NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - GENERAL EQUITY
ESSEX COUNTY
DOCKET NO.: ESX-C-122-13

COTY US LLC, Plaintiff vs. 680 S. 17TH STREET LLC, AIRAJ HASAN, CITY OF NEWARK, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and IQBAL MOZAWALLA Defendants	**O P I N I O N**

Hearing Held: February 17, 2015
Decided: February 26, 2015

Donald F. Campbell, Esq. (Giordano Halleran & Ciesla)
David M. Williamson, Esq., admitted *pro hac vice*
Attorneys for Plaintiff

Rashaan S. Williams, Esq.
Attorney for Defendants 680 S. 17th Street LLC, Airaj Hasan, and Iqbal Mozawalla

Steven F. Olivo, Esq
Attorney for Defendant City of Newark

Deputy Attorney General Lisa J. Morelli, Esq.
Attorney for Defedant New Jersey Department of Environmental Protection

FACTS AND PROCEDURAL HISTORY

This matter concerns property located at 673-687 South Sixteenth Street and 678-690 South Seventeenth Street in Newark, often referred to as Lot 13 and Lot 33, respectively, and is known collectively as the LaCross Facility or the LaCross property. In this application, Plaintiff seeks various relief including the appointment of a receiver for the Defendant due to Defendant's financial inability to satisfy its contractual obligations to indemnify Plaintiff regarding clean-up costs of the LaCross Property. This application also requires the Court to construe whether a corporate merger of the indemnitee violated an anti-assignment clause of the purchase agreement. Further, as discussed below, this application also seeks to hold a sole and managing member of an LLC individually liable for indemnification for environmental cleanup costs when that LLC does not have, and never did have, sufficient assets to fund the cleanup.

The LaCross property is subject to New Jersey's Industrial Site Recovery Act (hereinafter "ISRA") in light of groundwater and soil contamination resulting from the previous industrial operations that took place at the site. The Court will provide a background of the matter using the undisputed facts established by the depositions, affidavits, and other documentary discovery provided by the parties.

Del Laboratories, Inc. (hereinafter "Del") was the previous owner of the LaCross property, which was formerly home to a metal implements manufacturing complex. Defendant 680 S. 17th Street, LLC ("680 LLC") is a New Jersey limited liability company whose sole and managing member is Mr. Airaj Hasan. According to Mr. Hasan, 680 LLC was formed for the purpose of

acquiring the LaCross property. See Deposition of Airaj Hasan (hereinafter "Hasan Dep.) at T. 43:1-3, attached to Certification of Donald F. Campbell (hereinafter "Campbell Cert."), as Ex. G.

On March 5, 2007, Del and 680 LLC entered into an "as is" purchase agreement by which 680 LLC agreed to purchase and Del agreed to sell the LaCross property. See Agreement for Sale and Purchase, attached to Certification of Donald F. Campbell, Esq. (hereinafter "Campbell Cert.") as Ex. H. Pursuant to the purchase agreement, 680 LLC was the buyer under the purchase agreement, with Blackstone Group LLC ("Blackstone"), another entity controlled by Mr. Hasan, being responsible for all development of the property. See Deposition of Gary Newman, employee of Blackstone (hereinafter "Newman Dep."), attached to Campbell Cert. as Ex. F. Mr. Hasan is also the sole member of Blackstone, a construction company.

The purchase agreement provided the following provision under which 680 LLC agreed to assume *all* environmental liabilities:

> As a material inducement and consideration for the transfer hereunder, upon the Closing, Seller does hereby transfer and assign, without further act or deed, to Buyer, and Buyer does accept and fully assume, without further act or deed, all responsibility, including, the payment, performance and discharge of each and every obligation of the Seller arising under or in connection with the Property, improvements, site improvements, infrastructure and land regardless of (i) any defects, errors or omissions in the design or construction of the Property, improvements or undeveloped land, or to any of the buildings or facilities constructed in, on, under or above same or (ii) other conditions (including environmental conditions) affecting the Property, improvements or land including without limitation those items identified on Schedule 1.

See Agreement for Sale and Purchase at ¶ 3 (emphasis added). Schedule 1 is entitled "Assumed Liabilities" and includes "[a]ny and all obligations related to the Property under the Industrial Site Recovery Act" as well as "[a]ny and all liabilities, responsibilities and/or obligations respecting the Property under all Environmental Laws." See id. at Schedule 1. The agreement also defines environmental laws to include, inter alia, the Industrial Site Recovery Act, the Spill Compensation

and Control Act, and "and other Federal, State or local environmental statute, code, regulation or ordinance." See id. at ¶ 9(b)(i). Thus, there is no dispute that 680 LLC is contractually responsible for the environmental remediation of the LaCross property.

680 LLC also agreed under the purchase agreement to indemnify Del for the following:

> [A]ll actions, causes of action, obligations, expenses, liabilities, losses, penalties, fines fees (including counsel fees and reasonable costs of investigations and defense) or costs (including monitoring, clean-up, compliance and/or litigation costs), claims, suits and damages for personal injury (including death), property damage and violation of any Federal, State or local law, statute, rule, regulation or ordinance which the Seller may, at any time and from time to time, incur, pay out, be exposed to and/or be responsible for which arises from or is related to the Property, including without limitation as a result of the presence of any Hazardous Materials (as hereinafter defined) and/or violation of *any Environmental Law* . . . regardless of whether the conduct or condition took place or existed prior to or after the conveyance of the Property pursuant to this agreement. Without limiting the generality of the foregoing, it is *understood that Buyer is assuming all of the Seller's liabilities respecting the Property under all Environmental Laws*. It is the intent of the Seller and Buyer that as between them *Buyer is solely liable for compliance with all Environmental Laws affecting the Property* or operations on the Property.

Id. at ¶ 9(b) (emphasis added). 680 LLC represented in the purchase agreement that it had "sufficient financial resources and ability to perform all of its obligations" under the purchase agreement and that it would "expend all funds necessary to perform all of its obligations." Id. at ¶ 8(b)(iii). Further, 680 LLC agreed to "waive any and all rights of contribution and other claims [it] might otherwise have against the Seller under applicable Environmental Laws or at common law in connection with the environmental condition of the Property or claims now existing or hereafter arising as a result thereof." Id. The purchase agreement also contains an anti-assignment clause which states that "[n]either party may assign its right and obligations under this Agreement without the prior written consent of the other party." Id. at ¶ 17(i).

Because, as mentioned above, the LaCross party is subject to regulation by the NJDEP, the parties were required to enter into a remediation agreement with the New Jersey Department of

Environmental Protection (hereinafter "NJDEP") in order to complete the sale of the property. Pursuant to the remediation agreement, 680 LLC agreed to be the "lead responsible person for administering and completing all administrative and remediation obligations pursuant to ISRA and the [remediation agreement]." See Remediation Agreement, attached to Campbell Cert. as Ex. K. Title to the property was ultimately transferred by Del to 680 LLC by deed on June 8, 2007. Defendant Iqbal Mozawalla invested in 680 LLC's construction project on the LaCross property, and currently holds a mortgage on the property. See Hasan Dep. at T. 38:15-25 attached to Defendant's Brief in Opposition as Ex. A.

On June 12, 2008, about a year after selling the LaCross property to 680 LLC, Del was converted from a corporation into an LLC. See Certification of Conversion, attached to Campbell Cert. as Ex. JJ. Thereafter, on June 30, 3008, Del entered into an agreement of merger with Plaintiff Coty US LLC (hereinafter "Coty"), which provided that Coty shall possess "all the rights, privileges, and powers" of both itself and of Del, as well as "all property, real, intellectual . . . personal, and mixed, and all debts to [Coty and Del] . . . as well as other things and causes of action belonging to [Coty and Del]." See Merger Agreement at ¶ 3, attached to Campbell Cert. as Ex. LL. The merger agreement also provided that any action pending by or against Del or Coty "shall be prosecuted as if the Merger had not taken place" and that Coty may be substituted in such an action. Id.

In April 2010, the NJDEP sent a directive to 680 LLC and to Del pursuant to the authority vested in the NJDEP under the Spill Act. The directive stated that 680 LLC failed to submit a required vapor intrusion sampling schedule and a vapor intrusion remedial investigation report within a previously set deadline, and also failed to perform required vapor intrusion sampling at the eight homes adjacent to the LaCross property by a certain deadline. See Amended Directive

and Notice to Insurers, dated April 16, 2010, at ¶ 6, attached to Campbell Cert. as Ex. N. Specifically, although 680 LLC submitted a vapor intrusion sampling work plan to the NJDEP in 2009, it failed to follow-up or take any required action under the workplan. See Transcript of August 2013 Show Cause Hearing, T. 26:14-21 (statement of Ms. Morelli, counsel for NJDEP), attached to Defendant's Brief in Opposition as Ex. M; see also Letter from Kevin F. Kratina, Assistant Director of Enforcement and Assignment Element, dated August 10, 2012, attached to Campbell Cert. as Ex. O (stating that "[O]n September 17, 2009, the [NJDEP] approved a Vapor Intrusion Study Workplan" for the LaCross Property). Thus, the NJDEP directed that 608 LLC provide the required reports and perform the required sampling. See id.

On August 10, 2012, the NJDEP sent a letter to Del, stating that it had not received the required report or any information that demonstrates that the vapor intrusion sampling required at the residences adjacent to the property had been performed by 680 LLC. See Letter from Kevin F. Kratina, Assistant Director of Enforcement and Assignment Element, dated August 10, 2012, attached to Campbell Cert. as Ex. O. However, because NJDEP improperly addressed both the directive and the letter to Coty's predecessor company at an abandoned address, both documents were returned by the post office and therefore never received by Coty. See Deposition of Eugene Keogh, Assistant General Counsel to Coty (hereinafter "Keogh Dep.") at T. 15:4-11, attached to Defendants' Brief in Opposition as Ex. I; see also Deposition of Sarah Kinsel, Enforcement Manager for NJDEP (hereinafter "Kinsel Dep.") at T. 17:10-25, attached to Defendant's Brief in Opposition as Ex. EE.[1] Thus, Coty did not become aware of the directive until Mr. Keogh received

[1] The Court notes that all exhibits submitted by Defendants are annexed to its brief in opposition, and not to a certification. This violates Rule 1:6-6, which requires any documents to be submitted on a motion to be annexed to an affidavit made on personal knowledge. Such documents may not merely be attached to the brief, whose "function is a written presentation of legal argument." See Celino v. General Acc. Ins., 211 N.J.Super. 532 (App. Div. 1986). However, the Court refers here to the sworn deposition testimony provided with Defendants' brief.

a telephone call from Ms. Sarah Kinsel of the NJDEP in February 2013, some six months after the date of the NJDEP's initial correspondence. See Keogh Dep. at T. 15:4-11. Following that conversation, a copy of the directive was sent to Coty at the correct address. See Keogh Cert. at T. 25:1-8; T. 26:5-12.

After learning of the notices and directives from the NJDEP, Coty contacted Ms. Kinsel through its counsel, David M. Williamson, Esq., on February 18, 2013. See E-Mail from Mr. Williamson to Ms. Kinsel, dated February 18, 2013, attached to Campbell Cert. as Ex. R. After speaking with Ms. Kinsel, Coty retained Thomas Bambrick of First Environment as Licensed Site Remediation Professional ("LSRP") on February 22, 2013.[2] See LSRP Retention Confirmation, attached Campbell Cert. as Ex. U.

In addition to promptly contacting the NJDEP, Mr. Williamson also reached out to Blackstone's point person for dealing with the NJDEP with respect to the LaCross property, Mr. Gary Newman, via e-mail on February 25, 2013, stating that he attempted to reach Mr. Newman by telephone four times without any response. See E-Mail from Mr. Williamson to Mr. Newman, dated February 25, 2013, attached to Campbell Cert. as Ex. S. Mr. Williamson advised Mr. Newman that by failing to adhere to the remediation agreement, 680 LLC also is in breach of the purchase agreement. See id. Mr. Williamson further informed Mr. Newman that in order to stave off civil enforcement action by the NJDEP, Coty itself retained a LSRP as required by the remediation agreement. Id.

In an e-mail dated February 28, 2013, Mr. Williamson demanded that 680 LLC work cooperatively with Coty to avoid civil penalties, and provided a list of action items, including the

[2] The LSRP program was introduced in 2009 by the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 et seq. Pursuant to the SRRA, responsible parties are required to hire an LSRP to oversee remediation in accordance with NJDEP standards and regulations.

establishment of a funding source for the remediation. See E-Mail from Mr. Williamson to Mr. Newman, dated February 28, 2013, attached to Campbell Cert. as Ex. S. Additionally, Mr. Williamson requested that Coty's LSRP be allowed access to the property, and Mr. Williamson accordingly attached a simple site access agreement. Id. It was not until sometime in October, 2013, nearly three and one half years after the NJDEP's April 2010 directive, that 680 LLC took action with respect to the directive by hiring an LSRP. See Kinsel Dep. at T. 55:6-15; see also Newman Dep. at T. 127:13-18. Significantly, Mr. Newman acknowledged that 680 LLC did not retain a LSRP when it initially received the directive in April 2010 because 680 LLC felt that it was not receiving clear direction from the NJDEP as to what actions needed to be taken, and Mr. Hasan desired to devote funds to projects other than the LaCross property. See Newman Dep. at T. 131:9-25; T. 135:22-25 to T. 136:7.

On June 12, 2013, Coty filed a Complaint against 680 LLC, along with an order to show cause, requesting that the Court appoint a receiver or special fiscal agent in order to ensure that 680 LLC completed its obligations under the NJDEP directive.[3] The Court signed the order to show cause on July 18, 2013, ordering Defendants to show cause on August 28, 2013. According to Coty, one of the facts that prompted it to seek a receiver was learning that 680 LLC had lost title to Lot 33 by tax foreclosure instituted by the City of Newark in July 2012. Coty took this is an indication that 680 LLC was in financial straits such that it did not have the funds to comply with its environmental obligations.

[3] The City of Newark, the NJDEP, and Iqbal Mozawalla, the mortgage holder on the LaCross property, were all named as Defendants because of their status as creditors of 680 LLC. However, no claims have been brought against those Defendants. Mr. Mozawalla is represented by Mr. Williams as well. The City of Newark is represented by Steven F. Olivio, Esq., and the NJDEP is represented by Lisa Morelli, Esq.

In opposition to the order to show cause, 680 LLC submitted the certification of Mr. Hasan, in which Mr. Hasan swore that 680 LLC had sufficient assets to meet the DEP directives. 680 LLC's prior counsel similarly represented during the hearing on the order to show cause that 680 LLC had the requisite funds and was ready to move forward with the remediation. As such, the Court entered an order on September 16, 2013, denying Coty's application without prejudice based on 680 LLC's representations it has sufficient assets and access to the requisite financing. The Court explained that Coty could, however, renew its application if it subsequently obtained information that 680 LLC became insolvent, and allowed the parties to engage in limited discovery.

Thereafter, 680 LLC moved to dismiss Coty's Complaint, arguing that the Court did not have the authority to appoint a receiver absent other substantive claims. The Court denied that motion on November 7, 2013 and gave Coty leave to file an Amended Complaint. On December 12, 2013, Coty filed its Amended Complaint, which repeated the request for appointment of a receiver but added claims for monetary damages, specific performance and indemnification under the purchase agreement and the New Jersey Spill Act.

680 LLC again moved to dismiss on January 30, 2014, which the Court denied on February 21, 2014. Meanwhile, on August 29, 2014, the City of Newark issued a tax foreclosure notice regarding the second lot, Lot 13, as a result of the $62,628.14 tax lien held by the City of Newark. See Tax Foreclosure Notice for Lot 13, attached to Campbell Cert. as Ex. M.

On November 14, 2014, following the close of discovery, Coty renewed its application to appoint a receiver, and also moved for summary judgment on its contract and Spill Act claims, seeking monetary damages. The motion was originally returnable on January 23, 2015. However, on January 17, 2015, 680 LLC's counsel belatedly requested an extension to file its opposition to

the motion. Coty objected to this request, explaining that sometime in January 2015, the City of Newark obtained a foreclosure judgment against Lot 13, and thus 680 LLC lost the remaining lot of the LaCross property.[4] The Court conducted a conference call among the parties on January 20, 2015, at which time the parties agreed to make the motion returnable on February 17, 2015.

After reviewing the submissions and extensive briefing of the parties, and having entertained oral argument on February 17, 2015, the Court issues this opinion in connection with the current applications before the Court.

ARGUMENTS

As a threshold to both forms of the requested relief, Coty argues that it has standing to seek a receiver and indemnification under the purchase agreement between 680 LLC and Del. Coty also argues that it has met its burden of showing that a receiver is necessary based on several grounds, including but not limited to the fact that 680 LLC is a shell corporation will no assets. Finally, Coty argues that it is entitled to summary judgment on its legal claims for breach of contract and right to indemnity under the New Jersey Spill Act. Coty's arguments are as follows.

STANDING

Coty asserts that, pursuant to the merger agreement, Coty took on all the rights and privileges of Del. Thus, Coty argues that it has standing to seek relief under the purchase agreement and the remediation agreement. Moreover, according to Coty, the anti-assignment clause in the purchase contract has no effect on assignments by operation of law, such as a merger

[4] Counsel for Coty represented that because the City of Newark is in the process of recording the foreclosure judgment, it has not provided a copy to Coty's counsel. Counsel indicated that he would provide a copy of same as soon as it is received.

or reorganization. Coty argues that in order to have such an effect, the anti-assignment clause would have had to contain express language proscribing reorganization.

APPLICATION FOR APPOINTMENT OF RECEIVER

Coty argues that following discovery, it has become clear that 680 LLC is in fact insolvent, and therefore appointment of a receiver for 680 LLC is necessary to ensure that it complies with its environmental obligations in connection with the LaCross property. Specifically, Coty asserts that the depositions of Mr. Hasan and Mr. Newman confirm that 680 LLC currently has no cash, income or financial liquidity. Moreover, Coty argues that 680 LLC currently has no assets, as it has lost both parcels of the LaCross property to tax foreclosure. Coty also contends that 680 LLC has no access to financing to complete the remediation. Coty argues that its request for a receiver is justified on several alternative grounds, including the New Jersey Limited Liability Act, the New Jersey Corporation Act, and the Court's inherent equitable powers.

Coty argues that N.J.S.A. 42:6-1, which allows a creditor to apply for the appointment of a receiver for a "voluntary business association," applies to LLC's because it is part of Title 42, the same Title under which the LLC Act exists. Coty argues that N.J.S.A. 42:6-1 is a "catch-all" provision that applies not just to partnerships.

Coty also argues that a receiver may be appointed under N.J.S.A. 14A:14-2, which allows a creditor "whose claim is for a sum certain or a sum which can, by computation, be made certain" when a company is insolvent, has suspending its ordinary business for lack of funds, or the business is being conducted at a great loss and greatly prejudicial to the interest of its creditors or shareholders.

Coty asserts that 680 LLC meets the test of insolvency, because its debts are more than its assets. Specifically, Coty argues that while the remediation could cost over $1 million, and 680 LLC also remains liable on the mortgage held by Mr. Mozawalla, 680 LLC currently has no assets to pay those debts, nor any cash.

Coty also contends that 680 LLC suspended its operations for lack of funds, based on the fact that the company has not taken steps to develop or remediate the property and in fact lost the property for failing to pay its taxes.

Alternatively, Coty argues that separate and apart from the New Jersey LLC Act or the New Jersey Corporation Act, the Court should appoint a receiver based on its inherent equitable powers to do so. Coty argues that a receiver is necessary to ensure that 680 LLC cooperates with and pays for its environmental remediation obligations and also to ensure that 680 LLC has funds to reimburse Coty for costs it incurred in responding to the directive.

SUMMARY JUDGMENT ON INDEMNIFICATION CLAIMS

Coty argues that it is entitled to summary judgment with respect to 680 LLC's liability to Coty under the real estate contract, as well as under the New Jersey Spill Act. Coty argues that it had no choice but to act in response to the directive because otherwise it would face significant civil penalties. As such, Coty incurred costs necessitated by 680 LLC's failure to comply with the directive. Coty argues that 680 LLC should reimburse Coty for the money Coty expended to retain an LSRP, negotiate site access with the City of Newark and 680 LLC, and to undertake environmental investigation actions. Coty argues that 680 LLC should also be responsible for the legal fees Coty incurred as a result the environmental compliance issues at the LaCross property.

In the event the Court elects not to appoint a receiver, Coty requests that the Court grant injunctive relief in the form of an order requiring 680 LLC to promptly comply with the NJDEP directive, adequately capitalize the LLC and post financial assurance sufficient to complete the remediation, complete any necessary remediation within the time frame dictated by the NJDEP, obtain a no further action letter from the NJDEP, and provide the Court and Coty with periodic status reports and copies of all correspondence and technical documents.

Coty bases its request for indemnification on several grounds. First, Coty argues that pursuant to the purchase agreement for the LaCross property, 680 LLC is responsible for indemnification of the costs Coty incurred as a result of 680 LLC's failure to comply with its obligations under the agreement. Coty argues that if it did not take action, it would have been subject to civil penalties by the NJDEP for each separate day of violation.

Second, Coty argues that, even if 680 LLC were not obligated to indemnify Coty under the purchase agreement, it is required to do so pursuant to the Spill Act, N.J.S.A. 58:10-23.11. Coty argues that the Spill Act imposes strict liability for the cost of remediation on certain parties. Coty contends that 680 LLC is either a "responsible person" or "other liable person" as defined under the Spill Act. Specifically, Coty asserts that 680 LLC is a "responsible person" based on its current ownership of the property, and its designation as "lead responsible person" under the remediation agreement. Alternatively, 680 LLC is an "other liable person" by virtue of the purchase agreement by which it assumed all legal responsibility for environmental cleanup costs.

Coty argues that although the Spill Act provides for a right of contribution among responsible parties, 680 LLC is not entitled to any contribution from Coty for the cleanup costs because it waived such a right under the purchase agreement. Further, Coty argues that the Spill Act allows courts to use "equitable factors" when allocating the costs of cleanup. In light of 680

LLC's agreement to assume the remediation obligations under the purchase agreement, to be the lead responsible person under the remediation agreement, and its failure to comply, Coty argues that the Court should allocate 100% of the costs to 680 LLC.

Finally, Coty argues that Mr. Hasan should be personally liable for indemnifying Coty based on two separate grounds. Coty asserts that the Spill Act imposes liability not only on corporations, but also on corporate officers responsible for making harmful environmental decisions. Alternatively, Coty argues that the same "veil piercing" principles that apply to corporations should also apply to LLC's, and that the circumstances are such that the Court should "pierce the corporate veil" and hold Mr. Hasan liable for the debts of his LLC. Specifically, Coty claims that 680 LLC was undercapitalized, failed to follow any corporate formalities or keep any corporate records. Coty argues that Mr. Hasan undercapitalized the company in order to avoid liabilities.

Notwithstanding the above, 680 LLC argues that Coty's application should be denied in its entirety. First, 680 LLC disputes several of the facts underlying Coty's application to the Court. 680 LLC asserts that it has in fact hired a new LSRP, and that the reason its original LSRP did not complete the vapor intrusion sampling of the off-site properties was because 680 LLC encountered difficulty in maintaining access to those neighboring properties. In fact, 680 LLC points out that it had to obtain Court orders from this Court to gain access to the neighboring properties. Since obtaining orders from this Court compelling the owners of the adjacent properties to allow access to the LSRP, 680 LLC has completed the vapor intrusion testing of all the off-site residences. Moreover, 680 LLC claims that it has commenced the remaining remedial investigation work and expects to have it completed within the NJDEP's time frames.

In addition to relying on the above factual disputes, 680 LLC further disputes Coty's legal arguments. 680 LLC argues that, as a threshold matter, Coty is not a "creditor" of 680 LLC and thus has no standing to seek appointment of a receiver. Moreover, 680 LLC asserts that Coty cannot show that it is insolvent, because there are resources available from Mr. Hasan's other businesses with which 680 LLC can satisfy its obligations to the NJDEP.

As to Coty's claims for indemnification, 680 LLC argues that the purchase agreement does not provide any basis for indemnification to Coty, because Coty was never properly assigned Del's rights under the purchase agreement. 680 LLC asserts that the purchase agreement refers to "sellers" and "successors" as separate and distinct categories. According to 680 LLC, unlike other provision in the purchase agreement, the indemnification provision refers only to the *seller*, and not to the *successors* of the seller. Moreover, 680 LLC argues that the agreement provides only that successors are *bound by* the obligations set forth in the agreement, but are not entitled to the *rights* of the seller under the agreement. According to 680 LLC, in order for the agreement to have this effect, the parties should have provided that the agreement shall "inure to the benefit of" the seller's successors.

680 LLC also argues that, in any event, Coty's approach to the directive was "heavy-handed" and thus 680 LLC should not be liable for the costs Coty incurred in dealing with the directive. 680 LLC further argues that Coty cannot recover under the Spill Act because it has not incurred any costs related to the cleanup or removal of environmental contamination. According to 680 LLC, the invoices from Mr. Bambrick show that Mr. Bambrick's costs were solely related to reviewing the site's file.

Finally, 680 LLC argues that the Revised LLC Act prohibits the Court from imposing personal liability on Mr. Hasan. 680 LLC asserts that even if veil piercing were permitted, Coty

has not made the requisite showing to pierce the LLC's veil. Specifically, 680 LLC contends that it is perfectly permissible for an LLC to be managed by its sole member and to operate as a "holding company." Further, 680 LLC asserts that Mr. Hasan has not engaged in fraudulent conduct to avoid liabilities, but instead has testified that he would fund the liabilities of 680 LLC with the assets of his other businesses.

DISCUSSION

Standing

Coty seeks the appointment of a receiver based upon 680 LLC's promise to assume Del's environmental liabilities and obligations under the purchase agreement and the remediation agreement. Coty's claims for indemnification and monetary damages also stem, in large part, from the purchase agreement between 680 LLC and Del. Thus, before analyzing the merits of Coty's claims, the Court must first, as a threshold matter, determine whether Coty is entitled to enforce the purchase agreement between Del and 680 LLC.[5]

[5] As mentioned above, 680 LLC filed a second motion to dismiss on January 30, 2014, on the grounds that, *inter alia*, Coty was not entitled to seek appointment of a receiver or to indemnification because it did not have standing under the purchase agreement between Del and 680 LLC. Specifically, 680 LLC argued that because the indemnification section of the purchase agreement omitted "successors in interest" as a party entitled to Del's indemnification rights under the purchase agreement, Coty could only enforce that part of the agreement if it was given an assignment, which it was not. Moreover, 680 LLC argued that Section 17(i), which provided that the agreement is binding upon the parties and their successors, did not entitle Coty to Del's rights to indemnification because it did not provide that the agreement shall *inure to the benefit* of Del's successors. Those motions were decided under the standard applicable to motions to dismiss. (Footnote continued)

The Court found that under a fair reading of the complaint pursuant to the motion to dismiss standard, Coty is a successor to Del, and thus the two companies are "one in the same." Moreover, the Court found that nothing in the agreement prohibited Del from undertaking a corporate reorganization. Thus, the Court denied 680 LLC's motion to dismiss for lack of standing. However, because the motion to dismiss standard differs significantly from the summary judgment standard, the Court must reexamine the issue of standing under the summary judgment standard.

As discussed above, Del was initially a corporation, and subsequently converted into an LLC. Thereafter, Coty and Del entered into an agreement of merger which provided that the existence of Del "shall cease," and that Coty, the "surviving entity," shall possess all rights, privileges, and powers of both itself and Del. See Merger Agreement, attached to Campbell Cert. as Ex. LL. 680 LLC argues that, despite the clear language of the merger agreement, Coty is not entitled to enforce Del's rights under the purchase agreement by virtue of that agreement's "anti-assignment" clause.

In Segal v. Greater Valley Terminal Corp., 83 N.J.Super. 120, 124 (App. Div. 1964), the court held that a merger of two corporations into one did not effect an assignment of a lease agreement to the resulting company in violation of the lease's anti-assignment clause. The plaintiff in Segal leased real property in New Jersey to Greater Valley Terminal Corporation for the purpose of shipping, receiving, and warehousing facilities for petroleum products. The lease provided that the lessee shall not assign the lease without the written consent of the lessor. A few years after executing the lease, Greater Valley Terminal Corporation changed its name to Greater Valley Oil & Terminal Corporation. Thereafter, Greater Valley was merged into defendant Paragon Oil Company, as Paragon owned all of Greater Valley's stock. Although Greater Valley did not execute an assignment or sublease, the plaintiff argued that the merger violated the lease's anti-assignment covenant. The court first held that the sale of the shares of stock of a lessee corporation to another company, resulting in the relationship of a parent and wholly-owned subsidiary, did not constitute an assignment of the lease. Id. at 123. Further, the court held that "[a] subsequent merger of the parent and subsidiary into one corporation, achieved as it was in the present case by the filing of a certificate of ownership and the elimination of Greater Valley's stock and name, *in*

no way changed the beneficial ownership, possession, or control of Greater Valley's property or leasehold estate." Id. at 123-24 (emphasis added).

Similarly, in Professional Buyer's Guild, LLC v. Ace Fire Underwriters Ins. Co., 2007 U.S. Dist. LEXIS 80143 (D.N.J. 2007), the District of New Jersey, applying New Jersey law, held that pursuant to Segal, the passing of contract rights by operation of merger did not constitute an assignment and thus did not violate the anti-assignment clause. In Professional Buyer's Guild, the court pointed out that the "no assignment" provision was arguably broader than that in Segal, as it prohibited assignment, transfer, encumbrance *or other disposition*. Id. at *12. Nevertheless, the court found that the anti-assignment clause still did not prohibit rights passing via merger. Id.

In Star Cellular Telephone Company, Inc. v. Baton Rouge CGSA, 1993 Del. Ch. LEXIS 158 (Del. Ch. Jul. 30, 1993), aff'd, 647 A.2d 382 (Del. 1994), while not binding on the Court, the Delaware Chancery court held that, absent contract language expressly prohibiting a transfer of property rights to a new entity by merger, the court would not presume that the parties intended to prohibit the merger by including an antiassignment clause. Id. at *26.

Here, the merger agreement provides that Del was to be merged into Coty, and that all of the outstanding shares of Del would be cancelled. Thus, consistent with Segal, while Del's stock and name was eliminated, the beneficial ownership of its property was not. Id. As discussed above, the merger agreement between Del and Coty provided that Del would cease to exist, and the surviving entity would be Coty. In other words, Del *became* Coty—thus, there was no need for an assignment of any property, causes of actions, or other rights from Del to Coty.

Moreover, the statute under which Del merged into Coty, 6 Del. C. § 18-209, provides that when any merger becomes effective, "all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated,

and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, *shall be vested in the surviving or resulting domestic limited liability company* or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated." 6 Del. C. § 18-209 (emphasis added). The language of this provision characterizes the rights of the company that merged as being *vested* in the surviving company, not as being *assigned* to the surviving company. Thus, the statutory provision under which Del and Coty merged to become Coty further supports that the merger did not constitute an assignment of rights under the purchase agreement.

Finally, the purchase agreement provides that it shall be binding upon the parties as well as their successors and assigns. See Purchase Agreement at ¶ 17(i). The language of this provision indicates that successors and assigns are to be treated as separate and distinct categories. In other words, a successor is *not* necessarily an assign. Had 680 LLC wished for its written consent to be required upon a corporate reorganization of Del or a merger or consolidation between Del or another company, it should have negotiated for express language to this effect to be included in the purchase agreement. The Court will not read a prohibition on mergers or corporate reorganizations into a provision prohibiting an assignment, as such provisions are "subject to the doctrine of strict construction which tends to limit [their] operation." Segal, 83 N.J.Super. at 124. Thus, the Court finds that the transfer of rights to Coty, who is a successor company, not an assign, is entirely proper and does not violate the purchase agreement's anti-assignment clause.

Appointment of a Receiver

Coty argues that the Court should appoint either a custodial or statutory receiver. While Coty argues that the RULLCA and the New Jersey Corporation provide the authority to appoint a receiver to an LLC, the Court need not resort to either of these statutes to justify its authority to appoint a receiver. A court of equity has the inherent power to appoint a custodial receiver to manage a corporation's affairs and preserve its assets. See Wilentz v. Home Serv. Soc., 130 N.J. Eq. 187, 189-190 (Ch. 1941). "This power does not and never did depend upon statute, nor upon the character of the parties, whether individuals or corporation, nor upon the nature of the property." Id. at 190 (citing Smith v. Washington Casualty Insurance Co., 110 N.J. Eq. 122, 136 (Ch. 1932)). A custodial receiver is appointed for a discrete period of time, typically *pendente lite*. See State v. East Shores, Inc., 131 N.J. Super. 300, 309-310 (Ch. Div. 1974).

An entity need not be insolvent in order for a court to appoint a custodial receiver. See Roach v. Margulies, 42 N.J.Super. 243, 245 (App. Div. 1956). Instead, a court of equity may appoint a custodial receiver in the event of "gross or fraudulent mismanagement by corporate officers or gross abuse of trust or general dereliction of duty." Id. However, appointment of a receiver is a "drastic action" and should be "avoided where possible . . . if the relief necessary can be accomplished by some less onerous expedient." Id.

Coty argues that a receiver is necessary to ensure that 680 LLC complies with and pays for the required environmental remediation, as well as to preserve any assets of 680 LLC so that Coty may receive the indemnification it claims it is entitled to from 680 LLC. In support of its argument that a receiver is necessary for completion of the remediation work, Coty strenuously argues, based on facts revealed during oral argument, that 680 LLC has improperly and perhaps unlawfully

released from escrow the required funding source of $100,000. Coty also highlights the fact that Mr. Thompson, the LSRP 680 LLC retained in October 2013, did not perform any work at the property and has since withdrawn as LSRP. See Kinsel Dep. at T. 90:13-20. It should be noted, however, that since the commencement of this action, 680 LLC did obtain an order from this Court on June 19, 2014, granting 680 LLC access to the properties adjacent to the LaCross properties for the purpose of conducting air sampling, soil vapor sampling, and any and all other remedial action necessary under the directive. See June 19, 2014 Order, Docket No. C-63-14, attached to Br. in Opp. as Ex. R.

Shortly thereafter, 680 LLC retained a new LSRP, Joseph P. Chiappetta of Advanced GeoServices, to conduct off-site vapor intrusion testing and install groundwater monitoring wells in accordance with the SRRA. See Contract for Remedial Investigation with Advanced GeoServices, dated July 29, 2014 attached to Def. Br. as Ex. EE; see also Kinsel Dep. at T. 73:6-13; T. 108:1-25; DEP's Br. in Response to Coty's Motion at p. 9 (stating that 680 LLC retained another LSRP in July 2014 who has enrolled with the NJDEP), attached to Br. in Opp. as Ex. N. Ms. Kinsel, who is responsible for enforcing the directive, testified that the NJDEP does not plan to step in to conduct any remediation activities in light of 680 LLC's representation that they have retained an LSRP and are going to move forward with their environmental obligations. See Kinsel Dep. at T. 69-70:1-12.

In addition to providing evidence that it retained an LSRP, 680 LLC has also provided several e-mails from its LSRP indicating that certain work has in fact been performed. Specifically, on August 25, 2014, Mr. Chiappetta sent an e-mail to Mr. Newman attaching the results of vapor intrusion testing of indoor air and soil gas at the LaCross property. See E-mail From Mr. Chiappetta to Mr. Newman, dated August 25, 2014, attached to Br. in Opp. as Ex. S.

On September 26, 2014, Mr. Chiappetta sent the results of groundwater testing at the LaCross property to Mr. Newman via e-mail. See E-mail from Mr. Chiappetta to Mr. Newman, dated September 26, 2014, attached to Br. in Opp. as Ex. T.

As stated above, appointment of a receiver should be "avoided where possible . . . if the relief necessary can be accomplished by some less onerous expedient." Roach, 42 N.J.Super. at 245. Coty has stated that it seeks a receiver to complete the cleanup, "not necessarily to liquidate assets." See Br. in Reply to Defs.' Opp. at p. 12. In light of the evidence and representations indicating that 680 LLC has taken substantial steps in furtherance of its remediation requirements, the Court finds that a receiver is not necessary to ensure that the environmental remediation is completed. Moreover, the NJDEP has represented that the necessary remedial investigation report is to be completed and submitted to the NJDEP by March 1, 2017. See NJDEP Br. in Response at 11 (citing N.J.A.C. 7:26E-4.10). In other words, 680 LLC has ample time within which to complete the remedial activities. Thus, instead of appointing a receiver, the Court will issue an order to compelling 680 LLC and Mr. Hasan, based on his express representation to the Court that he is willing and able, to comply with the NJDEP directive, and any other investigative and remedial obligations under any environmental laws, and to do so within the timelines set forth by the NJDEP's directives and guidelines.

The Court will further order that Mr. Hasan, the sole member and manager of 680 LLC, shall fund 680 LLC with adequate funds to complete all investigative and remedial obligations under any and all environmental laws, statutes, regulations, directives or otherwise applicable to the LaCross property, and also to pay the NJDEP's oversight costs as applicable. Mr. Hasan must also establish and maintain a remediation funding source in accordance with N.J.S.A. 53:10B-3(a), which requires the funding source to contain an amount equal to the projected budget for the

project. Pending the determination of the budget by 680 LLC's current LSRP, Mr. Hasan shall forthwith deposit $100,000 into the remediation funding source, or any amount subsequently determined by the NJDEP. Mr. Hasan must also establish and maintain financial assurances as required by N.J.A.C. 7:26C-7.10(a)(1). The budget for the remedial work shall be determined by the LSRP currently retained by 680 LLC.

Further, Mr. Hasan must pay all annual fees for the remedial action permits.[6] Indeed, Mr. Hasan has testified that he is willing to "devote the resources necessary to do the work that is required" at the LaCross property, see Hasan Dep. at T. 103:1-5, and Coty has represented that it "welcomes any resources which Mr. Hasan can use to complete the remediation." Pl. Br. in Reply to Def. Opp. at p. 40. While 680 LLC, as a mere holding company, may not have sufficient assets, Mr. Hasan is the sole member of approximately eight or nine LLC's which own parcels of property that do in fact have cash flows. See id. at T. 22:1-13. Indeed, at oral argument, Mr. Hasan represented, through counsel, that he is willing to fully comply with any and all NJDEP directives and remedial obligations, and to provide all necessary monies and assurances to guarantee completion of the environmental work. The Court will hold Mr. Hasan to these representations by ordering that he be financially responsible for 680 LLC's compliance with all NJDEP's requirements and mandates.

Finally, the Court will order that 680 LLC is to provide the Court, Coty, the NJDEP, and the City of Newark with periodic reports, at least monthly, informing the Court of 680 LLC's progress and compliance with all required investigative and remedial environmental work.

Summary Judgment for Indemnification

[6] According to the NJDEP, the responsible parties of the LaCross property are required by the Site Remediation Reform Act ("SRRA") to apply for a Remedial Action Permit.

A motion for summary judgment should be granted only where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. R. 4:46-2(c); see Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954). The purpose of summary judgment is "to provide a means for piercing the allegations of pleadings to show there is no triable issue of material fact so as to allow resolution of a case or issue as a matter of law." Sellers v. Schonfeld, 270 N.J.Super. 424, 427 (App. Div. 1993) (citing Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954)). In deciding whether there is a genuine issue of material fact in dispute, the Court must "consider whether the competent evidential materials presented, when viewed in light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). The party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts." Triffin v. Am. Intern., 372 N.J. Super. 517, 523-24 (App. Div. 2004) (quotation marks omitted). Moreover, "[b]are conclusions in the pleadings without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999). Thus, self-serving assertions are insufficient to create a genuine issue of material fact necessary to defeat summary judgment. Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2004).

Coty contends that it is entitled to indemnification on contractual grounds and alternatively on statutory grounds for the costs it incurred in acting on the NJDEP directive. Coty also argues that 680 LLC is obligated to reimburse Coty for the legal fees it incurred in connection with this action. As discussed above, the purchase agreement for the LaCross property provides that 680 LLC shall indemnify Del (now Coty) for:

> [A]ll actions, causes of action, *obligations*, expenses, *liabilities*, losses, penalties, fines, *fees* (including counsel fees and *reasonable costs of investigations* and defense) or costs (including monitoring, *clean-up, compliance* and/or litigation costs), claims, suits and damages for personal injury (including death), property damage and violation of any Federal, State or local law, statute, rule, regulation or ordinance which the Seller may, at any time and from time to time, incur, pay out, be exposed to and/or be responsible for *which arises from or is related to the Property, including without limitation as a result of the presence of any Hazardous Materials (as hereinafter defined) and/or violation of any Environmental Law . . .* regardless of whether the conduct or condition took place or existed prior to or after the conveyance of the Property pursuant to this agreement. Without limiting the generality of the foregoing, it is *understood that Buyer is assuming all of the Seller's liabilities respecting the Property under all Environmental Laws*. It is the intent of the Seller and Buyer that as between them *Buyer is solely liable for compliance with all Environmental Laws affecting the Property* or operations on the Property.

See Agreement for Sale and Purchase at ¶ 9(b) (emphasis added). Coty argues that upon finally receiving the NJDEP directive, it acted expediently by retaining a LSRP to avoid being subject to penalties by NJDEP. Thus, Coty argues that it is entitled to indemnification for the costs it incurred in connection with the LSRP because those costs arose from the presence of hazardous materials on the property and violation of environmental laws.

The Court finds that the scope of the indemnity clause in the purchase agreement between the parties includes the costs incurred by Coty in responding to the NJDEP directive. 680 LLC agreed to indemnify Coty for any and all costs it incurred in connection with the presence of any hazardous material or violation of any "environmental law." See Purchase Agreement ¶ 9(b). The purchase agreement defines "environmental law" as including the Spill Act. The NJDEP directive to which Coty responded was issued pursuant to the Spill Act. See Directive dated April 19, 2010. Thus, the Court finds that there is no dispute of fact that Coty's response to the directive was within the scope of the indemnity provision.

680 LLC argues that Coty in essence overreacted in deciding to commence remediation activities because there was no genuine threat of civil enforcement action or civil penalties against Coty. The Court finds that, in light of the evidence presented to it by the parties, it is undisputed that if Coty failed to act when it did, it would have been subject to further action by the NJDEP. The directive sent by NJDEP, on its face, provides that "[f]ailure by Del Laboratories Inc. [Coty] and 680 South 17th Street, LLC to comply with this Directive may result in the issuance of any order by the [NJDEP], which will subject Del Laboratories [Coty] and [680 LLC] to penalties of up to $50,000 per day and each day of violation constitutes an additional, separate and distinct violation of the Spill Compensation and Control Act." See April 19, 2010 Directive at ¶ 15. The express language of the directive clearly required action on the part of Coty as a secondarily liable party in the event 680 LLC failed to fulfill its responsibilities as lead responsible person under the remediation agreement and the Spill Act.

Moreover, Ms. Kinsel testified that the case had already been referred to enforcement for the purpose of drafting the directive due to 680 LLC's failure to act, and that if the directive was not complied with, the NJDEP would assess administrative penalties. See Kinsel Dep. at T. 81:1-25. Mr. Newman also acknowledged in an e-mail to its LSRP on November 7, 2013, that when 680 LLC failed to respond to the NJDEP directive, the NJDEP threatened administrative action against Coty. See E-mail from Mr. Newman to LSRP, dated November 7, 2013, attached to Campbell Cert. as Ex. Z. Thus, there is no genuine issue of fact as to whether Coty would have been subjected to penalties had it not responded to the NJDEP directive.

In addition to the directive, the Spill Act itself obligates Coty to engage in environmental remediation actions in the absence of action on the part of 680 LLC. Specifically, under the Spill Act, if "responsible parties" fail to participate in the cleanup, the Spill Act permits the DEP to

recover three times the amount expended in cleaning the contaminated site. N.J.S.A. 58:10-23.11f(a)(2)(a). As a former owner/operator of the LaCross property, Coty is a "responsible person" who may be held liable for cleanup under the Spill Act. See State, Dep't of Envtl. Prot. v. Ventron Corp., 94 N.J. 473, 502 (1983). Coty attempted to contact 680 LLC on several occasions to inquire into 680 LLC's failure to respond to the directive and to give 680 LLC a fair opportunity to do so. For example, on Monday, February 25, 2013, Mr. Williamson sent an e-mail to Mr. Newman in which he indicated that he had attempted to reach Mr. Newman by telephone four times in the previous week regarding 680 LLC's default of the directive but had not since received any response. See February 25, 2013 E-mail From Mr. Williamson to Mr. Newman, attached to Campbell Cert. as Ex. S. In that e-mail, Mr. Williamson also notified Mr. Newman that Coty would proceed to manage the obligations under the directive, and therefore had retained a LSRP.

Mr. Williamson again e-mailed Mr. Newman on February 28, 2013, in which Mr. Williamson memorialized a telephone conversation conducted on February 26, 2013. In that e-mail, Mr. Williamson also informed Mr. Newman that he spoke with Ms. Kinsel, who indicated that the NJDEP was preparing to issue enforcement notices to both 680 LLC and Coty and to impose civil penalties on both parties if they did not comply with the directive. See February 28, 2013 E-Mail from Mr. Williamson to Mr. Newman, attached to Campbell Cert. as Ex. S. As such, Mr. Williamson set forth a detailed list of actions that 680 LLC would need to undertake in order to satisfy its obligations. See id. Mr. Williamson concluded this e-mail by proposing that 680 LLC and Coty work cooperatively to address each of the necessary actions to avoid "expensive and drawn out enforcement action." Id.

On March 28, 2013, Mr. Williamson again e-mailed Mr. Newman, expressing his disappointment in not having received a response to the aforementioned February 28, 2013 e-mail. See March 28, 2013 E-Mail from Mr. Williamson to Mr. Newman, attached to Campbell Cert. as Ex. T. Mr. Williamson requested that Mr. Newman advise Coty whether 680 LLC will indemnify it so that it could proceed with the requisite remediation. Id. Despite the repeated demands made by Coty through counsel, 680 LLC failed to take even minimal action on the directive until October 2013, when it hired its first LSRP. Moreover, even after it retained a LSRP, Ms. Lisa Morelli, counsel for the NJDEP in the instant matter, sent an e-mail to counsel for all parties on January 10, 2014 in which she stated that the LSRP retained by 680 LLC had still not addressed the requirements of the directive. See E-mail from Ms. Morrelli, dated January 10, 2014, attached to Campbell Cert. as Ex. W. It is clear that despite several notices from both the NJDEP and from Coty, and despite various demands for cooperation and compliance, 680 LLC neglected to satisfy or even attempt to satisfy its environmental remediation obligations. Indeed, 680 LLC acknowledged that it failed to respond to the NJDEP directive because it either mistakenly misunderstood the directive or did not have the funds to undertake the cleanup. See Newman Dep. at T. 131:9-25; T. 135:22-25 to T. 136:7. This consistent failure to act on the part of 680 LLC exposed Coty to significant liability and penalties. As such, Coty was justified if not required to respond to the NJDEP directive.

Further, pursuant to the remediation agreement, 680 LLC agreed to be the "lead responsible person" for administering and completing all environmental obligations, but that Del (now Coty) would not be relieved of its obligations to complete the its remedial and administrative obligations. See Remediation Agreement at ¶ 3. The remediation agreement also provided that in the event that 680 LLC or Coty failed to perform any obligation under the remediation agreement, the

NJDEP has the right to exercise any remedies it has available to it under any statute. See id. at ¶ 19.

The Court also finds that there is no issue of material fact that Coty's retention of a LSRP was a reasonable response to the NJDEP directive. The Spill Act is clear that before engaging in any remedial activity, a responsible party must retain a LSRP. See N.J.S.A. 58:10B:1-3(b); see also Kinsel Dep. at T. 77:15-25. Thus, Coty is entitled to indemnification for the monies it paid to Mr. Bambrick, its LSRP, as such costs were necessary to comply with the NJDEP directive and avoid further enforcement action by the NJDEP. The Court also finds that Coty is entitled to recover legal fees, as the indemnification provision allows the seller to recover attorney's fees. See Purchase Agreement at ¶ 9(b).

As to 680 LLC's contention that Coty's damages must be barred or reduced for failure to mitigate, the Court finds that Coty's retention of a LSRP was tantamount to mitigating damages. While Coty did incur *some* costs in hiring a LSRP (i.e., $15,000) it did so in order to avoid significant civil penalties imposed by the NJDEP (i.e., up to $50,000 per day). In other words, had Coty failed to take any action, it would have had to pay much more in civil penalties than that which it incurred in retaining a LSRP, which 680 LLC would be obligated to indemnify pursuant to the purchase agreement.

The Court also finds that Coty would be entitled to indemnity under the Spill Act, entirely independent of any indemnity provision under the purchase agreement. The Spill Act was enacted to, *inter alia*, provide liability for damage sustained by hazardous substances "by requiring the prompt containment and removal of such pollution and substances." N.J.S.A. 58:10-23.11A. Accordingly, the Spill Act prohibits the "discharge" of "hazardous substances" into the environment and provides for the cleanup of that discharge. N.J.S.A. 58:10-23.11c.

The Spill Act allows any party who has incurred cleanup costs to recover those costs from any "responsible party" under the Spill Act. "The purpose of the contribution amendment to the Spill Act was to encourage prompt and effective remediation by those parties responsible for contamination who might otherwise be reluctant to cooperate in the remediation efforts for fear of bearing the entire cost of cleanup when other parties were also responsible for the creation and continuation of the discharge." Magic Petroleum Corp. v. Exxon Mobil Corp., 218 N.J. 390, 403. (2014). In Magic Petroleum, the New Jersey Supreme Court held that a party may be adjudicated as liable before the "final tally of cleanup costs" is complete. Id. at 410. The Court explained that this result "is consistent with the Legislature's intent to encourage expeditious and efficient remediation of site contamination." Id. In other words, a party who has commenced, but not yet completed, steps in the remediation process may bring a contribution claim against a responsible party. Thus, the fact that Coty had not undertaken any actual remedial activities at the LaCross property does not preclude Coty from recovering the cost of retaining a LSRP. Indeed, N.J.S.A. 58:10-23.11b defines "cleanup and removal costs" as all direct costs *associated* with a discharge. The plain language of the statute indicates that cleanup and removal costs are not limited only to those costs incurred in actually removing the hazardous substance from the property. While the court may choose to allocate liability between and among the responsible parties, in this case, there is no question that 680 LLC agreed to fully assume liability for environmental liabilities. Thus, it is equitable to allocate 100% of the costs for the LSRP to 680 LLC.

Having decided that 680 LLC must reimburse Coty under both the indemnification provision of the purchase agreement and the Spill Act, the Court must determine whether 680 LLC's sole member, Mr. Hasan, should be personally liable for the money judgment. The power of a court to "pierce the corporate veil" in New Jersey is well-established. See Stochastic

Decisions, Inc. v. DiDomenico, 236 N.J.Super. 388, 393 (App. Div. 1989). Piercing the corporate veil is an equitable remedy designed to prevent a corporation from being used to "defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law." See State v. Ventron Corp., 94 N.J. 473, 500 (1983). Courts will not pierce a corporate veil *except in cases of fraud, injustice*, or the like. Id.

While RULLCA provides that "failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members," N.J.S.A. 42:2C-30(b), no court in New Jersey has held that this provision categorically precludes the doctrine of piercing the veil of LLC's. Instead, the Court finds this provision merely provides a specific *standard* for veil piercing. That is, in light of the deliberate organizational flexibility of an LLC, the RULLCA eliminates failure to adhere to corporate formalities as a basis for piercing the veil. As such, Court finds that the equitable remedy of piercing the veil is applicable to a LLC, as long as it is not based solely on a LLC's failure to follow formalities.

It is undisputed that 680 LLC is a "shell company" established for the purpose of acquiring a single parcel of real estate. See Newman Dep. at T. 13:8-9; see Def. Br. in Opp. at p. 19. Specifically, Mr. Hasan testified that 680 LLC's only asset is the LaCross property, and that 680 LLC has no cash flow or any income whatsoever. See Hasan Dep. at T. 29:18-25; T. 30:21-25; T. 57:9-18; T. 60:13-25-61:7; see Def. Br. in Opp. at 19 ("Defendant agrees that there [is] . . . no cash flow . . . or assets . . . and that this is all by design.") Moreover, Mr. Hasan testified that 680 LLC was always a shell company from the day of its creation, and never had assets or income, even when the order to show cause was filed against it in June 2013. Despite the reality of 680 LLC's form and Mr. Hasan's acknowledgment thereof, Mr. Hasan nevertheless represented through the

purchase agreement that 680 LLC had sufficient financial resources to perform all of its obligations under the agreement. See Purchase Agreement at ¶ 8(b)(iii). Further, in his initial certification filed in this Court in opposition to the order to show cause, filed in June 2013, Mr. Hasan swore that 680 LLC had sufficient resources to complete the necessary environmental work. See Certification of Airaj Hasan, dated August 19, 2013, attached to Campbell Cert. as Ex. A. Mr. Hasan later clarified in his deposition that this statement was meant to indicate that the *principals* of 680 LLC, and not the entity itself, had sufficient assets to complete the environmental remediation. See Hasan Dep. at T. 116:2-8.

In light of 680 LLC's repeated representations that it had the ability to pay its obligations despite its known inability to do so, as well as 680 LLC voluntarily undertaking responsibility for environmental cleanup costs when in fact 680 LLC has no financial means to do so, the Court finds it appropriate to pierce the veil of 680 LLC to hold Mr. Hasan liable for indemnifying Coty. By representing that it had sufficient assets to comply with its environmental obligations, 680 LLC persuaded the Court into denying the appointment of a receiver in the first instance, and 680 LLC inappropriately led Del (now Coty) into allocating clean-up costs to 680 LLC when 680 LLC in fact had no independent means whatsoever to honor that obligation. 680 LLC is in fact a "shell company" with no assets to fulfill the significant obligations and liabilities it assumed in regards to environmental clean-up costs in which the public has a strong interest in seeing fulfilled. The Court finds that it must pierce the veil of 680 LLC in order to prevent fraud and injustice. Otherwise, Mr. Hasan would be able to use the limited liability company form to evade the obligations and liabilities he consistently promised his company would satisfy and which he represented in this Court that he would undertake. Again, Mr. Hasan has indicated his willingness to satisfy any judgment arising out of the environmental cleanup from his own personal assets.

Thus, equity weighs in favor of piercing the veil of 680 LLC and imposing personal liability for indemnification on the entity's sole member, Mr. Hasan. As a result, the Court will hold a case management conference on March 16, 2015, to schedule dates for the parties' submissions regarding the reasonableness of the costs and legal fees incurred by Coty in connection with complying with the directive, as well as to schedule a plenary hearing if necessary.

An Order accompanies this Opinion.

Dated: February _____, 2015

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Hon. David B. Katz