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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2261-09T3

STEPHEN VOELLINGER and THOMAS KENNEDY,

Plaintiffs-Respondents,

v.

ELECTRO-COATINGS, INC. a/k/a EC INDUSTRIES, INC.,

Defendant-Appellant,

and

THE ESTATE OF JOHN PERSIC,

Defendant.

Argued May 25, 2011 – Decided June 29, 2011

Before Judges Fisher, Sapp-Peterson and Simonelli.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-593-04.

Charles J. Stoia argued the cause for appellant (Porzio, Bromberg & Newman, attorneys; Mr. Stoia, of counsel; Mr. Stoia and Laura C. Conway, on the brief).

Stuart J. Lieberman argued the cause for respondents (Lieberman & Blecher, attorneys; Mr. Lieberman, of counsel; Mara Epstein, on the brief).

PER CURIAM

Plaintiffs Stephen Voellinger and Thomas Kennedy, as well as another individual,[1] were partners in an entity that owned contaminated property in Woodbury Heights; the three were also the only shareholders in Aeroplating, Inc., which operated a metal plating business on the property from 1980 to 1990.

Because of their obligation to clean up the contamination, plaintiffs filed this action in 2004, seeking contribution from defendant Electro-Coatings, Inc. (ECI),[2] which owned the property and operated a metal plating business there from 1969 until 1980, when it sold its business assets to Aeroplating. Plaintiffs' action was based on the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, as well as the common law torts of negligence, trespass, and nuisance. ECI obtained dismissal of the common law claims,[3] but the judge rejected ECI's argument that the Spill Act claim should be dismissed on laches grounds; this argument was renewed at trial

[1]The third partner was John Persic, who died in February 2004.

[2]Improperly pled as Electro Coatings, Inc.

[3]Plaintiffs' common law claims were dismissed by way of summary judgment; the trial judge determined that plaintiffs were aware of their potential claim against ECI in 1989 and, as a result, the statute of limitations applicable to the alleged torts, N.J.S.A. 2A:14-1, barred their assertion in 2004. Plaintiffs have not appealed that determination.

and again rejected. At the trial's conclusion, the judge determined, for reasons contained in a written decision, that ECI released certain chemicals -- trichloroethylene (TCE) and tetrachloroethylene (PCE) -- into the environment during its period of ownership and, as a result, was liable for twenty-five percent of future remediation costs and $448,012 of the remediation costs already incurred.

ECI appealed, arguing that: (1) the judge's finding that ECI released TCE and PCE into the environment was not supported by adequate, substantial, and credible evidence; and (2) the judge mistakenly declined to dismiss the action pursuant to the doctrine of laches. Because we agree with ECI's first argument, we need not reach the second.

By way of background, Aeroplating was criminally investigated and ultimately pled guilty to manslaughter in connection with the 1985 death of a sewer worker exposed to chemicals emanating from Aeroplating's place of business. That same year, the Division of Criminal Justice seized Aeroplating's records, which remained in the Division's possession long after the criminal proceeding was concluded. In fact, plaintiffs never sought or demanded the return of the documents until 2007, by which time they could not be found. We recently affirmed an order entered in favor of the Division that dismissed

plaintiffs' claim for damages based on the loss of these records. Voellinger v. Dow, __ N.J. Super. __ (App. Div. 2011).

At the trial in the matter at hand, plaintiffs sought to establish that ECI used and discharged into the environment TCE and PCE while conducting its plating operations between 1969 and 1980.[4] In part because of the loss of the records seized by the Division of Criminal Justice, plaintiffs were unable to provide documentary proof as to the particular solvents ECI used.[5] Plaintiffs' witnesses were also unable to provide direct evidence that ECI released or discharged TCE or PCE into the environment. Consequently, in seeking to prove their case, plaintiffs relied entirely on circumstantial evidence and expert testimony, which surmised the general time frame during which the contaminants were dispersed into the environment.

In support of their claim, plaintiffs relied on the testimony of James Peterson, of Princeton Geoscience, Inc., which plaintiffs hired in 2000. Peterson sampled the property's

[4]Plaintiffs acknowledged they were responsible for the full cost of remediation required by Aeroplating's dispersal of 111 Trichlor (TCA) into the environment.

[5]Similarly, ECI demonstrated that because of the passage of time, it could not locate former employees or records relating to its plating operations. This and other circumstances were offered by ECI as grounds for barring the action by way of the doctrine of laches. As noted earlier, we need not reach this issue because we agree with ECI's other arguments in reversing the judgment entered against ECI.

six monitoring wells, and prepared four reports, which asserted the concentrations of PCE, TCE and TCA were highest "in the immediate vicinity of the building" on the property. The only compound found at the "downgradient locations" was TCE, which was concentrated more near the building than the wells. In his third and fourth reports, Peterson also theorized about the origin of TCE, TCA and PCE on the property. Relying on his discussions with plaintiff Voellinger -- that Aeroplating had only used TCA, that ECI's plating operation used the same degreaser, and that, historically, the plating industry used PCE, TCE and TCA in the seventies and eighties -- he concluded that TCE and PCE spills originated from ECI's plating operations.[6]

Peterson also conducted an investigation over a six-week period in 2006 that "focus[ed] on the area beneath the [Aeroplating] building." He testified about these findings, asserting that numerous soil samples revealed "an area of overlapping sources of TCA and PCE and TCE contamination." He asserted "[t]he area where they overlap coincides with the degreaser," and then, testified that extending to the north of

[6]Peterson acknowledged that this finding was developed to solicit DEP approval of plaintiffs' innocent purchaser application, which the DEP initially denied after plaintiffs failed to provide any proof that Aeroplating had only used TCA in its 1980s operation, and that it did not discharge TCE or PCE.

the degreaser is additional PCE and TCE contamination, which is in an area "formerly occupied by the plating lines, some of the plating equipment" and that TCE was the only compound found in a well located about 550 feet from the degreaser. Peterson also testified that the concentrations of TCE, PCE and TCA "diminish thousand[-]fold or are not detected" in the "west southwest[,] or upgradient" from the degreaser, which effect was caused by the downgradient direction of the groundwater flow that migrated the solvents to the northeast. He also claimed that the lack of "upgradient concentration" indicated that TCE, PCE and TCA "didn't flow there from somewhere else," and came from a source located on the property. Given the high concentration of the compounds under the degreaser, and their northeasterly migration in the groundwater, Peterson opined that the likely source of the contamination was the degreaser used by both Aeroplating and ECI.

Gil Oudijk, a geologist, testified on plaintiffs' behalf on the subject of forensic hydrogeology. Oudijk found that TCE and PCE deposits, or "plumes," on the property were older than the TCA deposits and that soil samples established that TCE and PCE were present at lower depths than TCA, in a different layer in the ground. Oudijk testified that if TCA had been discharged before TCE and PCE, then TCA would have been "dragged down with

the TCE and PCE" due to the solubility of all three compounds, and would have been present in soil samples taken from the lower depth that contained only TCE and PCE. He also testified that the relative ages of TCA, TCE and PCE were supported by custom in the plating industry: "TCE and PCE were used more readily in the sixties and seventies, as opposed to the eighties." In his report, he asserted that the national production of TCE and PCE decreased as production of TCA increased because TCE was a suspected carcinogen.

Extrapolating from his opinion about the relative ages of TCE, PCE and TCA, Oudijk opined about the migration rates of the solvents using what were referred to as "fate and transport calculations" -- in essence, a formula to determine the migration rate of any given chemical, into which are inputted certain variables to arrive at a date the chemical first interacted with the environment. In this manner, Oudijk sought to fix the rate at which TCE, PCE and TCA migrated through the groundwater. Certain variables at the property were inputted into the formula, such as, most importantly, the distance the solvents had traveled (the size of the plume), the organic carbon in the soil (FOC value) and the permeability of the soil (KOC value).

By way of his calculations, Oudijk arrived at ranges for each solvent, showing the dates he believed they were released on the property. For TCE, Oudijk arrived at a range from 1959 to 1985; for PCE, a range from 1929 to 1972; and for TCA, a range from 1984 to 1995. By using the fastest migration rate he deemed probable, seven feet per year, and also taking into account the historical usage of TCE, as well as Voellinger's claim that Aeroplating used only TCA, Oudijk concluded that TCE and PCE were discharged before 1980 and TCA discharged after 1980. Oudijk conceded his calculations had a fifty percent error rate.

Jorge Berkowitz, Ph.D., an environmental scientist formerly employed by the DEP, testified for ECI. He explained that the most abundant compound discovered on the property was DCA, the daughter product of TCA, and that amounts of DCE found on the property also derived from TCA. This was significant for two reasons: (1) DCE and DCA were more harmful than TCE and PCE, thereby bearing on damages; and (2) DCE and DCA had degraded by hydrolysis and anaerobic degradation from TCA only after TCA had been discharged at the property and not while in the degreaser.

Based on Berkowitz's finding regarding the presence of DCA and DCE on the property, Robert Bond, P.G., a geologist, testified for ECI, explaining that DCE and DCA would increase

the length of the TCA plume, thereby countering Oudijk's estimated date that TCA was released. Bond also opined that DNAPL was not present at the property, and therefore, it was possible for DCE and DCA to form from hydrolysis and anaerobic degradation of TCA.[7] As for PCE and TCE, Bond disagreed with two variables that Oudijk included in his fate and transport calculations regarding PCE and TCE, which significantly altered the results obtained.

For example, the KOC value, as mentioned above, is the "coefficient between soil and water." When the KOC value is considered with the FOC value -- the organic carbon in the soil -- it yields the velocity at which a chemical will migrate through groundwater. Chemicals with high KOC values, such as chlorinated solvents, "stick more in the soil," and are more sensitive to the fate and transport formula. In other words, with higher KOC values, the range of possible release dates increases, whereas with lower KOC values the range is not "huge." This, Bond explained, is why Oudijk's range of release dates is twenty-six years for TCE and forty-three years for PCE. Moreover, he testified that carbon in the ground slows

[7]Oudijk did not find the presence of DCE and DCA significant, and opined that DCE and DCA did not affect the size of the TCA plume; if it did affect the size of the plume, he agreed it would change his conclusion of when TCA discharged.

migration. Thus, with a higher FOC value, which Oudijk used, the calculation will result in a slower migration rate. Bond also testified that while the KOC value is supposed to be constant for the type of chemical, there are multiple KOC values used by geologists for the same chemical; Bond used numbers arrived at by the DEP, Oudijk did not.

For KOC, Bond testified that the DEP recommended KOC values for PCE of 155, TCA of 110 and TCE of 166. Oudijk, however, used the range of 303-364 for PCE, 152-155 for TCA, and 126-152 for TCE. Oudijk's rationale for arriving at these ranges was unclear as his ranges also seemed to conflict with the literature he cited as a source. However, Oudijk claimed in his supplementary report that the KOC recommended by the DEP was conservatively determined for cleanup plans, and the KOC he adopted was useful for calculating migration rates. Conflicting testimony was also presented as to other variables used in calculating migration rates.

After changing the two values that he considered improperly used by Oudijk with regard to the PCE and TCE calculations, and changing the plume length for the TCA, Bond concluded that PCE was discharged from 1989 to 1997, TCE from 1983 to 1994, and TCA from 1992 to 1999. After explaining how he arrived at these ranges, Bond asserted that a specific release date for TCE was

1984, the date for PCE was 1986, and for TCA 1986. As a result, all of the compounds discovered on the property would have, in his opinion, been discharged after 1980, thereby placing liability for all remediation costs squarely on plaintiffs.

We have explained the testimony regarding these calculations at some length in order to illuminate an understanding of the reasons for the judge's rejection of the hypothetical approach urged by plaintiffs. That is, the trial judge found the fate and transport calculations to be "informative" but neither persuasive nor dispositive in ascertaining release dates, explaining that

> the wide variability and margin of error in those calculations support their use in conservatively estimating the area of the [TCE, PCE and TCA] plume[s] for remediation purposes, but render them unpersuasive as evidence.

The judge thoroughly discussed the problems with the fate and transport calculations, observing that Bond's estimated dates for when TCE and PCE were released into the environment in the 1980s were "not consistent with the evidence of the plating operations." The judge also noted that Bond's calculations "did not include an error analysis" and found that Oudijk's calculations were dependant on the existence of DNAPL, which was "undercut by the twenty years of investigation and remediation, during which no consultant or laboratory has reported the

presence of DNAPL." The judge also found critical the discrepancies in the K and KOC values Oudijk used. For these reasons, the judge found the calculations unreliable, a finding to which we defer.

By contrast, the judge relied on evidence that the TCE and PCE plumes overlapped, a fact which indicated their common release date, and that PCE and TCE were common solvents in the seventies and into the mid-eighties. The judge attributed the discharge of TCE and PCE to "the plating operation itself," specifically to the degreaser. And she found that each party had used the degreaser, with Aeroplating "essentially" taking over ECI's operation, and that both operations had used TCE in the degreaser.

The judge supported her finding that ECI had used TCE with evidence that it sold storage tanks to plaintiffs that "held up to two hundred gallons of TCE." The judge also based a finding that Aeroplating had used TCE in the degreaser upon a 1987 DEP memorandum, which showed that TCE was the chemical that Aeroplating spilled into the environment in 1985.[8] The judge discredited testimony that Aeroplating had only used TCA and determined that Aeroplating switched from TCE to TCA after the

[8]Plaintiffs do not challenge the judge's findings that they used TCE.

1985 spill. Thus, the judge concluded that since both parties had used TCE in the degreaser, each had contributed to TCE and PCE contamination during their respective operations.

The judge also attributed a discharge of TCE to "specific releases." She found that a "specific release" occurred in 1985, when "TCE contamination [in the sewer] . . . led to the death of the city worker." The judge also found there was a "specific release" in 1969 by ECI, "after which the contaminated manhole was capped" because in September 1985 "the manhole still contained the odor of solvents[,] as reported by" the DEP.

Based upon this evidence, the trial judge concluded that it was more likely than not that TCE and PCE were used over the ten year period of [ECI's] control and for a five year period of plaintiffs' control over the property. The judge initially held that liability for TCE and PCE remediation should be allocated equally but, because plaintiffs failed to show the cleanup cost for PCE and TCE were distinguishable from cleanup cost for TCA, the judge reduced ECI's liability for past and future cleanup costs from fifty percent to twenty-five percent. See N.J.S.A. 58:10-23.11f(a)(2) (declaring that "a court may allocate the costs of cleanup and removal among liable parties using such equitable factors as [it] determines are appropriate").

ECI argues that the factual finding that it discharged TCE and PCE was not supported by adequate and credible evidence. Specifically, ECI claims that because the judge discredited the fate and transport calculations, plaintiffs failed to establish that TCE and PCE were discharged during the relevant period that ECI owned the property.

In an action for contribution against other "dischargers and persons in any way responsible" for discharging hazardous waste, a plaintiff "need prove only that a discharge occurred for which the contribution defendant or defendants are liable" under the Spill Act. N.J.S.A. 58:10-23.11f(a)(2). The Spill Act imposes joint and several strict liability "without regard to fault" on a "person who has discharged . . . or is in any way responsible" for the discharge of any hazardous substances, whether occurring prior to the Act or after. N.J.S.A. 58:10-23.11g(c)(1); Handy & Harman v. Borough of Park Ridge, 302 N.J. Super. 558, 565 (App. Div.), certif. denied, 152 N.J. 10 (1997). The phrase "in any way responsible" includes ownership or control over the property at the time of the discharge. Dep't of Envtl. Prot. v. Ventron Corp., 94 N.J. 473, 502 (1983). And "discharge" encompasses "any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous

substances into the waters or onto the lands of the State . . . ." N.J.S.A. 58:10-23.11b. TCE, PCE and TCA, as well as their breakdown products of DCE and DCA, are identified as hazardous substances. N.J.A.C. 7:1E, Appx. A.

In reviewing a judgment entered following a bench trial, we have a duty to refrain from "disturb[ing] the factual findings and legal conclusions of the trial judge unless . . . convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Abtrax Pharms., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 517 (1995); see also Klumpp v. Borough of Avalon, 202 N.J. 390, 412 (2010). This principle precludes our engaging "in an independent assessment of the evidence as if [we] were the court of first instance." State v. Locurto, 157 N.J. 463, 471 (1999). The trial judge's findings "are considered binding on appeal when supported by adequate, substantial and credible evidence" in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974).

Here, the judge found that plaintiffs met their burden of establishing by a preponderance of the credible evidence that a discharge, as defined by N.J.S.A. 58:10-23.11b, occurred during the period of ECI's ownership, and that as a result, ECI was

liable to contribute as a result of TCE and PCE contamination pursuant to N.J.S.A. 58:10-23.11f(a)(2). Notwithstanding the limits imposed by the standard of appellate review, we conclude that the judge's determination that plaintiffs met their burden of showing that ECI was responsible under the Spill Act for discharging TCE and PCE is unsupported by the evidence developed at trial. This is demonstrated by the unreliability of the fate and transport calculations, as the judge found, as well as the lack of support for the judge's findings that: ECI spilled TCE in 1969; sold tanks containing TCE to plaintiffs; the degreaser leaked during ECI's ownership of the business; and the assumption that more likely than not ECI spilled TCE and PCE when it owned the property.

The trial judge discredited the experts' fate and transport calculations, a conclusion justified by the fact that the formula was susceptible to manipulation through the use of values derived from speculative theories.[9] Indeed, Oudijk's acknowledgement on cross-examination that his fate and transport calculations had a fifty percent error rate demonstrated that their adoption would have led to speculation about ECI's

[9]Plaintiffs' argument that the judge only rejected the fate and transport calculations as they impacted on the allocation of liability is unsupported by the judge's express finding that the calculations were not credible "on the issue of release dates."

liability. Thus, the judge's finding that the fate and transport calculations were unreliable for determining the timing of TCA, PCE and TCE discharges at the property was wholly supported by the record.[10]

Absent the fate and transport formula, the record is devoid of a nexus between ECI's operation and the claim that it discharged TCE and PCE. That ECI may have used TCE, or engaged in the same plating operation as Aeroplating, or used the same degreaser, does not support the conclusion that TCE was discharged into the environment when ECI conducted a plating operation on the property from 1969 to 1980. See White Oak Funding, Inc. v. Winning, 341 N.J. Super. 294, 299 (App. Div.) (a discharge "requires some act or omission of human conduct" that causes a hazardous substance to "enter the waters or land"), certif. denied, 170 N.J. 209 (2001); see also Atlantic

[10]ECI forcefully argues that the judge's rejection of the fate and transport calculations negated Oudijk's credibility as an expert witness on all other subjects to which he testified, and that as a result, plaintiffs' case should have failed as a matter of law since expert testimony was required to prove a discharge. We reject this because it is well-established that a factfinder may reject a conclusion that an expert draws from some evidence but accept a conclusion that the expert draws from other evidence. State v. M.J.K., 369 N.J. Super. 532, 549 (App. Div. 2004), appeal dismissed, 187 N.J. 74 (2005); Torres v. Schripps, Inc., 342 N.J. Super. 419, 430 (App. Div. 2001). The particular weight given to Oudijk's other opinions was a matter left to the judge's discretion as factfinder.

City Mun. Utils. Auth. v. Hunt, 210 N.J. Super. 76, 96 (App. Div. 1986).

Nevertheless, the judge determined that ECI had released TCE and PCE in 1969 from the 1985 DEP memorandum. That memorandum, however, merely stated that the sewer contained an odor of solvents in 1985:

> Milt Grundlock, GCUA, said that after [ECI] (previous discharger before Aero[p]lating) had an acid spill release in 1969?, the manhole was never reconditioned. However the sanitary line which exits the manhole was replaced. There was a large amount of aggregate found inside the manhole and there was [roughly] 2 inches of water inside the manhole. This manhole contained a solvent odor.

Contrary to the judge's findings, the memorandum did not link the alleged acid spill to the "solvent odor" then detected. The DEP official's observations were made while investigating Aeroplatings' 1985 solvent spill. Thus, the "solvent odor" noted by DEP in the sewer line was hardly likely to have resulted from a sixteen-year-old acid spill and we deem any contrary conclusion to be purely speculative. Indeed, the memorandum hardly provides reliable evidence that a solvent spill occurred in 1969. In inserting that date in the memorandum, without further explanation, the memorandum author followed it with a question mark, suggesting his doubt about the date to which he was alluding.

The judge also based her conclusion on the fact that assets ECI sold to plaintiffs included storage tanks. The judge asserted that one of the storage tanks held up to two hundred gallons of TCE, but there was no evidence in the record to support the finding as to the content of the storage tanks. Voellinger only testified that plaintiffs bought "plating tanks" from ECI; he did not testify that the tanks contained TCE when purchased.[11]

In addition, the judge concluded that "[t]he evidence supports that the degreaser vault is the source of the contamination and that the contamination occurred as a result of the plating operation itself . . . ." This general statement is a mere conclusion that fails to support plaintiffs' claim that ECI contaminated the property. While there was testimony that the contamination occurred in the area of the degreaser, there was no factual evidence to suggest that any discharge of TCE or PCE in this or any other area occurred during ECI's operation.

[11]Plaintiffs have argued on appeal that the judge's determination is also supported by a certification executed by Persic on January 27, 2003, shortly before his death wherein he asserted that he "believe[d]" Aeroplating did not use TCE, and that TCE was used by defendant. This statement was excluded at trial because the court found that as a statement of Persic's belief, it was untrustworthy. As a result, it has no weight in determining whether there is factual support for the judge's findings.

The judge also found that ECI caused a spill of PCE or TCE by surmising that ECI and Aeroplating conducted "similar" plating operations. There was no evidence to support that conclusion. The witnesses called by plaintiffs professed no personal knowledge of ECI's plating operation. Voellinger testified he was not involved in the operations of Aeroplating and acknowledged he had no first-hand knowledge of ECI's operations.[12] And plaintiffs' expert, who baldly concluded that the plating operations were similar, never visited the property until nineteen years after ECI vacated the premises.

The court's imposition of liability on ECI for a discharge of TCE was based on an overly expansive reading of the Spill Act. True, the Act was intended to be liberally construed. N.J.S.A. 58:10-23.11x. However, Spill Act liability nonetheless requires a "nexus between the use or discharge of a substance and its contamination of the surrounding area . . . ." N.J. Dep't of Envtl. Prot. v. Dimant, 418 N.J. Super. 530, 544 (App. Div. 2011). In Marsh v. Department of Environmental Protection, 152 N.J. 137, 146 (1997), that "nexus" was Marsh's ownership and control over property at the time that gasoline tanks leaked on

[12]As noted earlier, Persic died in 2004. Kennedy was not able to testify because of the onset of Alzheimer's disease. These, as well as other factors, were also urged by ECI as part of its laches argument.

the property. Similarly, in Lacey Mun. Utils. Auth. v. N.J. Dep't of Envtl. Prot., 369 N.J. Super. 261, 275-76 (App. Div. 2004), the nexus was established by circumstantial proof that underground storage tanks had actually leaked onto the property during Lacey Amoco's ownership of the property. As we explained in Lacey, the appellant successfully met its burden of proof under the Spill Act by establishing that a discharge occurred in the 1980s:

> This evidence of tank leakage and relining in 1986, coupled with evidence that the subsequent remediation of the Lacey Amoco site by the DEP in 1993 required the removal of over 4000 tons of gasoline-contaminated soil, adequately supports the conclusion that there was a major leakage of petroleum products at the Lacey Amoco site in the mid-1980s.
>
> . . . .
>
> This proof derives from the installation of new tanks in 1966, the relining of the tanks in 1986, and the revised "travel time" calculation showing that contaminants could move from the Lacey Amoco site to the nearest wells in Zone 12 in as few as 368 days.
>
> [Id. at 274-75.]

There was no similar evidence here. Even an assumption that ECI used the substances in question does not demonstrate the substances were discharged into the environment during ECI's ownership. And, certainly, Spill Act liability cannot attach to

ECI merely because it operated at the premises prior to plaintiffs. Aeroplating acquired ECI's assets and conducted a similar operation. And it may be true that the degreaser, which was purchased by Aeroplating from ECI, was a source of contamination. But those circumstances do not automatically impose responsibility on the prior owner. Plaintiffs were required to prove that a discharge occurred during the prior ownership. We conclude that no evidence supports the judge's finding that defendant discharged TCE and PCE at the property. As a result, we reverse and remand for the entry of a judgment in favor of ECI.

Reversed.