

Suppl. Countercl. and Third-Party Compl. (Dezube FAC) ¶ 14, Ex. 3.) The auction agreement referred to the property to be auctioned as 460 Rochambeau Avenue, Providence, Rhode Island. (Dezube FAC Ex. 3 at 1.) On March 23, 2022, Howard executed two documents. He signed an Auction Sale Acknowledgement, which authorized Concierge to auction 460 and 440 Rochambeau Avenue at a no-reserve auction the following day. (Dezube FAC ¶ 16, Ex. 4.) Howard also signed a Rhode Island Residential Purchase and Sales Agreement (P&S) in which he agreed to sell the properties at 460 and 440 Rochambeau Avenue to the highest bidder (collectively, the Property). (Dezube FAC ¶ 17, Ex. 5.) Title to 460 and 440 Rochambeau Avenue had vested in Howard via two quitclaim deeds from Object N, LLC as grantor to Howard as grantee dated June 9, 2015 and recorded June 30, 2015 in the Records of Land Evidence for the City of Providence. (Dezube FAC ¶¶ 11-12, Exs. 1-2.)¹

Concierge auctioned the Property on March 29, 2022 and Dezube was the high bidder at \$4,000,000. (Dezube FAC ¶¶ 23, 24, Ex. 5.) The next day, Dezube signed the same P&S signed by Howard, which specified a closing date of April 29, 2022. (Dezube FAC ¶ 27, Ex. 5 at 1.) Ultimately, Howard refused to convey the Property and filed this action on April 26, 2022 seeking a declaratory judgment that the P&S was unenforceable. (Dezube FAC ¶¶ 31, 39; Howard Verified Compl. ¶ 18.) On May 2, 2022, Dezube recorded with the City of Providence Recorder of Deeds a *lis pendens* asserting his interest in 440 and 460 Rochambeau Avenue pursuant to the P&S (the *Lis Pendens*). (Dezube FAC ¶ 46, Ex. 7 at 1-2.) On May 20, 2022, Dezube filed a counterclaim against Howard seeking specific performance of the P&S, declaratory relief, and damages. (Docket.) On May 27, 2022, Concierge filed a demand for arbitration against Howard seeking damages for his breach of the auction agreement. (Dezube FAC ¶ 47, Ex. 8.)

¹ Howard is the sole Member-Manager of Object N. (Dezube FAC Exs. 1, 2, 6.)

On April 12, 2022, Object N, LLC purported to convey by quitclaim deed 440 Rochambeau Avenue to an entity named Rochambeau Holdings, LLC, which the deed indicated was a Rhode Island company; the deed was recorded April 21, 2022. (Dezube FAC ¶ 36, Ex. 6.) Shortly thereafter, on April 26, 2022, the same date Howard filed this action, a purported entity named 440 Rochambeau Holdings, LLC filed a verified complaint in a separate lawsuit against Dezube and Concierge styled *440 Rochambeau Holdings, LLC v. Concierge Auctions, LLC*, C.A. No. KC-2022-0292. (Dezube FAC ¶ 39.) In that verified complaint, Rebecca Howard averred that she is the sole member of 440 Rochambeau Holdings, LLC and that that company is the owner of 440 Rochambeau Avenue. (Dezube FAC ¶¶ 40, 42.)² Neither Rochambeau Holdings, LLC nor 440 Rochambeau Holdings, LLC has ever existed in Rhode Island. (Dezube FAC ¶¶ 38, 41.)

On September 15, 2022, Howard entered into a lease agreement with BCG as the nominal tenant (the Lease) that provided an initial term of two years and a purchase option to Floe (the Option). (Dezube FAC ¶¶ 49-51, Ex. 9; Third-party Defs.’ Am. Countercl. (Floe Am. Countercl.) ¶¶ 5, 7; Def.’s Answer to Am. Countercl. (Answer) ¶¶ 5, 7.) The Option granted Floe the right to purchase the Property during the two-year term. (Dezube FAC Ex. 9 at ¶ 10; Floe Am. Countercl. ¶ 7, Ex. 1 at 4.) The Option stated a purchase price of \$5,500,000 and specified: “[i]mmediately upon exercising the Purchase Option, [Floe] shall provide [Howard] with a deposit of . . . \$550,000[.]” (Floe Am. Countercl. ¶ 11, Ex. 1 at 4; Answer ¶ 11; Dezube FAC ¶ 61, Ex. 10 at ¶ 3.) Floe’s right to exercise the Option was subject to the following litigation contingency (the Litigation Contingency):

“Optionee acknowledges that title to the Property is subject to pending litigation captioned *Howard v. Dezube*, C.A. No. KC-22-291 (Providence County Superior Court) (the “Litigation”). The

² Dezube believes that Rebecca Howard is the wife of Howard and resides with him in Washington, D.C. (Dezube FAC ¶ 40.)

parties agree that Optionor does not have to perform its obligations herein unless judgment enters in favor of Optionor. The parties agree that if a judgment enters against Landlord (Optionor), declaring that title to the Property should be transferred to the defendant in the Litigation, after Optionee has exercised this Option, then this Option shall be null and void.” (Floe Am. Countercl. ¶ 5, Ex. 1 at 7; Answer ¶ 5; Dezube FAC ¶ 63, Ex. 10 at ¶ 20.)³

On August 16, 2023, the arbitration between Concierge and Howard, which occurred in New York, culminated in a final award which concluded, *inter alia*, that Howard employed Concierge to market for sale by auction “real property owned by Mr. Howard and located at 440-460 Rochambeau Avenue, Providence, Rhode Island.” (Dezube FAC Ex. 12 at 1-2.) On October 18, 2024, the United States District Court for the Southern District of New York confirmed the arbitration award. *Concierge Auctions, LLC v. Howard*, No. 24-CV-281 (VSB), 2024 WL 4546303, at *3 (S.D.N.Y. Oct. 18, 2024).

On August 2, 2024, Dezube filed his First Amended Complaint and Supplemental Counterclaim and Third-Party Complaint against Howard, BCG, and Floe. (Floe Am. Countercl. ¶ 13.) Among other relief, Dezube sought (i) specific performance of the P&S and a declaration that: (ii) he had superior rights to title and possession of the Property as to Howard and Floe; (iii) he may declare the Option and any sale thereunder void; and (iv) he is entitled to enforce the Lease and the Option. (Dezube FAC ¶¶ 92-100.) Floe and BCG filed an Answer and Counterclaim on

³ The Lease contained a similar litigation contingency:

“Tenant acknowledges that title to the Property is subject to pending litigation captioned *Howard v. Dezube*, C.A. No. KC 22-291 The parties agree that either party may terminate this Lease prior to the end of the Term if a judgment enters against Landlord, declaring that title to the Property should be transferred to the defendant in the Litigation. Upon declaring this Lease terminated pursuant to this Section 11, this Lease shall be null and void.” (Dezube FAC Ex. 9 at ¶ 11.)

September 11, 2024. (Floe Am. Countercl. ¶ 14.) Two days later, on September 13, 2024, counsel for Floe purported to exercise the Option on Floe’s behalf via an e-mail sent to counsel for Howard. *Id.* ¶ 15, Ex. 1 at 1.) On October 22, 2024, Dezube moved for summary judgment.

On December 16, 2024, Dezube and Howard filed a proposed consent judgment, which this Court entered the following day (the Consent Judgment). (Docket.) The Consent Judgment entered final judgment for Dezube and against Howard on each Count of Howard’s Complaint and also entered final judgment for Dezube and against Howard on Count I (specific performance of the P&S), Count II (declaration that P&S is enforceable), Count III (breach of contract), and Count IV (declaration that Dezube’s rights to the Property are superior as to Floe and Howard) of Dezube’s Amended Counterclaim. *Id.* The Consent Judgment ordered, among other things, that: the P&S is a valid and enforceable contract requiring Howard to sell the Property to Dezube; Dezube is entitled to specific performance of the P&S; the Option is null and void; Howard waives any and all right to appeal from the Consent Judgment; and the “Consent Judgment constitutes a final judgment on the merits of the parties’ claims for purposes of res judicata, collateral estoppel, issue preclusion, and claim preclusion.” *Id.* ¶ 13. On February 12, 2025, Floe filed a motion to vacate the Consent Judgment, arguing that it did not constitute a valid, final, and binding judgment of the Court and that it was based on fraud and misrepresentation. (Docket.) On May 7, 2025, the Court granted partial summary judgment to Dezube on Count IV of his Amended Counterclaim and entered an order declaring that: “(i) per the Litigation Contingency provision in the Purchase Option, the Purchase Option is null and void as a result of the entry of the Consent Judgment between Dezube and Howard; and (ii) Dezube has superior rights to title and possession in the Property over Howard, BCG and Floe.” Order, May 7, 2025. The Court ultimately denied Floe’s motion to vacate the Consent Judgment on May 19, 2025. Order, May 19, 2025.

On February 26, 2025, Floe moved for leave to file an Amended Complaint, which the Court granted on May 19, 2025. (Docket.) As relates to Dezube, Floe’s Amended Complaint seeks a declaratory judgment essentially upholding Floe’s rights under the Lease and Option (Count I) and alleges that Dezube: tortiously interfered with Floe’s contract rights (Count IV), tortiously interfered with Floe’s prospective business advantage (Count V), engaged in a civil conspiracy with Howard (Count VI), and was unjustly enriched at Floe’s expense (Count VII).⁴ (*See generally* Floe Am. Countercl.) On May 23, 2025, Dezube filed his Answer to the Amended Complaint and the instant motion for judgment on the pleadings and motion for sanctions. (Docket.) On May 27, 2025, Floe recorded a *lis pendens* against the Property. Order, June 11, 2025. Dezube and Howard filed emergency motions to vacate the *lis pendens* and for sanctions against Floe. (Docket.) After hearing on June 11, 2025, the Court vacated Floe’s *lis pendens* and declared that “[a]s a matter of fact and law, [Floe] did not validly exercise the Purchase Option dated September 15, 2022 for the subject real property located at 440-460 Rochambeau Avenue[.]” Order, June 11, 2025. On June 23, 2025, Howard conveyed the Property by warranty deeds to entities owned by Dezube.

On June 12, 2025, Floe filed a notice of appeal of the order vacating his *lis pendens*. (Docket.) Dezube moved this Court to dismiss the appeal as interlocutory, and on June 18, 2025, the Court did so. *Id.* Floe appealed the dismissal of the interlocutory appeal on the same day. On June 23, 2025, the Court dismissed the second appeal. *Id.* That same day, Floe filed another notice of appeal. *Id.* On July 18, 2025, that appeal was certified to the Rhode Island Supreme Court. *Id.* On September 23, 2025, the Supreme Court issued an interim remand to this Court solely for the purpose of ruling on Dezube’s pending motion for judgment on the pleadings. *Id.*

⁴ The counts in Floe’s Amended Counterclaim are misnumbered. The Court numbers them sequentially.

The matter is ripe for decision.

II

Standard of Review

Rule 12(c) of the Superior Court Rules of Civil Procedure states, in full:

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Super. R. Civ. P. 12(c).

“A Rule 12(c) motion is tantamount to a Rule 12(b)(6) motion, and the same test is applicable to both, that is, is it clearly apparent that the plaintiff can prove no set of facts to support the complaint.” *Heritage Healthcare Services, Inc. v. Beacon Mutual Insurance Co.*, 109 A.3d 373, 377 (R.I. 2015) (quoting *Collins v. Fairways Condominiums Association*, 592 A.2d 147, 148 (R.I. 1991)). “The court must accept that ‘[t]he factual allegations contained in the nonmovant’s pleadings are admitted as true for purposes of the motion,’ and ‘[a]ll proper inferences . . . are to be drawn in favor of the nonmovant.” *Id.* (quoting *Haley v. Town of Lincoln*, 611 A.2d 845, 847 (R.I. 1992)).

“Ordinarily, when ruling on a motion to dismiss brought under Rule 12(b)(6) or Rule 12(c), a court may not consider any documents that are outside of the complaint, or not expressly incorporated therein, unless the motion is converted into one for summary judgment.” *Goodrow v. Bank of America, N.A.*, 184 A.3d 1121, 1126 (R.I. 2018) (quoting *Chase v. Nationwide Mutual Fire Insurance Co.*, 160 A.3d 970, 973 (R.I. 2017)). However, Rhode Island law recognizes a “narrow exception for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs’ claim; or for documents sufficiently

referred to in the complaint.” *Doe v. Brown University*, 253 A.3d 389, 395 (R.I. 2021) (quoting *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 22 (R.I. 2018)). For purposes of the exception, official public records are “documents susceptible to judicial notice.” *Goodrow*, 184 A.3d at 1126 (citing *Freeman v. Town of Hudson*, 714 F.3d 29, 36-37 (1st Cir. 2013)). And “‘a court may take judicial notice of court records[.]’” *Id.* (quoting *Curreri v. Saint*, 126 A.3d 482, 485 (R.I. 2015)). With respect to court records, our Supreme Court has often said that, “while ‘[n]ot every document that may have been placed in a court file . . . may properly be regarded as part of the record[,]’ we have demarcated examples of those that would be considered as such . . . ‘includ[ing] judgments previously entered by the court that have the effect of res [i]udicata[.]’” *Id.* (quoting *Curreri*, 126 A.3d at 485-86) (emphasis omitted); see *In re Michael A.*, 552 A.2d 368, 370 (R.I. 1989).

Dezube argues that this Court can consider its prior orders—including the Consent Judgment, the partial grant of summary judgment, and the order vacating Floe’s *lis pendens*—in resolving this motion for judgment on the pleadings without converting it into a motion for summary judgment because the prior orders are subject to judicial notice. Floe counters that the Court’s prior orders are not official public records subject to judicial notice because they do not have any *res judicata* effect as to Floe; therefore, Floe insists that the Court ignore its prior orders or convert the motion to one for summary judgment. (Third-Party Defs.’ Suppl. Mem. in Supp. of their Obj. to Def.’s Mot. for J. on the Pleadings 3-7.)

The Supreme Court in *Goodrow* demarcated “judgments previously entered by the court that have the effect of res [i]udicata” as one example of a court record of which a court may properly take judicial notice. *Goodrow*, 184 A.3d at 1126 (emphasis omitted). The oft-repeated examples of such records “do not purport to be exhaustive.” *In re Michael A.*, 552 A.2d at 370. Rather, the rule of *In re Michael A.* was an explicit expansion of Rule 201(b) of the Rhode Island

Rules of Evidence to define the circumstances under which, “[e]ven though this rule does not specifically deal with the matter of judicial notice of a court record, it would by clear implication only apply to those aspects of a court record that cannot be reasonably disputed.” *In re Michael A.*, 552 A.2d at 370; *see Curreri*, 126 A.3d at 486 (“In examining Rule 201[,] . . . we have said that judicial notice should ‘only apply to those aspects of a court record that cannot be reasonably disputed.’”) (quoting *In re Michael A.*, 552 A.2d at 370).⁵

Accordingly, the important question here is not whether the Consent Judgment or any other order of this Court has *res judicata* effect on Floe but whether those judgments are “aspects of a court record that cannot be reasonably disputed.” *In re Michael A.*, 552 A.2d at 370. *In re Michael A.* illustrates why the answer is “yes.” There, the Supreme Court held that the records judicially noticed by the trial justice were subject to reasonable dispute. *Id.* *In re Michael A.* dealt with a family court termination of parental rights based upon the parents’ inability to care for the children. *Id.* at 368. In rendering his bench decision, the trial justice “referred extensively” to three reports indicating that the parents were unable to care for their children. *Id.* at 369. However, the reports had not been admitted into evidence in the termination proceeding. *Id.* The Court reasoned that the records could not be judicially noticed because they “were never incorporated into a pleading, . . . never admitted into evidence,” and the authors were not subjected to cross-examination. *Id.* at 370.

The issue before this Court is very much unlike *In re Michael A.* Here, the court records are in fact orders of this Court. This Court entered the Consent Judgment, granted partial summary judgment to Dezube in an order declaring the rights of the parties, and denied Floe’s motion to

⁵ Under Rule 201(b) of the Rhode Island Rules of Evidence, “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”

vacate. Because the existence of these orders is undisputed, the Court takes judicial notice of them without converting the motion to one for summary judgment.

III

Analysis

A

Count I: Declaratory Judgment

As is relevant to Dezube, Floe seeks declarations that (a) the Lease and the Option are legally valid, binding, and enforceable contracts, (c) Floe's September 13, 2024 letter was a valid exercise of the Option, (e) the Consent Judgment be set aside or stayed pending adjudication of Floe's other claims; (f) Floe was injured as a direct and proximate result of Howard and Dezube entering the Consent Judgment; and (g) at all relevant times, the Property was held by Howard in a constructive trust for the benefit of Floe. (Floe Am. Countercl. ¶ 30.)

As noted, the Consent Judgment entered by this Court on December 17, 2024 ordered, among other things, that the P&S between Howard and Dezube is a valid and enforceable contract requiring Howard to sell the Property to Dezube; Dezube is entitled to specific performance of the P&S; the Option is null and void; Howard waives any and all right to appeal from the Consent Judgment; and the "Consent Judgment constitutes a final judgment on the merits of the parties' claims for purposes of res judicata, collateral estoppel, issue preclusion, and claim preclusion." Consent Judgment. This Court also ruled, in granting partial summary judgment to Dezube, that "per the Litigation Contingency provision in the Purchase Option, the Purchase Option is null and void as a result of the entry of the Consent Judgment between Dezube and Howard," and that "Dezube has superior rights to title and possession in the Property over Howard, BCG and Floe." Order, May 7, 2025. Lastly, in vacating Floe's May 27, 2025 *lis pendens* on the Property, this Court ruled that "[a]s a matter of fact and law, [Floe] did not validly exercise the Purchase Option

dated September 15, 2022 for the subject real property located at 440-460 Rochambeau Avenue[.]”
Order, June 11, 2025.

1

The Law of the Case

Dezube argues that Floe’s request for declaratory relief fails on the pleadings because this Court’s prior rulings have established the law of the case and Floe’s requested declarations contradict that law. Floe counters that the law of the case doctrine does not apply here because (a) the doctrine does not apply to prior decisions of the same judge, (b) the doctrine may be disregarded when a second ruling is based on an expanded record, and (c) the doctrine “should not be used to perpetuate a clearly erroneous earlier ruling.” *Paolella v. Radiologic Leasing Associates*, 769 A.2d 596, 599 (R.I. 2001) (citing *In re Estate of Speight*, 739 A.2d 229, 231 (R.I. 1999)).

Under the law of the case doctrine, ““after a judge has decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling.”” *Lynch v. Spirit Rent-A Car, Inc.*, 965 A.2d 417, 424 (R.I. 2009) (quoting *Chavers v. Fleet Bank (R.I.), N.A.*, 844 A.2d 666, 677 (R.I. 2004)). The doctrine “is designed to promote the stability of decisions of judges of the same court and to avoid unseemly contests and differences that otherwise might arise among them to the detriment of public confidence in the judicial function.” *Payne v. Superior Court for Providence County*, 78 R.I. 177, 184-85, 80 A.2d 159, 163 (1951). Upon first adopting the doctrine, our Supreme Court quoted with approval an observation of the Supreme Judicial Court of Massachusetts: ““A judge should hesitate to undo his own work Still more should he hesitate

to undo the work of another judge.” *Id.* at 185, 80 A.2d at 163 (quoting *Peterson v. Hopson*, 29 N.E.2d 140, 145 (Mass. 1940)).

Floe points to an unpublished decision of the Rhode Island Superior Court for the proposition that the law of the case doctrine is inapplicable when questions come before the same judge. *234 Realty, LLC. v. First Hartford Realty Corporation*, No. PC-2019-6794, June 25, 2021, Stern, J; Floe Suppl. Mem. in Supp. of Obj. to Dezube Mot. for J. on Pleadings, Ex. B (*234 Realty*) at 7. Indeed, Justice Stern stated as much there. *234 Realty*, at 7. However, there the court declined to apply the doctrine in light of several independent reasons, including that there was an expanded record upon which a subsequent ruling could be based. *Id.* And this Court can find no case actually prohibiting the application of the doctrine merely because the same judge is asked to rule again on an issue he already decided. Accordingly, the Court finds Floe’s contention that the law of the case doctrine cannot apply because the questions posed here are to be decided by the same judge who previously ruled on them unavailing.

“The law of the case doctrine . . . is a flexible rule that may be disregarded when a subsequent ruling can be based on an expanded record.” *Lynch*, 965 A.2d at 424 (quoting *Chavers*, 844 A.2d at 677). But here, the record has not expanded in any way that bears upon the questions this Court resolved in its prior rulings. Floe alleges that the facts have changed, but the Court disagrees. He argues that, since those rulings, Howard has deeded the Property to entities owned by Dezube. But that fact is the result of this Court’s rulings, not a fact on which the rulings relied. Therefore, this argument is no bar to the application of the law of the case doctrine.

Lastly, Floe contends that this Court’s rulings that the Option is null and void because the Consent Judgment activated the Litigation Contingency and that Floe did not validly exercise the

Purchase Option are clearly wrong and require correction. For the reasons set forth below, the Court disagrees.

The Court's ruling that the Consent Judgment is a judgment for purposes of the Litigation Contingency is not clearly wrong. Floe asserts a multitude of reasons why the Consent Judgment does not constitute a judgment for purposes of the Litigation Contingency, relying on Rules 54 and 58 of the Superior Court Rules of Civil Procedure. None of his arguments are availing.

Under Rule 54(a), Floe argues that the Consent Judgment is not a judgment for purposes of the Litigation Contingency because it includes "a recital of [the] pleadings" and does not include an "order from which an appeal lies." He also contends that under Rule 54(b), the Consent Judgment is not a "final judgment" because the Court has not made an express determination that there is no just reason for delay and the Consent Judgment adjudicates fewer than all the claims of fewer than all the parties. Under Rule 58(a), Floe posits that the Consent Judgment is not a judgment because judgments granting relief must be "set forth on a separate document."⁶

⁶ Rule 54 reads, in pertinent part:

"(a) 'Judgment' as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings

"(b) When more than one (1) claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one (1) or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims . . . of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

Rule 58 reads, in pertinent part:

"(a) Subject to the provisions of Rule 54(b):

The Lease, the Option, and the Litigation Contingency are contractual provisions that speak for themselves. The Litigation Contingency states: “[t]he parties agree that if a judgment enters against [Howard], declaring that title to the Property should be transferred to [Dezube], after [Floe] has exercised this Option, then this Option shall be null and void.” (Floe Am. Countercl. Ex. 1 at 7.) The provision does not state that the “judgment enter[ed] against [Howard]” must be a final judgment. Even assuming that the Litigation Contingency did require that the judgment comport with the definition of Rule 54(a) in that it is an “order from which an appeal lies,” an appeal does lie from the Consent Judgment because consent decrees may be appealed in the event of fraud, mutual mistake, or actual absence of consent pursuant to Rule 60 of the Superior Court Rules of Civil Procedure. *Andrews v. Lombardi*, 231 A.3d 1108, 1119 (R.I. 2020) (citing *In re McBurney Law Services, Inc.*, 798 A.2d 877, 882 (R.I. 2002)); *Mansolillo v. Employee Retirement Board of City of Providence*, 668 A.2d 313, 316 (R.I. 1995) (citing *DeFusco v. Giorgio*, 440 A.2d 727, 729 (R.I. 1982)). Similarly, Floe’s argument that the “recital of the pleadings” within the Consent Judgment invalidates it as a judgment is also misplaced because judgments are effective where they clearly evince finality and an adjudication of the issues. *Malinou v. Kiernan*, 105 R.I. 299, 302, 251 A.2d 530, 532-33 (1969) (upholding judgment not set forth on a separate document because court “satisfied the spirit, if not the letter, of a rule”). The recital of pleadings within the Consent Judgment, which provides context, does not invalidate the judgment because it evinces finality.

“(1) Upon . . . a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith sign and enter the judgment without awaiting any direction by the court

“Every judgment shall be set forth on a separate document.”

Floe's argument under Rule 58(a) is also unpersuasive. He argues that judgments granting relief must be set forth on a separate document. But the "separate document" requirement "means one separate from an opinion or memorandum of the court." *In Re Smith Corset Shops, Inc.*, 696 F.2d 971, 975 (1st Cir. 1982) (citing *State National Bank of El Paso v. United States*, 488 F.2d 890, 893 (5th Cir. 1974)). The Consent Judgment is not an opinion or memorandum of this Court, but the judgment itself. Thus, as a judgment against Howard and in favor of Dezube, the Consent Judgment activated the Litigation Contingency, thereby rendering the Option null and void by its plain terms. *See Malinou*, 105 R.I. at 302, 251 A.2d at 533.

Rhode Island law has "long recognized the sanctity of final judgments entered by the various courts in this state and, in particular, consent judgments." *Mansolillo*, 668 A.2d at 316. "The fact that it was consented to does not in any way detract from its efficacy. It is to be given the same force and effect thereafter by everyone, including the court, as though it had been entered after a hearing." *Id.* (quoting *Burns v. Burns*, 92 R.I. 278, 281-82, 168 A.2d 141, 143 (1961)). "Although a consent judgment receives a court's imprimatur, the judgment is in essence a contract between the parties to the litigation and is to be construed as a contract." *McEntee v. Davis*, 861 A.2d 459, 462-63 (R.I. 2004) (quoting *In re McBurney Law Services, Inc.*, 798 A.2d at 882). "[A] consent judgment . . . is not a ruling on the merits of the legal issue that . . . applies to others under the law of claim preclusion or issue preclusion." *Langton v. Hogan*, 71 F.3d 930, 935 (1st Cir. 1995) (emphasis omitted).

The Consent Judgment itself does not bind Floe; rather, Floe is bound by the Litigation Contingency, by which he attached his rights under the Option to the outcome of the litigation between Howard and Dezube. The Consent Judgment cannot bind Floe by its terms because he did not consent to it. But Howard and Floe executed the Litigation Contingency, making Floe's

rights under the Option contingent upon a judgment entering in favor of Howard and not Dezube. By operation of the Consent Judgment, which is essentially a contract requiring Howard to specifically perform the P&S and convey the Property to Dezube, a judgment will never enter in favor of Howard.

Accordingly, none of Floe's arguments persuade this Court that it was clearly wrong to treat the Consent Judgment as a "judgment" for purposes of the Litigation Contingency.

Floe next contends that this Court was clearly wrong to conclude that Floe did not validly exercise the Purchase Option via his attorney's September 13, 2024 e-mail to counsel for Howard. But the plain language of the Option and Litigation Contingency, which are documents that speak for themselves, forecloses this conclusion. As explained above, the Consent Judgment is a "judgment enter[ed] against [Howard]" that "declar[es] that title to the property should be transferred to [Dezube]," which activated the Litigation Contingency. The plain terms of the Litigation Contingency specify that upon such judgment, the Option "shall be null and void." (Floe Am. Countercl. Ex. 1 at 7.) "[A] void contract is a nullity . . . [and] cannot be enforced[.]" *Johnston Equities Associates, LP v. Town of Johnston*, 277 A.3d 716, 733-34 (R.I. 2022) (quoting *Cruz v. Mortgage Electronic Registration Systems, Inc.*, 108 A.3d 992, 996-97 (R.I. 2015)). Accordingly, this Court's conclusion that Floe did not validly exercise the Purchase Option was not clearly wrong.

Moreover, even assuming that Floe retained the ability to exercise the Option notwithstanding the effect of the Consent Judgment on the Litigation Contingency, the Court's conclusion that Floe did not validly exercise the Option is not clearly wrong. The Option requires that "[i]mmediately upon exercising the Purchase Option, [Floe] shall provide [Howard] with a deposit of . . . \$550,000[.]" (Dezube FAC Ex. 10 at ¶ 3.) And paragraph 21 of the Option states in

bold capital letters: “TIME IS OF THE ESSENCE AS TO ALL DEADLINES CONTAINED IN THIS AGREEMENT.” *Id.* ¶ 21. Rhode Island law recognizes “‘the indisputable right of parties to make time of the essence in their contracts,’ and where those terms are present, the time fixed for performance is a material part of the contract and is applicable to the obligations of both parties.” *Fracassa v. Doris*, 814 A.2d 357, 362 (R.I. 2003) (quoting *Safeway System, Inc. v. Manuel Brothers, Inc.*, 102 R.I. 136, 145, 228 A.2d 851, 856 (1967)). Reading these provisions in light of the entire contract, this Court concluded that Floe did not validly exercise the Option by e-mailing counsel for Howard and never tendering a deposit. That conclusion was not clearly wrong because the plain meaning of the contractual terms required tender of the deposit simultaneously with the exercise of the Option.

In light of the foregoing, this Court’s prior orders are the law of the case until and unless overturned on appeal.

2

Conclusions of Law

As noted, Floe seeks declarations essentially stating that he has rights to the Property pursuant to the Option and Lease. “Under a purchase and sale agreement, the purchaser becomes the equitable owner of the real estate and the seller holds legal title as a security interest.” *Thompson v. McCann*, 762 A.2d 432, 439 (R.I. 2000) (citing *Dulgarian v. City of Providence*, 507 A.2d 448, 451 (R.I. 1986)). On December 17, 2024, this Court ordered that the P&S between Howard and Dezube is a valid and enforceable contract requiring Howard to sell the Property to

Dezube. (Docket.) Thus, the P&S Howard and Dezube executed on March 30, 2022 vested equitable title in the Property in Dezube.⁷

“It is well established that . . . a third party who purchases . . . land with notice of [a first buyer’s] interest therein under a preexisting executory purchase-and-sale agreement takes title subject to such interest . . . and may in a proper case be directed to convey the land to the [first buyer].” *George v. Oakhurst Realty, Inc.*, 414 A.2d 471, 473 (R.I. 1980) (first citing *Christiansen v. Stuwe*, 60 R.I. 238, 197 A. 876 (1938), and then citing *Potwin v. Tucker*, 234 A.2d 430 (Vt. 1967)). “Lis pendens’ . . . means litigation or suit pending[.]” *Id.* at 474 (citing *Kent Estates, Inc. v. Matteson*, 97 R.I. 230, 233, 197 A.2d 292, 294 (1964)). “Lis pendens . . . puts all prospective purchasers on notice that there is a suit pending involving an issue of title to the real property.” *Id.*

Here, after Howard initiated this action, Dezube recorded his May 2, 2022 *Lis Pendens*, thereby asserting his interest in the Property. Thereafter, on September 15, 2022, Howard and Floe executed the Lease and Option. The existence of the *Lis Pendens* put Floe on constructive notice of Dezube’s interest. Floe also had actual notice of Dezube’s asserted interest by virtue of the Litigation Contingency, which subscribed itself to the contest of title between Howard and Dezube. Because the Consent Judgment activated the Litigation Contingency, Floe’s rights to title and possession of the Property are subordinate to Dezube’s, as this Court ruled in granting partial summary judgment to Dezube.

Floe cannot prove any set of facts which would entitle him to the declarations he seeks because Dezube had equitable title to the Property at all relevant times from and after his execution of the P&S of March 30, 2022, the Consent Judgment activated the Litigation Contingency, and

⁷ Dezube’s equitable and legal title consolidated upon Howard’s conveyance of the Property by warranty deeds to entities owned by Dezube on June 23, 2025.

in any event Dezube's rights under the P&S are senior to Floe's under the Lease and Option. Therefore, the Court grants Dezube's motion for judgment on the pleadings as to Count I of Floe's Amended Counterclaim.

B

Counts IV and V: Tortious Interference with Contract and Business Advantage

Floe asserts claims for tortious interference with contract (Count IV) and tortious interference with prospective business advantage (Count V) against Dezube. (Floe Am. Countercl. ¶¶ 43-54.)

“The elements of a claim for tortious interference with contractual relations under Rhode Island law are: (1) the existence of a contract; (2) defendants' knowledge of the contract; (3) defendants' intentional interference with the contract; (4) damages caused by the interference.” *APG, Inc. v. MCI Telecommunications Corp.*, 436 F.3d 294, 303 (1st Cir. 2006) (citing *Western Mass. Blasting Corp. v. Metropolitan Property and Casualty Insurance Co.*, 783 A.2d 398, 401 (R.I. 2001)). “The same elements are required to state a claim based on tortious interference with a prospective contractual relationship, with the exception that the defendant's knowledge must relate to a business relationship or expectancy, rather than to an actual contract.” *Id.* (citing *Mesolella v. City of Providence*, 508 A.2d 661, 669-70 (R.I. 1986)). “To satisfy the intentional interference element, a plaintiff must allege ‘legal malice’ or ‘intent to do harm without justification.’” *Steward Health Care System, LLC v. Blue Cross & Blue Shield of Rhode Island*, 997 F. Supp. 2d 142, 164 (D.R.I. 2014) (quoting *Belliveau Building Corp. v. O'Coin*, 763 A.2d 622, 627 (R.I. 2000)).

Here, Floe alleges that Dezube knowingly interfered with the Lease and Option by entering the Consent Judgment with Howard, which agreed to terminate the Lease and void the Option.

(Floe Am. Countercl. ¶¶ 44-54.) Floe also alleges that Dezube knowingly interfered with Floe's exercise of the Option on September 13, 2024 by entering the Consent Judgment. *Id.* ¶¶ 45, 51.

Dezube contends that Floe cannot establish the existence of a contract or business expectancy because this Court has ruled both that the Option is null and void as a result of the Consent Judgment and that Floe did not validly exercise the Option. (Def.'s Mot. for J. on the Pleadings and Mot. for Sanctions (Dezube Mot.) 14.) But Floe's claim is that the very act of entering the Consent Judgment, which terminated his contractual rights and business expectancy, was tortious. Accepting the factual allegations in Floe's Amended Counterclaim as true and drawing all reasonable inferences in his favor, Floe has pled sufficient facts to establish the existence of contracts with Howard—to wit, the Lease and Option—and perhaps his business expectancies therefrom. Similarly, assuming the truth of Floe's allegations, he has pled sufficient facts to establish Dezube's knowledge of the contracts and business expectancy.

With respect to the third element, Dezube's intentional interference with the contract and business expectancy, Dezube argues that there is no evidence that he acted without justification. *Id.* He points out that “[a] good faith assertion of a legally protected interest or claim is privileged and constitutes a defense to an action for tortious interference with contract.” *Western Mass. Blasting Corp.*, 783 A.2d at 402 (citing *Belliveau Building Corp.*, 763 A.2d at 629). Thus, under Dezube's view, because his rights were senior to Floe's as a result of the P&S and the Consent Judgment upholding the P&S, his asserted legal interest in the Property constitutes a defense to Counts IV and V. Again, however, Floe's claim is that the act of entering the Consent Judgment, which had the effect of confirming Dezube's rights under the P&S, was the intentional interference with Floe's contractual rights and business expectancy. Moreover, whether Dezube entered the Consent Judgment in good faith is a question of fact which this Court must resolve in favor of Floe

in the instant motion for judgment on the pleadings. Thus, assuming the truth of Floe's allegations and drawing the inference in his favor that Dezube and Howard did not enter the Consent Judgment in good faith, he has pled sufficient facts to establish Dezube's intentional interference.

Finally, assuming the truth of Floe's allegation that he was injured as a direct and proximate result of Dezube's intentional interference with Floe's contractual rights and business expectancy, the Court finds that Dezube is not entitled to judgment on the pleadings as to Counts IV and V.

C

Count VI: Civil Conspiracy

Floe alleges that Dezube and Howard engaged in a civil conspiracy by entering the Consent Judgment and terminating Floe's rights under the Lease and the Option. (Floe Am. Countercl. ¶¶ 55-59.)

"Rather than an independent source of liability, civil conspiracy is a vehicle for demonstrating joint liability for distinct tortious behavior; and, as such, plaintiff must set forth 'a valid underlying intentional tort theory.'" *Bainum v. Coventry Police Department*, 156 A.3d 418, 421 (R.I. 2017) (quoting *Read & Lundy, Inc. v. Washington Trust Co. of Westerly*, 840 A.2d 1099, 1102 (R.I. 2004)). As discussed above, Floe's allegations that Dezube tortiously interfered with Floe's contractual rights and business expectancies survive this motion for judgment on the pleadings. Dezube contends that no evidence exists to show that Dezube and Howard conspired to harm Floe, but at this stage the Court must assume Floe's allegations as true. Accordingly, assuming as true Floe's allegation of a conspiracy between Howard and Dezube to wrongfully terminate Floe's rights by entering the Consent Judgment, the Court finds that Dezube is not entitled to judgment on the pleadings on Count VI.

D

Count VII: Unjust Enrichment

Floe's final allegation against Dezube is that Floe has made improvements to the Property during the Lease and that "Howard and/or Dezube" have benefited therefrom. (Floe Am. Countercl. ¶¶ 60-63.) Floe alleges that he has occupied the Property since September 15, 2022 and has made improvements to the Property totaling approximately \$350,000. *Id.* ¶¶ 61-62.

“[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.” *IDC Clambakes, Inc. v. Carney as Trustee of Goat Island Realty Trust*, 246 A.3d 927, 932-33 (R.I. 2021) (quoting *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210-11 (R.I. 2015)). “[C]laims for unjust enrichment sound in equity[.]” *Id.* at 932 (quoting *United Lending Corp. v. City of Providence*, 827 A.2d 626, 632 (R.I. 2003)). And, “[t]he third prong of the analysis is the most important.” *Id.* at 934 (quoting *South County Post & Beam, Inc.*, 116 A.3d at 211). “In determining what is, and what is not, an unjust result, the hearing justice must ‘examine the facts of the particular case and balance the equities.’” *Id.* (quoting *South County Post & Beam, Inc.*, 116 A.3d at 212).

There is no injustice in a landowner retaining a benefit conferred as a direct result of another entity using its property with knowledge of a dispute over the title and control of the property. *Id.* at 936. In *IDC Clambakes, Inc.*, our Supreme Court held that landowners were not unjustly enriched by improvements made by a nominal tenant during the pendency of a legal battle over title to the property. *Id.* After years of litigation, the Supreme Court held that title to a contested area of land was held in common ownership by nearby condominium owners and not a

separate entity who had purported to purchase the land years prior. *Id.* at 930-31 (citing *America Condominium Association, Inc. v. IDC, Inc.*, 844 A.2d 117, 130-31 (R.I. 2004) and then citing *America Condominium Association, Inc. v. IDC, Inc.*, 870 A.2d 434, 441-42 (R.I. 2005)). Despite knowing that several condominium unit owners contested the purchaser's right to title, the purchaser constructed an event facility on the contested area and operated the same for approximately six years. *Id.* at 930. At the end of the litigation over title to the land, the purchaser turned over possession of the contested area to the condominium owners pursuant to a consent order entered into by the parties. *Id.* at 931. The purchaser thereafter claimed that the condominium owners were unjustly enriched because they "consented to [the purchaser's] establishment of a landmark business . . . then reaped the benefits of [its] investment by ousting [them.]" *Id.* at 932.

The Supreme Court affirmed the hearing justice's grant of summary judgment in favor of the condominium unit owners:

"[W]e are in wholehearted agreement with the following cogent statement by the hearing justice which bears repeating: 'How can it be unjust when any alleged benefit received by the Defendants was solely a result of winning the legal battle concerning its ownership of the [contested area]? How can the consequence of a final judicial determination be deemed unjust? It cannot.'" *Id.* at 936.

The Court continued that the purchasers "entered the [contested area] and built on it at considerable risk. It would be nonsensical for this Court to now permit [the purchaser] to pursue its equitable claims . . . the wrongdoer should [not] be permitted to benefit through a quasi-contractual theory." *Id.*

Even assuming *arguendo* that Floe could establish the first two elements of unjust enrichment, his claim that Dezube retaining benefit without recompense to Floe would be inequitable is foreclosed as a matter of law. This case is identical to *IDC Clambakes*. In *IDC Clambakes*, the purchaser constructed a facility and operated a business on the contested area

despite knowing that condominium owners claimed ownership. *Id.* at 930. Here, Floe entered the Lease and Option with Howard with constructive and actual notice of Dezube’s contest. Just like how the purported purchaser in *IDC Clambakes* hitched its wagon to the seller’s assertion that it could convey title, Floe entered the Property and made improvements upon it at considerable risk that Howard would lose his legal battle with Dezube—which is exactly what happened. Given this Court’s controlling rulings regarding title to the Property, Floe cannot prove any set of facts establishing that it would be unjust for Dezube to retain any benefit by way of Floe’s improvements. “How can it be unjust when any alleged benefit received by [Dezube] was solely a result of winning the legal battle concerning its ownership of the [Property]? . . . It cannot.” *See id.* at 936.

IV

Conclusion

Accordingly, Dezube’s motion for judgment on the pleadings is **GRANTED** as to Counts I and VII of Floe’s Amended Counterclaim. It is otherwise **DENIED**. Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Howard v. Dezube v. The Boston Capital Group, Inc., et al.**

CASE NO: **KC-2022-0291**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **November 17, 2025**

JUSTICE/MAGISTRATE: **Silverstein, J.**

ATTORNEYS:

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