

PREPARED BY THE COURT

	:	SUPERIOR COURT OF NEW JERSEY	
STATE OF NEW JERSEY,	:	CHANCERY DIVISION	
DEPARTMENT OF	:	SUSSEX COUNTY	
ENVIRONMENTAL	:		
PROTECTION,	:		
	:		
Plaintiff,	:		
	:	DOCKET NO. SSX-C-7-19	
v.	:		FILED
	:		OCT 15 2019
JOSEPH WALLACE and	:	CIVIL ACTION	
LAURA WALLACE,	:		
	:		<i>Maritza Berdote Byrne, P.J.Ch.</i>
Defendants.	:	ORDER	

THIS MATTER comes before the court by way of motion filed by Kevin J. Fleming, Esq., counsel for plaintiff, State of New Jersey, Department of Environmental Protection, and no opposition having been filed by defendant, Joseph Wallace, or defendant, Laura Wallace, and the court having read and considered the pleadings filed, and for the reasons set forth in the attached statement of reasons, and for good cause shown;

IT IS ON THIS 15th DAY OF OCTOBER 2019 ORDERED as follows:

1. Plaintiff's motion in aid of litigant's rights pursuant to R. 1:10-3 is **GRANTED in part** as to defendant Joseph Wallace and **DENIED without prejudice** as to defendant Laura Wallace.
2. The court appoints a Receiver to identify and marshal defendants' assets and hire and oversee appropriate personnel to address the remediation of the contaminated property. The Receiver shall have the authority to contractually bind Joseph Wallace to any remediation plans necessary for the property. A separate Order naming the Receiver and describing his appointment shall issue.
3. Plaintiff's request for fines and penalties relating to Joseph Wallace's non-compliance is **DENIED without prejudice** until assets for remediation have been identified by the Receiver or further Order of the court.



MARITZA BERDOTE BYRNE, P.J. Ch.

NJDEP v. Joseph Wallace et al.**C-7-19****STATEMENT OF REASONS**

This action involves a dispute between plaintiff, the State of New Jersey, Department of Environmental Protection (“NJDEP”), and defendants Joseph Wallace (“Mr. Wallace”) and Laura Wallace (“Ms. Wallace”)(collectively “defendants”), owners of real property located at Block 130, Lot 1.05, commonly known as 3 Silver Spruce Drive, Vernon Township, Sussex County, New Jersey (the “property”). Plaintiff filed a Complaint and Order to Show Cause on February 22, 2019 alleging defendants were operating an unpermitted solid waste management facility on their property in violation of the Solid Waste Management Act (“SWMA”) and requesting the court compel defendants to: (i) immediately cease receiving fill and solid waste material on the property; (ii) immediately provide NJDEP access to the property to perform necessary inspections and sampling of the property; (iii) within ten days, provide NJDEP with documentation of potential solid waste on the property; (iv) within thirty days, characterize all fill material on the property to determine if it meets the definition of solid waste and provide NJDEP an estimate for the cost of removal; (v) within forty-five days, place sufficient funds in an escrow or trust account to guarantee removal of the solid waste from the property; and (vi) within ninety days, remove and properly dispose of all solid waste. Complaint, Count One.

On March 1, 2019, the court denied NJDEP’s request for entry of an Order to Show Cause based on NJDEP’s failure to prove, by clear and convincing evidence, it would succeed on the merits of its claims. However, the parties entered into a Consent Order consenting to entry of paragraphs a, b, and e of the Order to Show Cause, compelling defendants to act as follows:

- (a) Immediately cease receiving any and all fill material and/or solid waste onto the property at Block 130, Lot 1.05, also known as 3 Silver Spruce Drive, Vernon, New Jersey (the “site”);

- (b) Immediately provide access to NJDEP and/or individuals on behalf of the Department to delineate the area of disturbance and extent of the fill material brought onto the site, to perform any sampling of the material on site, and/or perform any other inspections of the property as the Department deems necessary to determine compliance with the SWMA, the Water Pollution Control Act, and the Highlands Water Protection and Planning Act;
- (e) Within thirty (30) days of this order, provide NJDEP with full and complete documentation setting forth the source and nature of the material brought onto the site since 2009, including but not limited to all analytical results, receipts, bills of lading, and identification of all transporting haulers.

On May 24, 2019, defendants submitted documents to NJDEP in an attempt to comply with paragraph (e) above. On April 8, 2019, NJDEP renewed its application for entry of all provisions included in its initial February 22, 2019 Order to Show Cause based on soil testing it performed on defendants' property on March 14, 2019 in accordance with the March 1, 2019 Consent Order.

On June 3, 2019, the court granted NJDEP's unopposed request for entry of a preliminary injunction as to all six prayers for relief in its February 22, 2019 Order to Show Cause. Additionally, the June 3, 2019 Order required defendants to provide NJDEP with full and complete documentation regarding the source and nature of the material brought onto the property since 2009. On August 22, 2019, the court denied Mr. Wallace's request to vacate the June 3, 2019 Order and also denied his request to stay the preliminary restraints entered by the court and any further proceedings in this matter pending the outcome of municipal court proceedings. NJDEP filed this present motion on September 25, 2019 in aid of litigant's rights, alleging defendants have not complied with the court's Orders.

On October 9, 2019, the court wrote a letter to parties concerning multiple correspondence the court had received regarding service upon Ms. Wallace and adjournment

requests. The court found Ms. Wallace had been properly served with the Complaint in this matter because Mr. Wallace accepted personal service on her behalf at the former marital residence and because Mr. Wallace's attorney had entered an appearance on her behalf verbally on the record. See October 9, 2019 Letter, attached hereto as Ex. A.

Defendants' involvement with NJDEP dates back to 2014 and includes complaints about ongoing violations on defendants' property from private citizens, Vernon Township officials, and other entities. Complaint ¶¶ 9, 11. NJDEP performed soil testing on defendants' property on March 14, 2019 in accordance with the March 1, 2019 Consent Order, identifying "contamination levels in the soil that exceeded New Jersey's Residential Direct Contract Soil Remediation standards." Plaintiff's Letter Brief at 4. On April 8, 2019, NJDEP submitted a report ("April 8 Report") detailing the sampling and mapping analysis conducted on the property following the March 1, 2019 Consent Order. Update Letter from Plaintiff dated April 8, 2019 at 1. The April 8 Report details eight samples taken from eight locations on defendants' property, each of which, when tested, showed contaminants exceeding NJDEP's residential soil standards. Id. at 2, ex. A. Based on these exceedances, the materials are considered solid waste such that defendants are "operating an unlicensed solid waste facility" Id. at 2.

NJDEP asserts this motion in aid of litigant's rights is "necessary because of defendants continuing failure to take any action to comply with the [c]ourt's directions and Orders in this matter." Plaintiff's Letter Brief at 1. Mr. Wallace received materials onto the property after March 1, 2019, in violation of paragraph 2(a) of the Consent Order prohibiting any new material from being brought onto the property. Kevin Fleming Certification in Support of State's Motion in Aid of Litigant's Rights ("Fleming Cert.") ¶¶ 6-7. Pursuant to the court's June 3, 2019 Order, defendants were to remove and properly dispose of all fill material that meets the definition of

solid waste on the property within 120 days, therefore all solid waste on the property should have been removed by October 1, 2019. Plaintiff's Letter Brief at 4. Mr. Wallace has not complied with the June 3, 2019 Order, and on August 22, 2019, the court found "Mr. Wallace willfully failed to comply with the court's March 1, 2019 and June 3, 2019 Orders." Id. at 5. Moreover, the court warned "[c]ontinued non-compliance with court Orders may result in the imposition of sanctions against defendants or the appointment of a special agent to oversee compliance with the court's Order." Id. NJDEP sent two letters to counsel for defendants after the court's August 22, 2019 Order "reminding defendants of their obligations and requesting that defendants advise the State how they intend to come into compliance," and has not received a response from defendants. Plaintiff's Letter Brief at 5-6.

Mr. Wallace did not oppose NJDEP's instant application. Counsel for Mr. Wallace requested a two week adjournment of this motion, which the court denied in its October 9, 2019 letter as being untimely. Ex. A. Because counsel requested the adjournment three days before the return date of the motion, and five days after the expiration of the period in which to file opposition, pursuant to R. 1:6-2(a), the court considers the motion unopposed by Mr. Wallace. The court also addressed service of process for Ms. Wallace in its October 9, 2019 letter. See Ex. A. The court stated because counsel for Mr. Wallace represented to the court he also represented Ms. Wallace during the March 1, 2019 hearing for the Order to Show Cause, Ms. Wallace had been served and waived insufficiency of service of process pursuant to R. 4:6-2, R. 4:6-3, and R. 4:6-7. Id. Accordingly, the court also considers this motion unopposed by Ms. Wallace. In its present motion, NJDEP seeks to have a receiver appointed pursuant to N.J.S.A. 13:1E-9(d) to address the ongoing SWMA violations on the property. Additionally, NJDEP also requests the court hold Mr. Wallace liable pursuant to R. 1:10-3 for failure to comply with the Consent Order

of March 1, 2019, and the court Orders of June 3, 2019 and August 22, 2019. NJDEP alleges Mr. Wallace failed to: (1) provide full and complete documentation setting forth the source and nature of the material brought onto the property, (2) characterize all fill material at the property to determine if it meets the definition of solid waste and provide NJDEP with an estimate for the cost of removal of the solid waste, (3) place sufficient funds into escrow, (4) submit and implement a soil erosion and sediment control plan, and (5) remove and properly dispose of all fill material which meets the definition of solid waste. Thus, NJDEP brings the present motion to enforce the Consent Order, March 1, 2019 Order, June 3, 2019 Order, and August 22, 2019 Order, and its rights as a litigant pursuant to R. 1:10-3.

A claim that a party is acting in violation of court Order should be brought before the court that issued that Order by motion for relief in aid of litigants' rights under R. 1:10-3. Asbury Park Bd. of Educ. v. New Jersey Dep't of Educ., 369 N.J. Super. 481, 486 (App. Div. 2004). Before relief can be afforded, the court must be satisfied the party had the capacity to comply with the Order and willfully refused. Pressler & Verniero, Current N.J. Court Rules, cmt. 4.3 on R. 1:10-3 (2019). Sanctions pursuant to R. 1:10-3 are not intended to be punitive but are a coercive measure to facilitate the enforcement of a court Order. Pressler & Verniero, cmt. 4.4.1 on R. 1:10-3; Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997). Thus, the scope of relief is "limited to remediation of the violation of a court Order." Id. See also Abbott v. Burke, 206 N.J. 332, 371 (2011).

New Jersey courts have repeatedly held "a receiver will be appointed only when it appears necessary to protect the interests of the parties." Fishman v. Raphael & Fishman, 141 N.J. Eq. 576, 578 (Ch. Ct. 1948). In relevant part, N.J.S.A. 42:4-7 provides "at any subsequent time before or after a judgment of dissolution or other judgment, the court may appoint a

temporary receiver or may charge the persons in actual control of the partnership assets as trustees under appointment by and accountable to the court [.]” Case law makes clear the power of the court to appoint a receiver should be rarely exercised. See Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C. v. Lowenstein Sandler, P.C., 365 N.J. Super. 241, 249 (App. Div. 2003)(noting the appointment of a receiver is a rarity, and the power to appoint a receiver should be exercised only as a “last resort”). Pursuant to N.J.S.A. 13:1E-9(d), however, a proceeding “in the Superior Court for injunctive and other relief, including the appointment of a receiver for any violation of [the SWMA]” is appropriate. See also Leonard v. Leonard, 428 N.J. Super. 272, 276 (App. Div. 2012)(“it was within the trial court’s discretion to go as far as to appoint a receiver in order to enforce a court order. The goal of Rule 1:10-3 is enforcement. . .”).

NJDEP seeks to “enforce Orders previously consented to before, and issued by [the court] in this same matter” with respect to both defendants. Plaintiff’s Letter Brief at 2. In the court’s August 22, 2019 Order, the court noted:

L. Wallace did not join in or file opposition to J. Wallace’s motions. Additionally, at oral argument, the parties discussed an intent to remove L. Wallace from these proceedings as the parties are currently contemplating divorcing. As such, the court will not consider enforcement of its June 3, 2019 with respect to L. Wallace at this time.

Because the court did not consider enforcement as to Ms. Wallace on August 22, 2019, it cannot consider NJDEP’s motion in aid of litigant’s rights with respect to Ms. Wallace at this time.¹

¹ One day prior to the return date of this motion, a new attorney attempted to enter an appearance on behalf of Ms. Wallace and file opposition to this motion “on short notice” although no court rule allows for that form of pleading. The court is currently without sufficient information as to the scope of Ms. Wallace’s involvement with this property or knowledge of the contamination. It is also without knowledge as to when she obtained actual notice of these proceedings. As such, the court did not consider the opposition. Any attorney is free to file any motion or pleading he or she deems appropriate to address Ms. Wallace’s status as a party and/or her responsibility to the contamination on the property. Although the court will not find against Ms. Wallace in aid of litigant’s rights, her assets will be marshalled until a determination is made as to her involvement, if any, with the contamination on the property or until further Order of the court.

With respect to Mr. Wallace, NJDEP provides clear and documentary evidence he has not complied with the Consent Order and subsequent Orders of the court. See, e.g., Fleming Cert. ¶¶ 7-8, 10, 13, 20. Mr. Wallace has engaged in a pattern of unlawful behavior without regard to remedying such actions. Of increasing concern to the court, several of the shipping receipts provided to NJDEP were for material “brought onto the site after the March 1, 2019 Consent Order in blatant violation of paragraph 2(a) of the Consent Order.” Plaintiff’s Letter Brief at 10. Mr. Wallace has also failed to comply with prior Orders, including “the June 3, 2019 and August 22, 2019 Orders as they relate to production of documentation on the source and nature of fill material.” Id.

Given the continuous and willful pattern of non-compliance with court Orders, the court appoints a receiver to marshal defendants’ assets and hire and oversee appropriate personnel to address the remediation of the contaminated property. Mr. Wallace has consistently avoided obligations consented to by him or otherwise imposed upon him by the court. Thus, while it is rare for courts to appoint receivers, it is also rare for three court Orders to go entirely ignored. See generally In re Carlton, 48 N.J. 9, 16 (1966) (“There must be no defiance of a court. . . One who is dissatisfied with the action of a court must obtain a stay or obey the order. He may not ignore it.”). When a party fails to comply with mandates set out by the court, a motion in aid of litigant’s rights is proper. Abbott, 206 N.J. at 371. It is clear Mr. Wallace deliberately elected to disregard the court’s prior Orders. The court’s August 22, 2019 Order previously found Mr. Wallace “willfully failed to comply with the court’s March 1, 2019 and June 3, 2019 Orders.” Plaintiff’s Letter Brief at 14. A receiver is necessary to develop a compliance plan for Mr. Wallace with the authority to contractually commit Mr. Wallace to environmental cleanup actions for the property.

NJDEP also seeks monetary penalties against defendants for their “refusal to engage with the State or to comply with underlying court Orders” Id. at 15. NJDEP notes “[a]lthough the pertinent statutes allow for penalties up to \$50,000 and \$100,000 per day, the State defers to the court to order daily sanctions at a rate it deems appropriate. Environmental compliance is paramount. . .” Id. NJDEP therefore requests daily sanctions against defendants to “run from the date of any Order resulting from this motion until representative sampling results fully characterizing the fill pile have been presented to [NJDEP].” Id.

The court acknowledges environmental compliance is a high priority. However, paramount to any other consideration at this time is the immediate identification of the scope of contamination and its swift remediation. The property is in the Highlands Preservation region and it is still unknown whether neighboring properties or groundwater are being impacted by the contamination. Until assets are identified and marshalled, it is of paramount importance this court preserve any assets for site remediation first, before assessing fines and penalties. A receiver has been appointed to identify and marshal assets. The court declines without prejudice to enforce daily penalties at this time. NJDEP may renew its application after the receiver has identified assets.

The relief awarded today is consistent and coterminous with the Consent Order and the court’s March 1, 2019, June 3, 2019, and August 22, 2019 Orders. Mr. Wallace is to produce the outstanding documents detailed in the court’s prior Orders. The court hereby appoints a receiver to marshal defendants’ assets and hire and oversee appropriate personnel to address the remediation of the contaminated property. The relief sought by NJDEP is consistent not only with the purpose of the SWMA, but with public policy supporting dumping solid waste and contaminants at NJDEP approved solid waste facilities. Therefore, NJDEP’s requested relief is

granted to the extent the relief is consistent with the June 3, 2019 and August 22, 2019 Orders and as outlined herein.