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Kumble v. Voccola, 253 A.3d 1248 (R.I. 2021)

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Attorneys' Fees. *Kumble v. Voccola*, 253 A.3d 1248 (R.I. 2021). Trustees are entitled to indemnification of reasonable attorneys' fees and expenses incurred on behalf of a trust. In executing a trust, Title 18 of the Rhode Island General Laws § 18-6-1 gives the trial court authority to grant interest on attorneys' fees.

FACTS AND TRAVEL

In 2002, Frederick Carrozza, Jr. (Carrozza) “created a will that, upon his death, would form two testamentary trusts.”¹ He passed away that same year and named the plaintiffs, Michael Voccola (Voccola) and Daniel Shedd (hereinafter the trustees) co-trustees of both trusts; in return for their services as trustees, they were to receive “reasonable compensation.”² Voccola also served as the executor of Carrozza’s will.³ The defendants, Angela Giguere Kumble and Christine Tellefsen (hereinafter the beneficiaries) were Carrozza’s wife and daughter.⁴ Carrozza owned multiple properties that became part of the trust estate.⁵ Voccola permitted the beneficiaries to continue to manage those properties, as they had before Carrozza’s death.⁶

Shortly after Carrozza died, his family members filed suit against Voccola and the beneficiaries “to impose a trust on the properties for the benefit of the Carrozza family.”⁷ Attorney Evan Leviss was hired to represent the estate and the beneficiaries.⁸ However, “the relationship between the trustees and beneficiaries fractured over time,” and Voccola discharged Attorney Leviss and “informed the beneficiaries that he had retained the law firm of

1. *Kumble v. Voccola*, 253 A.3d 1248, 1249 (R.I. 2021).

2. *Id.*

3. *Id.* at 1250.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

Duffy & Sweeney and intended to hire a third-party management company to oversee the trusts' properties"⁹ Voccola then liquidated one of the trust properties and used the proceeds to pay his own attorneys' fees, without first disclosing his intentions to the beneficiaries.¹⁰

In 2012, the defendants filed a complaint for specific performance and injunctive relief, "asking that the trustees distribute the trust assets to Tellefsen and [the court bar them] from making any further disbursements from the trusts, from transferring management of the trust properties to a company or individual other than the beneficiaries', and from removing the trusts' previous counsel."¹¹ The trial court subsequently granted the trustees a writ of replevin, demanding the beneficiaries and Attorney Leviss "return property and records belonging to the estate and trust."¹²

The protracted litigation between the beneficiaries and trustees resulted in \$1,040,293.75 of attorneys' fees.¹³ In December 2012, the parties agreed to settle on grounds "that if trust assets were insufficient to pay for any expenses, fees or liabilities incurred in the administration of the Trusts and approved by the court, [the beneficiaries] shall personally indemnify the [t]rustees."¹⁴ The consent order terminated the trustees' access to trust assets; thus, the trustees filed a petition for fees incurred in the administration of the trusts, including attorneys' fees owed to Duffy & Sweeney.¹⁵

In May 2017, the trial court consolidated the beneficiaries' action with the trustees' action holding a nonjury trial awarding compensation to Voccola as executor of Carrozza's estate, as well as to the trustees for their work.¹⁶ After determining that the trustees were entitled to the fees they sought, the trial court held they could indemnify the trust for their attorneys' fees.¹⁷ The trial court reasoned first, "the consent order provided that the beneficiaries would indemnify the professional fees of the trustees if the trust assets

9. *Id.* at 1250–51.

10. *Id.*

11. *Id.*

12. *Id.* at 1252.

13. *See id.* at 1256–57.

14. *Id.* at 1253.

15. *Id.*

16. *Id.* at 1254.

17. *See id.* at 1259.

were insufficient” and second “that he had both contractual authority, under the consent order, and statutory authority, [under section] 18-6-1, to award attorneys’ fees.”¹⁸

Only one month later, the beneficiaries sought the release of all real estate, as well as the partial release of the trust funds from the escrow account, arguing that the trustees were “substantially over-secured.”¹⁹ The beneficiaries specifically disputed “the hourly rate billed; whether the ‘protracted hearings’ were the joint responsibility of the parties; whether certain expenses were reimbursable; and whether the trustees’ counsel was successful, a factor that the trial justice found went to the issue of the proportionality of the fees requested to the success of the litigation.”²⁰

The trial court granted the trustees’ request for attorneys’ fees.²¹ The court first considered the opinion of expert legal counsel put forth by the trustees’ that “the hourly legal-fee rate was reasonable.”²² Second, the court concluded, pro-rata, that neither side was more responsible for litigation costs than the other.²³ In determining proportionality, “the trial justice indicated that the action entailed more than the trustees recovering compensation for administering the trust and estate”; specifically, the lower courts resolved the “other claims made by the beneficiaries” in favor of the trustees.²⁴ Thus, the court granted the attorneys’ fees in the full amount.²⁵

The parties disputed whether prejudgment interest was appropriate.²⁶ Enmeshed in the interest issue was the distinction between trustees’ fees and the reimbursement of legal fee expenses.²⁷ The beneficiaries had previously paid prejudgment interest and further contended “the fees were not ‘due or owing’ until the trial justice awarded them.”²⁸ Additionally, they questioned whether an

18. *Id.* at 1254.

19. *Id.* at 1255.

20. *Id.*

21. *See id.* at 1259.

22. *Id.* at 1256.

23. *Id.* at 1256–57.

24. *Id.* at 1256.

25. *See id.* at 1259.

26. *Id.* at 1259–60.

27. *Id.* at 1258.

28. *Id.* at 1257.

interest award was equitable “given that the time between the trial and the trial justice’s decision and the ultimate award of fees was lengthy and no fault of the beneficiaries.”²⁹

In 2018, the trial court reached its conclusions in determining judgment for the trustees.³⁰ First, the beneficiaries were on notice and did not object to “the retainer agreement” of the trustees’ counsel.³¹ Second, a one percent per month fee was reasonable under section 18-6-1.³² Therefore, the trial court found \$1,091,981.66 in attorneys’ fees reasonable and subject to indemnification, with interest on the attorneys’ fees set at \$431,654.26, which would accrue at the rate of \$268.10 per day through the conclusion of any appeal.³³ The beneficiaries appealed to the Supreme Court of Rhode Island on all issues discussed above related to the award and interest of attorneys’ fees.

ANALYSIS AND HOLDING

The Rhode Island Supreme Court affirmed the judgment of the Superior Court order in granting the trustees action to indemnify the Carrozza trust for their services, expenses, attorneys’ fees incurred, and interest owed on those fees.³⁴ The Court relied on the rule outlined in *Tri-Town Construction Co. v. Commerce Park Associates 12 LLC*,³⁵ which requires affidavits or expert testimony “from counsel who is a member of the Rhode Island Bar and who is not representing the parties to the action.”³⁶ Additionally, the Court noted that *Colonial Plumbing & Heating Supply Co. v.*

29. *Id.* at 1257–58.

30. *See id.* at 1259–60.

31. *Id.* at 1258.

32. *Id.*

33. *Id.* at 1259.

34. *See id.* at 1268.

35. 139 A.3d, 467 (R.I. 2016).

36. *Id.* at 479–80.

Contemporary Construction Co.,³⁷ which established the factors for assessing the reasonableness of attorneys' fees, remains good law."³⁸

The parties disputed the following: first, whether the award of attorneys' fees and costs was unreasonable, disproportionate, and an abuse of discretion because the trial justice ignored "material factors deserving significant weight."³⁹ Additionally disputed was the trustees' award of what the beneficiaries termed "fees for fees," petitioning the trial court to make a "significant downward adjustment" of the fees incurred.⁴⁰ Second, whether the award of interest was contrary to the law and the facts and subject to *de novo* review for errors of law.⁴¹ Finally, although the parties "agreed on many of the *Colonial Plumbing* factors," they disputed four points—the hourly rate billed; whether the 'protracted hearings' were the joint responsibility of the parties; whether certain expenses were reimbursable; and whether the trustees' counsel was successful."⁴²

A. Award of Reasonable Fees

Conducting a *de novo* review, the Court rejected the first argument and found the award of attorneys' fees reasonable and in alignment with the *Colonial Plumbing* factors.⁴³ In *Tri-Town*, the Court held that evidence of reasonable attorneys' fees requires affidavits or expert testimony "from counsel who is a member of the Rhode Island Bar and who is not representing the parties to the

37. 464 A.2d 741, 743 (R.I. 1983) (finding eight factors in assessing the reasonableness of a fee: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent).

38. *Kumble*, 253 A.3d at 1261–62.

39. *Id.* at 1263.

40. *Id.*

41. *See generally id.* at 1264.

42. *Id.* at 1262.

43. *Id.* at 1261–63.

action.”⁴⁴ Here, the Court held that the trial justice correctly granted attorneys’ fees because the trustees met this requirement.⁴⁵ The Court reasoned that the award of attorneys’ fees was reasonable because the trial justice acknowledged and weighed the *Colonial Plumbing* factors after assessing the evidence.⁴⁶

B. *Award of Fees and Costs to the Winner*

The trial court was not required to consider the “proportionality of the fee award,” that decision was discretionary.⁴⁷ The Court rejected the argument that the trial justice abused his discretion by ignoring “material factors deserving significant weight.”⁴⁸ Under neither *Tri-Town* nor *Colonial Plumbing* did this Court require the trial justice to weigh the evidence proportionally; however, here, the trial justice weighed the trustees’ success on the substantial claims asserted against the beneficiaries.⁴⁹ The Court reasoned that not only did the trial justice consider the material factors of the case, but he considered proportionality, an additional factor that was not required.⁵⁰ Further, the majority did not opine on whether this other factor was helpful or necessary.⁵¹ Still, it concluded that the lower court did not ignore any material factors of the case in light of this decision.⁵²

C. *Stipulated to Indemnification*

The Carrozza family members challenged the trust, and the trustees incurred costs and expenses in defending it.⁵³ The Court held the trustees were entitled to indemnify the Carrozza trust for attorneys’ fees and expenses.⁵⁴ The beneficiaries contend the trustees volitionally fired Attorney Leviss and hired Duffy & Sweeney; moreover, that the trustees should bear some of the burdens of costs

44. *Id.* at 1255.

45. *Id.* at 1262.

46. *Id.* at 1255.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *See id.* at 1250.

54. *See id.* at 1261–63.

and fees because litigation was unavoidable.⁵⁵ The Court reasoned that the trial justice correctly found that the trustees were entitled to indemnify the Carrozza trust: first, because section 18-6-1 provides the courts statutory authority; second, the parties' consent order contained an indemnity provision.⁵⁶ Finally, the Court found that the beneficiaries waived appellate consideration on the issue of "fees for fees" because they did not appeal this matter in the lower court.⁵⁷

D. *Award of Interest*

Among other contentions, the beneficiaries specifically argued there was no basis to award interest, and to the extent that the trial judge was going to treat it like a service charge, it was subject to the *Tri-Town* analysis.⁵⁸ The Court rejected this argument and found the award of interest was not in error as a matter of law.⁵⁹ Title 18 of the Rhode Island General Laws § 18-6-1 provides "[e]very trustee under any trust instrument, whether previously or subsequently made, shall be entitled to reasonable expenses and costs incurred in the execution of the trust, and also reasonable compensation for services rendered as trustee[.]"⁶⁰ The Court held that the trial justice properly concluded that the trustees were entitled to indemnify the Carrozza trust for the accrued interests on their costs and expenses in defending it.⁶¹ In the scope of their duty, the trustees relinquished the beneficiaries of their managerial control over the trust properties, which resulted in the beneficiaries' retaliatory demands and, ultimately, a long and protracted string of litigation.⁶² The Court reasoned the trial justice was correct to award interest to the trustees not just because section 18-6-1 conferred statutory authority but because they prevailed in showing they were not at fault for the expenses and obligatorily acted as fiduciaries.⁶³

55. *See generally id.* at 1254–56.

56. *See id.* at 1263–64.

57. *Id.*

58. *Id.* at 1264–65.

59. *See id.* at 1266–68.

60. *See* 18 R.I. GEN. LAWS ANN. § 18-6-1 (2013).

61. *Kumble*, 253 A.3d at 1266–67.

62. *See id.* at 1249–50.

63. *Id.*

E. *Statutory Interest*

There is a statutory scheme for calculating interest rates on trustee incurred expenses and costs in Rhode Island, including attorneys' fees.⁶⁴ The Court held "the interest rate charged under the retainer agreement, in this case, [sic] was the same rate as that provided under the prejudgment interest statute and is thus reasonable as a matter of law."⁶⁵ The beneficiaries conflate many interest arguments to contend that the interest calculation is subject to the *Tri-Town* analysis; the fees awarded were because of indemnification, not damages, thus, not subject to interest; and finally, an award of interest is punitive.⁶⁶ The Court reasoned categorically rejecting all of the contentions mentioned above because the precedent in *Tri-Town* solely provides to determine the "reasonableness of an expense incurred in the execution of a trust" and affirmed that in this case, section 18-6-1 provides the proper interest calculations.⁶⁷ Additionally, the trustees' submitted all pretrial documents with interest rates, per section 18-6-1.⁶⁸ Finally, the "extraordinarily large sum of interest" is not punitive but fair as a matter of law because "the [hired] law firm extended credit in the form of forgoing timely payment of its bills in exchange for interest to be paid."⁶⁹ Therefore, the Court affirmed the trial court's judgment that granted the trustee's claims for attorneys' fees and denied the beneficiaries' counterclaims.⁷⁰

F. *Justice, Fairness, and Proportionality*

Justice Robinson authored a dissenting opinion in which he stressed the importance of reducing the attorneys' fees and interest awarded in this case by more than a *de minimis* amount.⁷¹ Although Justice Robinson wrote that he agreed with the majority's "powerful arguments" that support their result, he felt that the majority was disregarding the "staggering amount of the attorneys'

64. *See id.* at 1264.

65. *Id.*

66. *See id.* at 1263–64.

67. *See id.* at 1264.

68. *Id.* at 1268.

69. *Id.* at 1267–68.

70. *Id.*

71. *Id.* at 1268–69 (Robinson, J., dissenting).

fees at issue.”⁷² Justice Robinson argued that the substantial delays in the course of this litigation were not solely attributable to the beneficiaries and that the Court’s jurisprudence suggests “reducing the [awarded] attorneys’ fees and costs to an amount the Court determined would be ‘just, fair, and proportional.’”⁷³

COMMENTARY

The Rhode Island Supreme Court’s ruling avoids court disputes over attorneys’ fees awards and sets a precedent of predictability in determining attorneys’ fees in estate planning matters. The Court acknowledged the legislative intent entitling trustees to reasonable expenses and costs incurred in the execution of the trust and reasonable compensation for services rendered as trustee. It also found from the statutory language that the bills incurred by trustees in the administration of a trust, including interest accrued, if reasonable, are indemnifiable trust expenses under section 18-6-1. This decision reinforces the notion that trust beneficiaries, although provided broad rights, are not entitled to play an active role in every decision the trustee makes about the trust. Although communication is preferable between trustees and trust beneficiaries before selling trust property, it is not generally a requirement. Thus, the Court’s ruling maintains the status quo for litigation in the American system of legal fees.

The American Rule is a rule in the United States justice system that says two opposing sides in a legal matter must pay their attorney fees, regardless of who wins the case.⁷⁴ The rule’s rationale should not deter a plaintiff from bringing a case to court for fear of prohibitive costs. In furtherance of the legislative policies of the rule, the Court here not only allowed the trustees to collect attorneys’ fees incurred and interest owed on those fees but, in doing so, likely provided the unhindered managerial ability of decedents’ assets to trust beneficiaries. Similarly, it reinforces policies to maintain the judicial economy. In the context of encouraging desirable litigation, “it is contingent fees (now supplemented by

72. *Id.*

73. *See id.* (quoting *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 802 (R.I. 2005)).

74. *See generally* John Leubsdorf, *Does the American Rule Promote Access to Justice? Was that Why It Was Adopted?* 67 DUKE L. J. 257 (2018).

litigation financing), one-way fee-shifting statutes, and other institutions that do the heavy work.”⁷⁵ Fee shifting statutes like Rhode Island’s section 18-6-1 provide a “[o]ne-way fee” to encourage what the legislature and courts have deemed desirable litigation.⁷⁶ However, there is a fine line delineating desirable and encouraged litigation, and a burdened judicial economy, such as those of most jurisdictions, including Rhode Island, appreciate that “litigation cannot be regarded as so delightful that it should always and in all circumstances be promoted.”⁷⁷ Actions for breach of fiduciary duties remain viable challenges to trust beneficiaries; however, litigants can expect trustees to protect their decisions vehemently to collect attorneys’ fees and interest owed on those fees from trust assets when meritorious.

CONCLUSION

The Rhode Island Supreme Court held that trustees may indemnify a trust for their services, expenses, attorneys’ fees, and interest owed on those fees when reasonable and within Rhode Island laws. Moreover, the Court determined that awarding an “extraordinarily large sum of interest” in attorneys’ fees is not dispositive of injustice, unfairness, and disproportionality.

Aryamen Andrew Omshehe

75. *See id.* at 270.

76. *See generally id.*

77. *See id.*