NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3585-13T1

SANDRA DORRELL and SANDRA DORRELL, t/a OLD ALLOWAY MERCHANDISE,

Plaintiff-Appellant,

v.

WOODRUFF ENERGY, INC. and CHEVRON CORPORATION,

Defendants-Respondents,

and

GULF OIL LIMITED PARTNERSHIP, HARLEYSVILLE GROUP, INC., HARLEYSVILLE INSURANCE COMPANY, and FARMERS MUTUAL FIRE INSURANCE CO. OF SALEM COUNTY,

Defendants.

Argued February 25, 2015 – Decided September 30, 2015

Before Judges Alvarez, Maven and Carroll.

On appeal from the Superior Court of New Jersey, Law Division, Salem County, Docket No. L-343-11.

Louis Giansante argued the cause for appellant (Giansante & Assoc., LLC, attorneys; Mr. Giansante, of counsel and on the briefs).

Emily Breslin Markos argued the cause for respondent Woodruff Energy, Inc. (Flaster Greenberg, P.C., attorneys; Mitchell H. Kizner and Ms. Markos, on the brief).

Matthew S. Slowinski argued the cause for respondent Chevron U.S.A. Inc. (Slowinski Atkins, LLP, attorneys; Mr. Slowinski, on the brief).

PER CURIAM

Plaintiff Sandra Dorrell appeals the Law Division's November 22, 2013, and February 28, 2014 orders granting summary judgment to defendants Woodruff Energy, Inc. ("Woodruff") and Chevron U.S.A. Inc. ("Chevron"),[1] and dismissing her claims as time-barred by the six-year statute of limitations set forth in N.J.S.A. 2A:14-1. Plaintiff contends that the trial court erred by relying on Morristown Associates v. Grant Oil Co., 432 N.J. Super. 287 (App. Div. 2013) (Morristown I), rev'd, 220 N.J. 360 (2015), which held that the six-year statute of limitations period found in N.J.S.A. 2A:14-1 applied to claims filed under the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.1 to -23.24. Morristown I, supra, 432 N.J. Super. at 290. Plaintiff argues that our holding in Morristown Associates I departed from our earlier decision in Pitney Bowes,

[1] On July 1, 1985, Chevron U.S.A. Inc. merged with and into Gulf Oil Corporation (Gulf) and changed its name to Chevron U.S.A. Inc. Since the allegations of the complaint relate to Gulf, the party-defendant is now Chevron as the successor to Gulf.

Inc. v. Baker Industries, Inc., 277 N.J. Super. 484 (App. Div. 1994), which rejected the application of a time bar to private contribution claims under the Spill Act. Id. at 489-90.

During the pendency of this appeal, the Supreme Court considered whether the general six-year statute of limitations contained in N.J.S.A. 2A:14-1 applies to private claims for contribution made pursuant to the Spill Act. After construing the legislative intent of the Spill Act, the Court reversed Morristown I holding that the six-year statute of limitations does not apply to private contribution claims. Morristown Assocs. v. Grant Oil Co., 220 N.J. 360, 380 (2015) (Morristown II). Because the Supreme Court's ruling in Morristown II directly affects the issue presented in this appeal, we reverse the trial court orders and remand for reconsideration of defendants' motions for summary judgment.

We provide a short summary of the underlying facts. Plaintiff contends that her property, purchased in 1984, (Property) contains oil and gasoline contamination. In the early 1990's, a Woodruff deliveryman spilled heating oil in plaintiff's basement. Plaintiff was aware of the spill and recalled Woodruff cleaning it. However, although she smelled petroleum in the basement for years, plaintiff did not report

the spill to any government agency. She eventually reported the smell to Woodruff in 2004.

In 2011, plaintiff retained an environmental consultant to investigate the petroleum odor. Test results showed gasoline and benzene contamination, and the consultant opined that there "may be" a gasoline tank under the Property's front sidewalk. Plaintiff also found documents addressed to the Property's previous owner, referencing the installation of a gasoline tank, as well as the past sale and delivery of products from Woodruff and Gulf. However, neither the consultant nor plaintiff investigated further.

On November 23, 2011, plaintiff sued Woodruff, Gulf, and her homeowners' insurance companies, asserting claims related to heating oil and gasoline contamination on the Property.[2] Plaintiff filed an amended complaint on December 15, 2011, substituting Chevron for Gulf as a defendant. The complaint against Woodruff and Chevron asserted breach of contract, negligence, nuisance, and trespass claims, and sought damages under the Spill Act.

[2] Plaintiffs sued the insurers who provided property insurance, asserting a claim for breach of contract, in addition to a claim for "bad faith." The insurance company defendants were dismissed early in the litigation.

In October 2013, Woodruff moved for partial summary judgment, arguing that the contribution claims related to the oil spill were time-barred. On November 22, 2013, the court agreed and entered an order dismissing all of the oil contamination claims.

In January 2014, Woodruff and Chevron each moved for summary judgment on the claims related to the alleged gasoline contamination. In separate written opinions, dated February 28, 2014, the trial court granted both motions and dismissed plaintiff's common law claims and requests for damages under the Spill Act. Using the same rationale to grant both motions, the court reasoned that the tort claims were barred under the six-year statute of limitations set forth in Morristown I. The court also determined that there was insufficient factual evidence to substantiate the alleged gasoline contamination; therefore, each common law claim failed as a matter of law. This appeal followed.

On January 26, 2015, the Supreme Court declared that the six-year statute of limitations set forth in N.J.S.A. 2A:14-1 does not apply to private Spill Act contribution claims. Morristown II, supra, 220 N.J. at 364. In reaching its conclusion, the Court noted that the Spill Act provides that "[w]henever . . . persons clean[] up and remove[] a discharge of

a hazardous substance, those . . . persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance[.]" N.J.S.A. 58:10-23.11f(a)(2)(a); see also L. 1991, c.372, § 1 (enacting contribution provision). The Court observed that the Spill Act contemplated strict joint and several liability for anyone who "is in any way responsible for any hazardous substance . . . without regard to fault . . . ." Morristown II, supra, 220 N.J. at 378 (citing N.J.S.A. 58:10-23.11g). The Court also commented that the statute's enumeration of specific defenses to private contribution actions, exclusively "war, sabotage, or God, or a combination thereof," demonstrated a legislative intent to exclude a statute of limitations defense. Id. at 381 (citing N.J.S.A. 58:10-23.11g(d)). Thus, the Court approved of "the longstanding view, expressed by the Legislature and adhered to by the courts, that the Spill Act is remedial legislation designed to cast a wide net over those responsible for hazardous substances and their discharge on the land and waters of this state." Id. at 383 (quoting Pitney Bowes, supra, 277 N.J. Super. at 490).

We recognize that Morristown II was decided after the summary judgment hearing; therefore, the Law Division judge did not have the benefit of the Court's guidance on the issue

presented in this appeal. For that reason, we remand for the trial court to reconsider defendants' motions for summary judgment in light of the discussion in Morristown II. The trial court must review defendants' motions in recognition of the Court's directive that defendants may be jointly or severally liable under the Spill Act if they are "in any way responsible for any hazardous substance . . . without regard to fault. . . ." Id. at 378. We take no position on the sufficiency of plaintiff's proofs or the validity of the defenses proffered by defendants.

Reversed and remanded. We do not retain jurisdiction.