STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: February 26, 2025)

GREAT POINT, INC.	:	
	:	
	:	
v.	:	**C.A. No. KC-2019-0705**
	:	
NE FIBERS, LLC;	:	
US GREENFIBER, LLC;	:	
APPLEGATE GREENFIBER	:	
HOLDINGS, LLC; GREENFIBER, LLC;	:	
and GREENFIBER CANADA, ULC	:	

DECISION

LICHT, J. Plaintiff Great Point, Inc. (Plaintiff or Great Point) has moved for partial summary judgment asking this Court to find that Defendants Greenfiber, LLC and Greenfiber Canada, ULC (Purchasers) are the legal successors in interest for its breach of contract claim against Defendants NE Fibers, LLC and US Greenfiber, LLC (Sellers). The Purchasers oppose Great Point's motion and have filed a cross-motion for partial summary judgment asking this Court to find that the Purchasers are not liable as successors in interest under any theory of successor liability. For the reasons stated herein, this Court grants Great Point's partial motion for summary judgment and denies the Purchasers' partial motion for summary judgment.

I

Facts and Travel

These motions for summary judgment stem from a breach of contract action filed by Great Point against the Sellers. (Second Am. Compl.; Agreed Statement of Facts

(ASOF) ¶ 3.) Great Point alleges that the Sellers failed to pay it several commissions on sales it performed pursuant to a contract.[1] (Second Am. Compl. ¶¶ 29-36.) Following the close of discovery, Great Point learned that the Sellers had sold all their assets to the Purchasers. (ASOF ¶ 3.) Great Point then amended its complaint to include Applegate Greenfiber Holdings, LLC (Applegate), the indirect parent company of the Purchasers, as being liable for the breach of contract claim under the theory that it is the successor in interest to the Sellers. (Second Am. Compl. ¶¶ 2, 40; Pl.'s Mem. in Supp. of Mot. for Summ. J. (Pl.'s Mem.) 1.) Great Point also moved to join the Purchasers to the instant action on the basis that they too were liable for the breach of contract claim as successors in interest to the Sellers. (Pl.'s Mot. to Join.)

The salient facts for this case can be found in the parties' Agreed Statement of Facts,[2] as well as this Court's October 25, 2024 Decision (Prior Decision) which addressed both Great Point's motion for partial summary judgment against Applegate and the Purchasers and Great Point's motion to join the Purchasers. Nevertheless, a brief summary of those facts is provided below.

On December 31, 2021, the Purchasers entered into a contract with the Sellers to purchase the Sellers' assets. ASOF ¶ 3. Prior to this sale, the Sellers were in the business

[1] The parties have stipulated that the damages arising from Great Point's breach-of-contract claim amount to $977,434.40. (ASOF ¶ 16.)

[2] Notably, Great Point and Applegate stipulated to the ASOF originally for the purpose of the cross-motions for summary judgment. *See* ASOF 1. However, the Purchasers incorporated Applegate's cross-motion for summary judgment and objection to Great Point's motion for summary judgment, which relied on those stipulated facts, in the Purchasers' own opposition to Great Point's motion for summary judgment and cross-motion for summary judgment. *See* Pl.'s Mem. 5; *see also* Purchasers' Opp'n and Cross-Mot. 1. The Purchasers also relied on the ASOF throughout their opposition and cross-motion. *See generally* Purchasers' Opp'n and Cross-Mot. Therefore, the Court will consider the ASOF in adjudicating the present motions.

of producing and selling cellulose-based insulation products and hydroseeding mulches. *Id*. ¶ 5. The sale of assets included everything the Purchasers required to continue the Sellers' business operations, including "inventory, equipment, real property, contracts, accounts receivable, intellectual property, licenses, trade secrets, proprietary information, and goodwill, among other assets." *Id*. ¶¶ 6-7. However, the sale excluded liability for any action or suit, such as Great Point's breach-of-contract claim. *Id*. ¶ 12. In consideration, the Purchasers paid the Sellers $48,500,000 in cash and stock of Applegate. *Id*. ¶ 9. Pursuant to the sale agreement, $12,670,296.59 of the consideration paid was allocated to pay the Sellers' debts. *Id*. ¶ 10. Yet, in their memorandum in opposition to Great Point's partial motion for summary judgment, the Sellers assert that, after closing, they still owed their creditors more than $10 million. (Defs. NE Fibers, LLC and US Greenfiber, LLC's Mem. Opp'n to Summ. J. (Sellers' Opp'n) 2.)

Great Point and Applegate moved for partial summary judgment, respectively, solely on the issue of whether Applegate and the Purchasers are liable as successors in interest to Great Point's claim against the Sellers. (Pl.'s Mem. 1; Def.'s Cross-Mot. Summ. J. (Applegate's Mem.) 1.) In this Court's Prior Decision, the Court denied Great Point's partial motion for summary judgment as to Applegate and granted Applegate's motion for summary judgment, finding that Applegate could not be held liable as a successor in interest to the Sellers.[3] *Great Point, Inc. v. NE Fibers, LLC*, No. KC-2019-0705, 2024 WL 4646426, at *9 (R.I. Super. Oct. 25, 2024). While the Prior Decision granted Great

[3] However, the Court stated, "[s]hould further discovery be conducted and evidence is produced that Applegate has dominated or undercapitalized the Purchasers, the Court will consider a request to pierce the corporate veil at that time." *Great Point, Inc. v. NE Fibers, LLC*, No. KC-2019-0705, 2024 WL 4646426, at *9 (R.I. Super. Oct. 25, 2024).

Point's motion to join the Purchasers to this action, the Court reserved ruling on Great Point's motion for partial summary judgment as to the Purchasers. *Id.* In making this ruling, the Court stated as follows:

> "[T]he instant motion for summary judgment—which seeks to definitively impose liability on the Purchasers should Great Point succeed in proving its breach-of-contract claim—came before they had been joined to this action. Thus, they have not had the opportunity to substantively address Great Point's arguments for summary judgment. As the Purchasers have now been joined—because of Great Point's prima facie showing of successor liability—the Court provides them thirty days to respond to Great Point's arguments. Great Point will then have ten days to submit a reply. Of particular interest to the Court are facts regarding the consideration paid for the transfer of assets and arguments of law addressing whether adequate consideration is a dispositive factor in the *Baker* analysis or if it constitutes a genuine issue of material fact." *Id.* at *7.

Following the Prior Decision, the Purchasers filed their opposition to Great Point's motion for partial summary judgment and filed their own cross-motion for partial summary judgment on the basis that successor liability cannot be advanced against them. (Defs.' Mem. Opp'n to Mot. Summ. J. and Cross-Mot. Summ. J. (Purchasers' Opp'n and Cross-Mot.).)

For the reasons set forth below, this Court grants partial summary judgment in favor of Great Point and denies partial summary judgment for the Purchasers.

II

Standard of Review

"A motion for summary judgment 'is designed to decide in an expeditious fashion cases presenting groundless claims.'" *Town of Exeter by and through Marusak v. State*, 226 A.3d 696, 700 (R.I. 2020) (quoting *Hexagon Holdings, Inc. v. Carlisle Syntec*

Incorporated, 199 A.3d 1034, 1038 (R.I. 2019)). However, "'summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). '"Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law."' *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011)); *see* Super. R. Civ. P. 56. "In deciding a motion for summary judgment, [a] [c]ourt views the evidence in the light most favorable to the nonmoving party." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013); *see Beauregard v. Gouin*, 66 A.3d 489 (R.I. 2013).

Moreover, the moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (internal quotation omitted). The burden then shifts to the "nonmoving party [who] bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk*, 82 A.3d at 532 (internal quotation omitted). "'[C]ompetent evidence' . . . is generally presented on summary judgment in the form of . . . 'depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits[.]'" *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018) (quoting *Leone v. Mortgage Electronic Registration Systems*, 101 A.3d 869, 872, 874 (R.I. 2014)).

III

Analysis

Great Point argues that the Purchasers should be deemed successors in interest to the Sellers and thus liable for the Sellers' alleged breach of contract under both the mere continuation and *de facto* merger theories of successor liability. (Pl.'s Mem. 13-16.) However, the Purchasers argue they are not the successors in interest to the Sellers under any theory of successor liability. (Purchasers' Opp'n and Cross-Mot. 3-10.)

The two main theories upon which the parties base their successor liability arguments will be addressed in turn below.

A

Mere Continuation Theory

"Generally, a company that purchases the assets of another is not liable for the debts of the transferor company." *H.J. Baker & Bro., Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I. 1989). "An exception to this rule is made in a situation in which the new company is merely a continuation or a reorganization of another, and the business or property of the old corporation has practically been absorbed by the new . . ." *Id.* (internal quotation omitted). "In such a case, the new company will be held responsible for the old one's debts." *Id.* "The facts and circumstances of a particular case must be examined to determine whether the new company is merely a continuation of the original entity." *Id.* In determining whether a "continuing" entity exists, the Rhode Island Supreme Court accentuated "five persuasive criteria" to be considered:

> "(1) there is a transfer of corporate assets; (2) there is less than adequate consideration; (3) the new company continues the business of the transferor; (4) both companies have at least one common officer or director who is instrumental in the transfer; and (5) the transfer renders the transferor

> incapable of paying its creditors because it is dissolved either in fact or by law." *Id.* (citing *Jackson v. Diamond T. Trucking Co.*, 241 A.2d 471, 477 (N.J. 1968))." *Id.*

As this Court noted in the Prior Decision, all of the *Brown* factors but for the adequacy of consideration factor are satisfied based on the undisputed facts in this case. *See Great Point, Inc.*, 2024 WL 4646426, at *4-6; *see also* ASOF. In the Prior Decision, the Court acknowledged the uncertainty surrounding whether adequate consideration is a dispositive factor in the *Baker* analysis, as well as whether a genuine issue of material fact exists as to the adequacy of the consideration paid for the transfer of assets. *Great Point, Inc.*, 2024 WL 4646426, at *7. Each question will be addressed separately.

1

Dispositive Nature of the Adequacy of Consideration

The parties fervently debate whether the adequacy of consideration factor is dispositive as to whether successor liability may be imposed. While the Purchasers argue that adequacy of consideration is a requisite component for successor liability to be imposed (Purchasers' Opp'n and Cross-Mot. 2-3), Great Point contends that the mere continuation theory requires holistic review of all the facts and may be satisfied by satisfying only some of the enumerated factors. (Pl.'s Reply 3-11.)

The Rhode Island Supreme Court has not explicitly weighed in on whether the mere continuation theory requires a strict showing on *Baker* factor number 2 for adequacy of consideration. However, in *Baker* itself, the Supreme Court noted that its mere continuation inquiry required it to consider the facts and circumstances of the particular case based on various persuasive criteria, which included not only the five factors enumerated in *Jackson* but also other factors set forth in cases hailing out of the First Circuit, *see Dayton v. Peck, Stow & Wilcox Co.*, 739 F.2d 690, 693 (1st Cir. 1984), and the

Appellate Court of Illinois, *see Bergman & Lefkow Insurance Agency v. Flash Cab Co.*, 249 N.E.2d 729, 737 (Ill. App. Ct. 1969). *H.J. Baker & Bro., Inc.*, 554 A.2d at 205. In this way, the Supreme Court's mere continuation theory analysis was neither predicated solely on *Jackson* nor mandated that every single factor be proven. *Id.* Much to the contrary, the Supreme Court held that the evidence in *Baker* strongly supported a mere continuation theory based on only some of the persuasive factors, which notably did not include the adequacy of the consideration provided.[4] *Id.* Therefore, *Baker* itself does not stand for the proposition that adequacy of consideration is a dispositive factor in imposing successor liability.

A few years later, the Rhode Island Supreme Court again conducted a holistic review of the factors enumerated in *Baker* when determining whether to impose successor liability in *Casey v. San-Lee Realty, Inc.*, 623 A.2d 16, 19-20 (R.I. 1993). Just as the Supreme Court did in *Baker*, the Court in *Casey* only focused on some of the factors articulated in *Baker*. *Id.* at 19-20. However, unlike in *Baker*, the Supreme Court did consider adequacy of consideration in *Casey*. *Id.* Specifically, the Supreme Court noted that there was adequate consideration for the transfer of corporate assets to the corporation's sole shareholder as such a transfer was pursuant to standard corporate

[4] "Considering all these factors, we are convinced that the record supports a conclusion that The Homestead, having absorbed the business and property of Orgonics, was a mere continuation of that corporation. The record establishes that O'Donnell was a principal officer in both entities. Even though the form of the organization changed from a corporation to a sole proprietorship, the management remained substantially the same. In addition, both companies sold virtually identical 38–percent–nitrogen products. The Homestead operated from the same manufacturing plant as Orgonics under a similar leasing arrangement with Fezido, Inc. Many of the original employees continued working for The Homestead and, in fact, were initially paid with Orgonics's checks and covered under Orgonics's workers' compensation plan." *H.J. Baker & Bro., Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I. 1989).

dissolution procedures. *Id.* at 19. The sole shareholder's subsequent transfer to her grandchildren was also deemed to be for adequate consideration due to it being a commonplace *inter vivos* gift transfer. *Id.* Yet, the Supreme Court did not base its refusal to impose successor liability solely on the adequacy of consideration, but it also noted that *Baker* factor number 3 for continuation of business and *Baker* factor number 4 for commonality of director or officers was lacking as well.[5] *Id.* at 19-20. As such, *Casey* does not stand for the proposition that adequacy of consideration is a dispositive factor but rather it echoes the holistic analysis approach set forth in *Baker*. Because the Rhode Island Supreme Court's decisions in *Baker* and *Casey* indicate that the decision to impose successor liability under the mere continuation theory requires a fact-intensive review of the case based on various factors, this Court rejects the Purchasers' contention that Rhode Island law requires a showing of inadequacy of consideration to hold them liable as the Sellers' successors in interest.

The Court's understanding of the mere continuation theory as not requiring the fulfillment of every *Baker* factor also comports with other nonbinding decisions promulgated in Rhode Island and in nearby federal courts. For example, while the Superior Court in *Asea Brown BOVERI, et al. v. ALCOA FUJIKURA LTD., et al.*, No. PC-02-1084,

[5] "When one applies the facts as found by the trial court to the standard enunciated in *Baker* it is clear that J.A.T. Realty is not a successor to San–Lee Realty. The transfer of assets from Antonetta to her grandchildren, although for no monetary consideration was not a transfer for inadequate consideration as that term is contemplated by our holding in the *Baker* case. Transfers of property from grandparents to grandchildren are not uncommon. The trial justice found that '[r]elationships which engender transfers by inter vivos gifts are not inadequate consideration.' In addition there were no stockholders, officers, or directors in common between San–Lee Realty and J.A.T. Realty. And, as the trial justice noted, although the businesses of San–Lee Realty and J.A.T. Realty were similar, they did not hold title to all off the same real estate and thus were not identical." *Casey v. San-Lee Realty, Inc.*, 623 A.2d 16, 19-20 (R.I. 1993).

2007 WL 1234523 (R.I. Super. Apr. 11, 2007) found adequacy of consideration to be a key factor in opting to forego imposing successor liability, the Superior Court acknowledged that it "[did] not necessarily disagree" with Plaintiffs' argument that it need not show all five of the *Baker* factors to prevail on a mere continuation theory. *Asea Brown*, 2007 WL 1234523. The Superior Court also addressed the mere continuation theory in *Blouin v. Surgical Sense, Inc.*, No. PC-07-6855, 2008 WL 2227781 (R.I. Super. May 12, 2008) where the court described the holding in *Baker* as being that "the facts and circumstances of the case should be considered as a whole" and that "all of the factors need not be met to sustain a claim under the 'mere continuation' theory[.]" *Blouin*, 2008 WL 2227781, at *6. Relatedly, in *Fraioli v. Lemcke*, 328 F.Supp.2d 250 (D.R.I. 2004), the U.S. District Court for the District of Rhode Island categorized the mere continuation theory as "multifaceted" and "require[ing] the factfinder to engage in a cumulative, case by case assessment of the evidence as it relates to five circumstances." *Fraioli*, 328 F. Supp. 2d at 277. Furthermore, in *John T. Callahan & Sons, Inc. v. Dykeman Electric Co.*, 266 F. Supp. 2d 208 (D. Mass. 2003), when applying Rhode Island law, the U.S. District Court for the District of Massachusetts noted that its reading of *Baker* and its progeny led it to believe that "Rhode Island law would not always require the presence of all of the *Baker* factors in order to find a successor corporation liable as a mere continuation of the seller." *John T. Callahan & Sons, Inc.*, 266 F. Supp. 2d at 224.

Based on the foregoing, this Court rejects the Purchasers' argument that adequacy of consideration is a dispositive factor when determining whether to impose successor liability under the mere continuation theory.

2

Determination as to the Adequacy of Consideration

While the adequacy of consideration is not dispositive in deciding whether to impose successor liability, it is still one of the various factors the Court must weigh when applying the mere continuation theory. *See H.J. Baker & Bro., Inc.*, 554 A.2d at 205.

Black's Law Dictionary defines "consideration" as "[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act." *See* Consideration, Black's Law Dictionary (12th ed. 2024). "Adequate consideration" is defined as "[c]onsideration that is fair and reasonable under the circumstances of the agreement." *Id.* "Inadequate consideration" is defined as "[c]onsideration that is not fair or reasonable under the circumstances of the agreement." *Id.*

The parties hotly debate whether the amount the Purchasers paid to acquire the Sellers' assets was sufficient to constitute adequate consideration. The Purchasers argue that Applegate's detailed expert report clearly shows that they provided adequate consideration since they indisputably paid almost twice the fair market value of those assets in the hope of transforming the Sellers' old, distressed entity into a new, better entity. (Purchasers' Opp'n and Cross-Mot. 7-8.) The Purchasers contend that this beneficial sale allowed the Sellers to allocate a substantial sum of money toward paying off their secured lending debts then totaling $40 million and to retain $3.5 million from the sale to potentially satisfy any future judgments. *Id.* at 8-9. However, Great Point argues that the Court cannot determine, as a matter of law, that the Purchasers paid adequate consideration because the Purchasers have failed to disclose sufficient information to make that

determination. (Pl.'s Reply 13-14.) Specifically, Great Point contends that the Court would need to know, at a minimum, the value of the assets sold and the amount that the Purchasers paid for those assets specifically, which the discovery conducted thus far in the case has yet to reveal. *Id.* at 14-16. Further, the fact that the Sellers were left with $3.5 million in cash from the sale does not in and of itself indicate the Sellers' ability to satisfy a past or present judgment. *Id.* at 16-17.

The applicability of the mere continuation theory of successor liability is generally treated as an issue of fact by courts. *See Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 649 (5th Cir. 2002); *see also Call Center Technologies, Inc. v. Grand Adventures Tour & Travel Publishing Corp. et al.*, 635 F.3d 48, 53 (2nd Cir. 2011). The adequacy of consideration factor has also been specifically categorized as a question of fact. *See Ed Peters Jewelry Co., Inc. v. C & J Jewelry Co., Inc.*, 124 F.3d 252, 271 (1st Cir. 1997). However, at this juncture, the Court can only rule as a matter of law if there is no genuine dispute of material fact. *See Town of Exeter by and through Marusak*, 226 A.3d at 700. In other words, the Court's role is to act as an "issue finder" not a "factfinder." *Little v. Barnett Carter & Co., Inc.*, 119 R.I. 686, 687, 382 A.2d 815, 816 (1978).

As this Court noted in its Prior Decision, there is a question of fact as to whether there was adequate consideration paid for the asset transfer. *Great Point, Inc.*, 2024 WL 4646426, at *5. The consideration for the sale was $48,500,000, delivered by the Purchasers to the Sellers in a combination of cash, seller notes, and Class W Units issued by Applegate. ASOF ¶ 9. As indicated in Applegate's expert report, the Sellers' company was valued at $25.33 million as of the date of the sale, much less than the $48,500,000 paid. (Millsom Aff., Ex. 1 ¶ 3.) If these were the only pertinent facts, then the Court could

potentially determine the adequacy of the consideration. However, there are other facts that muddy the waters and challenge the Court's ability to determine the adequacy of consideration provided. The Asset Purchase Agreement indicated that the $48,500,000 in consideration was paid to Greenfiber Holdings, LLC and "each of the Company's direct and indirect Subsidiaries," creating uncertainty as to how much of the consideration was actually received by the Sellers themselves for their specific assets. (ASOF Ex. 1 at 1, 71.) Moreover, Applegate's response to Great Point's discovery request that it provide asset valuations failed to address in full the assets purchased, creating uncertainty as to the valuation of many assets identified in the Asset Purchase Agreement. (ASOF Ex. 3 at 3.) Given these deficiencies, the Court finds that there is a genuine issue of material fact as to the adequacy of the consideration.

Consequently, the Court cannot weigh this factor in applying the mere continuation theory, and summary judgment cannot be granted in Great Point's favor under the mere continuation theory.

B

***De Facto* Merger Theory**

Great Point next argues that the Purchasers are the successors in interest to the Sellers under the *de facto* merger theory. (Pl.'s Mem. 11-16); (Pl.'s Reply 11-13).

"Another exception to the general rule that the transferee is not liable for the liabilities of a transferor after an asset purchase is the *de facto* merger exception." *Great Point, Inc.*, 2024 WL 4646426, at *6. "Our Supreme Court has recognized the existence of such a theory but has yet to apply it." *Id.* (citing *Douglas v. Bank of New England*, 566 A.2d 939, 941 (R.I. 1989) ("[I]n the event the transaction amounted to a de facto merger

of the buyer and the seller, there would be an assumption of debts and liabilities.")). However, "[t]he Superior Court previously has stated the factors to consider when applying this exception are:

> "'1. that there was a continuation of the enterprise of the selling corporation vis a vis a continuation of management, personnel, physical location, assets, and general business operation;
> "2. that there is a continuity of shareholders resulting from the purchase of the assets with shares of stock, rather than cash;
> "3. that the selling corporation ceases operations, liquidates, or dissolves as soon as possible; and
> "4. that the purchasing corporation assumes the obligations of the selling corporation necessary for uninterrupted continuation of business.'" *Id.* (quoting *Blouin*, 2008 WL 2227781, at *6).

"The judge in the *Brown* case also previously considered this theory as a valid exception to the general rule against successor liability, noting that both exceptions, '[w]hile treated as separate, the requirements and underlying policies of each theory significantly overlap with each other.'" *Id.* (quoting *Brown*, 2007 WL 1234523, at *27). "The 'mere continuation' and *de facto* merger theories also have been treated as the same theory by other persuasive authorities." *Id.* (citing Timothy J. Murphy, *A Policy Analysis of a Successor Corporation's Liability for its Predecessor's Defective Products when the Successor has Acquired the Predecessor's Assets for Cash*, 71 Marq. L. Rev. 815, 821 (1988) ("In essence, the policy behind [the "mere continuation"] exception is the same as that behind the de facto merger exception in that a corporation should not be able to avoid liabilities merely due to a change in its form or name."))

As stated in the Prior Decision, the facts and circumstances of this case as set forth in the parties' Agreed Statement of Facts satisfy the *de facto* merger theory of successor

liability. In evaluating whether the four criteria set forth in *Blouin* were satisfied, this Court noted in the Prior Decision as follows:

> "To repeat, there was a transfer of corporate assets between the Sellers and the Purchasers. (ASOF ¶ 3.) That transfer was sufficient for the Purchasers to continue the business operations of the Sellers—two of the Sellers' former executives joined the Purchasers' executive team, the Sellers' employees were offered employment with the Purchasers, and the Purchasers operate from the same physical locations as the Sellers previously operated from. *Id*. ¶¶ 6-7, 15(b), 15(e), 15(f). Those facts satisfy the first factor of the *de facto* merger analysis. *Blouin*, 2008 WL 2227781, at *6. Additionally, although the consideration paid included cash, "Purchasers paid and delivered to [Sellers] . . . Rollover Units issued by [Applegate] valued at $16,000,000 [and] . . . Class W Units issued by Applegate . . ." (ASOF ¶ 9.) Applegate and Purchasers argue that those units were "not paid to the [Seller's] *owners*, but rather were given to three noteholders in exchange for partial satisfaction and release of [Sellers'] debt." (Defs.' Mem. Mot. to Join 5). However, the stipulated facts state: "*Purchasers paid and delivered to [Sellers]*. . . Rollover Units issued by [Applegate] . . . valued at $16,000,000 [and] . . . Class W Units issued by [Applegate] . . ." (ASOF ¶ 9.) (emphasis added). Applegate and the Purchasers stipulated that such units were paid and delivered to the Sellers, and not to three noteholders as they now argue. *Id*. That stipulation cannot be changed now. Therefore, the second factor of the *de facto* merger test has been met. *Blouin*, 2008 WL 2227781, at *6.
>
> "As to the third factor, the parties stipulated that the Sellers have ceased operations. (ASOF ¶ 15(d).) Finally, for the fourth factor, the parties additionally stipulated the asset transfer was "adequate and sufficient for the continued conduct of the Business after the Closing in substantially the same manner, in all material respects, as conducted by [the Sellers] immediately prior to the Closing," and the transfer included all contracts, other than those specifically excluded. *Id*. ¶¶ 6, 8. Thus, the Purchasers assumed at least some of the Sellers' contractual obligations necessary to continue the business, which satisfies the fourth factor. *Blouin*, 2008 WL 2227781, at *6." *Great Point, Inc.*, 2024 WL 4646426, at *6-7.

Given the foregoing, the stipulated facts unequivocally indicate that the four criteria

for successor liability under the *de facto* merger theory are satisfied. Since the Purchasers' memorandum of law in opposition to Great Point's motion for partial summary judgment and in support of its own cross-motion for summary judgment fails to substantively address the *de facto* merger theory, the Court stands by its analysis in the Prior Decision.

Because no genuine issue of material fact exists, this Court rules as a matter of law that the Purchasers are liable as successors in interest under the *de facto* merger theory.

IV

Conclusion

Based on the foregoing, this Court **GRANTS** Great Point's partial motion for summary judgment and holds the Purchasers liable as successors in interest to the Sellers under the *de facto* merger theory. In turn, this Court **DENIES** the Purchasers' partial motion for summary judgment. Counsel shall prepare an order and judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Great Point, Inc. v. NE Fibers, LLC, et al.**
CASE NO:	**KC-2019-0705**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**February 26, 2025**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Caroline R. Thibeault, Esq.** **Robert Corrente, Esq.** **Matthew H. Parker, Esq.**
For Defendant:	**Geoffrey W. Millsom, Esq.** **Andrew Tugan, Esq.**