STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: October 13, 2021)

MANUEL ANDREWS, JR., et al.,	:	
	:	
Plaintiffs,	:	
v.	:	**C.A. No. KC-2013-1129**
	:	
JAMES J. LOMBARDI, in his capacity as Treasurer of the City of Providence, Rhode Island,	:	
	:	
Defendant.	:	

DECISION

TAFT-CARTER, J. This matter is before the Court on Plaintiffs'[1] Motion[2] for Prejudgment Interest on Past-Due COLA Payments. The Defendant, James J. Lombardi, in his capacity as Treasurer of the City of Providence (Defendant or City) opposes the Motion. On December 11, 2020 and January 11, 2021, in accordance with a Supreme Court Opinion, Plaintiffs were awarded accrued Cost of Living Adjustment (COLA) benefits. *See* Partial Judgment ¶ 1 (Dec. 11, 2020) (Taft-Carter, J.); Partial Judgment ¶ 1 (Jan. 11, 2021) (Taft-Carter, J.). At issue before this Court is whether Defendant is obligated to pay prejudgment interest pursuant to G.L. 1956 § 9-21-10(a) on the amounts awarded to each Plaintiff. Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

[1] The instant Plaintiffs comprise Categories A, B, and E – K in the organizational scheme adopted by the parties. *See Andrews, Jr. v. Lombardi*, No. KC-2013-1128, 2017 WL 532353, at *5-8 (R.I. Super. Feb. 02, 2017).

[2] Plaintiffs' filing is entitled "Plaintiffs' Memorandum in Support of Their Right to Prejudgment Interest on Their Past-Due COLA Payments." This Court will refer to Plaintiffs' filing as a Motion.

I

Facts and Travel

This motion is yet another step in the dispute over pension benefits for retired members of the City of Providence police and fire departments. In this particular action, the retired members challenge the suspension of their COLAs through the enactment of a 2012 Ordinance intended to address a fiscal crisis in the City. *Andrews v. Lombardi*, 231 A.3d 1108, 1113 (R.I. 2020). "On April 30, 2012, the Providence City Council passed [the] ordinance, amending Chapter 17, Article VI of the Providence Code of Ordinances, 'suspend[ing] future COLAs for all retired City employees and any beneficiary of a retired City employee who receives a service or disability pension allowance until the system achieved a seventy (70%) funded level' (the 2012 Pension Ordinance or the ordinance)." *Id.* at 1115 (citing City of Providence Ch. 2012-20, Ordinance No. 276 (Apr. 30, 2012)).

While many retirees settled their claims through a settlement agreement and consent judgment entered in the Providence County Superior Court allowing for the ten year suspension of the benefit, certain retirees opted out of the settlement and pursued their claims through the litigation process. *Id.* at 1115-16. These plaintiffs sought a declaration that:

> "(1) the City breached its contractual obligations to each plaintiff by refusing to pay the COLAs to which each is entitled; (2) the 2012 Pension Ordinance is both unconstitutional on its face and as applied because it violates the Contract Clauses, Due Process Clauses, and Takings Clauses of the United States Constitution and Rhode Island Constitution; and (3) plaintiffs are entitled to relief under a promissory estoppel theory." *Id.* at 1116; *see* Pls.' First Am. Compl.

Additionally, Plaintiffs "requested an injunction prohibiting the City's treasurer from suspending the COLAs to which plaintiffs were allegedly entitled." *Andrews*, 231 A.3d at 1116; Pls.' First Am. Compl.

This Court first issued a written decision on March 16, 2016, "grant[ing] the City's motion for partial summary judgment with respect to the Takings Clause and promissory estoppel claims." *Andrews*, 231 A.3d at 1116. In April 2016, the Court held a bench trial that addressed the remaining claims: breach of contract and violation of the Contract Clause. *Id.* Prior to the trial the parties "stipulated to the separation of plaintiffs into twelve categories, grouped by the claimed source of their entitlement to the pension benefits, such as consent judgments, settlement agreements, final court judgments, collective bargaining agreements (CBAs), interest arbitration awards, or implied-in-fact contracts." *Id.* at 1117 (footnote omitted).

Following the bench trial, in February 2017, this Court issued a written decision in which it "denied and dismissed [P]laintiffs' claims for breach of contract and concluded that the 2012 Pension Ordinance had not violated the Contract Clauses of the United States or Rhode Island Constitutions." *Id.*; *see Andrews, Jr.*, 2017 WL 532353, at *21, *27. Final judgment was entered for the City, and Plaintiffs timely appealed. *Andrews*, 231 A.3d at 1117.

On appeal, Plaintiffs made four broad arguments. *Id.* at 1118.

> "First, they argue that the 2012 Pension Ordinance specifically excluded certain categories of plaintiffs from its reach and that some of those plaintiffs were absolutely immunized from any changes to their COLAs because of prior judicial adjudications (the 1991 Consent Judgment, the 2004 Consent Judgment, and this Court's opinion in *Arena*, cited *supra*). Second, plaintiffs collectively challenge the trial justice's conclusion after trial that the 2012 Pension Ordinance did not violate the Contract Clause of either the United States Constitution or the Rhode Island Constitution. The plaintiffs' final two arguments challenge the trial justice's decision to grant summary judgment in favor of the City on plaintiffs' claim of violation of the Takings Clause and claim for promissory estoppel." *Id.*

In addressing the Plaintiffs' first argument, the Supreme Court held that "[t]he 2012 Pension Ordinance purports to legislate over and around these final judgments, which is an

undeniable violation of the doctrine of separation of powers." *Id.* at 1121 (citing *Taylor v. Place*, 4 R.I. 324, 338-39 (R.I. 1856)). Therefore, "the 2012 Pension Ordinance has no force or effect because . . . a final judgment, especially one that is the result of a negotiated agreement between the adversarial parties, is the ultimate exercise of judicial power." *Id.* at 1121-22.

In its ruling, the Supreme Court

> "reverse[d] the judgment with respect to all of the plaintiffs who were also a party in prior litigation regarding their COLA benefits and who were included in either the 2004 Consent Judgment, 1991 Consent Judgment, an individual settlement agreement, or were a plaintiff in *Arena* (Categories A, B, E, F, G, H, I, J, K, *see supra* note 5). The 2012 Pension Ordinance is unenforceable as to these individuals . . . and we direct [this Court] to enter judgment in favor of these plaintiffs." *Id.* at 1130.

Following the remand, this Court entered Partial Judgments in favor of Plaintiffs on December 11, 2020 and January 11, 2021. *See* Partial Judgment ¶ 1 (Dec. 11, 2020) (Taft-Carter, J.); Partial Judgment ¶ 1 (Jan. 11, 2021) (Taft-Carter, J.). These Partial Judgments did not address the issue of prejudgment interest. *See* Partial Judgment ¶ 5 (Dec. 11, 2020) (Taft-Carter, J.); Partial Judgment ¶ 4 (Jan. 11, 2021) (Taft-Carter, J.).

II

Standard of Review

Prejudgment interest is a creature of the Legislature. *See Andrade v. State*, 448 A.2d 1293, 1294 (R.I. 1982). Section 9-21-10(a) provides:

> "In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued, which shall be included in the judgment entered therein. Post-judgment interest shall be calculated at the rate of twelve percent (12%) per annum and accrue on both the principal amount of the judgment and the prejudgment interest entered therein. This section shall not

> apply until entry of judgment or to any contractual obligation where interest is already provided."

The dual purpose of prejudgment interest is to encourage early settlement of claims and to compensate an injured plaintiff for delay in receiving compensation to which he or she may be entitled. *See Martin v. Lumbermen's Mutual Casualty Co.*, 559 A.2d 1028, 1031 (R.I. 1989). The Supreme Court has declared that prejudgment interest "is not an element of damages but is purely statutory, peremptorily added to the award by the clerk." *Barbato v. Paul Revere Life Insurance Co.*, 794 A.2d 470, 472 (R.I. 2002) (citing *DiMeo v. Philbin*, 502 A.2d 825, 826 (R.I. 1986)).

Nevertheless, the Supreme Court has also recognized that the application of § 9-21-10(a) to a given claim is a question of law. *See Free & Clear Co. v. Narragansett Bay Commission*, 131 A.3d 1102, 1112 (R.I. 2016); *Danforth v. More*, 129 A.3d 63, 70 (R.I. 2016) ("[O]ur case law has created various dividing lines with regard to whether a certain claim constitutes 'pecuniary damages' within the meaning of § 9–21–10(a)."); *see also Commercial Associates v. Tilcon Gammino, Inc.*, 801 F. Supp. 939, 942–43 (D.R.I. 1992) (citations omitted) ("The Rhode Island Supreme Court has sometimes referred to the calculation of prejudgment interest as a ministerial or peremptory act to be performed by the clerk rather than the court. However, it also has recognized that the court has discretion to determine the extent to which interest should be awarded in any particular case."). Moreover, while it has held that § 9-21-10 applies to both tort and contract claims, the Supreme Court has declined to extend the statute any further. *See Glassie v. Doucette*, 159 A.3d 88, 98 (R.I. 2017) (quoting *In re Estate of Cantore*, 814 A.2d 331, 335 (R.I. 2003)) ("Therefore, because this case 'is neither a contract claim nor a tort claim,' we conclude that the trial justice did not err in refusing to add prejudgment interest to plaintiff's claim.").

III

Analysis

A

Parties' Arguments

1

Plaintiffs' Argument

Plaintiffs argue that they are entitled to prejudgment interest on the amounts listed on the Partial Judgments entered by the Court on December 11, 2020 and January 11, 2021, respectively. Pls.' Mem. at 2. Plaintiffs break their argument down to three parts: (1) a party with a judgment for breach of contract damages is entitled to prejudgment interest pursuant to § 9-21-10; (2) Plaintiffs' damages are "contract-based," triggering the statutory entitlement; and (3) the City is not immune from prejudgment interest because it acted in a proprietary capacity when it suspended Plaintiffs' COLAs. *Id.* at 3, 6, 8.

As to their first prong, Plaintiffs argue that an award of pecuniary damages triggers an entitlement to prejudgment interest under § 9-21-10, and that the Supreme Court has determined that compensatory damages awarded in breach of contract or tort actions are pecuniary damages. *Id.* at 3. Plaintiffs further argue that while the trial justice determines questions of law related to whether a party is entitled to prejudgment interest, the amount of the award, and the date on which the cause of action accrued, the addition of the interest is not discretionary once the Court determines that the party is entitled to such an award under the statute. *Id.*

Second, Plaintiffs argue that "the source of plaintiffs' entitlement to their COLAs is and must be the CBAs in force when each of the plaintiffs retired." *Id.* at 5. Thus, according to Plaintiffs, "[t]he source of plaintiff's entitlement to their COLAs is not the various judicial decrees

confirming their entitlement to COLAs, but rather the CBAs upon which those decrees *were based*." *Id.* Plaintiffs contend that the "contract-based nature" of their claim is clear. *Id.* at 5-6.

Last, Plaintiffs argue that the City is unable to avoid paying prejudgment interest by asserting sovereign immunity because it was acting in a proprietary capacity when indefinitely suspending Plaintiffs' COLAs. *Id.* at 6-8. As to the proprietary function at issue, Plaintiffs say that "entering into collective bargaining agreements that contractually obligate a private person or company to establish, fund, and administer a pension plan for retired members of its workforce is something that . . . individuals and companies do every single day." *Id.* at 14.

2

City's Objection

The City objects to Plaintiffs' motion, taking issue with the Plaintiffs' characterization of their judgment as breach of contract based and the argument that the City acted in a proprietary, rather than governmental, capacity. Def.'s Opp'n at 2. First, the City argues that § 9-21-10 contains no express or implied waiver of sovereign immunity, and therefore, Plaintiffs have no right to prejudgment interest under that provision. *Id.* at 6. Moreover, Defendant argues that the Supreme Court's decisions in *Jolicoeur Furniture Co. v. Baldelli*, 653 A.2d 740 (R.I. 1995), finding that interest may be levied against the government when it sits in a proprietary rather than government capacity, and its progeny, were wrongly decided. *Id.* at 7-8. In any event, the City argues, it was acting in a governmental capacity when it enacted the ordinance suspending the COLAs, so it is not liable for prejudgment interest. *Id.* at 8-10.

The City also argues that it did not "breach" Plaintiffs' contracts. *Id.* at 18. The City contends that judicial decrees and judgments are the source of Plaintiffs' rights, and that Plaintiffs, at this point, are trying to recharacterize their claims. *Id.* Furthermore, the City argues, this Court

"correctly concluded at trial that Plaintiffs had no sustainable claims for breach of contract" and denied and dismissed that claim, because the case instead concerned the unconstitutional impairment of contracts. *Id.* at 19.

3

Plaintiffs' Reply

In response to the City's Memorandum in Opposition, Plaintiffs argue that the City has not provided the Court "with a basis for denying plaintiffs interest." Pls.' Reply at 3. First, Plaintiffs dispute the City's argument that sovereign immunity may be waived only by express or implied statutory language. *Id.* at 5. Plaintiffs say that this contention "is based on a single-focused reading of the caselaw and asks this Court to disregard the plain language in the [S]upreme [C]ourt's opinions on imposition of statutory interest on governmental entities." *Id.* Rather, Plaintiffs argue, the Supreme Court has expressly rejected the argument that sovereign immunity can only be abrogated by the Legislature. *Id.* at 8.

Next, Plaintiffs say that the City has misunderstood the "function" at issue, as it is not the legislative enactment of the COLA Ordinance. *Id.* at 10-11. They contend that the "discrete underlying activity" here was the operation of a pension system, which is a proprietary function. *Id.* at 11. Plaintiffs also argue that the judicial decrees did not create their rights but affirmed them. *Id.* at 13. The source of those rights, according to Plaintiffs, is contractual. *Id.* Plaintiffs also interpret the Supreme Court's determination regarding the breach of contract claim differently; while the City argues that the Supreme Court did not reverse this Court's ruling, Plaintiffs argue that it did by addressing the separation of powers argument and ruling that the Ordinance had no effect on Plaintiffs' judicially protected contractual right to receive COLAs. *Id.* at 14-15.

B

Breach of Contract

In challenging the 2012 Pension Ordinance, Plaintiffs brought claims against the City alleging breach of contract and violation of the Contract Clause of the Constitution of the United States and the Constitution of Rhode Island. *Andrews*, 231 A.3d at 1116. As a result, in the February 2017 decision, "[a]s a threshold matter" this Court examined whether the Ordinance "constituted[d] a breach of Plaintiffs' contracts with the City—triggering damages—or a more severe impairment of the obligations thereunder" that would implicate the Contract Clause. *Andrews, Jr.*, 2017 WL 532353, at *9. It was noted that there is a discrete distinction between a mere breach of contract and a constitutional impairment of a contractual obligation. *Id*. at *10. While disparities have developed in three areas, it is settled that the crux of a court's analysis focuses on the availability of a remedy for damages. *Id.* (citing, *inter alia*, *E & E Hauling, Inc. v. Forest Preserve District of Du Page County, Ill.*, 613 F.2d 675, 677 (7th Cir. 1980)).

Certainly, "'[it] would be absurd to turn every breach of contract by a state or municipality into a violation of the federal Constitution,'" and in the context of municipal contracts it is important to distinguish "'between a measure that leaves the promisee with a remedy in damages for breach of contract and one that extinguishes the remedy.'" *Id.* (quoting *Horwitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248, 1250 (7th Cir. 1996)). In its decision, this Court found that the City exercised its legislative powers in a way to preclude a remedy of damages. *Id.* Therefore, it was concluded that the claims as presented concerned the issue of an unconstitutional impairment of contract, not a breach of contract. *Id.*

In analyzing the 2012 Pension Ordinance to reach that conclusion, this Court found that the text of the Ordinance "demonstrate[d] the City's intent to preclude a damage remedy." *Id.* The

Ordinance, which by its own terms applied "[n]otwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award," replaced the then-extant schedule of annual COLA payments with a "revised benefit plan[]" under which Plaintiffs' COLAs would be suspended until the City's pension plan achieved a 70 percent funding level. *Id.* Because the Ordinance thereby "provide[d] the City with a defense to [any] breach of contract suit," this Court concluded that it constituted an impairment rather than a breach. *Id.* at *11; *see also E & E Hauling, Inc.*, 613 F.2d at 679 ("Use of law normally will preclude a recovery of damages because the law will be a defense to a suit seeking damages unless it is clear the law is not to have that effect."). Accordingly, this Court denied and dismissed Plaintiffs' breach of contract claims and moved on to perform the Contract Clause analysis. *Andrews, Jr.*, 2017 WL 532353, at *10.

On appeal to the Supreme Court, Plaintiffs argued that the 2012 Pension Ordinance "could not modify or supersede" the prior judicial adjudications confirming their COLA benefits and challenged this Court's finding that the Ordinance did not violate the Contract Clause. *Andrews*, 231 A.3d at 1118. Significantly, the Plaintiffs did not appeal the denial and dismissal of their breach-of-contract claims. *See id.* As a result, that ruling remains the final judgment with respect to Plaintiffs' breach-of-contract action. Article I, Rule 16(a) of the Rhode Island Supreme Court Rules of Appellate Procedure provides that "[e]rrors not claimed, questions not raised and points not made ordinarily will be treated as waived and not be considered by the [Supreme] Court." *See McGarry v. Pielech*, 108 A.3d 998, 1005 (R.I. 2015) (citing *Bowen Court Associates v. Ernst & Young, LLP*, 818 A.2d 721, 728 (R.I. 2003)) ("Even when a party has properly preserved its alleged error of law in the lower court, a failure to raise and develop it in its briefs constitutes a waiver of that issue on appeal and in proceedings on remand.").

Plaintiffs nevertheless contend that when "the [S]upreme [C]ourt short-circuited all of the arguments made by plaintiffs and the City except separation of powers and simply ruled that the Pension Ordinance had no effect whatsoever," it simultaneously—but silently—resurrected Plaintiffs' breach-of-contract claims. Pls.' Reply Mem. at 14-15. As previously stated, however, the Supreme Court's reversal of this Court's judgment against the instant Plaintiffs was based solely on its conclusion that the 2012 Pension Ordinance was a constitutionally "unenforceable" attempt to override prior judicial adjudications through legislative action. *Andrews*, 231 A.3d at 1118-22, 1130. The Plaintiffs did not appeal this Court's denial and dismissal of their breach-of-contract claims, and the Supreme Court did not separately analyze or overturn that disposition. *Id.* at 1117-22. Under these circumstances, Plaintiffs' argument is untenable. The Supreme Court has cautioned that "'it is not the role of a trial justice to attempt to read between the lines of [the Supreme Court's] decisions'" and this Court declines to do so here. *State v. Arciliares*, 194 A.3d 1159, 1162 (R.I. 2018) (internal quotation omitted). Accordingly, Plaintiffs' damages are not contractual in nature; therefore, the claim for prejudgment interest is denied.

C

Prior Judicial Adjudications and Separation of Powers

Plaintiffs also assert that they are entitled to receive prejudgment interest under § 9-21-10(a) because their awards of accrued COLA benefits ultimately stem from their prior contracts with the City. *See* Pls.' Mem. at 5. "The source of [Plaintiffs'] entitlement to their COLAs is not the various judicial decrees *confirming* their entitlement to COLAs, but rather the CBAs upon which those decrees *were based*." *Id.* In support, they cite to this Court's prior findings—unchallenged on appeal—"that each plaintiff proved beyond a reasonable doubt that they were entitled to pension benefits from the City, including COLAs, by way of an express contract or an

implied-in-fact contract." *Andrews*, 231 A.3d at 1124. In Plaintiffs' view, the "contract-based nature" of their claims is the "critical factor" governing their entitlement to prejudgment interest under § 9-21-10(a). Pls.' Mem. at 6.

In response, the City notes that the Supreme Court in *Andrews* concluded that the 2012 Pension Ordinance "was not effective as to those who are parties to judgments, not contracts." Def.'s Opp'n at 18. The City thus contends that "the only reason that the [Plaintiffs] are immune from the City's COLA-suspending ordinance is that their rights do *not* stem from contract." *Id.*

In *Andrews*, the instant Plaintiffs argued that they were "absolutely immunized from any changes to their COLAs because of prior judicial adjudications[.]" *Andrews*, 231 A.3d at 1118. The Supreme Court agreed, noting that the City's prior attempts to reduce Plaintiffs' COLAs "had been challenged and resulted in either a consent judgment, a judicially approved settlement agreement, an opinion by [the Supreme] Court, or some combination thereof." *Id.* at 1121. Significantly, the Supreme Court stated that "[a]lthough the contractual nature of a consent judgment is beyond dispute, the consent judgment has more weight than contracts that have not received a court's imprimatur as the agreed-upon solution to a legal dispute." *Id.* at 1119. This is because consent judgments are "'clearly protected by the impenetrable posted authority that we know as separation of powers, based upon articles 5 and 10 of the Rhode Island Constitution.'" *Id.* at 1119-20 (quoting *City of Providence v. Employee Retirement Board of City of Providence*, 749 A.2d 1088, 1098 (R.I. 2000) (*Mansolillo II*). Under that doctrine, a legislative body is "utterly powerless to enact legislation that would serve to interfere with, set aside, or reopen a judgment that had been entered by the [trial court]." *Mansolillo II*, 749 A.2d at 1098 (citing *Taylor*, 4 R.I. at 338-39). Because "[t]he 2012 Pension Ordinance purport[ed] to legislate over and around [the]

final judgments" at issue, the Supreme Court held that it was "an undeniable violation of the doctrine of separation of powers." *Andrews*, 231 A.3d at 1121 (citing *Taylor*, 4 R.I. at 338-39).

It is clear from the Supreme Court's decision, resulting in the award of past-due COLAs, that the Plaintiffs' entitlement to the COLA payments stems from the final judgments. *See id.* at 1119 (quoting *Mansolillo v. Employee Retirement Board of City of Providence*, 668 A.2d 313, 316 (R.I. 1995)) (*Mansolillo I*) ("The integrity of any decree or judgment is necessarily derived from its entry by the particular court in the exercise of its judicial function."). While it is true that the judgments in question resulted from disputes over Plaintiffs' contracts with the City, it is the status as final judgments that is dispositive. *See id.* at 1121-22. The award resulted from this Court's enforcement of those final judgments, rather than any interpretation of the terms of a contract. As Plaintiffs note, one consequence of the Supreme Court's decision is that they are not subject to the "reasonable length of time for which the COLA suspension may remain in effect" analysis under the Contract Clause that the Supreme Court directed this Court to undertake on remand. *Id.* at 1126-27; Pls.' Mem. at 4-5. In other words, the pertinent feature of Plaintiffs' claims is not that they derive from underlying contracts—a feature shared by the other categories of plaintiffs in *Andrews*—but that they have "received a court's imprimatur" and were therefore protected by the Rhode Island Constitution from the 2012 Pension Ordinance. *Andrews*, 231 A.3d at 1119.

The Plaintiffs' awards do not fall within the ambit of § 9-21-10(a) because the reinstatement of Plaintiffs' COLAs is based on a constitutional doctrine rather than on a tort or contract claim. The Supreme Court has recognized that "the right to receive interest on judgments was unknown at common law" and therefore has "strictly construe[d] any statute that awards interest on judgments so as not to extend unduly the changes enacted by the [L]egislature." *Andrade*, 448 A.2d at 1294 (citations omitted). In *Gott v. Norberg*, 417 A.2d 1352 (R.I. 1980),

for instance, plaintiffs were taxpayers who obtained a refund of estate tax payments collected by the state. *Gott*, 417 A.2d at 1355. In considering the taxpayers' claim for prejudgment interest on their refund, the Supreme Court analyzed the Legislature's decision to amend § 9-21-10 by "substituting the words 'any civil action' for the phrases 'causes of action' and 'actions for damages to the person or to real and personal estate.'" *Id.* at 1357. This amendment followed two Supreme Court decisions holding that the previous version of § 9-21-10 "did not encompass actions sounding in contract," and the Supreme Court concluded that "the Legislature intended to equalize the right of tort and contract litigants to collect interest on judgments" but "did not intend to provide for interest on tax refunds awarded upon review of administrative proceedings[.]" *Id.*

More recent prejudgment interest cases have applied the same principle of strict construction by drawing careful distinctions between breach-of-contract claims and claims where a contract has been implicated or incorporated by reference. In *Fravala v. City of Cranston ex rel. Baron*, 996 A.2d 696 (R.I. 2010), plaintiff challenged the city of Cranston's denial of her application for a widow's pension. *See Fravala*, 996 A.2d at 698-99. The parties stipulated to the dismissal of plaintiff's claims "seeking a writ of mandamus and a mandatory injunction sounding in breach of contract," and trial ensued on plaintiff's remaining claim for a declaratory judgment that she had been the common-law spouse of the deceased. *Id.* at 707 & n.5. After plaintiff prevailed and received a retroactive payment of widow's pension benefits, the trial justice denied her claim for prejudgment interest. *Id.* at 702. Rebuffing plaintiff's argument "that the city breached its contract with both Local 1363 of the International Association of Fire Fighters and herself, as a beneficiary of the contract," the Supreme Court upheld the denial, noting that plaintiff's successful "petition for declaratory relief did not contain a breach-of-contract claim" and holding that the ensuing "determination of benefits, by way of a declaratory judgment, was

not an award of damages." *Id.* at 707-08 & n.5; *cf. Danforth*, 129 A.3d at 71 (distinguishing case from *Fravala* because "[plaintiff]'s complaint included both a breach of contract claim *and* an action for declaratory judgment").

In *Glassie*, plaintiff sued the estate of testator, her former spouse, to obtain the $2,000,000 bequest in her favor in testator's will. *Glassie*, 159 A.3d at 91-92. The trial justice granted summary judgment for plaintiff but denied her motion for prejudgment interest. *Id.* at 93. On appeal, the Supreme Court noted that the language of testator's will provided that plaintiff was to receive "the sum of $2,000,000.00, *or* such other amount as shall be then required to fully satisfy" all of testator's remaining obligations under the property-settlement agreement between testator and plaintiff. *Id.* at 94-95. Due to the lack of clarity as to testator's intent, the Supreme Court vacated the award and remanded for further proceedings but continued on to address the issue of prejudgment interest. *Id.* at 96-97. Although plaintiff noted that her claim ultimately arose from testator's contractual obligations in the property-settlement agreement, the Supreme Court held that the "crux of the matter" was "not a breach of the agreement, as the will conforms to the agreement—but the bequest in the will." *Id.* at 97-98. Accordingly, the Supreme Court upheld the denial of prejudgment interest, as plaintiff's claim was not a contract claim and her award "was testamentary and not pecuniary." *Id.* at 98 (citing *Cantore*, 814 A.2d at 335); *see also Dennis v. Rhode Island Hospital Trust National Bank*, 744 F.2d 893, 901 (1st Cir. 1984), *abrogated on other grounds, Salve Regina College v. Russell*, 499 U.S. 225, 111 (1991) (declining to award prejudgment interest under § 9-21-10 because "[t]he [surcharge] action in this case is traditionally viewed as one in equity, not in tort or contract.").

In the instant case, "the crux of the matter" is that Plaintiffs were parties to prior judicial adjudications that were protected from the 2012 Pension Ordinance by the doctrine of separation

of powers. *Glassie*, 159 A.3d at 98. Given the Supreme Court's consistently strict limitation of § 9-21-10(a) to tort and contract claims, this Court is reluctant to extend that statute to encompass awards directly resulting from constitutional challenges to legislative action. *See Andrews*, 231 A.3d at 1119 ("Although the contractual nature of a consent judgment is beyond dispute, the consent judgment has more weight than contracts that have not received a court's imprimatur as the agreed-upon solution to a legal dispute."). In addition, this Court is not convinced that Plaintiffs' awards of past-due COLA benefits fall within the scope of the "pecuniary damages" contemplated by § 9-21-10(a). *See Fravala*, 996 A.2d at 707 ("Because a determination of benefits is not an award of damages, § 9–21–10 does not apply; and a plaintiff, therefore, will not be entitled to interest."); *Rhode Island Insurer's Insolvency Fund v. Leviton Manufacturing Co.*, 763 A.2d 590, 597–98 (R.I. 2000) (distinguishing statutory reimbursement from pecuniary damages); *Shoucair v. Brown University*, No. 96-2896, 2005 WL 372297, at *2 (R.I. Super. Jan. 27, 2005) ("Section 9-21-10 thus does not apply to an award made as a form of equitable relief. An action for back pay is such a claim. The relief sought is equitable-akin to restitution-not legal.").

The Supreme Court has held that in enacting § 9-21-10, "the Legislature's primary intention was . . . to establish a device to encourage settlements of cases sounding in tort without undue delay." *DiMeo*, 502 A.2d at 826; *see also Glassie*, 159 A.3d at 97 (quoting *Roy v. Star Chopper Co.*, 584 F.2d 1124, 1135 (1st Cir. 1978)) ("'The Rhode Island prejudgment interest statute was enacted to promote expeditious settlement of claims.'"). A financial incentive for prompt settlement, while proper for run-of-the-mill tort and contract disputes, is less appropriate for claims that turn on constitutional challenges to legislation. While prejudgment interest also serves the "'more important[]'" purpose of "'compensat[ing] persons for the loss of use of money that was rightfully theirs,'" *Glassie*, 159 A.3d at 97 (quoting *Blue Ribbon Beef Co. v. Napolitano*,

696 A.2d 1225, 1229 n.3 (R.I. 1997)), accomplishment of this worthy objective has not rescued claims that otherwise fall outside the scope of § 9-21-10. *See, e.g.*, *Fravala*, 996 A.2d at 707-08 (denying prejudgment interest on past-due widow's pension benefits); *Connelly v. Retirement Board of City of Providence*, 633 A.2d 1352, 1352–53 (R.I. 1993) (denying prejudgment interest on accidental disability benefits).

This Court therefore concludes that Plaintiffs are not entitled to recover prejudgment interest, as their past-due benefits were not pecuniary damages awarded pursuant to a contract claim under the Supreme Court's prior interpretations of § 9-21-10(a). Given this Court's disposition of that issue, the Court declines to address the parties' additional arguments regarding the doctrine of sovereign immunity and whether the City acted in a governmental or proprietary capacity.

IV

Conclusion

For the foregoing reasons, Plaintiffs' Motion for Prejudgment Interest on Past-Due COLA Payments is denied. Counsel shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Andrews, et al. v. Lombardi**
CASE NO:	**KC-2013-1129**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**October 13, 2021**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Thomas M. Dickinson, Esq.; Lauren E. Jones, Esq.; Kevin F. Bowen, Esq., Thomas J. McAndrew, Esq.**
For Defendant:	**William M. Dolan, Esq.; Kenneth B. Chiavarini, Esq.; Matthew T. Jerzyk, Esq.; Jeffrey M. Padwa, Esq.,; William K. Wray, Jr., Esq.**