

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ULSTER

STATE OF NEW YORK and NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Plaintiffs,

-v-

ORDER AND JUDGMENT

JOSEPH KAROLYS, Individually and Doing
Business as J. KAROLYS + SON, RACHEL
KAROLYS, and MICHAEL S. CUMMINS,
Individually and as Trustee of the J & H
IRREVOCABLE FAMILY TRUST,

Index No. EF2020-1432

Hon. Richard Mott

Defendants.

WHEREAS, plaintiffs State of New York and the New York State Department of Environmental Conservation (DEC) (collectively, the State) commenced this action against defendants Joseph Karolys and Rachel Karolys (Defendants) on June 25, 2020 by filing a Summons and Verified Complaint (*see* Summons and Verified Complaint, New York State Courts Electronic Filing [NYSCEF] Doc. No. 1). The Verified Complaint alleges numerous violations of the Environmental Conservation Law (ECL) at three properties owned by the Defendants in Ulster County: 1446 State Route 212, Saugerties, NY 12477 (Route 212 site); 90 Goat Hill Road, Saugerties, NY 12477 (Goat Hill site); and 33/43 Fel Qui Road, Woodstock, NY 12498 (Fel Qui site) (collectively, the Sites). At each of the Sites, the Defendants accepted and disposed of solid waste, including construction and demolition debris, in violation of ECL Article 27 and accompanying solid waste regulations and commenced construction activities without water pollution control

permits in violation of ECL Article 17 and accompanying regulations. The State's complaint seeks injunctive relief and statutory penalties for the Defendants' violations of the ECL.

WHEREAS, shortly after issue was joined, Defendants created the J & H Irrevocable Family Trust (Trust), naming Michael S. Cummins as trustee. They then sold the Route 212 site to the Trust and the other two sites to Cummins.

WHEREAS, the State amended its complaint twice as a result of these property transfers: first to add the new owners of the Sites (Cummins and the Trust) as defendants (*see* Amended Summons and Amended Verified Complaint, NYSCEF Doc. Nos. 51, 52), and then to assert causes of action under the Universal Voidable Transaction Act, codified in Article 10 of the New York State Debtor and Creditor Law, to reverse the property transfers (*see* Second Amended Summons and Second Amended Verified Complaint, NYSCEF Doc. Nos. 82, 83). Subsequently, the State moved for partial summary judgment against the Defendants and partial default judgment against Cummins and the Trust on the Voidable Transactions causes of action.

WHEREAS, the Court's April 24, 2023, Decision and Order, which granted the State's motion in its entirety: (1) declared null and void all sales to Cummins and the Trust of the Sites previously owned by the Defendants; (2) restored ownership of all the Sites to the Defendants; (3) enjoined any further transfers and/or encumbrances of the Sites by the Defendants; and (4) granted the State's

motion for partial default judgment against Cummins as trustee of the Trust, and Danielle Bach as the acting/successor trustee of the Trust.

WHEREAS, in accordance with the April 24, 2023, Order, the Sites were transferred back to the Defendants by deeds executed on November 20, 2023, and filed with the Ulster County Clerk on November 22, 2023. Concurrently, the parties stipulated to discontinue the action against Cummins and the Trust (see NYSCEF Doc. No. 155).

WHEREAS, the Defendants conceded and/or admitted their liability on the first through fourth causes of action in the State's Second Amended Complaint, by Stipulation and Order, so-ordered by the Court on December 21, 2023 (NYSCEF Doc. No. 160).

WHEREAS, as to the First Cause of Action, the Defendants conceded and/or admitted liability for numerous violations of 6 NYCRR 360.9(a)(1), 360.9(b)(2), and 360-1.14 (1993).

WHEREAS, as to the Second Cause of Action, the Defendants conceded and/or admitted liability for numerous violations of 6 NYCRR 360.9(b)(6), 360.9(b)(3), 364-3.2(b), 364-3.3(e), 360.9(b)(1)(i), 360.9(b)(5), 360.9(a)(1), 360.9(b)(2), 360.19(b)(2), and 360-1.7(a)(1)(i) (1993).

WHEREAS, as to the Third Cause of Action, the Defendants conceded and/or admitted liability for numerous violations of 6 NYCRR 360.9(b)(6), 360.9(b)(3), 364-3.2(b), 364-3.3(e), 360.9(b)(1)(i), 360.9(b)(5), 360.9(a)(1), 360.9(b)(2), 360.19(b)(1), 360.19(b)(2), and 360-1.7(a)(1)(i) (1993).

WHEREAS, under ECL § 71-2703(1)(a), each violation above carries a maximum penalty of \$7,500.00, as well as an additional penalty for continuing violations of up to \$1,500.00 per day. Under ECL § 71-2703(1)(b)(ii), each violation that causes the release of more than ten cubic yards of solid waste into the environment carries a maximum civil penalty of \$22,500.00, plus an additional penalty for continuing violations of up to \$22,500.00 per day. Under ECL § 71-2703(3), each violation with regard to the construction and operation of facilities for the disposal of construction and demolition debris carries an additional maximum daily penalty of \$15,000.00.

WHEREAS, as to the Fourth Cause of Action, the Defendants conceded and/or admitted liability for numerous violations of ECL § 17-0505 by commencing construction activities at the Sites before obtaining permit coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity. Pursuant to ECL § 71-1929(1), each violation carries a maximum allowable penalty of \$37,500.00 per day.

WHEREAS, the parties have engaged in settlement negotiations on the remaining issues – injunctive and monetary relief. As part of this effort, Defendants retained an expert to prepare a remediation report, including a cost analysis, for the Sites.

WHEREAS, at a court conference on February 22, 2024, the parties apprised the Court that they had reached an impasse in their settlement negotiations.

WHEREAS, the Court stated a belief that there remain no issues of fact for the Court to decide and directed the State to submit to it an order and judgment on notice setting forth the relief requested by the State.

WHEREAS, there is no dispute that the State is entitled under the law to injunctive and monetary relief as Defendants' violations remain uncorrected.

WHEREAS, in developing the State's request for monetary relief, the State considered DEC's Solid Waste Enforcement Policy (OGC 8), Technical & Operational Guidance Series (TOGS) 1.4.2: Compliance Enforcement of State Pollutant Discharge Elimination System (SPDES) Permits, and Civil Penalty Policy (DEE-1). The State also considered the economic benefit derived by the Defendants by failing to comply with the ECL and corresponding regulations.

WHEREAS, the cost of removing and properly disposing of the unlawful solid waste at all of the Sites is no less than \$8,000,000.00 based on the volume of solid waste currently present at the Sites.

NOW, upon application of the New York State Attorney General's Office, counsel for the State:

IT IS HEREBY ORDERED,

1. At the property located at 1446 State Route 212, Saugerties, NY 12477, Defendants shall cease accepting and/or disposing of solid waste, and shall remove and lawfully dispose of all solid waste at a DEC-approved solid waste management facility, within 90 days of this Order and Judgment.

2. At the property located at 90 Goat Hill Road, Saugerties, NY 12477, Defendants shall cease accepting and/or disposing of solid waste, and shall remove and lawfully dispose of all solid waste at a DEC-approved solid waste management facility, within 90 days of this Order and Judgment.

3. At the property located at 33/43 Fel Qui Road, Woodstock, NY 12498, Defendants shall cease accepting and/or disposing of solid waste, and shall remove and lawfully dispose of all solid waste at a DEC-approved solid waste management facility, within 90 days of this Order and Judgment.

4. Within 30 days of this Order and Judgment, and prior to commencing any solid waste removal activities at any of the Sites, Defendants shall submit to DEC for review and approval a waste removal plan to remove and lawfully dispose of all solid waste at the Sites. Defendants shall comply with all terms and provisions in the final DEC-approved waste removal plan. Such waste removal plan shall be submitted in hard copy to Regional Materials Management Engineer, NYSDEC Region 3, 21 South Putt Corners, Road, New Paltz, NY 12561 and electronically to dec.sm.r3.solidwaste@dec.ny.gov.

5. Defendants shall provide the State with written notice of its intent to begin waste removal and disposal activities at the Sites at least five days prior to work beginning. Such notice shall be provided to DEC by mail correspondence to Regional Materials Management Engineer, NYSDEC Region 3, 21 South Putt Corners, Road, New Paltz, NY 12561 or electronic correspondence at dec.sm.r3.solidwaste@dec.ny.gov.

6. The State's representatives shall be permitted access to the Sites and to relevant records during reasonable hours to inspect and/or perform such tests and other activities to ascertain compliance with this Order and Judgment.

7. Defendants shall cease all activities resulting in soil disturbance at the Sites other than those activities necessary to install or maintain erosion and sediment control measures pursuant to an approved Stormwater Pollution Prevention Plan or to comply with this Order and Judgment.


8. Within 30 days of this Order and Judgment, Defendants shall file with the Ulster County Clerk a deed restriction for each of the three Sites regarding the presence of unauthorized solid waste on the Sites and indicating that records are on file with DEC; the State has provided a copy of the text of the deed restriction to Defendants. The State will authorize Defendants to extinguish the deed restriction when the waste removal plan, as approved by DEC, has been completed.

IT IS FURTHER ORDERED, the Defendants shall not convey, transfer, sell, devalue, or otherwise dispose of any assets, including any portion of and/or interest in any real property or any corporation, LLC, or other corporate entity formed during the pendency of this action, until the terms and condition of this Order and Judgment have been completed and/or satisfied.

IT IS HEREBY ORDERED AND ADJUDGED, that Plaintiffs State of New York and the New York State Department of Environmental Conservation, The Capitol, Albany, New York 12224, recover of defendants Joseph Karolys and Rachel Karolys, 1446 Route 212, Saugerties, NY 12477, the total sum of

\$8,000,000.00; and that Plaintiffs shall have execution thereof. Payment shall be by certified check, money order, or attorney escrow check payable to the "State of New York" and shall be delivered within 180 days of this Order and Judgment to Assistant Attorney General Marie Chery-Sekhobo, Environmental Protection Bureau, New York State Office of the Attorney General, The Capitol, Albany, NY 12224, or such other individual(s) as the State may designate. Payment(s) to the State under this Order and Judgment shall, as authorized by Executive Law § 63(16), be held by the New York State Office of the Attorney General in a designated account and used in Ulster County, New York, to prevent, abate, restore, mitigate, or control prior or ongoing water, land, or air pollution.

IT IS FURTHER ORDERED, the State may reduce the \$8,000,000.00 monetary relief owed to the State in proportion to any money demonstrated to DEC's satisfaction to have been spent by the Defendants to remediate the Sites. Such reductions in the total monetary relief may only be done in increments of \$100,000.00 or more. The remedial work and any claimed expenditures must be approved in writing by DEC.

So Ordered: 
 Hon. Richard Mott
 Justice, Supreme Court

Dated MAY 12, 2024

Judgment signed this 10th day
 of MAY, 2024


 Clerk