

Appendix F

1961 Building Permit, Fire Marshall Permit, Certificate of Occupancy

GUALCO LAW

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Marc D. Roberts
Of Counsel

December 18, 2012

Sent Via Email

Nathan King, P.G.
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, 14th Floor
Oakland, CA 94612

Re: Former Moonlite Cleaners
2640 El Camino, Santa Clara, California (the "Property")

Dear Mr. King,

This letter will address Scott Reisch's letter to you dated December 17, 2012, wherein he continues to argue that United Artists Theatre Circuit, Inc. ("United Artists") should not be named as a discharger under the California Water Code based on the authority in *Redevelopment Agency of the City of Stockton v. BNSF Railway Company* (2011), 643 F. 3d 688 and *Resolution Trust Corporation v. Rossmoor Corporation* (1995) 34 Cal.App 4th, 93. The cases cited by Mr. Reisch are not binding precedent on this present matter, a fact which Mr. Reisch tacitly acknowledges when he writes that the "cases provide *useful guidance* on this question of how the courts and the Board¹ are to determine what a landowner or other possessors of land 'should have known' about contamination caused by a third party." (italics added.) (Reisch letter P2,¶2). Mr. Reisch also appears to agree with Moonlite Associates LLC's, ("Moonlite Associates") position that 1) the cited case law is factually different from the present matter (Reisch letter P1,¶1), 2) the cases address private party common law nuisance claims heard by a court (Reisch letter P2,¶2), and 3) a clean-up order under California Water Code §13304 was issued to the defendant in the *Resolution Trust* case (Reisch letter P4, Footnote 4) (notwithstanding defendant's lack of knowledge as determined by the court for purposes of the nuisance claim²).

Despite Mr. Reisch's concurrence with Moonlite Associates' interpretation of the cases, he continues to argue their applicability to the present case solely based on the courts' findings

¹ This is an extreme leap by Mr. Reisch as his cited cases do not address how the Board is to determine what a landowner "knew or should have known"; they only address private party court cases under common law nuisance theories.

² Mr. Reisch's statement in Footnote 4, relative to the *Resolution Trust* case, that, "...it seems likely that the defendant was not liable under Section 13304" is pure speculation. In addition, whether the defendant in that case was ultimately liable under that section is immaterial. Moonlite Associates is only requesting that United Artists be named as a discharger.

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therein relative to whether defendants “knew or should have known” of prior contamination. Mr. Reisch then summarily concludes that United Artists had no knowledge of the contamination, and because the contamination was caused by the tenant, had no reason to be aware of the contamination. Notably, Mr. Reisch provides no affirmative factual support for this conclusion, merely arguing in the negative, that “There is accordingly no basis to conclude that, during the time when [United Artists] owned and lease the Site, it knew or should have known of any contamination on the [Property]...” (Reisch letter P4, ¶3.) Contrary to this assertion, there is sufficient basis contained in the site and building history of the Property, as set forth in the building permit, certificate of occupancy, and State Fire Marshall permit, that United Artists had actual knowledge of the use of chemicals at the Property, and, at the very minimum, should have known of the use of chemicals at the Property.

1961 Application for Building Permit and 1962 Certificate of Occupancy

United Artists owned the shopping center in 1961 when the “Application for Building Permit” for the “Building at Moonlite Cleaners-Moonlite Shopping Center” was issued and in 1962 when the Certificate of Occupancy was issued. Notably, the Application for Building Permit was issued to “United Calif [sic] Theatre” as “Owner” and signed by a contractor as the agent for “Owner-United Calif Theatre”. This Application for Building Permit shows that United Artists was not a detached owner of the shopping center but, in fact, was an active participant in the creation and building of the former Moonlite Cleaners business from the very beginning. Not only did United Artists know that the space was being built for a dry-cleaning business, United Artists actually prepared the interior space for occupation by Moonlite Cleaners. The Certificate of Occupancy was issued in 1962 listing “United California Theaters, Inc” as owner. A copy of the Building Permit and Certificate of Occupancy are enclosed.

State Fire Marshall Permit-Moonlight Cleaners-Moonlight Shopping Center-May 11, 1961

As shown above, United Artists had actual knowledge of the use of its property for a dry-cleaning business, a highly regulated business even in 1961. In order to operate its dry-cleaning business, Moonlite Cleaners had to obtain a State Fire Marshal permit to install a “Hoffman Master Jet Cleaning Unit, Hoyt SF-130 Reclaimer, Per Combo Filter-Still-Cooker, and a Vaper-Mat Model 800”, which required improvements not only to the interior of the premises, but to the exterior building owned and maintained by the owner. As shown in the permit, the Fire Marshall required Moonlite Cleaners to install exhaust fans, exhaust ducts terminating on the exterior of the building, a pump or gravity flow piping system, low-voltage door locks, in addition to other improvements listed in the fire permit. It is unlikely that Moonlite Cleaners was able to perform these extensive structural improvements to the interior and exterior of the Property without the knowledge of the owner. If United Artists did not have actual knowledge of the use of chemicals at the Property, the substantial building improvements necessitated by the

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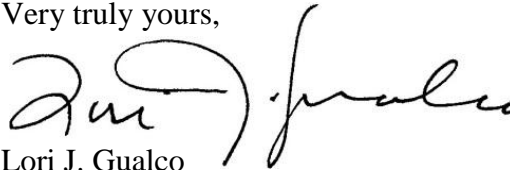
dry-cleaning operations should have put them on notice that this particular business had risks not inherent in other businesses.

The State Fire Marshal permit also indicated that, "in areas where a local or County Building Permit is required, the enclosed plan approved May 11, 1961 should be submitted to the building authority." As United Artists applied for and obtained the building permit on June 6, 1961, a month *after* the Fire Marshall issued its May 11, 1961 permit, it was the responsibility of United Artists as owner to submit the Fire Marshal's plan to the city building department. The Fire Marshal permit also put United Artists on actual notice of the potential contamination at the Property, including the potential for "toxic concentrations of vapors". Notwithstanding this actual notice, United Artists chose to allow Moonlite Cleaners to proceed with its business, chose to apply for a building permit, assisted Moonlite Cleaners by building the interior space to accommodate the cleaning business, and ultimately profited for nearly 17 years through the receipt of rent from Moonlite Cleaners. A copy of the State Fire Marshall Permit is enclosed.

Moonlite Associates maintains the case law cited by Mr. Reisch is inapplicable to the facts of the present case. However, even assuming the cases were somehow "useful" as to the issue of whether United Artists "knew or should have known", Moonlite Associates asserts that there are sufficient facts in the records that United Artists had actual knowledge of the use of chemicals as the owner, operator, and/or landlord, and because United Artists was an active participant in the initial construction and occupancy of the Property by Moonlite Cleaners. Even if United Artists did not have actual knowledge, there is more than sufficient evidence in the historical record that United Artists should have known of the use of chemicals at the Property and the potential for discharges. For these reasons, we believe that the Board should disregard the case law cited by Mr. Reisch as inapplicable and non-binding and name United Artists as a discharger.

Thank you for your attention to this matter. Please contact me if you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lori J. Gualco", written in a cursive style.

Lori J. Gualco

LJG/jh

cc: Client
Yuri Won, Esq.
Stephen A. Hill, Regional Board
John Wolfenden, Regional Board
Scott H. Reisch, Esq.

2640 | El Camerino Real LOT NO. _____
 NO. STREET BL 01961-22358 NPMT

APPLICATION FOR BUILDING PERMIT

CITY OF SANTA CLARA

Date 6/27 CITY OF SANTA CLARA, 1961 Permit No. 22358

Application is hereby made for a permit to Install Partitions
 a 4 story, Type 2 Building

at Japanite Cleaners - Moonlite Shopping Center
 to be occupied only as Partitions Only
 in accordance with Plans, Specifications and Plot-Plan filed herewith.

Estimated Value of Improvements, \$ \$1,000. Fee \$ 6.00

It is hereby agreed that the requirements of the Santa Clara Building and Zoning Ordinances and all other laws applicable to the construction, location, and use of buildings within the City of Santa Clara, will be complied with.

Owner United Calif Theater Address TIDEMARK

By Pete Henrichs Address _____

CONTRACTOR, AGENT
 Phone Ch 3-8314

Approved [Signature]
 BUILDING INSPECTOR

CO # 2632

State License

6LD1961.22358-60

City of Santa Clara

Building Department

TIDEMARK

Certificate of Occupancy

No. 1032

THIS IS TO CERTIFY that the (description of building or structure).

ONE STORY - MOONLITE SHOPPING CENTER
44' WIDE SECTION - CLEANERS & LAUNDRY

Erected on Lot No. _____ Tract No. _____
 Addition _____ Fire Zone 2
 Street No. 2640 El Camino Real Occ. Group F-2 Type V-N
 Owner United California Theatres, Inc. Use Zone P-C
 Architect _____ Engineer _____
 Contractor _____
 Building Permit No. 22358 Plan No. _____

has been inspected and the following occupancy thereof is hereby authorized.

OCCUPANCIES	Max. Allowable Floor Loads per sq. ft.
Basement	
1st floor	100 lbs.
2nd floor	
3rd floor	
4th floor	
Add floors as necessary	
Roof	20 lbs.

City of SANTA CLARA

July 10, 19 62

Glen C. Redditt
 Building Inspector

This certificate must be posted and permanently maintained in a conspicuous place at or close to the entrance of the building or structure referred to above.

2640 El Camino



STATE OF CALIFORNIA
State Fire Marshal
507 POLK STREET
SAN FRANCISCO 2

May 11, 1961

Moonlight Cleaners
Moonlight Shopping Center
Santa Clara, California

File No. 4446-E

Gentlemen:

THIS COMMUNICATION IS A PERMIT FOR:

- (X) establishment of
- () construction of a building or room in
- () additional construction in
- () reconstruction of
- () installation of machinery in
- () addition of machinery in
- () machinery rearrangement in
- () machinery replacement in

a clothes cleaning establishment at the above address.

Your attention is called to local ordinances, rules and regulations and restrictions by Zoning and Planning Commissions and agencies. Local requirements more stringent than those administered by this office shall apply. This permit is not a guarantee that local authorities will sanction the proposal and you are therefore cautioned to investigate thoroughly before continuing further with this undertaking.

In areas where a local or County Building Permit is required, the enclosed plan approved May 11, 1961 should be submitted to the building authority.

The enclosed plan is approved, subject to the conditions marked thereon and compliance with the following:

Moonlight Cleaners
Moonlight Shopping Center
Santa Clara, California

-2-

File No. 4146-E
May 11, 1961

COMMENTS:

This permit shall cover only the installation of a Hoffman Master-Jet Cleaning Unit, Hoyt SF-130 Reclaimer, Per Combo Filter-Still-Cooker, and a Vaper-Mat Model 800.

Final approval, however, is contingent on satisfactory compliance with the following:

1. All processes consisting of washing, extracting, and deodorizing, solvent cleaned garments shall take place in equipment approved for that purpose by the State Fire Marshal.
2. The State Fire Marshal reserves the right to require a ventilated enclosure around cleaning equipment in the event a toxic concentration of vapor develops.
3. The exhaust fans of the cleaning and reclaiming units shall be automatic in operation whenever the doors are opened. Exhaust fans, when operating as provided above, shall automatically exhaust vapors to the ventilation duct provided therefor.
4. Exhaust ducts shall terminate on the exterior of the building, not less than eight feet (8') from any opening in any building.
5. In the event muck is removed or handled in a wet condition, floor level ventilation or an approved type breathing mask shall be provided.
6. The transfer of reclaimed solvent from the muck-reclaimer to the cleaning system shall be made through an approved piping system by means of pump or gravity flow. In no case shall the reclaimed solvent be circulated or transferred by air pressure or open container.
7. Low voltage door locks shall be installed on the Reclaimer and Cleaning Unit, locks to be inter-connected with dampers on the Vaper-Mat, so that the fan must be on and the dampers of the Vaper-Mat must be open before units can be put into operation.

Very truly yours,

GLENN B. VANCE
State Fire Marshal

By

John W. Fricke,
Senior Deputy

JWF:WTF:fm
Enc.

cc: Santa Clara Fire Dept-w/plan