

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: March 26, 2015]

In re PENSION CASES : C.A. Nos. PC-10-2859  
: PC-12-3166  
: PC-12-3167  
: PC-12-3168  
: PC-12-3169  
: PC-12-3579  
: KC-14-0345  
: PC-14-4343  
: PC-14-4768

**DECISION**

**TAFT-CARTER, J.** Before this Court for decision is Defendants’ Motion for Summary Judgment on the Clifford Plaintiffs’ conversion claim pursuant to Super. R. Civ. P. 56.<sup>1</sup> Plaintiffs have objected. Plaintiffs filed the underlying actions in 2014 against the Governor and General Treasurer of the State of Rhode Island, the Employees’ Retirement System of Rhode Island (ERSRI), by and through the Retirement Board, and the Chairman and Secretary of the Retirement Board (collectively, Defendants), raising various challenges to the Rhode Island Retirement Security Act (RIRSA) of 2011. For the reasons stated herein, the Court grants the Defendants’ Motion for Summary Judgment.

**I**

**Facts and Travel**

A detailed recitation of the facts and travel of these cases has been provided by this Court in its April 25, 2014 Decision. See Rhode Island Council 94 v. Chafee, 2014 WL 1743149 (R.I.

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<sup>1</sup> Plaintiffs in C.A. No. KC-2014-0345 consist of a number of individual Plaintiffs, who are all retired public sector employees.

Super. Apr. 25, 2014). Consequently, this Court will provide only the facts it deems necessary for ruling on the instant Motion.

Pursuant to ERSRI, participants' pension benefits were compounded by a Cost of Living Adjustment (COLA). The intent of the COLA was to maintain the real value of a retiree's pension in light of changes to the cost of living occurring over the life of retirement. However, as a consequence of the underfunding of Rhode Island's public pension system, the General Assembly enacted RIRSA in November 2011. Relevant to this motion, RIRSA permanently reduced all COLAs to apply only to the first \$25,000 of a person's retirement allowance and suspended all COLAs until they are funded to eighty percent, which is estimated to take at least sixteen years.

Plaintiffs contend that the State's action with respect to the COLAs amounted to conversion. Defendants now move for summary judgment on Plaintiffs' conversion claim, arguing that the Plaintiffs' claim fails as a matter of law because the cost-of-living adjustment (COLA) benefits are not specifically identifiable property capable of being converted.

## II

### Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it “is a drastic remedy and should be cautiously applied.” Steinberg v. State, 427 A.2d 338, 339–40 (R.I. 1981) (quoting Ardente v. Horan, 117 R.I. 254, 366 A.2d 162, 164 (R.I. 1976)). “Thus, [s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ., 93 A.3d 949, 951

(R.I. 2014). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. Steinberg, 427 A.2d at 340. The party who opposes the motion for summary judgment “carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006).

### III

#### Analysis

To prevail on a claim of conversion, a plaintiff must establish that the defendant “[took] the plaintiff’s personalty without consent and exercise[d] dominion over it inconsistent with the [P]laintiff’s right to possession.” Fuscellaro v. Industrial Nat’l Corp., 117 R.I. 558, 560-561, 368 A.2d 1227 (R.I. 1977) (citing Iavazzo v. R.I. Hosp. Trust Co., 51 R.I. 459, 462, 155 A. 407, 408 (1931)). Specifically, a party must establish that (1) it was in possession of or entitled to possession of the personal property at the time of conversion; (2) the defendant took the plaintiff’s personal property without consent and exercised dominion over it inconsistent with the plaintiff’s right to possession; and (3) such “intentional exercise of control over the plaintiff’s chattel . . . so seriously interfere[d] with the right of [plaintiff] to control it that the [defendant] may justly be required to pay [plaintiff] the full value of the chattel.” Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 97 (R.I. 2006). Furthermore, the party “must identify the allegedly converted property with reasonable certainty, in order to render it capable of identification, for the purpose of determining whether the property in fact belonged to the plaintiff at the time of its conversion.” DeChristofaro v. Machala, 685 A.2d 258, 263 (R.I. 1996).

Here, Plaintiffs' conversion claim concerns elimination of their right to receive COLA benefits. The Rhode Island Supreme Court has held that "the question of whether money can be the subject matter of an action for conversion generally depends on whether the defendant is under any obligation to deliver specific money to the plaintiff." Id. (emphasis added). Defendants argue the conversion claim must fail because the Plaintiffs cannot identify the specific money they allege has been converted. In so arguing, Defendants rely on the fact that the proceeds used to pay the COLA benefits are commingled with the State's general pension funds.

In response, Plaintiffs contend that the incomplete state of discovery renders summary judgment premature. Plaintiffs also claim that the monies at issue are, in fact, specifically identifiable based on actuarial valuations of Plaintiffs' COLA benefits and the fact that the monies were held in trust. See G.L. 1956 § 36-8-15 ("All money immediately required for the payment of retirement allowances or other benefits shall be deemed to be held in a trust under the laws of the state of Rhode Island with respect to which the general treasurer is designated the trustee in accordance with § 36-8-20(b).").

Although Plaintiffs do not specifically identify the documents they hope to obtain in discovery that may give rise to genuine factual dispute as to their conversion claim, the undisputed fact remains that the funds for COLA are commingled with the State's general pension funds. See § 36-8-15 ("All money immediately required for the payment of retirement allowances or other benefits shall be deemed to be held in a trust. . . .") (Emphasis added). Generally, "[a]n action will not lie for the conversion of a mere debt or chose in action . . . where there is no obligation to return identical money." 18 Am. Jur. 2d Conversion § 8; see also Macomber v. Travelers Prop. & Cas. Corp., 804 A.2d 180, 199 (Conn. 2002) ("[A]n action for

conversion of funds may not be maintained to satisfy a mere obligation to pay money . . . .”)  
(quoting National Union Fire Ins. Co. v. Wilkins-Lowe & Co., 29 F.3d 337, 340 (7th Cir. 1994)).

In line with this general proposition, the Rhode Island Supreme Court has stated as follows:

“It has never been [the law] in this State that a tort action could be maintained for money had and received, even though the person receiving the same has negligently and fraudulently refused to pay over the same to the person to whose use it was received, or has even converted it to his own use. . . .” DeChristofaro, 685 A.2d at 264 (quoting Royce v. Oakes, 20 R.I. 418, 39 A. 758, 759 (1898)).

For this reason, “[c]onversion generally does not lie for money such as general funds in the state’s hands. . . .” U. S. Fid. & Guar. Co. v. Bass, 619 F.2d 1057, 1060 (5th Cir. 1980). In U.S. Fidelity and Guaranty Co. v. Bass, a surety on a state contractor’s performance and payment bond filed suit against the state highway director and state treasurer for conversion and breach of contract based on the “erroneous disbursement of state funds by other state employees without defendants’ participation or knowledge.” 619 F.2d at 1059. The Fifth Circuit, applying state law, determined that because the funds allegedly converted must be specifically identifiable, the plaintiff “could not maintain an action for conversion of nonidentifiable funds in state accounts for progress payments and retainages.” Id. at 1060.

Similarly, in the present case, while Plaintiffs claim that the COLA benefits are specifically identifiable because the amount they would be entitled to can be calculated by actuarial analysis, COLA benefits are drawn from the general pool of pension funds; each participant’s benefit is not identified and kept in a separate trust or account. See Cumis Ins. Soc., Inc. v. Peters, 983 F. Supp. 787, 794 (N.D. Ill. 1997) (“[T]he court determines that [the plaintiff] has not alleged that there is a specifically identifiable fund which could be the subject of conversion. In this case, [the plaintiff] is seeking only a certain amount of money, not a specifically identifiable account or fund.”); Global View Ltd. Venture Capital v. Great Cent.

Basin Exploration, L.L.C., 288 F. Supp. 2d 473, 480 (S.D.N.Y. 2003) (“To state a cause of action for conversion of money, the money must be described or identified in the same manner as a specific chattel . . . . In other words, the money must be specifically identified and segregated.”) (internal citation and quotation marks omitted). As such, the State is under no obligation to return identical money, and Plaintiffs cannot maintain a claim for conversion on this basis. See 18 Am. Jur. 2d Conversion § 8.

#### IV

#### **Conclusion**

After due consideration, the Court grants Defendants’ Motion for Summary Judgment. The monies that fund the Plaintiffs’ COLA benefits are part of the State’s general pension funds and therefore do not meet the requirement that converted property be specifically identifiable.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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PC 14-4768

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** March 26, 2015

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

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***In Re PENSION CASES***

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