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1998 Survey of Rhode Island Law: Cases: Remedies

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Remedies. *DiPardo & Sons, Inc. v. Lauzon*, 708 A.2d 165 (R.I. 1998). An action for tortious interference with contractual relations brings with it a right to a jury trial under the Rhode Island Constitution, even where the complaint requests substantial equitable relief.

In *DiPardo & Sons, Inc. v. Lauzon*,[1] the Rhode Island Supreme Court faced the issue of whether, under Rhode Island law, tortious interference of contract was an equitable or legal claim, and, whether a party to such a claim has the right to a jury trial. The court determined that tortious interference with contract was a legal claim, and, as such, a party to a cause of action involving this claim has the right to a trial by jury under Rhode Island law.[2]

FACTS AND TRAVEL

The DiPardo family funeral business, established in 1928 by Egidio DiPardo, was for many years one of the most successful funeral homes in Woonsocket.[3] The business thrived for two generations, but then suffered a relentless attack at the hands of Egidio's double-dealing grandson, James DiPardo (James).[4]

James apprenticed under his father Angelo and became a licensed embalmer and funeral director in the 1970s, working in the family business along with his father. A "bitter row" with his father, however, caused James to quit the family business and pursue other interests.[5] James then returned after Angelo died, and acquired 49 percent of the corporate stock in DiPardo & Sons from his mother, Elaine.[6]

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1. 708 A.2d 165 (R.I. 1998).
2. *See id.* at 173.
3. *See id.* at 167.
4. *See id.*
5. *Id.*
6. *See id.* The nature of this acquisition was itself in serious contention, with James insisting the stock was a gift to him in grateful appreciation of his years of underpaid service, and Elaine contending that the stock transfer was pursuant to James' agreement to pay $58,000 in the future. In any event, no payments on the note were ever made by James, and Elaine's claim later became part of the litigation of the case. *See id.* The issue was decided against James at trial with the trial justice finding "overwhelming evidence . . . that it was not a gift of stock for past or future services . . . ." *Id.* at 176.

Relations between James and Elaine deteriorated, and in early 1993 they had a disagreement over whether James should buy out his mother's interest in the family business entirely and obtain sole ownership in the corporation.[7] According to Elaine's trial testimony, James uttered death threats to her and threatened to destroy the name of the DiPardo funeral business.[8] During the week of February 6, 1993, James began taking steps to undermine his mother's apparent intention to maintain administrative control over DiPardo & Sons. He paid all the corporation's outstanding mortgage and other debts, dismissed its employees, and "filched" its client lists and other business documents.[9]

James then posted a "Closed" sign in the window of the funeral home (notwithstanding that the funeral home still had some 300 "pre-arranged-funeral contracts" in its inventory),[10] and negotiated with Lauzon, a principal of another Woonsocket funeral home, to form a competing funeral business, Lauzon & DiPardo Funeral Home, L.L.C. (Lauzon & DiPardo).[11] Opening the doors of the new funeral home just doors down the street from DiPardo & Sons, James and Lauzon advertised on local radio stations that Lauzon & DiPardo's "new location" was just down the street.[12] These confusing advertisements, issued four times daily, implied that the original firm, DiPardo & Sons, had simply changed its name and moved.[13]

The still-existent firm of DiPardo & Sons suffered further attacks when James and Lauzon communicated with a large number of its former customers with the intention of wooing them to the new funeral home.[14] James and Lauzon also sent form letters to DiPardo & Sons customers, whose names were drawn from the lists that James had filched from DiPardo & Sons,[15] designed to encourage clients to transfer their contracts to the newly formed funeral home.[16] Lauzon personally ferried some of the clients to

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7. *Id.*
8. *Id.* at 167 n.1.
9. *Id.* at 167.
10. *Id.*
11. *See id.*
12. *See id.* at 168.
13. *See id.*
14. *See id.*
15. *See id.*
16. *See id.*

the DiPardo & Sons premises to facilitate these transfers of contracts.[17] In addition, Lauzon and James filed "specious" complaints with various state regulatory agencies against DiPardo & Sons.[18]

The effect of this "cutthroat onslaught" on DiPardo & Sons was to cause it severe financial losses.[19] Upon learning of James' attack upon the family business, Elaine, owner of the controlling interest in DiPardo & Sons, filed suit on behalf of the corporation in superior court on April 1, 1993 seeking both money damages and an order enjoining James and the Lauzon defendants[20] from continuing in their course of conduct.[21] The court issued a temporary restraining order[22] and then, after a hearing on April 16, 1993, issued a preliminary injunction restraining James and the Lauzon defendants from affirmatively soliciting any customers of DiPardo & Sons, and even from using the DiPardo name.[23]

The complaint against James and the Lauzon defendants contained three counts and numerous specific allegations, some of which were equitable and some of which were legal in nature.[24] The defendants filed timely demands for a jury trial, but by the time of trial, only one count—an allegation that Lauzon had tortiously interfered with the present and prospective contractual relations of DiPardo & Sons, Inc.—involved an issue for which a jury trial was demanded.[25]

The trial judge concluded that the case was predominately equitable in nature,[26] and ruled that the count of tortious interfer-

17. *See id.*

18. *Id.*

19. The evidence presented at trial established that DiPardo & Sons suffered a "grave loss of business" following James' conduct. *Id.* at 175.

20. *See id.* The Lauzon defendants included Lauzon, Joseph Lauzon & Sons Funeral Home, Inc. and the Lauzon & DiPardo Funeral Home, L.L.C. *See id.* at 168 n.2.

21. *See id.* at 168.

22. *See id.* The temporary restraining order enjoined James and the Lauzon defendants from using the name DiPardo and from having any contact with individuals who had entered into pre-arranged funeral agreements with DiPardo & Sons. *See id.*

23. *See id.*

24. *See id.*

25. *See id.* at 169.

26. The trial judge concluded that

> [t]he primary thrust and primary complaint seeks equitable relief . . . primarily, injunction against the defendants from engaging in any further

ence with contract rights did not require a jury trial.[27] Over the protestations of the Lauzon defendants, the trial judge tried the entire case without a jury. At the conclusion of the bench trial, the trial justice entered judgment for the plaintiffs in the amount of $285,000 in compensatory damages along with interest and costs; and $50,000 in punitive damages against each defendant.[28] The court also entered judgment in favor of DiPardo & Sons, Inc. for the approximately $32,000 that James had diverted into an unauthorized unilateral pay raise for himself.[29] The court also issued a permanent injunction virtually identical in its terms to the preliminary injunction issued before trial.[30]

ANALYSIS AND HOLDING

The *Lauzon* court was faced squarely with two important issues of jury right jurisprudence: first, whether a claim of tortious interference with contract rights brings with it a right to jury trial at all, and second, whether, if the right to jury trial is applicable, a jury trial must be had in a case arguably overshadowed by other, equitable, issues.[31]

> acts of oppression or misconduct against the plaintiffs' corporation including but not limited to the use of the plaintiffs' corporate name, trade name, and trade mark and from attacking and improperly soliciting plaintiffs' customers and customer list and enjoining the defendants from engaging in unfair competition against the plaintiffs for the purpose of misleading and confusing the public and for purposes of damaging or destroying the plaintiffs' business.

Id.

27. *See id.*

28. *See id.* The order of punitive damages was vacated by the supreme court pursuant to an agreement by all parties at a pre-briefing conference that the trial justice erred in awarding punitive damages against James' estate because he had died before trial. *See id.* at 176.

29. *See id.* James had died before the trial commenced and his estate was substituted as a party defendant in his place. *See id.* at 169 n.4.

30. *See id.* at 169.

31. Justice Flanders, writing for the Rhode Island Supreme Court, framed the issue as "whether the legislative policies, constitutional considerations, and traditional practices underlying the *Sasso* rule counsel its continued vitality in the context of our modern rules of civil procedure." *Id.* at 170. The "*Sasso* rule" referred to by Justice Flanders is that a Rhode Island court must "conduct a jury trial upon a timely request with respect to any underlying legal issues in a civil action which were traditionally cognizable at common law when money damages were sought even when, as here, a complaint requests substantial equitable relief." *Id.* The rule stems from *Maryland Cas. Co. v. Sasso*, 204 A.2d 821 (R.I. 1964), a decision

The Jury Trial Right in Rhode Island

According to the Rhode Island Supreme Court, "a fundamental doctrine of Rhode Island civil practice requires that claims historically cognizable at law should be tried by a jury."[32] The tort of interference with contract is relatively modern, at least in its current form; Rhode Island first recognized the tort in 1934.[33] Legal commentators consulted by the *Lauzon* court tend to identify 1853 as the "first appearance of the tort in its contemporary visage."[34] Yet this was a decade *after* the adoption of the Rhode Island Constitution, so whether the right to jury applies was an issue requiring some thoughtful consideration.[35]

In *Lauzon*, the Rhode Island Supreme Court went through a historical tour of common law precedents in and out of Rhode Island before and after the adoption of its 1843 constitution;[36] more than a dozen sources were cited, in all. The court even noted that "incipient forms" of actions for tortious interference with contract rights could be discerned from as far back as Roman law.[37] The court concluded that the modern tort of interference with contract is roughly analogous to common law suits for intentionally calculating to "damage another in that other person's property or trade."[38]

"The canvas of ancient authorities," wrote the *Lauzon* court, "persuades us that Rhode Island's courts, if presented with a similar case in 1843, would have recognized . . . that the allegations of tortious and malicious interference with contract as pled in this

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pre-dating the 1965 merger of Rhode Island's separate law and equity courts. *See id.*

32. *Id.* at 169.

33. *See id.* at 172 (citing Local Dairymen's Coop. Assoc., Inc. v. Potvin, 173 A. 535, 536 (R.I. 1934)).

34. *Id.* at 173 (citing W. Page Keeton et al., Prosser and Keeton on The Law of Torts § 129, at 980 (5th ed. 1984)).

35. *See id.* at 172. Strong implications that the tort of interference with contract was thought of as triable in both law and equity courts at the time of the tort's first appearance in Rhode Island can be identified in *Local Dairymen's Cooperative Association, Inc. v. Potvin*, 173 A. 535, 536 (R.I. 1934). *See id.* (stating that "the *Potvin* decision also impliedly recognized that if damages were requested, the same claim [of interference with contract] could be brought at law").

36. *Id.* at 172-75.

37. *Id.* at 174.

38. *Id.* at 173 (quoting Mogul S.S. Co. v. M'Gregor, Gow, & Co., 23 Q.B.D. 598, 613, A.C. 25 (Eng. C.A. 1889)).

complaint stated an action on the case cognizable at law."[39] Thus, the protest of the defendants that the right to jury trial was improperly denied them was validated.[40]

The Mixed Law and Equity Issue

Lauzon, for the first time since the merger of law and equity in 1965, resolved the question whether in Rhode Island, a single claim "at law" was enough to bring an otherwise heavily equitable claim under the umbrella of the jury trial right. The Rhode Island Supreme Court, in *Maryland Casualty Co. v. Sasso*,[41] had answered this question in the affirmative *before* the merger. The merger of law and equity was a significant alteration of Rhode Island practice, however, and the outcome was in question.[42] The trial judge in *Lauzon* had dismissed Lauzon's demands for a jury trial with the statement that the case was primarily equitable in nature and that "the mere inclusion of a prayer for damages does not convert it to an action in law."[43]

The supreme court dismissed this argument early on in its decision, remarking that it had long been the law in Rhode Island that mixed law and equity cases must defer to recognition of the jury right.[44] Although equity courts had historically had the power to try any incidental legal issue without a jury,[45] modern practice requires that all such issues be brought before a jury upon request. The *Lauzon* precedent closely corresponds to the federal precedents of *Beacon Theatres, Inc. v. Westover*[46] and *Dairy Queen, Inc. v. Wood.*[47] Regardless whether a mixed law-and-equity case could have been tried entirely in an equity court under the common law of the early 1800s, such courts in Rhode Island must defer to the "constitutionally influenced" policy that favors a jury trial of all legal issues before moving on to equitable issue.[48] The primary

39. *Id.* at 174.
40. *See id.* at 175.
41. 204 A.2d 821 (R.I. 1964).
42. *See Lauzon*, 708 A.2d at 175.
43. *Id.* at 169.
44. *See id.*
45. The trial justice determined that "a fair reading of the complaint . . . is a prayer for equitable relief and that the mere inclusion of a prayer for damages does not convert it to an action in law." *Id.*
46. 359 U.S. 500 (1959).
47. 369 U.S. 469 (1962).
48. *Lauzon*, 708 A.2d at 170.

difference is that Rhode Island continues to adhere to a strict historical analogy test for qualifying causes of action, rather than accept a remedy-sought test.

Thus, *Lauzon* extended the *Sasso* rule to post-merger Rhode Island practice, applying the right to jury trial to the mixed claims presented in the case "as if it had been brought in a pre-merger court of law seeking money damages."[49]

CONCLUSION

In *DiPardo & Sons, Inc. v. Lauzon*, the Rhode Island Supreme Court found that the 1965 merger of Rhode Island's separate courts of law and equity did not alter the court's earlier jurisprudence with regard to the right to jury trial in civil suits. A jury trial is required upon demand in suits for tortious interference with contract, or other civil actions which by analogy were traditionally recognized at common law, even when a complaint requests substantial equitable relief. Rhode Island continues to follow the general path laid out at the national level by the United States Supreme Court.

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49. *Id.* at 175.

Remedies. *Merrill v. Trenn*, 706 A.2d 1305 (R.I. 1998). In a personal injury dispute where the plaintiff settles with one defendant without giving a release, the later settling defendant ought to be charged with interest at statutory rate on the total amount of damages. Interest should be calculated from the time the cause of action arose until the date the first settlement payment is made. Furthermore, the entire amount of damages should be reduced by the total amount of the prior payment and the non-settling party ought to be charged with interest on the reduced balance of the remaining damages. Interest should accrue from the time of the earlier payment until the date of final judgment.

FACTS AND TRAVEL

On October 31, 1991, Christopher Merrill (Merrill) and James Pakuris (Pakuris) were traveling in a car driven by Edward Trenn (Trenn) on Route 102 in North Kingstown.[1] While speeding, Trenn attempted to pass a school bus on the right.[2] At the same time, the school bus tried to merge into the right lane.[3] The two vehicles collided resulting in both Merrill and Pakuris sustaining substantial injuries.[4]

On June 18, 1993, both Merrill and Pakuris filed suit in superior court against the driver of the car Trenn, the owner of the bus, Arthur Bennett, the Town of North Kingstown, and the driver of the bus, Betty Williams.[5] In April of 1995, Trenn's automobile insurance settled with Merrill for $25,000, the extent of the policy.[6] At the time of the settlement no mention was made as to whether Merrill had released Trenn from all liability.[7] Additionally, Merrill did not release the other defendants from liability or include language that would reduce his claim against them by more than the $25,000 settlement payment.[8]

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1. *See* Merrill v. Trenn, 706 A.2d 1305, 1305 (R.I. 1998).
2. *See id.* at 1306.
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.* Furthermore, Rhode Island's version of the Uniform Contribution Among Tortfeasors Act states that:

> [a] release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release

After receiving the settlement payment from Trenn, Merrill entered into non-binding arbitration with the remaining defendants.[9] The arbitrator assessed Merrill's total damages to be $66,250.[10] Additionally, the arbitrator concluded that the bus driver was thirty-five percent at fault and Trenn was sixty-five percent at fault.[11] Merrill elected to reject the arbitration award and the case proceeded to a de novo trial in superior court.[12] On April 12, 1996, prior to the commencement of trial, the parties reached an agreement whereby the remaining defendants would pay Merrill the balance of his total damages.[13] Additionally, both parties agreed that Merrill was entitled to prejudgment interest, however, neither party could agree upon how to factor in the $25,000 Trenn settlement or the method to use to determine the interest.[14] Therefore, these two issues were submitted to the superior court for determination on September 16, 1996.[15] The superior court determined that:

> interest should be calculated at [twelve] percent per annum on the total amount of Merrill's losses from the date of his injury (when the accident occurred and his cause of action arose) to the date of the $25,000 Trenn payment, or approximately forty-one and one-half months. At that point the Trenn payment would be subtracted from the total damages and interest would continue to accrue on the difference until the date of the final settlement, or twelve additional months.[16]

The defendants petitioned for reconsideration, arguing that the court was bound to compute interest based on the method put forth in the Rhode Island Supreme Court's holding in *Margadonna*

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so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

R.I. Gen. Laws § 10-6-7 (1956) (1996 Reenactment).

9. *See Merrill*, 706 A.2d at 1306-07.

10. *See id.* at 1307.

11. *See id.* at 1307 n.7.

12. *See id.* at 1307.

13. *See id.* (noting that both parties agreed to calculate Merrill's damages at $66,250).

14. *See id.*

15. *See id.*

16. *Id.* at 1308.

v. Otis Elevator Co.[17] The superior court reversed itself and adopted a computation method in line with the *Margadonna* method.[18] Merrill appealed this decision to the Rhode Island Supreme Court asserting that (1) the *Margadonna* method of computing interest is unfair to the settling party and (2) the court is violating his equal protection rights by using the *Margadonna* method.[19]

BACKGROUND

In *Margadonna*, the plaintiff was injured while exiting an elevator owned by Rhode Island Hospital and manufactured by Otis Elevator Company.[20] The plaintiff sued both parties and eventually settled with the hospital.[21] After trial, a verdict was returned against Otis.[22] Similar to this case, a dispute arose as to how prejudgment interest should be calculated.[23] The court held that according to "[section] 10-6-7 of the Uniform Contribution Among Tortfeasors Act (UCATA), the total consideration paid by an earlier-settling joint tortfeasor had to be deducted from the damages verdict before prejudgment interest could be computed."[24] The *Margadonna* court adopted this method so that "'the non-settling tortfeasor is not forced to pay interest on the amount of the settlement.'"[25]

ANALYSIS AND HOLDING

In *Merrill*, the court holds that prejudgment interest should be computed by using the method originally put forth by the superior court.[26] Specifically, since Trenn did not give any release, section 10-6-7 and thereby, the *Margadonna* method are inapplicable.[27] To determine a proper method the court looks to the policies underlying the prejudgment interest statute, section 9-21-10 of the

17. 542 A.2d 232 (R.I. 1988).
18. *See Merrill*, 706 A.2d at 1309.
19. *See id.*
20. *Margadonna*, 542 A.2d at 232.
21. *See id.* at 235.
22. *See id.*
23. *See id.*
24. *Merrill*, 706 A.2d at 1309-10; *Margadonna*, 542 A.2d at 236.
25. *Merrill*, 706 A.2d at 1310 (quoting *Margadonna*, 542 A.2d at 236).
26. *See id.* at 1315.
27. *See id.* at 1311.

Rhode Island General Laws.[28] The court holds that the statute was designed to provide an incentive for early settlements[29] and to "'compensate plaintiffs for waiting for recompense to which they were legally entitled.'"[30] Therefore, the court reasoned that a method must be devised that "will not impose disincentives on willing litigants to reach as early and as accurate a settlement as the parties can fashion."[31] The court further held that the best method to achieve these goals is the method previously adopted by the superior court.[32] The court reasoned that the superior court's original method was the best method since it eliminates the possibility of the plaintiff receiving "more than full compensation."[33]

CONCLUSION

The *Merrill* court holds that the existing *Margadonna* rule is only applicable in situations where there are joint-tortfeasor releases.[34] In situations where no releases exist, the superior court's original method of prejudgment interest is the appropriate method.[35] Therefore, the court reverses the superior court's interest award and remands the case back to superior court so that the court may apply its original method of computation.[36]

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28. *See id.* at 1310-11.
29. *See* DiMeo v. Philbin, 502 A.2d 825, 826 (R.I. 1986).
30. *Merrill*, 706 A.2d at 1311 (quoting Martin v. Lumbermen's Mut. Cas. Co., 559 A.2d 1028, 1031 (R.I. 1989)).
31. *Id.* at 1312.
32. *See id.* at 1312-13.
33. *Id.* at 1314.
34. *Id.* at 1315.
35. *See id.*
36. *See id.*