

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: February 2, 2012)

SMITHFIELD ESTATES, LLC :
 :
V. : C.A. No. PC 2003-4157
 :
THE HEIRS OF JOHN M. :
HATHAWAY; JOHN J. RILEY; :
ESTATE OF JOHN J. RILEY; :
EUGENE F. RILEY; ESTATE OF :
EUGENE F. RILEY; JUDSON DAVIS; :
GRACE BOARDMAN; LEWIS T. :
GARDNER; MARY A. WHITTAKER; :
ESTATE OF MARY A. WHITTAKER; :
MARY MACAULEY; ESTATE OF :
MARY MACAULEY; SARAH A. :
GARFIELD; ESTATE OF SARAH A. :
GARFIELD; CHARLES H. RUSSELL; :
FRANKLIN M. RUSSELL; CHARLES :
H. SHIPPEE; ESTATE OF CHARLES :
H. SHIPPEE; JAMES B. CANNING; :
ESTATE OF JAMES B. CANNING; :
MARY A. MCGIN a/k/a MARY A. :
MCGINN; ESTATE OF MARY A. :
MCGIN a/k/a MARY A. MCGINN; :
CATHERINE F. MCGIN; ESTATE OF :
CATHERINE F. MCGIN; FRED M. :
SWARTS; ESTATE OF FRED M. :
SWARTS; CATHERINE BRESLIN; :
ESTATE OF CATHERINE BRESLIN; :
THOMAS ADAMS; ESTATE OF :
THOMAS ADAMS; MABLE A. :
ADAMS; ESTATE OF MABLE A. :
ADAMS; WILLIAM BISHOP; ESTATE :
OF MILLIE BISHOP; EDITH H. :
RICHARDSON; THOMAS H. :
PHILLIPS; ESTATE OF THOMAS H. :
PHILLIPS; ROSE PHILLIPS; ESTATE :
OF ROSE PHILLIPS; DEBORAH :
NORTH; ESTATE OF DEBORAH :
NORTH; CHRISTINA HEAP; :
HAROLD HEAP; TOM HEAP; FRED P. :
HEAP; ADA HEWITT; THOMAS S. :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DECISION

STERN, J. This matter arises out of an action to quiet title over certain parcels of real property located within the Town of Smithfield, Rhode Island. Pursuant to Super. R. Civ. P. 42(b), Plaintiff Smithfield Estates, LLC (“Smithfield”) has filed a Motion to Bifurcate the trial of the Parties’ competing adverse possession claims from a claim for slander of title filed by Defendants Paul Filippi, Jr, Steven Filippi, and Blake Filippi (collectively “Filippis”) against Smithfield Estates. Smithfield asserts that a bifurcation of the Parties’ claims is warranted because an adverse possession claim is tried by a court in equity while a slander of title claim is tried by a jury, and trying the two together in this case will lead to juror confusion as well as undue prejudice to Smithfield’s position. The Filippis object to bifurcation and claim that they have a constitutional and procedural right to a trial by jury for all claims including adverse possession. Should the Court disagree and try the Parties’ adverse possession claims without a jury, the Filippis move the Court to empanel a jury to render an advisory verdict under Super. R. Civ. P. 39(c). Jurisdiction is pursuant to R.I. Gen. Laws 1956 §§ 8-2-13, 8-2-14.

I

Facts and Travel

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

Smithfield has asserted, among other theories in this quiet title action, that it is the sole owner of the disputed parcels at issue by virtue of adverse possession. In response, the Filippis have counterclaimed that they in fact are the sole adverse possessors and as such are entitled to exclusive ownership of the disputed lots. In a previous proceeding, the Parties filed cross-motions for summary judgment on their competing adverse possession claims, which were subsequently denied by the Court in the above referenced Aug. 15, 2011 Decision. In addition to the still pending adverse possession claims, the Filippis have counterclaimed for slander of title against Smithfield due to the Notice of Claim Smithfield has filed over the disputed lots, which the Filippis assert belong to them.

Smithfield's Motion to Bifurcate was filed on November 18, 2011, to which the Filippis timely objected and advanced their own conditional motion for an advisory verdict on the issue of adverse possession. A hearing was held on January 27, 2012.

II

Standard of Review

Super. R. Civ. P. 42(b) provides in part “[T]he court in furtherance of convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy, may order a separate trial . . . of any claim, cross-claim, counterclaim, or third party claim” When deciding a motion to bifurcate, this Rule “grants a trial justice broad discretion to separate the issues at trial.” DiLugio v. Providence Auto Body, Inc., 755 A.2d 757, 776 (R.I. 2000) (citing State v. Martinez, 651 A.2d 1189, 1196 (R.I. 1994) (holding “the decision concerning whether a bifurcated trial should be held rests solely within the discretion of the trial justice”). “The purpose of the Rule is to preserve judicial economy” and bifurcation is warranted “when to do so otherwise may invite confusion or unfair prejudice.” Mello v. DaLomba, 798 A.2d 405, 408 (R.I. 2002).

III

Analysis

In support of bifurcation, Smithfield argues that because actions at equity and actions at law are fundamentally different, to try both in front of a jury could lead to confusion and significant expenditure of time and resources to ensure a jury can keep the two separate. Smithfield also asserts that the Filippis’ presentation of evidence before the jury in support of their slander of title claim will cause undue prejudice toward Smithfield’s claim for adverse possession. Finally, Smithfield claims it is premature for a jury to decide the Filippis’ slander of title claim when the Court has yet to determine whether the Filippis do in fact have title to the disputed lots. In response, the Filippis assert that they have both a constitutional and procedural right to a trial by jury on both

their slander of title and adverse possession claims. Despite acknowledging that suits for adverse possession are typically tried without a jury, the Filippis assert nonetheless that the right to a jury trial is triggered in suits for adverse possession because, at the time the Rhode Island State Constitution was ratified in 1842, there are examples of adverse possession cases being tried by a jury.

A.

Motion to Bifurcate

The right to a trial by jury is maintained in Super. R. Civ. P. 38(a), which states:

“The right of a trial by jury as declared by Article I, Section 15 of the constitution of this state or as given by a statute shall be preserved to the parties inviolate.”

In deciding whether a cause of action triggers a right to a jury trial, a court must look first to whether the action “was triable before a jury in 1842, the year Rhode Island’s first constitution became effective.” FUD’s, Inc. v. State, 727 A.2d 692, 695 (R.I. 1999); see Rowell v. Kaplan, 103 R.I. 60, 67-68, 235 A.2d 91, 96 (1967) (stating that Rule 38(a) “insures that issues which were formerly triable at law as of right to a jury are still triable in that fashion, and that those which were considered equitable shall be triable by the court.”). Whereas claims for monetary damages were traditionally tried before a jury, “[a]t no time . . . could injunctive relief be awarded by any tribunal other than a court of equity.” Bendick v. Cambio, 558 A.2d 941, 945 (R.I. 1989). In addition to a historical perspective, courts must also be mindful of the practicalities of providing the kind of relief requested by the parties. See FUD’s, Inc., 727 A.2d at 695 (“Indeed, this available-relief analysis is ‘[m]ore important than finding a precisely analogous common-law cause of action in determining whether’ article I, section 5, mandates the opportunity for a jury

trial.” (quoting Tull v. United States, 481 U.S. 412, 421 (1987) (internal citations omitted))).

The Filippis present the Court with past examples of cases in which adverse possession claims were tried by juries. None of the Rhode Island cases cited by the Filippis, however, date back to 1842, nor do they address a party’s right to a trial by jury in an adverse possession claim. In Folsom v. Freeborn, 13 R.I. 200, 1881 WL 4128, *5 (1881), a mill owner sought a grant by prescription to operate his mill in waters of the Town of Warren. The Court held that it was for the jury to decide an appropriate amount of time necessary for a presumption that a party had obtained prescriptive use of a waterway. Id. No analogous role exists today in a real property adverse possession case wherein the length of time necessary for adverse possession is fixed by statute at ten years. R.I. Gen. Laws 1956 § 34-7-1. In Saunders v. Kenyon, 52 R.I. 221, 159 A. 824, 826 (1932), an adverse possession case, the plaintiff appealed the lower court’s denial of his motion for a directed verdict. The Court found that the competing evidence between the parties warranted factual findings by the jury and that there was sufficient evidence for the jury to reasonably decide the case in the plaintiffs’ favor. Nowhere in the case, however, is there a mention of a right to a trial by jury. It is possible that the parties stipulated to a trial by jury even though one was not required. Further, that factual determinations must be made in order for a case to be decided does not necessarily mean it can only be decided by a jury rather than a court of equity. The key distinction is the relief sought, “whether the type of relief available for the cause of action is legal or equitable,” FUD’S, Inc., 727 A.2d at 695, not the mode by which a court must reach its decision. See Dalo v. Thalmann, 878 A.2d 194, 200 (R.I. 2005) (in collection on

promissory note case, the Court found a right to a trial by jury “because, historically, a jury trial has been available for actions brought for damages under a defaulted promissory note”); Bendick 558 A.2d at 945 (“Our constitutional command requires that the right to trial by jury be preserved, not extended.”) (citing Gunn v. Union R.R. Co., 27 R.I. 320, 133 A. 812 (1926))). In applying the “availability of relief” analysis, it is clear to the Court that the essence of the relief sought by the Filippis in their adverse possession claim is equitable. The Filippis seek ownership, and ownership cannot be granted in the form of damages. Accordingly, the Court finds the Parties competing adverse possession claims to be equitable in nature and do not trigger a constitutional right to a trial by jury.

Having rejected the Filippis’ constitutional argument, the Court still must inquire as to whether a right to a jury trial is provided by statute. See Super. R. Civ. P. 38(a) (“The right to a jury trial as declared by [the Constitution] or as given by a statute shall be preserved to the parties inviolate.”) (Emphasis added). It is clear from the applicable statutory language, however, that not only does no right to a jury trial exist in quiet title actions such as this but the Court is in fact required to render a decision in equity. R.I. Gen. Laws 1956 § 34-16-3 states:

“Determination of title – Decree,

A cause of action under this chapter shall follow the course of equity so far as equity is applicable, and the court shall determine the validity of the title of the plaintiff, and may affirm the title, or if it finds other parties to have any title and estate therein, it shall also determine the interest, title, and estate of those parties” Id. (emphasis added).

Where the language of a statute such as this is clear, the Court cannot disregard it. See Tanner v. Town Council of East Greenwich, 880 A.2d 784, 796 (R.I. 2005) (“It is well

settled that when the language of a statute is clear and unambiguous [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.”).

After looking to constitutional as well as statutory authority, the Court turns its attention to the case law of our Supreme Court, which clearly recognizes the trial justice as the usual trier of adverse possession claims. In 1912, the Supreme Court decided an appeal regarding the sufficiency of evidence relied upon by a trial justice in deciding an adverse possession case. Dodge v. Lavin et al., 34 R.I. 514, 84 A. 857 (1912) (not reported in Rhode Island Reporter). In evaluating the trial justice’s findings, the Court stated:

“When a claim of title by adverse possession is made, it devolves upon the court, after due examination, to determine whether or not the party so claiming comes within the provisions of the statute . . . under these conditions, two questions are presented to the court—one a question of fact and the other a question of law. In the first place the Court must determine whether or not the party claiming title has satisfactorily proven the several acts relied upon by him as showing the exercise of dominion over the land. Then, if the court finds such acts and dealings duly established, it will then proceed to consider the same connection with the statute for the purpose of ascertaining whether such established facts and circumstances are sufficient in law to create a title by adverse possession.” Id. (emphasis added).

In a similar case in which the losing party to an adverse possession claim appealed the trial justice’s findings, the Court noted “[t]he trial justice in his decision, given at the conclusion of the hearing, summed up the evidence with care and precision, and . . . [t]his decision of a question of fact is not clearly erroneous, and hence . . . will not be disturbed by this court.” Matteodo et al. v. Ricci et al., 148 A. 33, 34 (1929). See also Russo et al.

v. Stearns Farms Realty, Inc., et al., 117 R.I. 387, 391, 367 A.2d 714, 717 (1977) (“The determination of whether claimants sustained their burden [for adverse possession] involves an exercise by the trial justice of his fact finding power. It is well-settled that the trial justice’s findings of fact will be upheld unless they are clearly wrong or unless he has misconceived or overlooked material evidence.”).

The Filippis submit to the Court five prior Decisions of the Superior Court decided post-Russo, which they claim demonstrate that parties in adverse possession claims enjoy a right to a trial by jury. Only one of these cases however, Hammond v. Rosewell, 2008 Super. LEXIS 149 (R.I. Sup. Ct. 2008), specifically addresses this right, while the others merely mention in passing that a jury was waived.³ The Hammond decision did find it appropriate for a jury to decide an adverse possession claim, but it stopped short of stating categorically that all adverse possession claims trigger the right to a trial by jury. The trial justice instead found that “some of the issues of fact now pending in this action were historically allowed to be tried before a jury in our state.” Id. at *3 (emphasis added). Notably, both the Hammond Decision as well the Filippis’ argument in this case refer to the Massachusetts case of Hutchins v. Maloomian, 590 N.E.2d 1171 (Mass. App. Ct. 1992), which found “[i]ssues arising out of a claim to title by adverse possession present questions of fact . . . and such questions are triable by jury.” Id. at 1172. This Court notes, however, that many of the cases relied upon by the Hutchins Court in finding that adverse possession claims gave rise to questions of fact

³ The Filippis cite Butterfly Realty & Dairyland, Inc. v. James Romanella & Sons, Inc., 2011 R.I. Super. LEXIS 41 (R.I. Super. Ct. 2011); R.I. Mobile Sportsfishermen, Inc. v. Nope’s Island Conservation Ass’n, 2011 R.I. Super. LEXIS 9 (R.I. Super. Ct. 2011); King v. Broke Props., 2008 R.I. Super. LEXIS 10 (R.I. Super. Ct. 2008); Prentiss v. Cadenazzi, 2006 R.I. Super. LEXIS 56 (R.I. Super. Ct. 2006). The Court notes that three of these four decisions were authored by the same trial justice that wrote the Hammond Decision.

were nonetheless cases in which a trial justice rather than a jury was found to have adequately weighed the evidence. See Nantucket v. Mitchell, 271 Mass. 62, 68, 170 N.E. 807 (1930); Bates v. Cohasset, 280 Mass. 142, 153, 182 N.E. 284 (1932); Kershaw v. Zecchini, 342 Mass. 318, 320, 173 N.E.2d 624 (1961). As the Court has noted above, that a case presents facts triable by a jury, does not mean that it also triggers a right to a jury trial. While it is true that some ancient Massachusetts decisions have found the appropriate trier of fact in adverse possession cases is a jury, and, like Rhode Island, Massachusetts looks to what was tried at equity and at law when its constitution was established to decide whether the right to a jury trial is triggered, see New Bedford Hous. Auth. v. Olan, 435 Mass. 364, 370, 758 N.E.2d 1039, 1045 (2001), this Court may only concern itself with Rhode Island history and jurisprudence. To the extent that this Court's Decision conflicts with Hammond, this Court chooses to remain within established constitutional and statutory principles, particularly since the Hammond decision has yet to be reviewed by our Supreme Court.

Additionally, the Court is opposed to allowing the presentation of both legal and equitable claims before the same jury in this matter. This case presents a great complexity of issues, some of which concern actions taken over a century ago. Additionally, even before a jury can consider the Filippis' slander of title claim, it must first be determined whether the Filippis do in fact have title. Lastly, a slander of title claim inevitably requires evidence of the defending party's tortious conduct, which in this case is certainly likely to prejudice a jury against Smithfield in its adverse possession claim. Thus, the Court finds that were it not to bifurcate the Parties' claims, juror confusion and prejudice toward Smithfield's position would likely result. See Super. R.

Civ. P. 42(b) (“[T]he court in furtherance of convenience or to avoid prejudice . . . may order a separate trial.”). The Filippis are not prevented from merging into one action their equitable adverse possession claim and their legal slander of title claim, Rowell, 103 R.I. at 69, 235 A.2d at 96, but nothing prevents the Court, on motion or sua sponte, from bifurcating them subsequently. Accordingly, the Court rejects the Filippis’ argument that they are entitled to a trial by jury on their adverse possession claims, and in the interest of avoiding undue prejudice and juror confusion, grants Smithfield’s Motion for Bifurcation. See Corrente v. Fitchburg Mut. Fire Ins. Co., 557 A.2d 859, 861-62 (R.I. 1989) (bifurcation of bad faith and contract claims warranted to prevent unfair prejudice to defendant).

B.

Motion for an Advisory Jury

In an equitable action, “the court upon motion or of its own initiative may try any issue with an advisory jury” Super. R. Civ. P. 39(c) (emphasis added). Unless the Court with the consent of the parties decides prior to trial that an advisory jury’s verdict will be binding, an advisory verdict becomes “part of the record [which] imports no more conclusive force to a verdict than to pleadings . . . [which are] subject to the review and final judgment of the court.” Law v. Miller, 24 R.I. 14, 51 A. 1051 (1902). Given the discretionary language of Rule 39(c) and the Court’s expectation that an advisory verdict would be of little assistance to the Court in making its determinations, the Court denies the Filippis’ Motion for an Advisory Verdict.

IV

Conclusion

Based on the above reasoning, Smithfield's Motion to Bifurcate the Parties' competing adverse possession claims from the Filippis' slander of title claim is granted, and the Filippis' Motion for an Advisory Verdict is denied.

Counsel shall submit an appropriate Order for entry.