STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 11, 2017]

ANGELA GIGUERE KUMBLE f/k/a ANGELA GIGUERE and CHRISTINE TELLEFSEN f/k/a CHRISTINE GIGUERE-CARROZZA,	**:**	
Plaintiffs,	**:**	
v.	**:**	**C.A. No. PB-2012-3338**
MICHAEL VOCCOLA and DANIEL SHEDD,	**:**	**(*Consolidated with)***
Defendants.	**:**	

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MICHAEL A. VOCCOLA and DANIEL S. SHEDD, in their capacity as Trustees of the Trust Under Will of Frederick Carrozza Jr., and MICHAEL A. VOCCOLA, in his capacity as Executor of the Estate of Frederick Carrozza Jr.,	**:**	
Plaintiffs,	**:**	
v.	**:**	**C.A. No. PB-2012-3476**
ANGELA GIGUERE KUMBLE, f/k/a ANGELA GIGUERE and CHRISTINE TELLEFSEN f/k/a CHRISTINE GIGUERE-CARROZZA,	**:**	
Defendants.	**:**	

DECISION

SILVERSTEIN, J. Currently before the Court is a dispute involving the Beneficiaries of a testamentary instrument and the fiduciaries appointed to oversee its execution. The parties to these consolidated matters participated in a bench trial, during which they offered evidence

concerning the amount of compensation owed to the fiduciaries, as well as the reasonableness of the fiduciaries' requests for reimbursement for legal fees incurred in their capacity as fiduciaries. This Court has jurisdiction over the subject matter of the dispute under G.L. 1956 § 8-2-13. Pursuant to Super. R. Civ. P. 52(a), the Court now states its findings of fact and conclusions of law regarding the above-mentioned issues.

I

Findings of Fact

1. Frederick Carrozza Jr. (Carrozza Jr.) established the Frederick Carrozza Jr. Testamentary Trust Under Will for the benefit of his widow, Angela Kumble (A. Kumble), and his daughter, Christine Tellefsen (Tellefsen) (collectively, the Beneficiaries).
2. The trust was established in part to prevent Carrozza Jr.'s father, Frederick Carrozza Sr., from obtaining control of the assets of Carrozza Jr.
3. Carrozza Jr. chose two of his longtime friends, Michael Voccola (Voccola) and Daniel Shedd (Shedd) (collectively, the Trustees), to serve as co-trustees with respect to the trust.
4. Prior to being chosen, Voccola had no experience acting as a trustee.
5. Voccola was also appointed by Carrozza Jr. as Executor of the latter's estate.
6. Voccola graduated from law school in 1997, but is not licensed to practice law in the State of Rhode Island.
7. While serving as a fiduciary, Voccola held a position as a Vice President at a real estate investment and management company known as The Procaccianti Group.
8. Under the terms of the trust, the Trustees were required to pay to A. Kumble and Tellefsen "so much of the net income arising from the trust estate as [the Trustees] shall deem

advisable in all the circumstances for the health, maintenance, and support of [A. Kumble and Tellefsen], or for the welfare in other respects of my said wife, [A. Kumble]."

9. Upon A. Kumble's passing, the trust estate was to be distributed to Tellefsen, if Tellefsen had then reached the age of thirty-two.
10. For their services to the Beneficiaries, the Trustees were to receive "reasonable compensation."
11. On August 19, 2002, Carrozza Jr. died. At the time of his death, Carrozza Jr. was the owner of the following properties, all of which became part of the trust estate: a mixed-use building and an adjacent parking lot located on Bellevue Avenue in Newport (the Bellevue Avenue Property); a condominium unit on Canary Court in West Warwick (Canary Court); and a commercial property housing a rental car facility on Post Road in Warwick (the Post Road Property) (collectively, the Trust Properties).
12. Prior to Carrozza Jr.'s death, A. Kumble and Tellefsen, who are both licensed real estate brokers, had been involved in management of what became the Trust Properties.
13. Voccola deemed it prudent to allow A. Kumble and Tellefsen to continue to act as managers of the Trust Properties "given the historical nature of [A. Kumble and Tellefsen]'s management of the properties, and knowledge of the real estate, and knowledge of the vendors, and knowledge of the tenants and the rents, etc." Trial Tr. 118:20-24.
14. Neither Voccola nor Shedd possessed keys to the Trust Properties.
15. Voccola interacted with certain tenants of the Trust Properties. For example, he served as the "primary liaison" with respect to the Post Road Property tenant.
16. Tellefsen was paid for services she provided as a manager of the Trust Properties.

17. As property managers, A. Kumble and Tellefsen collected rents, handled routine repairs and maintenance, interacted with tenants, and paid bills and expenses.
18. A. Kumble communicated regularly with Voccola regarding the Trust Properties.
19. Tellefsen testified that Voccola provided assistance to her and A. Kumble concerning the Trust Properties when asked to do so.
20. Voccola maintained no contemporaneous time records evidencing the scope of his participation with respect to the management of the Trust Properties.
21. Shedd, who occasionally acted as a consultant to Voccola, had minimal involvement with the trust and the Beneficiaries.
22. Funds related to the trust and the Trust Properties were held in a Fleet Bank account that bore Carrozza Jr.'s name and which had existed prior to his death.
23. The Trustees had no signatory authority with respect to the Fleet Bank account and could not withdraw money from it.
24. Funds withdrawn from the Fleet Bank Account were withdrawn by the Beneficiaries.
25. As Executor, Voccola filed Carrozza Jr.'s will in the Probate Court of Middletown, Rhode Island.
26. Voccola took part in the process of resolving claims against the Estate.
27. Voccola marshaled the assets of the Estate and arranged for certain Estate assets to be appraised.
28. Voccola disposed of certain assets of the Estate to create liquidity for the Beneficiaries. For example, Voccola, with assistance from A. Kumble, coordinated the purchase by a third party of property located on Atwells Avenue in Providence, Rhode Island.
29. Voccola notified Fleet Bank of his appointment as the Executor of Carrozza Jr.'s Estate.

30. As a fiduciary, Voccola reviewed and signed tax returns prepared by an accountant on behalf of the trust and the Estate.
31. Voccola also engaged an attorney for the purposes of obtaining a reduced tax assessment with respect to the Bellevue Avenue Property in 2009.
32. In 2004, Voccola acted in his fiduciary capacity as trustee to contest a finding by the Newport Fire Department of a fire code violation at the Bellevue Avenue Property.
33. Voccola did not maintain contemporaneous records detailing the tasks he performed as Executor or the amount of time he spent completing those tasks.
34. Voccola did preserve emails and other documents produced in the course of the performance of his duties as Executor.
35. After reviewing the preserved emails and documents, Voccola concluded that he had worked 179 hours in his capacity as Executor.
36. A determination was not requested of and has not been made by the probate court as to the amount of compensation to which Voccola as Executor is entitled.
37. Shortly after Carrozza Jr.'s death, Carrozza Jr.'s father, Frederick Carrozza Sr. (Carrozza Sr.), and other members of the Carrozza family filed a lawsuit against the Executor of Carrozza Jr.'s Estate, as well as the Beneficiaries. Carrozza Sr. and his co-plaintiffs also filed notices of lis pendens with respect to the Trust Properties.
38. The objective of the lawsuit Carrozza Sr. filed was to have a resulting trust imposed on the Trust Properties.
39. Carrozza Sr.'s other children—Phillip Carrozza, Freida Carrozza, and Laurie Carrozza-Conn—joined him as plaintiffs in that lawsuit.

40. Voccola and the Beneficiaries filed a counterclaim against Carrozza Sr. and his co-plaintiffs for slander of title.

41. Attorney Evan Leviss was hired to defend both Carrozza Jr.'s Estate and the Beneficiaries against the claims brought by Carrozza Sr. and his co-plaintiffs.

42. At A. Kumble's suggestion, Attorney Alan Baron, an out-of-state attorney, was retained to represent the interests of the Beneficiaries in the litigation.

43. Attorneys Leviss and Baron communicated frequently with one another and with Voccola regarding the matter.

44. Ultimately, the claims brought by Carrozza Sr. and his co-plaintiffs were dismissed.

45. Following trial, the Newport Superior Court entered a $2.5 million judgment, including a punitive damages award of $845,000, in favor of Voccola and the Beneficiaries.[1]

46. For their services, Attorneys Leviss and Baron were paid $242,540.05 and $753.709.64, respectively.

47. Attorney Baron was paid by A. Kumble's husband, Steven Kumble.

48. Attorney Leviss was compensated with funds drawn from accounts held by A. Kumble, personally, or the trust itself.

49. A. Kumble provided funds to pay for improvements to the Trust Properties.

50. Between 2008 and 2010, A. Kumble provided approximately $310,000 to fund renovations made to the Bellevue Avenue Property.

51. In November 2010, Voccola expressed disappointment concerning Tellefsen's property management.

[1] The amount of the punitive damages award was subsequently found to be excessive and was reduced by our Supreme Court. See Carrozza v. Voccola, 90 A.3d 142 (R.I. 2014).

52. Voccola also expressed frustration because he had not yet been compensated for the services he was providing as a fiduciary.

53. In November 2010, Voccola resigned as trustee.

54. Steven Kumble, who had been informed of Voccola's intent to resign as trustee, requested that Voccola withdraw his resignation. Voccola acceded to that request.

55. As Trustee, Voccola created liquidity for the trust by refinancing the Trust Properties.

56. In 2012, for example, Voccola arranged a refinancing for the Trust Properties, which generated $662,000 in net proceeds for the trust.

57. Voccola intended that a portion of the proceeds from this transaction, as well as additional, similar transactions, be used to reimburse A. Kumble for expenditures made on behalf of the trust.

58. In connection with the 2012 refinancing, Voccola generated an invoice in the amount of $75,000 for "special services" provided to the trust.

59. The $75,000 fee was "neither a percentage-based fee [n]or an hourly fee," but a "flat fee for the work that [Voccola] did." Trial Tr. 271:4-7.

60. Prior to generating the invoice, Voccola had not received any compensation for his services as trustee.

61. Also in 2012, and with a mandate from A. Kumble, Voccola arranged for the disposition of Canary Court.

62. While he was coordinating the disposition of Canary Court, Voccola provided minimal information in response to certain inquiries made by Attorney Leviss and the Beneficiaries concerning the status of the transaction.

63. Voccola stated that he "didn't have an obligation, a need, or desire to communicate with Mr. Leviss about what my duties as a trustee [were] relative to the sale of [Canary Court]."

64. Voccola deposited the proceeds from the Canary Court transaction into a Washington Trust bank account that A. Kumble was not permitted to access.

65. Using funds withdrawn from the Washington Trust account, Voccola retained the law firm of Duffy & Sweeney in connection with the matters subject to this litigation.

66. Voccola did not disclose to the Beneficiaries his intent to use the proceeds from the Canary Court transaction to pay Duffy & Sweeney because he "did not feel as though [he] needed to."

67. A substantial portion of the proceeds from the Canary Court transaction were used to pay fees incurred by Duffy & Sweeney.

68. On June 20, 2012, Voccola informed the Beneficiaries that he had retained the services of the law firm of Duffy & Sweeney.

69. On June 20, 2012, Voccola also informed the Beneficiaries of his intent to retain a third-party management company, Olympus Group Management Company (Olympus Group), to manage the remaining Trust Properties.

70. Attorney Leviss refused to comply with a request by Voccola for documents to be transferred to Olympus Group.

71. On June 27, 2012, A. Kumble attempted to renounce her interest in the trust.

72. On June 29, 2012, the Beneficiaries sued the Trustees for specific performance and for conveyance of the trust estate to Tellefsen.

73. Also on June 29, 2012, the Beneficiaries moved for a Temporary Restraining Order concerning the engagement of Olympus Group, the termination of Attorney Leviss as trust

counsel, and the disbursement of trust funds. The Court denied the Motion, and ordered the Beneficiaries to comply with the Trustees' request for documents.

74. Subsequently, the Beneficiaries filed two additional Motions to enjoin the Trustees' use of independent property managers. Both Motions were denied.

75. The Beneficiaries also moved to enjoin the Trustees' appointment of a new accountant.

76. On July 5, 2012, the Trustees brought a replevin action against the Beneficiaries, whereby they sought control of certain trust assets, including documents and records.

77. On August 3, 2012, the Beneficiaries filed counterclaims in the Trustees' replevin action. However, in 2014, the Beneficiaries amended their counterclaims alleging breaches of fiduciary duty and of the duty of loyalty.

78. On August 6, 2012, the Trustees filed an answer and counterclaims in the Beneficiaries' suit for specific performance. The Trustees counterclaimed that the Beneficiaries had committed acts of embezzlement, conversion, unlawful appropriation, larceny, tortious interference with business relations, and breaches of fiduciary duties owed to the Trustees.

79. On October 26, 2012, this Court issued a bench decision, granting specific performance to the Beneficiaries with respect to their request that the co-trustees distribute the trust assets to Tellefsen.

80. On December 10, 2012, this Court entered a Consent Order, directing that the assets of the trust estate be conveyed to Tellefsen.

81. Between June 27, 2012 and October 26, 2012, Duffy & Sweeney incurred fees in the amount of $175,425.25.

82. By a stipulation dated November 6, 2014, the parties to this litigation agreed to allow this Court to determine the amount of fees owed to Voccola for services he allegedly provided as Executor of the Estate of Carrozza Jr.

83. As of May 2015, Duffy & Sweeney have incurred upwards of $900,000 in attorneys' fees.

84. This Court authorized and ordered that on-account payments in the amount of $275,000 be made to Duffy & Sweeney toward the fees referenced in ¶ 83.

85. This Court further authorized and ordered that on-account payments in the amount of $15,000 be made to offset fees incurred by the Trustees in obtaining expert testimony.

II

Standard of Review

"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). The Court "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). "The trial justice, however, 'need not engage in extensive analysis to comply with this requirement.'" S. Cty. Post & Beam, Inc. v. McMahon, 116 A.3d 204, 210 (R.I. 2015) (quoting JPL Livery Servs., Inc. v. R.I. Dep't of Admin., 88 A.3d 1134, 1141 (R.I. 2014)). "Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." Anderson v. Town of E. Greenwich, 460 A.2d 420, 423 (R.I. 1983).

III

Discussion

A

Executor Compensation

The first issue in this case is whether Voccola is entitled to compensation for the services he performed as Executor of Carrozza Jr.'s Estate. In Rhode Island, executors are allowed "such compensation for their services as the probate court shall consider just." G.L. 1956 § 33-14-8. Other courts may review determinations made by the probate court as to what constitutes just compensation, see Kogut v. Brenner, 113 R.I. 327, 328-29, 321 A.2d 103, 104 (1974), but the statutory authority to award compensation to executors generally rests with the probate court alone. See § 33-14-8.

Here, the probate court has not made a determination as to what would constitute just compensation for Voccola in his capacity as Executor. Absent such a determination, this Court would ordinarily be without jurisdiction to state a conclusion regarding whether Voccola is entitled to the fee he seeks. See id. However, by way of a Stipulation entered in November 2014, the parties agreed to allow this Court to "determine whether Michael Voccola, as executor of the Estate of Frederick Carrozza Jr., is entitled to receipt of compensation for his services as Executor of the Estate and the amount of any such compensation." Stipulation ¶ 1 (Nov. 6, 2014). The Stipulation is signed by Counsel for the Executor, as well as Counsel for the Beneficiaries, and states that "[t]he parties will not assert any jurisdictional challenge with regard to this Court's authority to determine Voccola's Executor compensation, including any assertion

that the issue needed to be addressed in the first instance to the Probate Court in the Town of Middletown, Rhode Island."[2] Id. at ¶ 2.

Typically, '"no action of the parties can confer subject-matter jurisdiction upon a . . . court.'" Sidell v. Sidell, 18 A.3d 499, 507 (R.I. 2011) (quoting Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982)). Even a signed stipulation, such as the one entered here, would normally not be sufficient, ipso facto, to vest in a court the power to rule. See Macera v. Mortgage Elec. Registration Sys., Inc., 719 F.3d 46, 48-49 (1st Cir. 2013). However, under § 8-2-13 of our General Laws, "the superior court shall have jurisdiction of all other actions arising out of the same transaction or occurrence" as any action of an equitable character brought before the superior court, "provided the other actions are joined with the action so brought or are subsequently made a part thereof under applicable procedural rules." Our Supreme Court has characterized the above provision as a "supplemental jurisdiction provision," Chavers v. Fleet Bank (RI), N.A., 844 A.2d 666, 678 (R.I. 2004), and noted that it "is analogous to 28 U.S.C. § 1367, which authorizes federal district courts, in certain situations, to extend supplemental jurisdiction over claims not otherwise cognizable in federal court." Id. at 678 n.11.

Section 1367 of Title 28 of the United States Code states that, except as expressly provided elsewhere, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." The purposes of 28 U.S.C. § 1367 are to promote judicial economy, convenience, and fairness to litigants. Growth Horizons, Inc. v. Delaware Cty., Pa., 983 F.2d 1277, 1284 (3d

[2] The Beneficiaries reserved "any and all rights they may have to object to Voccola's request for Executor compensation at the trial of this matter." Stipulation ¶ 4 (Nov. 6, 2014).

Cir. 1993). Where the court's authority to exercise supplemental jurisdiction would not facilitate the achievement of these objectives, "a federal court should hesitate" to invoke 28 U.S.C. § 1367. United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966).

Thus, in order for this Court to assume jurisdiction with respect to the executor compensation question, it must find that there is a proceeding equitable in nature properly before it, that the executor compensation question arises out of the same transaction or occurrence as the equitable proceeding, and that the executor compensation question and the equitable proceeding were properly joined or made part of the same action. See § 8-2-13. Additionally, the Court should consider whether its determination of the executor compensation question would further the goals of judicial economy, convenience, and fairness to the litigants. See Growth Horizons, Inc., 983 F.2d at 1284; see also Chavers, 844 A.2d at 679-80.

Here, Voccola and Shedd have asserted a claim that is equitable in nature necessary for the Court to invoke supplemental jurisdiction over Voccola's claim for executor compensation. In addition to Voccola's own claim for executor compensation—and in addition to the Trustees' joint claim for trustees' fees—both Voccola and Shedd seek indemnification for the attorneys' fees they have incurred in their role as trustees. Because the Court must exercise its equitable authority in order for such fees to be awarded in the first place, see In re Janet S. Bagdis Living Trust Agreement, 136 A.3d 1122, 1130 (R.I. 2016), the Court concludes that there is an equitable proceeding properly before it for purposes of § 8-2-13. This Court also concludes that the Trustees' request for attorneys' fees and the Executor's prayer for compensation were properly made part of the instant action. Therefore, for purposes of § 8-2-13's supplemental jurisdiction provision, the only remaining issue for the Court to resolve is whether the question concerning

executor compensation arises out of the same transaction or occurrence as the proceeding involving the Trustees' demand for indemnification for their attorneys' fees.

On at least two occasions, our Supreme Court has acknowledged the authority of the Superior Court to exercise jurisdiction of a matter under the supplemental jurisdiction provision of § 8-2-13. See Chavers, 844 A.2d at 678-80; see also Wellington Hotel Assocs. v. Miner, 543 A.2d 656 (R.I. 1988) (noting that "the exercise by the Superior Court of equitable jurisdiction may reach other actions arising out of the same transaction or occurrence only if such other actions are jointed with the then-pending Superior Court action pursuant to the applicable procedural rules"). However, the Court has not opined on the meaning of the phrase "same transaction or occurrence" as it is used in § 8-2-13. Although this Court could turn to case law interpreting 28 U.S.C. § 1367 for guidance with respect to this issue, it will first look to Decisions involving Rule 13(a) of the State and Federal Rules of Civil Procedure.[3] Rule 13(a) of the Rhode Island Superior Court Rules of Civil Procedure concerns compulsory counterclaims and states that "[a] pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Federal Rules of Civil Procedure 13(a) similarly requires that "[a] pleading must state as a counterclaim any claim that . . . the pleader has against an opposing party if the claim . . . arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Both the Superior Court

[3] While 28 U.S.C. § 1367 has been called analogous to § 8-2-13, see Chavers, 844 A.2d at 678 n.11, the Court notes that the text of the statutes varies in the following respect: Whereas 28 U.S.C. § 1367 confers supplemental jurisdiction over claims which are "so related to claims in the action . . . that they form part of the same case or controversy," the supplemental jurisdiction provision of § 8-2-13 is triggered when questions arise "out of the same transaction or occurrence" as equitable claims properly before the Court. For purposes of determining the meaning of the statutory phrase "same transaction or occurrence," the Court concludes that opinions discussing 28 U.S.C. § 1367 are likely to be less helpful than those addressing the above-mentioned rules of civil procedure.

Rule and the Federal Rule have as a main purpose the advancement of judicial economy, see Abedon v. Providence Redevelopment Agency, 115 R.I. 512, 514, 348 A.2d 720, 721 (1975) ("Rule 13 is designed to eliminate multiplicity in litigation"); Local Union No. 11, Int'l Bhd. Of Elec. Workers, AFL-CIO v. G.P. Thompson Elec., Inc., 363 F.2d 181, 184 (9th Cir. 1966) ("[T]he purpose and design of Rule 13(a) is to prevent multiplicity of litigation and to bring about prompt resolution of all disputes arising from common matters"). Given the similar language and goals of § 8-2-13 and Rule 13(a), the Court deems it proper to review Federal cases discussing the meaning of "transaction or occurrence" as that phrase is used in Rule 13(a) for guidance as to how to interpret "same transaction or occurrence" in the context of § 8-2-13.

Federal courts routinely apply one of four tests to determine whether two issues arise out of the same transaction or occurrence. The first test, known as the identity of issues test, invokes the following question: Are the issues raised by the two matters largely the same? See, e.g., Whigham v. Beneficial Fin. Co. of Fayetteville, Inc., 599 F.2d 1322, 1323 (4th Cir. 1979). The second test is focused on whether the doctrine of res judicata would bar the claimant from bringing the ancillary matter before the court as part of a separate action. See, e.g., Big Cola Corp. v. World Bottling Co., Ltd., 134 F.2d 718, 723 (6th Cir. 1943). The third test has to do with whether the same—or substantially the same—evidence will be used to either support or refute the claims. See, e.g., Keyes Fibre Co. v. Chaplin Corp., 76 F. Supp. 981, 984 (D. Me. 1947). The fourth test, referred to as the "logical relationship test," derives from the U.S. Supreme Court case Moore v. New York Cotton Exchange, 270 U.S. 593 (1926), and is more frequently applied than the other three tests. In Moore, the U.S. Supreme Court affirmed a decree in favor of the defendant's counterclaim in part because the counterclaim arose "out of the transaction which [was] the subject-matter of the suit." Moore, 270 U.S. at 609. Although

the Supreme Court recognized a close connection between the action brought against the defendant and the defendant's counterclaim, it noted that "'[t]ransaction' is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." Id. at 610. Moore was decided under the erstwhile Equity Rule 30, but its logical relationship test is still regularly used to determine whether two matters arise out of the same transaction or occurrence. See 6 Wright & Miller, Federal Practice & Procedure, Civil 3d § 1410 (2004).

"A logical relationship exists when 'the same operative facts serve as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights, otherwise dormant, in the defendants.'" Montgomery Elevator Co. v. Bldg. Eng'r Servs. Co., 730 F.2d 377, 380 (5th Cir. 1984) (quoting Plant v. Blazer Financial Servs., Inc., 598 F.2d 1357, 1361 (5th Cir. 1979)). Here, Voccola and Shedd's request for indemnification of their attorneys' fees, like Voccola's prayer for executor compensation, arise from, in part, the same operative facts. For example, as illustrated in the Court's findings of fact supra, part of what is at issue in this trial for purposes of determining the equitable issue of attorneys' fees indemnification is Voccola's service as Executor of Carrozza Jr.'s Estate. Voccola's appointment as Executor also arises out of the same relationship that resulted in his designation as a co-trustee of the trust—his longstanding friendship with Carrozza Jr. Moreover, the fracturing relationships between the parties serve as a factual backdrop to what ultimately resulted in the present litigation regarding the Trustees' performance of their fiduciary responsibilities. In other words, the factual predicate for the litigation presently before the Court began with Voccola's appointment as Executor of an Estate, which, in turn, was followed by the Carrozza Sr. litigation. Based on the facts found supra, the Court determines that there are a sufficient number of similar operative

facts for there to be a "logical relationship" necessary for the Court to exercise supplemental jurisdiction pursuant to § 8-2-13. Because this Court has jurisdiction over an equitable proceeding under § 8-2-13—i.e., the request for indemnification of attorneys' fees—and because Voccola's request for compensation as an Executor results, in part, out of the same transaction or occurrence as he and Shedd's prayer for indemnification, this Court may exercise jurisdiction over his request for executor compensation.

Additionally, the Court's exercise of jurisdiction with respect to the executor compensation question serves to effectuate the intent that the General Assembly likely had when it enacted the supplemental jurisdiction provision of § 8-2-13. As noted above, the supplemental jurisdiction provision of § 8-2-13 is analogous to 28 U.S.C. § 1367, see Chavers, 844 A.2d at 678 n.11, which has as its purposes the promotion of judicial economy, convenience, and fairness to litigants. See Growth Horizons, Inc., 983 F.2d at 1284. Regarding the latter purpose—fairness to litigants—the parties here stipulated to the Court's consideration of the executor compensation question, and to the waiver of any jurisdictional challenges relating to that question. Since the parties have expressly granted the Court permission to resolve the executor compensation issue, the Court need not concern itself with the risk that unfairness might result from the exercise of jurisdiction. Furthermore, given that the Court has already heard evidence concerning the executor compensation question, declining jurisdiction now and remanding the matter to the only other court having the statutory authority to resolve it in the first instance—the Middletown Probate Court—would be neither convenient nor economical. Because the exercise of jurisdiction over the executor compensation issue is permissible under § 8-2-13, and because it facilitates the achievement of the presumed goals of the General

Assembly, the Court will proceed to consider whether Voccola is entitled to compensation for services provided in his capacity as Executor of Carrozza Jr.'s Estate.

Although the Court is not exercising jurisdiction over the executor compensation question pursuant to the above-mentioned Stipulation, it will, in accordance with the terms of the Stipulation "apply the legal, statutory and substantive standards that would apply had Mr. Voccola's Executor compensation been presented to the Middletown Probate Court in the first instance." Stipulation ¶ 3 (Nov. 6, 2014). Thus, in addition to § 33-14-8, which allows executors "compensation for their services as the probate court shall consider just," this Court will render its determination as to executor compensation consistent with the Rules of Practice of the Middletown Probate Court. Under the Middletown Probate Court Rule concerning Claims of Executors, all claims filed must state "the nature and approximate amount of the claim." Joint Ex. 56 at 2. Furthermore, all claims must be made consistent with the terms of § 33-11-4, see Joint Ex. 56 at 2, which requires all claimants to state the basis for their claims, and also assigns to claimants the "burden of establishing proper and timely presentation of the claim." Sec. 33-11-4. Finally, under the Middletown Probate Court rules concerning fees for attorneys, accountants, and other fiduciaries, "[p]etitions for fees shall be accompanied by, but not limited to, documents indicating hours spent, the nature of the work provided, and results obtained," and the Court "shall consider, but not require, approval by the beneficiaries/heirs at law." Joint Ex. 56 at 3; see also id. ("the same procedures relative to notice, detail, etc. as established for attorney and accountant fees shall apply for fiduciaries").

Voccola argues that he is entitled to compensation for performing certain tasks as an executor, including the following: causing the will to be filed in Middletown Probate Court; coordinating the preparation of Estate tax returns; marshaling the assets of the Estate; arranging

for the appraisal and disposal of certain Estate assets; and engaging in the claims resolution process. Based upon his review of records generated in the course of the performance of his duties as Executor, Voccola estimates that he spent 179 hours completing the above-mentioned tasks. In accordance with the testimony offered by his expert witness, Voccola states that a reasonable hourly rate for the services he provided as Executor is $150, and that he is entitled to a fee of $26,850. Conversely, the Beneficiaries note that none of the records maintained by Voccola in his capacity as Executor of Carrozza Jr.'s Estate evidence the amount of time he spent completing the above-mentioned tasks. On these grounds, the Beneficiaries argue that any estimate concerning the amount of time spent by Voccola working in his capacity as Executor is unreliable, and that there is no adequate basis in law for granting Voccola compensation for services he allegedly provided in his capacity as an executor.

After considering the evidence presented at trial, the Court finds that Voccola has presented evidence indicating that he is entitled to compensation as Executor of Carrozza Jr.'s Estate. Specifically, Voccola has offered testimony and exhibits confirming that he performed the tasks listed above, such as causing Carrozza Jr.'s will to be filed in the Middletown Probate Court, coordinating the preparation of Estate tax returns, marshaling the Estate's assets, arranging for the appraisal and disposal of certain Estate assets, and engaging in the claims resolution process. The parties do not dispute whether Voccola's claim for executor compensation was timely nor do they dispute whether Voccola has stated the amount of his claim. However, the Beneficiaries have not approved his claim for executor compensation, a factor the Court may consider under Middletown's Probate Court rules. Although the Court finds that Voccola is entitled to compensation for performing services as an executor, it does not award him the full amount that he has requested. Again, this Court looks to "the legal, statutory

and substantive standards that would apply had Mr. Voccola's Executor compensation been presented to the Middletown Probate Court in the first instance." Stipulation ¶ 3 (Nov. 6, 2014). Under the Middletown Probate Rules, Voccola had to present documents detailing the tasks he performed as Executor, or the amount of time he spent completing those tasks. He has not fully complied with that requirement. Because the Court applies those rules, it must account for the inadequacy of the records Voccola has offered in evidence, and must reduce the compensation he seeks.[4] Voccola asked to be paid at a rate of $150 per hour for work performed over 179 hours. The Court finds that the rate of $150 per hour is reasonable, but discounts his hours by half for lack of contemporaneous time records. However, while Voccola's records were lacking in some respects, the Court does take note of the evidence showing the nature of the work Voccola performed as Executor and the results he obtained in the administration of Carrozza Jr.'s Estate. Accordingly, Voccola is entitled to executor compensation at a rate of $150 per hour for 89.5 hours of work—a total of $13,425 in executor compensation.

B

Trustee Compensation

Next, the parties dispute whether the Trustees—Voccola and Shedd—should be fully compensated for their efforts in performing their fiduciary duties as co-trustees. Under Rhode Island law, by statute, trustees are entitled to "reasonable compensation for services rendered as trustee." G.L. 1956 § 18-6-1. The determination as to what constitutes reasonable compensation is left to the sound discretion of the trial justice. In re Quinn's Estate, 64 R.I. 322, 322, 12 A.2d 275, 276 (1940); see also 76 Am. Jur. 2d Trusts § 574 ("The amount of compensation awarded to

[4] The Court notes that, based on Voccola's failure to provide the Court with documents indicating the amount of time he spent working in his capacity as Executor, it would be justified in altogether denying him compensation for services related to his appointment as Executor of Carrozza Jr.'s Estate.

a trustee rests within the sound discretion of the trial court"). Indeed, "[t]he fundamental criterion for determining the compensation due a trustee is reasonableness." 76 Am. Jur. 2d Trusts § 573. Of note, our Supreme Court has yet to directly interpret what constitutes "reasonable compensation" under § 18-6-1 of our General Laws. Therefore, in making its reasonableness determination here, the Court considers the factors provided in the Restatement (Third) of Trusts, which include:

> "the trustee's skill, experience and facilities, and the time devoted to trust duties; the amount and character of the trust property; the degree of difficulty, responsibility, and risk assumed in administering the trust included in making discretionary distributions; the nature and costs of services rendered by others; and the quality of the trustee's performance." Restatement (Third) of Trusts § 38 cmt. (c)(1).

The Court may also consider local custom. Id. Using reasonableness as its compass, the Court now sets out to determine whether the Trustees are entitled to trustee compensation.

In this case, the Trustees seek a total of $443,978.57 in compensation for their services as co-trustees. They base that dollar figure in large part on the testimony of their expert, Attorney Anthony Mignanelli. According to Attorney Mignanelli, in finding that the compensation that the Trustees seek is reasonable, this Court should consider the trustee fees charged by local bank trust departments, or what are otherwise known as institutional-type trustees. In his opinion, it is reasonable to award the Trustees an amount equal to an annual rate of 1.2% of the fair market value of the trust assets, or $320,828.57. Trial Tr. 1290:7-14, 1304:25-1305:6; see also Joint Ex. 33. Attorney Mignanelli made that calculation using estimates of real estate appraisals dating back to the Trustees' appointment, which began in 2002 when Carrozza Jr. died. Trial Tr. at 1291:6:-10. That amount forms the first part of the compensation sought, or what the Trustees have called their "fee for the general trustee services." Id. at 1315:2-4.

In addition to the $320,828.57 for general trustee services, the Trustees also seek compensation for special services that Voccola rendered on behalf of the trust. According to Voccola, he performed 1321 hours of special services on behalf of the trust and that a rate of $150 per hour should serve as a reasonable rate for compensation. Based on information Voccola provided to him, Attorney Mignanelli also concluded that a rate of $150 per hour was reasonable for the 1321 hours of work. Id. at 1311:22-25, 1313:8-1314:24. Based on those numbers, the Trustees seek an additional $198,150 of fees for special services—an amount totaled from 1321 hours worked multiplied by a rate of $150 per hour. Id. at 1314:23-24. However, the Trustees subtract $75,000 from that requested amount in order to account for Voccola's earlier self-distribution. Trial Tr. at 1315:9-15. That subtraction brings the Trustees' requested compensation for special services to $123,150. See id. In sum, the Trustees seek $443,978.57 total: $320,828.57 based on a percentage of the value of the trust assets; and $123,150 for special services rendered on behalf of the trust. See id. at 1314:25-1315:4, 1315:9-15.

On the other side of the coin, the Beneficiaries argue that the Trustees should be denied any compensation for their services because of the Trustees' failure to maintain proper records, including records of time spent providing services on behalf of the trust, and to otherwise act in accordance with their fiduciary duties. In addition to that contention, the Beneficiaries presented an expert of their own, Attorney Marvin Homonoff. Attorney Homonoff, a probate judge who also co-edited A Practical Guide to Probate in Rhode Island (1st ed. 2011), see Trial Tr. 531:15-16, opined that Rhode Island law disfavors trustee compensation in the form of a percentage-based payment. Trial Tr. 551:19-552:4, 558:8-559:5. According to Attorney Homonoff, in Rhode Island, compensation for trustees should flow primarily from services the trustees actually

rendered. See id. at 551:19-23. Furthermore, Attorney Homonoff distinguished between institutional and individual trustees with respect to percentage-based compensation. Id. at 558:8-559:5. Where institutions, such as banks, may enter into fee agreements based on the percentage of the assets managed, individuals, such as the Trustees here, rarely do so, id. at 548:21-549:6, 550:11-20; in fact, Attorney Homonoff called such a practice "inequitable." See id.

Under the express terms of the trust, the trustee is authorized and empowered "[t]o collect from the income and the principal of such trust estate a reasonable compensation for services in the trusteeship . . . ." Joint Ex. 32 § 5.5.5. Thus, it is clear that the Trustees are entitled to some form of compensation—it just must be "reasonable." See id.; see also § 18-6-1. In this case, the Court need not determine whether Rhode Island law favors or disfavors the use of percentage-based compensation for individual, non-institutional trustees. Although the Court does note that one court in Rhode Island has determined that "it is appropriate to look to bank trustee fee schedules when determining reasonable trustee compensation," our Supreme Court has not yet held that a percentage-based fee schedule is reasonable for an individual trustee. See Sundlun v. Loper, No. 84-3285, 1990 WL 10000213, at *3 (R.I. Super. Oct. 18, 1990) (Pfeiffer, J.), rev'd in part by Sundlun v. Loper, 598 A.2d 653 (R.I. 1991) (reversing on the issue of prejudgment interest but affirming the award of compensation for the trustee). Here, the Court does not find it reasonable to use the percentage-based model as a starting point for the Trustees' fee for general trustee services. Such a manner of trustee compensation is used primarily for institutional trusts, such as banks, who charge a rate that can be negotiated and agreed upon beforehand. See, e.g., Trial Tr. 1285:16-1286:11, 1339:24-1341:14; id. at 548:21-549:6. In this case, however, no such agreement was made for the Trustees as a form of compensation. Moreover, the Court does note that our General Laws provide that trustees may be paid "reasonable compensation for services

rendered as trustee." Sec. 18-6-1. Accordingly, the Court finds that the Trustees are entitled to reasonable compensation for the services they rendered on behalf of the trust; however, the Court does not find that it is reasonable in this case to calculate that compensation using a percentage-based rate of the fair market value of the trust properties over the course of over a decade. See Rutanen v. Ballard, 678 N.E.2d 133, 142 (Mass. 1997) ("A trustee is only entitled to payment for services actually performed on behalf of the trust"); see also § 18-6-1. To determine an amount of reasonable compensation for the Trustees, the Court turns to the factors listed in the Restatement (Third) of Trusts for guidance. See Restatement (Third) of Trusts § 38 cmt. (c)(1).

With respect to those factors, the Court looks to the Trustees' proffered evidence regarding the "special services" that Voccola performed on behalf of the trust. Generally, a trustee is deemed to have provided special services to a trust when he performs tasks on behalf of the trust in his capacity as something other than a trustee. See Restatement (Third) of Trusts § 38. For instance, if a trustee acts on behalf of a trust as either a lawyer or a real estate agent, he may be found to have provided special services to the trust. Id. If a court concludes that the trust derived a benefit from having the trustee provide such services, the trustee may be entitled to compensation for the additional tasks he performed. Id. However, a trustee must do so in light of his or her fiduciary duty to the trust. As our Supreme Court has opined,

> "'Broadly speaking it is clearly established that a trustee must give undivided loyalty to the trust confided to his care and to its beneficiaries. It is the policy of the law to see that in administering the trust he shall not be tempted in any way by conduct or circumstances to act otherwise than with complete loyalty to the trust and its interests. He must at all times exercise a high standard of honor and avoid all situations and transactions that tend to call his good faith into question and to create in himself rights possibly conflicting with those of the beneficiaries.'" Montaquila v. Montaquila, 85 R.I. 447, 453, 133 A.2d 119, 122 (1957) (quoting Dodge v. Stone, 76 R.I. 318, 323, 69 A.2d 632, 634 (1949)).

Therefore, in order for the trustee's exercise of discretion to be proper, it must be true that the trust derives a benefit from having him—as opposed to a third party—provide the required services. See id.

Here, Voccola seeks compensation for the following "special services" he rendered on behalf of the trust: services related to the above-mentioned Carrozza Sr. litigation; his involvement in management of the Trust Properties, including his role as the primary contact person for the Post Road Property tenant; his work in preventing the issuance of a citation for a fire code violation at the Bellevue Avenue Property; his participation in arranging the sale of Canary Court; and his successful efforts to refinance the Trust Properties. Voccola asserts, based upon his expertise concerning legal and real estate matters, as well as expert testimony he offered at trial, that $150 is a reasonable hourly rate for the special services he provided. However, as the Beneficiaries point out, in 2012 Voccola—without first providing notice to the Beneficiaries—took for himself a $75,000 "flat fee" for the services he had provided in connection with a refinancing of one of the Trust Properties.[5] Certainly, our Supreme Court's above-quoted language strongly disfavors such behavior. See id. However, based on the circumstances presented in this case, which include, among other things, a strained relationship between the parties, this Court will not altogether deny the Trustees compensation due to the $75,000 fee.[6] While the Court is aware that Voccola's flat-fee is not in line with the best practices for trustees generally, here the Court does not find that the $75,000 fee rises to the level of self-dealing that would warrant a wholesale denial of compensation. Cf. Kessler v. Bishop, 51

[5] The services listed on Voccola's 2012 invoice for $75,000 include: preparing requests for proposals; evaluating responses, reviewing and executing the term sheet, evaluating zoning issues, scheduling a showing for the lender and its appraiser, corresponding with the lender's representatives, securing documents from the Beneficiaries, securing evidence of insurance with respect to Trust Property, and coordinating the loan closing. Joint Ex. 1.

[6] However, the Court is cognizant that a trustee generally has a duty to notify beneficiaries of such transactions.

R.I. 202, 202 153 A. 247, 248 (1931) (denying compensation to a seller's real estate broker who secretly acted for the buyer in violation of his fiduciary duty).

With respect to the first factor—"the trustee's skill, experience and facilities, and the time devoted to trust duties"—the Court accepts Voccola's estimation that he performed 1321 hours of services on behalf of the trustees, performing the above-mentioned tasks. Voccola, who has experience in real estate, estimates that his rate for those hours should be set at $150 per hour. He bases that rate on the experience he brought to the management of the Trust Properties, though the Beneficiaries contend that his involvement in the actual day-to-day management of the properties was nothing more than minimal. Nevertheless, Voccola performed a number of services relating to the litigation against Carrozza Sr. and his co-plaintiffs, as well as successfully refinancing the Trust Properties.

With regard to the second factor—"the degree of difficulty, responsibility, and risk assumed in administrating the trust and in making discretionary distributions"—the Court considers that the Beneficiaries did perform nearly all of the day-to-day management of the Trust Properties. However, they always had Voccola to turn to in the event of trouble, as evidenced by Voccola's handling of the fire code violation and the various complexities of the Carrozza Sr. litigation. Even though A. Kumble and Tellefsen handled the day-to-day management of the properties, the Court still finds that Voccola was more than a passive bystander in many of the services he rendered.

Furthermore, the third and fourth factors weigh in Voccola's favor. As noted above, Voccola, using his own experience in real estate, provided services on behalf of the trust. And, the Court finds that the overall quality of Voccola's performance in managing the trust was sufficiently adequate. This is true even in light of the $75,000 flat fee Voccola invoiced in 2012.

The Trust empowered Voccola, as a co-Trustee, to interact with tenants, and to manage, refinance, and improve the Trust Properties. See Joint Ex. 32. Specifically, the Trustees were "authorized and empowered" to: "exercise discretionary powers of sale" with respect to the trust estate (5.5.3), borrow money, "mortgage or pledge any part or parts" of the trust estate, and execute notes and other instruments on the trust's behalf (5.5.11); manage, control, mortgage or "otherwise deal with any and all real property," "satisfy and discharge or extend the term of any mortgage thereon," and make structural improvements to the trust assets; "mortgage or pledge any part of the trust estate or [Carrozza Jr.'s] estate, real or personal, upon terms that [the] co-trustees . . . deem[] advisable"; and "sell real estate even though there may be personal property which might be sold." Joint Ex. 32 at §§ 5.5.3, 5.5.11, 5.5.12, 6.8, 6.9. The evidence presented at trial shows that he performed a large majority of those tasks successfully.

Again, the record indicates that the Trustees performed certain services on behalf of the trust. The Trustees held title to the Trust Properties, reviewed and signed tax returns prepared on behalf of the trust, oversaw renovations to the Trust Properties, and obtained a reduced tax assessment with respect to the Bellevue Avenue Property. Moreover, the Beneficiaries acknowledged that Voccola provided assistance with respect to various trust-related matters, including the litigation involving Carrozza Sr., and the management of the Trust Properties. Under the Trustees' stewardship, the purposes of the trust were realized, including the provision of support for the health and maintenance of A. Kumble and Tellefsen as well as the protection of Carrozza Jr.'s holdings "from the grasp of his father and siblings." Trial Tr. 915:22-33.

On balance, after considering the evidence presented by both parties and the Restatement (Third) of Trusts factors, the Court concludes that the Trustees are entitled to reasonable compensation in the amount of $123,150. Even without well-accounted contemporaneous time

records, the Court accepts as credible the 1321 hours Voccola estimates he performed services on behalf of the trust from 2002 onward. Like the Court's conclusion with regard to the hourly rate applied for Voccola's services as Executor, based on the nature of the services rendered on behalf of the trust, the Court finds that a rate of $150 per hour here is reasonable. The Court arrives at its figure in the same manner that Attorney Mignanelli did: multiply 1321 hours by the rate of $150, which totals $198,150. See Trial Tr. 1314:23-24. However, to account for the $75,000 Voccola already paid himself, the Court subtracts $75,000 from that total, leaving an award of $123,150. See id. at 1315:9-15. That $123,150 figure represents the services that the Trustees actually performed on behalf of the trust. See Rutanen, 678 N.E.2d at 142.

The Court concludes that the "special services" and "general trustee services" are nearly indistinguishable under the terms of the trust. In other words, the Trustees are being compensated for services they rendered on behalf of the trust, in the trust's interests, and the Court does not see a distinction, in this case, between the services rendered "specially" or "generally." The Court also notes that it based the award amount on the numbers used to calculate the value of the Trustees' "special services" and not on the percentage-based fee sought as "general trustee services." The Court did not apply the 1.2% annual rate because it considers that unreasonable based on the facts of this case, where individuals, not an institution, served as the trustees without an express fee agreement in place. Under § 18-6-1, the Trustees are entitled to "reasonable compensation for services rendered as trustee[s.]" See also Joint Ex. 32 § 5.5.5. The Court finds that $123,150 is reasonable here, and awards the Trustees compensation in that amount.[7]

[7] Consistent with the services each performed on behalf of the trust, the co-trustees, Voccola and Shedd, should split the compensation accordingly.

Because the Court has found that the Trustees are entitled to reasonable compensation for services rendered on behalf of the trust, the Court does not find in the Beneficiaries' favor as to their counterclaims asserted in the Trustees' replevin action.[8] Specifically, the Court denies the Beneficiaries relief as to their counterclaims of breach of fiduciary duty and the breach of the duty of loyalty. The evidence at trial does not support the Beneficiaries' contention that the Trustees fully abdicated their roles as fiduciaries of the trust.

C

Indemnification of Attorneys' Fees

Finally, the Court addresses what is perhaps the most pressing issue presented in this case: whether the Trustees are entitled to indemnification of the attorneys' fees and expenses that they claim were incurred on behalf of the trust. Under § 18-6-1 of our General Laws, trustees are entitled to indemnification for costs reasonably incurred pursuant to the execution of the trust instrument. Such costs may include fees paid to attorneys, including counsel retained for purposes of defending the trust in litigation. See Restatement (Third) of Trusts § 88. Ordinarily, a trustee is under a duty to defend the trust against any attack brought upon it. George Gleason Bogert, The Law of Trusts & Trustees § 581 (hereinafter Bogert). So long as the defense presented is a reasonable one, the trustee will be entitled to reimbursement for expenses incurred. Id. "The right of indemnification applies even though the trustee is unsuccessful in the action, as long as the trustee's conduct was not imprudent or otherwise in violation of a fiduciary duty." Restatement (Third) of Trusts § 88 cmt. d.

The trustee's duty to defend persists regardless of the identity of the parties on the offensive. Bogert § 581. Just as the trustee would be entitled to indemnification if the party carrying out the attack were a creditor, reimbursement is ordinarily permitted where the

[8] This is the case numbered PC-2012-3476.

beneficiaries bring an action for early termination of the trust instrument. Id. However, if the attack is unwarranted, or if a defense is unnecessary, a trustee is not under a duty to defend the trust, and may not have a right to reimbursement. Id. Significantly, a trustee has a duty to resist attacks on the validity of a trust, even when pursued by a beneficiary. See, e.g., In re Estate of Duffill, 206 P. 42, 50 (Cal. 1922).

Here, the Trustees seek indemnification for reasonable attorneys' fees and expenses incurred. The Trustees argue that they are entitled to indemnification for the attorneys' fees and expenses incurred by them in: attempting to prevent the termination of the trust by the Beneficiaries; administering the trust while the instant action was pending; seeking compensation for their services; and defending against claims by the Beneficiaries that they improperly managed the trust assets. The extent of the reimbursement to which trustees are entitled as to attorneys' fees and costs is left to the discretion of the trial court. See Keystone Elevator Co., Inc. v. Johnson & Wales Univ., 850 A.2d 912, 921 (R.I. 2004). Under Rule 1.5(a) of the Supreme Court Rules of Professional Conduct, "[t]he factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent." See Colonial Plumbing & Heating Supply Co. v. Contemporary Const. Co., 464 A.2d 741, 743 (1983); see

also Ferris Avenue Realty, LLC v. Huhtamaki, Inc., No. PB-2007-1995, 2013 WL 1789488, at *4 (R.I. Super. April 22, 2013) (Silverstein, J.). "Each of these factors is important, but no one is controlling." Palumbo v. United States Rubber Co., 102 R.I. 220, 224, 229 A.2d 620, 622-23 (1967).

However, the Court considers those factors only after the parties follow the procedure outlined in Tri-Town Constr. Co. v. Commerce Park Assocs. 12, LLC, 139 A.3d 467, 479-80 (R.I. 2016) (hereinafter Tri-Town). If the Court finds that a party is entitled to attorneys' fees, the Court must then make a determination as to the dollar figure, but only after the prevailing party has had an opportunity to prove and non-prevailing party has had an opportunity to contest the reasonableness of the attorneys' fees sought. Id. at 479-80. "[T]o prove the . . . reasonableness of legal fees," the party awarded attorneys' fees and expenses must offer competent and independent evidence, in the form of an affidavit or expert testimony, "from counsel who is a member of the Rhode Island Bar and who is not representing the parties to the action . . . ." Id. at 479-80. That independent affidavit or expert testimony must include "'the criteria on which [the] fee award is to be based.'" Sisto v. Am. Condo. Ass'n, Inc., 140 A.3d 124, 129 n.7 (R.I. 2016) (quoting Colonial Plumbing & Heating Supply Co., 464 A.2d at 744). The non-prevailing party will then have an opportunity to submit his or her own affidavit or expert testimony from an independent Rhode Island attorney regarding the reasonableness of the fees requested. See Tri-Town, 139 A.3d at 479-80. After considering the evidence from both parties, the Court then makes its determination as to reasonableness.[9]

[9] This amount is known as the "lodestar," which "is the starting point for determining the reasonableness of attorney's fees and is 'the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.'" Sisto, 140 A.3d at 129 n.7 (quoting In re Schiff, 684 A.2d 1126, 1131 (R.I. 1996)).

The Trustees have asked to be indemnified for the full amount of attorneys' fees and expenses that they accrued through March 31, 2015, and for any fees that they reasonably incurred thereafter. At this juncture, the Court need not determine or discuss the specific amounts at issue—such a determination is best left for the Tri-Town process. However, what the Court must decide here is whether the Trustees will be indemnified for their attorneys' fees and expenses. The Trustees have categorized their requested attorneys' fees as follows: (1) fees incurred from litigating the termination question; (2) fees incurred as a result of suing to secure trust records and responding to the Beneficiaries' efforts to enjoin the Trustees; (3) fees from defending against the Beneficiaries' counterclaims and fees incurred defending allegations from the tenants' malfeasance lawsuit; (4) fees incurred defending the Trustees' right to trustee compensation; (5) fees incurred in trust administration; (6) fees in connection with the preparation and conducting of trial; (7) additional expenses; (8) fees incurred through March 31, 2015; and (9) legal fees reasonably incurred after March 31, 2015.[10] The Court will address whether the Trustees are indemnified to these requests below.

In Rhode Island, "'we typically adhere steadfastly to the American Rule that, in the absence of a statute providing otherwise, each litigant is responsible for the litigant's own legal expenses.'" In re: Janet S. Bagdis Living Trust Agreement, 136 A.3d at 1129 (quoting Shine v. Moreau, 119 A.3d 1, 9 (R.I. 2015)). "However, exceptions exist to that rule; specifically, a judge may appropriately award attorneys' fees . . . where contractual or statutory authorization exists." Id. (citing Ins. Co. of N. America v. Kayser-Roth Corp., 770 A.2d 403, 419 (R.I. 2001)). Of particular relevance to the issue of attorneys' fees in this case is a Consent Order entered on December 10, 2012. Pursuant to the terms of that Consent Order,

[10] The Trustees use a broader categorization method in their brief. The Court's formulation is slightly more specific, but should be clear to the parties which categories correspond to those identified in the papers.

> "To the extent that the Trust assets are insufficient to pay for any expenses, fees or liabilities incurred in the administration of the Trusts and approved by the Court, Tellefsen and Kumble shall personally indemnify the Trustees for any such expenses, fees or liabilities, but only to the extent of the value of all proceeds or property that Tellefsen and/or Kumble received from the Trust; provided, however, that this limitation on indemnity shall not apply to the extent that the Court determines, following notice and an opportunity to be heard, that Tellefsen and Kumble were not harmed by the actions complained of or that any claims or defenses were pursued by them in bad faith. The Trust expenses and liabilities referred to in this Paragraph include, but are not limited to, Federal and State taxes, professional fees incurred in the administration of the Trust, and any compensation that the Court determines is due to the Trustees." Consent Order ¶ 9 (Dec. 10, 2012) (second emphasis added).

Moreover, as noted above, § 18-6-1 provides that trustees are "entitled to reasonable expenses and costs incurred in the execution of the trust." Therefore, the Court has both contractual and statutory authorization to award indemnification of attorneys' fees and expenses.

Generally, trustees "can properly incur expenses for reasonable counsel fees and other costs in bringing, defending, or settling litigation as appropriate to proper administration or performance of the trustee's duties." Restatement (Third) of Trusts § 88, cmt. d. "In exercising its discretion to award attorney's fees in trusts cases, the trial court's underlying consideration must be whether the litigation and the participation of the parties seeking attorney's fees caused a benefit to the trust." 76 Am. Jur. 2d Trusts § 666. As one court has explained, "'[t]he underlying principle which guides the court in allowing costs and attorney fees incidental to litigation out of a trust estate is that such litigation is a benefit and a service to the trust.'" Donahue v. Donahue, 105 Cal. Rptr. 3d 723, 731 (Cal. Ct. App. 2010) (quoting Terry v. Conlan 33 Cal. Rptr. 3d 603, 614 (Cal. Ct. App. 2005)). "If litigation is necessary for the preservation of the trust, the trustee is entitled to reimbursement for his or her expenditures from the trust; however, if the litigation is specifically for the benefit of the trustee, the trustee must bear his or

her own costs incurred, and is not entitled to reimbursement from the trust." Id. Put another way, whether trustees are entitled to indemnification for attorneys' fees and expenses hinges on whether "those fees [were] incurred in rendering a benefit to the trust estate." Kronzer v. First Nat'l Bank of Minneapolis, 235 N.W.2d 187, 196 (Minn. 1975).

The Trustees argue that all the attorneys' fees they incurred were done so on the trust's behalf. They also reason that the fees incurred are higher than they otherwise might have been because the Beneficiaries employed a litigation strategy intended to cause the Trustees to "fold." Conversely, the Beneficiaries argue that the Trustees' requests for indemnification should be denied because the expense categories listed above were not incurred on behalf of the trust. Specifically, with respect to the first category—the trust termination question—the Beneficiaries note that the Trustees were prepared to permit termination, had the Beneficiaries adopted a different approach to the process. The Beneficiaries contend that the difference between the approaches was immaterial, and that the Trustees' opposition to termination was therefore unreasonable. The Beneficiaries further assert that the Trustees failed to manage the costs of litigation so as to preserve the trust assets, and, citing this Court's decision in Ferris Avenue Realty, LLC, 2013 WL 1789488, at *7-8, that the attorneys' fees incurred were not proportional to the overall amount at issue in the case.

Regarding the first category of attorneys' fees and expenses—the fees incurred litigating the termination question—the Trustees argue that when the Beneficiaries brought suit, the law in Rhode Island was unsettled as to the propriety of termination. The Trustees contend that they were therefore obligated to defend against the Beneficiaries' action, and that they executed their duties in a reasonable manner. Now, the Trustees assert that they are entitled to indemnification for costs incurred. In support of that argument, the Trustees rely most heavily upon In re Estate

of Harbaugh, 646 P.2d 498 (Kan. 1982). There, the Supreme Court of Kansas dealt with the issue of whether to award attorneys' fees to a trustee who had unsuccessfully contested a beneficiary's petition for trust termination. In re Estate of Harbaugh, 646 P.2d at 503-504. Although the court did approve the trustee's request, it awarded him just $500—far less than the $46,000 requested by the Trustees in this case. Id. at 504. Moreover, the Supreme Court of Kansas also noted that "when a trustee acts in good faith he is entitled to fees and expenses but the amount of that award is within the discretion of the trial court." Id. Thus, although the Supreme Court of Kansas' opinion does support the theory that trustees are entitled to fees reasonably incurred in defending a suit brought by beneficiaries, it does little to reinforce the Trustees' assertion here that, whenever there is a question as to the propriety of a beneficiary's attempt at termination, a trustee is entitled to indemnification for all legal fees incurred. See id.

Similarly, Am. Nat'l Bank of Cheyenne, Wyo. v. Miller, 899 P.2d 1337 (Wyo. 1995), stands for the proposition that trustees are entitled to fees reasonably incurred in defense of the trust. The Trustees cite Am. Nat'l Bank of Cheyenne, Wyo. for its statement that "[i]t is inconsistent to recognize a trustee has standing in its official capacity to defend a trust, but to then make the trustee personally bear the expense of defending the trust." Am. Nat'l Bank of Cheyenne, Wyo., 899 P.2d at 1341. What the Trustees fail to note, however, is that in that case the court was not attempting to resolve the same question now before this Court. Rather, in Am. Nat'l Bank of Cheyenne, Wyo., the Supreme Court of Wyoming was asked to decide whether the trustee should have to fund the posting of a supersedeas bond. Id. In Rhode Island, supersedeas bonds are posted pursuant to Super. R. Civ. P. 62(c), which concerns stays of proceedings to enforce judgments. Because stays are granted only if the moving party is able to show that its request is reasonable, see Narragansett Elec. Co. v. Harsch, 367 A.2d 195, 197 (R.I. 1976) (per

curiam), Am. Nat'l Bank of Cheyenne, Wyo. stands for nothing more than the established principle that trustees are entitled to fees reasonably incurred—a proposition already discussed above.

In the third and final case cited by the Trustees in support of their argument for reimbursement of fees incurred litigating the termination question, a court again stated the general rule that "a trustee is entitled to be allowed against the trust estate all the trustee's proper expenses, including all expenses reasonably necessary for the security, protection, and preservation of the trust property, or for the prevention of a failure of the trust." Anselmo v. Guasto, 13 S.W.3d 650, 653 (Mo. Ct. App. 1999). In Anselmo, the trustees of a revocable trust were sued by a plaintiff who was not a beneficiary of the trust, but was seeking to have the trust instrument set aside. Id. The trustees moved for their counsel fees to be paid from the trust assets, and the court granted the motion. Id. The court in Anselmo had before it an action for termination of the trust that ran against the interests not only of the trustees, but also the beneficiaries of the trust itself. Id. Here, however, the Court is faced with a case involving Beneficiaries who had consented to termination, and a trustee opposed to it. Thus, while it might have been unreasonable for the trustee in Anselmo not to contest the plaintiff's action for termination, the Trustees here could reasonably have considered that allowing the Beneficiaries to terminate the trust would have caused a loss to the trust or to the Beneficiaries, and would have defeated a material purpose of the Trust. See id.

Although the Court does not find that any of those three cases are directly on point, this Court still concludes that the Trustees are entitled to indemnification of the attorneys' fees and expenses incurred in litigating the trust termination question—the first category listed above. The Court finds that the fees incurred under that category were done on behalf of the trust.

When the Trustees challenged the termination of the trust, Rhode Island law was not yet settled on the subject. This fact goes directly to the Court's conclusion that challenging the trust termination, even if done in opposition to the wishes of the Beneficiaries, was reasonably done on behalf of the trust estate. The Trustees' decision to engage legal counsel to oppose the Beneficiaries' trust termination was not unreasonable because they could have reasonably believed that allowing the trust to terminate was against the interests of the trust. Therefore, with respect to the first category, the Trustees are entitled to indemnification of reasonable attorneys' fees and expenses.

Next, with respect to the second category of attorneys' fees and expenses—those resulting from the Trustees' suing to secure trust records and defending against the Beneficiaries' efforts to enjoin the Trustees—the Court finds that the Trustees acted reasonably and for the benefit of the estate. With respect to obtaining those trust documents from the Beneficiaries, who had been acting as managers of the Trust Properties, the Trustees were empowered and authorized to manage the Trust Properties. Under that power, the Trustees were permitted to delegate that management to Olympus Group just as they had delegated to the Beneficiaries. Thus, it was not improper, nor unreasonable, for the Trustees to incur reasonable fees to have certain documents transferred, thereby facilitating the provision of the contracted-for service with Olympus Group. Furthermore, the Court also determines that the Trustees acted reasonably and for the benefit of the estate in defending against the Beneficiaries' efforts to enjoin the Trustees. The Beneficiaries asked the Court for injunctive relief to enjoin the Trustees' appointment of a new accountant and use of third-party property managers. In addition, the Beneficiaries also moved for temporary restraining orders concerning the engagement of Olympus Group, the termination of Attorney Leviss as trust counsel, and the disbursement of

trust funds. Had the Trustees not defended against those actions, administration of the trust in a manner consistent with its underlying purpose would have been frustrated. The Trustees needed to ensure the continued management of the Trust Properties, and it was not unreasonable for them to defend against the Beneficiaries' injunctive requests to do so. Preservation of the trust estate remained necessary prior to the trust termination and the Trustees acted in accordance with their duty to properly administer the trust; therefore, the Trustees acted reasonably and on behalf of the trust here. Accordingly, the Court holds that the Trustees are entitled to be indemnified for reasonable attorneys' fees and expenses incurred under category two.

Moving to the third category of fees—those incurred in defending against the Beneficiaries' counterclaims and those incurred in defending against the tenants' lawsuit—the Court again concludes that the Trustees are entitled to indemnification. The Beneficiaries' counterclaims, which, as noted above, the Court has denied, were attacks on the Trustees' management of the trust—attacks against which the Trustees had a duty to defend. See, e.g., Regions Bank v. Lowrey, 101 So.3d 210, 220 (Ala. 2012) (explaining that "when a trustee defends itself against attacks concerning the management of trust assets, the trustee is entitled to recover its litigation expenses, including attorney fees, from the trust"). Similarly, the tenants' lawsuit implicated the Trustees' management of the trust assets, and because there was not a finding of misconduct or mismanagement there, the Trustees are entitled to indemnification for those fees. Thus, the Trustees are entitled to indemnification for reasonably incurred attorneys' fees and expenses for category three.

With regard to the fourth category of fees—those that the Trustees incurred defending their right to trustee compensation—there is a dispute over whether these are merely "fees for fees," as the Beneficiaries maintain, or whether the fees were reasonably incurred on behalf of

the trust, as the Trustees contend. The Beneficiaries cite to a case that stands for the proposition that "time spent litigating fees, as distinguished from time spent in actual administration of the estate, must be excluded in determining the proper attorney's fees which are chargeable against the estate." In re Estate of Painter, 628 P.2d 124, 126 (Colo. Ct. App. 1980) (remanding an award of attorneys' fees). The Trustees cite a different case standing for the opposite proposition—that "the right of a trustee to an award of counsel fees, incurred in the defense of its right to compensation as trustee, is generally recognized." Cleveland Trust Co. v. Wilmington Trust Co., 258 A.2d 58, 66 (Del. 1969) (citing W. Coast Hosp. Ass'n v. Florida Nat'l Bank of Jacksonville, 100 So.2d 807 (Fla. 1958)). In considering this issue, the Court is mindful that "[a] trust is created for the beneficiaries named and not for the purpose of paying fees to the trustees." W. Coast Hosp. Ass'n, 100 So.2d at 812.

This Court finds that the prevailing law on this issue entitles the Trustees to indemnification of the attorneys' fees and expenses incurred under category four. See Cleveland Trust Co., 258 A.2d at 66. As the Supreme Court of Florida has explained, "[c]osts and counsel fees may be allowed a faithful trustee in litigation relating to the trust. Such fees should be allowed in those cases where a trustee, in good faith, institutes or defends an action or incurs legal expense in connection with his duties and responsibilities as trustee." W. Coast Hosp. Ass'n, 100 So.2d at 812. The Trustees' efforts to seek trustee compensation were pursued in good faith—indeed, the Trustees had a right to seek them. See § 18-6-1; Joint Ex. 32 § 5.5.5. Applying the principle that "the right of a trustee to an award of counsel fees, incurred in the defense of its right to compensation as trustee, is generally recognized," Cleveland Trust Co., 258 A.2d at 66, the Court holds that the attorneys' fees and expenses the Trustees generated in their pursuit of trustee compensation were not merely "fees for fees," but instead were generated

"in connection with [the Trustees'] duties and responsibilities as trustee[s]." See W. Coast Hosp. Ass'n, 100 So.2d at 812. Put another way, under the terms of the trust and under our General Laws, the Trustees had a legal right to seek compensation for their services; it follows, then, that the reasonable attorneys' fees and expenses generated therefrom are subject to indemnification. Accordingly, the Court finds that the Trustees are entitled to indemnification for the reasonable attorneys' fees and expenses incurred under category four.[11]

However, the Court emphasizes that the Trustees are entitled to indemnification of only those attorneys' fees and expenses that were reasonably incurred.[12] This Court has previously discounted an award of fees where the attorneys' fees racked up far exceeded the ultimate award of compensatory damages. See Ferris Avenue Realty, LLC., 2013 WL 1789488, at *6-8. The principle articulated in Ferris Avenue Realty, LLC applies here: a comparison must be done with respect to the trustee compensation awarded and the attorneys' fees expended in pursuit of such compensation. See id. Thus, consistent with the procedure outlined in Tri-Town, 139 A.3d at 479-80, the Trustees must still demonstrate the reasonableness of the fees generated in their pursuit of trustee compensation—even though the Court has found that those fees are subject to indemnification. See Ferris Avenue Realty, LLC, 2013 WL 1789488 at *7 ("[T]he Court must place its judicial stamp of approval on the reasonableness of a request for fees and costs. If that stamp is to mean anything, the Court cannot award a fee so in excess of the amount in controversy and the amount of the judgment.").

[11] In their papers, the Trustees split this category further into fees "incurred securing and enforcing the protections of the Consent Order and defending against the Beneficiaries' challenge to their right to compensation and indemnification." Trustees' Proposed Findings of Fact and Conclusions of Law 57. The Court finds that the broader category—known here as category four—encompasses those subcategories, all of which were pursued on behalf of the trust, as discussed supra. Thus, the Court grants the Trustees' request for indemnification as to the above-quoted subcategory of fees. See id.

[12] This is true of all attorneys' fees and expenses entitled to indemnification in this Decision.

As for the fifth category of fees—those incurred from the administration of the trust during the pendency of the present litigation—the Court finds that the Trustees acted reasonably and for the benefit of the trust estate. This is a far clearer decision for the Court. Put simply, the Trustees, in administering the trust while this litigation moved forward, did precisely what the trust required of them—administer the trust. Therefore, the Court finds that the Trustees are indemnified for the reasonable attorneys' fees and expenses incurred under category five.

Similarly, category six, or those fees incurred in connection with the preparation for and conducting the trial, is also clear to the Court. These attorneys' fees and expenses were reasonably generated in defense of the trust and on behalf of the trust. See § 18-6-1. The Trustees had to defend their management of the trust as well as the trust estate itself. Thus, the Court concludes that the Trustees are entitled to indemnification for the reasonable attorneys' fees and expenses described in category six.

Next, category seven, or those expenses generated in conjunction with category six—the attorneys' fees resulting from trial preparation and the conducting of trial—are also indemnified as they were reasonably incurred on behalf of the trust. The Trustees are entitled to incur reasonable expenses in the execution of the trust—these additional expenses fall under that umbrella. Thus, for the reasons discussed above, the Court finds that the Trustees are entitled to indemnification for the reasonable attorneys' fees and expenses characterized as category seven.

Finally, as for categories eight and nine—fees incurred through March 31, 2015 and fees reasonably incurred after March 31, 2015, respectively—the Trustees also seek indemnification on the basis that those fees were reasonably and properly incurred on behalf of the trust. The Trustees state that the fees generated under category eight were done so "in connection with the preparation, submission, and hearing on the proposed findings of fact and conclusions of law."

Trustees' Proposed Findings of Fact and Conclusions of Law 58. The Court finds that those fees were reasonably incurred on behalf of the trust for the same reasons as the fees under category six. Thus, the Court determines that the Trustees are indemnified for the reasonable attorneys' fees and expenses generated under category eight—i.e., fees incurred since trial through March 31, 2015. However, with respect to category nine, the Court has not yet been briefed on that issue and cannot yet make a finding as to indemnity. Thus, the Court directs the parties to, in conjunction with the upcoming Tri-Town process, prepare a brief explanation as to why or why not the post-March 31, 2015 attorneys' fees and expenses were expended on behalf of the trust and, in turn, should or should not be subject to indemnification. When the Court makes its determination as to the reasonableness of the attorneys' fees and expenses in accordance with Tri-Town, the Court will also determine whether fees incurred under category nine are subject to indemnification.

In sum, the Court has found that the following categories of the Trustees' reasonable attorneys' fees and expenses are indemnified: one, two, three, four, five, six, seven, and eight. Furthermore, those fees incurred under category nine are subject to the above-stated process. At this juncture, the Court again mentions that the exact valuation for each of these categories has yet to be determined and is still subject to the Tri-Town procedure. This means that the Trustees' attorneys must submit independent, expert testimony, see Tri-Town, 139 A.3d at 479-80, and still satisfy the Court that the attorneys' fees and expenses are in fact reasonable pursuant to the familiar factors embodied by Rule 1.5(a) of the Supreme Court Rules of Professional Conduct. See Colonial Plumbing & Heating Supply Co., 464 A.2d at 743; see also Ferris Avenue Realty, LLC, 2013 WL 1789488, at *4, *6-8.

IV

Conclusion

After reviewing the evidence in this case—including exhibits and testimony—and considering the thoughtful arguments presented by counsel, the Court finds that Voccola is entitled to $13,425 in executor compensation and that the Trustees are entitled to $123,150 in trustee compensation for services rendered. The Court also determines that the Trustees are indemnified as to the reasonable attorneys' fees and expenses incurred in a manner consistent with the reasoning articulated above. The amount of reasonable attorneys' fees and expenses to which the Trustees are entitled is still subject to procedure outlined in Tri-Town. Furthermore, the Court denies the Beneficiaries' counterclaims; the evidence did not support the Beneficiaries' claims for breaches of fiduciary duty and of the duty of loyalty. Because the Court found in the Trustees' favor on the issues discussed herein, to the extent they still exist, the Trustees' counterclaims regarding embezzlement, fraudulent conversion, larceny, tortious interference, and breach of fiduciary duties are denied as well. Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Angela Giguere Kumble f/k/a Angela Giguere, et al. v. Michael Voccola and Daniel Shedd
CASE NO:	PB-2012-3338
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 11, 2017
JUSTICE/MAGISTRATE:	Silverstein, J.
ATTORNEYS:	
For Plaintiff:	Mark W. Freel, Esq.; Alan I. Baron, Esq.
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