STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(Filed: April 9, 2013)

DONALD B. MACDOUGALL, JR.	:	
	:	
v.	:	**C.A. No. WC 2004-0564**
	:	
	:	**Consolidated with**
TOWN OF CHARLESTOWN ZONING	:	
BOARD OF REVIEW	:	**C.A. No. WC 2007-0474**

DECISION

SAVAGE, J. This matter is before this Court on Plaintiff Donald B. MacDougall's Motion to Award Interest Pursuant to R.I. Gen. Laws § 9-21-10. Plaintiff seeks an award of prejudgment interest, pursuant to Rhode Island's general interest statute, on a prior award of attorney's fees and expenses in the amount of $50,201.38. This Court awarded Plaintiff these reasonable litigation expenses pursuant to the Rhode Island Equal Access to Justice Act, R.I. Gen. Laws §§ 42-92-1 et seq. (the "Act"), in connection with his tortuous quest to obtain dimensional zoning relief from the Town of Charlestown Zoning Board of Review. For the reasons set forth in this Decision, this Court denies Plaintiff's motion for an award of prejudgment interest.

I

Facts and Travel

As this is the fourth published decision of this Court in this case, the facts and travel of the case, as outlined in the prior reported decisions, are incorporated herein by reference. See MacDougall v. Charlestown Zoning Bd. of Review, C.A. Nos. WC 2007-0474, WC 2004-0564, 2008 WL 1699279 (Super. Ct. Feb. 21, 2008) (Thompson, J.) (original zoning case); MacDougall v. Charlestown Zoning Bd. of Review, C.A. Nos. WC 2007-0474, WC 2004-0564,

2011 WL 486037 (Super. Ct. Feb. 1, 2011) (Savage, J.) (finding MacDougall eligible to recoup reasonable litigation expenses under the Rhode Island Equal Access to Justice Act); MacDougall v. Charlestown Zoning Bd. of Review, C.A. Nos. WC 2007-0474, WC 2004-0564, 2011 WL 3153296 (Super. Ct. July 19, 2011) (Savage, J.) (further defining the categories of reasonable litigation expenses that MacDougall could recoup and the hourly rate applicable to his requested fee award).[1] Using this Court's most recent decision as a guide, and without prejudice to either party contesting the prior decisions of this Court with respect to attorney's fees and expenses, the parties agreed upon the amount of reasonable litigation expenses due and owing from the Zoning Board to MacDougall in accordance with those decisions. At the parties' request, this Court then entered an Order dated December 6, 2011 that requires the Zoning Board to pay MacDougall $42,000 in attorney's fees and $8201.38 in costs for a total award of reasonable litigation expenses of $50,201.38. See MacDougall v. Charlestown Zoning Bd. of Review, C.A. Nos. WC 2007-0474, WC 2004-0564 (Order). As the parties disputed whether prejudgment interest should attach to that award, the Order is silent as to the issue of prejudgment interest. Id.

To address the outstanding issue of prejudgment interest, Plaintiff filed a Motion to Award Interest Pursuant to § 9-21-10, together with a supporting memorandum. He argues that an award of reasonable litigation expenses under the Rhode Island Equal Access to Justice Act is an award of pecuniary damages in a civil action to which prejudgment interest must be added under § 9-21-10—Rhode Island's general interest statute. He further contends that such an award against the municipality is not barred by the doctrine of sovereign immunity. Plaintiff seeks an award of prejudgment interest on attorney's fees and expenses running from the date that he paid those fees and expenses. He also seeks an additional award of "fees on fees" to

[1] This Court does not sanction this piecemeal litigation, as it constrains judicial resources and delays the ultimate disposition of cases.

compensate him for the attorney's fees that he incurred in litigating both his request for attorney's fees and expenses and his claim for prejudgment interest.

The Zoning Board filed a memorandum in opposition to Plaintiff's motion to award prejudgment interest. It argues that any award of prejudgment interest under the Rhode Island Equal Access to Justice Act should follow the federal model. As the federal Equal Access to Justice Act does not provide for an award of prejudgment interest, it contends that the Rhode Island Equal Access to Justice Act similarly should not provide for such an award. The Zoning Board argues further that the general interest statute cannot be read as allowing for an award of prejudgment interest in this case and that awards of that nature are discouraged by most courts.

In reply, Plaintiff maintains that the federal Equal Access to Justice Act and the Rhode Island Equal Access to Justice Act are not parallel with respect to interest awards, in that the federal Equal Access to Justice Act provides for the award of post-judgment interest while the Rhode Island Equal Access to Justice Act is silent as to the award of interest. This difference regarding post-judgment interest, Plaintiff argues, warrants deviating from the federal model as to prejudgment interest as well. He also argues that a judgment for reasonable litigation expenses under the Rhode Island Equal Access to Justice Act is a primary damages remedy designed to compensate him for the injury of having to expend resources to challenge agency misconduct—as opposed to the usual fee request that is made secondary to prevailing on an underlying cause of action. As such, Plaintiff contends that his request for prejudgment interest is a demand for pecuniary damages that falls squarely within the State's general interest statute in § 9-21-10.

II

Analysis

The primary question before this Court, therefore, is whether a plaintiff who receives an award of reasonable litigation expenses under the Rhode Island Equal Access to Justice Act is entitled to recover prejudgment interest on that award, either under the terms of that Act or the State's general interest statute. To answer this question, this Court first must examine the nature of prejudgment interest. It then must consult settled precepts of statutory construction applicable to interpreting statutes that arguably provide for an award of prejudgment interest. Mindful of these precepts and the nature of prejudgment interest, it then must determine if either the Rhode Island Equal Access to Justice Act or the general interest statute allow for the award of prejudgment interest in this case.

A

Prejudgment Interest

Prejudgment interest is a remedy that did not exist at common law. See In re McBurney Law Services, Inc., 798 A.2d 877, 883-884 (R.I. 2002). Indeed, all forms of interest were banned by the laws of usury in early agrarian economies. See James L. Bernard, Prejudgment Interest and the Copyright Act of 1976, 5 Fordham Intel. Prop. Media & Ent. L.J. 427, 432 (1995). The decline of the agrarian economy and the rise of the more modern mercantilist and industrial economies ultimately led to the repeal of those usury laws that prohibited interest. Id. at 433. Interest came to be seen as a stimulant to trade in the new economies. Id.

As statutes began providing for prejudgment interest, courts used two theories to justify awarding such interest: the loss theory and the unjust enrichment theory. See id. at 435. The loss theory rests on "the unarticulated assumption that the inherent income-producing ability of

money cannot be separated from the money itself; hence, denial of interest would be denial of an inexorable economic fact." Recent Developments, Prejudgment Interest as Damages: New Application of an Old Theory, 15 Stan. L. Rev. 107, 109 (1962). Similarly, the unjust enrichment theory states that "[t]o the extent defendant has had the free use of the income-producing ability of plaintiff's money without having to pay for it, he [or she] has been unjustly enriched." Id.

The influence of these two approaches arguably can be found in the language of Rhode Island's general interest statute, which states:

> In any civil action in which a verdict is rendered or a decision made for pecuniary damages there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent per annum thereon from the date the cause of action accrued, which shall be included in the judgment entered therein.

R.I. Gen. Laws § 9-21-10(a).[2] Today, "the purpose of [Rhode Island's] prejudgment interest statute is to accelerate the settlement of claims." Andrade v. State, 448 A.2d 1293, 1297 (R.I. 1982) (citing Pray v. Narragansett Improvement Co., 434 A.2d 923 (R.I. 1981); Isserlis v. State Director of Public Works, 111 R.I. 164, 300 A.2d 273 (1973)).

B

Statutory Construction

As prejudgment interest did not exist at common law, it can be awarded only by statute. McBurney, 798 A.2d at 883-884; Andrade, 448 A.2d at 1294. The statute must expressly

[2] "The statute explicitly provides that interest will be calculated only upon 'entry' of a judgment, not its mere rendering, nor upon the entry of an order." Cardi Corp. v. State, 561 A.2d 384, 386 (R.I. 1989). As no judgment has entered in this case, Plaintiff's motion for prejudgment interest is, at best, premature. In this Court's view, the absence of entry of judgment alone warrants the denial of Plaintiff's motion for prejudgment interest. Yet, in the interest of judicial economy, this Court will proceed, notwithstanding the absence of the entry of judgment, to address Plaintiff's motion for prejudgment interest on its merits.

provide for an award of prejudgment interest by its plain language. Id. This precept differs from the well-accepted rule of statutory construction that allows courts to "extend statutes by implication and inference because legislation cannot practically or conveniently, or perhaps even possibly, specify all of the detailed operational effects it should have in all of the various circumstances to which it may apply." 2B Norman J. Singer, Sutherland Statutory Construction § 55:2 at 451 (2012). Indeed, courts often read provisions into statutes by necessary implication, which is an implication "that is so strong in its probability that the contrary thereof cannot reasonably be supposed."[3] Id. § 55:3 at 453 (internal quotation omitted). This precept is particularly applicable when multiple statutes are involved because "[l]egislation never is written on a clean slate, never is read in isolation, and never applies in a vacuum." Id. § 53:1 at 373-74. Indeed, "[h]armony and consistency are positive values in a legal system because they promote impartiality and minimize arbitrariness." Id. at 375. Thus, courts typically "have a duty to construe statutes harmoniously where reasonable." Id. at 375-76.

Our Supreme Court has made clear, however, that any statute providing for an award of prejudgment interest, being in derogation of the common law, must be strictly construed so as not to alter the purpose and scope of the statute, as intended by the Legislature. Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill, 652 A.2d 440, 451-452 (R.I. 1994); see also Krikorian v. R.I. Dep't of Human Services, 606 A.2d 671, 675 (1992) (noting that statutory construction must conform with the Legislature's purpose and intent); Gott v. Norberg, 417 A.2d 1352, 1357 (R.I. 1980) (noting that judicial interpretation of a statute should only expand its scope when the statute's clear purpose would otherwise fail). In strictly construing a prejudgment interest statute, the Court cannot "extend the reach of the[] statute" or "read

[3] Stated more plainly, a necessary implication is one "so strong in its probability that anything to the contrary would be unreasonable." Black's Law Dictionary 757 (7th ed. 1999).

anything into a prejudgment interest statute by implication." McBurney, 798 A.2d at 884, n.5 (citing DiLuglio v. Providence Auto Body, Inc., 755 A.2d 757, 775 (R.I. 2000); Clark-Fitzpatrick, Inc., 652 A.2d at 451-52); see Andrade, 448 A.2d at 1294. Furthermore, in construing a state statute that is modeled on a federal statute—such as the Rhode Island Equal Access to Justice Act at issue here—the Court should follow the construction put on the federal statute by the federal courts. Krikorian, 606 A.2d at 674.

C

Rhode Island Equal Access to Justice Act

This Court must examine the language of the Rhode Island Equal Access to Justice Act to determine if it provides for an award of prejudgment interest. The Act provides, in pertinent part, as follows:

> [I]n order to encourage individuals and small businesses to contest unjust actions by the state and/or municipal agencies, the legislature hereby declares that the financial burden borne by these individuals and small businesses should be, in all fairness, subject to state and/or municipal reimbursement of reasonable litigation expenses when the individual or small business prevails in contesting an agency action, which was without substantial justification.

R.I. Gen. Laws § 42-92-1(b). By its terms, therefore, the Act allows certain individuals and small businesses to contest unjust actions by state and municipal agencies and to be reimbursed for their "reasonable litigation expenses" if they prevail and prove that such agency action was without substantial justification. Id. It is undisputed that the Rhode Island Equal Access to Justice Act does not expressly provide for an award of prejudgment interest. Indeed, the Act is completely silent as to prejudgment interest.

While the Act allows prevailing parties to recoup their reasonable litigation expenses under certain circumstances, it cannot be argued that such expenses include prejudgment interest.

"Reasonable litigation expenses" are defined in a separate provision of the Act as "expenses which were reasonably incurred by a party in adjudicatory proceedings, including, but not limited to, attorney's fees, witness fees of all necessary witnesses, and other costs and expenses as were reasonably incurred." Id. § 42-92-2(6). An "expense" is "[a]n expenditure of money, time, labor, or resources to accomplish a result." Black's Law Dictionary 598 (7th ed. 1999). Prejudgment interest is not an expense that was "reasonably incurred by a party in adjudicatory proceedings." § 42-92-2(6). It is instead a remedy that, under proper circumstances, may be awarded to a party as compensation for delay in obtaining a damage award. See Andrade, 448 A.2d at 1295 (citing Foster, 94 R.I. 217, 179 A.2d 494). While the Act thus may allow a prevailing party to be compensated for the loss of use of its money as an element of damages in an award for reimbursement of reasonable litigation expenses, its plain language cannot be read as providing for prejudgment interest to be added to a damage award.

Mindful that the Rhode Island Equal Access to Justice Act itself does not provide for prejudgment interest, Plaintiff argues that the general interest statute in § 9-21-10 requires prejudgment interest to be added to any award for reasonable litigation expenses under the Act. In so arguing, Plaintiff suggests, at least implicitly, that the Legislature intended the prejudgment interest statute in § 9-21-10 to apply to claims under the Rhode Island Equal Access to Justice Act.

The question thus becomes whether the Rhode Island Equal Access to Justice Act can be construed as allowing for an award of prejudgment interest by implication. To resolve this question, this Court must "apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature." Kingston Hill Acad. v. Chariho

Reg'l Sch. Dist., 21 A.3d 264, 271 (R.I. 2011) (quoting In re Tetreault, 11 A.3d 635, 639 (R.I. 2011)).

In doing so, it is clear that the purpose of the Act is to "mitigate the burden placed upon individuals and small businesses by the arbitrary and capricious decisions of administrative agencies made during administrative proceedings." Taft v. Pare, 536 A.2d 888, 892 (R.I. 1988) (citing § 42-92-3). That is why the statute allows certain individuals and small businesses that are prevailing parties to be reimbursed for reasonable litigation expenses incurred in contesting agency actions that were taken without substantial justification. See R.I. Gen. Laws § 42-92-1(b). There is no indication, however, that the Legislature intended for the Rhode Island Equal Access to Justice Act to further mitigate a party's burden by providing for an award of prejudgment interest on top of any award that it received for reasonable litigation expenses.

Indeed, when the Legislature enacted the Rhode Island Equal Access to Justice Act, it "modeled it on the [f]ederal Equal Access to Justice Act, 28 U.S.C.A. § 2412 (West 1978)." Krikorian, 606 A.2d at 674. The federal Equal Access to Justice Act provides in pertinent part, as follows:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action . . . , unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). The only provision of the federal statute concerning interest states:

> If the United States appeals an award of costs or fees and other expenses . . . under this section and the award is affirmed in whole or in part, *interest shall be paid on the amount of the award as affirmed*. Such interest . . . *shall run from the date of the award through the day before the date of the mandate of affirmance*.

Id. § 2412(f) (emphasis added). As such, neither the federal Equal Access to Justice Act nor the Rhode Island statute that is modeled on that federal law provides for prejudgment interest.[4] While the Rhode Island statute differs from the federal statute in its silence as to post-judgment interest, the two statutes are the same when it comes to the absence of provision for prejudgment interest. This Court is thus hard-pressed to ascribe to the Rhode Island General Assembly an intent to provide for prejudgment interest on an award for reasonable litigation expenses under the Rhode Island Equal Access to Justice Act when it modeled the state statute on the federal Equal Access to Justice Act and there is no provision for prejudgment interest in the federal law.

Moreover, our Supreme Court has instructed that when construing a state statute that is modeled on a federal statute—in particular the Rhode Island Equal Access to Justice Act—the Court "should follow the construction part on [the federal statute] by the federal courts, unless there is strong reason to do otherwise." Krikorian, 606 A.2d at 674 (quoting Laliberte v.

[4] As noted in the prior decisions of this Court, the federal Equal Access to Justice Act has a number of other similarities to the Rhode Island Equal Access to Justice Act. See MacDougall v. Charlestown Zoning Bd. of Review, C.A. Nos. WC 07-0474, WC 04-0564, 2011 WL 486037 (Super. Ct. Feb. 1, 2011) (Savage, J.); MacDougall v. Charlestown Zoning Bd. of Review, C.A. Nos. WC 07-0474, WC 04-0564, 2011 WL 3153296 (Super. Ct. July 19, 2011) (Savage, J.). Both statutes, for example, set net worth thresholds for eligibility. Compare 28 U.S.C. § 2412(d)(2)(B) (establishing net worth threshold of $2,000,000) with § 42-92-2(5) (requiring net worth to be under $500,000 for a party to be able to recoup reasonable litigation expenses under the Equal Access to Justice Act). Both statutes also limit awards of attorney's fees to a rate of $125 per hour, unless a higher award is court-authorized based on special circumstances. Compare 28 U.S.C. § 2412(d)(2)(A)(ii) (stating that "attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee") with § 42-92-2(6) (stating that an "award of attorney's fees may not exceed one hundred and twenty-five dollars ($125) per hour, unless the court determines that special factors justify a higher fee"). Additionally, both the federal Equal Access to Justice Act and the state Equal Access to Justice Act apply only against sovereigns. Compare 28 U.S.C. § 2412(a)(1) (allowing an award of costs and fees "to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity") with § 42-92-1(b) (noting that the purpose of the Equal Access to Justice Act is "to contest unjust actions by the state and/or municipal agencies").

Providence Redevelopment Agency, 109 R.I. 565, 575, 288 A.2d 502, 508 (1972) (internal quotations omitted)). In so doing, federal authority makes clear that "[p]rejudgment interest is not available under the [federal Equal Access to Justice Act]." 2 Mary Francis Derfner & Arthur D. Wolf, Court Awarded Attorney Fees ¶ 18.07[4][b] at 18-140 (2011). In addition, the United States Supreme Court has stated that prejudgment interest is not a component of "costs" that is recoverable under the federal Equal Access to Justice Act. Library of Cong. v. Shaw, 478 U.S. 310, 321 (1986) (citing 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2664 at 159-60 (2d ed. 1983); 2 A. Sedgwick & G. Van Nest, Sedgwick on Damages 157-58 (7th ed. 1880)). "Indeed, the term 'costs' has never been understood to include any interest component." Id. (citing 28 U.S.C. § 1920; 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §§ 2666 and 2670). "Costs" include "[t]he amount[s] paid or charged for something; price[s] or expenditure[s]." Black's Law Dictionary 349 (7th ed. 1999).

Prejudgment interest is unavailable "because the federal government's waiver of sovereign immunity is strictly construed and does not extend to an award of prejudgment interest." Derfner & Wolf, Court Awarded Attorney Fees ¶ 18.07[4][b] at 18-140. Indeed, based on this precept, federal courts have declined to grant awards for "delay factors," such as cost-of-living increases, on the theory that "[i]nterest and a delay factor share an identical function [] [because] [t]hey are designed to compensate for the belated receipt of money." Shaw, 478 U.S. at 322; Pettyjohn v. Chater, 888 F. Supp. 1065, 1068-69 (D. Colo. 1995). In denying a request for a cost-of-living increase on a fee award as merely a request for prejudgment interest on that award in disguise, one federal court reasoned:

> Because the [federal Equal Access to Justice Act] expressly provides for *post* judgment interest on fee awards (28 U.S.C. § 2412(f)) but is silent on the issue of prejudgment interest, the Fifth and Seventh Circuits concluded the strict construction

> mandated by *Shaw* precludes the indexing of [federal Equal Access to Justice Act] fees at current rates, and instead requires them to be indexed at the rates in effect when the services were performed.

Pettyjohn, 888 F. Supp. at 1068-69 (emphasis in original). It necessarily follows that any calculation at the end of the case that "compensates for the delay in receipt of [attorney's] fees . . . is in essence an award of prejudgment interest, which is prohibited under the [federal Equal Access to Justice Act] by the principles of sovereign immunity." Derfner & Wolf, Court Awarded Attorney Fees ¶ 39.01[3][e][i] at 39-69.

Accordingly, in interpreting the Rhode Island Equal Access to Justice Act, this Court will "follow the construction put on [the federal Equal Access to Justice Act] by the federal courts." Krikorian, 606 A.2d at 674 (quoting Laliberte, 109 R.I. at 575, 288 A.2d at 508 (internal quotations omitted)). In light of the parallel provisions of the two statutes that fail to provide for prejudgment interest and the federal authority that precludes an award of prejudgment interest under the federal statute, there is not a "strong reason to do otherwise." Id. To interpret the Rhode Island statute to the contrary would be to suggest that the Legislature intended to allow for prejudgment interest with respect to claims under the Rhode Island Equal Access to Justice Act when the federal law from which it borrowed does not. This Court cannot ascribe such intent to the Legislature in the face of its silence on the subject, particularly when doing so would contravene the dictates of our Supreme Court to follow the federal law and its interpretation by the federal courts in this circumstance.

Yet, assuming, arguendo, that the parallel provisions of the federal Equal Access to Justice Act and the federal courts' interpretation of that federal statute do not resolve the question of whether the Legislature, in enacting the Rhode Island Equal Access to Justice Act, intended to allow for prejudgment interest to apply to such awards, this Court then must look to

Supreme Court precedent concerning the interpretation of statutes awarding prejudgment interest and the waiver of sovereign immunity. It must determine if the Act can be construed as allowing a plaintiff who obtains a judgment for reasonable litigation expenses against a state or municipal agency under the Act to recover prejudgment interest on that judgment under the Rhode Island general interest statute in § 9-21-10.

The Rhode Island Supreme Court had occasion to consider a very similar issue in the seminal case of Andrade v. State, 448 A.2d 1293 (R.I. 1982)—a case decided prior to the enactment of the Rhode Island Equal Access to Justice Act. In Andrade, the plaintiff sued the State for wrongful death in connection with a fire at the Rhode Island Training School that killed her son. Id. At 1294. The jury awarded her monetary damages to which the trial justice added prejudgment interest under the Rhode Island general interest statute in § 9-21-10. Id. On appeal, the Supreme Court reversed the award of prejudgment interest, holding that the prejudgment interest statute in § 9-21-10 does not apply to tort actions against the State, notwithstanding the language in the State Tort Claims Act that explicitly stated that the State "shall be liable in all actions of tort in the same manner as a private individual or corporation." Id. at 1294-95 (quoting § 9-31-1).

In so holding, the Supreme Court relied on two precepts of statutory interpretation, firmly established in prior precedent, that bar reading into statutes by implication an intent to allow for an award of prejudgment interest or a waiver of sovereign immunity. Id. at 1294-96. With respect to the first precept concerning prejudgment interest, it reasoned:

> . . . because the right to receive interest on judgments was unknown at common law as it is a right created by statute, the court will strictly construe any statute that awards interest on judgments so as not to extend unduly changes enacted by the legislature . . . . Because we are strictly construing the statute, we should avoid reading anything into the statute by implication.

Id. at 1294 (citing Gott v. Norberg, 417 A.2d 1352, 1357 (R.I. 1980) (the Legislature's failure to provide for prejudgment interest in a statute evidenced an intent to deny interest); Atlantic Refining Co. v. Director of Public Works, 104 R.I. 436, 441, 244 A.2d 853, 856 (1968) (interest on a judgment is a creature of statute and court must strictly construe statutes that are in derogation of the common law). It found that the provision of the State Tort Claims Act that provided that the State shall "be liable in all actions of tort in the same manner as a private individual or corporation" referred to damages for liability only. Id. at 1295. The Supreme Court declined to read into that language, by implication, an intent by the Legislature to make the State liable for prejudgment interest under the Rhode Island general interest statute in § 9-21-10, even though the general interest statute, at that time, was applicable by its terms to "any civil action." Id. at 1295-96. The Supreme Court concluded:

> Had the legislature intended to expose the state treasury to the additional financial burden of prejudgment interest it could have so provided easily. Having failed to do so, we decline to incorporate the prejudgment interest statute into the State Tort Claims Act . . . .

Id. at 1295.

The Supreme Court emphatically declared: "we will not attribute to the General Assembly an intent to depart from the common law unless such intent is expressly and unmistakably declared." Id. (quoting Westerly School Comm. v. Westerly Teacher's Ass'n, 111 R.I. 96, 102, 299 A.2d 441, 445 (1973)) (internal citation omitted). It continued to adhere to this precept in subsequent decisions. See McBurney, 798 A.2d at 884 ("prejudgment interest is available only where a statute, when strictly construed, expressly grants it"); DiLuglio, 755 A.2d at 775 ("the [C]ourt will strictly construe any statute that awards interest on judgments so as not to extend unduly the changes enacted by the [L]egislature"); Clark-Fitzpatrick, Inc., 652 A.2d at

451-52 (omission of prejudgment interest in operable statute is dispositive of the question of whether such interest may be awarded on a judgment under such statute).

Similarly, with respect to the precept of statutory construction that bars reading into statutes by implication a waiver of sovereign immunity, the Supreme Court in Andrade recognized:

> It is also a general rule that a statute waiving sovereign immunity, which is also in derogation of common law, must be strictly construed and whatever right of recovery is to be ascertained against the state must be expressly mentioned in the waiver of the immunity statute . . . . In construing a waiver of immunity statute, it is presumed that the Legislature did not intend to deprive the state of any part of its sovereign power unless the intent to do so is clearly expressed or arises by necessary implication from the statutory language.

448 A.2d at 1294-95 (citing Brown University v. Granger, 19 R.I. 704, 36 A. 720 (1897)). It found that the language in the State Tort Claims Act that provided that the State shall be liable to the same extent as if it were a private person or corporation did not reflect an intent to subject the State to liability for prejudgment interest under the general interest statute in § 9-21-10. It reasoned that "[f]or the State to be liable for prejudgment interest, the [State Tort Claims Act] should have expressly so provided." Id. at 1295-96 (citing Fosbre v. State, 76 Wash. 2d 255, 456 P.2d 335 (1969) (holding that state was not liable for post-judgment interest because state statute waiving sovereign immunity did not expressly so provide)). Our Supreme Court has continued to adhere to this precept. See John Rocchio Corp. v. Town of Coventry, 919 A.2d 418, 419 (R.I. 2007) (doctrine of sovereign immunity shields municipalities from liability for prejudgment interest unless a statute waives it); Reagan Constr. Corp. v. Mayer, 712 A.2d 372, 373 (R.I. 1998) (waiver of sovereign immunity can be expressly stated or arise by necessary implication from the statute which must be strictly construed); State Dept. of Transportation v. Providence

and Worcester R.R. Co., 674 A.2d 1239, 1244 (R.I. 1996) (noting a lack of "waiver by the state of its immunity from having to pay prejudgment interest").

Mindful of this volume of precedent, this Court cannot find that the Legislature intended the prejudgment interest statute in § 9-21-10 to apply to awards of reasonable litigation expenses made under the Rhode Island Equal Access to Justice Act. It likewise cannot find that the Legislature intended to waive sovereign immunity in the Act by allowing for such awards against state and municipal agencies. The Act contains no express language that either provides for prejudgment interest, incorporates the provisions of the general interest statute in § 9-21-10 by reference, or waives sovereign immunity as to the imposition of prejudgment interest against state and municipal agencies. It likewise contains no language that makes clear a legislative intent to allow for the award of prejudgment interest against these sovereigns. The Act does not even contain language similar to the verbiage that the dissent, but not the majority, in Andrade found indicative of an intent to allow for prejudgment interest to be awarded under the general interest statute against the sovereign. Compare Andrade, 448 A.2d at 1294-96 (majority found provision of State Tort Claims Act that stated that the State shall be "liable in all actions in tort in the same manner as a private individual or corporation" insufficient to infer legislative intent to award prejudgment interest against the State and waive its sovereign immunity for that purpose) with Andrade, 448 A.2d at 1296-98 (dissent) (inferring, from this same language, a legislative intent to subject the State to prejudgment interest on damages in an action under the State Tort Claims Act).

While Plaintiff relies on the decision of the Supreme Court in Rocchio to suggest that this Court can infer an intent to allow for awards of prejudgment interest against state or municipality agencies from the language of the Rhode Island Equal Access to Justice Act, that case is clearly

distinguishable from the case at bar. 919 A.2d 418. In Rocchio, the Supreme Court issued an order affirming a decision of an arbitrator to award prejudgment interest on an arbitration award, making reference to language in the Public Works Arbitration Act that states that judgments entered under that statute shall be "subject to all provisions of law relating to a judgment in the action." 919 A.2d at 419 (citing Reagan Construction, 712 A.2d at 374 (quoting R.I. Gen. Laws § 37-16-24)) (emphasis added). In contrast here, the Rhode Island Equal Access to Justice Act is completely devoid of the language upon which the Supreme Court ostensibly relied in Rocchio or any other language from which an intent to waive sovereign immunity and allow for prejudgment interest to be awarded against a state or municipality agency could be implied. To infer such an intent from the language of the Act at issue here would be to "unduly extend changes made by the Legislature," in contravention of the express dictates of our Supreme Court. Andrade, 448 A.2d at 1294.

Moreover, while the General Assembly, in 1976, amended the general interest statute in § 9-21-10 to apply to judgments in "any civil action," it could not have intended at that time to include within those actions a request for reimbursement of reasonable litigation expenses under the Rhode Island Equal Access to Justice Act, as the Act had not yet come into existence. In addition, while the General Assembly, in enacting the Act, may have intended to waive the sovereign immunity of state and municipal agencies which acted without substantial justification, it did so only with respect to allowing awards for attorney's fees and expenses to enter against them. There is no evidence from the language of the Act that the Legislature intended to broaden that waiver of sovereign immunity to include prejudgment interest on such awards.

The Legislature is presumed to know, when it enacts legislation, the state of pre-existing statutory and decisional law in the State of Rhode Island. P.J.C. Realty, Inc. v. Barry, 811 A.2d

1202, 1206 (R.I. 2002) (citing Smith v. Ret. Bd. Of Employees' Ret. Sys. Of R.I., 656 A.2d 186, 189-90 (R.I. 1995)) ("The Legislature is presumed to be aware of the state of existing relevant law when it enacts or amends a statute."). When it enacted the Equal Access to Justice Act in 1985, therefore, it presumably knew that the Act was modeled on the federal Equal Access to Justice Act that did not provide prejudgment interest, that the general interest statute in § 9-21-10 predated it and hence could not have been enacted with the intent that it apply to the Act, and that Andrade and its progeny established the need for inclusion in it of express language that would signal the Legislature's intent to provide for prejudgment interest on awards for reasonable litigation expenses under the Act and to waive the sovereign immunity of the State and municipalities with regard to any such award of prejudgment interest. It also presumably knew that, notwithstanding the apparent breadth of the language in the general interest statute that states that it applies to "any civil action," the Supreme Court had confined the reach of that statute to actions sounding in tort and contract and specifically exempted from its application appeals of administrative actions and reimbursement actions. See In re Estate of Cantore, 814 A.2d 331, 335 (R.I. 2003) (affirming Probate Court decision that disallowed award of prejudgment interest under the general interest statute on order that co-executrix reimburse estate $36,000 after accounting and finding that a reimbursement action "is not the equivalent of a civil action for pecuniary damages"); R.I. Insurers' Insolvency Fund v. Leviton Mfg. Co., Inc., 763 A.2d 590, 597 (R.I. 2000) (holding that the general interest statute is inapplicable to actions seeking reimbursement of payments required by statute); Normandin v. Gauthier, C.A. No. PC 2003-6211, 2006 WL 1073422 at *11 (Super. Ct. April 20, 2006) (finding that it is impermissible to award prejudgment interest on an award reimbursing a party for a deposit paid prior to the breach of a commercial purchase and sale agreement).

Armed with this knowledge, it was incumbent on the General Assembly to include language in the Rhode Island Equal Access to Justice Act that would have made clear any intent on its part to allow for awards of prejudgment interest on top of awards for reasonable litigation expenses under the Act. "Had the legislature intended to expose [the] State [or municipal] treasury[ies] to the additional financial burden of prejudgment interest it could have so provided easily." Andrade, 448 A.2d at 1295. "Having failed to do so, [this Court] decline[s] to incorporate the prejudgment interest statute [in § 9-21-10] into the [Rhode Island Equal Access to Justice Act]" by implication. Id.

III

Conclusion

For all of these reasons, Plaintiff's Motion to Award Interest Pursuant to R.I. Gen. Laws § 9-21-10 is denied.

Counsel shall confer and submit to this Court forthwith for entry an agreed upon form of Order that is consistent with this Decision as well as a form of Final Judgment that is consistent with this Decision and all prior orders and decisions of this Court.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	MacDougall v. Town of Charlestown Zoning Board of Review
CASE NO:	WC 04-0564 [consolidated with] WC 07-0474
COURT:	Washington County Superior Court
DATE DECISION FILED:	April 9, 2013
JUSTICE/MAGISTRATE:	Savage, J.
ATTORNEYS:	
For Plaintiff:	Elizabeth McDonough Noonan, Esq.
For Defendant:	Robert E. Craven, Esq.