

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

SMITHFIELD ESTATES, LLC :
 :
V. :
 :
THE HEIRS OF JOHN M. :
HATHAWAY; JOHN J. RILEY; :
ESTATE OF JOHN J. RILEY; :
EUGENE F. RILEY; ESTATE OF :
EUGENE F. RILEY; JUDSON DAVIS; :
GRACE BOARDMAN; LEWIS T. :
GARDNER; MARY A. WHITTAKER; :
ESTATE OF MARY A. WHITTAKER; :
MARY MACAULEY; ESTATE OF :
MARY MACAULEY; SARAH A. :
GARFIELD; ESTATE OF SARAH A. :
GARFIELD; CHARLES H. RUSSELL; :
FRANKLIN M. RUSSELL; CHARLES :
H. SHIPPEE; ESTATE OF CHARLES :
H. SHIPPEE; JAMES B. CANNING; :
ESTATE OF JAMES B. CANNING; :
MARY A. MCGIN a/k/a MARY A. :
MCGINN; ESTATE OF MARY A. :
MCGIN a/k/a MARY A. MCGINN; :
CATHERINE F. MCGIN; ESTATE OF :
CATHERINE F. MCGIN; FRED M. :
SWARTS; ESTATE OF FRED M. :
SWARTS; CATHERINE BRESLIN; :
ESTATE OF CATHERINE BRESLIN; :
THOMAS ADAMS; ESTATE OF :
THOMAS ADAMS; MABLE A. :
ADAMS; ESTATE OF MABLE A. :
ADAMS; WILLIAM BISHOP; ESTATE :
OF MILLIE BISHOP; EDITH H. :
RICHARDSON; THOMAS H. :
PHILLIPS; ESTATE OF THOMAS H. :
PHILLIPS; ROSE PHILLIPS; ESTATE :
OF ROSE PHILLIPS; DEBORAH :
NORTH; ESTATE OF DEBORAH :
NORTH; CHRISTINA HEAP; :
HAROLD HEAP; TOM HEAP; FRED P. :
HEAP; ADA HEWITT; THOMAS S. :
HEAP; EUGENE CORCORAN; :

C.A. No. PC 2003-4157

ESTATE OF EUGENE CORCORAN; :
 MARIA CORCORAN; ESTATE OF :
 MARIA CORCORAN; EDWARD :
 KANE; EDWARD P. KANE, JR.; :
 MARGARET M. KANE; GEORGIA :
 PENTA; EVELYN DEL DONNO; :
 GEORGE A. MOORE; ESTATE OF :
 GEORGE A. MOORE; GEORGE H. :
 MOORE; ESTATE OF GEORGE H. :
 MOORE; ESTER MOORE; ESTATE :
 OF ESTER MOORE; MARGARETTE :
 MARA; ESTATE OF MARGARETTE :
 MARA; ALPHONSE MALO; ESTATE :
 OF ALPHONSE MALO; MARTIN :
 LYONS AND WIFE; ESTATE OF :
 MARTIN LYONS AND WIFE; DANIEL :
 HOOD; CHRISTINA LIVINGSTON; :
 THOMAS HINDLE AND WIFE; :
 GEORGE HINDLE; THOMAS :
 HINDLE; FANNY W. HINDLE; FRANK :
 ROBARGE; ESTATE OF FRANK :
 ROBARGE; JAMES RILEY; ESTATE :
 OF JAMES RILEY; CHARLES :
 LOCKWOOD AND WIFE; DOMENIC :
 D'AMBRA; MARJORIE V. :
 LOCKWOOD; JULIA J. LOCKWOOD; :
 MARY A. GILLAN; ESTATE OF MARY :
 A. GILLAN; E. HAVERLY; ESTATE :
 OF E. HAVERLY; ANNIE SMYTHE; :
 ESTATE OF ANNIE SMYTHE; MARY :
 COLEMAN; ESTATE OF MARY :
 COLEMAN; EUGENE CORCORAN; :
 ESTATE OF EUGENE CORCORAN; :
 MARIA CORCORAN; ESTATE OF :
 MARIA CORCORAN; EDWARD :
 KANE; EDWARD P. KANE, JR.; :
 MARGARET M. KANE; JOSEPH :
 FONT; ESTATE OF JOSEPH FONT; :
 PATRICK KELLY; CATHERINE :
 KELLY; ANN AGNEW; ESTATE OF :
 ANN AGNEW; W.F. GRAHAM; :
 ESTATE OF W.F. GRAHAM; :
 MARGARET J. BRINDLE; ESTATE OF :
 MARGARET J. BRINDLE; MARY A. :
 MCGOUGH; ESTATE OF MARY A. :
 MCGOUGH; THOMAS S. LANE; :

MARGARET T. MCGOUGH; ROBERT :
E. FITZGERALD; ESTATE OF :
ROBERT E. FITZGERALD; WILLIAM :
H. ROSE; ESTATE OF WILLIAM H. :
ROSE; HENRY BASIALEWICK; :
ESTATE OF HENRY BASIALEWICK; :
JAMES RILEY; ESTATE OF JAMES :
RILEY; WILLIAM E. KILROY; MARY :
A. KILROY; ANNA E. CULLION; :
LETITIA A. LEACH; EUGENIA M. :
WATSON; EDWIN F. LEACH; :
LETITIA A. BEARS; EUGENIA M. :
WATSON; ESTATE OF EUGENIA M. :
WATSON; ANN CASH; SAMUEL L. :
CASH; FANNI L. QUINSBY; ALICE C. :
RHIND; JOHN B. ADAMS; ESTATE OF:
JOHN B. ADAMS; SARAH ADAMS; :
ESTATE OF SARAH ADAMS; :
ARTHUR B. MULLEN; ESTATE OF :
ARTHUR B. MULLEN; JOSEPHINE :
MULLEN; ESTATE OF JOSEPHINE :
MULLEN; CHARLES W. FRASER; :
ESTATE OF CHARLES W. FRASER; :
PHILIP B. BANSH; ESTATE OF :
PHILIP B. BANSH; ISABELLA :
LANCASTER; ESTATE OF ISABELLA :
LANCASTER; BRIDGET HEANEY; :
ESTATE OF BRIDGET HEANEY; :
ELLEN M. COLLINS; ESTATE OF :
ELLEN M. COLLINS; MARY L. :
LONGWILL; ESTATE OF MARY L. :
LONGWILL; ANNIE A. RIELLY; :
ESTATE OF ANNIE A. RIELLY a/k/a :
ANNIE A. O'RIELLY; PATRICK :
MCKENNA; ESTATE OF PATRICK :
MCKENNA; HENRY S. BRIGGS AND :
WIFE; WALTER E. BARKER; ANNA E.:
MARION; EMILY L. REINNAGEL; :
CORNELIUS FRIEL; ESTATE OF :
CORNELIUS FRIEL; ELIZABETH :
JOHNSON; ESTATE OF ELIZABETH :
JOHNSON; GEORGE PERL BUCKLIN :
AND WIFE; ESTATE OF WIFE OF :
GEORGE PERL BUCKLIN; DOMENIC :
D'AMBRA; MARY E. SHIPPEE; :
ESTATE OF MARY E. SHIPPEE; :

PATRICK MCGUINNESS; ESTATE OF :
PATRICK MCGUINNESS; CHARLES :
MARKOFF; CHARLOTTE MARKOFF; :
SAMUEL A. MARKOFF; RUTH :
MARKOFF; MICHAEL RODGERS :
AND WIFE, ANNIE; ESTATE OF :
ANNIE RODGERS; JOHN J. :
RODGERS; MARY T. O'NEIL; :
ESTATE OF MARY T. O'NEIL; MARY :
O'NEIL; PETER REILLY; ESTATE OF :
PETER REILLY; BRIDGET REILLY; :
ESTATE OF BRIDGET REILLY; :
MARY A. O'BRIAN; ESTATE OF :
MARY A. O'BRIAN; LILLIE CLANCY; :
ESTATE OF LILLY CLANCY; JULIUS :
HERMAN OTTO; EMMA ZEUNER; :
ANNA ASHCROFT; BERTHA OTTO; :
HERMAN OTTO; GEORGE OTTO; :
GERTRUDE OTTO; ANNIE HANLEY; :
ESTATE OF ANNIE HANLEY; ANNIE :
M. HANLEY; ANNIE A. HANLEY; :
SARAH A. RADICAN; ESTATE OF :
SARAH A. RADICAN; JAMES H. :
BROGAN; ESTATE OF JAMES H. :
BROGAN; DAVID CARTWRIGHT; :
ESTATE OF DAVID CARTWRIGHT; :
ANNIE SHAY; MADELINE V. :
GORMAN; CHARLES R. BOUTELLE; :
ESTATE OF CHARLES R. BOUTELLE; :
ISABELLA A. STEVENS; ESTATE OF :
ISABELLA A. STEVENS; JAMES :
EGLINTON AND WIFE; ESTATE OF :
WIFE OF JAMES EGLINTON; OLIVE :
H. EGLINTON; IRENE M. STANDISH; :
ESTATE OF IRENE M. STANDISH; :
MARY A. COLLINS; ESTATE OF :
MARY A. COLLINS; BENJAMIN S. :
TERRY; ESTATE OF BENJAMIN S. :
TERRY; JULIA MORADIAN; ESTATE :
OF JULIA MORADIAN; CATHERINE :
CRONIN; ESTATE OF CATHERINE :
CRONIN; MARIE A. O'CONNELL; :
ESTATE OF MARIE A. O'CONNELL; :
MARY J. BURKE; ESTATE OF MARY :
J. BURKE; ELLA A. BURKE; ESTATE :
OF ELLA A. BURKE; ANNA BEAGAN; :

ESTATE OF ANNA BEAGAN; MAY S. :
 KEMP; ESTATE OF MAY S. KEMP :
 a/k/a MARY S. KEMP; KATE :
 HAROLD; ESTATE OF KATE :
 HAROLD; ALBINE P. SONTAG; :
 ESTATE OF ALBINE P. SONTAG; :
 JOHN STEWART; ESTATE OF JOHN :
 STEWART; JULIA M. SANDERS; :
 ESTATE OF JULIA M. SANDERS; :
 HENRY HARDY; ESTATE OF HENRY :
 HARDY; THOMAS STONES; :
 CHARLES STONES; ROSE HOBSON; :
 SARAH ENGLEHART; JULIA :
 RABBITT; ELIZABETH RUDDY; :
 AGNES HEART; THOMAS RABBITT; :
 EDWARD RABBITT; SARAH A. :
 JACKSON; ESTATE OF SARAH A. :
 JACKSON; KATE HAROLD; ESTATE :
 OF KATE HAROLD; GEORGE A. :
 KIMBARK; GENIE G. KIMBARK; S.A. :
 GREENE; JOHN BOWEN; ESTATE OF :
 JOHN BOWEN; MINNIE BISHOP; :
 ESTATE OF MINNIE BISHOP; NAOMI :
 HUGHES; ESTATE OF NAOMI :
 HUGHES; MARY E. DOYLE; :
 MARGARET T. DAILY; WILLIAM B. :
 CRAM; ESTATE OF WILLIAM B. :
 CRAM; MARY A. MELODY; :
 CATHERINE MCELROY; ELLA :
 TRACY; ESTATE OF ELLA TRACY; :
 MARY CASSIDY; ESTATE OF MARY :
 CASSIDY; ANNIE CALVERT; ESTATE :
 OF ANNIE CALVERT; JOHN :
 WINTHROP; ANNIE WINTHROP; :
 CHARLOTTE M. MCCORMACK f/k/a :
 CHARLOTTE WINTHROP; FRANK :
 WINTHROP; ANNIE BISHOP; JOHN :
 BISHOP; CATHERINE CRONIN; :
 ESTATE OF CATHERINE CRONIN; :
 ERNEST PURSHE; ESTATE OF :
 ERNEST PURSHE; WILLIAM :
 GLENNON; ESTATE OF WILLIAM :
 GLENNON; ANTONIO MONCONE; :
 ESTATE OF ANTONIO MONCONE; :
 MARGARET CONNERTON; ESTATE :
 OF MARGARET CONNERTON; :

**ZYLPHA PHELPS; ESTATE OF :
ZYLPHA PHELPS; MARGARET :
CHENY; ESTATE OF MARGARET :
CHENY; ALBINE P. CONSTAG; :
ESTATE OF ALBINE P. CONSTAG; :
AXEL A. LAWS; ESTATE OF AXEL A. :
LAWS; WILLIAM G. GRUBE; ESTATE :
OF WILLIAM G. GRUBE; NELLIE B. :
COMER; ESTATE OF NELLIE B. :
COMER; NORA KURRAN; ESTATE :
OF NORA KURRAN; EDWARD T. :
MCSOLEY; ESTATE OF EDWARD T. :
MCSOLEY; THOMAS MCKENNA; :
MARION MCCAUGHEY; EVELYN :
PATTERSON; KATHLEEN REISS; :
JOHN J. MCKENNA; THOMAS F. :
MCKENNA; FRANK LOVE; ESTATE :
OF FRANK LOVE; FRANK ROONEY; :
ESTATE OF FRANK ROONEY; :
HELEN E. ANDREWS; ESTATE OF :
HELEN E. ANDREWS; ANNIE :
MCHUGH; MARY F. TALBY; :
MARGARET E. AYONS; HELEN I. :
ALDRICH; ANNA M. MCHUGH; :
PETER J. MCHUGH; ANNIE :
MCHUGH, ALIAS ANN MCHUGH; :
MARY F. TALBY; MARGARET E. :
AYONS; HELEN I. ALDRICH; ANNA :
M. MCHUGH; PETER J. MCHUGH; :
MARY B. HIGGINS; ESTATE OF :
MARY B. HIGGINS; MARGARET V. :
MURPHY; ESTATE OF MARGARET :
V. MURPHY; AMELIA BRINDLE; :
ESTATE OF AMELIA BRINDLE; :
MARY JUDGE; ESTATE OF ELLEN G. :
HENNESSY; ELLEN G. HENNESSY; :
JAMES WOLSTENHOLME; ESTATE :
OF JAMES WOLSTENHOLME; :
JAMES WOLSTENHOLME; JAMES :
CLAXTON WOLSTENHOLME; :
SARAH PETTINE; ESTATE OF :
SARAH PETTINE; PETER :
TRUMPLER; PATRICIA LETT; :
MARY M. SIMMONS; MARY M. :
GAYLORD; ELLA TRUMPLER; :
WILLIAM COURT; ESTATE OF :**

WILLIAM COURT; THOMAS :
 REYNOLDS; ESTATE OF THOMAS :
 REYNOLDS; ALMIRA M. HALL; :
 JOHN HOLMES; FRED L. BALCOM; :
 ESTATE OF MARY ELIZABETH :
 MCCARTHY; MARY MCCARTHY; :
 PATRICK A. MORGAN; MARGARET :
 M. MORGAN; JOSEPH F. CURRIER; :
 ESTATE OF JOSEPH F. CURRIER; :
 PATRICK D. LOUTH; THOMAS :
 LOUTH; CHARLES H. BRIGGS; :
 ESTATE OF CHARLES H. BRIGGS; :
 WILLIAM JOHNSON; ESTATE OF :
 WILLIAM JOHNSON; ELLEN T. :
 SHANLEY; ESTATE OF ELLEN T. :
 SHANLEY; MICHAEL J. SALMON :
 AND WIFE; ESTATE OF MICHAEL J. :
 SALMON; ESTATE OF WIFE OF :
 MICHAEL J. SALMON; MARTIN :
 MURTAUGH; ESTATE OF MARTIN :
 MURTAUGH; MARY MURTAUGH; :
 ESTATE OF MARY MURTAUGH; :
 ALICE CRONIN; ESTATE OF ALICE :
 CRONIN; MAURO DALARINO; :
 ESTATE OF MAURO DALARINO; :
 NATHAN BROWN; ESTATE OF :
 NATHAN BROWN; MARY :
 WATERMAN; ELISA ALDEN :
 WATERMAN; EVELINA F. :
 WATERMAN SMITH; JOSIAH :
 HARRIS WATERMAN; FRANK :
 ATWOOD WATERMAN; PHOBEY :
 KNIGHT; HENRY KNIGHT; MARY :
 KNIGHT BOWEN; C. E. SILVA; AMIL :
 M. O'NEILL; FRANK O'NEILL; :
 GEORGE KNIGHT; PATRICK HAYES; :
 MARY HAYES; ESTATE OF MARY :
 HAYES; ERNESTINE M. SCHWAB; :
 AUGUSTA C. A. MEYER; ESTHER H. :
 FINNERAN; MARY B. HIGGINS; :
 ESTATE OF MARY B. HIGGINS; :
 VICTORIA AVERY; ESTATE OF :
 VICTORIA AVERY; THOMAS E. :
 CARTER; ESTATE OF THOMAS E. :
 CARTER; MARY A. LARKIN; ESTATE :
 OF MARY A. LARKIN; JOHN J. RICH; :

**SISTER MARY J. DOLORITA a/k/a :
 JENNIE C. RICH; MARY T. RICH; :
 AGNES C. RICH; ALMA M. RICH; :
 CATHERINE G. RICH; IRENE M. :
 STANDISH; ESTATE OF IRENE M. :
 STANDISH; MARY JUDGE; ESTATE :
 OF ELLEN G. HENNESSY; VICTORIA :
 AVERY; ESTATE OF VICTORIA :
 AVERY; JAMES H. MADDEN; :
 ESTATE OF JAMES H. MADDEN; :
 ANNIE CALVERT; ESTATE OF ANNIE :
 CALVERT; CHARLES HOWE; :
 FRANCES BERTHA HOWE; ARTHUR :
 FREDERICK HOWE; JOSEPH :
 PETTINE; ESTATE OF JOSEPH :
 PETTINE; JOHN H. VALLETTE; :
 ESTATE OF JOHN H. VALLETTE; :
 ROBERT STEWART; ESTATE OF :
 ROBERT STEWART; AGNES :
 STEWART; ESTATE OF AGNES :
 STEWART; AGNES GIFFEN :
 STEWART; ALMIRA M. HALL; JOHN :
 HOLMES; JOHN INDELKOT; ESTATE :
 OF JOHN INDELKOT; THOMAS J. :
 NORMAN; ESTATE OF THOMAS J. :
 NORMAN; WILLIAM H. :
 LE LACHEUR; CHARLES H. :
 LE LACHEUR; PAUL LE LACHEUR; :
 ESTATE OF HARRIET LE LACHEUR; :
 PAUL A. LE LACHEUR; PAUL P. LE :
 LACHEUR; JAMES P. LOFTUS; :
 ESTATE OF JAMES P. LOFTUS; :
 MARY E. LOFTUS; ESTATE OF MARY :
 E. LOFTUS; MARY SHANNON; :
 ESTATE OF MARY SHANNON; JOHN :
 SHANNON; ESTATE OF JOHN :
 SHANNON; JOHN A. SHANNON; :
 MARY B. HIGGINS; ESTATE OF :
 MARY B. HIGGINS; GIUSEPPE :
 PAONE; ESTATE OF GIUSEPPE :
 PAONE; CORA L. CANNON; ESTATE :
 OF CORA L. CANNON; MARY A. :
 CANNON; ROBERT S. ROBERTSON; :
 SOPHIA ROBERTSON; KATHERINE :
 MCCARTHY; ESTATE OF :
 KATHERINE MCCARTHY; :**

KATHERINE T. MCCARTHY; :
KATHERINE MARY MCCARTHY; :
C. G. CAMBIO; FRANK C. CAMBIO; :
WILLIAM A. CAMBIO; EDWARD P. :
CAMBIO; ADOLF A. CAMBIO; :
EVELYN OAKLEY, JR.; MARIA B. :
O'BRIEN, ESTATE OF MARIA B. :
O'BRIEN; WILLIAM FUERTH; HELEN: :
FUERTH; CAROLINE FUERTH; DORA: :
FUERTH; HELEN FUERTH HEDISON; :
ERNEST FUERTH; ELIZABETH :
KELLEY; ESTATE OF ELIZABETH :
KELLEY; THOMAS J. NORMAN; :
ESTATE OF THOMAS J. NORMAN; :
MARGUERITE BROWN; ESTATE OF :
MARGUERITE BROWN a/k/a :
MARGUERETE BROWN; DANIEL S. :
BUSHEE; ESTATE OF MARY L. :
BUSHEE; ERASTUS D. NILES; :
ESTATE OF ERASTUS D. NILES; :
JENNIE CRAMER; ESTATE OF :
JENNIE CRAMER; HENNIRETTA :
SIEGEL; ESTATE OF HENNRIETTA :
SIEGAL a/k/a HENNIRETTA SIEGEL; :
JOS. E. SCANLON; ESTATE OF JOS. :
E. SCANLON; TERASA SCANLON; :
ESTATE OF TERASA SCANLON; :
HANNAH E. BOLAN; ESTATE OF :
HANNAH E. BOLAN; RHEY T. :
SNODGRASS; ESTATE OF RHEY T. :
SNODGRASS; JOSEPH MANION; :
ESTATE OF JOSEPH MANION; JOHN :
CROFT; SARAH M. LUND; JOHN T. :
CROFT; CLARA I. CROFT; MILDRED :
R. CROFT; MARTIN F. FARRELL, JR.; :
ESTATE OF MARTIN F. FARRELL, :
JR.; DEBORAH L. GIFFORD; ESTATE :
OF LYSANDER C. GIFFORD; :
GEORGE A. SPINK; LUCIE A. SPINK; :
WILLIAM F. MCCARTNEY; ESTATE :
OF WILLIAM F. MCCARTNEY; :
WILLIAM MERRITT; ESTATE OF :
WILLIAM MERRITT; JOHN J. :
BURCH; WILLIAM W. BURCH; :
EMMA L. COOK; ESTHER A. :
MADDOX; ALBERT LINDGREN; :

ESTATE OF ALBERT LINDGREN; :
 FANNIE E. WHITE; ESTATE OF :
 FANNIE E. WHITE; MARY A. HOYE; :
 ESTATE OF MARY A. HOYE; :
 ROBERT R. RAWLINSON AND WIFE; :
 ESTATE OF ROBERT R. :
 RAWLINSON; ESTATE OF WIFE OF :
 ROBERT R. RAWLINSON; HANNAH :
 E. BOLAN; ESTATE OF HANNAH E. :
 BOLAN; THOMAS A. DILLON; :
 ESTATE OF THOMAS A. DILLON; :
 SAMUEL H. TOBIN; ESTATE OF :
 SAMUEL H. TOBIN; MYER COHEN; :
 ESTATE OF MYER COHEN; ESTER :
 COHEN; ESTATE OF ESTER COHEN; :
 JOSEPH H. REYNOLDS; ESTATE OF :
 JOSEPH H. REYNOLDS; JAMES :
 DANIELS; ESTATE OF JOHN F. :
 DANIELS; ESTATE OF :
 CHRISTOPHER W. DANIELS; :
 ESTATE OF EVELYN N. DANIELS; :
 MARY E. DANIELS; WALTER E. :
 DANIELS; CATHERINE DANIELS; :
 JOHN W. MOORE; ESTATE OF :
 JOHN W. MOORE; FERDINAND :
 TANZER; ESTATE OF DORA :
 FUERTH; CAROLINE FUERTH; :
 ELEANOR P. CARTWRIGHT; ESTATE: :
 OF ELEANOR P. CARTWRIGHT; :
 MAURICE GELUSHA; ESTATE OF :
 MAURICE GELUSHA; MAX :
 GELUSHA; ESTATE OF MAX :
 GELUSHA; JOHN G. C. GAUTIEN; :
 ESTATE OF JOHN G. C. GAUTIEN; :
 LUCY A. BOWEN; ESTATE OF LUCY :
 A. BOWEN; MARGARET T. BOWEN; :
 ESTATE OF ELLEN BOWEN; ESTATE :
 OF ELIZABETH BOWEN; ESTATE OF :
 JOHN F. MULDOON; MARY BOWEN; :
 ESTATE OF MARY BOWEN; MARY :
 COMLIN; ESTATE OF MARY :
 COMLIN; JANE OGDEN; ESTATE OF :
 JANE OGDEN; THOMAS J. CRAMER; :
 ESTATE OF THOMAS J. CRAMER; :
 SARAH J. FRENCH; ESTATE OF :
 SARAH J. FRENCH; HECTOR J. :

HECKETT; ESTATE OF HECTOR J. :
 HECKETT; HANNAH E. BOLAN; :
 ESTATE OF HANNAH E. BOLAN; :
 MARY A. BYRNES; ESTATE OF :
 MARY A. BYRNES; ADRIAN :
 JACKSON; ESTATE OF ADRIAN :
 JACKSON; ROSE ANN JACKSON; :
 ESTATE OF ROSE ANN JACKSON; :
 BENJAMIN BOUTELLE; ESTATE OF :
 BENJAMIN BOUTELLE; THEODORE :
 BIDET; THEODORE F. BIDET; :
 JENNIE R. GIRARD; WILLIAM :
 BIDET; MARY F. BIDET; ESTATE OF :
 MARY F. BIDET; STEPHEN HANEY; :
 ESTATE OF STEPHEN HANEY; :
 ELIZABETH HANEY; ESTATE OF :
 ELIZABETH HANEY; FANNIE :
 CLARE; ESTATE OF FANNIE CLARE; :
 CHARLES MCHUGH; EDWARD J. :
 MCHUGH; GLADYS BROWN; SUSAN :
 K. MCHUGH; AMELIA W. MARTIN; :
 ESTATE OF AMELIA W. MARTIN; :
 CATHERINE LEONARD; ESTATE OF :
 CATHERINE LEONARD; JOHN J. :
 RICH; SISTER MARY J. DOLORITA :
 (JENNIE C. RICH); MARY T. RICH; :
 AGNES C. RICH; ALMA M. RICH; :
 CATHERINE G. RICH; MARY A. :
 MARTIN; ESTATE OF MARY A. :
 MARTIN; MARY A. BYRNES; ESTATE :
 OF MARY A. BYRNES; JULIETTE :
 DARLING; ESTATE OF JULIETTE :
 DARLING; JAMES D. VANDERBEEK; :
 ESTATE OF JAMES VANDERBEEK; :
 BALDASSARE PARRILLO; MARY :
 PARILLO; ESTELLE PARILLO; :
 ANTONETTA PARRELLO; SOREN R. :
 LIND; ANNIE R. LIND; ANNIE R. :
 KAY; WILLIAM TRIMBLE; ELIZA :
 TRIMBLE; MARY E. MCCANN; :
 ESTATE OF MARY E. MCCANN; :
 JOSEPH P. MCELROY; ESTATE OF :
 JOSEPH P. MCELROY; ROBERT J. :
 MARTIN; ESTATE OF ROBERT J. :
 MARTIN; THEODORE E. THORPE; :
 ESTATE OF THEODORE E. THORPE; :

**KATE L. BRENNAN; ESTATE OF :
 KATE L. BRENNAN; GIUSEPPE :
 PAONE; ESTATE OF GIUSEPPE :
 PAONE; FRANK RILEY; VIOLA M. :
 DOYLE; CLARENCE J. RILEY; :
 AUDREY E. RILEY; BRIDGET RILEY; :
 WILLIAM KELLEY; WILLIAM H. :
 KELLEY; JAMES H. MADDEN; :
 ESTATE OF JAMES H. MADDEN; :
 JANE HOLDEN; ESTATE OF JANE :
 HOLDEN; ABE SELEZER; ESTATE OF :
 ABE SELEZER; WILLIAM TRIMBLE; :
 ELIZA TRIMBLE; NOBLE C. BROWN; :
 ESTATE OF NOBLE C. BROWN; :
 ANTONIO MARCHIONNE; ANNA :
 MARCHIONNE; JAMES J. QUINN; :
 THOMAS L. QUINN; PATRICK J. :
 QUINN; ARTHUR NEILL; ESTATE OF :
 ARTHUR NEILL; FILOMENO :
 CAMBIO; ESTATE OF FILOMENO :
 CAMBIO; ROSE SPERA; ESTATE OF :
 ROSE SPERA; ESTELLA DOUGLASS; :
 ESTATE OF ESTELLA DOUGLASS; :
 MARTIN L. GRAY; ESTATE OF :
 MARTIN L. GRAY; DOMESTIC LOAN :
 AND INVESTMENT BANK f/k/a :
 DOMESTIC SAFE DEPOSIT :
 COMPANY; MAINE DEVELOPMENT, :
 INC.; PAUL FILIPPI;¹ MARION :
 FILIPPI a/k/a MARIAN FILIPPI;² :
 DOMENIC D'AMBRA; BI REALTY, :
 INC. LEONARD W. HATHAWAY; :
 ESTATE OF LEONARD W. :
 HATHAWAY; WHEELOCK :
 COLLEGE; DEAN JUNIOR COLLEGE :
 ALUMNI ASSOCIATION; :
 LIGHTHOUSE FOR THE BLIND; :
 MIAMI SHORES COMMUNITY :
 CHURCH; GREATER MIAMI LAY :
 DIABETIC; LAWRENCE A. SIGNORE; :
 COASTWAY CREDIT UNION; :
 INDEPENDENT REALTY :**

¹ Paul Filippi, Sr. is a named party in Plaintiff's original and Amended Complaint; however, he is not identified in the caption of Plaintiff's Second Amended Complaint.

² By stipulation of the parties in February of 2008, Marion Filippi was substituted as a defendant with her sons, Paul C. Filippi, Steven C. Filippi and Blake A. Filippi.

**ASSOCIATES; PAUL T. SURABIAN; :
their heirs, executors, administrators, :
successors and assigns, known and :
unknown, and also all other persons :
unknown and unascertained, claiming, or :
who may claim, any right, title, estate, :
lien, or interest in the real estate involved, :
which is, or might become, adverse to the :
Plaintiff's right, title, or interest therein :
as alleged or which does or may :
constitute any cloud upon Plaintiff's title :
thereto, as set forth in the Amended :
Complaint :**

DECISION

Stern J. Before the Court in this quiet title action are Cross-Motions for Declaratory Judgment pursuant to Super. R. Civ. P. 57 filed by Defendants/Counterclaim Plaintiffs Paul Filippi, Steven Filippi, and Blake Filippi (“Filippis” collectively) and Plaintiff/Counterclaim Defendant Smithfield Estates, LLC (“Smithfield”) regarding whether the Filippis hold marketable record title (“MRT”) to disputed lots of real property under the Marketable Record Title Act (MRTA), G.L. 1956 § 34-13.1-1, et seq. The Filippis seek a Declaration that they possess MRT subject to Smithfield’s interests and claims for adverse and constructive possession. Smithfield seeks an opposite Declaration, that the Filippis do not possess MRT to the disputed lots. Jurisdiction is proper under G.L. 1956 § 9-30-1.

I

Facts and Travel³

The present Motions concern approximately five hundred and forty-nine (549) lots to which both Parties claim possession (“Disputed Lots”). In 1902, John M. Hathaway (“Hathaway”) recorded title to approximately sixty-five (65) acres of land in Smithfield, Rhode Island (“Town”) along both sides of Douglas Pike. Hathaway platted the parcel into one thousand four hundred thirty-six (1,436) 25' x 60' lots, which he transferred as a promotion to his tea and shoe store customers. (Filippi Mem. Ex. 1: Tax Assessors Maps.) The Disputed Lots are included in this overall plan and form a checkerboard amongst approximately three hundred twenty-nine (329) lots owned by the Belcher Family (“Belcher Lots”), from whom Smithfield purchased the Belcher Lots in 2002. (Filippi Mem. at 3 n.1.) The reason for this checkerboard configuration is that over the years, many owners of the individual lots defaulted on their property taxes and the lots were foreclosed upon by the Town at varying times. In 1953, the Belchers purchased the 329 defaulted properties checkerboarded within the area that more or less constitutes the Disputed Lots.

Smithfield argues that it owns all of the Disputed Lots through adverse and constructive possession because its predecessor in interest, the Belcher family, openly and notoriously occupied both their own and the Disputed Lots for the requisite statutory period of ten (10) years. See G.L. 1956 § 34-7-1. Smithfield has also asserted that it

³ The facts and travel of this case are well-documented in a prior written Decision of this Court. See Smithfield Estates, LLC. v. The Heirs of John M. Hathaway et al., No. PC 03-4157, 2011 R.I. Super. LEXIS 113 (R.I. Super. Dec. Aug. 15, 2011). Therefore, the Court will not repeat the facts and travel of the case, except as necessary for the purposes of this Decision.

holds interests to certain of the Disputed Lots against a third-party who claimed to have purchased some of the Disputed Lots from a purported Hathaway heir. Further, Smithfield claims it obtained purported title to additional Disputed Lots through tax deeds and land purchases from two colleges and a community church, which had originally obtained their titles through charitable donations. (Smithfield Second Am. Compl. at pp. 80-84.)

In 1970, the Filippis' father, Paul Filippi, Sr. ("Filippi, Sr."), purchased a tax deed ("Hines Deed") that included the Disputed Lots through a family entity, B. I. Realty. (Filippis' Mem. Ex. 6: Murphy aff. ¶ 10.) Since that time, the Hines Deed has been transferred from B. I. Realty into the Filippi family, first to Filippi, Sr. and culminating in the possession of his sons, the current Plaintiffs before the Court.⁴ In many respects, however, the initial sale of the Hines Deed to B. I. Realty was not properly executed. In particular, it was purchased not from the Town of Smithfield directly but from John Hines, Jr. ("Hines"), the Smithfield Town Solicitor, and his wife Rosalie Hines as grantor. (Filippis' Mem. Ex. 5: Hines Deed; Ex. 10: Hines aff. ¶ 4.) Additionally, the Hines Deed was sold without efforts to publicize or otherwise notify potentially interested parties as was required by statute at the time. See G.L. 1956 §§ 44-9-9 through 44-9-11.

⁴ In 1987, B. I. Realty transferred by deed its interest in the Disputed Lots to Paul Filippi, Sr. individually. (Filippi Mem. Ex. 6: Murphy aff. ¶ 13.) Within that same year, Paul Filippi, Sr. transferred the Disputed Lots to himself and his wife, Marion, as tenants in the entirety. (Id. at ¶ 15.) Upon Paul Filippi, Sr.'s death in 1992, his interest passed to Marion Filippi by operation of law. (Id. 19.) Marion subsequently transferred her interest in the Disputed Lots to her sons, Paul, Steven and Blake, who are currently before the Court in the instant dispute.

In a prior Decision, the Court found the Hines Deed to be null and void ab initio. See Smithfield Estates, LLC. v. The Heirs of John M. Hathaway et al., No. PC 03-4157, 76-77, 2011 R.I. Super. LEXIS 113, *108 (R.I. Super. Dec. Aug. 15, 2011). The Court's ruling was based on the fact that Hines, as Town Solicitor, did not have a personal interest in the Disputed Lots such that he could transfer them to B.I. Realty. Id. The Court further found that the purchase of the Hines Deed did not comply with statutory notice requirements in effect at the time. Id.; See §§ 44-9-9 through 44-9-11. Nevertheless, though invalid, the Court still found that the Hines Deed provided the Filippis color of title to the Disputed Lots. Smithfield, No. PC 03-4157, 76-77, 2011 R.I. Super. LEXIS 113, *108. Despite the Court's denial of their claim to valid title by virtue of the Hines Deed, the Filippis assert that they still own the Disputed Lots through adverse possession. Because the Hines Deed serves as color of title, were the Filippis to succeed on their adverse possession claim, their possession of the some of the Disputed Lots could result in possession of all of the Disputed Lots that are described in the Hines Deed.

With their current Motion, the Filippis seek to go beyond the Court's determination that the Hines Deed constitutes color of title and assert that it also serves as root of title to the Disputed Lots under the MRTA. They argue that by recording and relying on the Hines Deed as good title for the statutory minimum of forty (40) years without any transactions divesting them of their interest, they have obtained MRT to the entire Disputed Lots.⁵ See § 34-13.1-2. Under the MRTA, if a party demonstrates a forty

⁵ If the Filippis do hold MRT to the Disputed Lots subject to Smithfield's purported interests, because the Hines Deed was recorded in May of 1970, Filippis' Mem. Ex. 5: Hines Deed, MRT was obtained in May of 2010.

(40) year chain of ownership to a valid root of title, any other claims of ownership to the subject property are extinguished in the party's favor, subject to certain interests that may be asserted by other parties. The Filippis, therefore, ask the Court for a declaration that they hold MRT to the Disputed Lots, and that their MRT is subject to Smithfield's claims for adverse possession as well as valid title.

In opposition, Smithfield has asked for a declaration of its own that the Filippis do not hold MRT to the Disputed Lots. They argue that in addition to failing to satisfy the necessary statutory requirement for a tax sale and being declared void ab initio, the Hines Deed also violates the Due Process Clause of the Fourteenth Amendment. Because of this, they claim that the Hines Deed cannot ripen into MRT. Smithfield also lists numerous recorded events and claims upon the Disputed Lots such that the Filippis' chain of title dating back to the invalid Hines Deed was divested within the forty (40) year period needed to establish MRT. Lastly, Smithfield argues that it would be nonsensical for the Court to declare that the Filippis hold MRT yet also declare that the Filippis do not hold MRT subject to certain findings of fact at trial.

After the submission of briefs by the Parties, a hearing was held on Jan. 27, 2012. This Decision follows.

II

Standard of Review

Whether to grant declaratory or injunctive relief is "addressed to the sound discretion of the trial justice." Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005) (citing DiDonato v. Kennedy, 822 A.2d 179, 181 (R.I. 2003)). "When deciding an action for declaratory judgment, a trial justice makes all findings of fact without a jury." Houde

v. State, 973 A.2d 493, 498 (R.I. 2009) (citing Fleet Nat'l Bank v. 175 Post Road, LLC, 851 A.2d 267, 273 (R.I. 2004)). Provided the record does not “demonstrate[] a clear abuse of discretion or [that] the trial justice committed an error of law[,]” the justice’s decision will not be disturbed on appeal. Foster Gloucester Reg. Sch. Bldg. Comm. v. Sette, 996 A.2d 1120, 1124 (R.I. 2010). Further, “[i]t is well-established that ‘the findings of fact of a trial justice, sitting without a jury, will be given great weight and will not be disturbed absent a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong.’” Casco Indemnity Co. v. O’Connor, 755 A.2d 779, 782 (R.I. 2000) (citing Technology Investors v. Town of Westerly, 689 A.2d 1060, 1062 (R.I. 1997)). Unlike questions of fact, however, a trial justice’s conclusions of law are reviewed de novo. Fleet Nat'l Bank, 851 A.2d at 273.

Because the Court’s Decision in this matter requires it to construe the statutory language of the MRTA, it is cognizant that its “ultimate goal is to give effect to the General Assembly’s intent.” Martone v. Johnston Sch. Committee, 824 A.2d 426, 431 (R.I. 2003). When engaged in this exercise, the Court is mindful that “plain statutory language is the best indicator of legislative intent.” State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005). Therefore, when the language of the statute is “clear and unambiguous,” the Court will interpret it literally and “give the words of the statute their plain and ordinary meanings.” In re Narragansett Bay Comm’n. Gen. Rate Filing, 808 A.2d 631, 636 (R.I. 2002). If the statute is clear and unambiguous, the Court “must enforce [it] as written by giving the words . . . their plain and ordinary meaning.” Harvard Pilgrim Health Care, Inc. v. Gelati, 865 A.2d 1028, 1037 (R.I. 2004).

III

Discussion

The MRTA operates by allowing the establishment of marketable title upon a showing of a forty-year chain of title to real property, “with nothing appearing of record . . . purporting to divest the claimant of the purported interest.” §§ 34-13.1-2 and 34-13.1-10. This chain of title must originate from a “root of title” which is the last title transaction as of a date forty (40) years prior to the date that marketable record title has vested. § 34-13.1-1 (e). Even though a party may establish MRT, that title is still subject to prior interests and claims by outside parties such as muniments of title, claims of possession preserved through notices of claim, claims by adverse possession, and title transactions recorded after the effective date for root of title. §§ 34-13.1-3 and 34-13.1-5; see also Charles Allott, The New Marketable Title Act: Will It Chase The Clouds Away in Rhode Island? 44 R.I. B.J. 7, 8 (Nov. 1995) (noting that there are “exceptions to the rule of marketability which are interests or encumbrances in land arising prior to the root of title to which marketable record title will still be subject.”). The MRTA is a curative measure intended to “facilitate and simplify land title transactions.” Bitting et al. v. Gray et al., 897 A.2d 25, 33-34 (R.I. 2006). By its very terms, it is to be “liberally construed to effect [that] legislative purpose.” § 34-13.1-10. Rhode Island is one of approximately twenty (20) states to have passed an MRTA, and given the limited Rhode Island case law on the subject, the Court finds case law from other jurisdictions to be of assistance. See generally Jonathan Starble, Navigating Connecticut’s Marketable Record Title Act: A Roadmap for the Practitioner, 2007 Conn. B.J. 369, 370 (noting that the first version of

an MRTA was passed in Iowa in 1919 and a subsequent 1945 version passed in Michigan became the basis for a Model Act in 1960).

A

MRTA Requires a Conveyance

The threshold issue in a claim for MRT, is whether the claimant has established possession of a root of title. Under the MRTA, root of title is defined as:

“that conveyance or other title transaction in the chain of title of a person, purporting to create or containing language sufficient to transfer the interest claimed by such a person, upon which he relies as a basis for marketability of his title, and which was the most recent to be recorded as of a date forty (40) years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it is recorded” § 34-13.1-1(e) (emphasis added).

The very underpinnings of the MRTA is to “clear titles of stale claims and defects to create certainty of marketability of title.” Allott at 10. Thus, the instances in which MRT has been sought are where a party has for whatever reason acquired bad title. In Mobbs v. Lehigh, 655 P.2d 547, 550 (Okla. 1982), the claimant’s predecessors in interest acquired a county tax deed to land that had already been condemned by the City of Lehigh years before. Finding the tax deed was invalid in that the City was deprived of its own land, the Oklahoma Supreme Court nevertheless found the claimant had obtained MRT, in part because the Court determined that the Oklahoma MRTA could extinguish the stale interests in land of a state entity the same it is could the interests of a private individual. Id. 551-52. In E. E. Marshall v. Hollywood, Inc., 236 So.2d 114 (Fl. 1970), an individual posing as an administrator of a deceased’s estate managed to forge a deed to himself for corporate property intended to pass to the deceased’s widow. Id. at 116-17.

The individual transferred the deed to successors in interest who subsequently sought to quiet title through Florida's MRTA. Id. In ruling for the successors in interest, the court dismissed the widow's estate's arguments that the MRTA could not be used in the furtherance of fraud. Id. 119-20. The Court stated "to accept [the widow's] arguments would be to disembowel the Act through a case dealing with a factual situation of a nature precisely contemplated and remedied by the Act itself." Id.; see also H & F Land, Inc. v. Panama City-Bay County Airport & Industrial District, 736 So.2d 1167, 1173 (Fl. 1999) (MRTA extinguished common law way of necessity where interest was not asserted during thirty (30) year statutory period).

The MRTA is not a cure all, however, and in some instances faulty deeds have been found to be outside the MRTA's saving power. In Sigmund v. Elder, 631 So.2d 329 (Fl. 1994), a husband failed to deed property owned solely by him to he and his wife as tenants in the entirety because his wife did not participate in the deed's execution. Id. at 330. When the wife subsequently sought to employ Florida's MRTA to salvage her purported interest, the Court noted that the deed was void ab initio because it did not comply with the necessary statutory requirements in place at the time of transfer. Id. Finding the MRTA could not revive a deed found void ab initio, the Court dismissed the wife's claim. Id. at 331; see also Reid v. Bradshaw, 302 So.2d 180, 183 (Fla. 1st DCA 1974) (finding MRTA could not cure an inherent defect in a deed that violated the state constitution). In the Mobbs case relied on by the Filippis and referenced above, the county tax deed was saved by the Oklahoma MRTA, 655 P.2d at 551. The Court, however, based its ruling on a specific statute that provided for a shorter limitation period for quieting title to void tax deeds. Id. at 551. No such statute exists in Rhode Island.

The Court finds that the Hines Deed falls amongst the latter cases which have declined to extinguish deeds that are void ab initio through application of the MRTA. That a deed is void ab initio as opposed to simply void is a fundamental distinction. A document found to be void ab initio is null from its very beginning and, unlike a deed that was transferred with a defect that could be perfected subsequently, a title transaction that legally did not occur at its inception cannot be subsequently validated by statute or decree. See Massachusetts Mun. Wholesale Elec. Co. v. Tn. of Danvers, 411 Mass. 39, 54, 577 N.E.2d 283, 292-93 (Mass. 1991) (“A contract which is void ab initio, or void from the beginning, may not be enforced. No contractual duty exists, no breach of contract is possible, and no judgment for money damages can be obtained under the contract.”). Instead, such a document is treated “as if it had never been made.” Id. 411 Mass. at 55, 577 N.E.2d at 293. “Void ab initio is defined as “[n]ull from the beginning, as from the first moment when a contract is entered into. A contract is void ab initio if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract.” Blacks Law Dictionary 1709 (9th ed. 2009).

It has been a longstanding policy in Rhode Island that a tax deed that fails to effect proper notice is invalid. See L. Brayton Foundry Building, Inc. v. Santilli, 676 A.2d 1364, 1365 (R.I. 1996) (stating “[i]t is well settled that the failure to comply fully with . . . statutory-notice provisions invalidates the attempted tax sale.”). In some instances, it has been held that a failure to give sufficient notice during a tax sale is a violation of the Due Process Clause of both the Fourteenth Amendment to the U.S. Constitution as well as the Rhode Island State Constitution. In Jones v. Flowers, 547 U.S. 220 (2006), the Court determined that failure to effect sufficient notice to an

interested party in land sold at a tax sale was a violation of the Due Process Clause. Id. at 239. There, the state entity sent a letter to the purported owner of the property which was returned as undeliverable and failed to take further actions to effectuate notice. Id. This Court notes that even less effort was taken in the transfer of the Hines Deed to the Filippis. Likewise, in Robert P. Quinn Trust v. Ruiz, 723 A.2d 1127 (R.I. 1999), our Supreme Court found a statute that supported a tax sale without affording notice to a vested remainderman was unconstitutional. Id. at 1129; See also Mennonite Board of Missions v. Adams, 462 US. 791, 798 (1983) (insufficient notice of tax sale did not meet the obligations of the Due Process Clause of the Fourteenth Amendment); 16 Corpus Juris Secundum, Constitutional Law, § 5 (“Statutory law, in order to be valid, must conform to both the federal and state constitutions . . . No statute can, therefore, breathe life into an instrument made and executed in contravention of a constitutional inhibition.”).

In the present case, the Court will withhold from deciding whether the Hines Deed violates the Due Process Clause of the State or U.S. Constitutions as Smithfield has asked it to do. The Court does find, however, that the above cases are instructive with regard to the distinction between a deed that is void for an inability of the grantor to transfer good title for example and deed that is void ab initio because it is either unlawful or against settled public policy.⁶

⁶ As an aside, the Court finds the Filippis’ reliance on Texaco, Inc. v. Short, 454 U.S. 516 (1982) for the proposition that failure to afford proper notice when a statute extinguishes a party’s interest is misplaced. First, unlike in Texaco where the focus of the due process challenge was a statute, at issue here is not the MRTA itself but rather the implications of the Hines Deed being declared void ab initio in the context of root of title. Secondly, the Texaco decision, which concerned the statutory extinguishment of mineral rights, relied heavily on the fact that the party whose rights were being extinguished was in a highly

Looking at the strong rejection given tax deeds that failed to effect proper service and the key distinctions between a void and one deemed void ab initio, the Court finds that the Hinds Deed cannot constitute a “conveyance or other title transaction” under the MRTA. § 34-13.1-1(e). By virtue of the Court’s previous August 15 Decision, the Hines Deed has been deemed void ab initio, essentially meaning it never occurred. Unlike a faulty deed that is curable by adverse possession or other legal remedies, a deed that, in the eyes of the law was never conveyed, cannot serve as a transaction under the MRTA. The Court is mindful of the General Assembly’s desire for the Act be “broadly applied,” but it also finds insufficient language to support the creation of a transaction that though having physically taken place, does not have legal existence. See State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005) (noting that “plain statutory language is the best indicator of legislative intent.”).

B

Color of Title is not Synonymous with Root of Title

The Filippis assert that because this Court found previously that the Hines Deed vested in them color of title, they therefore have obtained root of title to the Disputed Lots as well. Color of title, however, is also not a “conveyance or other title transaction” under the statutory definition for root of title. § 34-13.1-1(e). “[T]he object of color of title is not to pass title, but to define the extent of the claim and extend the possession beyond the actual occupancy to the whole property described in the instrument.” 3 Am. Jur. 2d Adverse Possession § 258 (emphasis added). A party may rely on an invalid deed

regulated industry who would be deemed to have constructive notice of applicable statutes and regulations. Id. at 531-33. Per the clear terms of the statutes governing tax sales at the time, interested parties to the Hines Deed had sound reason to expect reasonable notice. §§ 44-9-9 through 44-9-11

as color of title, and provided the party takes the affirmative step of adversely possessing the applicable property for the requisite statutory period for adverse possession, color of title will ripen into marketable title. See Sleboda v. Heirs at Law of Harris, 508 A.2d 652, 655-56 (R.I. 1986) (noting that possession of color of title provides two benefits – that possession of a portion of the land described in the writing is treated as constructive possession once adverse possession is established and that under some statutory provisions the required length of possession is lessened). Possession of color of title without adverse possession, therefore, is meaningless and void of legal significance. See Daniels v. Blake, 81 R.I. 103, 108, 99 A.2d 7 (1953).

In contrast, a party may obtain MRT without adverse possession so long as nothing has occurred in the party’s chain of title for the required forty (40) years. While it is certainly possible that the same deed can constitute both root of title and color of title, in this context where the subject deed is not just void but void ab initio, the two cannot exist in the same document. See Vermont Dept. Public Service v. Massachusetts Mun. Wholesale Electric Co., 558 A.2d 215, 225 (Vt. 1988) (noting that sales agreements were “void ab initio” and “invocation of judicial or equitable doctrines cannot now breathe life into them.”). Further, that the dimensions written on the Hines Deed could be used subsequently to determine how many, if any, of the disputed lots the Filippis own by constructive possession does not also mean that the original transaction is somehow legitimized. Sleboda 508 A.2d at 655-56. The document considered color of title serves merely as a description of what will ripen after the statutory period. Accordingly, the Court finds that the Hines Deed, though constituting color of title, does not also constitute root of title under the MRTA.

IV

Conclusion

The Court finds the Hines Deed does not serve as root of title because it is void ab initio and therefore was not a conveyance within the context of the MRTA. The Court also finds that its prior determination that the Hines Deed vested color of title in the Filippis is immaterial to the question of whether the Filippis possess MRT to the Disputed Lots. Accordingly, the Filippis' Motion for a declaration that they possess MRT to the Disputed Lots subject to Smithfield's interests is denied and Smithfield's Motion for a declaration that the Filippis do not hold MRT to the Disputed Lots is granted.