



Putting Substance Over Legal Form, Court Finds Property Owner Eligible for Innocent Party Grant

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In September, the Appellate Division determined that the current corporate owner of property qualified for an innocent party grant, which provides remediation funding to pre-1983 purchasers of contaminated property who did not cause the contamination, even though that entity did not obtain title to the property until 2006.

Cedar Knolls 2006, LLC v. New Jersey Department of Environmental Protection, Docket No. A-1405-15T3 (Sept. 20, 2017).

Longtime owners of contaminated property in New Jersey who did not cause the pollution may be eligible for an “innocent party” grant under the Brownfields and Contaminated Site Remediation Act (the “Brownfield Act”). In addition to being an innocent party, in order to qualify for the grant, the owner must have purchased the property prior to December 31, 1983, and must continue to own the property until such time as the grant is approved. The NJDEP had denied the grant application of Cedar Knolls 2006, LLC (“Cedar Knolls”), which became the title owner of property in Hanover, New Jersey in 2006 as a result of a series of intra-family trust transfers. The original owner of the property, John Higginson, had purchased the contaminated parcel in 1977 and then bequeathed it to his wife, who in turn through various trust vehicles transferred her interest in the property to her son, William, who ultimately in 2006 transferred his interests to a limited liability company, Cedar Knolls, which was solely owned by William.

NJDEP denied Cedar Knolls' grant application on the basis that the entity was not a person who acquired the property prior to December 31, 1983. Cedar Knolls sought reconsideration arguing that the intra-family transfers were not a “change in ownership” under New Jersey environmental laws, specifically the Industrial Site Recovery

Act ("ISRA"). Based upon ISRA's definition of "change in ownership" that specifically excludes intra-family transfers, Cedar Knolls argued there had been no change in ownership of the property since John's 1977 acquisition.

Agreeing with Cedar Knolls, the Appellate Division found that the Brownfields Act and ISRA are "part of a unified legislative strategy to address the remediation of contaminated sites." Accordingly, the Court found that it was appropriate to look to the definitions in ISRA to determine what constitutes a "change in ownership" for purposes of the innocent party grant. In addition, the Court said it was required to liberally construe remedial statutes like the Brownfield Act and ISRA to effectuate the Legislature's important social goals, which include helping innocent owners defray the cost of remediating contamination. Thus, the Court found that the Legislature was "more concerned with the substance of ownership and continuity than the technicalities of legal form" and found that because ownership transferred through family members, Cedar Knolls qualifies for the innocent party grant. Interestingly, the Court did not make a distinction between Cedar Knolls, a limited liability business entity, and a family member, which would be a natural person.

Based upon this decision, an applicant for an innocent party grant does not have to be the same person, or entity, that purchased the property, when the transfer that vests title in the current owner is not considered a "change in ownership" under ISRA. Here, the transfers were among family members. ISRA, however, also excludes other transfers, for example, certain corporate mergers and inter-corporate transfers, from the definition of "change in ownership." As a result of this ruling, entities that become the owner of contaminated property as a result of these types of transfers also may be eligible for innocent party grants notwithstanding that their ownership begins after 1983.

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