ADLER POLLOCK & SHEEHAN P.C.

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

(1) SUPREME COURT HOLDS THAT A PARTY WHO IS NOT AGGRIEVED BY A JUDGMENT CANNOT BE QUALIFIED AS AN APPELLANT.

In Lombardi v. City of Providence, No. 2012-86-Appeal, the Rhode Island Supreme Court reminded litigants that a party who is not aggrieved by a judgment cannot be qualified as an appellant on appeal.

In that case, the plaintiff had filed suit against the City of Providence (the "City"), alleging that it negligently failed to maintain or repair a portion of the sidewalk where the plaintiff had fallen. *Id*. at 1-2. The plaintiff later amended her complaint to add the state as a defendant. *Id*. at 2. Importantly, the state never filed a cross-claim against the City. *Id*. The City moved for summary judgment, arguing that it did not owe a duty to the plaintiff because the state, not the city was responsible for maintenance and repair of the sidewalk. *Id*. The state opposed the City's motion, arguing that there was a genuine issue of material fact as to which entity was responsible for maintenance and repair of the sidewalk. *Id*. The trial court disagreed and entered summary judgment in favor of the City. *Id*. at 5. Final judgment entered in favor of the City on plaintiff's claims and the state filed an appeal. *Id*.

After oral argument on the state's appeal, the Court ordered the parties to file memoranda addressing whether the state, having chosen not to file a cross-claim against the City, was a party aggrieved by the Superior Court's judgment. *Id*.

R.I. Gen. Laws § 9-24-1 sets forth the right of a party to appeal from a final judgment of the Superior Court. That statute provides, in relevant part, "[a]ny party aggrieved by a final judgment, decree, or order of the [S]uperior [C]ourt may, within the time prescribed by applicable procedural rules, appeal to the [S]upreme [C]ourt."

In *Lombardi*, the Rhode Island Supreme Court held that the rights set forth in R.I. Gen. Laws § 9-24-1 "'must be read in light of our long-established rule that a person is aggrieved by a judgment when it adversely affects, in a substantial manner, his [or her] personal or property rights.'" *Id*. at 6. (quoting *Adams v. United Developers, Inc.*, 397 A.2d 503, 505 (R.I. 1979)). "'[A]n aggrieved party is one whose interest in the lower court decision is *actual and practical, as opposed to merely theoretical*.'" *Id*. (quoting Adams, 397 A.2d at 505). Applying those principles, the Rhode Island Supreme Court concluded that the state was not an aggrieved party because it had not filed a cross-claim against the city.

Although the plaintiff was a party that was aggrieved by the trial court's judgment, the plaintiff did not appeal the trial court's judgment.

(2) RHODE ISLAND SUPREME COURT ANSWERS QUESTIONS CERTIFIED TO IT BY THE FIRST CIRCUIT.

In a rare decision, this term the Rhode Island Supreme Court entertained a question certified to it by the United States Court of Appeals for the First Circuit. *See* American States Insurance Company v. LaFlam, No. 2012-80-M.P. The last time the Court answered a certified question was more than two years ago. *See In re Tetreault*, 11 A.3d 635 (R.I. 2011).

Article I, Rule 6 of the Rhode Island Supreme Court Rules of Appellate Procedure authorizes the Rhode Island Supreme Court to answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or of the District of

Columbia, or a United States District Court upon request by those courts. R.I. Sup. Ct. R. App. P. Art. I, Rule 6. The question certified must present a question of Rhode Island law "which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of [the Rhode Island Supreme] Court." *Id.*

In *LaFlam*, the defendant filed a motion in the United States District Court for the District of Rhode Island requesting certification of two questions of law. LaFlam at 3. The District Court denied the defendant's motion, concluding that decisions of the Rhode Island Supreme Court were indicative of how it would answer the questions presented in that case. *Id.* at 3-4. On appeal to the First Circuit, the defendant again requested certification of the two questions to the Rhode Island Supreme Court. *Id.* at 4. The First Circuit agreed with the defendant that there was no controlling precedent in Rhode Island that would assist it in answering the questions before it and, therefore, certified the questions to the Rhode Island Supreme Court.

(3) SUPREME COURT MAY AFFIRM GRANT OF SUMMARY JUDGMENT ON OTHER GROUNDS.

In a decision this term, the Rhode Island Supreme Court reminded practitioners that it may affirm decisions granting summary judgment on grounds other than those relied upon by the motion justice. *See* Beauregard v. Gouin, No. 2010-434-Appeal at 10 n.7 (citing *Lavoie v. North East Knitting, Inc.*, 918 A.2d 225, 228 (R.I. 2007)). In that case, the Court concluded that the trial court properly granted summary judgment in favor of the defendant on plaintiff's claim for slander of title because one of the necessary elements for such a claim was absent. *Id.* at 8-9.

On appeal, the plaintiff argued that the trial court also erred with respect to its conclusions on a different element of the slander of title claim. *Id*. at 10 n.7. Having already concluded that one of the necessary elements was absent, the Court affirmed the trial court's decision on that basis alone and declined to address the plaintiff's arguments with respect to the other elements of the slander of title claim. *Id*.

(4) SUPREME COURT MAY AFFIRM TRIAL COURT RULINGS ON OTHER GROUNDS.

In addition to the Rhode Island Supreme Court's ability to affirm a trial court's grant of summary judgment on grounds other than those relied upon by the trial court, the Court may also affirm a trial court's rulings on other grounds. *See* Meyer v. Meyer, No. 2011-14-Appeal at 16 n.8 (citing *In re Last Will and Testament of Quigley*, 21 A.3d 393, 401 n.6 (R.I. 2011); *Shepard v. Harleysville Worcester Ins. Co.*, 944 A.2d 167, 170 (R.I. 2008); *Ahlburn v. Clark*, 728 A.2d 449, 452 (R.I. 1999)).

(5) DID YOU KNOW?

The Rhode Island Supreme Court "rides the circuit" twice a year, hearing cases in various venues throughout the state. The tradition of riding the circuit "dates to colonial times when the courts and other bodies of government traveled from town to town, taking the people's business directly to the people." *See* Office of Community Outreach and Public Relations. For example, when he was a practicing lawyer, Abraham Lincoln traveled the circuit in the Eighth Judicial Circuit of Illinois. *See* John J. Duff, A. Lincoln: Prairie Lawyer 168 (1960). This term, the Rhode Island Court sat at Exeter-West Greenwich Regional High School. *See* Cruz v. DaimlerChrysler Motors Corp., No. 2012-56-Appeal at 1.

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Nicole J. Benjamin

nbenjamin@apslaw.com

www.apslaw.com

APS | ADLER POLLOCK & SHEEHAN P.C.

One Citizens Plaza, 8th Floor
Providence RI 02903
401.274.7200
fax 401.751.0604

175 Federal Street
Boston MA 02110
617.482.0600
fax 617.482.0604