

**CIVIL CASE SUMMARIES**

**RHODE ISLAND SUPREME COURT**

**2017 – 2018**

**2016-2017 cases decided after last year's Annual Meeting**

**Adam Correia v. John Bettencourt et al. v. James Martitz et al., 162 A.3d 630 (R.I. 2017)**

The plaintiff, Adam Correia, was seriously injured when a friend's High Standard Model 1911 .45-caliber handgun accidentally discharged, causing a bullet to strike Correia in the abdomen. At the time of the accident, the friends were target shooting on property owned by the defendants, John Bettencourt and Theresa Bettencourt (the Bettencourts). Correia appealed from a final judgment pursuant to Rule 54(b) of the Superior Court Rules of Civil Procedure granting the Bettencourts' motion for summary judgment. This case came before the Supreme Court sitting at Woonsocket High School, pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not be summarily decided. After considering the parties' written and oral submissions and reviewing the record, the Supreme Court affirmed the judgment of the Superior Court and concluded that the factual circumstances before the Court did not give rise to the imposition of a duty on the defendant.

**Charles E. Fogarty v. Ralph Palumbo, CPA et al. v. Ralph Palumbo, CPA et al.; James Ottenbacher v. Ralph Palumbo, CPA et al. 163 A.3d 526 (R.I. 2017)**

This case arose from the August 15, 2005, sale of an approximately 360-acre tract of undeveloped land located on Dye Hill Road in Hopkinton (the property). The plaintiffs, Charles E. Fogarty and James Ottenbacher, averred that the sale of the property to an entity of which the defendants, Ralph Palumbo and Jonathan Savage, were principals, without their consent, was fraudulent; they each consequently filed an eight-count complaint in Superior Court. The plaintiffs also named Pilgrim Title Insurance Company (Pilgrim), which was the title insurance and escrow agent in connection with the sale of the property, as a defendant in this case. Following discovery, all three named defendants, Palumbo, Savage, and Pilgrim, filed a total of five motions for summary judgment, all of which were granted by a justice of the Superior Court. The Supreme Court affirmed summary judgment as to Pilgrim on the plaintiffs' negligence counts against it, as it held such claims were barred by the applicable statute of limitations and that the plaintiffs failed to meet the requirements of the discovery-rule exception. The Supreme Court vacated the hearing justice's decision to grant summary judgment on all counts against Palumbo and Savage based on the plaintiffs' purported failure to present evidence of lost profits, as it deemed that the evidence presented by the plaintiffs was sufficient to raise a genuine issue of material fact. However, the Supreme Court affirmed summary judgment on counts 6 (fraud), as it deemed such counts to be derivative. Moreover, the Supreme Court affirmed summary judgment on counts 4 (tortious interference with contractual relations), counts 5 (tortious interference with prospective contractual relationship) and counts 8 (civil conspiracy) as to both Palumbo and Savage, and on counts 3 (breach of contract) against Savage. Accordingly, the Supreme Court affirmed the judgment of the Superior Court in part, vacated the judgment in

part, and remanded the record to the Superior Court for further proceedings with respect to the plaintiffs' two remaining counts against Palumbo.

**Stephen L. Key et al. v. Brown University et al., 163 A.3d 1162 (R.I. 2017)**

The plaintiffs, Stephen L. Key, as Trustee of the Stephen L. Key Trust – 2008, and individually, and Melanie D. Mitchell, appealed from a judgment entered in Superior Court in favor of the defendants, Brown University and the City of Providence. The first count of the plaintiffs’ second-amended complaint sought a declaration pursuant to the Uniform Declaratory Judgments Act (G.L. 1956 chapter 30 of title 9) that Brown University’s construction of an artificial turf field hockey field with attendant bleachers, press box, electronic scoreboard, and public-address system was an unlawful use under the Providence zoning ordinances. Ruling that the plaintiffs lacked standing to seek such a declaration, a Superior Court justice granted the defendants’ motion for summary judgment as to count 1 and entered judgment pursuant to Rule 54(b) of the Superior Court Rules of Civil Procedure.

After reviewing the record, the Supreme Court concluded that the hearing justice erred in finding that the plaintiffs had no standing with respect to count 1 of the second-amended complaint because the plaintiffs did indeed allege an injury in fact related to their home—allegations which referenced measurable economic injuries that they had suffered as a result of Brown University’s project. The Supreme Court, therefore, vacated the order of the Superior Court and remanded the matter for further proceedings.

## 2017-2018 CASES

### Sevan (Bjorklund) Cappuccili v. David A. Carcieri, M.D., d/b/a Medical Office of David A. Carcieri, M.D. et al., 174 A.3d 722 (R.I. 2017)

The plaintiff, Sevan (Bjorklund) Cappuccilli, appealed to the Supreme Court following a Superior Court judgment in favor of the defendants, David A. Carcieri, M.D., d/b/a Medical Office of David A. Carcieri, M.D., and Women & Infants Hospital of Rhode Island.

The plaintiff's claim against the defendants derives from a vein injury she alleged occurred during an emergency cesarean section at Women & Infants. The jury ultimately returned a verdict for the defendants. The trial justice denied the plaintiff's subsequent motion for new trial, concluding that reasonable minds could differ. On appeal, the plaintiff asserted that the trial justice failed to weigh the credibility of the evidence in deciding the motion. The plaintiff also argued that the trial justice improperly excluded evidence from trial.

The Supreme Court rejected the plaintiff's contention that the trial justice failed to make a credibility determination in deciding the motion for new trial. The Court also determined that the plaintiff's arguments regarding the excluded evidence were unpersuasive. Accordingly, the Court affirmed the Superior Court's judgment.

**Joseph Clifford et al. v. Gina Raimondo, in her capacity as Governor of the State of RI, et al., No. 2016-24-A., No. 2016-25-A., No. 2016-26-A., No. 2016-28-A., No. 2016-49-A.**  
**Rhode Island Public Employees' Retiree Coalition et al. v. Gina Raimondo, in her capacity as Governor of the State of Rhode Island, et al., No. 2015-379-Appeal.**

In these consolidated matters, the plaintiffs appeal a Superior Court justice's approval of a class action for settlement purposes only. The plaintiffs, all state and municipal employees, alleged that the settlement violated their constitutional rights in denying them their retirement benefits. They contended that the trial justice's certification of the class was improper and that the settlement was not fair, reasonable, and adequate.

The Supreme Court first held that the trial justice did not abuse her discretion in certifying the class in accordance with Rule 23(a) of the Superior Court Rules of Civil Procedure, because the requirements of numerosity, commonality, typicality, and adequacy of representation were all met. Next, the Court determined that the trial justice did not abuse her discretion in certifying the class pursuant to Rule 23(b)(2), because the plaintiffs sought mainly equitable relief, and any money damages would be merely incidental. The Court also held that the trial justice's division of the class into subclasses was not improper.

Finally, the Court concluded that the trial justice did not abuse her discretion in finding that the settlement was procedurally fair. In addition, the Court affirmed the trial justice's determination that the settlement was substantively fair, reasonable, and adequate, acknowledging that the trial justice conducted an exhaustive review of the factors necessary to ascertain the fairness of the settlement and did not overlook any of the objectors' concerns. Thus, the Supreme Court affirmed the judgment of the Superior Court.

Justice Robinson did not participate.

**Karen Dent v. PRRC, Inc., d/b/a Price Rite, No. 2016-129-Appeal.**

The plaintiff, Karen Dent, is before the Supreme Court on appeal from the entry of summary judgment in favor of the defendant, PRRC, Inc. d/b/a Price Rite. The plaintiff suffered an injury when she fell on a liquid substance on the floor of an aisle in the defendant's grocery store. The plaintiff then filed a five-count amended complaint in Superior Court alleging: negligence; breach of contract; mode of operation; failure to warn; and breach of warranties. At a hearing, the trial justice granted summary judgment in favor of the defendant with respect to the plaintiff's negligence claim, and dismissed the remainder of the plaintiff's claims. The plaintiff timely appealed.

The Supreme Court addressed the arguments of both parties and concluded that the trial justice engaged in weighing and evaluating the evidence presented to him, which is an impermissible function at the summary-judgment stage. However, the Supreme Court also concluded that the remainder of the plaintiff's claims are without merit, and declined to adopt the theory of "mode of operation" as a cause of action. Accordingly, the Supreme Court vacated the judgment of the Superior Court granting summary judgment on the negligence count in favor of the defendant, and affirmed the judgment dismissing the remainder of the plaintiff's claims.

**Stephanie Flynn et al. v. Nickerson Community Center et al., 177 A.3d 468 (R.I. 2018)**

The plaintiffs appeal from the Providence County Superior Court hearing justice's grant of summary judgment in favor of the defendant. The incident underlying this appeal was a fatal car accident in Providence caused by a juvenile after he stole a van from the defendant's premises. On appeal, the plaintiffs argue that the hearing justice erred in concluding that the defendant did not owe a duty to the plaintiffs because questions of fact exist.

The Supreme Court concluded that the defendant did not owe a duty of care to the plaintiffs. The Court held that, despite the plaintiffs' contentions that various issues of fact still remained at the summary judgment stage, some of the evidence submitted by the plaintiffs was inadmissible hearsay and not competent evidence admissible at summary judgment. Next, the Court determined that there was no duty owed on the basis of any purported special relationship between the defendant and the juvenile or the plaintiffs because there was no evidence that the juvenile was known in any way to the defendant. Further, the Court reasoned that, even if the defendant had failed to follow its security protocols, thus purportedly enabling the juvenile to break into its premises and steal the keys to the van, a car accident some distance away from the facility was not a foreseeable consequence of a breaking and entering at the premises. Accordingly, the Court affirmed the judgment of the Superior Court.

Justice Goldberg did not participate.

**George T. Hawes v. Daniel P. Reilly, No. 2015-250-Appeal.**

The plaintiff, George T. Hawes, appealed from the April 29, 2015 final judgment entered in the Newport County Superior Court. That judgment was entered to reflect an April 27, 2015 written decision, in which the hearing justice quashed an execution previously issued by the Superior Court on a State of Utah District Court judgment and dismissed the plaintiff's petition to enforce the Utah judgment, on the ground that Utah did not have personal jurisdiction over the defendant, Daniel P. Reilly. On appeal, the plaintiff contended that the hearing justice erred in refusing to grant full faith and credit to the order of the state District Court in Utah with respect to personal jurisdiction. He further averred that the hearing justice erred in determining that Utah did not have personal jurisdiction over Daniel Reilly. Lastly, he posited that Daniel Reilly had "forfeited the defense of lack of personal jurisdiction."

The Supreme Court held that the order of the State of Utah District Court at issue was not entitled to full faith and credit because the issue of personal jurisdiction was not fully and fairly litigated or finally decided in Utah. The Court further held that Utah did not have personal jurisdiction over Daniel Reilly. Lastly, the Supreme Court determined that Daniel Reilly had not forfeited his defense of lack of personal jurisdiction. Accordingly, the Supreme Court affirmed the judgment of the Superior Court.

**Angela Luis v. Kevin Gaugler, No. 2016-334-Appeal.**

The defendant, Kevin Gaugler, appealed from a Providence County Family Court judgment granting the request of the plaintiff, Angela Luis, for a divorce. Angela alleged that she and Kevin, although not formally wed, were married at common law based on their intentions and conduct over the course of their twenty-three-year relationship. The trial justice agreed, and concluded that Angela presented clear and convincing evidence that she and Kevin were married by common law.

The Supreme Court held that the trial justice erred in determining that the proffered evidence satisfied the standard of clear and convincing to support the conclusion that Angela and Kevin were married at common law. Accordingly, the Court vacated the trial justice's judgment.

**John R. Grasso v. Gina M. Raimondo et al.; John R. Grasso v. Employees' Retirement System of Rhode Island, 177 A.3d 482 (R.I. 2018)**

These consolidated cases came before the Supreme Court on an appeal and a petition for the issuance of a writ of certiorari for review of a November 5, 2015 bench decision in Providence County Superior Court in favor of the plaintiff, John R. Grasso. The defendants, Governor Gina Raimondo, Frank Karpinski, the Employees' Retirement System of Rhode Island, and the State of Rhode Island, contended before the Supreme Court that the trial justice erred in determining that Mr. Grasso need not comply with G.L. 1956 §§ 45-21-23 and 45-21-24 in order to continue receiving his accidental disability pension because, in his view, those sections were not applicable to his pension.

The Supreme Court held that Mr. Grasso was indeed required to comply with §§ 45-21-23 and 45-21-24 and, as such, could be required to undergo independent medical examinations and disclose information with respect to gainful employment as conditions of his accidental disability pension under G.L. 1956 § 45-21.2-10. Accordingly, the Supreme Court vacated the decision of the Superior Court.

**North Kingstown School Committee v. Ken Wagner et al., 176 A.3d 1097 (R.I. 2018)**

This matter arises out of administrative proceedings adjudging student allegations of inappropriate behavior by high school teacher James Viner. Following a full evidentiary hearing before the North Kingstown School Committee resulting in a decision to suspend Viner without pay for the 2015-2016 the school year and terminate his employment immediately thereafter “for good and just cause,” Viner appealed that decision to the commissioner of elementary and secondary education within the Rhode Island Department of Elementary and Secondary Education (RIDE). The RIDE hearing officer granted Viner’s subpoena requests for documents and the testimony of two attorneys acting as legal counsel for the North Kingstown School Committee. In response, the school committee filed a miscellaneous petition to quash the subpoenas in the Superior Court. The hearing justice granted in part and denied in part the school committee’s petition to quash three subpoenas.

On appeal to the Supreme Court, Viner challenged the hearing justice’s grant of the school committee’s petition to quash the subpoenas compelling the testimony of the attorneys. He contended that the hearing justice applied the attorney-client privilege to the attorneys’ anticipated testimony in an overly broad manner when he failed to make question-by-question privilege determinations.

The Supreme Court held that to ensure that the attorney-client privilege remains strictly confined, the question of attorney-client privilege should be remanded to the Superior Court in order for the attorneys to testify either in person or by deposition and the school committee to assert a claim of privilege on a question-by-question basis. Following the hearing justice’s privilege determination, any party in interest may request the RIDE hearing officer to reopen the evidence to receive any testimony from the attorneys that has been deemed to be nonprivileged

by the hearing justice. Accordingly, the Supreme Court vacated the Superior Court judgment granting the school committee's motion to quash the attorneys' subpoenas, affirmed the judgment in all other respects, and remanded this case to the Superior Court the question of attorney-client privilege.

**John Sauro v. James Lombardi, in his capacity as Treasurer of the City of Providence et al., 178 A.3d 297 (R.I. 2018)**

The defendant, city of Providence (defendant or the city), is before the Supreme Court on appeal from the entry of summary judgment in favor of plaintiff, John Sauro (Sauro or plaintiff). The plaintiff suffered an injury to his right shoulder while performing his duties with the Providence Fire Department. Due to this injury, plaintiff was unable to return to work and was given an accidental disability pension by the city. After undergoing an independent medical examination, it was determined that plaintiff had recovered from the work-related injury, but could not resume service with the fire department due to unrelated physical and psychological illnesses. As a result, the city terminated plaintiff's accidental disability pension benefits.

The plaintiff sought declaratory relief in the Superior Court, asking the trial justice to interpret section 17-189(8)(a) of the pension ordinance in plaintiff's favor. At the hearing, the trial justice interpreted the ordinance in plaintiff's favor and ordered the city to place plaintiff on a waiting list, as contemplated by § 17-189(8)(a), to return to service and to continue to pay plaintiff's accidental disability pension.

The Supreme Court addressed the arguments of both parties and concluded that, based on plaintiff's extensive unrelated physical and psychological illnesses, he was neither "qualified" nor "prepared" to resume service in the fire department, as §17-189(8)(a) plainly requires, and therefore should not be placed on a waiting list or continue to receive an accidental disability pension. Accordingly, the Supreme Court vacated the judgment of the Superior Court.

**Simeng Wu-Carter v. Thomas G.J. Carter, 179 A.3d 711 (R.I. 2018)**

The defendant, Thomas Carter, appealed from a Family Court decision pending entry of final judgment following a divorce proceeding. The trial justice found the marital estate to be virtually nonexistent, with most of the disputed assets belonging solely to the plaintiff, Simeng Wu-Carter. Thomas disagreed with that finding; he argued that the trial justice erred in not identifying certain assets as marital property, which would have been subject to equitable distribution upon divorce.

The Supreme Court affirmed in part and vacated in part the decision pending entry of final judgment of the Family Court. Deferring to the trial justice's findings of fact, the Court held that Simeng's car was properly excluded from the marital estate because it was premarital property. The Court also held that, based on the trial justice's findings, certain funds in Simeng's individual bank accounts were correctly identified as nonmarital property because they were a gift or loan to Simeng alone during the marriage for the purpose of satisfying immigration requirements. However, the Court held that the rest of the money in Simeng's individual bank accounts was marital property because it was derived from income she earned during the marriage; her intent to keep her finances separate from Thomas's was not determinative of its classification as marital or nonmarital. Those funds were property acquired during the marriage, and, as such, they were subject to equitable distribution upon the parties' divorce. Accordingly, the Supreme Court remanded the case to the Family Court to distribute that money pursuant to the parties' stipulation.