STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: May 19, 2014]

DANIEL S. SHEDD and DAVID A. SHEDD, in their capacity as Co-Executors of The Estate of Martin B. Shedd Plaintiffs,	:	
VS.	:	**C.A. No. PC 09-5738**
MURIEL SHEDD Defendant.	:	

DECISION

I

Introduction and Background

CARNES, J. This matter was tried before the Court without a jury on March 11, 2014. The trial involved certain allegations made in Plaintiffs' Complaint and boils down to the essential question of who, based on the specific facts of this case, should pay the interest on a certain Equity Line of Credit secured by a Mortgage recorded against a certain parcel of real property located at 10 Hanley Farm, Warren, Rhode Island (the Subject Premises).

II

Standard of Review

In a non-jury trial, the standard of review is governed by Super. R. Civ. P. 52(a) (Rule 52(a)). The Rule provides that "in all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon . . . ." Accordingly, "the trial justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). In a non-jury trial, '"determining the credibility of [the] witnesses is

peculiarly the function of the trial justice."' McEntee v. Davis, 861 A.2d 459, 464 (R.I. 2004) (quoting Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003)). This is so because it is "the judicial officer who [actually observes] the human drama that is part and parcel of every trial and who has had the opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." In re Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006).

Although the trial justice is required to make specific findings of fact and conclusions of law, "brief findings will suffice as long as they address and resolve the controlling factual and legal issues." White v. Le Clerc, 468 A.2d 289, 290 (R.I. 1983); Rule 52(a). Accordingly, a trial justice is not required to provide an extensive analysis and discussion of all evidence presented in a bench trial. Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998). See also Anderson v. Town of East Greenwich, 460 A.2d 420, 423 (R.I. 1983). Competent evidence is needed to support the trial justice's findings. See Nisenzon v. Sadowski, 689 A.2d 1037, 1042 (R.I. 1997). Moreover, the trial justice should address the issues raised by the pleadings and testified to during the trial. Nardone v. Ritacco, 936 A.2d 200, 206 (R.I. 2007). However, a trial judge sitting as a finder of fact need not categorically accept or reject each piece of evidence or resolve every disputed factual contention. Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006)).

III

Analysis

A

Factual Background

1.

Trial, Witnesses and Exhibits

The Court conducted a jury-waived trial on March 11, 2014, and thereafter received post-trial memoranda and responses thereto from each party. The Court heard testimony from four (4) witnesses. Daniel Shedd and William Tsonos, Director of Commercial Banking for BankRI, testified for the Plaintiffs. Muriel Shedd and her son, Arthur Kreuter, testified for the Defendant. The Court received thirty-two (32) exhibits in evidence. The exhibits received consisted mainly of five categories: First, documents consisting of probate and background documents, including a death certificate, Last Will and Testament, Codicil, probate appointments, a deed in Plaintiffs' father's name for the Subject Premises, and a Prenuptial Agreement between Plaintiffs' father and the Defendant (Exs. 1-7); documents consisting of various Mortgages on the Subject Premises existing between the dates of June 24, 1987 and December 24, 2004 (Exs. 8-16); documents initially dated between January 25, 2005 and November 21, 2008 consisting of copies of emails, email chains, and a certain letter between attorneys (Exs. 18-25 and Ex. 31); documents consisting of a list of outstanding probate expenses (Ex. 17), as well as applications to the Probate Court (Exs. 26 and 29) to increase the Equity Line of Credit and the Open End Equity Mortgage on the Subject Premises in order to pay the expenses of the Estate, and the actual Mortgages on the Subject Premises (Exs. 27, 28, and 30). The final document is the

BankRI ledger (Ex. 32), which was admitted in conjunction with the testimony of William Tsonos.

2.

Summary Overview of Witness Testimony

This segment of the Decision is not intended to replace the comprehensive stenographic record nor the copious notes taken by the Court during the trial. The sole purpose of this particular section is to give a general summary and overview of the testimony of the various witnesses regarding the issues framed in the case. Specific portions of a particular witness's testimony and particular findings of fact and credibility determinations will be addressed in other parts of this Decision and may not appear in this summary overview.

Plaintiffs' witnesses:

Daniel Shedd[1]: Daniel testified credibly about much of the background information. His brother, David, is also a Plaintiff in this case. He testified that his father, Martin B. Shedd, (hereinafter Martin) died testate on January 10, 2005 in Warren, Rhode Island. He described the marital relationship between Martin and Defendant Muriel,[2] and testified about the Prenuptial Agreement, (with Muriel), the Last Will and Testament, and the Codicil which were all duly filed in the Warren Probate Court. Daniel testified about the various mortgages against the Subject Premises after Martin had purchased the premises in his name alone. Daniel also testified about various communications with Muriel's son, Arthur Kreuter, after Martin died, regarding attempts to reach agreement between the Plaintiffs and Muriel about who should make what payments relative to the Subject Premises, and also as to the value of the Subject Premises. Daniel also testified as to the various steps taken in the Warren Probate Court to pay the expenses of Martin's Estate by increasing the principal amount of outstanding debt on an Open End Mortgage recorded against the Subject Premises. Daniel also testified that he and his brother had paid the interest on said Open End Mortgage and had not been reimbursed by Muriel for any part thereof.

William Tsonos: Mr. Tsonos is the Director of Commercial Banking at BankRI. He testified about the nature of and the content of Exhibit 32. He testified that since the date of Martin's death, $97,680.31 had been paid as interest against the Open End Mortgage

[1] Given their common surname, for the sake of clarity, the individual Plaintiffs and the Defendant will on occasion be referred to by only their first names. No disrespect is intended.
[2] It is undisputed that Muriel is not the mother of either of the Plaintiffs.

and related Promissory Note for which the Subject Premises stood as security. His testimony was forthright and credible and not seriously challenged on cross-examination. Mr. Tsonos also testified that certain late charges depicted in Exhibit 32 had not been charged to the Plaintiffs. Again, this testimony was credible and not seriously challenged during cross-examination, by other witness testimony, or by post-trial filings.

Defendant's witnesses:

Muriel Shedd: Muriel testified about her relationship and marriage to Martin. Based upon the Prenuptial Agreement, Martin's Last Will and Testament, and Martin's Codicil, she testified as to her understanding of what payments she was responsible for with regard to a life tenancy she received from Martin in the Subject Premises under the Codicil to Martin's Last Will and Testament. Muriel testified that they (Plaintiffs) "felt I should pay for a part of the mortgage . . . but . . . I felt I didn't owe . . . [it] was not my responsibility." Upon further questioning, she stated, "I guess it's interest . . . Probate never told me I was liable for the interest . . . ." Muriel admitted that her son, Arthur Kreuter, was helping her as to these issues during the years after Martin's death, and she also testified that she had NOT seen the emails put in as exhibits during the trial BUT acknowledged that back around 2005, she "might have."

Arthur Kreuter: Mr. Kreuter is the son of Muriel and no relation to the adult Plaintiffs. He testified that after Martin died, he communicated with Daniel. Initially, he inquired about how long his mother could stay living in the Subject Premises. Daniel made him aware of his mother's life Estate in the Subject Premises and told him Muriel would be responsible for "all expenses" on the house and would not "have to pay anything on the principal" [of the Open End Mortgage]. He testified that Stephen Litwin told him that Muriel was not responsible for the interest on said mortgage. He testified about discussions as to the value of the property with Daniel and disagreement over the value of said property. He testified that the discussions "went poorly" and mentioned an appraisal for approximately $425,000 to $435,000, in the context of a discussion about a claimed value of the Subject Premises of $725,000.

3.

Undisputed Facts

Many facts are either not in dispute or they are not seriously contested by the parties in this case. Such facts are established by credible testimony that is relatively undisputed on cross-examination, and are also established or corroborated by other witnesses. Some facts are established or corroborated by certain exhibits admitted during the trial. Additionally, some of

the facts are admitted by virtue of Defendant's Answer to Plaintiffs' Amended Complaint. These facts are initially set forth at this juncture, and they are also the findings of this Court.

Martin B. Shedd (Martin) died testate on January 10, 2005. (Ex. 1). Plaintiffs, Daniel S. Shedd (Daniel) and David E. Shedd (David) are the sons of Martin. They are Co-Executors and sole beneficiaries of their father's Estate, which has been duly admitted to probate in the Town of Warren, Rhode Island. (Exs. 2-3). At the present time, the Estate remains open. Defendant, Muriel Shedd, (Muriel) resides at the Subject Premises. Muriel is the second wife of Martin. The couple was married in Barrington, Rhode Island on February 12, 1983. At the time of their marriage, Martin owned property in Barrington, Rhode Island. At a later date, specifically June 26, 1986, Martin acquired the Subject Premises in Warren, Rhode Island in his name alone. (Ex. 7 – Deed dated June 26, 1986).

The day before their marriage, on February 11, 1983, Martin and Muriel executed a Prenuptial Agreement. Pursuant to Paragraph FIFTH, said agreement provided that "[e]ach of the parties during his or her lifetime shall keep and retain sole ownership, control and enjoyment of all his or her property, real and personal, free and clear of any claims of the other." (Ex. 4). Martin also executed a Last Will and Testament on that same date, February 11, 1983. Said Will, in paragraph EIGHTH, states, "[m]y failure to provide herein for Muriel Kreuter[3] is intentional and not occasioned by accident or mistake. Pursuant to an antenuptial agreement entered into by Muriel Kreuter and me (sic) on February 11, 1983, each of us has waived all rights and interests in the property of the other which may arise by virtue of the marital relation which will exist between us. Each of us further agreed in said agreement that in the event of the

[3] It is beyond dispute that Muriel Kreuter became Muriel Shedd by virtue of her marriage to Martin.

death of either of us the survivor would make no claim to any part of the Estate of the other as the surviving spouse." (Ex. 5).

Said Will was amended by Codicil on March 7, 1986. Said Codicil provides in relevant part as follows:

> "If my wife, Muriel Shedd, survives me, I give and devise to her for her lifetime the right to use and occupy any real Estate located in Warren, Rhode Island, which I may own at the time of my death, or any interest I may have in and to such real Estate, subject to the requirement that she pay all expenses associated with such real Estate, including, but not limited to, taxes, maintenance, upkeep, repair and insurance." (Ex. 6).

The Will and Codicil were admitted to probate in the Warren Probate Court, and together with the antenuptial agreement, certified copies were admitted as full exhibits in the instant trial.

At the time the Codicil was executed on March 7, 1986, Martin still owned the real Estate in Barrington, as described above, but he anticipated selling same and acquiring the Subject Premises in Warren. Said Codicil specifically mentions real Estate in Warren, Rhode Island, and Martin acquired the Subject Premises in his name alone by deed dated June 26, 1986. A certified copy of that Deed is also before this Court (Ex. 7).

Presently, indebtedness exists in the form of an Equity Line of Credit secured by a Mortgage on the Subject Premises. Documents for the Equity Line of Credit and the Mortgage were received as full exhibits during the trial. (Exs. 27, 28, and 30).

Further factual findings shall be discussed infra.

4.

Issues Raised by Amended Complaint, Answer and Defenses

Plaintiffs' Amended Complaint (hereinafter Complaint) bears a Court stamp of October 21, 2009. The Complaint sets forth a number of factual predicates in twelve (12) paragraphs and four (4) Counts. Count I requests declaratory relief pursuant to G.L. 1956 §§ 9-30-1 et seq. and specifically seeks a "declaration of rights and obligations arising out of the [C]odicil and specifically as to [the Plaintiffs'] respective rights and obligations concerning payment of monthly interest toward the Equity Line of Credit and Mortgage due to BankRI." (¶ 14). Count II alleges that "Defendant owes Plaintiff (sic) the sum of $63,989.86, representing all monies paid by the Estate of Martin B. Shedd toward the Equity Line of Credit and Mortgage subsequent to [Martin's] death and through August 2009." (¶ 16). Count III alleges that "Defendant should be required to make all monthly interest payments due pursuant to the Equity Line and Mortgage during the remainder of her lifetime." (¶ 18). Count IV alleges that the "Estate of Martin Shedd no longer has the financial wherewithal to pay monthly interest payments due pursuant to the Equity Line and Mortgage (¶ 20); and, thereafter, goes on to allege, "Absent prompt [C]ourt intervention, the Plaintiffs will be forced to pay monthly interest payments out of their own pockets in order to protect the interests of the Estate of Martin B. Shedd in the Subject Premises even though . . . the Defendant is responsible for same during her lifetime. (¶ 21). Plaintiffs also allege that they "[L]ack an adequate remedy at law and are entitled to injunctive relief requiring the Defendant to pay the monthly interest payments due pursuant to the Equity Line and Mortgage." (¶ 22). It should be noted here that Defendant, in her Answer, responded as to Count I, "As the allegation in Paragraph 14 does not seem to require a responsive Answer, none is offered by the Defendant." (See Def.'s Answer to Pls.' Am. Compl. [hereinafter Answer] at

¶ 14.) In response to Count II and Count III, Defendant has responded with the singular word, "Denied." (See Answer ¶¶ 16 and 18). As to Count IV, Defendant specifically states that she "neither admits nor denies the information contained in [both Paragraphs 20 and 22] and therefore leaves Plaintiffs to their proof." (See Answer ¶¶ 20 and 22). As to Paragraph 21 of the Complaint, Defendant responds by stating that she specifically "[D]enies that she is responsible for any payments under the Equity Line of Credit." Defendant goes on to respond that she "[Neither admits nor denies the remaining information contained in Paragraph 21 [of the Complaint] and therefore, leaves Plaintiffs to their proof." (See Answer ¶ 21).

Plaintiffs have requested relief in the form of declaratory and injunctive relief. Furthermore, they request a judgment enter in favor of Plaintiffs against the Defendant. Specifically, Plaintiffs have asked this Court to "[D]eclare the rights and obligations arising out of the Codicil of the late Martin B. Shedd pursuant to §§ 9-30-1 et seq., and specifically as to their [Plaintiffs'] respective rights and obligations concerning the interest payments due BankRI pursuant to the Equity Line of Credit and Mortgage." Plaintiffs also ask this Court to "[D]eclare that the Defendant is responsible for all monthly interest payments due BankRI pursuant to the Equity Line of Credit and Mortgage subsequent to the death of Martin B. Shedd during the remainder of her lifetime." In Plaintiffs' third prayer for relief, they appear to be asking the Court to "grant judgment in favor of the Plaintiffs and against Defendant for a sum in excess of the jurisdictional requirements of . . . this Court with interest, costs and a reasonable attorney's fee." This is a legal remedy. In their fourth prayer for relief, Plaintiffs request injunctive relief in favor of the Plaintiff (sic) against the Defendant . . . requiring the Defendant to make all payments due to BankRI pursuant to the Equity Line of Credit and Mortgage during the remainder of her lifetime. (Emphasis added). It is appropriate for the Court to note at this point

that Plaintiffs' prayer that the Court requires Defendant to make "all payments" due to BankRI appears to be more than initially sought in the various Counts where the Court was led to believe that only the interest payments due to BankRI were being sought. (Emphasis added). The Court is unsure if this anomaly is because of oversight, typographical error or overreaching. The Court will address this infra.

Defendant has asserted a number of affirmative defenses in her Answer. In addition to asserting that Plaintiffs' recovery is barred by the doctrines of estoppel and laches, Defendant also asserts that any alleged damages of the Plaintiffs "were caused in whole or in part by the omissions of the Plaintiffs themselves, or in whole or in part by someone other than the Defendant." (See Answer, First, Second, Third, and Fourth Affirmative Defenses).

5.

Construction of Complaint, Answer and Defenses

This Court is mindful of the rule that, "a party should not be granted relief that it did not request." See Nye v. Brousseau, 992 A.2d 1002, 1011-12 (R.I. 2010) and cases cited therein. Rule 8 of the Superior Court Rules of Civil Procedure provides that "Relief in the alternative or of several different types may be demanded." Super. R. Civ. P. 8(a). The Rule also provides that "A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or on both." Id. Rule 8(e)(2). The Rule also directs that "All pleadings shall be so construed as to do substantial justice." Id. Rule 8(f). Plaintiffs have sought a declaration of rights and obligations arising out of the Codicil and how said Codicil relates to Plaintiffs' rights and obligations concerning the payment of monthly interest toward the Equity Line of Credit and Mortgage due to BankRI. (Count I).

Count I is in the nature of a declaratory judgment regarding the question of who is obligated to pay the monthly interest payment due on the Equity Line of Credit and Mortgage. There is nothing in the way Count I is worded to allow the reader to infer that there is anything more than the interest payment at stake.

Count II alleges that Defendant "owes" Plaintiffs a sum certain as of a date through August 2009. This is a legal remedy. The sum certain is described as representing all monies paid by the Estate of Martin Shedd toward the Equity Line of Credit and Mortgage. (Emphasis added). Notwithstanding the ambiguity in the particular language used, the only monies paid to BankRI pursuant to the Equity Line of Credit and Mortgage, as described in the testimony and Exhibit 32 at page 9 thereof, were interest payments. (Emphasis added). According to the testimony and Exhibit 32, no amount of principal was paid. This legal remedy is the basis for Plaintiffs' demand for a judgment against Defendant representing amounts paid in the past by the Plaintiffs which should properly have been paid by the Defendant, according to Plaintiffs' allegations. (Emphasis added.)

Count III addresses Plaintiffs' rights and obligations going forward in time with respect to the Equity Line of Credit and Mortgage. Notwithstanding the way the wording is phrased, the Court construes the Plaintiffs as seeking the same declaration they are seeking for past amounts due. Closely connected to Count III is Plaintiffs' request for injunctive relief in Count IV, seeking to have the Court order the Defendant to pay the monthly interest payments due to BankRI on the Equity Line of Credit and Mortgage going forward. Given the particular words used in the Counts, the Court construes Plaintiffs' prayers for relief as seeking only the interest payments that become due pursuant to the Equity Line of Credit and Mortgage.

B

Declaration of Rights and Obligations

1.

Propriety of Declaratory Judgment

Under Rhode Island law, probate courts are statutorily vested with jurisdiction over the probate of wills, G.L. 1956 § 8–9–9, whereas the Superior Court "may exercise general probate jurisdiction in all cases brought before it on appeal from probate courts, or when such jurisdiction is properly involved in suits in equity." Sec. 8–2–17.[4]

Notwithstanding these statutory provisions, the Uniform Declaratory Judgments Act, (UDJA), §§ 9-30-1 et seq., also vests the Superior Court with jurisdiction to make declarations with respect to probate matters. Section 9–30–4 of the UDJA expressly provides the following:

> "Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the Estate of a decedent, an infant, person who is mentally incompetent or insolvent, may have a declaration of rights or legal relations in respect thereto:
>
> . . .
>
> "(3) To determine any question arising in the administration of the Estate or trust, including questions of construction of wills and other writings." Tyre v. Swain, 946 A.2d 1189, 1197-98 (R.I. 2008).

In the case before the Court, the probate Estate is still open. Plaintiffs are the Executors of their father's Estate. They have filed a suit in equity,[5] and the Plaintiffs are seeking a declaration of rights or legal relations to determine a question arising in the administration of the

[4] **§ 8-2-17 Jurisdiction of appeals, statutory proceedings, and probate matters. –** The superior court shall have jurisdiction of such appeals and statutory proceedings as may be provided by law, and may exercise general probate jurisdiction in all cases brought before it on appeal from probate courts, or when such jurisdiction is properly involved in suits in equity.

[5] Count IV seeks injunctive relief.

Estate which concerns a question as to the construction of a Codicil. Declaratory judgment is properly requested within the context of the Complaint.

2.

Construing the Codicil

In the instant case, according to the undisputed facts set forth supra, Martin's Last Will and Testament was amended by Codicil on March 7, 1986. Said Codicil provides in relevant part as follows:

> "If my wife, Muriel Shedd, survives me, I give and devise to her for her lifetime the right to use and occupy any real estate located in Warren, Rhode Island, which I may own at the time of my death, or any interest I may have in and to such real estate, subject to the requirement that she pay all expenses associated with such real estate, including, but not limited to, taxes, maintenance, upkeep, repair and insurance." (Ex. 6) (Emphasis added).

A codicil is an integral part of the will. The will and codicil are to be construed together as one testamentary act, and dispositions in the will are not to be disturbed any more than is necessary to give effect to the intention of the testator as expressed in the codicil. A codicil will vary or modify the will so far, and so far only, as the intention of the testator that it shall do so is made manifest. In construing doubtful language in a codicil, that interpretation will be preferred which gives consistency to the whole will and most effectively carries out the intention of the testator, keeping in mind the circumstances surrounding him when the codicil was executed. (Emphasis added). See Redding v. R.I. Hosp. Trust Co., 67 R.I. 41, 47, 20 A.2d 523, 527 (R.I. 1941). As to the intention of the testator, the Supreme Court went on to say:

> "In construing a will, it is fundamental that the will is not to be reconstructed by judicial interpretation. As was said in Pell v. Mercer, 14 R.I. 412, our duty in construing a will is to "throw our minds back to the time when it was made," and to ascertain from the whole will the testator's paramount intent and to give it effect as far as reasonably possible, without doing violence to established

> legal principles or the language used by the testator. In other words, the intention of the testator when ascertained is all controlling, and must be deduced from what is actually expressed in the whole will and from implications necessarily following from the language therein employed. When such intention is thus definitely ascertained it is all controlling. Conjecture or speculation is not permitted.
>
> . . .
>
> To ascertain the testator's intention, his language should be interpreted with reference to the subject-matter relative to which it speaks. Unless words of art are involved, such language is to be given its ordinary meaning, especially if the language is used by a layman. Words will not be rejected as meaningless if, by any reasonable construction, they may be given meaning and made consistent. As between a reasonable construction which requires the rejection of a part of the language of a will or codicil and another which gives meaning to all the language therein used, the latter construction will be adopted. Id. at 526-27. (Emphasis added).

The Codicil clearly gives Muriel a life estate in the Subject Premises subject to the requirement that she pay all expenses associated with such real Estate, including, but not limited to, taxes, maintenance, upkeep, repair and insurance. (Codicil, Ex. 6). As indicated at the outset of this Decision, the issue is who, Muriel or the Plaintiffs, should pay the interest on the Equity Line of Credit and Mortgage secured against the Subject Premises. (Emphasis added).

Plaintiffs argue that the general rule with respect to encumbrances is that the life tenant must pay the interest but not the principal due on liens created by others on the real Estate. See Plaintiffs' Proposed Findings of Fact and Conclusions of Law (Pls.' Mem. at 8-9); (citing 2 Thompson on Real Property, § 19.10 (2d ed. Thomas 2002)). Alluding to Thompson, Plaintiffs cite a host of cases from other jurisdictions. Defendant argues that the "language of the Codicil does not state that [Muriel] should be responsible for the payment of 'interest' on any 'Promissory Note' secured by 'Mortgage' on the Property (sic)." (Emphasis added.) See

Defendant's Post Trial Memorandum of Law Concerning Findings of Fact and Conclusions of Law (Def.'s Mem. at 5). Defendant argues that the words "interest," "Promissory Note," and "Mortgage" are "all simple and well known words," and that [Martin] could have simply inserted such words into the Codicil had he wanted Muriel to be responsible for such payments. Id. This Court agrees that the words "interest," "Promissory Note" and "Mortgage" do not appear in the Codicil. But, the words "subject to the requirement that she pay all expenses associated with such real Estate, including, but not limited to, taxes, maintenance, upkeep, repair and insurance" do appear. This Court finds that the "interest" payment is not taxes, upkeep, repair, or insurance. "Maintenance" is generally construed, as it relates to real property, to the general repair or upkeep of the property. Black's Law Dictionary defines "maintenance" as ". . . 4. The care and work put into property to keep it operating and productive; general repair and upkeep." Black's Law Dictionary 1039 (9th ed. 2009). Dictionaries define "maintenance," as it relates to property, as "care or upkeep, as of machinery or property: [i.e.,] *With proper maintenance the car will last for many years.* Dictionary.com, http://dictionary.reference.com/browse/maintenance (last visited May 16, 2014). The Court finds that the "interest" payment is not a part of the maintenance of the property as generally construed.

The Court notes that the Codicil, by its express terms, requires Muriel to "pay all expenses associated with such real Estate including but not limited to . . . ." The word "associated" is the verb form of the word "associate." The word "associate" means: . . . 3. to unite; combine." Dictionary.com, http://dictionary.reference.com/browse/associate (last visited May 16, 2014). World English Dictionary also defines "associate" as . . . 13. accompanying; concomitant." See Collins English Dictionary - Complete & Unabridged (10th ed. 2009) (Dictionary.com, http://dictionary.reference.com/browse/associate (last visited May 19, 2014)).

The "interest" payments could fairly be construed as "accompanying or concomitant" according to the preceding definition. Furthermore, the words "including but not limited to" give rise to the notion that there may be other expenses associated with the real Estate beyond "taxes, maintenance, upkeep, repair and insurance." (Emphasis added).

Resorting to the plain meaning of the words used in the Codicil, as described above, is of some help to this Court. However, the Court needs to analyze further, given that the "interest" payment does not appear to be mentioned one way or the other.

The Redding case, discussed supra, provides guidance for this Court's further analysis.

This Court is required to "ascertain from the whole will the testator's paramount intent and to give it effect as far as reasonably possible." Redding, supra, 67 R.I. at 47, 20 A.2d at 527. "In construing doubtful language in a codicil, that interpretation will be preferred which gives consistency to the whole will and most effectively carries out the testator's intention, keeping in mind the circumstances surrounding him when the codicil was executed." Id. Finally, "the intention of the testator when ascertained is all controlling, and must be deduced from what is actually expressed in the whole will and from implications necessarily following from the language therein employed. When such intention is thus definitely ascertained it is all controlling. Conjecture or speculation is not permitted . . . ." Id.

3.

Construing the Codicil together With the Last Will and Testament And the Prenuptial Agreement

The Codicil was executed by Martin on March 7, 1986. At that time, he had not yet purchased the Subject Premises. He acquired that premises on June 26, 1986, some three months later. See Ex. 7 and "Undisputed Facts" above. Under Clause "FOURTH-A" of the Codicil, Martin gives and devises a life Estate to Muriel for "any real Estate located in Warren, Rhode

Island, which I may own at the time of my death . . . ." He uses the words "may own" in the Codicil, and the Deed (Ex. 7) reflects that he received the property subsequent to the date of the Codicil. The Court finds this to be a fact.

Prior to the execution of the Codicil, Martin and Muriel married on February 12, 1983. The day before the marriage, February 11, 1983, they executed a Prenuptial Agreement. They clearly indicate by the terms of the Prenuptial Agreement that they were contemplating marriage to each other, that each had been previously married, and that they each had children by his or her former marriage. By virtue of said Agreement, each party desired and expected that the "marriage shall not in any way change their respective legal rights with respect to property now owned or hereafter owned by each, including the rights to separately own, manage, dispose of, or pass or transfer such property." (Emphasis added). The Agreement further provided that all rights in any property of the other, that could arise by virtue of their marital relationship, were expressly "relinquished and waived." (Clause THIRD). The Agreement further provided that in the case one party should survive the other, the surviving party would make no claim to any part of the other as the surviving spouse. (Clause EIGHTH). Notwithstanding the Court's findings as undisputed facts above, the Court additionally finds these provisions of the Antenuptial Agreement as facts in the instant case.

On that same day, February 11, 1983, Martin executed a Last Will and Testament. (Ex. 5). At that time, Martin identified himself as living in Barrington, Rhode Island, and that his Will was made "in contemplation of his marriage to Muriel." (Clause FIRST). Martin identifies his sons Daniel and David in Clause SECOND. In Clause THIRD, Martin directs his "executors . . . to pay from the residue of [his] Estate [his] debts, funeral expenses, all proper expenses incurred in the administration of [his] Estate . . . ." (Emphasis added). By virtue of Clause

FOURTH, Martin disposes of "all of [his] tangible personal property" to such of his sons as survive him. In Clause FIFTH, Martin disposes of "all the rest, the residue and remainder" of his Estate by leaving same to his sons. In Clause SEVENTH, Martin names his sons as executors of the Will and delineates their powers. In Clause EIGHTH, as noted above, Martin states that his failure to provide for Muriel is intentional and makes reference to the Antenuptial Agreement each has entered into on February 11, 1983, and further references, "pursuant to an antenuptial agreement entered into by Muriel Kreuter and me (sic) on February 11, 1983, each of us has waived all rights and interests in the property of the other which may arise by virtue of the marital relation which will exist between us. Each of us further agreed in said agreement that in the event of the death of either of us the survivor would make no claim to any part of the Estate of the other as the surviving spouse." (Ex. 5). The Court is aware that subsequent to Martin purchasing the Subject Premises on June 26, 1986 (Ex. 7), there were a number of loans secured by mortgages against the Subject Premises (Exs. 8-15). Ultimately, all loans were consolidated into a single loan against the Subject Premises, with a mortgage on the Subject Premises standing as security. That singular loan was not paid in full at the time of Martin's decease. The Court accepts the testimony of Daniel as credible on this topic and notes that his testimony is not seriously disputed on cross examination, nor in the testimony of other witnesses on this subject, and it is corroborated by the exhibits. The Court finds it as fact.

Referring to the Codicil, in addition to the life Estate bestowed upon Muriel, the Codicil also makes it clear that the operative clause of the Codicil, Clause "FOURTH-A," is to be inserted between Articles FOURTH and FIFTH of [Martin's] [W]ill." (Emphasis added). The Codicil, in effect, adds to the Will but does not replace any specific clause of the Will. The Codicil goes on to provide in relevant part: "Upon my wife's death if she survives me, . . . , I

give and devise all my right, title and interest in and to said real Estate to such of my sons as survive me, . . .” (Ex. 6).

It is clear to the Court, after a review of all the testimony and the exhibits, that Martin was aware of his sons as the natural objects of his bounty. Furthermore, all exhibits appear to be meticulously and professionally drafted. In his Will, Martin indicated that he wanted the “proper” expenses incurred in the administration of his Estate to be paid from the residue of his Estate. (Ex. 5, Clause THIRD) (Emphasis added). When Martin executed the Codicil just over three years later, he gave Muriel a life Estate in the subject property but he was still cognizant that his sons would ultimately inherit the Subject Premises. A reading of the Antenuptial Agreement and the Will clearly indicate that Martin was cognizant that his sons would ultimately inherit the residue of his Estate. Muriel’s life Estate was expressly “subject to the requirement that she pay all expenses associated with such real Estate, including, but not limited to, . . .” (Ex. 6). (Emphasis added). Furthermore, Martin was aware of the mortgages on the Subject Premises standing as security for certain debts due on the property. Such debts were ultimately consolidated into a single loan which was not paid in full at the time of Martin’s death. (Exs. 8-16).

Under Redding, supra, that interpretation will be preferred which gives consistency to the whole will and most effectively carries out the intention of the testator, keeping in mind the circumstances surrounding him when the codicil was executed. The Court concludes that the “proper” expenses of administration do not include the residuary legatees or remaindermen being required to pay interest on the indebtedness secured by a Mortgage on the Subject Premises. Notwithstanding Plaintiffs’ citation to 2 Thompson on Real Property, §19.10 and the host of cases from other jurisdictions cited by the Plaintiffs, this Court notes that the Rhode Island

Supreme Court has stated, "Moreover, as a life tenant [the life tenant] is charged with the duty of paying the interest on the mortgages . . . . " See Atwood v. Charlton, 21 R.I. 568, 571, 45 A., 580, 581 (R.I. 1900) (Emphasis added). That case involved a bill to compel the assignment of two mortgages held by the respondent on property in which the complainant had a life Estate. According to the timeline in the various Mortgage exhibits (Exs. 8-15), the debt occurred after Martin and Muriel were married. (Emphasis added).

The Court draws the inference that the intention of the testator, Martin, was that the life tenant, Muriel, should pay the interest due on the indebtedness standing against the Subject Premises at the time of his death. The Court finds this as a fact.

4.

The Increase in Said Indebtedness Subsequent to Martin's Death

The Court is aware that Daniel testified that he applied to the Probate Court to increase the Equity Line of Credit and the Open End Equity Mortgage on the Subject Premises in order to pay the expenses of the Estate, and the actual mortgages on the Subject Premises (Exs. 27, 28, and 30). Daniel testified about the outstanding expenses of the Estate and the fact that the Estate could not afford to pay the interest on the Mortgage. The Court received Exhibit 17 as a full exhibit corroborating the testimony, especially as to the expenses of the Estate. Additionally, the Court received the applications to the Probate Court in 2005 and 2007 as exhibits. (Exs. 26, 29). The Court accepts the testimony of Daniel as credible on this topic and notes that his testimony is not seriously disputed on cross-examination, or in the testimony of other witnesses on this subject, and it is corroborated by the exhibits. The Court finds as fact that the increase in

interest[6] payment in this context is not a proper expense of the administration of the Estate. (Emphasis added).

C

The Affirmative Defenses

The Defendant has set forth several affirmative defenses including estoppel, laches, and assertions that Plaintiffs' damages were caused in whole or in part by the actions or omissions of the Plaintiffs themselves, or by someone other than the Defendant. The Defendant has the burden of proof to establish her affirmative defenses. Ridgewood Homeowners Ass'n v. Mignacca, 813 A.2d 965, 972 (R.I. 2003).

1.

Actions or Omissions of the Plaintiffs Themselves or Others; Life Estate

Defendant argues and suggests that around February 1, 2005, her counsel, in correspondence to the Estate's attorney, Doris Licht, advised that in the opinion of Defendant and her counsel, the Promissory Notes and Mortgage were not expenses associated with the Subject Premises and that the Defendant would not be paying any amounts due thereon. (Def.'s Mem. at 2, ¶ 8). Defendant refers to correspondence dated February 1, 2005 from her attorney, Stephen M. Litwin, to Doris J. Licht, Esq. The Court received this document, marked as Exhibit 20. The actual language in said communication can be found in the fourth paragraph on the page. The paragraph reads as follows:

> "There is, however, one issue that has risen. This would concern the Promissory Notes of Martin Shedd which have been secured by Mortgages on the Hanley Farm property. I believe that

[6] The Court takes this opportunity to make it clear that, as opposed to the "interest" payment on the indebtedness, the responsibility for the payment of the "principal" lies with the Plaintiffs as the remaindermen. The payment of the principal balance due on the indebtedness is a proper expense of the administration of the Estate.

> Muriel has been under the impression, and may have been informed, that these Notes were her responsibility. I have informed her however, that that is not correct. As the Notes are debts of Mr. Shedd, and consequently the Estate and not expenses of the property, I have instructed her not to make any payments on these matters."

The paragraph fails to make clear exactly what was discussed with Muriel regarding who was responsible for exactly what. The correspondence says, "Muriel was under the impression that the Notes were her responsibility." The Notes, specifically the principal due, are the responsibility of the Plaintiffs. Only the interest is the Defendant's responsibility. (See n.6). The next paragraph of the correspondence reads: "Second, I would assume that at some point in the future, we would want to record a document which would identify Muriel Shedd's Life Estate. I do suppose, however, that the Will, when probated, would work to create that notice."

This contradicts Defendant's suggested Conclusion of Law that the "language of the Codicil does not necessarily create a Life Estate." (Def.'s Mem. at 4, ¶ I). The Court has already found that a Life Estate was created, supra.

Defendant next suggests that there was never a response from Doris Licht or the Plaintiffs "disagreeing with the Defendant's opinion and/or action" concerning the Promissory Note and Mortgage. (Ex. 20; Def.'s Mem. at 2, ¶ 10). Defendant asserts that it was not until the Plaintiffs' Complaint was filed that she "first became advised that the Plaintiffs believed she had a responsibility to pay interest on the Promissory Note." (Def.'s Mem. at 4, ¶ 17).

The Court acknowledges that the parties in the instant action would be free to change their respective rights and obligations by entering into a contract. A contract is not, however, specifically mentioned in the affirmative defenses. Arthur Kreuter, on redirect exam, testified, "Dan (Daniel) said he'd honor the terms of the Life Estate and pay interest." This agreement is disputed by Daniel. The Defendant has the burden of proof on this issue. A valid contract

requires competent parties, subject matter, legal consideration, mutuality of agreement, and mutuality of obligation. DeAngelis v DeAngelis, 923 A.2d 1274 (R.I. 2007). Regarding the element of mutuality of agreement, the Court has considered the testimony of both Daniel and Arthur Kreuter. The Court has reviewed the various emails, email chains, and correspondence contained in Exhibits 18 through 25 which are dated from January 25, 2005 to June 10, 2005, and also Exhibit 31, which contains emails from August, October and November of 2008. There is nothing in Exhibits 18 through 25 which allows the Court to draw a reasonable inference that Daniel agreed to pay the interest on the Promissory Note. Exhibit 31, containing an October 22, 2008 email from Daniel to Arthur Kreuter, makes it clear that Plaintiffs feel that the payment of interest was not their responsibility but the Defendant's. There is discussion among the various emails as to the parties' respective obligations and also as to the value of the Subject Premises, but no express or implied agreement. Defendant, at one point, testified "[T]hey felt I should pay for a part of the mortgage . . . . I felt I didn't owe anything . . . It's not my responsibility to help pay the mortgage." When questioned further, Defendant testified, "I guess it's the interest . . . they said I should help pay . . . The [Probate] judge never told me I was liable . . . I went to probate myself." The Defendant testified that the first time she "became advised that the Plaintiff's [sic] believed she had a responsibility to pay interest on the Promissory Note was when Plaintiffs filed the Complaint. (See Def.'s Mem. at 4, ¶ 17). On review and consideration, the Court finds Daniel's denial as to this topic more credible than that of Defendant and her son, Arthur. The Court finds that based upon the weight of the evidence, as to the existence of a contract as urged by Defendant, that Defendant has failed to establish the existence of said contract by a preponderance of evidence. The Defendant has not seriously argued that anyone other than herself or Doris Licht, by her failure to respond to Mr. Litwin's opinion asserted in the

February 1, 2005 letter, has done anything to allow for relief by way of an affirmative defense. The Court finds there is no mutuality of obligation as to any promise by Daniel to be responsible for the payment of interest on the Promissory Note and Mortgage. The Court declines to afford the Defendant any relief on these two affirmative defenses.

2.

Estoppel

Defendant urges the Court to apply the doctrine of estoppel and thereby deny any recovery to the Plaintiffs. As a basis for the invocation of the doctrine, Defendant maintains that after her counsel gave his opinion in a February 2005 communication "concerning Defendant's responsibilities on the Promissory Note . . . the Plaintiff (sic) was silent." See Def.'s Mem. at 8. Defendant continues her argument by further maintaining that in the course of a July 2005 email by Daniel, when "identifying the responsibilities of [Muriel], [Daniel] was silent on the issue of the interest on the Promissory Note." Id. Defendant has attached to her Memo an email dated July 14, 2005, which purports to be from Daniel to Arthur Kreuter. The email document does not appear to be among the full exhibits before the Court. The document by its terms appears to indicate that the Plaintiffs "will be taking care of property insurance, condo (sic) fees and taxes" and thereafter would "send a monthly invoice to [Muriel] for these amounts." The email solicits input as to any other costs that Arthur Kreuter feels should be included and states that Plaintiffs feel it is in "everyone's interest that these accounts be handled directly by the executor-trustees of the Estate." It appears that Mr. Kreuter forwarded the email to his attorney, Mr. Litwin, about one hour and fifteen minutes later with a short message indicating that Defendant "should be pleased" with the change of events. A review of all of the email and correspondence exhibits in the case (Exs. 18-25 and Ex. 31) reveals that there was a great deal of negotiating going on

during the month of June 2005. Furthermore, a review of Exhibit 31, which is a compilation of several emails from August, October, and November 2008, over three years later, demonstrates a great deal of negotiating and inquiry still underway with regard to the value of the Subject Premises; and, also, whether Plaintiffs will attempt to purchase Defendant's interest in the Subject Premises. It is clear, however, that on October 22, 2008 at 6:24 p.m., Daniel sent an email to Arthur Kreuter which contained some comments on the negotiations over the value of the Subject Premises. That email clearly states in the second paragraph thereof, "[w]e have kept mortgaging the house to pay the interest which we feel is not our responsibility but your mother's." (Emphasis in original). This line contrasts with Defendant's testimony and post-trial assertions that the first time she heard about the interest payments being her responsibility was when the Complaint was filed. Defendant did testify that her son, Arthur Kreuter, was "helping her" during the probate process and she "didn't remember if she was aware of the emails" but she "might have been back then." As a third and final ground for the application of estoppel, Defendant asserts that "in correspondence leading up to the Warren Probate Court, there was silence by the Estate regarding [Muriel's] responsibilities of paying interest on the Promissory Note."

"Estoppel is 'extraordinary' relief, which 'will not be applied unless the equities clearly [are] balanced in favor of the part[y] seeking relief.'" Sturbridge Home Builders, Inc. v. Downing Seaport, Inc., 890 A.2d 58, 67 (R.I. 2005) (quoting Southex Exhibitions, Inc. v. R.I. Builders Ass'n, Inc., 279 F.3d 94, 104 (1st Cir. 2002) (applying Rhode Island law)). Additionally, an estoppel claim requires two elements: first, an affirmative representation on the part of the person against whom the estoppel is claimed, which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, that such

representation or conduct in fact did induce the other to act or fail to act to his injury. See Providence Teachers Union v. Providence School Bd., 689 A.2d 388, 391-92 (R.I. 1997). See also El Marocco Club, Inc. v. Richardson, 746 A.2d 1228, 1233, 1234 (R.I. 2000). (the key element of an estoppel is intentionally induced prejudicial reliance) (quoting East Greenwich Yacht Club v. Coastal Resources Mgmt. Council, 118 R.I. 559, 568, 376 A.2d 682, 686 (1977)).

If Defendant's July 2005 email from Daniel to Arthur Kreuter was in evidence, and after considering all of Defendant's assertions on this topic, the Court finds that there is no basis in the testimony of Daniel, Arthur Kreuter, or Muriel from which the Court can draw a reasonable inference that any of the negotiations or discussions between Daniel and Arthur Kreuter and Defendant were made for the purpose of inducing the other to act or fail to act in reliance thereon. After a thorough review of all emails in evidence, and consideration of their context, as well as consideration of the July 2005 email referenced by Defendant, (not in evidence), the Court is unable to draw that inference. The Defendant has the burden of proof on this affirmative defense and has not sustained same based on the evidence. Furthermore, the Court cannot say, based on review and consideration of all of the above, that the equities are clearly balanced in favor of the Defendant on this issue. The Court declines to apply the doctrine of estoppel.

3.

Laches

Defendant also urges the Court to apply the doctrine of laches and deny recovery to the Plaintiffs. Defendant bases her suggestion on the length of delay in Plaintiffs' filing of the instant Complaint. Specifically, Defendant claims that since Martin's death on January 10, 2005,

and throughout the communications, including writings, emails, and verbal discussions, and considering the time the Plaintiffs filed their original Complaint[7] in 2009, the delay has worked to the disadvantage of the Defendant. In Cigarrilha v. City of Providence, 64 A.3d 1208 (R.I. 2013), the Rhode Island Supreme Court considered whether the doctrine of laches afforded the plaintiffs any relief from the City of Providence's enforcement of its zoning ordinance where Plaintiffs alleged the City sat on its rights for over seventy (70) years. The Supreme Court stated: "Laches" is [an] equitable defense that precludes [a] lawsuit by [a] plaintiff who has negligently sat on his or her rights to [the] detriment of [a] defendant. O'Reilly v. Town of Glocester, 621 A.2d 697, 702 (R.I. 1993). In order to pass upon the applicability (vel non) of the doctrine of laches in a particular case, "A court applying the defense of laches must use a two-part test; first, there must be negligence on the part of the plaintiff that leads to a delay in the prosecution of the case, and, second, this delay must prejudice the defendant." See School Committee of Cranston v. Bergin-Andrews, 984 A.2d 629, 644 (R.I. 2009) (internal quotation marks omitted). It is also well established that . . . the applicability of the defense of laches in a given case generally rests within the sound discretion of the trial justice. See Hazard v. East Hills, Inc., 45 A.3d 1262, 1270 (R.I. 2012). Id. at 1214.

In Cigarrilha, the Supreme Court upheld a finding by the trial justice that the City had not acted negligently. In the instant case, the Court finds that the Plaintiffs have not acted negligently. Negotiations commenced almost immediately upon Martin's death. The parties were faced with divergent opinions as to the liability of the other for any payments. Even describing the nature of the payments, i.e., "interest" payments versus payment of "principal," appears to the Court to be not as articulate as it could have been in hindsight. The parties had

[7] The Amended Complaint is Court stamped October 21, 2009.

difficulty in ascertaining a value of the Subject Premises according to the testimony and emails. The Court finds all of such evidence is credible. The mere fact that the Plaintiffs could have filed suit sooner than 2009 does not mean they were negligent. An action for declaratory and injunctive relief was also available to the Defendant within the same time frame. The Court declines to apply the doctrine of laches.

D

Remedies Under the Amended Complaint

1.

Confirmation of Declaratory Relief

The Court confirms the Declaratory Relief in favor of the Plaintiffs as set forth above. Defendant is responsible for the payment of "interest" payments due on the Equity Line of Credit Promissory Note and the Mortgage against the Subject Premises. Defendant is responsible for said interest payments from the date of martin's death forward. Defendant is also responsible for any increase in the "interest" payment as a result of the increases in the Line of Credit authorized by the Probate Court.

2.

Request for Judgment Against Defendant—Calculation of Amount

During the trial, the Court heard testimony from Daniel and also from William Tsonos, the Director of Commercial Banking for BankRI. BankRI is the entity to which the interest payments are currently being made. According to Mr. Tsonos and Exhibit 32, as of January 28, 2014, the total amount of interest paid by the Plaintiffs amounts to $97,680.35. This amount covers the period from Martin's death to January 28, 2014. The amount includes the increase in payments necessitated by increasing the Open End Line of Credit secured by the Mortgage. The

amount does not include late charges, as Mr. Tsonos testified that the late fees "were not charged." The Court accepts the testimony of the witnesses and the exhibit as credible regarding the amount paid. Based upon the Court's declaration that the Defendant is responsible for all interest payments since Martin's death, the Court awards judgment to Plaintiffs against the Defendant in the amount of $97,680.35, plus per diem "interest" payments required by BankRI for all days subsequent to January 28, 2014, until said amount is paid. The judgment is intended to compensate and reimburse Plaintiffs for all amounts they have paid in "interest" payments looking backward to Martin's death.

3.

Injunctive Relief

Based upon the Court's declaration that the Defendant is responsible for all interest payments since Martin's death, Plaintiffs seek an injunction requiring Defendant to pay all future "interest" payments due during her lifetime. Plaintiffs argue that they have no adequate remedy at law. They note that their interest in the Subject Premises is not subject to partition, given the nature of the Plaintiffs' and Defendant's respective interests. See Pls.' Mem. at 9-10, ¶ 4. The Plaintiffs argue that "absent a consensual agreement with Defendant Muriel Shedd concerning the disposition of the Subject Premises or Defendant's life Estate, the Plaintiffs had (sic) no choice but to continue to pay the interest on the Equity Line of Credit in order to preserve their own interests (pending disposition of this dispute)." Id.

An injunction is an extraordinary remedy that requires a party to either do or refrain from doing some act. The main prerequisite to obtaining injunctive relief is a finding that the plaintiff is being threatened by some irreparable injury for which he has no adequate legal remedy. Brown v Amaral, 460 A.2d 7, 10 (R.I. 1983); See also In re State Employees' Unions, 587 A.2d

919 (R.I. 1991) (Principal prerequisite to obtaining injunctive relief is moving party's ability to prove that it is being threatened with some immediate irreparable injury for which no adequate remedy at law lies.); Nat'l Lumber & Bldg. Materials Co. v. Langevin, 798 A.2d 429 (R.I. 2002) (A party seeking injunctive relief must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.); Nye, 992 A.2d at 1002 (A party seeking injunctive relief must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.) "Irreparable injury" must be either presently threatened or imminent; injuries that are prospective only and might never occur cannot form the basis of a permanent injunction. Nye, supra, 992 A.2d at 1010. Ultimately, existence of irreparable harm, as a requisite for injunctive relief, is factual determination made at conclusion of all evidence. R. I. Turnpike & Bridge Auth. v. Cohen, 433 A.2d 179, 182-83, (R.I. 1981).

In the instant case, the Court finds that the Plaintiffs are unable to sever their own interests as remaindermen from the Defendant's interest as a life tenant. The Court finds that an Equity Line of Credit secured by a Mortgage against the Subject Premises presently exists. The Court finds that Defendant has never admitted that she is responsible for the payment of the "interest" payments due on the Promissory Note and Mortgage and, since Martin's death, has failed to make payment of any portion of the $$97,680.35 paid by the Plaintiffs in "interest" payments through January 28, 2014. The last Mortgage to BankRI prior to Martin's death is before the Court as Exhibit 16. Said Mortgage is dated December 28, 2004. Said Mortgage clearly contains a statutory power of sale (Mortgage at 3, Ex. 16 at 4) which would allow the Bank to institute foreclosure proceedings in the event of default. The Court finds that without

ordering the Defendant to make payments prospectively, the Estate, and ultimately Plaintiffs, will lose their interest in the property if the Plaintiffs do not continue to pay the required "interest" payments, for which this Court has declared that the Defendant is responsible for, out of Plaintiffs' own pockets. The Court finds that in the event the Defendant fails to make the required payments, and if the Plaintiffs fail to make such payments, the Plaintiffs, as Executors of Martin's Estate, as well as the Estate, will be in default as described in the Mortgage. Furthermore, it is clear to the Court that the Bank has the right to initiate foreclosure proceedings and thus terminate all interests in the Subject Premises, including those of the Plaintiffs as well as the Defendant. The Plaintiffs, as remaindermen, will stand to lose their interest in the Subject Premises. The Court finds that the Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the injunctive relief is not granted. Therefore, the Court orders Defendant to make all future "interest" payments due on the Equity Line of Credit, Promissory Note, and Mortgage when due.

Counsel shall confer and present an appropriate Order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Daniel S. Shedd and David A. Shedd, et al. v. Muriel Shedd
CASE NO:	PC 09-5738
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 19, 2014
JUSTICE/MAGISTRATE:	Carnes, J.
ATTORNEYS:	
For Plaintiff:	Barry J. Kusinitz, Esq.
For Defendant:	Stephen M. Litwin, Esq.