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U.S. v. 718 W. Wilson Ave., Glendale, Cal., 91203

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I. INTRODUCTION

In *United States v. 718 West Wilson Avenue, Glendale, California, 91203*,⁹¹ the District Court for the Central District of California granted partial summary judgment on the United States' motion to recover from a landowner, *in rem*, for all CERCLA⁹² related environmental costs where the landowner was previously found liable. The United States previously prevailed on a motion for summary judgment to establish liability against a property owner and his property, *in rem*, for chemical contamination of soil and groundwater.⁹³ Defendants were the property's owner, Hovsep Boghossian, and the property itself, 718 West Wilson Avenue, Glendale, California.⁹⁴ Boghossian bought the chemically contaminated property in 2008 despite an Environmental Protection Agency (EPA) lien on the property.⁹⁵ The court found Boghossian and his property liable on November 30, 2010, and granted summary judgment in the government's favor.⁹⁶ Following the determination of liability, the United States moved for partial summary judgment to determine the amount recoverable under CERCLA and the deficiency of Boghossian's response to the CERCLA Information Request.⁹⁷

II. FACTUAL AND PROCEDURAL BACKGROUND

The property, located in the San Fernando Valley, was used by the Drilube Company for aerospace related activities.⁹⁸ Drilube contaminated the soil and groundwater with hazardous

⁹¹ *U.S. v. 718 W. Wilson Ave., Glendale, Cal., 91203*, ___ F.Supp.2d ___, 2011 WL 1496325 (C.D. Cal. Apr. 11, 2011).

⁹² Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (2006).

⁹³ *718 W. Wilson Ave.*, 2011 WL 1496325 at *1.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at *2.

⁹⁷ *Id.*

⁹⁸ *Id.* at *1.

chemicals to an extent that the property was designated a Superfund Site.⁹⁹ Remy Mazmanian purchased the property in 2004.¹⁰⁰ The EPA began cleanup activities on the property in March of 2007.¹⁰¹ Using CERCLA, the EPA placed a lien on the property while it was still owned by Mazmanian.¹⁰² Cleanup activities concluded in April 2010.¹⁰³ Despite being aware of the contamination and lien, Hovsep Boghossian purchased the property after the EPA started response activities in 2008.¹⁰⁴ The EPA attempted to contact Boghossian in November 2008 with a CERCLA section 104(e) Information Request.¹⁰⁵ Boghossian was required to respond within 45 days.¹⁰⁶ When he was late in his response, the EPA sent a follow-up letter warning him of penalties if he failed to comply with the information request.¹⁰⁷ Boghossian finally responded 94 days after the information request was due.¹⁰⁸ But Boghossian's response failed to provide documentation or evidence in defense of EPA's claims, and he never requested to access or inspect EPA's documentation on its response costs.¹⁰⁹

The United States filed suit against Boghossian and the property on September 3, 2009.¹¹⁰ The United States moved to separate the case into three phases: (1) to establish liability, (2) to determine costs to be paid by parties, and (3) to resolve other issues raised by U.S. Bank, an intervenor.¹¹¹ The motion was granted and on November 30, 2010, the court partially granted

⁹⁹ *718 W. Wilson Ave.*, 2011 WL 1496325 at *1.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *718 W. Wilson Ave.*, 2011 WL 1496325 at *5 (Section 104(e) of CERCLA authorizes the EPA to issue information requests to any person who may have information about a contaminated site, not just potentially responsible parties).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at *1.

¹¹¹ *718 W. Wilson Ave.*, 2011 WL 1496325 at *1.

the United States' motion for partial summary judgment.¹¹² The court held that the property was liable *in rem* for cleanup costs associated with the EPA's National Contingency Plan (NCP).¹¹³ The court also found Boghossian individually liable as the property owner and operator of the site.¹¹⁴ The court having established liability, the United States sought to recover cleanup costs on a motion for partial summary judgment.¹¹⁵ The United States claimed \$1,392,734 in cleanup costs as of September 30, 2010.¹¹⁶

III. ANALYSIS

A. Recoverable Costs under CERCLA

The United States submitted to the court an EPA Cost Summary along with affidavits detailing the costs accrued from cleanup activities.¹¹⁷ The United States asked the court for all costs associated with its response actions pursuant to the NCP and CERCLA.¹¹⁸ The court determined that all costs should be construed broadly to include any direct costs, indirect costs, litigation costs, and interest on the recoverable costs incurred.¹¹⁹ Specifically, the court held that the United States could recover payroll and travel expenses, EPA contractor costs, indirect and oversight costs, costs incurred by the Department of Justice in bringing suit, and interest on unpaid amounts.¹²⁰ Boghossian failed to dispute the United States' right to recover the costs in his brief opposing summary judgment and the court determined there was no dispute as a matter of law in regards to the costs recoverable to the United States.¹²¹ Thus, the court awarded the United States the full \$1,392,734 claimed.¹²²

¹¹² *Id.* at *2

¹¹³ *Id.* at *2 (See 42 U.S.C. § 9605 and 40 C.F.R. pt. 300, *et seq* (2010) for a description of the NCP).

¹¹⁴ *Id.* at *2.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ 718 W. Wilson Ave., 2011 WL 1496325 at *4.

¹¹⁸ *Id.* at *3 (citing 42 U.S.C. § 9607(a)(4)).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at *4.

¹²² *Id.*

B. Civil Penalties Assessed for Failure to Respond to EPA Information Requests

The EPA notified Boghossian about the CERCLA liability on his land in November of 2008, and Boghossian responded 94 days after the response was due.¹²³ Boghossian's response did not provide any evidence or documentation to refute the CERCLA liability.¹²⁴ Boghossian declined opportunities to review the EPA documentation regarding its response activities on his property.¹²⁵ Under federal regulations, failure to respond to an EPA information request can result in serious monetary penalties.¹²⁶ The court used a test to analyze penalties under CERCLA which included: (1) the good or bad faith of defendant, (2) injury to the public, (3) defendants' ability to pay, (4) desire to eliminate the benefits derived by the violation, and (5) the necessity of vindicating the enforcing party.¹²⁷ Boghossian completely failed to respond to the request for a penalty in his brief.¹²⁸ As a result, the court fined Boghossian \$37,500, which is an amount equal to only one day of violation despite being 94 days late in a response. The court believed this fine was sufficient to send a message about taking EPA information requests seriously.¹²⁹

IV. CONCLUSION

This case demonstrates the seriousness that courts may take in finding responsible parties for environmental degradation and cleanup costs, which would otherwise be borne by taxpayers. In this case, the property owner did not actually contaminate the property but he purchased the property after cleanup activities had begun. Regardless, the court held the property owner accountable rather than allowing the government to go uncompensated for its cleanup expenses.

¹²³ 718 W. Wilson Ave., 2011 WL 1496325 at **1, 5.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at *6 (citing 42 U.S.C. § 9604(e)(5)(B), 73 Fed. Reg. 75340, 75345 (Dec. 11, 2008)).

¹²⁷ *Id.* (citing *U.S. v. Gurley*, 384 F.3d 316, 325 (6th Cir. 2004)).

¹²⁸ *Id.*

¹²⁹ 718 W. Wilson Ave., 2011 WL 1496325 at *6.