STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: April 16, 2014]

RHODE ISLAND PUBLIC EMPLOYEES' RETIREE COALITION, AFSCME, COUNCIL 94 RETIREE CHAPTER, NEARI-RETIRED, RI AFT/R LOCAL 8037, RHODE ISLAND RETIRED TEACHERS ASSOCIATION, RHODE ISLAND ASSOCIATION OF RETIRED PRINCIPALS, RHODE ISLAND LABORERS' RETIREE COUNCIL, DAVID FLORIO, JAMES GILLIS, CAROL KEISER, MARK KURTZMAN, MARY ANN PARKER, ANTHONY PICCIRILLI	:	
VS.	:	**C.A. NO. PC 12-3166**
LINCOLN D. CHAFEE, in his capacity as Governor of the State of Rhode Island, GINA RAIMONDO, in her capacity as General Treasurer of the State of Rhode Island, and the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through The RETIREMENT BOARD, by and through Gina Raimondo, in her capacity as Chairperson of the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board	:	

DECISION

TAFT-CARTER, J. Plaintiffs[1] filed the underlying action against the Governor and General Treasurer of the State of Rhode Island, the Employees' Retirement System of the

[1] Plaintiffs consist of a number of Associations representing retired state and municipal employees and individual Plaintiffs, who are all retired public sector employees or were married to public sector employees who are current beneficiaries of the Retirement System. Plaintiff-Associations include the Rhode Island Public Employees' Retiree

State of Rhode Island, by and through the Retirement Board and the Chairman and Secretary of the Retirement Board (collectively, the Defendants), challenging the constitutionality of the Rhode Island Retirement Security Act (RIRSA) of 2011. Before the Court is the Defendants' Motion to Dismiss the Plaintiffs' Complaint pursuant to Super. R. Civ. P. 12(b)(6) and the Plaintiffs' objection. For the reasons stated herein, the Court denies the Defendants' Motion to Dismiss the Complaint.

I

Facts and Travel

The State Retirement System was created by legislation and has been in existence since 1936. The retirement system was placed under the management of the Retirement Board (Board). The Board is chaired by the General Treasurer of the State. See G.L. 1956 § 36-8-4. The purpose of the retirement system is to provide retirement allowances to employees of the State of Rhode Island. It is known as the Employees' Retirement System of Rhode Island (ERSRI). Sec. 36-8-2. Among the retirement plans administered by the Board are the Employees' Retirement System (ERS) and the Municipal Employees' Retirement System (MERS). Sec. 36-10-1 and G.L. 1956 §§ 45-21-1 et seq. Over the years, amendments have been made to the pension legislation. See P.L. 2005, ch. 117, art. 7; P.L. 2009, ch. 68, art. 7; P.L. 2010, ch. 23, art. 16; P.L. 2011, ch. 406; P.L. 2011, ch. 408; and P.L. 2011, ch. 409.

The General Assembly, in November 2011, enacted the RIRSA, which overhauled the public pension system. Specifically, the legislation reduced the pension

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Coalition (RIPERC), AFSCME, Council 94 Retiree Chapter, the Rhode Island Retired Teachers Association, and the Rhode Island Laborers' Retiree Council.

benefits, including the COLA, for retired employees.[2] The RIRSA suspended the annual COLAs for all retirees effective January 2013. It also provides that no annual COLAs will be paid to retired teachers and state employees until the retirement system is eighty percent funded, which is not estimated to occur for about sixteen years. Even if the system becomes eighty percent funded—and thus, an annual COLA resumes—the RIRSA reduces the amount of the COLA by establishing a new formula for the COLA percentage and applying the COLA only to the first $25,000 of a beneficiary's retirement allowance. Finally, the reduced COLAs will be paid every five years after the system is eighty percent funded.

On June 22, 2012, Plaintiffs filed suit on behalf of individual retired state and municipal employees and retired public school teachers who were current beneficiaries of the ERSRI at the time the RIRSA became effective. The suit challenges various provisions of RIRSA as being unconstitutional under the Contract Clause, the Due Process Clause, and the Takings Clause of the Rhode Island Constitution. Defendants filed a Motion to Dismiss the Plaintiffs' Complaint pursuant to Super. R. Civ. P. 12(b)(6). The Court heard oral argument and now issues its Decision.

[2] The General Assembly has enacted a number of changes to the statute governing the ERSRI in an attempt to address the issue of underfunding. In May 2010, a group of union members filed a law suit challenging changes made in 2009 and 2010 as being unconstitutional under the Contract Clause and the Takings Clause of the Rhode Island Constitution. This Court denied Defendants' motion for summary judgment on September 13, 2011, holding that the plaintiffs had a unilateral implied-in-fact contractual right arising from their partial performance by working at least ten years. See R.I. Council 94, AFSCME, AFL-CIO et al. v. Donald Carcieri, in his capacity as Governor of the State of Rhode Island, et al., No. 10-2859, 2011 WL 4198506 (Sept. 13, 2011) (Pension I).

II

Standard of Review

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint about whether it fails to state a claim upon which relief can be granted." Boyer v. Bedrosian, 57 A.3d 259, 270 (R.I. 2012). "The standard for granting a motion to dismiss is a difficult one for the movant to meet." Id. (quoting Pellegrino v. Rhode Island Ethics Comm'n, 788 A.2d 1119, 1123 (R.I. 2002)). "Rule 12(b)(6) does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones allegations and claims as they are set forth in the complaint." Hyatt v. Vill. House Convalescent Home, Inc., 880 A.2d 821, 823 (R.I. 2005). When ruling on Rule 12(b)(6) motion, a court's review is confined to the four corners of the pleadings. See Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008). A court must "assume that the allegations contained in the complaint are true, and examine the facts in the light most favorable to the nonmoving party." Boyer, 57 A.3d at 270 (quoting Pellegrino, 788 A.2d at 1123); see also Palazzo, 944 A.2d at 149; Multi-State Restoration, Inc. v. DWS Properties, LLC., 2013 WL 116789 (R.I. 2013). Thus, "[i]f it 'appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts,' the motion may be granted." Boyer, 57 A.3d at 270 (quoting Estate of Sherman v. Almeida, 747 A.2d 470, 473 (R.I. 2000).

Further, to the extent that the United States Supreme Court has articulated a heightened pleading standard in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009), this standard does not yet apply in Rhode Island. Our Supreme Court has not adopted the heightened pleading standard and still

adheres to the notice pleading standard. See Barrette v. Yakavonis, 966 A.2d 1231 (R.I. 2009) (stating that "a pleading need not include 'the ultimate facts that must be proven in order to succeed on the complaint . . . or . . . set out the precise legal theory upon which [the plaintiffs'] claim is based.") (quoting Gardner v. Baird, 871 A.2d 949, 953 (R.I. 2005)); see also William Chhun et al. v. Mortgage Electronic Registration Systems, Inc., et al., No. 12-298, slip op. at 3-4 (R.I. Feb. 3, 2014) (addressing the differences between the Federal and Rhode Island Rule 12(b)(6) standards, but "[leaving] the Twombly and Iqbal conundrum for another day").

III

Analysis

The gravamen of the Defendants' argument is that at the time the RIRSA was enacted, no contractual relationship existed between the Plaintiffs and the State. The Defendants maintain that the pension legislation does not create a contractual relationship, and therefore, Plaintiffs' claims must fail as a matter of law. Defendants cite the federal doctrine of unmistakability in support of their argument that the Plaintiffs do not have contractual rights arising from the pension statute. Plaintiffs argue that the Complaint states implied-in-fact contract claims sufficient for relief.

When the unmistakability doctrine argument is made, it is the plaintiffs who bear a heavy burden to overcome the presumption that one legislature cannot bind another as legislative enactments declare policy "'to be pursued until the legislature shall ordain otherwise.'" Brennan v. Kirby, 529 A.2d 633, 638 (R.I. 1989) (quoting Dodge v. Bd. of Educ. of Chicago, 302 U.S. 74, 79 (1937)). Plaintiffs urge the Court to follow its analysis in Pension I, wherein this Court found that vested employees possessed implied-in-fact

contract rights to their pension benefits. Pension I, although parallel in argument, involved plaintiffs of a different status. In Pension I, the plaintiffs were not retirees; they were employees who had completed a minimum ten years of credited service but were ineligible for retirement as of the dates on which the 2009 and 2010 legislation became effective. They were, however, "vested" in the system.

As a canon of construction and a corollary of the sovereign acts doctrine, the unmistakability doctrine states that in entering into contracts, governments do not waive their sovereign powers unless they expressly surrender that sovereign power in unmistakable terms. See Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 51 (1986). In other words, "contractual arrangements, including those to which a sovereign itself is party, 'remain subject to subsequent legislation' by the sovereign." Id. The sovereign acts doctrine and the unmistakability doctrine have been described as being "designed to balance 'the Government's need for freedom to legislate with its obligation to honor its contracts.'" Connor Bros. Constr. Co., Inc. v. Pete Geren, 550 F.3d 1368, 1371-72 (Fed. Cir. 2008) (quoting U.S. v. Winstar, 518 U.S. 839, 896 (1996)). It is well-settled, however, that these doctrines may not be used by government simply "as a means to escape from contracts that it subsequently concluded were unwise." Id. at 1374. Although the Rhode Island Supreme Court has not referred to the doctrine by name, it has adopted the reasoning of the unmistakability doctrine. See Brennan, 529 A.2d at 633. In Brennan, our Supreme Court stated that "absent a clear indication by the Legislature that it intended to bind itself contractually by passing an enactment, the presumption pervades that '[the] law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain

otherwise.'" Id. at 638 (quoting Dodge, 302 U.S. at 75). To overcome the presumption, the Plaintiffs may rely on "'not only the words used [in the statute], but also apparent purpose, context, and any pertinent evidence of actual intent, including the legislative history.'" Pension I (quoting R.I. Laborers' Dist. Council v. State of R.I., 145 F.3d 42, 43 (1st Cir. 1998)).

The Courts must therefore consider the language and circumstances of the enactment prior to the repeal or amendment to determine the relationship between the parties. See Retired Adjunct Professors of the State of R.I. v. Almond, 690 A.2d 1342, 1345 (R.I. 1997); Brennan, 529 A.2d at 639. Specifically, "a statute is itself treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State." U.S. Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 17 n.14 (1977); see also Retired Adjunct Professors, 690 A.2d at 1345. This Court will now begin with an analysis of the pension legislation's language and the surrounding context of it in order to determine whether it did create an enforceable contract between Plaintiffs and Defendants.

At the outset, the Court notes that unlike some of its sister states, the Rhode Island Constitution has no provision explicitly stating that public employees have a contractual right to their pension benefits. Cf. N.Y. Const. art. V, § 7 ("[M]embership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."). Furthermore, Rhode Island's pension statute does not expressly state that the retirement system creates a contractual relationship. Cf. Mass. Gen. Laws ch. 32, § 25(5) (stating that the pension statute "shall be deemed to establish and to have established membership in the

retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits . . .”). In contrast, Rhode Island’s pension statute does not explicitly refer to the ERSRI as creating a contract, nor does the statute ever specify that the ERSRI was intended to give members in the retirement system a contractual relationship with the State for their pension benefits.

The language in the pension statute which most appears to support the proposition that the State promised to provide pension benefits to ERSRI members is the statutory guaranty in § 36-10-7. Section 36-10-7 states that “it is the intention of the state to make payment of the annuities, benefits, and retirement allowances provided for under the provisions of this chapter and . . . to make the appropriations required by the state to meet its obligations to the extent provided in this chapter.” This language, however, does not evince a clear and unmistakable intent to form a contractual relationship. Rather, § 36-10-7 references payment of the benefits “provided for under the provisions of this chapter” and the requirement that the General Assembly make the annual appropriations. There is no express promise that the benefits will not be altered. The First Circuit has similarly concluded that § 36-10-7 “falls at least a step short of clearly expressing a contractual commitment not to change benefit levels or other plan variables by legislation.” Nat’l Educ. Ass’n-Rhode Island v. Ret. Bd. of R.I. Emps.’ Ret. Sys., 172 F.3d 22, 28 (1st Cir. 1999) (NEA II).

Defendants submit that absent such clear language in the statute, courts may not find that legislation creates contractual rights. However, the language of the statute is not the only factor to be considered in determining the existence of a contractual relationship.

See R.I. Laborers' Dist. Council, 145 F.3d at 43 ("No single form of wording is essential in order to find a contractual relationship.").

In addition to the statutory language, the relationship between the parties may be examined to determine the "apparent purpose, context, and any pertinent evidence of actual intent, including legislative history," in support of a contractual relationship. R.I. Laborers' Dist. Council, 145 F.3d at 43. Such an analysis requires this Court to turn to the basic contract law principles relating to the formation of contracts. Accordingly, this Court will consider whether the State made an offer to the Plaintiffs, whether the Plaintiffs accepted the offer, and whether the offer and acceptance were supported by consideration and a valid contract. See Restatement (Second) Contracts § 22, 71 (1981).

Though Rhode Island has not expressly stated, in either its Constitution or in the statute itself, that pension benefits are contractual, our Supreme Court has expressly recognized the various pension models. At the same time, our Supreme Court has declined to define where on the spectrum Rhode Island lands within the model. See Nat'l Educ. Ass'n-Rhode Island v. Ret. Bd. of R.I. Emps.' Ret. Sys., 890 F. Supp. 1143, 1155 (D.R.I. 1995) (NEA I); In re Almeida, 611 A.2d 1375, 1385 (R.I. 1992). There is no doubt, however, that in Rhode Island pensions are not gratuities of the State. See Almeida, 611 A.2d at 1385. In Almeida, our Supreme Court concluded that "a pension comprises elements of both the deferred compensation and the contract theories." Id. at 1386. In this context, "both the deferred compensation and contract theory are, in fact, theories of implied contract. Indeed, the only difference between deferred compensation and contract theories is the time at which pension rights vest." NEA I, 890 F. Supp. at 1156. While examining the issue of pension vesting and not the fulfillment of contract

rights, our Supreme Court in Almeida concluded that "[t]he right to deferred compensation vests upon meeting the terms of employment, but that vesting is subject to divestment because it is conditioned on continued honorable and faithful service." Almeida at 1386. The facts and legal analysis in Almeida are entirely distinguishable from the facts at bar. The Court in Almeida was not analyzing the pension statute for purposes of the Contract Clause but for the purpose of deciding whether vested pension rights may be terminated for misconduct.

One unresolved question in Almeida, which is central to the pension litigation, is not whether Plaintiffs' pension rights have vested but when may the Plaintiffs assert their contractual rights in their pensions to support their claim of a Contract Clause violation. See NEA I, 890 F. Supp. at 1156. The ultimate issue to be addressed, therefore, is when retirement pension benefits vest for contractual purposes. See id. at 1156.[3] Under either the contract theory or the deferred compensation model, employees have some contractual rights in their pensions. See id. Furthermore, under either theory, these Plaintiffs have become vested in the retirement system. Upon retirement, under Rhode Island law, COLAs and pension benefits are one and the same, providing retirees with a vested interest in the benefits which may not be altered retroactively. See Arena v. City of Providence, 919 A.2d 379, 392 (R.I. 2007) (finding that rather than being a gratuitous benefit after retirement, plaintiffs had a reasonable expectation at the time they retired that they would continue to receive the COLA that was negotiated for and in effect at the time they retired).

[3] In Nonnenmacher v. City of Warwick, 722 A.2d 1199, 1203 n.5 (R.I. 1999), the Court expressly reserved any opinion on the question of retirement pension vesting.

As previously noted, the statement of intent in § 36-10-7 does not rise to the level of "clearly expressing a contractual commitment not to change benefit levels or other plan variables by legislation." NEA II, 172 F.3d at 28. However, the context in which the statement of intent was made—that of an employer-employee relationship—provides support for finding that the language should be considered an offer. See id. ("The existence of an employer-employee relationship does weigh in favor of finding an implied contract[.]"); see also McGrath v. R.I. Ret. Bd., 88 F.3d 12, 16-17 (1st Cir. 1996) (acknowledging that "in general, pensions are to be regarded as a species of unilateral contracts."). Significantly, in the NEA II case, the First Circuit recognized the central importance of the employer-employee relationship in noting that the existence of the employment relationship may "tip the balance [in favor of finding an implied contract] if, for example, Rhode Island took a meat axe to the pensions of long-time state employees." Id. at 29. Courts have long accepted the importance of pension benefits as a "term and condition of public employment." Uricoli v. Bd. of Trustees, Police and Firemen's Ret. Sys., 449 A.2d 1267, 1273 (N.J. 1982). Our Supreme Court has also stated that pension benefits are "designed to induce individuals to enter public service." Almeida, 611 A.2d at 1386.

The provisions of the pension statute constituted one of the terms of employment made to the Plaintiffs when they entered into employment with the State or with a municipality. Pensions are meant to act "as an inducement to continued and faithful service," and as such, largely resemble offers to enter into a contract. Id. at 1385. An offer is defined as a "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his [or her] assent to that bargain is invited

and will conclude it." Restatement (Second) Contracts § 24. These circumstances—pension benefits in exchange for continued and faithful employment—constitute the kind of "bargained-for-exchange that is the hallmark of contracts." Retired Adjunct Professors, 690 A.2d at 1346 (internal quotations omitted). The terms of the pension statute constitute a typical unilateral contract, defined as one where "the offeror makes a promise and asks some performance by the offeree in return." Corbin on Contracts § 3.16 (Rev. ed. 1993).

In exchange, the public employees—the offerees—completed their years of faithful service. It is also generally accepted in contract law that an offeree may accept an offer by beginning to perform. See Williston on Contracts § 6:26. In the context of pension rights, the First Circuit previously recognized "the modern trend" that "a state's promise of pension benefits represents an offer that can be represented through the employee's performance—thus, a unilateral, implied-in-fact contract is created that is binding on the state." Parker v. Wakelin, 123 F.3d 1, 6 (1st Cir. 1997). Here, Plaintiffs accepted the State's offer of pension benefits by beginning their employment with the State and continued their service for the required time.

Moreover, these Plaintiffs have not only accepted the offer made by the State, but they also have fully performed by virtue of their "continued honorable and faithful service," as defined in the statute, by meeting the terms for years of service and/or reaching a certain retirement age. See Almeida, 611 A.2d at 1386. Plaintiffs had fully performed their duties as public sector employees for the required number of years and had already retired before the RIRSA was enacted. Cf. Retired Adjunct Professors, 690 A.2d at 1347 (finding that plaintiffs had no contractual rights in part because plaintiffs

were not "being asked to forfeit any payments due them for work they have already performed[.]"). Through Plaintiffs' faithful service, the State had already received the full benefits it expected from creating the ERSRI. Plaintiffs' pension benefits constitute part of their compensation for the services which they have already rendered to the State. See Arena, 919 A.2d at 393-95 (holding that "pension benefits vest once an employee honorably and faithfully meets the applicable pension statute's requirements" and accordingly, a court must look to "the terms of plaintiffs' pension plan *at the time they retired*" to determine plaintiffs' reasonable expectations of their benefits) (emphasis in original); see also Baker v. Oklahoma Firefighters Pension Ret. Sys., 718 P.2d 348, 352 (Okla. 1986) (holding that contractual rights exist upon vesting of pension eligibility requirements).

Finally, in order for the contract between Plaintiffs and the State to be valid and enforceable, it must have been supported by consideration. See NEA I, 890 F. Supp. at 1159. Consideration is defined as "some right, interest or benefit accruing to one party or some forbearance, detriment, or responsibility given, suffered, or undertaken by the other." See id. (citing Hayes v. Plantations Steel Co., 438 A.2d 1091, 1094 (R.I. 1982)). In the instant case, Plaintiffs have served the public through their respective duties for the required number of service years, as well as having contributed the required percentage of their salaries to the ERSRI. In return, the State has promised pension benefits that serve as a form of "compensation for services previously rendered." Almeida, 611 A.2d at 1385 (quoting Steinmann v. State Dep't of Treasury, 116 N.J. 564, 572, 562 A.2d 791, 795 (1989)). Because there has been a bargained-for exchange, supported by

consideration, this Court finds that there is an enforceable implied-in-fact contract between Plaintiffs and the State.

Furthermore, our Supreme Court's jurisprudence supports a finding that Plaintiffs possess protected contractual rights in receiving a pension and a COLA. In Almeida, the Supreme Court acknowledged, "[c]ontract rights may attach upon entering public employment and service." 611 A.2d at 1385. In Pellegrino, 788 A.2d at 1126, the Court affirmed that upon performing their duties, the plaintiffs acquired a protected "property interest in the statutory benefit that could not be taken from them for the public's use without due process of law and just compensation." In the instant case, the Plaintiffs have implied-in-fact contractual rights to their pension benefits and to a COLA. These rights are fully vested and no longer subject to divestment because Plaintiffs, as retirees, have fully and honorably completed their service. See Almeida, 611 A.2d at 1386; Arena, 919 A.2d at 392. Here, having retired, the Plaintiffs have fully performed. A valid contract exists between Plaintiffs and the State, entitling Plaintiffs to their pension benefits.

Additionally, Defendants' challenges to Plaintiffs' Takings Clause, Due Process, and Breach of Contract claims rest upon the absence of a contractual relationship between Plaintiffs and the State. As this Court finds a contractual relationship exists between the parties, these claims survive. Further, with respect to Plaintiffs' Promissory Estoppel claim, this Court finds Retired Adjunct Professors, on which Plaintiffs rely, to be distinguishable in both procedural posture and fact. Therefore, mindful of the Rule 12(b)(6) standard of review, this Court recognizes Plaintiffs' Promissory Estoppel claim.

IV

Conclusion

Having duly considered the arguments made by counsel and the language and circumstances of the pension statute, this Court holds that Plaintiffs have implied contractual rights arising from the ERSRI sufficient to support a claim for relief under the Contract Clause. Accordingly, Defendants' Motion to Dismiss is denied. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Rhode Island Public Employees' Retiree Coalition, et al. v. Lincoln D. Chafee, et al.
CASE NO:	PC 12-3166
COURT:	Providence County Superior Court
DATE DECISION FILED:	April 16, 2014
JUSTICE/MAGISTRATE:	Taft-Carter, J.
ATTORNEYS:	
For Plaintiff:	*See attached list
For Defendant:	*See attached list

R.I. Public Employees' Retiree Coalition, et al. v. Lincoln D. Chafee, et al.
C.A. No. PC 12-3166

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