STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: June 16, 2014]

ESTATE OF RICHARD J. DEEBLE	:	
	:	
v.	:	**C.A. No. PC 2013-0618**
	:	
RHODE ISLAND DEPARTMENT OF TRANSPORTATION	:	

DECISION

VAN COUYGHEN, J. This matter is before the Court as a result of Plaintiff's Complaint seeking declaratory judgment. Plaintiff seeks a judgment establishing a right of first refusal to purchase property previously taken by the State through eminent domain. The parties have submitted an Agreed Statement of Facts.[1] Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I

Facts and Travel

The relevant facts are as follows. Plaintiff is the Estate of Richard J. Deeble; Victoria Brown and Pamela Diehl are the co-executrices of the Estate of Richard J. Deeble. Revised Agreed Statement of Facts ¶ 1. Defendant, the Rhode Island Department of Transportation (RIDOT) is an administrative division of the State of Rhode Island established pursuant to G.L. 1956 §§ 42-13-1, et seq. Revised Agreed Statement of Facts ¶ 2.

As of January 2001, Richard J. Deeble and his wife Virginia L. Deeble (the Deebles) were the owners, as tenants by the entirety, of the real property, and improvements thereon,

[1] The parties submitted two versions of their Agreed Statement of Facts to the Court. The first was filed on January 31, 2014. The second, a revised version, was filed on February 19, 2014. The revised version, filed on February 19, 2014, represents the parties' factual agreements and was relied on by this Court in rendering its decision. See Revised Agreed Statement of Facts.

located at 480 Benefit Street, Providence, Rhode Island, and identified by the City of Providence Tax Assessor as Plat 18, Lot 21 (the Condemned Property). Revised Agreed Statement of Facts ¶ 3. On or about January 3, 2001, RIDOT acquired the Condemned Property from the Deebles by eminent domain for $1,080,000.00 in connection with the relocation of Interstate Route 195 (the Taking). Revised Agreed Statement of Facts ¶ 4. The Taking was authorized by the Rhode Island State Properties Committee in October 2000 in connection with the relocation of Interstate Route 195. Revised Agreed Statement of Facts ¶ 5. Thereafter, the Deebles filed a lawsuit against RIDOT and, after trial, the Superior Court awarded the Deebles an additional $292,403.69 for the Taking, $38,197.54 in prejudgment interest, and costs in the amount of $3,274.05. Revised Agreed Statement of Facts ¶ 6.

Virginia L. Deeble died on April 16, 2006[2] and Richard J. Deeble died on July 7, 2009. Revised Agreed Statement of Facts ¶¶ 7 and 8. Mr. Deeble's will was admitted to probate in Coventry, Rhode Island on April 22, 2010. Revised Agreed Statement of Facts ¶ 8. Mr. Deeble's will poured over into The Richard J. Deeble Revocable Trust – 1983 which, upon his death, split into two trusts, one for the benefit of Victoria Brown and the other for the benefit of Pamela Diehl. Id.

As of the date of the Taking, the Condemned Property contained approximately 31,502 square feet. Revised Agreed Statement of Facts ¶ 9. RIDOT used a portion of the Condemned Property in connection with the relocation of Interstate Route 195. Revised Agreed Statement of Facts ¶ 10. After completing the relocation of Interstate Route 195, there remains approximately 24,601 square feet of the Condemned Property (the Surplus Condemned Property). Revised

[2] Paragraph 7 of the Revised Agreed Statement of Facts states that all rights Mrs. Deeble had in the condemned property passed to Mr. Deeble by operation of law upon her death. This assertion represents a conclusion of law not considered by the Court in rendering its decision.

Agreed Statement of Facts ¶ 11. The survey of the Surplus Condemned Property is attached as Exhibit 1 to the Revised Agreed Statement of Facts. Id. In accordance with G.L. 1956 § 37-5-8(b), RIDOT is "directed, authorized and empowered" to sell the Surplus Condemned Property to the State of Rhode Island I-195 Redevelopment District Commission. Revised Agreed Statement of Facts ¶ 12.

Under the terms of a Consent Order entered by this Court on April 26, 2013, RIDOT agreed to refrain from selling or encumbering the Surplus Condemned Property pending resolution of this litigation. Revised Agreed Statement of Facts ¶ 13. In its Answer to Plaintiff's Complaint, RIDOT has denied that it has any obligation to provide the Estate of Richard J. Deeble with a right of first refusal concerning the Surplus Condemned Property as provided by article 6, section 19 of the Rhode Island Constitution. Revised Agreed Statement of Facts ¶ 14.

II

Parties' Arguments

Plaintiff asserts that it has a right of first refusal pursuant to article 6, section 19 of the Rhode Island Constitution in the event that Defendant seeks to sell or lease the remainder of the property taken from the Deebles in 2001. Specifically, Plaintiff contends that the right set forth in article 6, section 19 of the Rhode Island Constitution and codified by the Legislature in § 37-7-4 is a right vested in Mr. and Mrs. Deeble, which passed to their survivors, heirs, executors, or successors upon their death.

Defendant argues that article 6, section 19 of the Rhode Island Constitution and its codification give no such right to the survivors, heirs, executors, or successors of the original condemnee. In particular, Defendant asserts that the right of first refusal is limited to the original

landowner from whom property was taken, and that it is not a right which may pass to the Estate of Richard J. Deeble.

III

Standard of Review

Pursuant to the Uniform Declaratory Judgments Act (UDJA), the Superior Court is vested with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. Thus, "the Superior Court has jurisdiction to construe the rights and responsibilities of any party arising from a statute pursuant to the powers conferred upon [it] by G.L. chapter 30 of title 9, the Uniform Declaratory Judgments Act." Canario v. Culhane, 752 A.2d 476, 478-79 (R.I. 2000). Specifically, § 9-30-2 of the UDJA provides as follows:

> "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or legal relations thereunder."

"This statute gives a broad grant of jurisdiction to the Superior Court to determine the rights of any person that may arise under a statute not in its appellate capacity but as a part of its original jurisdiction." Canario, 752 A.2d at 479 (citing Roch v. Harrahy, 419 A.2d 827, 830 (R.I. 1980)); see also Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997).

With respect to constitutional and statutory interpretation, our Supreme Court has emphasized that when determining questions of construction, the court has an obligation to ascertain the Legislature's intent. State v. Benoit, 650 A.2d 1230, 1232 (R.I. 1994) (citing State v. Kane, 625 A.2d 1361, 1363 (R.I. 1993)); see Terrano v. State, Dep't of Corrs., 573 A.2d 1181,

1183 (R.I. 1990). The Court has the responsibility of effectuating the Legislature's intent by examining the provision in its entirety and giving words their plain and ordinary meaning. Riley v. R.I. Dep't of Envtl. Mgmt., 941 A.2d 198, 205 (R.I. 2008) (citing City of Pawtucket v. Sundlun, 662 A.2d 40, 45 (R.I. 1995)); State ex rel. Webb v. Cianci, 591 A.2d 1193, 1201 (R.I. 1991) (the chief function of the courts is to give effect to the intent of the framers when construing constitutional amendments). When a statute or a constitutional provision has a plain, clear, and unambiguous meaning, no interpretation is required. Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007) (citing State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005)). Moreover, the court will not ascribe to the legislature an intent that leads to an absurd or unreasonable result. McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 243-44 (R.I. 2012) (citing Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011)).

IV

Analysis

A

Interpretation of Article 6, Section 19 and § 37-7-4

Article 6, section 19[3] of the Rhode Island Constitution grants the original condemnee the right of first refusal[4] to repurchase or lease land taken by eminent domain for the construction of public highways, streets, places, parks, or parkways. Article 6, section 19 states as follows:

[3] Article 6, section 19, originally the Seventeenth Amendment to the Rhode Island Constitution, was proposed by the General Assembly on May 1, 1914. It was approved and ordered published on April 23, 1915 (P.L. 1915, ch. 1224) and approved by the voters on November 7, 1916 by a margin of 31,709 to 6,786. During the 1986 Constitutional Convention, the Constitution was redrafted, which included deleting sections nullified by amendment or court decision. "Annotated Constitution of the State of Rhode Island and Providence Plantations" (1988). Library Archive. Paper 26. http://helindigitalcommons.org/lawarchive/26. The Convention also directed its Committee on Style and Drafting to reorder the sections and articles in proper

> "The general assembly may authorize the acquiring or taking in fee by the state, or by any cities or towns, of more land and property than is needed for actual construction in the establishing, laying out, widening, extending or relocating of public highways, streets, places, parks or parkways; provided, however, that the additional land and property so authorized to be acquired or taken shall be no more in extent than would be sufficient to form suitable building sites abutting on such public highway, street, place, park or parkway. After so much of the land and property has been appropriated for such public highway, street, place, park or parkway as is needed therefor, the remainder may be held and improved for any public purpose or purposes, or may be sold or leased for value with or without suitable restrictions, and in case of any such sale or lease, the person or persons from whom such remainder was taken shall have the first right to purchase or lease the same upon such terms as the state or city or town is willing to sell or lease the same." R.I. Const. art. VI, § 19.

Additionally, the Rhode Island Legislature codified article 6, section 19 through § 37-7-4. Section 37-7-4 states as follows:

> "Whenever land is taken for the establishing, laying out, widening, extending, or relocating of public highways, streets, places, parks, or parkways, the acquiring authority may take more land and property than is needed for actual construction; provided, however, that the additional land and property so acquired or taken shall be no more in extent than would be sufficient to form suitable building sites abutting on the public highway, street, place, park, or parkway. After so much of the land and property has been appropriated for the public highway, street, place, park, or parkway as is needed therefor, the remainder may be held and improved by the acquiring authority for any public purpose or purposes, or may, with the approval of the state properties committee, be sold or leased for value, with or without suitable restrictions, and in the case of any sale or lease, the person or persons from whom the remainder was taken shall have the first right to purchase or lease the property upon such terms as the acquiring authority, with the

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sequence. Id. Thus, the Seventeenth Amendment became article 6, section 19 of the Rhode Island Constitution.

[4] "[A] 'Right of first refusal' does not give [the] possessor of it [the power] to compel [an] unwilling owner to sell; it merely requires the owner, when and if he decides to sell, to offer [the] property first to [the] person entitled to [the] right of first refusal at [the] stipulated price.'" Kenyon v. Andersen, 656 A.2d 963, 965 (R.I. 1995) (internal citation and quotation omitted).

> approval of the state purchasing agent, is willing to sell or lease the property." Sec. 37-7-4

The issue before this Court is whether article 6, section 19 or § 37-7-4 creates a vested right of first refusal that survives the death of the original condemnee. Stated differently, this Court must ascertain whether the language of article 6, section 19 or § 37-7-4 evinces a legislative intent to extend the right of first refusal to the original condemnee's survivors, heirs, executors, or successors.

As a preliminary matter, this Court notes that "[e]minent domain is an exercise of the inherent power of the sovereign." Rhode Island Econ. Dev. Corp. v. The Parking Co., L.P., 892 A.2d 87, 96 (R.I. 2006). "The power of eminent domain refers to the right of the sovereign, or of those to whom the power has been delegated, to condemn private property for public use, and to appropriate the ownership and possession thereof for such use upon paying the owner a due compensation." Id. (quoting 26 Am. Jur. 2d Eminent Domain § 2 at 418 (2004). Despite the fact that a "state's eminent domain authority is not derived from a specific constitutional grant, its exercise is limited by the Constitution." Id. (citing City of Newport v. Newport Water Corp., 57 R.I. 269, 275, 189 A. 843, 846 (1937). Moreover, the exercise of eminent domain is limited not only by the Rhode Island Constitution, but also the United Stated Constitution. See U.S. CONST. amend. V; R.I. Const. art. I, § 16; see also Joslin Mfg. Co. v. Clarke, 41 R.I. 350, 357, 103 A. 935, 937 (1918) (referring to the Taking Clause as "the safeguard in our state Constitution of property rights in condemnation proceedings"). Specifically, article 1, section 16 of the Rhode Island Constitution provides that "[p]rivate property shall not be taken for public uses, without just compensation." Equivalent language in the Fifth Amendment to the United States Constitution also prohibits the state, by operation of the Due Process Clause of the Fourteenth Amendment, from taking private property for the public use unless accompanied by

just compensation. See Kelo v. City of New London, Conn., 545 U.S. 469, ----, 125 S. Ct. 2655, 2672, 162 L.Ed. 2d 439 (2005) (O'Connor, J., concurring); Conti v. R.I. Econ. Dev. Corp., 900 A.2d 1221, 1231 (R.I. 2006).

Furthermore, it is well established that the measure of damages in a condemnation proceeding is the fair market value of the property at the time of the taking. Ocean Rd. Partners v. State, 612 A.2d 1107, 1110 (R.I. 1992); see also J.W.A. Realty, Inc. v. City of Cranston, 121 R.I. 374, 380, 399 A.2d 479, 482 (1979). Fair market value means "the amount of money which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses for which the land was suited and might in reason be applied." J.W.A. Realty, Inc., 121 R.I. at 380, 399 A.2d at 482 (quoting 4 Nichols, The Law of Eminent Domain § 12.2(1), at 12-71 to 81 (rev. 3d ed. Sackman 1978)); see also Sweet v. Town of W. Warwick, 844 A.2d 94, 98 (R.I. 2004) (quoting Nasco, Inc. v. Dir. of Pub. Works, 116 R.I. 712, 721, 360 A.2d 871, 876 (1976) ("[a]n individual disputing the condemning authority's offer should receive 'just compensation but not a penny more'")). Our Legislature has promulgated a statutory framework which provides that condemnees may sue the State if dissatisfied with the State's offer for compensation. See § 37-6-17, "Payment of agreed price for condemned land"; § 37-6-18, "Petition for assessment of damages by jury"; see also J.W.A. Realty, Inc., 121 R.I. at 380, 399 A.2d at 483 ("[t]his policy reflects the fundamental proposition that just compensation is the court's ultimate objective").

In order to provide the parties with a declaration of their rights, this Court's primary mission is to determine the Legislative intent behind the constitutional and statutory provision in question. See Benoit, 650 A.2d at 1232; Riley, 941 A.2d at 205. With that enterprise in mind, this Court finds it helpful to examine the context in which article 6, section 19 was enacted.

In 1916, which was when article 6, section 19 was added to the Rhode Island Constitution, "a town or its agents could be found guilty of trespass during reconstruction of a road if there was entry upon the lands of an adjacent property owner." Griffin v. Bendick, 463 A.2d 1340, 1347-48 (R.I. 1983). The rigid application of trespass law resulted in "[c]onstruction activities [being] confined to the roadbed, thereby hampering efficient road-building methods." Id. The Framers drafted article 6, section 19 in "reaction to these restraints" on constructing roads. Id. Specifically, article 6, section 19 was drafted and adopted, in part, so that the acquiring authority could take more land than was needed to build a road because it promoted better building methods by providing space to stage equipment during construction. See id. Upon completion of the road, it made sense to offer the excess land to the original condemnee if the state had no use for the land and intended to sell it. It is with this contextual background that the Court endeavors to provide the parties to this controversy with a declaration of their rights pursuant to article 6, section 19 and § 37-7-4.

A declaration of Plaintiff's rights, under article 6, section 19 and § 37-7-4, involves this Court's interpretation of the meaning of the phrase "the *person or persons from whom such remainder was taken* shall have the first right to purchase or lease the same upon such terms as the state or city or town is willing to sell or lease the same" to a third party. (emphasis added). This Court's analysis begins with an examination of the language in question. "When the statutory language is clear and unambiguous, [this Court] give[s] the words their plain and ordinary meaning." Miller v. Saunders, 80 A.3d 44, 50 (R.I. 2013) (quoting Morel v. Napolitano, 64 A.3d 1176, 1179 (R.I. 2013). Moreover, "when [this Court] examines an unambiguous statute, there is no room for statutory construction and [this Court] must apply the statute as written." Id. (internal citation and quotation omitted). In doing so, this Court

recognizes that '"ambiguity lurks in every word, sentence, and paragraph in the eyes of a skilled advocate . . . the question is not whether there is an ambiguity in the metaphysical sense, but whether the language has only one reasonable meaning when construed, not in a hypertechnical fashion, but in an ordinary, common sense manner."' Garden City Treatment Center, Inc. v. Coordinated Health Partners, Inc., 852 A.2d 535, 542 (R.I. 2004) (quoting Textron, Inc. v. Aetna Cas. & Sur. Co., 638 A.2d 537, 541 (R.I. 1994)). Therefore, this Court will "refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity where none is present." Mallane v. Holyoke Mut. Ins. Co. in Salem, 658 A.2d 18, 20 (R.I. 1995).

In addition, this Court must "presume the language was carefully weighed and its terms imply a definite meaning." Id. After finding a constitutional or statutory provision to be unambiguous, this Court "conclusively presumes" that "[t]he meaning expressed is . . . the meaning intended." Terrano, 573 A.2d at 1183 (quoting Murphy v. Murphy, 471 A.2d 619, 622 (R.I. 1984)). Furthermore, this Court also acknowledges the need to take into account the longstanding principle that "statutes should not be construed to achieve meaningless or absurd results." McCain, 41 A.3d at 243-44 (internal citations omitted).

Generally, when interpreting constitutional and statutory provisions which provide for a right of first refusal, the provisions are narrowly construed. [5] See 3 Nichols, Eminent Domain

[5] While the right of first refusal in the instant matter derives from a constitutional provision, this Court finds that a brief examination of rights of first refusal created by written instruments is insightful. In harmony with constitutional and statutory rights of first refusal, contractual rights of first refusal are also construed strictly by courts. See 92 C.J.S. Vendor & Purchaser § 182 (2000) (in the context of a contract, "[a] preemptive right or right of first refusal[,] that is silent as to duration[,] should be interpreted to be personal in nature and limited to the lifetime of the parties to the contract"). For example, in the context of an instrument such as a contract or deed, courts have generally held that the intent of the parties is dispositive in deciding whether a right of first refusal is assignable or personal. See Midwest Commc'ns, Inc. v Minnesota Twins, Inc., 779 F.2d 444, 455 (8th Cir. 1985) (stating that "[w]hen construing a contract, the fact-finder must allow the parties' intent to prevail"). As a result, rights of first refusal are presumed to be

§ 9.04(3)(i). For example, in Swims v. Fulton County, 475 S.E.2d 597 (1996), the Supreme Court of Georgia held that a transfer of property from one state entity to another state entity did not trigger the right of first refusal because the transfer did not come within interpretation of the word "disposal." Moreover, in Mary Chamberlin Trust v. Litke, 534 N.E.2d 33 (1998), the Court of Appeals of New York found that an attempt by the city to lease condemned property, after abandoning the project for which land was taken, was not a "disposition" of the property within meaning of statute, so as to provide former owner right of first refusal to purchase property.

The narrow interpretation of rights of first refusal exemplified by the above-mentioned cases also effectively promotes the free alienability of property, which is a policy favored by the common law and Rhode Island courts. See Ashley v. Kehew, 992 A.2d 983, 989 (R.I. 2010) (internal citation and quotation omitted) (reaffirming that Rhode Island courts must construe restrictions on the sale of real property "in favor of the free alienability of land while still respecting the purposes for which the restriction was established"); see also Hanley v. Misischi, 111 R.I. 233, 238, 302 A.2d 79, 82 (1973) (citing Emma v. Silvestri, 101 R.I. 749, 227 A.2d 480 (1967)) (holding that in order to increase the free use and transfer of land, restrictions on land use are to be strictly construed).

Our Supreme Court has narrowly interpreted article 6, section 19 and § 37-7-4 in the past. For example, in Griffin, 463 A.2d at 1347-48, the Court refused to expand the application of article 6, section 19 and § 37-7-4 to condemnees of land taken for a port. Specifically, our

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personal and are not ordinarily construed as transferable or assignable *unless* the particular clause granting the right refers to successors or assigns, or the instrument otherwise clearly shows that the right was intended to be transferable or assignable. See 77 Am. Jur. 2d Vendor and Purchaser § 34 at 152 (2006) (emphasis added).

Supreme Court held that article 6, section 19 and § 37-7-4[6] were inapplicable to the matter before it because "the term 'port' does not appear in the language cited, nor can its presence be inferred by any stretch of the imagination." Id. Moreover, our Supreme Court opined that:

> "[t]he Legislature, if it had so desired, could have expressly included a reference to port facilities in the language of the amendment . . . a conscious decision was made with respect to parks and parkways . . . absence of any such reference [to ports] consequently evidences an intent not to include such facilities within its ambit." Id. at 1348.

The Court went on to narrowly define the word "place," in the context of article 6, section 19, as referring to a "court or square on a short street." Id. It is axiomatic that article 6, section 19 only applies to "highways, streets, places, parks or parkways." See art. 6, section 19. The Court's refusal to expand the application of the word "place" in Griffin is indicative of the Court's interpretation of the Framer's intent when they drafted article 6, section 19. See id. It is clear that our Supreme Court found that the right of first refusal created by article 6, section 19 and § 37-7-4 is a strictly circumscribed right. See id. Likewise, in Lapre v. Flanders, 465 A.2d 214, 216 (R.I. 1983), the Supreme Court refused to apply the right of first refusal contained in article 6, section 19 to land taken for an airport. Similarly, in Wood v. City of East Providence, 504 A.2d 441, 443 (R.I. 1986), our Supreme Court relied on its previous holding in Griffin and Lapre

[6] This Court notes that the Griffin Court's holding regarding the limitations on the right of first refusal, emanating from article 6, section 19, focused on the Constitutional provision. However, the Court also highlighted that "the statute that tracks [Art. 6, Section 19] is . . . § 37-7-4" and that "the language used in § 37-7-4 referring to "highways, streets, places, parks or parkways" is identical to the language used in the [Constitutional provision]." Griffin, 463 A.2d at 1348. Accordingly, this Court finds that the Court's discussion of article 6, section 19 was equally applicable to § 37-7-4. See id.

and refused to extend the right of first refusal in article 6, section 19 to land taken by the State for school purposes.[7]

Here, this Court finds that the relevant language of article 6, section 19 and § 37-7-4 to be clear and unambiguous. See Miller, 80 A.3d at 50; Little v. Conflict of Interest Comm'n, 121 R.I. 232, 237, 397 A.2d 884, 887 (1979). Thus, this Court must "employ the well-established rule . . . that when words in the constitution [or statute] are free of ambiguity, they must be given their plain, ordinary, and usually accepted meaning." Riley, 941 A.2d at 205 (quoting Sundlun, 662 A.2d at 45).

Both article 6, section 19 and § 37-7-4 provide in pertinent part "the person or persons from whom the remainder was taken shall have the first right to purchase or lease." Art. 6, sec. 19; § 37-7-4. This Court finds that the clear and unambiguous language of article 6, section 19 and § 37-7-4 limits the right of first refusal to the original condemnee(s). See Riley, 941 A.2d at 205; Griffin, 463 A.2d at 1347-48. Furthermore, the historical context and purpose of article 6, section 19 and § 37-7-4 does not evidence that the right of first refusal was intended to continue in perpetuity. See id. at 1347-48. This Court's interpretation of the constitutional provision and its codification is bolstered by our Supreme Court's disfavor of unreasonable restraints on alienation, general principles regarding the strict construction of rights of first refusal, and the

[7] Even though our Supreme Court has never specifically addressed the issue before this Court, it has previously described the right of first refusal emanating from article 6, section 19 and codified by § 37-7-4 as limited to the original landowners. See Griffin, 463 A.2d at 1348 (referring to the holder of the right of first refusal as the "original landowner"). Additionally, the Supreme Court advisory opinion—Advisory Opinion to Governor, 110 R.I. 1, 5, 289 A.2d 430, 434 (1972)—though not binding precedent—does provide some direction. The Court stated article 6, section 19 of the Rhode Island Constitution and § 37-7-4 "give[ ] the *original landowner* a constitutionally protected preemptive right to purchase or lease the remainder taken from him earlier by either the state or a municipality." Advisory Opinion to Governor, 110 R.I. at 7, 289 A.2d at 434—(citing M.S. Alper & Son, Inc. v. Capaldi, 99 R.I. 242, 206 A.2d 859 (1965) (emphasis added).

narrow interpretation of rights that did not exist at common law. See Ashley, 992 A.2d at 989; 3 Nichols, Eminent Domain § 9.04(3)(i); see also Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996) (citing Ayers–Schaffner v. Solomon, 461 A.2d 396, 398 (R.I. 1983)) (holding that a provision that establishes rights not recognized by common law is subject to strict construction).

If this Court were to interpret article 6, section 19 and § 37-7-4 as Plaintiff urges, it would extend the right of first refusal to the original condemnee's survivors, heirs, executors, or successors. In the event the original condemnee died intestate, his heirs would inherit the right. If the original condemnee died testate, his beneficiaries would inherent the right. Either manner of inheritance would likely impose an extensive cloud on the title if considerable time had passed between the condemnation and the offering of the property for sale. The right of first refusal could be dispersed throughout generations and would potentially put the acquiring authority in the position of locating and offering the right of first refusal to multiple persons and/or entities. This raises many practical questions, such as: How would the right of first refusal be offered to numerous persons or entities with varying degrees of entitlement to the original condemnee's estate? What consequences would result if heirs or beneficiaries could not be located? Would the acquiring authority be required to proceed with title clearing procedure prior to the sale of the property? There is no evidence to suggest that the Legislature intended to saddle the acquiring authority with these burdens by allowing the right of first refusal to pass to the survivors, heirs, executors, or successors of the original condemnee.

Furthermore, allowing the heirs or beneficiaries of the original condemnee the right of first refusal would encumber the property and likely reduce its value. See Jerome v. Probate Court of Town of Barrington, 922 A.2d 119, 123 n.9 (R.I. 2007) (quoting Black's Law

Dictionary 568 (8th ed. 2004) (defining an encumbrance as "[a] claim or liability that is attached to property or some other right . . . that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest"). It is incongruent to find that the Framers drafted a Constitutional provision, and the Legislature passed a statutory provision, that would diminish the fair market value of condemned property in light of the fact that the Deebles were paid a total of $1,372,403.69 by the State representing the fair market value of the property. In this Court's opinion, interpreting article 6, section 19 and § 37-7-4 as urged by Plaintiff would lead to an absurd and inconsistent result restricting the alienability of the land and thus its value. See Parkinson v. Bd. of Assessors of Medfield, 495 N.E.2d 294, 297 (Mass. 1986) (internal citation and quotation omitted) ("restrictions on . . . property may reduce its value below that which would be appropriate in the absence of such restrictions"); see also Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 923 (R.I. 2004) (internal quotation omitted) (holding that the purpose of a court's interpretive endeavor is to "determine and effectuate the [Framers' intent and [ ] attribute to the enactment the meaning most consistent with its policies or obvious purposes").

For the above stated reasons, this Court finds that article 6, section 19 and § 37-7-4 limits the right of first refusal to the original condemnees. Accordingly, Plaintiff does not possess a right of first refusal in connection with the property taken by the State from the Deebles.

B

In Pari Materia

In support of their request for declaratory relief, Plaintiff argues that this Court should look beyond the text of article 6, section 19 and interpret §§ 37-7-4 and 37-7-3 in pari materia. In pari materia is a cannon of statutory construction which stands for the proposition that

"statutes on the same subject . . . are, when enacted by the same jurisdiction, to be read in relation to each other." Horn v. S. Union Co., 927 A.2d 292, 301 (R.I. 2007) (citing Reed Dickerson, The Interpretation and Application of Statutes 233 (1975)). In pari materia is utilized in an attempt to harmonize inconsistencies within statutory provisions relating to the same subject matter. See id. (citing State v. Dearmas, 841 A.2d 659, 666 (R.I. 2004)) (when "faced with [constitutional and] statutory provisions that are in pari materia, [this Court] construe[s] them in a manner that attempts to harmonize them and that is consistent with their general objective scope").

Plaintiff urges this Court to interpret the limiting language found in § 37-7-3 to create an ambiguity in § 37-7-4. Section 37-7-3 is a general condemnation statute which applies to all land taken by eminent domain except land taken for public highways, streets, places, parks, or parkways. See § 37-7-3. Section 37-7-3 provides that an original condemnee has the right of first refusal, "if living," if the acquiring authority wishes to sell or lease the condemned property.[8] See id.

This Court has already held that the language of § 37-7-4 is clear and unambiguous. Chambers, 935 A.2d at 960 (internal citation omitted); see also State v. Diamante, 83 A.3d 546, 550 (R.I. 2014). Section 37-7-4 provides that "the person or persons from whom the remainder was taken shall have the first right to purchase or lease the property . . . ." See § 37-7-4. There is absolutely no reference to the original condemnee's heirs, executors, or assigns. See id. Furthermore, reading § 37-7-4 in conjunction with § 37-7-3 does not render § 37-7-4 ambiguous.

[8] Section 37-7-3 also provides the City or Town, in which the condemned property is situated, with the ability to exercise a right of first refusal in the event the original condemnee chooses not to exercise his or her right of first refusal. See § 37-7-3.

See §§ 37-7-4 and 37-7-3. The limiting language providing for the right of first refusal to the original condemnee in § 37-7-3 cannot be interpreted in such a way as to infer that the exclusion of similar language in § 37-7-4 signifies a legislative intent to extend the right of first refusal to the original condemnee's survivors, heirs, executors, or successors. It is *non sequitur* to conclude that the exclusion of the words "if living" in § 37-7-4 evidences a conscious decision by the Legislature to extend the right of first refusal as urged by Plaintiff. This is especially true because the statute is clear on its face and does not specifically grant such right to the survivors, heirs, executors, or successors of the original condemnee. See Santos, 870 A.2d at 1032 (internal quotation marks omitted) (holding that a Court may not "broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent or defining the terms of the statute").

Moreover, the limiting language "if living," contained in § 37-7-3, provides clarity when considered in the context of the entire statute. Section 37-7-3 specifically provides that the acquiring authority may, "with the consent of the person or persons from whom the land . . . was obtained, or their heirs, successors, or assigns, convey the property, or any part thereof" back to the original owners, their heirs, successors or assigns. See § 37-7-3. The statute also provides that the conveyance "shall be considered in mitigation of damages in any proceeding instituted on account of the taking." See id. The reference to the original condemnee's heirs, successors, or assigns in the mitigation clause necessitates the inclusion of the limiting language, "if living," within the right of first refusal clause to avoid any implication that the heirs, successors, or assigns are entitled to the right of first refusal. See id. Conversely, § 37-7-4 has no such mitigation provision and the phrase "heirs, successors, and assigns" is not referenced therein, making the limiting language "if living" unnecessary. See § 37-7-4. For the above stated

reasons, it clear to this Court that the doctrine of in pari materia is not applicable to this Court's interpretation of article 6, section 19.

Even if this Court were to find that there was a conflict between § 37-7-4 and § 37-7-3, which created an ambiguity—Plaintiff's reliance on the doctrine of in pari materia would be misplaced. Plaintiff's argument also fails to consider the rule of statutory construction which requires that specific statutes prevail over general statutes that relate to the same subject matter. See Whitehouse v. Moran, 808 A.2d 626, 629-30 (R.I. 2002); see also Police and Firefighter's Ret. Ass'n of Providence v. Norberg, 476 A.2d 1034, 1036 (R.I. 1984). This rule of construction is set forth in G.L. 1956 § 43–3–26. Specifically, § 43–3–26 states that:

> "[w]herever a general provision shall be in conflict with a special provision relating to the same or to a similar subject, the two (2) provisions shall be construed, if possible, so that effect may be given to both; and in those cases, if effect cannot be given to both, the special provision shall prevail and shall be construed as an exception to the general provision."

Moreover, in Morton v. Mancari, 417 U.S. 535, 550-51 (1974), the Supreme Court expounded that "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."

Thus, assuming arguendo, that § 37-7-4 were in conflict with § 37-7-3, § 37-7-4 must prevail because it "specifically deals" with land condemned for the purposes of improving public highways, streets, places, parks, or parkways. Conversely, § 37-7-3 applies "[w]henever in the opinion of the acquiring authority *any land or other real property* or interest therein taken by condemnation is no longer required for the purpose for which it was taken." See § 37-7-3 (emphasis added). In particular, § 37-7-4 applies to the condemnation of land for the specific purposes of expanding a public highway. See § 37-7-4. Comparatively, § 37-7-3 is a general provision that applies to all other land taken by eminent domain and not covered by § 37-7-4.

See § 37-7-3; Griffin, 463 A.2d at 1347-48. As a result, the application of the doctrine of in pari materia is not applicable to the interpretation of § 37-7-4.

IV

Conclusion

This Court hereby declares that Plaintiff is not entitled to the right of first refusal, pursuant to article 6, section 19 or § 37-7-4, because the right of first refusal is only applicable to the original condemnee and cannot pass to the original condemnee's estate. Counsel for the prevailing party shall submit an appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Estate of Richard J. Deeble v. Rhode Island Department of Transportation
CASE NO:	C.A. No. PC 13-0618
COURT:	Providence County Superior Court
DATE DECISION FILED:	June 16, 2014
JUSTICE/MAGISTRATE:	Van Couyghen, J.
ATTORNEYS:	
For Plaintiff:	Robert Clark Corrente, Esq.; Christopher L. Ayers, Esq.
For Defendant:	Richard B. Woolley, Esq.