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COURT RULES FOR BUYER AGAINST BANK'S PREDECESSOR THAT SOLD POLLUTED PROPERTY IN TETERBORO

Thursday, September 1, 2016: Richard Catena, who owns an auto sales warehouse on Industrial Avenue in Teterboro, in Bergen County, bought the property in 1988, thinking it was clean, based on the seller's representations to NJDEP that no hazardous waste had been handled there.

In 2007, Catena found out that the seller, Daniel P. Andersen and the bank, First Fidelity, now Wells Fargo Bank, knew about subsurface pollution and hid it from Catena.

Catena sued Andersen and the bank for fraud, and was finally vindicated late last week when the Appellate Division of New Jersey Superior Court ruled in his favor, reinstating his fraud claim, which a Bergen County trial court judge dismissed after the bank and Andersen claimed Catena had waited too long to bring his claim. Catena's attorney was [Janine G. Bauer](#), a partner with [Szaferman, Lakind, Blumstein & Blader, P.C.](#) of Lawrenceville, N.J.



PHOTO: Teterboro, NJ: *Clean-up of hazardous waste begins, decades after property seller's sworn statement that hazardous waste operations did not take place at site during his ownership.*

Catena purchased the property, located in an industrial area in Teterboro, NJ, in 1988. The contract of sale was contingent upon the seller, Anderson, providing an affidavit at closing under the Environmental Clean-Up Responsibility Act (ECRA). ECRA was enacted in 1983 as a method of assuring the N.J. Dept. of Environmental Protection (NJDEP) that operations at an industrial property had not generated, manufactured, refined, transported, treated, stored, handled or disposed of hazardous waste prior to the property being sold. Anderson, as the record title holder, made signed, sworn representations to NJDEP that hazardous waste operations did not take place at the site during his ownership.

However, Anderson and the bank, which assumed property management after Anderson defaulted, had engaged in hazardous waste operations at the property. After the bank discovered subsurface PCE contamination, it conducted a partial clean-up and removal of some 80,000-100,000 cu. yds. of contaminated soil. Post-excavation testing showed that the remaining soil was not clean. Neither Anderson nor the bank disclosed the pollution or testing to Catena or NJDEP.

Catena discovered the contamination in 1998, ten years after the purchase and started the long process of remedial investigation to delineate the extent of the contamination. Catena discovered the cover-up by Anderson and the bank in 2007. Based on this information, Catena filed an amended complaint against

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Anderson in February of 2008 asserting common law fraud. In May of 2008, another amended complaint was filed naming the bank and charging it with common law fraud and violation of the Consumer Fraud Act based on the sale of the property to Catena without disclosure of the defect.

Catena discovered the cover-up by Anderson and the bank in 2007. Based on this information, Catena filed an amended complaint against Anderson in February of 2008 asserting common law fraud. In May of 2008, Catena filed another amended complaint naming the bank and charging common law fraud and Consumer Fraud Act claims.

Anderson and the bank moved for summary judgment based on the six year statute of limitations, which the trial court granted. The trial court concluded that Catena's claims were time-barred, as more than six years had elapsed from the time that Catena found out about the contamination, which the trial court equated with the time that Catena should have discovered the fraud.



[Janine G. Bauer, Esq.](#)
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The appellate court disagreed with the conclusion of the trial court. The appellate court found that the six year limit began when Catena learned of or should have discovered the fraud, not the contamination. Catena's discovery of the contamination did not establish knowledge that Anderson and the bank had concealed information about the site contamination. As the contamination and partial cleanup was not reported to the NJDEP, a search of public records by Catena would not have yielded any evidence of the contamination. As a result, the appellate court found that Catena's claims against Anderson and the bank were filed less than six years after the discovery of the facts that gave rise to the fraud claims, and were not time-barred.

"Richard Catena bought a property for full market value that turned out to be contaminated, and the bank and the former owner knew that. That was wrong," said Janine Bauer. "We're glad the Appellate Division recognized that fact."

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