STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

[Filed: September 26, 2018]

IDC CLAMBAKES, INC., ***Plaintiff,***	:	
v.	:	**C.A. No. NC-2005-0177**
DENNIS J. CARNEY, IN HIS CAPACITY AS TRUSTEE OF THE GOAT ISLAND REALTY TRUST, ET AL., ***Defendants.***	:	

DECISION

"To the victor belong the spoils . . ."[1]

VAN COUYGHEN, J. This matter is before the Court for decision upon the Defendants' motion for summary judgment as to Counts VIII (unjust enrichment) and IX (quasi-contract) of Plaintiff's second amended complaint. For the reasons articulated more fully below, Defendants' Motion for Summary Judgment is granted. Jurisdiction is pursuant to Super. R. Civ. P. 56.

[1] The phrase "To the victor belongs the spoils of the enemy" is originally attributed to United States Senator William L. Marcy commenting upon the victory of Andrew Jackson in the presidential election of 1828 and the corresponding power to make governmental appointments. *See* William L Marcy, Encyclopedia Britannica (June 30, 2018), *available at https://www.britannica.com/biography/William-L-Marcy* (last visited August 15, 2018). The contemporary meaning, applicable herein, is that the winner gets the benefit of everything associated with winning. *See* https://www.dictionary.com/browse/to-the-victor-belong-the-spoils ("The winner gets everything . . . .") (last visited Sept. 26, 2018).

I

Background[2]

This litigation is but another chapter in an ongoing saga which began on January 13, 1988, when Globe Manufacturing Company (Globe), by and through its director Thomas Roos (Mr. Roos), recorded a declaration of condominium creating the Goat Island South Condominium (GIS Condominium). As discussed further below, Mr. Roos was not only the director of Globe, which was the original declarant of the GIS Condominium, but he is also the president, vice president, director and sole shareholder of each successor declarant of the GIS Condominium. The successor declarants are Island Development Company, Inc. (IDC, Inc.) and IDC Properties, Inc. *See In re IDC Clambakes, Inc.*, 510 B.R. 678, 682 (Bankr. D.R.I. 2014).

The GIS Condominium is a twenty-three acre condominium area, located on Goat Island in Newport, Rhode Island, which at the time of creation consisted of six parcels. Three of the six parcels contained existing condominium buildings designated as the America Condominium, the Capella South Condominium, and the Harbor Houses Condominium. Each condominium has its own association (hereinafter the Condominium Associations). The other three parcels were undeveloped and designated as the South Development Unit, the West Development Unit and the North Development Unit. The North Development Unit, identified for purposes of this litigation as the "Reserved Area," is at the heart of the dispute before the Court. The Reserved Area is a waterfront parcel of land tucked into the west side of Goat Island and includes an unobstructed

[2] The facts before the Court arise from nearly two decades of litigation concerning a waterfront event venue located on Goat Island in Newport, Rhode Island and have been discussed *ad nauseum* in several state and federal court decisions. *See, e.g.*, *Am. Condo. Ass'n v. IDC, Inc. (America I)*, 844 A.2d 117 (R.I. 2004); *Am. Condo. Ass'n, Inc. v. IDC, Inc. (America II)*, 870 A.2d 434 (R.I. 2005); *see also In re IDC Clambakes, Inc.*, 852 F.3d 50 (1st Cir. 2017); *In re IDC Clambakes, Inc.*, 727 F.3d 58 (1st Cir. 2013). Nevertheless, this Court will recount the factual and procedural posture of the case relevant to the motion presently before it.

view of Narragansett Bay, the Newport Pell Bridge, Conanicut Island, and the setting sun. The development of the Reserved Area and its current status will be discussed in further detail below.

Goat Island South Condominium Association (GISCA) is the master association that oversees the other three condominium associations referenced above. *See* § 34-36.1-2.20. At the time of the filing of the original declaration, GISCA was controlled by Mr. Roos. In March 1988, Globe and GISCA amended and restated the declaration of condominium (the Master Declaration). In addition to reserving certain development rights laid out in the original declaration,[3] the Master Declaration also reserved Globe's right to convert the Reserved Area to a master unit and to construct improvements thereon or to completely withdraw the area from the GIS Condominium. The amended declaration set an expiration date of December 31, 1994 for the reservation of rights to be exercised.

In 1992, Globe transferred its interest in the GIS Condominium to IDC, Inc. Subsequently, in October 1994, IDC, Inc. transferred its interest to IDC Properties, Inc. As successor declarant, IDC Properties, Inc. was the entity that possessed all of the development rights in the three undeveloped parcels, which included the Reserved Area. As stated above, Mr. Roos was at the time of the transfer, and remains today, the president and sole shareholder of IDC, Inc. and IDC Properties, Inc. *See* Mot. Summ. J. Hr'g Tr. 7, July 2, 2018.

During the period that Globe transferred its interest in the GIS Condominium to the other various entities owned by Mr. Roos, it was also attempting to amend the Master Declaration to extend its development rights to the Reserved Area, as set forth in the Master Declaration, past the December 31, 1994 deadline. The amendments were passed by the master executive board

[3] These reserved development rights reserved the right to convert the land underlying the America Condominium, the Capella South Condominium, the Harbor Houses Condominium and the South Development Unit into master limited common elements with development rights in the above master unit airspace.

of GISCA between April and December 1994 and purportedly extended IDC Properties Inc.'s right to develop the Reserved Area to December 31, 1999. At that time, Mr. Roos, as president of Globe and subsequently, as president of IDC Properties, Inc., had a controlling interest in the master executive board. Although the amendments were passed by the master executive board of GISCA, several unit owners objected to the validity of the amendments. Despite the dispute regarding the attempted extension of development rights of the Reserved Area, in 1997 and 1998 IDC Properties Inc. initiated plans to construct, and did construct, an event facility on the Reserved Area.

In 1996, just prior to the construction of the event facility, Mr. Roos incorporated IDC Clambakes, Inc. to operate the event facility to be constructed on the Reserved Area that would come to be known as the Regatta Club (Regatta Club). Mr. Roos is the president and sole shareholder of IDC Clambakes, Inc. *See In re IDC Clambakes, Inc.*, 510 B.R. at 682. The purpose of IDC Clambakes, Inc. was "[t]o engage in the business of conducting social events, receptions, weddings, clambakes, cookouts, [and] parties." (Pl.'s Mem. Opp'n to Mot. Summ. J. Ex. 1, May 23, 2016.) From December 1998 through April 8, 2005, IDC Properties, Inc. leased the Reserved Area, including the Regatta Club, to IDC Clambakes, Inc. pursuant to a lease between Mr. Roos and himself in his capacity as president, vice president and director of both entities. *See In re IDC Clambakes, Inc.*, 510 B.R. at 683. While IDC Properties, Inc. leased the Reserved Area to IDC Clambakes, Inc., IDC, Inc. was the entity that clients hosting events at the Regatta Club contracted with and the entity that hired IDC Clambakes, Inc. to conduct those events.

The ongoing dispute regarding the validity of the amendment attempting to extend the development rights in the Reserved Area came to a head on May 29, 1999. At that time, the

Condominium Associations filed a state court action against IDC, Inc., IDC Properties, Inc. and Mr. Roos, alleging that the attempted extension of the development rights violated the Rhode Island Condominium Act. Importantly, IDC Clambakes, Inc. was not a party to this suit despite its operation of the Regatta Club and occupancy of the Reserved Area. The Condominium Associations claimed that the voting scheme used in amending and extending the development rights in the Reserved Area was contrary to law and therefore, ineffective. Specifically, the Condominium Associations argued that the voting procedure employed to extend the development rights in the Reserved Area did not conform to the Rhode Island Condominium Act because any attempt to extend special declarant development rights required unanimous consent of all unit owners. As such, the Condominium Associations argued that the amendment extending the December 31, 1994 deadline was invalid. Thus, as a result of the invalidity of the extension, the Condominium Associations claimed that fee simple title to the Reserved Area vested in the condominium unit owners on whose behalf the Condominium Associations acted. The Superior Court agreed and granted partial summary judgment in favor of the Condominium Associations, and IDC Properties, Inc. appealed.

The state court action regarding the development of the Reserved Area resulted in two Supreme Court decisions: *America I v. IDC, Inc.*, 844 A.2d 117 (R.I. 2004) and *America II v. IDC, Inc.*, 870 A.2d 434 (R.I. 2005), where IDC Properties, Inc. argued that "the amendments were approved validly through unanimous votes by the six master condominium unit owners in accordance with the act, and that the hearing justice erred in finding that statute required the unanimous consent of the sub-condominium unit owners." *America I*, 844 A.2d at 128. IDC Properties, Inc. also raised the affirmative defense of laches, contending that the doctrine of laches should bar the Condominium Associations' challenge to the Reserved Area because the

Condominium Associations sat on their rights while IDC Properties, Inc. invested heavily in developing the parcel into the Newport Regatta Club. *See America I*, 844 A.2d at 133.

Our Supreme Court ruled in favor of the Condominium Associations and found that the amendments were invalid because they did not conform to the requirements of the Rhode Island Condominium Act and thus, IDC Properties, Inc. had failed to exercise its development rights before their expiration, and title to the disputed property had vested in the Condominium Associations. The Court also held that IDC Properties, Inc. was not entitled to equitable relief regarding the structure it built because it clearly knew that the ownership of the Reserved Area was contested and therefore, built at its own peril. On April 8, 2005, the Supreme Court reaffirmed its ruling that title to the Reserved Area, including the Regatta Club, rested with the Condominium Associations. *See America II*, 870 A.2d at 443.

Subsequently, GISCA filed an Application for Writ of Execution for Possession and Writ of Ejectment, seeking to evict IDC Clambakes, Inc. from the Regatta Club. As a result, IDC Clambakes, Inc. sought protection in the United States Bankruptcy Court and filed a petition for Chapter 11 bankruptcy. *See In re IDC Clambakes, Inc.*, 431 B.R. 51, 57 (Bankr. D.R.I. 2010). On August 25, 2005, IDC Clambakes, Inc. entered into a consent order with GISCA (the Consent Order) in the Bankruptcy Court proceeding.[4] (Defs.' Mem. Supp. Mot. Summ. J. Ex. B,

[4] In Rhode Island, "a court may take judicial notice of court records" and, while "[n]ot every document that may have been placed in a court file . . . may properly be regarded as part of the record[,]" our Supreme Court has demarcated examples of those that would be considered as such. *Curreri v. Saint*, 126 A.3d 482, 485–86 (R.I. 2015). '"These would include judgments previously entered by the court that have the effect of res [ ]judicata . . . pleadings or answers to interrogatories by a party, which pleading or answer might constitute an admission . . . ."' *Id.* at 486 (quoting *In re Michael A.*, 552 A.2d 368, 370 (R.I. 1989)). Our Supreme Court has also said that the trial justice may also take judicial notice of official federal court documents. *See Goodrow v. Bank of Am., N.A.*, 184 A.3d 1121, 1126 (R.I. 2018) (explaining that the federal complaint and order constituted a court record for purposes of the general rule that allowed the trial court to take judicial notice of official court records).

Jan. 19, 2018.) The Consent Order provided that IDC Clambakes, Inc. could continue to operate the Regatta Club until November 5, 2005, and that IDC Clambakes, Inc. would pay GISCA $450,000 for the use and occupancy of the "Reserved Area" for the period of April 8, 2005 through November 5, 2005, at which time it would "peacefully surrender possession of the Regatta Club premises, along with all improvements and fixtures appurtenant thereto, in good and clean condition." *Id.* The Consent Order also allowed IDC Clambakes, Inc. to reserve its rights to proceed on its claims against GISCA as set forth in the instant lawsuit. However, the Consent Order did not resolve the other issues raised in the Bankruptcy Court proceeding, namely the financial claims raised by GISCA and IDC Clambakes, Inc. against each other.

In addition, IDC Clambakes, Inc. submitted an amended disclosure statement to its petition for Chapter 11 bankruptcy plan of reorganization (the Amended Disclosure Statement). Along with explaining how IDC Clambakes, Inc. would continue to conduct high-end weddings and other social events at an alternative location on Goat Island after vacating the reserved area, the Amended Disclosure Statement stipulated that IDC Clambakes, Inc. would reserve all of its business assets, including its personal property, intangible and intellectual property, cash on hand, and all licenses pertaining to its operations. The Amended Disclosure Statement also reserved IDC Clambakes, Inc.'s right to pursue any and all claims of any kind or nature against the Condominium Associations regarding the Regatta Club and the Reserved Area. (Defs.' Mem. Supp. Mot. Summ. J. Ex. C, Jan. 19, 2018.)

On April 19, 2005, despite entering into a Consent Order, IDC Clambakes, Inc. filed the instant state court action against 175 GIS Condominium unit owners, individually (the Unit Owners). The original complaint did not name GISCA as a defendant. The original complaint prayed for relief on several counts, including three counts for declaratory and injunctive relief,

unjust enrichment, quasi-contract, tortious interference with prospective business relations and specific performance. On December 28, 2006, IDC Clambakes, Inc. filed its first amended complaint, which added counts for breach of contract, tortious interference with contract and misrepresentation. On June 12, 2014, the parties stipulated that all counts against the Unit Owners would be dismissed with prejudice except Counts V (misrepresentation), VIII (unjust enrichment) and IX (quasi-contract). (*See* Stipulation of Dismissal, June 12, 2014.)

During the preliminary years of the instant state court action, IDC Clambakes, Inc. and GISCA's litigation in the federal courts emanating from the Bankruptcy Court proceeding had a long and tortured travel. The initial proceeding, which began in the Bankruptcy Court, was appealed to the United States District Court for the District of Rhode Island and then to the United States Court of Appeals for the First Circuit. The First Circuit remanded the case to the Bankruptcy Court for further fact-finding. The Bankruptcy Court's decision on remand was, again, appealed to the United States District Court and that decision was appealed to the First Circuit. The substance of the litigation in the federal courts has little relevance to the instant state court action except for the Bankruptcy Court Consent Order dated August 25, 2005. Nevertheless, the Court directs the reader to *In re IDC Clambakes, Inc.*, 852 F.3d 50, 53 (1st Cir. 2017) for a recitation of the issues that engaged the federal courts for twelve years.

On February 26, 2016, the Unit Owners filed a motion for summary judgment in the instant state court action on the two remaining claims and IDC Clambakes, Inc. timely objected. Oral argument was heard on June 6, 2016 and an order entered granting summary judgment in favor of the Unit Owners on Count V (misrepresentation) and continuing the motion for summary judgment as to Counts VIII (unjust enrichment) and IX (quasi-contract) to an undetermined future date to allow IDC Clambakes, Inc. to conduct further discovery and for

supplemental memoranda to be filed by both parties. After additional discovery took place, however, IDC Clambakes, Inc. sought leave to amend its complaint for a second time to add GISCA as an additional defendant. The hearing justice granted IDC Clambakes, Inc. motion to amend without prejudice to the Unit Owners or GISCA to pursue their argument regarding whether the amendment was barred by the statute of limitations. IDC Clambakes, Inc. filed its second amended complaint on October 12, 2016, which named GISCA as a defendant and included the two remaining claims for unjust enrichment and quasi-contract.

Following multiple discovery motions, including an *in camera* review of allegedly privileged communications, Defendants filed the instant motion for summary judgment and IDC Clambakes, Inc. timely objected. The Court heard oral argument on the parties' respective positions on July 2, 2018. At the close of the hearing, the Court took the matter under advisement. After review of the documents submitted, the arguments of counsel and the appropriate law, the Court hereby renders its decision.

II

Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it "'is a drastic remedy and should be cautiously applied.'" *Steinberg v. State*, 427 A.2d 338, 339–40 (R.I. 1981) (quoting *Ardente v. Horan*, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). "Thus, '[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.'" *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ.*, 93 A.3d 949, 951 (R.I. 2014) (citation omitted). In this context, "'material' means that a contested fact has the

potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995). Only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg*, 427 A.2d at 340. During a summary judgment proceeding, the court does not pass upon the weight or credibility of the evidence. *See DeMaio v. Ciccone*, 59 A.3d 125, 129-30 (R.I. 2013).

"Furthermore, 'the nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" *Newstone Dev., LLC v. East Pacific, LLC*, 140 A.3d 100, 103 (R.I. 2016) (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)). "[S]ummary judgment should enter 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case . . . .'" *Id.* (quoting *Lavoie v. North East Knitting, Inc.*, 918 A.2d 225, 228 (R.I. 2007)).

III

Parties' Arguments

In support of their motion for summary judgment, Defendants make three arguments.[5] First, Defendants argue that IDC Clambakes, Inc. cannot establish the elements necessary to

[5] In addition, the Defendants also argue that IDC Clambakes, Inc.'s position should be barred by the doctrine of judicial estoppel because IDC Clambakes, Inc. "affirmatively stated to the Bankruptcy Court that it was retaining all aspects of its business and would be continuing its business after the bankruptcy concluded." *See* Defs.' Corrected Reply Mem. Supp. Mot. Summ. J. 11. The Defendants thus argue that IDC Clambakes, Inc. cannot now take an inconsistent position and claim that they conferred a part of their business to the Defendants when it retained all "intangible assets" of its business and transferred them to the reorganized debtor. "[T]he application of [judicial] estoppel is an extraordinary form of relief, that 'will not be applied unless the equities clearly [are] balanced in favor of the part[y] seeking relief.'" *Gaumond v. Trinity Repertory Co.*, 909 A.2d 512, 519 (R.I. 2006) (citation omitted). "A trial justice has the discretion to invoke judicial estoppel 'when he or she finds that a party's inconsistent positions

prevail on its quasi contract claims, including unjust enrichment and quantum meruit, because there was no conferral of a benefit upon Defendants. Defendants next contend that IDC Clambakes, Inc.'s claims are barred by the doctrine of res judicata because (1) the Bankruptcy Court Consent Order determined that IDC Clambakes, Inc. had to relinquish possession of the Reserved Area and the Regatta Club to the Defendants, (2) the Rhode Island Supreme Court already determined that IDC Properties, Inc. was not entitled to equitable relief and therefore, the same applies to IDC Clambakes, Inc., and (3) the United States Court of Appeals for the First Circuit already rejected the theory behind IDC Clambakes, Inc.'s quasi-contract claims. Finally, Defendants maintain that IDC Clambakes, Inc.'s claims against GISCA are barred by the statute of limitations because they do not comply with Superior Court Rules of Civil Procedure 15(c) and thus do not relate back to the time of the filing of the original complaint, which was filed solely against the Unit Owners.

In opposition, IDC Clambakes, Inc. first claims that summary judgment is not appropriate because there is a factual dispute as to whether there was a conferral of a benefit to the Defendants. IDC Clambakes, Inc. next argues that Defendants' contention that *res judicata* applies is baseless because (1) the Consent Order entered in the Bankruptcy Court expressly

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would create an unfair advantage.'" *Iadevaia v. Town of Scituate Zoning Bd. of Review*, 80 A.3d 864, 870 (R.I. 2013) (citation omitted). '"Unlike equitable estoppel, which focuses on the relationship between the parties, judicial estoppel focuses on the relationship between the litigant and the judicial system as a whole."' *Id.* at 870–71 (quoting *State v. Lead Indus. Ass'n, Inc.*, 69 A.3d 1304, 1310 (R.I. 2013)). '"One of the primary factors courts typically look to in determining whether to invoke the doctrine in a particular case is whether the party seeking to assert an inconsistent position would derive an unfair advantage . . . if not estopped."' *Id.* (quoting *Lead Indus. Ass'n, Inc.*, 69 A.3d at 1310). In light of the summary judgment standard and in the light most favorable to IDC Clambakes, Inc., the non-moving party, the Court finds that there is a dispute as to a genuine issue of material fact as to whether IDC Clambakes, Inc.'s current position regarding the benefit it conferred is inconsistent with its position in Bankruptcy Court such that it would create an unfair advantage; therefore, the Court denies Defendants' motion for summary judgment regarding judicial estoppel.

dismissed IDC Clambakes, Inc.'s quasi-contract claims without prejudice, (2) IDC Clambakes, Inc. was not a party to the litigation in the Supreme Court decision, and (3) the First Circuit dismissed GISCA's claim for unjust enrichment, not IDC Clambakes, Inc.'s. Finally, IDC Clambakes, Inc. argues that the amendment to add GISCA as a party relates back to the original filing of the complaint pursuant to the standard laid out in Rule 15(c).

The Parties' respective arguments are discussed below.

IV

Analysis

A

Quasi-contract:

Unjust Enrichment & Quantum Meruit

As an initial matter, IDC Clambakes, Inc.'s complaint seeks relief on two remaining counts: Count VIII, labeled "Unjust Enrichment" and Count IX, labeled "Quasi-Contract"; however, in their memoranda and during oral argument, the Parties referred to the counts as "unjust enrichment" and "quantum meruit." In light of the above, the Court will briefly discuss the nuances between quasi-contract, unjust enrichment and quantum meruit.

Quasi-contract is an obligation that is created by law "for reasons of justice, without any expression of assent and sometimes even against a clear expression of dissent." 1A Corbin, *Contracts* § 19 (1963). Quasi-contract claims include actions for unjust enrichment and quantum meruit. In fact, our Supreme Court has explained that it may be more accurate to say that "quasi-contract is a more general term," while the doctrines of unjust enrichment and quantum meruit are "specific procedure[s] to recover on a quasi-contract." *See Process Eng'rs & Constructors, Inc. v. DiGregorio, Inc.*, 93 A.3d 1047, 1053 n.7 (R.I. 2014). To succeed in a quasi-contract

action, proof of "neither an actual promise nor privity is necessary." *R & B Elec. Co., Inc. v. Amco Constr. Co., Inc.*, 471 A.2d 1351, 1355 (R.I. 1984) (citation omitted). "The obligation to pay in cases of quasi-contract 'arises, not from consent of the parties, as in the case of contracts, express or implied in fact, but from the law of natural immutable justice and equity.'" *Fondedile, S.A. v. C.E. Maguire, Inc.*, 610 A.2d 87, 97 (R.I. 1992) (quoting *Hurdis Realty, Inc. v. Town of N. Providence*, 121 R.I. 275, 278, 397 A.2d 896, 897 (1979)). Further, an "obligation is imposed despite, and frequently in frustration of," the parties' intentions. *Bailey v. West*, 105 R.I. 61, 66, 249 A.2d 414, 417 (1969). Although the two forms of recovery under quasi-contract are similar, including the requisite elements needed to prevail on either unjust enrichment or quantum meruit, their distinctions are discussed more in depth below.

The equitable doctrine of unjust enrichment was first introduced to English common law by Lord Mansfield in 1760. In the case of *Moses v. Macferlan*, 2 Burr. 1005, 1012, 97 E.R. 676, 681 (K.B. 1760), Macferlan represented to Moses that, if Moses endorsed four promissory notes, Macferlan would never enforce Moses' liability on the endorsements. *Id.* However, after endorsing the notes, Macferlan sued Moses to compel him to pay the notes and Moses was subsequently ordered to pay Macferlan. *Id.* Moses then sued Macferlan in the Court of King's Bench for repayment. In affirming a jury verdict in favor of Moses, Lord Mansfield elucidated the doctrine of unjust enrichment where a type of justice exists beyond the realm of codified law: ". . . the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money." *See* Restatement (Third) of *Restitution* § 1 comment b, at 4 (2011).

At first, the doctrine of unjust enrichment was not warmly accepted by English courts. In fact, Lord Justice Scrutton dismissed a case premised on the theory of unjust enrichment and

held "[w]hatever may have been the case 146 years ago, we are not now free in the twentieth century to administer that vague jurisprudence which is sometimes attractively styled 'justice as between man and man.'" *Holt v. Markham*, 1 K.B. 504, 513 (1923). In 1931, however, Percy H. Winfield, a professor of English law at the University of Cambridge, became one of the first English Scholars to embrace the doctrine of unjust enrichment. Professor Winfield explained:

> There must always be circumstances which make one man civilly liable to another on grounds reducible neither to contract nor to tort. The principle that 'one person shall not unjustly enrich [preferably 'benefit'] himself at the expense of another' must penetrate any system of law. That principle is at the root of all genuinely quasi-contractual relations.[6]

Despite the reluctant acceptance of the doctrine in England, the development of the doctrine of unjust enrichment in American jurisprudence was well received and culminated in publication of the Restatement of the Law of Restitution in 1937. The treatise defined restitution as a doctrine whereby "[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other." *Restatement of the Law of Restitution* § 1 (1937). In fact, Lord Wright, an English Judge appointed to the Court of the King's Bench in 1925, concluded that the Restatement of Restitution was "an admirable model" from which the English could produce a "reasoned treatise on the subject."[7] Lord Wright also applied the theory of unjust enrichment in the case of *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd*, [1942] A.C. 32 (H.L.) 34 (Eng.), where he explained:

> It is clear that any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derive from another which it is against conscience that he could keep. Such remedies in English Law are generically

[6] Percy H Winfield, *The Province of the Law of Tort*, 122 (Cambridge: Cambridge Univ. Press, 1931).
[7] Lord Wright, Book Review: *Restatement of The Law of Restitution* (1937), 51 Harvard L. Rev. 369 (1938).

> different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution.

Our Rhode Island Supreme Court has adopted the principles set forth above. As such, it is well settled in our jurisdiction that, "[t]o recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances 'that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof,'" or in other words, that it would be unjust. *Emond Plumbing & Heating, Inc. v. BankNewport*, 105 A.3d 85, 90 (R.I. 2014) (quoting *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 113 (R.I. 2005)).

Quantum meruit is a slightly different, but closely related, cause of action. A Latin term meaning "as much as he has deserved," quantum meruit is defined as "[a] claim or right of action for the reasonable value of services rendered." *Process Eng'rs & Constructors, Inc.*, 93 A.3d at 1052 (quoting Black's Law Dictionary 1361, 1362 (9th ed. 2009)). "Such an action permits recovery of damages 'in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship.'" *Id.* (quoting Black's Law Dictionary at 1361–62). Our Rhode Island Supreme Court has stated that a plaintiff may recover in an action in quantum meruit if the plaintiff can show that a defendant "'derived some benefit from the services and would be unjustly enriched without making compensation therefor.'" *Id.* (quoting *National Chain Co. v. Campbell*, 487 A.2d 132, 135 (R.I. 1985)). While the term "unjustly enriched" is included "as a requirement for recovery under a quantum meruit theory," the Court has described the nuanced distinction between unjust enrichment and quantum meruit as follows: "'While unjust enrichment focuses on the propriety of a payee or beneficiary retaining funds or a benefit, quantum meruit's primary focus is on the value of services rendered.'" *Id.* at 1052

(quoting *Parnoff v. Yuille*, 57 A.3d 349, 355 n.7 (Conn. App. 2012)). "Quantum meruit generally applies 'in a situation in which the plaintiff has provided services to the defendant for which the defendant has refused to pay.'" Id. at 1053 (quoting *Parnoff*, 57 A.3d at 355 n.7).

"Although [this Court notes] the distinction between unjust enrichment and quantum meruit, [as stated above,] both doctrines are quasi-contractual theories" and are essentially the same. *Process Eng'rs & Constructors, Inc.*, 93 A.3d at 1053. The elements that a plaintiff must prove to prevail on a claim for unjust enrichment are identical to the elements required to recover in quantum meruit. *See Fondedile, S.A.*, 610 A.2d at 97; *R & B Elec. Co., Inc.*, 471 A.2d at 1355–56; *Bailey*, 105 R.I. at 67, 249 A.2d at 417. Therefore, to recover on a claim for quantum meruit, a plaintiff must prove the same three elements as in a claim for unjust enrichment. *See Dellagrotta*, 873 A.2d at 113.

The Court finds that IDC Clambakes, Inc.'s quasi-contract claims must fail because it has failed to establish a genuine issue of material fact on two essential elements. Specifically, IDC Clambakes, Inc. cannot establish that it conferred a benefit upon the Defendants and, even assuming there was a benefit and that benefit has been appreciated by the Defendants, IDC Clambakes, Inc. cannot establish that it would be unjust for the Defendants to retain the benefit.[8] As such, the Court focuses its analysis below on the two elements IDC Clambakes, Inc. cannot demonstrate to prevail on its claims.

[8] However, assuming, *arguendo*, there was a benefit conferred upon the Defendants, this Court finds that there is a genuine dispute as to a material fact as to whether the Defendants may have appreciated the alleged benefit.

1

Was the alleged enrichment unjust?

The most significant element of the doctrine of unjust enrichment[9] is whether the enrichment of the defendant is unjust. *See R & B Elec. Co., 471 A.2d at 1355; Howard & Bowie, P.A. v. Collins*, 759 A.2d 707, 710 (Me. 2000). Indeed, "[t]he fact that a person or entity received or obtained a benefit without paying for it does not of itself establish that the recipient has been unjustly enriched." *See* Restatement (Third) of *Restitution* § 2(1) (2011). Instead, the term "unjustly" could mean "illegally or unlawfully, or that the circumstances were such that it would be morally wrong for one party to be allowed to enrich itself at the expense of another." 66 Am. Jur. 2d *Restitution and Implied Contracts* § 9 (2001).

As for this element, IDC Clambakes, Inc. essentially claims that the Defendants were unjustly enriched because they were able to benefit by receiving a premium rental price for the Reserved Area inasmuch as IDC Clambakes, Inc.'s reputation imparted an increased value upon the res of the Reserved Area. Assuming, *arguendo*, that IDC Clambakes, Inc.'s assertions have merit, the doctrine does not apply simply because the Defendants may have allegedly benefited as a result of IDC Clambakes, Inc.'s actions. *See Styer v. Hugo*, 619 A.2d 347, 350 (Pa. Super. 1993). First, IDC Clambakes, Inc. ignores that it lost this property as a result of IDC Properties, Inc., its landlord, losing the litigation contesting ownership of the Reserved Area. IDC Clambakes, Inc. cannot not now be permitted to profit by IDC Properties, Inc. loss in the *America* decisions. The practical effect of the *America* decisions was that IDC Clambakes, Inc. lost its ability to operate the Regatta Club because IDC Properties, Inc. lost its claim of

[9] For purposes of the Court's analysis, the term "unjust enrichment" refers to both forms of recovery under quasi-contract because the elements to prevail under either unjust enrichment or quantum meruit are identical.

ownership to the Reserved Area. How can it be unjust when any alleged benefit received by the Defendants was solely a result of winning the legal battle concerning its ownership of the Reserved Area? How can the consequence of a final judicial determination be deemed unjust? It cannot. If this Court were to hold that any benefit received by the Defendants was unjust in this case, it would completely undermine the Supreme Court's holding in *America I*. If the Court adopted IDC Clambakes, Inc.'s reasoning, it would negate the legal consequence of the *America I* decision and would result in a complete *non sequitur*.

In addition, in *America I*, our Supreme Court held that IDC Properties, Inc. was found to not be entitled to any equitable relief because it built the Regatta Club on the Reserved Area while the rightful ownership was in dispute. Specifically, our Supreme Court held that IDC Properties, Inc. "developed the Reserved Area at a time when they were on notice that their right to do so was in dispute, [and] conclude[d] that they constructed on the parcel at their peril and cannot now contend that equity should prevent [the Condominium Associations] from prevailing because of [IDC Properties, Inc.] expenditures." *America I*, 844 A.2d at 135. The Supreme Court has already held that IDC Properties, Inc. was not entitled to the application of equitable principles based upon the same premise that IDC Clambakes, Inc. now argues it is entitled to the same equitable relief. How can this Court find that it would be unjust for IDC Clambakes, Inc. when our Supreme Court has found that it was not unjust for IDC Properties, Inc.? It makes no sense that the Defendants would unjustly retain the benefit of their own property when IDC Clambakes, Inc. operated the Regatta Club over the years with full knowledge that the *America* litigation was ongoing which was contesting its landlord's ownership of the Reserved Area. IDC Clambakes, Inc. is not now entitled to the application of unjust enrichment when its landlord, IDC Properties, Inc., was not entitled to relief based upon the application of equitable principles,

especially considering that Mr. Roos is the president and sole shareholder of both corporations. In this Court's opinion, the facts and circumstances of this case do not establish any injustice requiring the application of equitable relief.

Accordingly, IDC Clambakes, Inc. cannot establish that any benefit the Defendants may have received would be unjust.

2

Was a benefit conferred upon the Defendants by IDC Clambakes, Inc.?

IDC Clambakes, Inc. must demonstrate that it conferred a benefit upon the Defendants. The benefit IDC Clambakes, Inc. argues it conferred upon the Defendants is the "good will" and "reputation" that ran with the res of the Reserved Area. Specifically, at a recent Rule 30(b)(6) deposition of IDC Clambakes, Inc.'s General Counsel, Kevin Vendituoli (Mr. Vendituoli), the Defendants asked what benefit IDC Clambakes, Inc. conferred upon the Defendants. The testimony is as follows:

> Q. Are you saying GISCA inherited the business reputation by taking over possession of the property itself? Is that what you're saying?
> A. I'm saying that GISCA inherited the benefit of Clambakes' established good will when it took over possession and leased, under very favorable terms, the very building in which Clambakes had operated.
> Q. Are you saying that GISCA inherited this reputation by taking possession of the building?
> A. It inherited the reputation, the value of the reputation, not the reputation, the value of the reputation, when it took possession of the property and leased it to Longwood.
> Q. So the reputation was tied into the property, correct?
> A. In part, yes.
> Q. But whatever share of the reputation that GISCA got, it got when it took over possession of the proper[ty], correct?
> A. Yes, we are talking about intangibles, which is where the problem lies, because we are talking about conveying concepts.

Q. I'm trying to understand the mechanism through which you claim GISCA got possession of the reputation. And you're saying it took over possession of the property and thereby got the reputation which you attribute to Clambakes?

. . .

Q. Your testimony is that the mechanism through which GISCA inherited the reputation was when it took over possession of the property and leased it to Longwood; is that correct?

A. I'm saying - -

Q. Is that correct?

A. No, that is not correct. It's close but it's not correct.

Q. At what point in time did - - what was the mechanism through which GISCA obtained this reputation that you claim existed?

A. I don't understand what you mean by mechanism.

Q. We know there wasn't a written assignment or anything like that, correct?

A. Yes.

Q. We know that the business assets were not transferred to GISCA?

A. Which business assets?

Q. All of the business assets you listed before, personal property, the contracts?

A. The ones I said were not transferred?

Q. Yes. We know all of that was not transferred or not conferred, you have said that already. What was the mechanism or the vehicle through which GISCA came into possession of this so-called reputation?

A. It was when they took possession of the property.

Q. So the property had the reputation?

A. The property carried with it the reputation as built by Clambakes.

Q. The property had the reputation. It's that reputation which you claim Clambakes conferred on GISCA, correct?

A. Yes, in part.

Q. You would argue that the reputation was an improvement in the property; is that part of what you would say?

A. In part, yes.

Q. The reputation improved the property?

A. The reputation built improved the value of the property and its desirability for a new operator other than Clambakes because during the prior eight years or seven years, Clambakes had established it and run through a great cost and investment and effort. And by the closest estimates that I can come up with, 20,000 to 30,000 people a year

> pass through that building and enjoy a nice event. And that draw is what really provided the value because it was known as an event facility. For instance, the example I gave you in court, which was my high school prom, which the company, our company, provides proms at a loss. We will have proms. In my case, in 1999, our high school prom was there, with the idea being that later the high school students, when they go to get married, they would like to get married at the same location at which they had their prom. There is a carryover effect that stayed and attached to the property. Does that clarify it for you?
>
> Q. The carryover effect you're claiming is attached to the property, I understand.
>
> A. And it transferred with the possession once it - - it stuck with the property. *See* Defs.' Mem. Supp. Mot. Summ. J. Ex. A, Vendituoli Depo. Tr. 79-83.

IDC Clambakes, Inc.'s argument lacks merit. The record is devoid of any evidence, or inferences from evidence, that IDC Clambakes, Inc. conferred anything to the Defendants. Black's Law Dictionary defines the term "confer" as meaning "[t]o grant (something) as a gift, benefit, or honor." Black's Law Dictionary 360 (10th ed. 2014). IDC Clambakes, Inc. did not "confer" any benefit upon the Defendants. IDC Clambakes, Inc. relinquishment of the Reserved Area was solely the result of its landlord, IDC Properties, Inc.'s loss of the state court action, which culminated in the *America* decisions and held that IDC Properties, Inc. had no ownership interest in the Reserved Area. The relinquishment of the Reserved Area was also a result of the Consent Order IDC Clambakes, Inc. entered into in order to stave off being evicted from the Reserved Area by the Defendants. The Consent Order entered into in the Bankruptcy Court proceeding provided that IDC Clambakes, Inc. could continue to operate the Regatta Club until November 5, 2005, that IDC Clambakes, Inc. would pay GISCA $450,000 for the use and occupancy of the "Reserved Area" for the period of April 8, 2005 through November 5, 2005, at which time it would "peacefully surrender possession of the Regatta Club premises, along with all improvements and fixtures appurtenant thereto, in good and clean condition."

The record is devoid of any evidence that IDC Clambakes, Inc. voluntarily gave anything to the Defendants. It is *non sequitur* to hold that IDC Clambakes, Inc. conferred a benefit upon the Defendants when IDC Clambakes, Inc. was evicted from the Reserved Area as a result of IDC Properties, Inc. losing its claim to its ownership rights in the Reserved Area. IDC Clambakes, Inc. no more conferred a benefit to the Defendants as a patient confers a benefit to a dentist who extracted the patient's tooth.

Furthermore, IDC Clambakes, Inc. did not confer the alleged reputation that ran with the Reserved Area to the Defendants because IDC Clambakes, Inc. never owned the Reserved Area. From 1998 to 2005, IDC Clambakes, Inc. was leasing the Regatta Club from IDC Properties, Inc. Our Supreme Court concluded that IDC Properties, Inc. had failed to exercise its development rights before their December 1994 expiration, and thus title to the Reserved Area had vested in the Condominium Associations. *See America I*, 844 A.2d at 133. Moreover, even assuming, *arguendo*, there was a conferral of a benefit, IDC Properties, Inc. would be the entity that conferred the reputation of the Reserved Area to the Defendants, not IDC Clambakes, Inc., who was merely a tenant. As it was judicially determined that IDC Properties, Inc. did not own the Reserved Area, there is no way IDC Clambakes, Inc. can now argue that it indirectly conferred a benefit to the Defendants, the rightful owners.

Finally, if this Court were to find that IDC Clambakes, Inc. conferred its reputation that was instilled in the res of the Reserved Area to the Defendants, every property that housed a lessee conducting an event venue, restaurant or any business for that matter, would subject an owner of property to an unjust enrichment claim by arguing that the property owner was conferred a benefit through reputation that was instilled in the res of the property as a result of the lessees' operation of the business. That type of finding, as urged by IDC Clambakes, Inc.,

would create a cause of action where none currently exists. If the Court were to take IDC Clambakes, Inc.'s position to its logical conclusion, it would enable a lessee who was involuntarily evicted to take the position that the lessee has a proprietary interest that attaches to a particular location. This premise simply makes no sense and is a theory that, as far as this Court is concerned, is not recognized by the law based upon the facts and circumstances of this case.

Accordingly, the Court finds that there was no conferral of a benefit because IDC Properties, Inc. lost the land as a result of losing the *America* litigation, and anything the Defendants may have received from IDC Clambakes, Inc. was merely a consequence of IDC Properties, Inc.'s loss. Therefore, IDC Clambakes, Inc. did not confer anything to the Defendants and cannot establish two essential elements to prevail on a claim for unjust enrichment. As such, the Defendants' Motion for Summary Judgment is granted and IDC Clambakes, Inc.'s claims based on quasi-contract, including unjust enrichment and quantum meruit, are dismissed.

B

Res Judicata

Our Rhode Island Supreme Court has unequivocally held as follows: "*Res judicata*, or claim preclusion, prohibits the relitigation of all issues that were tried or might have been tried in the original suit" where there has been a final judgment between the parties to an action and those in privity with those parties. *Carrozza v. Voccola*, 962 A.2d 73, 78 (R.I. 2009) (citation and internal quotation marks omitted). Essentially, the doctrine of *res judicata* "serves as a bar to a second cause of action where there exists: (1) 'identity of parties'; (2) 'identity of issues'; and (3) 'finality of judgment in an earlier action.'" *Torrado Architects v. R.I. Dep't of Human*

Servs., 102 A.3d 655, 658 (R.I. 2014) (quoting *Huntley v. State*, 63 A.3d 526, 531 (R.I. 2013)). "The policy underlying res judicata is to economize the court system's time and lessen its financial burden. 'This doctrine ensures that judicial resources are not wasted on multiple and possibly inconsistent resolutions of the same lawsuit.'" *ElGabri v. Lekas*, 681 A.2d 271, 275 (R.I. 1996) (quoting *Gaudreau v. Blasbalg*, 618 A.2d 1272, 1275 (R.I. 1993)).

As for the first element, there is an exception "for extending res judicata to nonparties without savaging important constitutional rights, [which] is the concept of privity—a concept that furnishes a serviceable framework for an exception to the rule that *res judicata* only bars relitigation of claims by persons who were parties to the original litigation." *Gonzalez v. Banco Cent. Corp.*, 27 F.3d 751, 757 (1st Cir. 1994). This exception is applied "when it can be said that there is 'privity' between a party to the second case and a party who is bound by an earlier judgment." *Richards v. Jefferson Cty., Ala.*, 517 U.S. 793, 798 (1996). Specifically, '"[p]arties are in privity when 'there is a commonality of interest between the two entities' and when they 'sufficiently represent' each other's interests."' *Lennon v. Dacomed Corp.*, 901 A.2d 582, 591 (R.I. 2006) (quoting *Duffy v. Milder*, 896 A.2d 27, 36 (R.I. 2006)).

In addition, with respect to the second element of *res judicata*, our Rhode Island Supreme Court has adopted the "transactional rule." *ElGabri*, 681 A.2d at 276. The transactional rule provides that "all claims arising from the same transaction or series of transactions which could have properly been raised in a previous litigation are barred from a later action." *DiBattista v. State*, 808 A.2d 1081, 1086 (R.I. 2002) (citing *ElGabri*, 681 A.2d at 276). "What constitutes a transaction or a series of connected transactions is 'to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit

conforms to the parties' expectations . . . .'" *Town of Warren v. Bristol Warren Reg'l Sch. Dist.*, 159 A.3d 1029, 1036 (R.I. 2017) (quoting *Ritter v. Mantissa Inv. Corp.*, 864 A.2d 601, 605 (R.I. 2005)).

With these principles in mind, the Court proceeds to its analysis below.

1

Identity of Parties

Determining whether there is "identity of parties" requires resolving "whether the parties to this second action are identical to or in privity with the parties involved in the [prior action]." *E.W. Audet & Sons, Inc. v. Fireman's Fund Ins. Co. of Newark, New Jersey*, 635 A.2d 1181, 1186 (R.I. 1994) (citation omitted). "A party to an action has been defined as '[a] person who is named as a party to an action and subjected to the jurisdiction of the court . . . .'" *Id.* at 1186–87 (quoting 1 Restatement (Second) of *Judgments* § 34(1) at 345 (1982) (alteration in original)). Relying on the Restatement, our Rhode Island Supreme Court has also explained that "parties may subject themselves to the court's jurisdiction by making an appearance or participating in the action in a manner that has the effect of an appearance." *Id.* at 1187 (quoting Restatement (Second) of *Judgments* § 34(1) cmt. a).

The plaintiffs in the *America I* and *II* actions were the America Condominium Association, the Capella South Condominium Association, and the Harbor Houses Condominium Association. The Defendants in the instant action are the Unit Owners of the plaintiffs in the *America I* and *II* actions and the master association of the plaintiffs in the *America I* and *II* actions. As such, the plaintiffs in the *America I* and *II* actions are the Defendants in the instant action and are identical for purposes of this litigation.

The defendants in the *America I* and *II* actions were IDC Properties, Inc., IDC, Inc. and Mr. Roos. Because IDC Clambakes, Inc. was not a party to the *America I* and *II* actions but is the plaintiff to the instant action, the Court must determine whether there is privity between IDC Clambakes, Inc. and IDC Properties, Inc., IDC, Inc., and Mr. Roos. As stated above, "[p]arties are in privity when 'there is a commonality of interest between the [] entities and when they 'sufficiently represent' each other's interests.'" *Lennon*, 901 A.2d at 591 (quoting *Duffy*, 896 A.2d at 36).

Historically, the instant case and other related litigation involves a web of companies established and owned by Mr. Roos. First, Mr. Roos is the president of IDC, Inc., the predecessor declarant of the GIS Condominium in the early 90s and the special declarant who held development rights in the Reserved Area. *See America I*, 844 A.2d at 122. IDC, Inc. was also the contracting entity for any and all events held at the Regatta Club and conducted by IDC Clambakes, Inc. Next, Mr. Roos is the president and sole shareholder of IDC Properties, Inc., the successor declarant of the GIS Condominium and special declarant who held development rights in the Reserved Area prior to the *America I* decision. *See In re IDC, Inc.*, 431 B.R. at 57. Finally, Mr. Roos is the president and sole shareholder of IDC Clambakes, Inc., which leased the Regatta Club from IDC Properties, Inc. *See id.* To say that there is not a commonality of interest between the entities above would be absurd. Mr. Roos is the president and owner of all the entities listed above. In addition, when operating the Regatta Club on the Reserved Area, IDC Clambakes, Inc. did not enter into any contracts with any clients. Instead, the clients who held events at the Regatta Club would enter into contracts with IDC, Inc., which was the direct contractor. *See* Venditouli Dep. Tr. 46, Apr. 25, 2018. Therefore, it is simply not reasonable that the three entities (IDC, Inc., IDC Properties, Inc. and IDC Clambakes, Inc.) do not

sufficiently represent each other's interests when they are all effectively owned by the same person, Mr. Roos, and each entity's survival as a business is interrelated and dependent upon the success of the other.

Accordingly, the first element of *res judicata*, identity of the parties, is satisfied because this Court finds that IDC Clambakes, Inc. is in privity with IDC, Inc., IDC Properties, Inc. and Mr. Roos as there is a commonality of interest between the entities and they sufficiently represent each other's interests. The entities are closely linked and it would be ludicrous to hold that the parties are not in privity with each other. In addition, as stated above, the same is true as it relates to the Defendants in this case and the plaintiffs in the *America* actions.

2

Identity of Issues

The second requirement necessary to apply the doctrine of *res judicata* is "identity of issues." *Lennon*, 901 A.2d at 592. "'In determining the scope of the issues to be precluded in the second action, [our jurisdiction] has adopted the broad 'transactional' rule.'" *Id*. (quoting *Waters v. Magee*, 877 A.2d 658, 666 (R.I. 2005)). As stated above, "[t]he transactional rule provides that 'all claims arising from the same transaction or series of transactions which could have properly been raised in a previous litigation are barred from a later action.'" *Bossian v. Anderson*, 991 A.2d 1025, 1027 (R.I. 2010) (quoting *DiBattista*, 808 A.2d at 1086). Our Supreme Court has explained that in order to apply the transactional rule to *res judicata* "it must be shown that either the matter controverted in the second action was raised and litigated in the [earlier] proceedings . . . or that the matter, if not raised, was one which could and should have been brought forward and litigated." *Reynolds v. First NLC Fin. Servs., LLC*, 81 A.3d 1111, 1116 (R.I. 2014) (citation omitted). "What constitutes a transaction or a series of connected

transactions is 'to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations . . . .'" *Town of Warren*, 159 A.3d at 1036 (quoting *Ritter*, 864 A.2d at 605).

The facts and circumstances of the *America* cases form the basis for IDC Clambakes, Inc.'s claims here, which are linked in "time, space, and origin." In *America I* and *II*, IDC Properties, Inc. argued that it was entitled to equitable relief because it made a considerable investment in developing the Reserved Area. Therefore, it argued equity should prevent the Condominium Associations from prevailing because of its financial expenditures. Our Supreme Court rejected that argument and held that IDC Properties, Inc. "developed the Reserved Area at a time when they were on notice that their right to do so was in dispute, [and the Court] conclude[d] that [IDC Properties, Inc.] constructed the parcel at their peril and cannot now contend that equity should prevent [the Condominium Associations] from prevailing because of their expenditures." *America I*, 844 A.2d at 135.

Now, IDC Clambakes, Inc. is attempting to make the same argument in the instant action. Specifically, IDC Clambakes, Inc. argues that it made a considerable investment in developing the Reserved Area, in the form of "good will" and "reputation." *Res judicata* forecloses this type of claim, especially where the Supreme Court explicitly foreclosed any attempt to recoup the investment made in developing the Regatta Club by IDC Properties, Inc. In addition, the transactional rule applies to the instant case as IDC Clambakes, Inc.'s quasi-contract claims arise from the same transaction or series of transactions, which could have properly been raised in the previous state court action, and consequently, they are barred.

3

Finality of Judgment in an Earlier Action

"Finally, the application of *res judicata* requires that there be 'finality of judgment in the earlier action.'" *Reynolds*, 81 A.3d at 1116 (quoting *Huntley*, 63 A.3d at 531). The Supreme Court's decisions in the *America* cases are final.

On June 11, 2001, a justice of the Superior Court granted summary judgment in favor of the Condominium Associations. The case was appealed to the Rhode Island Supreme Court, twice. The Rhode Island Supreme Court affirmed the order granting summary judgment in favor of the Condominium Associations. *See America I*, 844 A.2d at 117. The Supreme Court found that the amendments were invalid because they did not conform to the requirements of the Rhode Island Condominium Act. *Id.* at 127-30. The Court explained that IDC Properties, Inc. failed to exercise its development rights before their December 31, 1994 expiration, and thus title to the disputed property had vested in the Condominium Associations. *Id.* at 133. In addition, the Supreme Court rejected IDC Properties, Inc.'s argument that they had invested $3 million in developing the Regatta Club, which should weigh against the Condominium Associations' winning title to the Reserved Area. *Id.* at 135. The Court stated "Considering that [IDC Properties, Inc.] developed the Reserved Area at a time when they were on notice that their right to do so was in dispute, we conclude that they constructed the parcel at their peril and cannot now contend that equity should prevent plaintiffs from prevailing because of their expenditures." *Id.* Thus, the third element of *res judicata* is satisfied.

Accordingly, Defendants' Motion for Summary Judgment as to this issue is granted because IDC Clambakes, Inc.'s quasi-contract claims are barred by the doctrine of *res judicata*.

C

Statute of Limitations

Rule 15(c) of the Superior Court Rules of Civil Procedure provides in pertinent part as follows:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing or adding a plaintiff or defendant or the naming of a party relates back if the foregoing provision is satisfied and within the period provided by Rule 4(1) for service of . . . required documents, the party against whom the amendment adds a plaintiff, or the added defendant: . . . [k]new or should have known that but for a mistake the action would have been brought by or against the plaintiff or defendant to be added. Rule 15(c)(2).

Under the "relation-back doctrine" of Rule 15(c), IDC Clambakes, Inc. may avoid the preclusive effect of a statute of limitations if its second amended complaint relates back to the original complaint. Rule 15(c) of the Superior Court Rules of Civil Procedure allows for an amended pleading to relate back to the date of the original pleading when three conditions are met. First, the claims against the new party must have arisen out of the same conduct, transaction, or occurrence as the claims in the original pleading. *See* Rule 15(c). Second, the party to be brought in by amendment must have received such notice of the institution of the action that the party would not be prejudiced in maintaining a defense on the merits. *See id.* Finally, the party to be brought in by amendment must have or should have known that but for a mistake concerning the identity of the proper party the action would have been brought against the party. *See id.*

Defendants argue that the statute of limitations bars IDC Clambakes, Inc.'s claims against GISCA because IDC Clambakes, Inc. cannot satisfy the Rule 15(c) relation-back standard. Specifically, Defendants contend that the second amended complaint, which added GISCA as a

defendant on October 12, 2016, does not relate back to the filing of the original complaint on April 19, 2005, because IDC Clambakes, Inc. made no "mistake concerning the identity of the proper party" as it "affirmatively rejected adding GISCA as a defendant to [the present] action" on more than one occasion. *See* Super. R. Civ. P. 15(c); *see also* Defs.' Mem. Supp. Mot. Summ. J. 20.

The order granting IDC Clambakes, Inc.'s motion to amend was made without prejudice to Defendants being able to raise the argument of "whether the amendment relates back to the original complaint filing" in the future. *See* Order, Sept. 15, 2016. Consequently, if this Court finds that the second amended complaint does not relate back to the filing of the original complaint, IDC Clambakes, Inc.'s quasi-contract claims against GISCA would undoubtedly be barred by the applicable statute of limitations—ten years for civil claims—given that the underlying incidents occurred in 2005. *See* G.L. 1956 § 9-1-13 ("Except as otherwise specially provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after.").

There is no dispute that the quasi-contract claims brought against GISCA arose out of the same conduct, transaction, or occurrence as the claims alleged against the Unit Owners in the original pleading. As for the second element of Rule 15(c)—whether GISCA received such notice of the institution of the action that GISCA would not be prejudiced in maintaining a defense on the merits—again, there is no dispute. GISCA clearly knew of the institution of the action because all of its members, including its officers and the members of its board, were individually served with process at the outset of the case. Moreover, there is no argument that GISCA would be prejudiced in maintaining a defense on the merits because GISCA represents

the interests of the Unit Owners and both are represented by the same attorneys who previously urged IDC Clambakes, Inc. to add GISCA as a defendant on more than one occasion.

The final element requires the Court to determine whether the party to be brought in by amendment, in this case GISCA, knew or should have known that, but for IDC Clambakes, Inc.'s mistake concerning the identity of the proper party, the action would have been brought against GISCA. *See* Rule 15(c); *Hall v. Ins. Co. of N. America*, 727 A.2d 667, 669 (R.I. 1999). Our United States Supreme Court has elaborated upon this requirement in *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010). The Court discusses the definition of mistake in the Rule 15 context. In *Krupski*, the U.S. Supreme Court held that "Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known . . . , not what the *plaintiff* knew or should have known at the time of filing her original complaint." *Id.* at 548. The Court explained that even if the plaintiff may have known the identity of the prospective defendant from documents in its possession, it "does not foreclose the possibility that she nonetheless misunderstood crucial facts regarding the two companies' identities." *Id.* at 555. In the case at bar, it is clear from the memoranda filed that GISCA had constructive notice of the claims alleged by IDC Clambakes, Inc. and should have known that it was a mistake that it was not named in the complaint. In fact, Defendants' counsel argued that he brought this issue to IDC Clambakes, Inc.'s attention on several occasions, both formally and informally.

Accordingly, the Court denies Defendants' Motion for Summary Judgment as to this issue because the amendment adding GISCA relates back to the original complaint.

V

Conclusion

For the reasons articulated above, Defendants' Motion for Summary Judgment is granted and IDC Clambakes, Inc.'s quasi-contract claims, including unjust enrichment and quantum meruit, are dismissed. As it relates to the quasi-contract claims, IDC Clambakes, Inc. has failed to establish a genuine issue of material fact on two essential elements. Specifically, IDC Clambakes, Inc. has failed to demonstrate that it would be unjust for the Defendants to receive any benefit or that it conferred a benefit upon the Defendants.

In addition, IDC Clambakes, Inc.'s quasi-contract claims are barred by the doctrine of *res judicata* because (1) there is an identity of parties as the parties to the instant action are in privity with the plaintiffs and defendant in the *America* cases, (2) there is an identity of issues because under the transactional rule, the quasi-contract claims could and should have been brought forward and litigated in the *America* cases, and (3) there is a finality of judgment as the Rhode Island Supreme Court affirmed the decision of the lower court granting summary judgment in favor of the Condominium Associations, twice. *See America I*, 844 A.2d at 117; *America II*, 870 A.2d at 443.

Finally, IDC Clambakes, Inc.'s second amended complaint adding GISCA as a party defendant relates back to the filing of the original complaint and thus, is not time barred.

Accordingly, as the sun sets over Goat Island in Newport Harbor, so shall the sun set on this litigation in the Superior Court for the time being.

Counsel shall confer and submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	IDC Clambakes, Inc. v. Dennis J. Carney, et al.
CASE NO:	NC-2005-0177
COURT:	Newport County Superior Court
DATE DECISION FILED:	September 26, 2018
JUSTICE/MAGISTRATE:	Van Couyghen, J.
ATTORNEYS:	
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