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In the matter of	:	Before the United States
	:	Environmental Protection Agency
LEFEVRE STREET SUPERFUND SITE	:	EPA DOCKET NO.
2710 Lefevre Street	:	CERCLA-03-2022-0129LL
Philadelphia, PA 19137	:	
	:	
	:	
MAS MANAGEMENT, LLC,	:	
1636 Ridge Avenue Unit #1	:	PROCEEDING UNDER SECTION
Philadelphia, PA 19130	:	107*(l)* OF THE COMPREHENSIVE
	:	ENVIRONMENTAL, RESPONSE,
	:	COMPENSATION , AND
	:	LIABILITY ACT OF 1980, AS
Owner	:	AMENDED, 42 U.S.C. § 9607*(l)*
	:	

MAS Management, LLC's Response to U.S. Environmental Protection Agency's Request to Perfect a Superfund Lien of the Property

The U.S. Environmental Protection Agency ("EPA" or "Agency") seeks a Superfund lien on property located at 2710 Lefevre Street in the City of Philadelphia, Pennsylvania ("the Property" or "Site").

MAS Management, LLC ("MAS"), the Property's owner since March 16, 2018, vigorously opposes any such imposition.

The EPA asserts that they have completed all statutory elements required for perfection of a lien under Section 107(l) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(l).

The “Lefevre Street Container Site,” as the EPA has styled the property, is the site of evaluation and removal actions spanning from 2018 to 2021. At all times the property owner, MAS, was active in the process of evaluation and proactive in response to the EPA. In fact, MAS retained an environmental company, RT Environmental Services, to evaluate the property and compile an action plan for removal and remediation of any threat posed by the property. Further, MAS engaged legal counsel to evaluate the overall plan and engage the EPA regarding their proposal. The EPA consistently rebuffed MAS’s efforts at communication and refused to consider their remediation plan. Instead, the EPA took control of the site and performed their own clean-up, which was completed in August of 2021. Subsequent communication to MAS discussed the concept of placing the cost burden of the clean-up as a lien against the property. The proposed lien, approximately $800,000.00, was more than three times the owner’s proposed plan cost. MAS, through counsel, pushed back on EPA’s intent to lien. MAS contends it should be shielded from being designated a potentially responsible party (“PRP”) as the special circumstances surrounding the 2009 EPA action reasonably led the City, the then-owner Joyce and any subsequent purchaser to believe the property was free from contamination.

The EPA, in its brief, asserts that MAS cannot avail itself of a safe harbor provided to subsequent purchasers and further asserts that no other assertion – the “equitable arguments” – stands either as a bar to perfecting the lien or as a proper basis for a limitation of liability. MAS contends here that it is appropriately entitled to relief from the lien, or, if this court refuses to bar EPA from attaining its lien, to a limitation of the potential liability.

Factual Background – Part I - Historical ownership, the 2009 Removal Action, sale in 2016

MAS owns the property commonly known as 2710 Lefevre Street in Philadelphia, PA. MAS acquired the property from former owner, Mr. John F. Joyce, by deed dated March 16, 2018. (See Deed Copy attached as Exhibit A)

The property is a rectangular parcel approximately 10,400 square feet extending from Lefevre Street frontage into the center of the city block, abutting many residential homes on three sides of the lot. (See plat map for block attached as Exhibit B.)

Based on information acquired from the City of Philadelphia ("the City"), EPA understands that Mr. Joyce's father acquired the Property in 1955 and, until his death in 1987, used a warehouse formerly located on the Property to store and sell electrical equipment.

(City Archives for 2710 Lefevre Street, pp. 5-27, Ex. A to this Response).

The property was continuously in the Joyce family. Mr. Joyce acquired the Property from his father's estate in 1988, and continuously used the Property for the storage and sale of electrical equipment until around 2008, when the City sued Mr. Joyce based on the poor condition of the property, and judicially condemned and subsequently demolished the warehouse building.

The property (at the time of the razing of the warehouse) can be described as an open area nearest to Lefevre Street which would be parking for a commercial enterprise, then the rear of the property is mainly comprised of a large concrete slab (the original footing for the warehouse) with soil extending from the slab to the left, right and rear fence lines.

At the time of the demolition, the city of Philadelphia, through the Philadelphia Fire Department and the Department of Licenses and Inspections ("L&I") addressed the issue of containers (noted as "drums, totes and other receptacles") that remained on the site. These containers were tested and found to contain PCBs.

The City then notified the PADEP and the EPA, at which time the EPA undertook an emergency action at the Site. This occurred in 2009, under the auspices of their "On-Scene Coordinator" ("OSC"). This OSC, named Jack Kelly, under the authority given to him by 40 C.F.R. § 300.410, performed an on-site evaluation. He determined two crucial things in his review, namely that 1) there was a substantial threat of release of PCBs into the environment and 2) that this threat presented "an imminent and substantial danger to the public health or welfare or the environment." (See the EPA's exhibit LFAR Ex. 1.04 at p. 2)

In April of 2009, the OSC, under his authority granted by 40 C.F.R. § 300.415, initiated an emergency removal action. All of the receptacles were removed from the property and a storage tank was pumped empty of heating oil. This action ended in June of 2009 and was documented that "all cleanup work on this site is complete" by the EPA in September of 2009. (See the EPA's Exhibit C, Close Out Special Bulletin dated 09/29/09)

Surprising, the EPA did none of the following:

- Levied a lien against the property or a fine against the owner; nor
- Intimated any follow-up needs to either the Owner or the City; nor
- Placed the property into a database or otherwise designating the property as potentially hazardous; nor
- Effectively recommended or performed any additional action regarding the property.

The end result of this completion and a lack of appropriate follow-up from the EPA led the two 2009 stakeholders – The City of Philadelphia and the property owner, Mr. Joyce – to believe the site was "clean". Mr. Joyce applied for and successfully amended the zoning on the property from Commercial to Residential. He then began to submit renderings to the city for approval of multi-tenant rental properties. The city, after granting his zoning change, then approved his architectural drawings for development of the property.

After some time, having improved the property by changing the zoning designation and by getting a set of multi-family renderings approved, Mr. Joyce sold the property to a property developer, MAS Management, LLC. The deed is dated March 18, 2016.

Factual Background Part II – The 2018-2021 EPA Site Evaluation and Clean Up

The EPA, by its own admission, failed to do any further testing of the Lefevre Street property in 2009. Sometime in 2018 the EPA apparently awoke from a decade-long slumber and claims it learned that the former owner, the elder Mr. Joyce, owned a property in Port Richmond being evaluated for the release of PCB's. It is at this time, some nine years after the Lefevre Street cleanup, that the EPA swung into action and contacted the current owner of the Lefevre Street property, MAS.

MAS immediately consented to EPA's entry to the Property to conduct a site evaluation, which EPA performed in August and September of 2018. The August testing, limited to surface-soil samples, revealed the presence of PCBs exceeding standards established by regulations promulgated under the Toxic Substances Control Act of 1976, as amended ("TSCA"), 15 U.S.C. §§ 2601-2629.8. The September testing was done by boring tests, engaging the soil at depths up to seven feet. Of 18 samples taken in September, three showed contamination, all at a depth between two and three feet. But through all of this testing, OSC Kelly never revealed that he had learned a decade before that there were discharges back in the late 1980's.

In fact he was exceedingly coy about the source of his information. In one email to MAS owner Amer Saeed, Mr. Kelly discusses taking surface soil samples on the site. He opines that he "will be surprised if anything of significance is discovered." Later in the same email, he speculates that "**if**" a problem exists, it will be underground, the result of "past leakage from transformers." Even then, he reassures them falsely by saying his "speculation is that there isn't [a problem]…"

(Attached, Jack Kelly email dated 08/13/18)

MAS planned to develop the property as a multi family residential project, falling into the definition for "high-use" under the TSCA. Therefore, MAS undertook a plan to provide remedy to the property through capping and cleaning. Their development plan included a central master driveway leading each of six individual town homes, each built on slabs, which would effectively "cap" two of the sub-surface areas of concern. Finally, they proposed a scarification of the property which would remove all of the surface soil and remove soil at the rear of the property to a depth sufficient to address the third and final test result.

After the sampling events conducted in August and September 2018, the OSC communicated with MAS on several occasions during 2018 and 2019 about the PCB analytical results and the need to conduct an adequate cleanup before residential development of the Property could begin. As related in their brief, the EPA engaged in an extensive dialogue with MAS regarding the project. On April 20, 2020, EPA issued a General Notice Letter ("GNL") to MAS, beginning a dialogue regarding the need to address the contamination on site. In June of 2020, MAS's attorney received correspondence from the EPA. This dispatch included an Action Memorandum and a draft Administrative Settlement Agreement. It also included a demand that the EPA receive a response by the end of June.

Beginning the spring and summer of 2020, MAS undertook a number of proactive steps to properly address the site's issues:

- MAS engaged the services of an environmental firm, RT Environmental Services, Inc.
- MAS and their then-attorney, Ed Paul, Esq. worked to engage an expert in environmental law, ultimately retaining Atty. Steve Miano from Hangley Aronchick Segal Pudlin & Schiller.
- MAS worked with their architect, David Ripple, AIA at Assimilation Design Lab, to appropriately revamp the site plan.
- MAS held meetings with their investors and lenders in an effort to structure commercial loans to fund the required clean-up.

- MAS held regular meetings by Zoom with its environmental team and the EPA during this period.

It should be noted that MAS' efforts were understandably hampered by the onset of COVID, the inability of many people to meet in person, the closure of many government offices, etc.

During this time also the EPA mentions that there was access by trespassers, which MAS refutes. The site was completely enclosed by tall fencing on all four sides. During 2020 and 2021, MAS employed contractors on four sites on neighboring Richmond Street and Bridge Street, and the owner or its agents would drive by and observe the Lefevre site multiple times per week.

In their brief, the EPA relates that "*For approximately nine months, from June 11, 2020, through March 19, 2021, EPA attempted to reach a settlement with MAS, but ultimately determined that MAS could not or would not perform the removal action properly and promptly as required under 42 U.S.C. §§ 9604(a)(1) and 9622(a).*"

MAS vigorously objects to this characterization of that period. MAS presented plans to the EPA that would comprehensively address all existing contamination and clean-up concerns. These were not cut-rate plans. The environmental piece was approximately $266,000 and the additional paving and slab work added another $75,000 to the cost of construction. All of this work was bolstered by the team of MAS, business attorney, environmental attorney, environmental firm, architect and construction firm meeting regularly with OSC Jack Kelly of the EPA.

Specifically, the MAS plans addressed each of the EPA written concerns:

(i) improved Site-security measures;
(ii) removal and off-site disposal, or the on-site capping, of PCB-contaminated soil in accordance with appropriate "high-occupancy" methods;
(iii) off-site disposal of all concrete found on-site with PCB concentrations exceeding 1.0 ppm;
(iv) further testing and evaluation of the August - September 2018 removal sites; and

(v) restoration of all areas of the Site where PCB-contaminated soils and other materials excavated and removed for off-Site disposal.

(LFAR Ex. 1.04).

In March of 2021, the EPA rejected all plans put forth by MAS and moved to complete their own project. The environmental attorney, Steven Miano, received correspondence from the EPA expressing their intent to begin the environmental clean under their auspices. The property was subjected to cleaning and removal processed through August of 2021 and a final report on the environmental process was issued in December of 2021. Sometime thereafter a cost report was provided to MAS informing them that a lien would be placed against the property in excess of $750,000 with additional costs and interest accruing to same.

Unbeknownst to MAS, a company named Best Management, LLC, ("Best") which had spoken to MAS's local realtor but not to any principal from MAS, contacted the EPA after inquiring about the property and finding out there was a recent EPA action. This awareness on the part of Best wasn't the result of some due diligence inquiry but was solely based on the realtor's transparent exchange of information.

The Agency *sua sponte* declared this to be an "exceptional circumstance" granting them the ability to immediately file a Notice of Lien against the property. At no time was MAS under contract to sell the property. MAS received a draft Contract for the Sale of Real Estate (CSRE) from Best which it neither signed nor intended to sign. The EPA did not reach out to MAS. The EPA did not contact either of MAS's attorneys – neither Mr. Paul nor Mr. Miano was notified of the Agency's intent. The EPA failed to do its homework regarding an "imminent" sale.

In August of 2022 the EPA notified MAS of the Notice of Lien and of its opportunity for a meeting with a neutral Agency official on August 18, 2022. (LFAR Ex. 1.10). Subsequent

correspondence between MAS's current attorney, Joseph Howard, Esq. and the agency resulted in this Lien Hearing.

II. Scheduled EPA Lien Hearing

MAS is aware of the extent to which this Lien Hearing does (and does not) address their broad concerns with this lien.

MAS 1) is aware of their due process right to notice and a hearing; 2) understands the lien hearing is less formal than typical litigation; 3) is aware that the EPA will argue their basis for the lien and provide support for their contention the owner is a PRP; 4) understands a lien is not subject to judicial review until such time as the EPA pursues cost recovery; and 5) is aware that the lien hearing will not result in a finding of liability or of non-liability, but will only serve to provide an opinion as to whether there exists a reasonable basis to perfect the lien.

III. Legal Framework

Lien Placement

The lien imposed by Section 107(l) of CERCLA arises upon the later of two occurrences:

(i) when response costs are first incurred by the United States on the affected real property, or
(ii) when the person owning the affected real property is given written notice of their potential liability. 42 U.S.C. §§ 9607(l)(2)(A) and (B).

Perfection of Superfund Lien

Thus, there are five statutory elements (or conditions) that must exist for EPA to have a reasonable basis to perfect a Superfund lien:

1. There must be real property subject to or affected by a removal or remedial action under CERCLA;
2. The real property subject to or affected by a removal or remedial action must be owned by a person who is a potentially liable party under Section 107(a) of CERCLA;
3. Response costs must have been incurred by the United States on the affected real property;

4. The person owning the affected real property must have received from EPA written notice of their potential liability; and
5. The liability for the costs (or any judgment against the person arising out of such liability) must not have been satisfied or must not have become unenforceable through operation of the statute of limitations provided in Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

Safe Harbor

Burden: Under CERCLA, which is a strict liability statute, the burden of persuasion of any defense rests on the shoulders of the Defendant. The Standard of Proof employed is a "preponderance of evidence" standard. Further, the Defendant must prove each and every element of the defense; failing that, the defense is unavailable to them.

Elements: CERCLA provides for a third-party defenses under various sections. The categories of defendants fall broadly under the rubric of 1) Bona Fide Prospective Purchaser ("BFPP"), 2) Contiguous Property Owner and 3) Innocent Landowner.

For category 3, that of "Innocent Landowner", the site owner must show:

1) "[when the owner] acquired the facility . . .[the owner] did not know and had no reason to know that any hazardous substance, which is the subject of the release or threatened release, was disposed of on, in, or at the facility." 42 U.S.C. § 9601(35)(A)(i).
2) that it performed "all appropriate inquiries" prior to having purchased the Property.
3) that it exercised "due care" and took precautionary measures as required under CERCLA's third-party defense. See 42 U.S.C. §§ 9607(b)(3)(a) and (b).

IV. Argument

Lien Placement

This entire affair arises from negligence on the part of the EPA.

As such, we argue that all of the stakeholders in this matter – The City, John Joyce Jr. and MAS – were not only unaware of the need for environmental action, worse, they could not have known because the information was negligently withheld from them.

After the "removal" action in 2009, the OSC received information that PCBs had been discharged on the Lefevre Street property. It deemed the source of this information "reputable." But, according to the EPA's own brief, there were three points of contact regarding the containers removed from the site: The owner, John F. Joyce, Jr., the Philadelphia Fire Department's Hazardous Materials Administrative Unit ("HAMU") and the City's Department of Licenses and Inspections ("L&I").

L&I had demolished the warehouse on the property in 2008 and was assisted by PFD during that process. They had tested the various containers on-site and determined they contained PCBs. This led to the "removal" action. The OSC's report on the action estimates the cost of the "removal action" to be $102,000.

By the description provided in the Close Out Special Bulletin the removal consisted of approximately 2,850 gallons of PCB contaminated liquids and 2,200 gallons of waste oil.

But, at the end of the "removal" action, the OSC reports that he

> "Informed the City of Philadelphia Law Department about a claim by a reputable source that PCB oils may have been permitted to leak in the rear portion of the vacant lot. This individual, formerly employed by the City, inspected the facility in the early 1980's when the electrical parts warehouse was in operation and had obtained information suggesting this."

The report continues:

> "The OSC suggested that the City make this a requirement before any future development of the property. He offered to arrange for sampling of the area if the City wished."

(Close Out Special Bulletin, p5.)

So, at the end of 2009, the EPA has a "reputable" source who tells them that there is likely PCB contamination of the soil in a residential neighborhood.

The EPA does not inform the owner. The EPA does not inform either L&I or HAMU. The EPA claims it offered the Law Department assistance with testing, and told them to make it a point of action for future development.

The City Zoning Board granted permit #18304 on 12/02/09 for construction on the site, allowing Mr. Joyce, Jr. to construct two multifamily apartment units. No mention of any testing requirement is provided by the City in its permit.

The owner never built the proposed construction, but renewed his permit every two years in 2011 and 2013. Each time the permit is renewed, it is renewed with no new conditions.

By the EPA's own criteria for placement of a lien, a lien should arise upon the later of two occurrences:

(i) when response costs are first incurred by the United States on the affected real property, or

(ii) when the person owning the affected real property is given written notice of their potential liability. 42 U.S.C. §§ 9607(l)(2)(A) and (B).

The City of Philadelphia had constructive possession of the property in 2008, when it sought court permission to enter the property and raze the warehouse. It had actual possession in 2014 when it took the property through foreclosure.

The response costs, estimated at $102,000 in 2009, arose in April – June of 2008 and were calculated as of September of 2008.

At all times the owner, John Joyce, Jr., and the constructive / subsequent owner, the City of Philadelphia, were on notice of the "removal action" and the liability associated with the costs of clean up.

By the EPA's own strategy, the placement of the lien should have occurred sometime after 2009 and before the SOL ran in 2012.

The EPA wants to place the current lien based on the fact that the future buyer of the property – MAS – should have completed an inquiry that literally no residential property buyer undertakes. The previous owner Joyce, the previous owner City of Philadelphia and current owner MAS are somehow placed into a position where they should have knowledge the EPA literally hid. Had the EPA followed up with actual responsible agencies, there would be knowledge; if the EPA had placed a lien against the property in 2009, there would be knowledge.

Perfecting the Superfund Lien

MAS concedes that the EPA has established elements 1, 3, 4 and 5 of the five statutory elements. However, MAS strenuously objects to their categorization as a PRP or Potentially Liable Party ("PLP").

<u>Conceded:</u>

1) There is real property subject to or affected by a removal or remedial action under CERCLA.

Conceded. The Lefevre Street property is subject to CERCLA and was admittedly the site of a removal and a remedial cleaning action.

3) Response costs have been incurred by the United States on the affected real property.

Conceded. The EPA spent a significant amount of money remediating the site.

4) The person owning the affected Property has received written notice of its potential liability.

Conceded. MAS received notice at its agent's email and through its attorney.5. Statutory

5) Liability for the costs or any judgment against MAS arising out of such liability has not been satisfied and has not become unenforceable through operation of the statute of limitations provided in Section 113(g)(2) of CERCLA.

Conceded. No action for recovery has been initiated. Clearly, MAS believes it is not liable for this environmental situation, however, the company recognizes that argument is appropriate in another forum.

Disputed:

2) Real property subject to or affected by a removal or remedial action is owned by a potentially liable party under Section 107(a) of CERCLA.

Conceded that the Lefevre Street property is a "facility" covered by 107(a) of CERCLA. MAS agrees that it is the "owner" of the facility. Under these facts, MAS is a potentially liable party under Section 107(a) of CERCLA as the current owner of the Property (LFAR Ex. 1.02). But, as will be spelled out below, MAS holds itself out as "Innocent Landowner" in this situation.

Safe Harbor:

MAS's purchase of the Lefevre Street residential property requires us to evaluate the Safe Harbor described as the "Innocent Landowner" defense.

Accordingly, the site owner must show:

1) "[when the owner] acquired the facility . . .[the owner] did not know and had no reason to know that any hazardous substance, which is the subject of the release or threatened release, was disposed of on, in, or at the facility." 42 U.S.C. § 9601(35)(A)(i).
2) that it performed "all appropriate inquiries" prior to having purchased the Property.
3) that it exercised "due care" and took precautionary measures as required under CERCLA's third-party defense. See 42 U.S.C. §§ 9607(b)(3)(a) and (b).

To address each element:

1) *"[when the owner] acquired the facility . . .[the owner] did not know and had no reason to know that any hazardous substance, which is the subject of the release or threatened release, was disposed of on, in, or at the facility." 42 U.S.C. § 9601(35)(A)(i).*

When the property was purchased, MAS completed a brief appraisal of the property (it was a vacant lot), performed a title search and researched zoning, variance and use conditions as part of due diligence for the commercial loan extended for the purchase and development of the lot. Given that the property was likely contaminated during its productive capacity, that date would predate the death of J. Joyce Sr. in or before the year approximately 1987. Even if the property had suffered contamination during the environmental cleanup undertaken in 2009, there was no indication in the title search or in the seller's affidavit or in the city records indicating any presence of hazardous materials.

Further, despite the fact that MAS was in privity with J. Joyce Jr. through the deed, MAS had no business affiliation, in any way, with any entity that previously owner or occupied the Site.

2) *that it exercised "due care" and took precautionary measures as required under CERCLA's third-party defense. See 42 U.S.C. §§ 9607(b)(3)(a) and (b).*

Despite the various assertions lobbed at MAS by the EPA's brief in this matter, the site was significantly improved by their presence. At the time of the purchase in 2018 there had been at least 12 years and possibly more of benign neglect from the previous owner.

Entire sections of the fencing were missing. The front gate was sometimes padlocked, sometimes not; even when it was secured the gates could be moved to allow a person to squeeze in between the leading edges of the gates. Neighborhood people freely crossed the site from many of the 21 different back yards that abut the property.

MAS performed basic maintenance to the site in order to prepare it for development. They cut the grass, they shored up fence panels that had fallen over, they replaced sections of missing fencing in the rear, they installed a new front gate and changed the way the gates were secured so that people couldn't slip through the front gates.

Remember that it only took the OSC less than six months to suddenly realize that the Joyce family was out of the property. In fact, in less than five months after MAS' purchase the OSC was back on the grounds with an engineering company performing soil sampling.

After the shocking discovery of contamination on the property, MAS then was tasked with improving the site security and addressing the very real possibility of addressing environmental contamination on the site.

As described above, MAS engaged an environmental company and followed their advice regarding site activities that would mitigate any possibility of further exacerbating the contamination. Likewise, the owner of MAS, Mr. Amer Saeed, was in frequent contact with the OSC J. Kelly and was given a set of guidelines to follow regarding proper site activity and proper site maintenance.

The EPA's brief mentions that MAS and its agents and managers were sometimes put out or seemed exasperated by the situation. It should come as no surprise that people sometimes chafe at government intrusion into their affairs. No one has ever thanked the IRS for an audit. The emails show that there was a familiarity and an informality between the OSC and the owner of MAS which demonstrates the frequency and depth and breadth of their communication.

Additionally, it absolutely should be noted that the OSC contacted MAS' owner, Mahmood Saeed, to make an introduction with the EPA's Criminal Investigation Division Agent in Charge, Ms. Nicole Bien. After some brief telephonic discussions, Mr. Saeed traveled to the EPA's

Philadelphia office and met personally with Ms. Bien. At that time she claimed she was investigating the Joyce family's ownership of the Lefevre Street Property and, as a follow-up, Mr. Saeed gathered all documents related to the sale of the land and shared them with Ms. Bien in the first week of February, 2019. Ms. Saeed was not informed as to any follow-up activity in this "investigation."

During the three years between the August 2018 soil sampling and the August 2021 completion of removal as performed by the EPA, MAS engaged a series of professionals and they met frequently with the EPA through meetings and then regular Zoom communication into the pandemic. MAS had four other properties in the Bridesburg area that were underway during this time period, and the various site supervisors were tasked with putting eyes on the Lefevre Street property and providing feedback regarding the site. At all times if there was a knocked-down fence or evidence of some sort of entry onto the property it would be timely addressed by MAS personnel.

Complementing this approach was the work of RT Environmental Services. Together with MAS, RT developed a plan that would help to achieve the stated goals of 1) preventing any continuing release of hazardous material, 2) prevent any future release of hazardous material and 3) limit the exposure of any person, habitat or natural resource to any existing hazardous material. By implementing this plan as part of site security, MAS believed that at all times it was conforming to the EPA's concerns, as transmitted to them by the OSC J. Kelly.

that it performed "all appropriate inquiries" prior to having purchased the Property.

MAS purchased the residential property after completing a brief appraisal of the property (it was a vacant lot), performing a title search and contracting with their architect to research zoning, variance and use conditions as part of due diligence for the site.

MAS did not, and would not, have reason to believe that the property was in any way impaired. There were no economic indicators – the price of the lot was not an unreasonably low figure, the marketing of the property was done traditionally through agents, etc. – and there were no accessible documents that would alert the buyer, their realtor or their architect to the possibility of some impairment.

MAS took a title policy from Fidelity National Title that specifically provides for a search of environmental issues. It is axiomatic that the title policy would be based on a title report showing a clean bill of environmental health, or the Title company would excluded the various standard environmental sections from coverage.

In reviewing the previous uses of the property, it was documented back to 2006 (12 years) the efforts undertaken by the Joyce family to get approval for the site as a Residential development, which status was cemented in December of 2009 when a residential permit to build a pair of multi-unit buildings was issued to Mr. Joyce. Following up on these documented use permissions, the City renewed his application, without comment or instruction in 2011 and again in 2013.

The City of Philadelphia took the property in 2014 through a tax sale foreclosure. It was the owner of the property briefly. If the City were armed with some knowledge that the property was contaminated, as is alleged by the Close Out Document, it would have not been able to turn the property back to the Joyce family upon redemption. But it did just that, returning the property to Joyce in 2015 after the payment of the tax deficit.

A buyer of residential property is expected to perform a reasonable inquiry into the property and its provenance. Unfortunately here, the very organization charged with ensuring that properties are free from hazard, the EPA, is the reason that all stakeholders in the property could state that

they had no knowledge or awareness of any reason the property might be tainted. The hidden information that there might be a hazardous situation prevented a reasonable buyer from performing any additional inquiry.

V. Conclusion

EPA arrived at this site under very suspicious circumstances. It failed to lien owner J. Joyce in 2008 for $100,000 of work completed. It failed to do any further site investigation despite reputable information regarding further contamination. It failed to put any future prospective buyer on notice that the property was likely contaminated.

Nine years passed and the EPA created a fiction that the owner's nearby site was contaminated, so that prompted them to check Lefevre Street. In fact, they knew all along there was an environmental issue and slept on the information. Only when the Joyce family divested itself of the property did EPA show up to remedy the hazardous situation they knew or should of known existed.

The EPA demanded a site cleaning plan from owner MAS and then completely ignored and dismissed the plans presented to them. After undertaking a cleanup at more than double the cost of the site owner's proposal, the EPA began to process a lien (this time). The EPA, without contacting the site owner or the site owner's attorney(s), declared an "imminent emergency" based on a single inquiry from a potential purchaser, and filed the attendant lien.

Based on the information provided above, MAS should be granted a safe harbor from the lien under the "innocent landowner" exception.

Respectfully submitted on behalf of the Defendant MAS Management, LLC,

Law Office of Joseph P. Howard, LLC

Date: December 16, 2022

/s/ *Joseph Howard*

Joseph P. Howard, Esquire

Attorney for Owner