. Defendant Sue's Clothes Hanger, Inc., is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 540 West Union Avenue, Bound Brook, New Jersey.

7. Defendant Ofra Dimant is an individual whose dwelling or usual place of abode is 525 N. Umlerland Road, Teaneck, New Jersey.

8. Defendant Ofra Dimant has, at all times relevant to this Complaint, been the president of Sue's Clothes Hanger, Inc.

9. Defendant Chouchan Samman is an individual whose dwelling or usual place of abode is 287 English Court, Bridgewater, New Jersey.

10. Defendant Riad Samman is an individual whose dwelling or usual place of abode is 287 English Court, Bridgewater, New Jersey.

11. Defendants Chouchan and Riad Samman have, at all times relevant to this Complaint, been directors of defendant Sue's Clothes Hanger, Inc.

12. Defendant Zaccardi's Cleaners is a partnership organized under the laws of the State of New Jersey, with a principal place of business located at 534 West Union Avenue, Bound Brook, New Jersey.

13. Defendant Charles Zaccardi is an individual whose dwelling or usual place of abode is 534 West Union Avenue, Bound Brook, New Jersey.

14. Defendant Evelyn Zaccardi is an individual whose dwelling or usual place of abode is 534 West Union Avenue, Bound Brook, New Jersey.

15. Defendant Gary C. Zaccardi is an individual whose dwelling or usual place of abode is 111 Hallock Avenue, Apartment 2, Middlesex, New Jersey.

16. Defendant Michael Zaccardi is an individual whose dwelling or usual place of abode is 311 Mountain Avenue, Apartment A8, Bound Brook, New Jersey.

17. Defendants Gary and Michael Zaccardi are partners in defendant Zaccardi's Cleaners.

AFFECTED NATURAL RESOURCE

Ground Water

18. 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.

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

20. Ground water provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

21. 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.

22. 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.

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

GENERAL ALLEGATIONS

(24) The Lapinski site consists of approximately .3 acres of real property located at 540 West Union Avenue, Bound Brook, Somerset County, New Jersey, this property being also known and designated as Block 59, Lot 4, on the Tax Map of Bound Brook Borough ("the Lapinski Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Lapinski Site").

(25) From 1948 through 1991, defendant Rita Lapinski and her husband, Edward Lapinski, now deceased, owned the Lapinski Property.

(26) In July 1991, defendant Rita Lapinski sold her interest in the Lapinski Property to Edward Lapinski, who died on May 31, 1993, which defendant Rita Lapinski then conveyed back to herself in that same year.

(27) As of the filing of this Complaint, defendant Rita Lapinski is the owner of record of the Lapinski Property.

28. During the time defendant Rita Lapinski has owned the Lapinski 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 trans-1,2-

dichloroethene ("DCE"), tetrachloroethene ("PCE"), and trichloroethene ("TCE").

29. Since 1984, defendant Sue's Clothes Hangers, Inc. has operated a dry cleaning business on the Lapinski Property, the operation of which involves the storage and handling of hazardous substances, certain of which were discharged there, which substances included DCE, PCE and TCE.

30. Since 1984, defendants Ofra Dimant, Chouchan Samman, and Riad Samman, all of whom are, or were, officers or directors of defendant Sue's Clothes Hangers, Inc., participated in, or were otherwise responsible for, the discharge of hazardous substances at the Lapinski Property.

31. The Zaccardi site consists of approximately .2 acres of real property located at 534 West Union Avenue, Bound Brook, Somerset County, New Jersey, this property being also known and designated as Block 59, Lot 4.01, on the Tax Map of Bound Brook Borough ("the Zaccardi Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Zaccardi Site").

32. From May 1986 through June 1997, defendants Charles and Evelyn Zaccardi owned the Zaccardi Property.

33. In June 1997, defendants Charles and Evelyn Zaccardi conveyed an interest in the Zaccardi Property to defendants Gary C. Zaccardi and Michael Zaccardi.

34. As of the filing of this Complaint, defendants Charles Zaccardi, Evelyn Zaccardi, Gary C. Zaccardi and Michael Zaccardi are the owners of record of the Zaccardi Property.

35. During the time that defendants Charles Zaccardi, Evelyn Zaccardi, Gary C. Zaccardi and Michael Zaccardi have owned the Zaccardi Property, hazardous substances were discharged there, which substances included DCE, PCE and TCE.

36. In 1991, defendants Gary C. Zaccardi and Michael Zaccardi formed Zaccardi Cleaners, a New Jersey partnership.

37. Since 1991, Zaccardi's Cleaners has operated a dry cleaning business on the Zaccardi Property, the operation of which involves the storage and handling of hazardous substances, certain of which were discharged there, which substances included DCE, PCE and TCE.

38. Since 1991, defendants Gary C. Zaccardi and Michael Zaccardi are, or were, partners of defendant Zaccardi Cleaners, and participated in, or were otherwise responsible for, the discharge of hazardous substances at the Zaccardi Property.

39. The Longwood Avenue Groundwater Contamination area ("the Longwood Avenue Area") consists of approximately 365 acres of property in the vicinity of West Union Avenue in Bound Brook Borough, Somerset County, which plaintiff DEP has designated as Site Remediation Program Interest No. G000008986.

40. On various occasions during 1988 and 1989, plaintiff DEP and the Middle Brook Regional Health Commissioner ("MBRHC") sampled 86 potable wells in the Longwood Avenue Area, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria, which substances included DCE, PCE and TCE in 45 potable wells, and benzene and xylenes in 14 others.

41. On various occasions from 1994 through 2000, plaintiff DEP searched for potable wells in the Longwood Avenue Area, which wells, when located, plaintiff DEP sampled, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria, including cis-1,2-DCE, in 2 potable wells, PCE in 17 potable wells, and TCE in 5 others.

42. From early 1989 through 2004, plaintiff DEP and the MBRHC continued sampling potable wells in the Longwood Avenue Area, and, further, investigated the nature and extent of the groundwater contamination.

43. Sampling results plaintiff DEP and the MBRHC obtained during this period revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the Longwood Avenue Area ground water, which substances included PCE and TCE.

44. In 1992, Bound Brook Borough installed a water line to supply potable water to affected residences in the Longwood Avenue Area, which activities the Spill Fund and plaintiff DEP funded.

45. In 1992, plaintiff Administrator approved 41 claims by Bound Brook Borough and residents of the Longwood Avenue Area for the costs these parties incurred to install and maintain point-of-entry treatment systems for the affected residences, the water line construction, and for connecting the affected residences to the water line.

46. Although plaintiffs DEP and the Administrator have undertaken, or funded, certain remediation activities for the Longwood Avenue Area, including for the Lapinski Site and the Zaccardi Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

47. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 46 above as though fully set forth in its entirety herein.

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

49. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Lapinski Property and the Zaccardi Property, including for the Longwood Avenue Area.

50. Plaintiff Administrator has certified, and may continue to certify, for payment of valid claims made against the Spill Fund concerning the Site, and, further, has approved, and may continue to approve, other appropriations for the Longwood Avenue Area, including for the Lapinski Site and the Zaccardi Site.

51. The 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 Lapinski Property and the Zaccardi Property, including for the Longwood Avenue Area.

52. The costs and damages the Plaintiffs have incurred, and will incur, for the Longwood Avenue Area, including for the Lapinski Property and the Zaccardi Property, are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

53. Defendants Ofra Dimant, Chouchman Samman, Riad Samman, and Sue's Clothes Hangers, Inc., as the dischargers of hazardous substances at the Lapinski Property, 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 Lapinski Property.
N.J.S.A. 58:10-23.11g.c.(1).

54. Defendant Rita Lapinski, as the owner of the Lapinski Property, a property at which hazardous substances were discharged, is a person otherwise responsible for the discharged hazardous substances, and is 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 Lapinski Property. N.J.S.A. 58:10-23.11g.c.(1).

55. Defendants Zaccardi's Cleaners, Charles Zaccardi, Evelyn Zaccardi, Gary C. Zaccardi and Michael Zaccardi, as the dischargers of hazardous substances at the Zaccardi Property, 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 Zaccardi Property. N.J.S.A. 58:10-23.11g.c.(1).

56. Defendants Charles Zaccardi, Evelyn Zaccardi, Gary C. Zaccardi and Michael Zaccardi, as the owners of the Zaccardi

Property at the time hazardous substances were discharged there, also 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 Zaccardi Property. N.J.S.A. 58:10-23.11g.c.(1).

57. 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).

58. 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area, 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area;
- 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 Lapinski and

Zaccardi Properties, including for the Longwood Avenue Area, 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area;

- 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

59. Plaintiffs repeat each allegation of Paragraphs 1 through 58 above as though fully set forth in its entirety herein.

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

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

62. The groundwater contamination in the Longwood Avenue Area, including the Lapinski Site and the Zaccardi 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.

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

64. 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area, 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area;

- 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 Lapinski and Zaccardi Properties, 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area;
- 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

65. Plaintiffs repeat each allegation of Paragraphs 1 through 64 above as though fully set forth in its entirety herein.

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

67. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Lapinski and Zaccardi Properties, including for the Longwood Avenue Area.

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

PRAYER FOR RELIEF

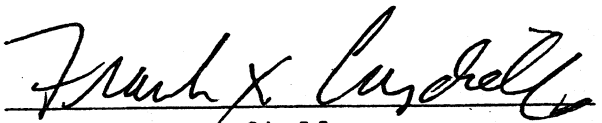
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area, 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

Lapinski and Zaccardi Properties, including for the Longwood Avenue Area;

- 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area, 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 Lapinski and Zaccardi Properties, including for the Longwood Avenue Area;
- 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: 
Frank X. Cardiello
Assistant Section Chief

Dated: 

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark D. Oshinskie, 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-6537-03 T3. 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
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Attorney for Plaintiffs

By: Frank X. Cardiello
Frank X. Cardiello
Assistant Section Chief

Dated: 10/30/04