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## 1996 Survey of Rhode Island Law: cases: Public Immunity

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**Public Immunity.** *St. James Condominium Ass'n v. Lokey*, 676 A.2d 1343 (R.I. 1996). Dismissal of action for failure to state a claim is disfavored where defendant asserts immunity under public-duty doctrine, and where plaintiff's pleadings sufficiently allege that a town owed a special duty.

In *St. James Condominium Ass'n v. Lokey*,<sup>1</sup> the Rhode Island Supreme Court reversed a superior court judgment that granted a motion to dismiss a negligence claim against a town and a building inspector. The supreme court held that dismissal for failure to state a cause of action under Rule 12(b)(6)<sup>2</sup> was inappropriate where a town claimed immunity under the public-duty doctrine because of the possibility of the existence of a special duty to the plaintiffs.<sup>3</sup>

#### FACTS AND TRAVEL

Plaintiffs, owners of units in the St. James Condominium development in North Providence, sued the developer of the project, the architect, the warranty company, the Town of North Providence (Town), and the building inspector alleging, inter alia, that the inspector had "negligently inspected or failed to inspect the plans and construction of the project and had negligently issued occupancy permits for units within the development."<sup>4</sup> The complaint also charged the Town with liability for the negligence of its public officials under the doctrine of respondeat superior.<sup>5</sup> The Town and the building inspector filed a motion to dismiss claiming immunity under the public-duty doctrine.<sup>6</sup> In opposition to the motion, plaintiffs submitted an occupancy permit and an inspection form for one of the condominium buildings that stated "[n]eed smoke stops between units[,] [s]tairs need re-building no overhang

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1. 676 A.2d 1343 (R.I. 1996).

2. A claim may be dismissed "for failure of the pleading to state a claim upon which relief can be granted." R.I. Super. Ct. R. Civ. P. 12(b)(6).

3. *St. James*, 676 A.2d at 1347.

4. *Id.* at 1344. Plaintiffs claimed that there were major defects in the building including settling foundations, cracked walls, frozen pipes, a leaking roof, and improper heating, and that the building inspector should have revealed the building code violations. *Id.*

5. The doctrine provides that a master is liable for the wrongful acts of his servant. Black's Law Dictionary 1311 (6th ed. 1990).

6. The public-duty doctrine protects governmental functions from tort liability. *St. James*, 676 A.2d at 1346.

Boiler rooms."<sup>7</sup> The defendants' motion was granted, and plaintiffs appealed to the Rhode Island Supreme Court claiming that the special duty exception to the public-duty doctrine applied to this case, and dismissal was an abuse of discretion.<sup>8</sup>

#### BACKGROUND

In several prior cases, the Rhode Island Supreme Court held that the "public-duty doctrine protects the state and its political subdivisions from tort liability arising out of the performance of governmental functions not commonly undertaken by private entities."<sup>9</sup> An exception to the public-duty doctrine existed where the governmental unit owed a special duty to an individual instead of the public in general.<sup>10</sup> Plaintiffs could show a special duty if there had been "some form of prior contact with state or municipal officials 'who then knowingly embarked on a course of conduct that endangered the plaintiffs, or they [knew] that the injury to that particularly identified plaintiff can be or should have been foreseen.'"<sup>11</sup>

Another exception to the public-duty doctrine is created where the state's actions are so extreme that it would not be necessary for a plaintiff to show that the government owed them a special duty.<sup>12</sup> In *Haley v. Town of Lincoln*,<sup>13</sup> the court noted that it would be virtually impossible for a defendant to sustain its burden in a motion to dismiss under either Rule 12(c) or 12(b)(6) because of the possibility of these exceptions.<sup>14</sup> A motion to dismiss under

7. *Id.* at 1345.

8. *Id.*

9. *Id.* at 1346 (citing *Haley v. Town of Lincoln*, 611 A.2d 845, 849 (R.I. 1992); *Bierman v. Shookster*, 590 A.2d 402, 403 (R.I. 1991)). The intent of the doctrine is to "encourage the effective administration of governmental operations by removing the threat of potential litigation." *Haley*, 611 A.2d at 849 (citing *Catone v. Medberry*, 555 A.2d 328, 333 (R.I. 1989)).

10. *St. James*, 676 A.2d at 1346 (citing *Haley*, 611 A.2d at 849; *Ryan v. State Dep't of Transp.*, 420 A.2d 841, 843 (R.I. 1980)).

11. *Id.* at 1345 (quoting *Quality Court Condominium Ass'n v. Quality Hill Dev. Corp.*, 641 A.2d 746, 750 (R.I. 1985)).

12. *Haley*, 611 A.2d at 849 (citing *Verity v. Danti*, 585 A.2d 65 (R.I. 1991)). This exception, known as the egregious conduct exception, was not claimed as a defense in *St. James*.

13. 611 A.2d 845 (R.I. 1992).

14. *St. James*, 676 A.2d at 1346 (quoting *Haley*, 611 A.2d at 849). The court in *Haley* was referring to Rhode Island Superior Court Rules of Civil Procedure 12(c), which is a motion for judgment on the pleadings, and Rule 12(b)(6), which is a

Rule 12(b)(6) "assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs."<sup>15</sup> It would be a rare circumstance when the pleadings are viewed in the light most favorable to the plaintiff that such motions could succeed.<sup>16</sup> "[S]uch a motion should not be granted 'unless it appears to a certainty that [the plaintiffs] will not be entitled to relief under any set of facts which might be proved in support of [their] claim.'"<sup>17</sup>

#### ANALYSIS AND HOLDING

In *St. James*, the Rhode Island Supreme Court first had to determine whether the trial judge had considered the defendants' motion to dismiss as a failure to state a claim pursuant to Rule 12(b)(6), or as a motion for summary judgment under Rule 56.<sup>18</sup> In this regard, the court noted that although the plaintiffs submitted two documents extrinsic to the pleadings, the motion judge "made no reference to the matters outside the pleadings when she ruled on the motion."<sup>19</sup> On this basis, the court reviewed the judgment as a judgment to dismiss, and next considered the question of whether the dismissal was proper.<sup>20</sup>

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motion to dismiss for "failure to state a claim upon which relief can be granted." *Haley*, 611 A.2d at 850 n.2.

15. *St. James*, 676 A.2d at 1346 (citing *Builders Specialty Co. v. Goulet*, 639 A.2d 59, 60 (R.I. 1994); *Ellis v. Rhode Island Pub. Transit Auth.*, 586 A.2d 1055, 1057 (R.I. 1991)).

16. *Id.* at 1347.

17. *Id.* (quoting *Bragg v. Warwick Shoppers World, Inc.*, 227 A.2d 582, 584 (R.I. 1967)).

18. "If on a motion [under 12(b)(6)] to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, [it] shall be treated as one for summary judgment and disposed of as provided in Rule 56." R.I. Super. Ct. R. Civ. P. 12(b)(6).

19. *St. James*, 676 A.2d at 1345. This dispute arose because the defendants argued that the motion as granted was actually one for summary judgment, although they had written the order (including the caption), that the trial judge signed. As the Rhode Island Supreme Court pointed out in its opinion, not only did the judge not reference these documents in her opinion, "[t]he plaintiffs . . . were not notified, as required by Rule 12(b)(6), that defendants' motion was being converted into a motion for summary judgment." *Id.* at 1345-46. When a motion to dismiss is treated as a motion for summary judgment, "all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56." *Id.* at 1345 (quoting R.I. Super. Ct. R. Civ. P. 12(b)(6)).

20. *Id.*

In considering whether to affirm the motion to dismiss pursuant to Rule 12(b)(6), the Rhode Island Supreme Court relied on its prior holdings regarding the public immunity defense.<sup>21</sup> The court did not depart from the test it had articulated in *Bragg v. Warwick Shoppers World, Inc.*,<sup>22</sup> which stated that a motion for dismissal under Rule 12(b)(6) "should not be granted 'unless it appears to a certainty that [the plaintiffs] will not be entitled to relief under any set of facts which might be proved in support of [their] claim.'"<sup>23</sup> The court affirmed that motions to dismiss based on the public-duty doctrine are especially disfavored.<sup>24</sup>

The court noted that there was enough ambiguity in the record to question whether the plaintiffs could show that defendants owed them a special duty.<sup>25</sup> Relying on *Haley*, the court said that "[i]t is possible to conceive of fact[s] that, if proven . . . at trial, could establish the existence of a special duty owed by a defendant to that plaintiff."<sup>26</sup> The court went on to note that the plaintiffs' complaint indicated several incidents wherein the defendant building inspector had failed in his duty to properly inspect the construction, had noted code violations, and yet had issued occupancy permits "when he knew or should have known they were in violation of the appropriate building codes."<sup>27</sup> Finally, the court noted that even though "these allegations are insufficient to establish the existence of a special duty, they do not preclude the possibility that such a duty existed."<sup>28</sup>

In reversing the motion judge's ruling, the court stated that because this case did "not present one of the rare circumstances in which the plaintiffs' pleadings leave no doubt whatsoever that [they] could not succeed at trial. Consequently, dismissal pursuant to Rule 12(b)(6) was inappropriate."<sup>29</sup> In his concurrence, Jus-

21. *Id.* at 1345-46.

22. 227 A.2d 582 (R.I. 1967).

23. *St. James*, 676 A.2d at 1346 (quoting *Bragg*, 227 A.2d at 584).

24. *Id.* at 1346 (citing *Haley v. Town of Lincoln*, 611 A.2d 845, 849-50 (R.I. 1992)).

25. *Id.*

26. *Id.*

27. *Id.* at 1347. The complaint further alleged, in part, that the "building inspector had failed to examine plans and specifications . . . failed to make . . . proper and thorough inspections, [and] negligently approved plans and specifications which did not meet building code requirements." *Id.*

28. *Id.*

29. *Id.*

tice Flanders somewhat softened the apparent harshness of this ruling by emphasizing that although dismissal on the pleadings may not be easily obtained where defendants plead the public-duty doctrine, a motion for summary judgment may be an "expeditious recourse short of trial to test whether a claim is barred by the public-duty doctrine."<sup>30</sup>

#### CONCLUSION

While this case does not depart from the supreme court's prior rulings on the issue of rule 12(b)(6) dismissal where defendant asserts immunity under the public-duty doctrine, it does appear to signal that a defendant may be more likely to prevail in a motion for summary judgment. State and municipal defendants should probably avoid Rule 12(b)(6) motions unless the pleadings strongly show the nonexistence of a public-duty exception. Defendants might be better advised to seek a motion for summary judgment after discovery, where extrinsic documentation would allow a motion judge a fuller examination of the record.

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30. *Id.* (Flanders, J., concurring).