STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

(FILED: February 16, 2018)

PROVIDENCE, SC.		**SUPERIOR COURT**
J.R. VINAGRO CORPORATION	:	
	:	
VS.	:	**C.A. No. PM 12-1719**
	:	
96-108 PINE STREET LLC	:	
		Consolidated with
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.	:	
	:	
VS.	:	**C.A. No. PM 12-1322**
	:	
96-108 PINE STREET, LLC	:	
	:	
VS.	:	
	:	
J.R. VINAGRO CORPORATION Third Party Defendant	:	
		Consolidated with
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.	:	
	:	
VS.	:	**C.A. No. PC 12-2141**
	:	
J.R. VINAGRO CORPORATION AND WESTCHESTER FIRE INSURANCE COMPANY	:	

DECISION

I

Introduction

LICHT, J. This matter was tried upon the merits with the Court sitting without a jury for over eleven days from August 7, 2017 through September 19, 2017. The claims remaining for adjudication at trial were:

a. J.R. Vinagro Corporation's (Vinagro) direct claims against 96-108 Pine Street LLC (Pine Street) for breach of contract and unjust enrichment in C.A. No. PM 2012-1719;

b. Pine Street's Amended Third Party Complaint against Vinagro for, *inter alia*, breach of contract in C.A. No. PM 2012-1322 and C.A. No. PC 2012-2141; and[1]

c. Vinagro's Third Party Counterclaim for breach of contract and unjust enrichment also in C.A. No. PM 2012-1322 and C.A. No. PC 2012-2141.

Both parties were well prepared, the presentations of witnesses was thorough, and the advocacy was vigorous. Over 200 exhibits consisting of a few thousand pages were submitted. The parties filed post-trial memoranda and reply memoranda. The Court heard arguments of counsel on November 20, 2017. The Court asked for and received from counsel proposed findings of fact and conclusions of law. [2]

After trial, Vinagro moved pursuant to Super. R. Civ. P. 52(c) for judgment as a matter of law on the liquidated damage claim of Pine Street.

Pursuant to Super. R. Civ. P. 52(a), the Court makes the following findings of fact and conclusions of law.

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[1] Pine Street's Amended Third Party Complaint and Vinagro's Third Party Counterclaim were filed after consolidation of these matters and were treated as if both arose in the two actions originated by Clean Harbors Environmental Services, Inc. (Clean Harbors), namely C.A. No. PM 2012-1322 and C.A. No. PC 2012-2141.

[2] The Court considers the submittals, 101 pages by Vinagro with 196 proposed factual findings and 63 conclusions of law and 47 pages by Pine Street with 250 findings and 23 conclusions of law to be unduly detailed and more a recital of the evidence favorable to each side than suitable in a form for inclusion in an opinion. Notwithstanding, the submittals presented a good summary of each party's theories of recovery or defense.

II

Factual Background

A

The Contract

Pine Street owned the property located at 100 Pine Street, Providence, RI and, through a manager, conducted a parking operation in two distinct areas: 1) a six-level parking garage (the Garage); and 2) a blacktop surface parking lot abutting the Garage (the Parking Lot Area). Pine Street received a notice of violation from the City of Providence concerning the structure of the Garage. To abate the violation, the City required Pine Street to demolish the Garage.

Sometime in early 2011, Pine Street engaged the firm of Robinson Green Beretta (RGB) to prepare plans and specifications for the demolition of the Garage. Russell Ferland (Mr. Ferland), a professional engineer and career RGB employee, supervised the preparation of the drawings and prepared the specifications for the demolition. While Mr. Ferland met with Anastasia Contos (Ms. Contos), a principal of Pine Street, most of his interaction on the project was with Pine Street's attorneys, Joseph DiStefano (Mr. DiStefano) and Robert Stolzman (Mr. Stolzman) of Adler Pollock and Sheehan (APS).

Previously and not in connection with the demolition project, Pare Engineering Corporation (Pare) prepared a Phase I Investigation Report for Site Evaluation Relative to Hazardous Waste and Materials at the Pine Street Garage dated November 18, 1998 (the Phase I Report). (Pl.'s Ex. 105A.) The Phase I Report was addressed to Mr. DiStefano and was within APS' files. Pare had also prepared an ASTM Phase I Environmental Site Assessment Update for the Pine Street Garage dated September 2002 (the 2002 Update). (Pl.'s Ex. 105D.) The 2002

Update was also addressed to Mr. DiStefano and was within APS' files (collectively, these reports are referred to as the Pare Reports).

Neither of the Pare Reports were given to Mr. Ferland or Vinagro prior to the commencement of the demolition contract.

In his research, Mr. Ferland discovered an old plan of the site, which showed a warehouse building on the portion of the site which constituted the Parking Lot Area. Mr. Ferland testified that he was concerned about what happened to the debris from the demolition of the warehouse. He wanted to know whether it was placed in a hole or it was a clean site. He testified that Mr. DiStefano said it was a clean site. Mr. Ferland made no independent inquiry as to whether Mr. DiStefano was correct. Mr. Ferland toured the Garage and found that there was water in the basement, as well as a sump pump and an oil/water separator.

Pine Street solicited bids for the demolition of the Garage based on Mr. Ferland's specifications. Vinagro was the contractor that Pine Street selected. As of July 7, 2011, Pine Street and Vinagro executed a Demolition Contract with the specifications attached for a fixed price of $297,000 (Pl.'s Ex. 3.) The scope of work for the Demolition Contract was to demolish the Garage, including the basement slab, and to remove the asphalt covering the Parking Lot Area. Also on July 7, 2011, the parties executed Amendment Number 1 to Demolition Contract which provided for filling the vault area abutting the Garage for a price not to exceed $47,000 and to resurface, at Pine Street's request, portions of Pine Street for a price not to exceed $25,650. (Pl.'s Ex. 5.) (The Demolition Contract and Amendment Number 1 are referred to throughout as the Contract.)

Paragraph 2 of the Contract required Vinagro to obtain all permits. Specifically, it stated:

> "As promptly as possible following the execution of this Demolition Contract by both parties, Contractor shall apply for,

obtain and pay for the Demolition Permit and all other permits and governmental fees, licenses and applications (the "Approvals") necessary for the proper execution and completion of the Work. The Contractor acknowledges that the cost of obtaining such Approvals is included in the Contract Price (as defined herein). Both parties acknowledge that time is of the essence in the obtaining of such approvals."

Paragraph 11 provided that time was of the essence and provided for liquidated damages of $2000 per day after the Completion Date which was to be eight weeks following the Commencement Date.

Sub-Sub-Section D of Subsection 3.1 of Section 315000 of the Contract addressed the issue of dewatering and provided as follows:

> "Provide, construct, and maintain, at no additional expense to the Owner, all pumps, piping, drains, well points, or any other facility for the control and collection of ground water or surface water. Provide dewatering operations of such a nature so that all excavations, fillings, and backfills are kept, at all times, free from water, so that all demolition is performed in a dry working area, including soil for a minimum distance of 1'-00" below foundations, existing basement slabs, and footings. Repair any damage resulting from the failure of the dewatering operations and any damage resulting from the failure to maintain the area of all structure and work in a suitably dry condition . . . Perform the pumping and dewatering operations in such a manner, that no loss of ground/soils will result from these operations. Take necessary precautions to protect new and existing work from flooding during storms and from other causes. Provide continuous pumping where required to protect the work and/or to maintain satisfactory progress."

Sub-Sub-Section D of Subsection 1.7 of Section 024116 of the Contract addressed the issue of hazardous waste and provided as follows:

> "D. Hazardous Materials: It is not expected that hazardous materials will be encountered in the Work, except possibly for the oil/water separator liquid and sludge.
>
> "1. If materials suspected of containing hazardous materials are encountered, do not disturb; immediately notify Architect and

> Owner. Hazardous materials will be removed by Owner under a separate contract."

Paragraph 6(f) of the Contract provided for an Owner's Representative:

> "(f) The Owner may designate an Owner's Representative, who shall have the authority to access the Property at any time in his sole discretion to inspect all work and materials, and to stop any Work on the Project when it appears to the Owner's Representative that the requirements of the Contract are not being met. . . . The Owner's Representative shall have the authority to decide questions and make interpretations in regard to issues which arise under the Contract."

While there was no writing which designated an Owner's Representative, the Vinagro employees who testified at trial stated that most of their communications concerning the Contract and the work being performed were with Mr. DiStefano or Mr. Stolzman.

Sub-Sub-Section E. 3 of Subsection 3.5. of Section 024116 required Vinagro to "Cap the connection to the sewer from the oil/water separator. All work to conform to the Narragansett Bay Commission requirements."

B

Work from August 5 through September 26, 2011

Work commenced on the demolition of the Garage no later than August 5, 2011. Pine Street engaged Henry Benn (Mr. Benn) to serve as a field observer. In that capacity, Mr. Benn and his associates drafted daily Field Observation Reports (the Benn Reports) detailing the activity on site from the beginning of demolition. Dana Zewinski (Mr. Zewinski), a senior employee at Vinagro who had responsibility for overseeing the Contract, Mr. DiStefano, Mr. Ferland, and Kerry Anderson, the Providence Building Inspector, were sent copies of his reports.

On September 2, 2011, six feet of water was observed in the basement of the Garage. (Pl.'s Ex. 107.) Vinagro commenced dewatering operations even though it did not have a

dewatering discharge permit. As of September 8, 2011, Vinagro was dewatering the project eight hours a day using its own pumps with the effluent being filtered through a filter bag.

As of September 7, 2011, Vinagro was approximately seventy or eighty percent complete with its base Contract scope of work at the Garage. At that time, the remaining work to be completed by Vinagro included the removal of the remaining slab foundations of the Garage, backfilling the Garage area, the removal of the oil/water separator, and the removal of the asphalt on the Parking Lot Area of the site. Those activities were expected to take approximately two to three weeks to complete.

On September 8, 2011, as Vinagro's foreman was excavating the foundation slabs in the center of the Garage along the foundation wall that was adjacent to the Parking Lot Area, he encountered petroleum in the groundwater that appeared to be coming from the Parking Lot Area. (Pl.'s Ex. 107, JRV01587.) Mr. Benn viewed the black liquid encountered by Vinagro on September 8, 2011 and testified that it was obviously oil—it looked and smelled like oil. Ms. Tracy Loftus (Ms. Loftus), Vinagro's project manager at the time, observed and smelled the petroleum and contacted Mr. Zewinski and Mr. Stolzman.

Mr. Zewinski contacted Vinagro's environmental consultant, Marshall Environmental (Marshall). Marshall came to the site on September 8, 2011 and worked with Vinagro to create an earthen berm and used booms, oil socks and absorbent pads to contain the petroleum. Mr. Stolzman also came to the site on September 8, 2011 and directed Ms. Loftus to contact the Department of Environmental Management (DEM). While at the site, Mr. Stolzman recommended that Vinagro contact Clean Harbors because of Clean Harbors' relationship with DEM. Ms. Loftus then contacted DEM. A DEM official came to the site and advised Vinagro to find the source of the petroleum contamination.

After receiving a phone call from Mr. Benn, Mr. Ferland also went to the site on September 8, 2011 and observed that oil was leaking from an old bulkhead and from below the foundation. Mr. Ferland confirmed that the oil appeared to be moving from the direction of the Parking Lot Area of the site where a building/warehouse had previously been demolished.

On September 9, 2011, Vinagro drilled three exploratory holes along the foundation wall of the Garage and outside of the earthen berm area to try to determine the source of the oil. However, these exploratory holes did not reveal the source. On September 12, 2011, Ms. Loftus, Mr. Stolzman, and Ms. Kristen Sherman (Ms. Sherman), an environmental attorney at APS, met with Kenneth McDermott (Mr. McDermott), a Senior Project Manager for Clean Harbors, at the site to discuss the petroleum contamination. At that September 12, 2011 meeting, Mr. McDermott smelled oil in the excavation and observed that the oil was coming from the Parking Lot Area.

On September 13, 2011, Mr. McDermott provided Ms. Loftus with a Clean Harbors' proposal that included those items discussed at their September 12, 2011 meeting, including, but not limited to, performing historic research and test borings to determine the source of the contamination, obtaining a DEM RIPDES dewatering permit, a frac tank to treat the petroleum impacted water "to allow for impacted soil, floor and footing removal," and the services of an environmental specialist at the site. Ms. Loftus provided a copy of Clean Harbors' September 13, 2011 proposal to Mr. Stolzman when he was at the site. (Pl.'s Ex. 17.) The items included in Clean Harbors' proposal, and the associated costs to address the petroleum impacted water at the site, greatly differed from Vinagro's original work plan—one that included the use of filter bags and silt sacks at a minimal total cost of $2000.

In addition, in or around September 13, 2011, in order to keep the work moving forward as much as possible, Vinagro began demolishing the foundation wall along Pine Street—the only area within the Garage that Vinagro could continue to perform its work under the Contract as a result of the petroleum encountered.

By email dated September 15, 2011, Mr. Stolzman advised Ms. Loftus that Mr. DiStefano and he "were looking for any old environmental reports, . . . we did locate an excerpt from a document that indicates there was a boiler room with a tank on the northeast corner [the Parking Lot Area] of the 'warehouse.'" (Pl.'s Ex. 20.) Prior to the receipt of Mr. Stolzman's email, Vinagro had no knowledge that there was a boiler room with an underground storage tank on the Parking Lot Area of the site.

On September 16, 2011, Mr. Stolzman, after receiving unit costs for extra work, questioned the proposed dewatering charges. (Pl.'s Ex. 23.) Ms. Loftus further explained to Mr. Stolzman by a reply email how the planned dewatering activities were impacted by the petroleum:

> "We had basic dewatering for the project: one pump which ran during the course of the day. Because of the oil found, we have to run an additional pump and both are running 24 hrs to keep the water levels as low as possible to keep the material from being contaminated. Also, because we can't backfill the hole as per our work plan, we have to keep the pumps running for longer than expected. . . . [W]e have had to monitor and replace the booms and pads around the sump to absorb the oil . . .
>
> "Once we start to remove contaminated material, we may need to increase the dewatering plan beyond the approved scope to include environmental devices (such as a defrac tank) and a potential permit to DEM." *Id.*

In an email dated September 19, 2011, Mr. Stolzman provided Ms. Loftus with Pare Site Plans dated November 1998 from the Phase I Report that Mr. DiStefano found in his office that

"indicate the location of the abandoned in place UST adjacent (immediately northeast) to the demolished warehouse boiler room." (Pl.'s Ex. 24.) The Pare Site Plans indicated the presence of a 25,000 gallon UST abandoned in place, a pipe chase, drums, abandoned boilers, a hot water tank, monitoring wells, and a previously demolished one-story "warehouse concrete block" on the Parking Lot Area of the site. (Pl.'s Ex. 24, JRV00126-00127.) On September 23, 2011, Clean Harbors provided Ms. Loftus with a revised proposal which tasked Clean Harbors with performing the following scopes of work:

a. Determining the source and extent of oil encountered on the site. (Pl.'s Ex. 31.)

b. Determining what governmental agency had jurisdiction over the discharge of the water that needed to be pumped from the site and obtaining the requisite permit for the discharge.

c. Observation and testing of excavated material from the Parking Lot Area of the site to determine the necessary extent of excavation to remediate to residential standards. (Pl.'s Ex. 31.)

Vinagro began excavating the underground storage tank on September 21, 2011. (Pl.'s Ex. 106, JRV01599; Pl.'s Ex. 30, JRV00142.) Per instructions from DEM, work on site stopped on September 26, 2011 due to the lack of a dewatering discharge permit.

C

Obtaining the Dewatering Permit

After work stopped on September 26, 2011, Vinagro asked Clean Harbors to obtain a dewatering permit. Clean Harbors struggled with determining from what jurisdiction it should obtain the permit. In downtown Providence, the City Department of Public Works (DPW), DEM, and the Narragansett Bay Commission (NBC) have ownership and/or jurisdiction over different pipes.

Mr. McDermott, the site supervisor for Clean Harbors, believed that DEM had jurisdiction based on his experience with the Route 195 relocation project that involved multiple treatment systems. "Some fell under NBC but the majority of those were under DEM jurisdiction." (Tr. 64:11-12, Aug. 10, 2017.) Consequently, Mr. McDermott focused his efforts on DEM and, in accordance with his September 13 proposal, prepared and then submitted the RIPDES application to DEM on October 18, 2011. Simultaneously, Mr. McDermott was inquiring of DPW if they had jurisdiction over the lines, and, since DPW maps had conflicting information, he was referred to NBC. Eventually, Mr. McDermott approached NBC where he discovered the NBC lines are on a GIS platform. On October 14, 2011, NBC "indicated that there were lines in the streets that terminate at their facility, however[,] the catch basins were not on their maps." (Pl.'s Ex. 41, JRV00270.) Mr. McDermott asked NBC to double check all lines and on October 20, 2011 NBC reconfirmed that the lines were in NBC jurisdiction. Thus, Mr. McDermott began to prepare the NBC application, which was dated October 24, 2011 and, according to NBC, received on October 26, 2011. NBC requested more information, which it received on November 3, 2011.

NBC issued a permit on November 15, 2011 (NBC Permit). The NBC Permit approved Clean Harbors' proposed pretreatment system, which included the use of a frac tank and bag filters. The frac tank served to remove TSS (total suspended solids) from the wastewater, which was the major concern to NBC, and also separated out the oil.

The NBC Permit required that the wastewater be pretreated for TSS; that "adequate operator staffing" be provided for the pretreatment system; that sampling and testing of the pretreated wastewater occur in accordance with the requirements contained in the NBC Permit;

and that the operator maintain a logbook documenting, *inter alia*, daily discharge meter readings. (Pl.'s Ex. 59.)

D

Vinagro Pumps Down the Site

During the interval between the cessation of work for want of a dewatering permit on September 26, 2011 and when NBC issued the NBC Permit, the site filled with water. Specifically, water completely filled the Garage basement, the berm area used to contain the oil sheen, an area of clean fill adjacent to Pine Street, and the portion of the Parking Lot Area that had been excavated. (Def.'s Exs. T-1 – T-5.)

After Clean Harbors secured the NBC Permit, Vinagro began pumping down the site with the use of three shifts of Vinagro pump operators and additional personnel from Clean Harbors' subcontractor, ServiceTech, manning the pretreatment equipment. It took Vinagro from November 16 through November 27, 2011 to remove a sufficient volume of accumulated water to allow the demolition project to recommence.

E

Work from November 28, 2011 through January 26, 2012

Once demolition work restarted on November 28, 2011, Vinagro had to excavate below the Parking Lot Area to remove the underground storage tank and other debris from the demolition of the warehouse many years before. This work was outside the scope of the Contract. Vinagro claims that it performed extra work and contract scope work between November 28 and December 14, 2011, while Pine Street contends that the last day on which extra work is documented in Vinagro's documents is December 1, 2011. In any event, work

continued on the site until it was completed in January 2012, and the site was turned over from Vinagro to Pine Street on January 26, 2012.

III

Vinagro's Entitlement to Recovery

A

Summary

Vinagro seeks to recover damages from Pine Street based upon the following legal theories: 1) Breach of Contract and 2) Unjust Enrichment. Vinagro claims a total of $1,494,421.49 comprised of the following:

Base Contract Work:	$ 145,500.00
Extra Work:	$ 754,753.92
Prejudgment Interest:	$ 594,167.57
Total:	$1,494,421.49

Vinagro is also seeking legal fees, but that issue has been deferred until after this Decision.

B

Base Contract Work

Pine Street stipulated at trial that it owed Vinagro the base Contract amount of $145,500.

C

Contract for Extra Work

Vinagro contends that as a result of the oil encountered on site, Pine Street tasked Vinagro with remediation—an effort that included pretreating all groundwater discharged from the site, and excavating and disposing of all contaminated soil, buried construction debris and the

underground storage tank beneath the Parking Lot Area and then backfilling the Parking Lot Area. Vinagro argues that this task was tendered to it despite the fact that the Contract explicitly provided that Pine Street would handle remediation under a separate contract. Vinagro contends that Mr. Stolzman was the authorized agent of Pine Street who had the authority to bind Pine Street. According to Vinagro, Mr. Stolzman was aware of all the extra work that was being performed and the proposed costs. Specifically, Vinagro argues that Pine Street, through Mr. Stolzman, demanded that Vinagro bring in Clean Harbors. Thereafter, Pine Street, through Mr. Stolzman, knew Clean Harbors was on site providing remediation services, equipment, and materials; was provided Clean Harbors' proposal to provide remediation services, equipment, and materials; reviewed Clean Harbors' costs proposals; never objected to the additional work performed by Clean Harbors and Vinagro; accepted the additional work performed by Clean Harbors and Vinagro; and ultimately obtained refinancing as a result of the additional remediation work Vinagro performed.

Vinagro asserts that notwithstanding that the Contract in Paragraph 8 states: "This Contract can only be modified by a written agreement signed by both parties," any requirement in the Contract that change order work be approved by a signed writing was waived based upon the parties' course of dealing and oral modifications to the Contract by persons possessing authority. Vinagro further argues that Mr. Stolzman and Mr. DiStefano had either actual or apparent authority to bind Pine Street to contract amendments.

Pine Street contends it never agreed to any of the unit pricing contained in any of Vinagro's communications or proposed change orders, although it did stipulate at trial that the unit pricing related to Vinagro's extra work was fair and reasonable. Pine Street argues that it voiced its concerns early and often regarding billing dewatering as an extra during the course of

the demolition project. Pine Street contends that it disputed Extra Work Order (EWO) 1 after it was received. Pine Street points out that Ms. Contos attended three meetings in October and November 2011 with representatives of Vinagro to try and resolve what additional costs were Pine Street's responsibility. No agreement ever emerged from those meetings.

The Court concludes that Vinagro has failed to establish by a preponderance of the evidence that there was a contract amendment for extra work. The Court agrees that, even though not formerly designated, Mr. Stolzman served as Pine Street's representative for the Contract. However, nothing in Paragraph 6(f) of the Contract authorizes Pine Street's representative to bind Pine Street to a contract amendment. That section merely allows Pine Street's representative to make the on-site decisions that so often arise in the course of construction. Moreover, the Court finds that Vinagro also failed to meet its burden to establish that either Mr. Stolzman or Mr. DiStefano had apparent or actual authority to bind Pine Street. The mere fact that they played a significant role in the creation and administration of the Contract does not make them agents who can bind their client.

Mr. Stolzman from the outset raised questions about the additional work. He requested budgets, which he never received, although he did receive the proposed costs of the Vinagro and Clean Harbors' work. EWO 1 was prepared on October 3, 2011 but not received by Mr. Stolzman until October 12, 2011. Before the end of the month, a meeting with Ms. Contos was held and she raised objections to the bill. She stated that she was concerned about dewatering being Vinagro's responsibility, extra down-time, one-way trucking, and inconsistencies between the Benn Reports and the extra work charges in EWO 1. (Tr. 112:18–113:11, Sept. 18, 2017.) While some revisions were made, Ms. Contos testified that the revised EWO 1 did not satisfy her concerns.

Ms. Loftus was also aware that Mr. Stolzman could not bind his client. In an email exchange on November 1, 2011, she asks Mr. Stolzman, "Have you had an opportunity to discuss the change order with your client?" In less than ninety minutes he responds, "Yes, I discussed the billing with the client and as I then discussed with you, they have significant questions on the rates and manpower reflected in the invoices. They recognize extra costs were incurred for environmental reasons, and as we discussed, you will need to review the items with them directly to explain your calculations." (Pl's. Ex. 50.)

Two more meetings were held in November with Ms. Contos and Vinagro's representatives without a resolution.

Vinagro chose to go forward and complete the project without ever reaching an agreement with Pine Street. Later, on November 1, 2011, Ms. Loftus wrote Mr. Stolzman in an email, "Rob we need to get the questions on our change order squared away before we remobilize." Mr. Stolzman's response on November 7, 2011 was, "The owner has made it clear to Vinagro that delays are incurring and will incur substantial damages, especially if delays interfere with refinancing pending. Again, I suggest a principal's meeting tomorrow . . ." (Pl.'s Ex. 53.)

This course of conduct belies any notion that Mr. Stolzman could or did bind Pine Street to a contract amendment. Ms. Loftus knew that change orders were not within Mr. Stolzman's authority. Also, Vinagro eventually chose to move forward without resolving the issues with the change order. Vinagro argues that it had to move forward because of Mr. Stolzman's "threat" about damages relating to the pending refinancing. The Court does not find that argument persuasive. Vinagro could have sent its own "lawyer's letter" saying it would stop work unless the issues were resolved. Vinagro's counsel contends that that would have been irresponsible and

led to a different kind of lawsuit. It is also possible that such a posture would have led to a meeting where both sides reached an agreement rather than meetings which proved unproductive. While what would have happened is pure speculation, the Court finds that Vinagro went forward without a contract amendment.

D

Quantum Meruit

Just because Vinagro cannot rely on a contract amendment does not mean it cannot recover against Pine Street. The excavation and removal of the debris from the demolished warehouse under the Parking Lot Area and the disposal of any hazardous material is work that was not included in the Contract.

Vinagro contends that Pine Street has been unjustly enriched by its work.[3] In Rhode Island, "[t]o recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof." *S. Cty. Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210–11 (R.I. 2015).

Recovery on an unjust enrichment claim is rooted in *quantum meruit*. "While plaintiff in this case styled its cause of action as one for unjust enrichment . . . plaintiff is actually seeking to recover the value of the services rendered for which defendants have thus far declined to pay, i.e., to recover in quantum meruit" *Id.* at 211.

[3] Vinagro contends that even if there was no express contract amendments, the conduct of the parties created an implied-in-fact contract. The Court does not need to address that issue because Vinagro conceded that the measure of damages for an implied-in-fact contract would be the same for unjust enrichment or *quantum meruit*.

Vinagro met its burden with respect to all three elements of unjust enrichment. Vinagro conferred a benefit upon Pine Street—the site was remediated and Pine Street refinanced the property as a result of Vinagro's remediation effort. Pine Street appreciated the benefit of remediation and refinancing conferred by Vinagro's work on the site. Lastly, it would be inequitable for Pine Street to retain the benefit conferred without payment to Vinagro equal to the reasonable value of what it received. Accordingly, Vinagro is entitled to recovery in *quantum meruit* on its unjust enrichment count—the reasonable value of the services for the work not covered by the Contract.

IV

Vinagro's Claims

A

Measure of Damages

While Vinagro is entitled to recover in *quantum meruit* for non-Contract work, the parties' views of what work is within and without the scope of the Contract are dramatically opposite. The Court is charged with sifting through the testimony and exhibits to identify non-Contract work and then determine its reasonable value.

There is no dispute as to the reasonable value of the work performed by Vinagro, as the parties stipulated that Vinagro's unit pricing was fair and reasonable. Pine Street, however, has not conceded that Clean Harbors' charges were reasonable.

B

Dewatering

A significant portion of the extra work and related charges relates to dewatering. The parties stipulated at trial that dewatering was foreseeable. Dewatering was necessary because fill

could not be compacted if it was wet. Section 315000 Sub-Sub-Section 3.1 D of the Contract provides that Vinagro:

> "Provide, construct, and maintain, at no additional expense to the Owner, all pumps, piping, drains, well points, or any other facility for the control and collection of ground water or surface water. ***Provide dewatering operations of such a nature so that all excavations, fillings, and backfills are kept, at all times, free from water, so that all demolition is performed in a dry working area, including soil for a minimum distance of 1'-0" below foundations, existing basement slabs, and footings . . . Provide continuous pumping where required to protect the work and/or to maintain satisfactory progress."*** (Pl.'s Ex. 3) (emphasis added).

Paragraphs 2 and 3 of the Contract required Vinagro to obtain all permits necessary for the completion of the Contract work prior to commencing the demolition.

Mr. Ferland inspected the Garage before he began drafting the contract documents and he "saw the basement, subbasement, water in the basement. We couldn't go in there and inspect it any further. We saw sump pumps in the corner." (Tr. 82:25-83:2, Aug. 7, 2017.)

When asked what she observed as to the water levels in the garage in 2011, Ms. Contos testified, "Well, generally there was always water in the garage, and the basement either had somewhere between six inches of water or several feet of water. It just ebbed and flowed." (Tr. 108:3-6, Sept. 18, 2017.)

Mr. Zewinski testified that when he did his walk-through there was "some water in the basement but not a lot." (Tr. 131:1-2, Sept. 11, 2017.) He claims that their plan was to power up the existing sump pump in the basement that he admitted was tied to the oil/water separator and then eventually obtain their own pumps. Mr. Zewinski testified that Vinagro did not know they needed a dewatering discharge permit because Mr. Bombard from the DPW told him the pumps were discharging to the city lines.

The Court can only conclude that Vinagro paid little heed to the issue of dewatering prior to the events of early September 2011. Notwithstanding the testimony of Ms. Loftus and Mr. Zewinski, the Court does not believe Vinagro had any realistic plan for dewatering. It only allotted $2000 in its cost estimates for dewatering even though it was uncontradicted that the Garage basement was constantly wet. They contended that they were to use Pine Street's pumps initially but introduced no evidence that they ever inquired if such pumps were operable. Moreover, that testimony is contradicted by the fact that once dewatering began in early September, even before the appearance of the oil sheen, Vinagro used its own pumps.

Vinagro wants to lay the blame at the feet of Pine Street for not telling it that there had been a prior NBC discharge permit for the oil/water separator. Ms. Loftus testified that if Vinagro was aware of the prior NBC permit, "we would have gone directly to NBC for our permit instead of . . . DEM first and we would not have had such delay of time on the site. . . . [T]here would not have been a delay in Clean Harbors going through entity to entity trying to find out who had jurisdiction over the discharge." (Trial Tr. 4:21-5:11, 5:22-6:12, Aug. 8, 2017.)

What Vinagro overlooks is that, as previously stated, the Contract in Sub-Sub-Section E. 3 of Subsection 3.5. of Section 024116 required Vinagro to "[c]ap the connection to the sewer from the oil/water separator. All work to conform to the Narragansett Bay Commission requirements." Mr. Zewinski knew there was a sump pump connected to an oil/water separator, and he knew that Vinagro had to cap the connection to the sewer. When the Contract says the capping has to be in accordance with NBC requirements, Vinagro was on notice that it was connected to NBC's lines and not those of the City of Providence or DEM. A simple reading of the Contract would have avoided going "from entity to entity."

More importantly, Vinagro should have addressed the dewatering permit issue before it ever commenced demolition. The responsibility of determining what permits were needed rested with Vinagro and not Pine Street. The consequences of failing to obtain all permits fall on Vinagro.

Moreover, the Court believes Clean Harbors could have been more proactive in determining that NBC was the proper agency to issue the dewatering permit. Instead of approaching the three agencies that could have had jurisdiction to determine conclusively who would issue the permit, Mr. McDermott assumed that it was DEM and prepared an application. Only after the DPW suggested that he check with NBC did he do so. Since NBC had its lines on a GIS platform, it would have been relatively easy to determine its role. Again, had Vinagro read the Contract it might also have pointed Clean Harbors toward NBC.

The failure to obtain the dewatering permit prior to commencement of construction led to a delay which had operational consequences. On September 26, 2011 worked stopped because DEM ordered Vinagro to get a dewatering permit. Work resumed on November 16, 2011. During that six-week period, there was no dewatering and thus the Garage basement, the berm area built to contain the oil sheen, and some clean fill became filled with water. Thus, when work resumed, it took until November 27, 2011 pumping twenty-four hours per day before demolition could resume.

Vinagro contends that even if it had obtained the permit prior to commencing demolition, the discovery of oil would have changed its dewatering plan, which was just to use a filter bag system. It contends that it budgeted $2000 for dewatering and, therefore, because of the oil, it changed its plan and all dewatering costs over $2000 is the responsibility of Pine Street.

The Court finds the testimony of Kerry Britt, the Pretreatment Manager at NBC (Ms. Britt), to be credible and she made the technical aspects of the pretreatment process easily understandable to this lay fact finder. Her narrative totally undermines Vinagro's theory. Ms. Britt testified that no matter what the quality of the water being discharged a permit was necessary. She said pretreatment of groundwater is necessary because, whether oil is present or not, NBC's principal concern relates to TSS. When asked, "Did the reported presence of an oil sheen in the application trigger pretreatment with respect to this application?," she replied, "No." (Tr. 8:4-7, Aug. 9, 2017.)

She also indicated that monitoring and testing requirements would be the same whether there was oil or not.

> "Q How did the reported presence of oil sheen in the application impact the test that NBC required for this permit, if at all?
> "A It did not.
> "Q So you would have required the same test irrespective of the presence of the oil sheen, correct?
> "A Correct." (Tr. 11:24-12:5, Aug. 9, 2017.)

Ms. Britt also testified that she was not aware of any bag filtration system used for the volumes of groundwater pumped at the Garage.

As previously discussed, Vinagro also contends that had it received notice of the NBC permit for the oil/water separator, it would have bid the job differently. Again, Ms. Britt deflates that argument when she testified there was no interplay between the previous permit and the application submitted in October 2011. Moreover, Vinagro was on notice of an NBC permit when it received the draft Contract which referred to NBC regulations.

It is evident to the Court that Vinagro underestimated the dewatering requirements of this project. The process required and the expense attributed thereto was a function of the volume of water and not the presence of oil. Vinagro totally failed to assess the dewatering challenge prior

to entering into the Contract and commencing work. As such, the Court finds that Pine Street is not responsible for any dewatering charges. [4]

C

The EWOs

The Court finds that Pine Street is responsible for extra work performed by Vinagro to excavate and remove the debris under the Parking Lot Area as well as disposing of material contaminated by the oil. This liability arises out of the failure to deliver the Pare Reports.

While there is no evidence that such failure was intentional, the duty is on an owner to disclose subsurface conditions to a contractor. The failure to do so here, when such information was within the imputed knowledge of Pine Street and its attorneys, makes Pine Street liable for the extra costs attributable to such failure. Additionally, to the extent that any of the costs relate to hazardous material, the Contract places the burden on Pine Street to pay those and Mr. Stolzman so acknowledged this in his email correspondence.

The challenge for the Court is to examine each EWO and parse the evidence to determine if each charge is in or out of scope work. The Court will turn to that laborious task.[5] Exhibit A to this Decision sets forth a summary of each item claimed by Vinagro for extra work.

The claims were revised from the original EWOs submitted to Pine Street based upon the testimony and exhibits at trial as Vinagro conceded that certain charges were within the scope of the Contract and Pine Street was entitled to a credit. The amounts on Exhibit A reflect the

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[4] Pine Street contends that Clean Harbors' costs were unreasonable. It also argued that Vinagro failed to introduce any evidence to show the difference in costs between a bag filtration system and a frac tank system. Since the Court has found that Pine Street is not responsible for dewatering charges, it need not address those contentions.

[5] The Court need not comment on the credibility of each witness as it is relying on the multitude of exhibits which contemporaneously documented what transpired. The principal benefit of the testimony of all witnesses was to explain the documentary evidence.

numbers presented by Vinagro in Exhibit 166. The Court has set out two columns of amounts allowed and amounts disallowed. This Decision will identify its reasons for disallowance in summary fashion and will not analyze each claim in great detail hour-by-hour or day-by-day. The parties have done that both through the witnesses and exhibits at trial and to a great extent in their post-trial submittals. Thus the Court is cognizant of the excruciating detail presented by each side in support of its case.

If a charge is allowed, it is either because Pine Street has conceded in its post-trial memoranda that it is extra work or the Court has concluded that Vinagro has met its burden that the work was beyond the scope of the Contract. As previously stated, Pine Street stipulated Vinagro's rates were fair and reasonable.

D

EWO 1

The Court disallowed the following:

(a) $20,700 of machine down time as this is not extra work;

(b) $487.59 of charges for laborers that related to checking the pumps as this relates to dewatering;

(c) $123.25 of the Marshall charges because a 10% mark-up is more reasonable than 15%;

The $66,365 of C&D Waste Disposal presented the Court with its greatest challenge. Both Ms. Loftus and Mr. Zewinski contended that this material was the debris which came from the underground storage tank under the Parking Lot Area. However, contradictory evidence is contained in Exhibit Q, which was prepared by Mr. Zewinski, and identified the material disposed on September 21, 2011 as "Conc/Fill-In" which is consistent with debris from the

Garage demolition. However, both the testimonial evidence and the Benn reports confirm that prior to September 21, Vinagro was excavating the debris under the Parking Lot Area. That material had to have been disposed of off-site and its disposal cost would have been non-Contract work. The Court is cognizant of Pine Street's argument that the burden of proof rests with Vinagro and perhaps its records could have better identified the source of material being disposed. But the Court is also aware that the failure of Pine Street to disclose the Pare Reports, no matter how unintentional, led to this excavation work not being in the original specifications. As such, the Court will accept the testimony of Ms. Loftus and Mr. Zewinski that this material did not come from the Garage as contended by Pine Street. As such, it will allow the $66,365 of C&D Waste Disposal.

Pine Street conceded most of the other items in EWO 1 except for the materials, but these were booms and pads necessary to contain the oil. Thus, they are found to be extra work.

The Court finds that in EWO 1, $87,637.95 is extra work.

E

EWO 2

The charges on EWO 2 relate to Cleans Harbors working on obtaining the dewatering permit and as such they are Contract work and disallowed as extra work.

F

EWO 3

The Court disallows the charges for laborers, equipment, and $56,625.80 of Clean Harbors' bill as all these items relate to dewatering.

Pine Street concedes, and the Benn Reports confirm, that machine and labor charges for November 29 through December 1, 2011 are properly for extra work but they dispute such

charges for December 2, 2011. The Benn Report for that day states that three machines state: "Three pieces of equipment operating in the area of underground concrete tank and parking garage basement." (Pl.'s Ex 106, JRV 01610.) Since Vinagro only charged for two operators that day, the Court finds that such items are compensable.

Vinagro also seeks an extra charge of $32,816.40 for the disposal of alternate cover. Vinagro alleges that Mr. Stolzman directed that the property be remediated to the residential standard, which is 500 parts per million (ppm) of total petroleum hydrocarbons (TPH). Mr. Stolzman, an experienced real estate lawyer with specific, specialized knowledge regarding property development, did not testify that he instructed Vinagro to remediate to a residential standard. Ms. Contos likewise testified that she did not instruct Vinagro or anyone else to remediate the property to the residential standard. There was testimony that the site might be used as a dormitory for Johnson & Wales University, which may have led to the conclusion by Vinagro and Clean Harbors that a residential standard must be met. Mr. Stolzman, however, testified that it was "a nuanced question that requires a lot of legal analysis because dormitories are actually considered commercial and multi-family, even have a different residential family residence, especially where entire sites are to be, are covered. It requires more analysis than a yes or no. So it really covers more of an analysis." (Tr. 111:11-21, Aug. 17-18, 2017.) No one then ever asked Mr. Stolzman or any other witness to make that analysis. Moreover, pursuant to the Contract, Pine Street had the responsibility for removing hazardous waste under a separate contract which it never entered into. The Court concludes it was reasonable for Vinagro to believe under the circumstances that it had to remediate to a residential standard. However, according to the Clean Harbors' testing, none of the soil excavated on November 28 through November 30, 2011 exceeded 500 ppm TPH. (Pl.'s Ex 103, JRV 01125.) On December 1, 2011,

two test points were over 500 ppm and two were under. Vinagro did not segregate or otherwise track the amount of disposed soil related to each test point. Consequently, Vinagro has failed in its burden to establish what soil was hazardous and compensable and what was not. All soil samples from December 2, 2011 exceeded 500 ppm so Vinagro is entitled to be compensated for 307.8 tons at $41 per ton or $12,619.80.

Thus, the Court finds that Vinagro is entitled to $40,325.43 for EWO 3.

G

EWO 4

The Court disallows the following:

(a) $20,000.32 of operator labor and machine charges because the Benn Reports and Mr. Benn's testimony establish that work performed on those days was Contract work;

(b) $25,128.00 of laborers and equipment charges which all relate to dewatering activities;

(c) $38,778.00 for backfill material as Vinagro failed to present evidence of what fill was for the Garage, which would be Contract work, and what fill was the Parking Lot Area; and

(d) $125,467.10 for Clean Harbors which relate to dewatering, the balance of its charge Pine Street has conceded is extra work.

The Court has allowed the following:

(a) $5209.05 for alternate cover because the sample for December 5 exceeded 500 ppm;

(b) $104,029.25 for disposal of waste soils based on the testimony that the material taken from excavating under the Parking Lot Area would have been contaminated.

The Court finds that Vinagro is entitled to $147,237.80 for EWO 4.

H

EWO 5

The Court disallows the following;

(a) $23,692.00 of laborers and equipment charges which all relate to dewatering activities;

(b) $1968.20 for disposal of waste soils from the bottom of the frac tank which relates to dewatering;

(c) $6671.50 for Thielsch Engineering work which relates to vibration monitoring services performed on a building adjacent to the property, prompted by complaints from building occupants regarding vibration. This analysis began on December 11, 2011 and continued into January 2012 when only Contract work was ongoing; and

(d) $125,467.10 for Clean Harbors which relates to dewatering, the balance of its charge Pine Street has conceded is extra work.

Pine Street has conceded that Vinagro is entitled to $9044.75 of Clean Harbors' charges in EWO 5.

I

EWO 6

The Court disallows this charge as it relates to a report that was never filed so Pine Street received no benefit from it.

J

Police Charges

While the record includes extra charges for police details (Pl.'s Ex. 120-122), neither Vinagro's brief nor its Ex. 166 included them in its claim. Consequently, the Court will not allow them.

K

Pre-Judgment Interest

Pine Street contends Vinagro's damages accrued on the date that it submitted its final, purportedly accurate, payment demand at trial on September 11, 2017. The Court finds no merit in this argument. With respect to the balance of the base Contract, there was never a dispute. In every case where pre-judgment interest is paid, it is based on the amount proven at trial and not the amount of the claim made in a demand or presented to the fact finder. Vinagro gave credits in this case because it acknowledged that it failed to prove its case as to those items. G.L. 1956 § 9-21-10 states that pre-judgment interest begins to run when the cause of action accrues. The Contract required final payment thirty days after the final invoice is received. For purposes of this matter, the Court finds the final invoice was submitted on April 12, 2012. Therefore, the cause of action accrued when payment was not made by May 12, 2012. Vinagro is entitled to interest from that date.

V

Pine Street's Counterclaim

Section 11 of the Contract provided for liquidated damages of $2000.00 per day if Vinagro failed to complete the demolition of the Garage and the Parking Lot Area within eight

weeks. Since the work began on August 5, 2011, the Contract completion date would have been September 30, 2011. Pine Street seeks ninety-six days of liquidated damages.

Vinagro claims any delay was the fault of Pine Street for failing to provide the Pare Reports and the information about the prior NBC discharge permit for the oil/water separator. Vinagro further contends that it was never invoiced for liquidated damages and no such claim was made until the counterclaim was filed. It further contends that Pine Street failed to meet its burden to entitle it to liquidated damages.

The elements of enforcement of a liquidated damages clause in the construction context are: (a) damages are "difficult to estimate"; (b) the liquidated damages amount is a "reasonable forecast of the actual harm"; (c) damages are related to the value of use of the property; and (d) the claimant suffered actual damages. *Allstate Interiors & Exteriors, Inc. v. Stonestreet Constr., LLC*, 907 F. Supp. 2d 216, 246 (D.R.I. 2012) (applying Rhode Island law).

For the amount of liquidated damages to be considered reasonable, the amount specified must "approximate actual loss or loss anticipated at the time the contract was executed." *Space Master Int'l, Inc. v. City of Worcester*, 940 F.2d 16, 17 (1st Cir. 1991).

The Court finds that Pine Street has met its burden to establish entitlement to liquidated damages. Ms. Contos testified that damages from delay were difficult to estimate due to the changing nature of the use of the property from a parking garage to a surface lot, going from monthly parkers to daily parkers. The liquidated damages amount was a good faith estimate based upon historic performance. Pine Street's damages grew out of the loss of use of the property as a result of Vinagro's delays, and Pine Street suffered actual pecuniary damage in the form of lost revenue occasioned by the loss of use of the property. Hence, the Court denies Vinagro's motion pursuant to Super. R. Civ. P. 52(c) with respect to Pine Street's counterclaim.

Pine Street is entitled to liquidated damages for periods within which Vinagro is ***solely*** responsible for delay. While the Court found that Vinagro's failure to obtain the dewatering permit prior to commencement of work led to many of the problems between September 7, 2011, when oil was discovered, and December 5, 2011, when Contract work resumed, Pine Street's failure to provide the Pare Reports which referred to the prior demolition of the warehouse and the discovery of the oil sheen also contributed to the delay. Work commenced on August 5, 2011 and was completed on January 26, 2012, a period of 174 days. Vinagro is to be credited fifty-six days to complete and eighty-seven days when both parties contributed to the delay. As such, the Court finds that Pine Street is entitled to thirty-one days of liquidated damages, or $62,000.00 plus pre-judgment interest from the date it filed its counterclaim which was November 1, 2012.

VI

Conclusion

The Court finds that Vinagro is entitled to $145,500.00 on the base Contract, $284,245.92 for extra work, plus pre-judgment interest from May 12, 2012, less Pine Street's liquidated damages of $62,000.00 plus interest from November 1, 2012. Counsel shall confer and present a proposed order and judgment for the Court. The Court reserves decision on the issue of attorneys' fees.

Exhibit A

J. R. VINAGRO v. 96-108 PINE STREET LLC

Allowable Charges for Extra Work

EWO	Work Dates	Description	Amount		Allowed		Disallowed	
1	9/8/11-10/3/11	Operator Labor	1,750.00		1,750.00			
1		Machine	25,200.00		4,500.00		20,700.00	
1		Laborers	2,275.00		1,787.50		487.50	
1		Marshall	2,834.75		2,711.50		123.25	
1		Materials	4,670.33		4,670.33			
1		C&D Waste Disposal	66,365.00		66,365.00			
1		Clean Harbors	5,853.62		5,853.62			
1		**Total**	**108,948.70**			**87,637.95**		**21,310.75**
2		Clean Harbors	4,895.47		-		4,895.47	
2		**Total**	**4,895.47**		-	-		**4,895.47**
3	11/11/11-12/3/11	Operator Labor	6,037.50		6,037.50			
3		Machine	15,525.00		15,525.00			
3		Laborers-All Shifts	21,450.00				21,450.00	
3		Laborers - Saturday	7,290.00				7,290.00	
3		Laborers - Sunday/Holiday	10,836.00				10,836.00	
3		Equipment	2,550.00				2,550.00	
3		Contaminated soils-Alternate Cover	32,816.40		12,619.80		20,196.60	
3		Clean Harbors	62,768.93		6,143.13		56,625.80	
3		**Total**	**159,273.83**			**40,325.43**		**118,948.40**
4	12/4/11-12/31/11	Operator Labor	5,600.10	*			5,600.10	
4		Machine	14,400.22	*			14,400.22	
4		Laborers-All Shifts	24,700.00	**			24,700.00	
4		Laborers - Saturday	6,480.00				6,480.00	
4		Laborers - Sunday/Holiday	14,448.00				14,448.00	
4		Equipment	4,200.00				4,200.00	
4		Contaminated soils-Alternate Cover	5,209.05		5,209.05			
4		Disposal of Soilid Waste Soils	104,029.25		104,029.25			
4		Backfill material	38,778.00				38,778.00	
4		Clean Harbors	163,466.60		37,999.50		125,467.10	
4		**Total**	**381,311.22**			**147,237.80**		**234,073.42**
5	1/1/12-end	Laborers-All Shifts	16,250.00				16,250.00	
5		Laborers - Saturday	2,430.00				2,430.00	
5		Laborers - Sunday/Holiday	3,612.00				3,612.00	
5		Equipment	1,400.00				1,400.00	
5		Disposal of Soilid Waste Soils	1,968.20				1,968.20	
5		Thielsch Engineering	6,671.50				6,671.50	
5		Clean Harbors	64,713.00		9,044.75		55,668.25	
5		**Total**	**97,044.70**			**9,044.75**		**87,999.95**
6		Clean Harbors	5,280.00				5,280.00	
		Total	**5,280.00**					**5,280.00**
		Grand Total	***756,753.92***			***284,245.92***		***472,507.99***

* In Ex.166,deducting the credits in the column "Additional Credit" from these items in P's Ex. 126 totals $20,000.32 not $20,000

** In Ex 166, on page 2 in the column JRV total there is a typographical error- $24,070 should be $24,700

Justice Independence Honor
JUDICIARY RHODE ISLAND

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**J.R. Vinagro Corp. v. 96-108 Pine Street LLC** **Consolidated with** **Clean Harbors Environmental Services, Inc. v. 96-108 Pine Street, LLC v. J.R. Vinagro Corp.** **Consolidated with** **Clean Harbors Environmental Services, Inc. v. J.R. Vinagro Corp., et al.**
CASE NOS:	**PM-2012-1719** **PM-2012-1322** **PC-2012-2141**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 16, 2018**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Vinagro:	**Michael A. Kelly, Esq.; Erin A. Hockensmith, Esq.; Jackson C. Parmenter, Esq.**
For 96-108 Pine St.:	**Armando E. Batastini, Esq.; Jeffrey S. Brenner, Esq.**