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Sussex County Law Division

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

L-178-03

NEW JERSEY DEPARTMENT OF :
ENVIRONMENTAL PROTECTION and : Civil Action
ACTING ADMINISTRATOR, NEW :
JERSEY SPILL COMPENSATION : COMPLAINT
FUND, :
 :
Plaintiffs, :
 :
v. :
 :
F.L. REALTY COMPANY, :
 :
Defendant. :
_____ :

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Acting Administrator, New Jersey Spill Compensation Fund ("Administrator"), 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 defendant, say:

STATEMENT OF THE CASE

1. Plaintiffs DEP and Administrator bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, to recover the cleanup and removal costs they have incurred, and will incur, as a result of the unsatisfactory storage or containment of hazardous substances at the Northern Fine Chemicals, Inc. site located in Franklin Borough, Sussex County, New Jersey (the "Northern Fine site" or the "Site"). Plaintiffs DEP and Administrator also seek reimbursement under the Spill Act for the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the 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. 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.

4. Defendant F.L. Realty Company is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 18 Howe Street, Passaic, New Jersey 07055.

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

GENERAL ALLEGATIONS

6. The Northern Fine site comprises approximately 23 acres of real property located at 93 Main Street, Franklin Borough, Sussex County, New Jersey, this property being also known and designated as Block 16, Lot 78 on the Tax Map of Franklin Borough, and all other areas where any hazardous substance discharged there has become located.

7. In the mid-1950's, Defendant F.L. Realty Company acquired the property comprising the Site.

8. In or about 1974, Defendant F.L. Realty Company leased the upper portion of the Site to Northern Fine Chemicals, Inc., during which time Northern Fine Chemicals, Inc. engaged in the manufacture of chemicals and/or chemical compounds.

9. Between 1974 and 1977, several inspections were conducted by Plaintiff DEP, during which substantial quantities of oil were observed in a stream, and chemical waste was found to be leaching into an abandoned building.

10. In April 1977, Northern Fine Chemicals, Inc. undertook the preparation of p-nitro sodium phenolate from p-nitro chlorobenzene, causing an explosion to occur at the Site.

11. Following the explosion, Plaintiff DEP inspected the Site and observed a powder-like residue covering everything in the area.

12. From 1977 through 1980, Plaintiff DEP, the Sussex County Health Department and the Franklin Board of Health conducted a series of site investigations, observing a number of drums throughout the Site, two lagoons whose liners were perforated, and several tanks with unknown liquids still in them.

13. Sampling results revealed the presence of various hazardous substances exceeding Plaintiff DEP's cleanup criteria in the soils at the Site, as well as a strong likelihood of groundwater contamination.

14. On March 11, 1980, Plaintiff DEP issued a directive ("Directive") to the defendant pursuant to N.J.S.A. 58:10-23.11f.a., directing the defendant to initiate a number of remedial measures at the Site.

15. On March 27, 1980, the defendant informed Plaintiff DEP that it was unable to comply with the Directive, thus requiring Plaintiff DEP to perform the remedial action selected for the Site using public funds.

16. On December 21, 1981, Plaintiff Administrator signed a first priority lien, which was subsequently recorded in the Sussex

County Clerk's Office on February 9, 1982, against the real property comprising the Site pursuant to N.J.S.A. 58:10-23.11f. and/or g.

17. On December 21, 1981, Plaintiff Administrator also signed a non-priority lien, which was subsequently recorded in the Sussex County Clerk's Office on February 9, 1982, against all revenues and other real and personal property of the defendant pursuant to N.J.S.A. 58:10-23.11f. and/or g.

18. On August 27, 1986, Plaintiff Administrator filed an amended first priority lien (Docketed Judgment No. DJ-41521-86) against the real property comprising the Site, and simultaneously filed an amended non-priority lien (Docketed Judgment No. DJ-41521-86) against the revenues and all other real and personal property of the defendant.

19. On January 12, 1999, Plaintiff Administrator filed a second amended first priority lien (Docketed Judgment No. DJ-41521-86) against the real property comprising the Site.

FIRST COUNT

20. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 19 above as though fully set forth in its entirety herein.

21. Plaintiff DEP has incurred, and will continue to incur, costs concerning the Site.

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

23. Plaintiffs DEP and Administrator have also incurred, and will continue to incur, damages, including reasonable assessment costs, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

24. The costs and damages Plaintiffs DEP and Administrator have incurred, and will incur, including any claims paid from the Spill Fund, for the Northern Fine site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

25. From the mid-1950's through the present, the defendant has owned the real property comprising the Site, during which time materials that were, or contained, hazardous substances were not satisfactorily stored or contained there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were discharged within the meaning N.J.S.A. 58:10-23.11f.a.(1)/ N.J.S.A. 58:10-23.11f.b.(3).

26. As a person responsible for materials that were, or contained, hazardous substances, certain of which were discharged/not satisfactorily stored or contained at the Site, the defendant is liable, jointly and severally, without regard to fault, for all costs Plaintiffs DEP and Administrator have

incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11.g.c.(1).

27. By failing to comply with the Directive, the defendant is also a person who is liable in an amount equal to three times the cleanup and removal costs Plaintiffs DEP and Administrator have incurred, and will incur, for the Northern Fine site. N.J.S.A. 58:10-23.11f.a(1).

28. As a person responsible for materials that were, or contained, hazardous substances, certain of which were discharged/not satisfactorily stored or contained at the Site, the defendant is liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

29. 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 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); and for any other unreimbursed costs Plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

30. 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 defendant to reimburse Plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs the plaintiffs have incurred for the Northern Fine site, with applicable interest;

b. Enter declaratory judgment against the defendant, jointly and severally, without regard to fault, for any cleanup and removal costs Plaintiffs DEP and Administrator may incur for the Northern Fine site;

c. Order the defendant to reimburse Plaintiffs DEP Administrator, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs Plaintiffs DEP and Administrator have incurred for the Northern Fine site;

d. Enter declaratory judgment against the defendant, jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs Plaintiffs DEP and Administrator may incur for the Northern Fine site;

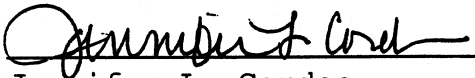
e. Order the defendant to reimburse Plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Administrator have incurred for any natural resource of this State damaged or destroyed by the contamination at the Site, with applicable interest;

f. Enter declaratory judgment against the defendant, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Site;

g. Award Plaintiffs DEP and Administrator their costs and fees in this action; and

h. Award Plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

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

By: 
Jennifer L. Cordes
Deputy Attorney General

Dated: March 24, 2003


DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Jennifer L. Cordes, Deputy Attorney General, is hereby designated as trial counsel for 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
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NEW JERSEY
Attorney for Plaintiffs

By: 
Jennifer L. Cordes
Deputy Attorney General

Dated: March 24, 2003