

CIVIL DIVISION  
N.J. SUPERIOR COURT  
MIDDLESEX VICINAGE

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FILED & RECEIVED

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. L-5700-06

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

Civil Action

COMPLAINT

Plaintiffs,

v.

MALOUF FORD, INC.; PAUL J.  
SANSONE, SR.; and "ABC  
Corporations" 1-20 (Names  
Fictitious),

Defendants.

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 Malouf Ford, Inc., Paul J.

Sansone, Sr., and "ABC Corporations" 1-20 (Names Fictitious), ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring 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 and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Malouf Ford Property in North Brunswick Township, Middlesex 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 Malouf Ford Property. Further, the Plaintiffs seek an order compelling 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 Malouf Ford Property.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect 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 injuries 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 ("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 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 Malouf Ford, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at P.O. Box 7480, North Brunswick, New Jersey.

6. Defendant Paul J. Sansone, Sr., is an individual whose dwelling or usual place of abode is 21 Bellevue Avenue, Rumson, New Jersey, 07760.

7. Defendant "ABC Corporation 1" d/b/a Sansone Auto Network (hereinafter "Sansone"), is a corporation whose exact identity is unknown at this point, but that is thought to be organized and existing under the laws of the State of New Jersey. A principal place of business, however, is unknown.

8. Defendants "ABC Corporations" 2-20, 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, or are otherwise related to, Defendant Sansone, or are previous owners of the Site that may have contributed to Site contamination.

#### AFFECTED NATURAL RESOURCE

##### Ground Water

9. 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.

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

11. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

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

13. Ground water 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.

14. There are more than 6,000 contaminated sites in New Jersey confirmed as having groundwater contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

15. The Malouf Ford site consists of approximately four acres of real property formerly located at the intersection of Routes 1 and 130, North Brunswick, Middlesex County, New Jersey, this property being also formerly known and designated as Block 245, Lot 4, on the Tax Map of North Brunswick ("the Malouf Ford 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. 013779.

16. From February 1988 through December 1992, the Defendant Paul J. Sansone, Sr. owned the Malouf Ford 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., which substances included benzene, toluene, ethylbenzene, xylene ("BTEX"), tetrachloroethene ("PCE"), trichloroethene ("TCE") and various metals.

17. From 1989 through sometime in 1990, the Defendant Sansone operated an automotive sales and service business that conducted the repair and servicing of new and used vehicles at the Malouf

Ford Property, the operation of which involved the storage and handling 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 BTEX, PCE, TCE and various metals.

18. From sometime in 1990 through 1998, the Defendant Malouf Ford operated an automotive sales and service business that included the repair and servicing of new and used vehicles at the Malouf Ford Property, the operation of which involved the storage and handling 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 BTEX, PCE, TCE and various metals.

19. Contamination at the Malouf Ford Property first came to DEP's attention in August 1992. Around that time, seven underground storage tanks ("USTs") were removed from the property. At least two of these USTs were observed to have discharged gasoline with impacts to both soil and ground water.

20. On or around August 21, 1992, DEP sent a letter to Sansone, informing it of the requirements of a remedial investigation and corrective action at the Site.

21. On June 22, 1994, Sansone entered into a Memorandum of Agreement ("MOA One") with DEP, pursuant to which it agreed to

investigate and remediate contamination at the Site with DEP oversight.

22. From August 1992, through 1998, the Defendant Sansone performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Defendant Sansone investigated the nature and extent of the contamination at the Site.

23. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding Plaintiff DEP's cleanup criteria in the ground water and soil at the Site.

24. In or around May 1995, it came to DEP's attention that Malouf Ford, the tenant at the Site, was possibly engaging in activities that were contributing to contamination at the Site.

25. During an inspection conducted on May 15, 1995, DEP observed evidence of a waste oil spill from an above-ground waste oil tank located at Malouf Ford's facility.

26. A subsequent survey and sampling conducted by Sansone revealed three sump-pump systems, which were located in a partial basement within the main building on the property. One of the pumps was noted to contain a free phase petroleum product, later determined to be a motor/waste oil product. The results of groundwater samples taken from the sump pit revealed PCE and TCE

concentrations in excess of Ground Water Quality Standards ("GWQS").

27. On or about May 15, 1996, Malouf Ford entered into a Memorandum of Agreement ("MOA Two") with DEP, according to which it agreed to conduct a complete remediation of the contamination caused by the waste oil spill that occurred while it was operating its business at the property.

28. Sansone completed a remedial investigation of the Site in June 1999.

29. In October 1999, Plaintiff DEP approved a Remedial Action Selection Report 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, and how Plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

30. The remedial action Plaintiff DEP has approved for the Site primarily provides for natural attenuation and the establishment of a Classification Exception Area ("CEA") and Well Restriction Area ("WRA") as a remedy for groundwater contamination. To address soil contamination, Sansone excavated and removed approximately 667 cubic yards of contaminated soil.

31. A CEA/WRA for TCE, PCE, and Nickel only, that encompasses the majority of the former Malouf Ford Property and extends across that property and into U.S. Highway 1, was established and continues to remain in place. DEP has estimated that an



approximately 64-year period is necessary before groundwater quality in the area will return to required GWQS. Sansone continues to submit monitoring reports documenting the progress of the natural attenuation remedy at the Site.

32. Malouf Ford received correspondence on October 31, 1996 from DEP stating that no further remedial action was required for soils associated with the former 500 gallon above-ground waste oil tank area (No Further Action Letter, hereinafter "NFA").

33. Sansone was issued an NFA on January 1, 2000 for soils associated with the removal of the seven USTs.

34. Although the Defendants have initiated the remedial action for the Site, the groundwater contamination continues.

#### FIRST COUNT

##### Spill Act

35. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 34 above as though fully set forth in its entirety herein.

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

37. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Malouf Ford Property.

38. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, may approve other appropriations for the Site.

39. The Plaintiffs also 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 Malouf Ford Property.

40. 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.

41. The Defendants Paul J. Sansone, Sr., Sansone, Malouf Ford, and one or more of the ABC Corp. Defendants are the dischargers of hazardous substances at the Malouf Ford Property, and are liable, 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, 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 Malouf Ford Property. N.J.S.A. 58:10-23.11g.c.(1).

42. The Defendants, Paul J. Sansone, Sr. and one or more of the ABC Corp. Defendants, as the owners of the Malouf Ford Property at the time hazardous substances were discharged there, also 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 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 Malouf Ford Property. N.J.S.A. 58:10-23.11g.c.(1).

43. 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).

44. 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 Malouf Ford 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 Malouf Ford Property;
- c. Enter judgment against the Defendants, compelling the Defendants to perform, under Plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Malouf Ford Property;
- d. 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 Malouf Ford 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 Malouf Ford Property;

- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

#### SECOND COUNT

##### Public Nuisance

45. Plaintiffs repeat each allegation of Paragraphs 1 through 44 above as though fully set forth in its entirety herein.

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

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

48. 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.

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

50. 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 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 Malouf Ford 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 Malouf Ford Property;
- c. Enter judgment against the Defendants, compelling the Defendants to abate, under Plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Malouf Ford Property;

- d. 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 Malouf Ford 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 Malouf Ford Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

51. Plaintiffs repeat each allegation of Paragraphs 1 through 50 above as though fully set forth in its entirety herein.

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

53. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Malouf Ford Property.

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

PRAYER FOR RELIEF

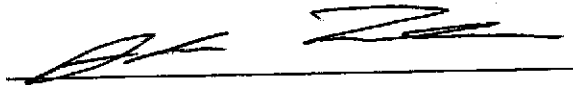
WHEREFORE, Plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost 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 Malouf Ford 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 Malouf Ford Property;
- c. Enter judgment against the Defendants, compelling the Defendants to cease, under Plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Malouf Ford Property;
- d. 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 Malouf Ford 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 Malouf Ford Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Adam B. Lavinthal  
Deputy Attorney General

Dated: 7/21/2006

DESIGNATION OF TRIAL COUNSEL

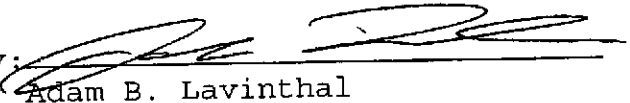
Pursuant to R. 4:25-4, the Court is advised that Adam B. Lavinthal, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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 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).

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Adam B. Lavinthal  
Deputy Attorney General

Dated: 7/21/2006

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