

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**WASHINGTON, SC.**

**SUPERIOR COURT**

**(FILED: January 18, 2018)**

**RICHARD C. PANCIERA and  
LOUIS PANCIERA, INC.,  
Plaintiffs,**

**v.**

**LAWRENCE C. VETELINO,  
Defendant.**

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**C.A. No. WC-2016-0248**

**DECISION**

**STERN, J.** Before this Court are Plaintiffs Richard C. Panciera (Panciera) and Louis Panciera, Inc.'s (LPI) (collectively, Plaintiffs) motion for summary judgment, as well as Defendant Lawrence C. Vetelino's (Vetelino) motion for partial summary judgment. Both motions seek a declaration of interpretation regarding the validity of certain rights afforded to Vetelino in his employment contract after LPI exercises its right to repurchase Vetelino's shares in LPI. Jurisdiction is pursuant to Super. R. Civ. P. 56(c) and G.L. 1956 §§ 9-30-1 *et seq.*

**I**

**Facts and Travel**

Around 1934, Panciera's father, Louis Panciera, founded LPI, an insurance and real estate agency with its primary business located in Westerly, Rhode Island. Compl. ¶ 5. He operated and managed the company for over fifty-three years until his death in 1987. *Id.* In the 1950s, Louis Panciera purchased another smaller insurance and real estate agency called Richmond & Nichols, Inc. (Richmond & Nichols) in Hope Valley, Rhode Island. *Id.* at ¶ 6. His wife, Grace Panciera, operated and managed Richmond & Nichols until her death in 2001. *Id.*

Panciera was the only child of Louis and Grace Panciera and in 1975 became a practicing attorney in Rhode Island. *Panciera Aff.* ¶¶ 1-2. Since 1975, Panciera has been substantially involved in the affairs of LPI and Richmond & Nichols as general legal counsel. *Id.* at ¶ 6. Additionally, between 1981 and 1987 he was Vice President of LPI and became LPI's President after his father's death in 1987. *Id.*

When Grace Panciera passed away in 2001, Panciera became the sole owner of both LPI and Richmond & Nichols; he assumed sole responsibility for the management of LPI and continued to rely on many long-term employees to service LPI's customers and conduct day-to-day affairs. *Id.* at ¶¶ 8-9. Since 2001, Panciera personally loaned LPI almost \$300,000 to pay off loans incurred by the agency but, as of this Decision, has yet to be fully repaid. *Id.* at ¶ 10. Panciera also funded the construction of new LPI offices on land owned by Princess Pines Estate, Inc., a corporation owned and organized by the Panciera family. *Id.* Since 2001, Panciera has been the sole personal guarantor of LPI's working capital loan from Washington Trust. *Id.*

Louis Panciera hired Vetelino in or around 1971; he worked at LPI without an employment contract or non-competition agreement. *Pls.' Mem. in Supp. of Mot. for Summ. J. (Pls.' Mot.)*. Over his time at the agency, Vetelino had pursued an ownership interest in LPI: he first asked Louis Panciera, but his request was rejected because Louis Panciera did not want to turn the agency into a partnership. *See id.* After Louis Panciera's death, Vetelino pursued his ownership interest with Grace Panciera; however, she, for the same reasons as her husband, also refused. *Id.* Then, in or around 2005, Vetelino pursued Panciera for the same reasons, and, after having a change of heart, Panciera decided to enter into negotiations. *Id.* After drafting at least four versions, Panciera finalized an Employment Contract (Contract) on December 22, 2006. *Id.*

The Contract provided Vetelino with a number of terms and conditions. First, and most important to this Decision, LPI was to issue a forty percent minority interest in LPI at no cost to Vetelino. Employment Contract Art. 6. Second, LPI was required to pay the cost of health insurance benefits up to Vetelino's death and thereafter for the remainder of his spouse's life. *Id.* at Art. 4(A). Third, LPI was responsible for paying the premiums on Vetelino's life insurance policy as and when due until the death of Vetelino. *Id.* at Art. 4(B). Fourth, upon Vetelino's retirement, LPI had to purchase a reasonable automobile at the sole cost and expense of LPI. *Id.* at Art. 4(C). Fifth, any indebtedness that LPI would undertake had to be specifically consented to by Vetelino in writing, except for debt reasonably incurred in the ordinary course of business with Vetelino's prior consent. *Id.* at Art. 5. Sixth, the Contract provided a "Right of First Refusal" for Vetelino whenever LPI or its shareholders decided to "sell, transfer, assign, convey or dispose of . . . substantially all of the assets or stock of [LPI]." *Id.* at Art. 7. Seventh, in the event that Vetelino were to voluntarily retire, LPI was required to pay him fifty percent of Vetelino's gross income from the prior year and such weekly payments would continue until Vetelino turned sixty-eight years old. *Id.* at Art. 8. Eighth, in the event that Vetelino were to become totally and permanently disabled, LPI was required to pay him his then-current salary and benefits for a period of six months from the date of his total and permanent disability, and, at that point, he would be deemed to have voluntarily retired. *Id.* Ninth, LPI could not voluntarily assign this Contract or any of its duties and obligations without the prior written consent of Vetelino; this section further defines an assignment as a "change of control of the ownership of [LPI], whether directly or indirectly." *Id.* at Art. 14(b). Lastly, LPI was required to pay premiums on Panciera's life insurance policy that could not be less than \$750,000. *Id.* at Art.

14(c). However, upon Panciera's death and the payment of such life insurance policy to Panciera's designee, all of the stock would then be transferred to Vetelino. *Id.*

Besides the rights granted to Vetelino, the Contract also contained provisions relevant to this Decision. For example, the repurchase right granted to LPI provided: "In the event that the stock or assets of [LPI] have not been sold by the time [Vetelino] has attained the age of sixty-six (66) years, [LPI] shall have the option to repurchase the shares of stock of [LPI] held by [Vetelino]." *Id.* at Art. 7. Notably, this provision is located under the same article that granted Vetelino his right of first refusal; in fact, this article is titled "Right of First Refusal." *See id.*

Additionally, the Contract provided an acceleration clause of all rights, duties, obligations and liabilities set forth in the Contract if there ever was a separation of employment between Vetelino and LPI for any reason prior to Vetelino's voluntary retirement. *Id.* at Art. 8. Furthermore, if Vetelino were to predecease Panciera or die prior to the disposition of LPI's stock or assets, only LPI's obligation to pay health insurance premiums for Vetelino, the forty-percent stock transfer, and Vetelino's right of first refusal would survive Vetelino's death and inure to the benefit of his spouse for the remainder of her natural life. *Id.* at Art. 9. Upon Vetelino's death, LPI would also have to pay Vetelino's spouse thirty percent of Vetelino's gross income from the prior calendar year until she turned seventy years old. *Id.*

Article 11, titled "Term of Agreement," stated that the Contract would remain in full force and effect "until the consummation of the transactions contemplated by this agreement." *Id.* at Art. 11. An integration and no oral modification clause was also provided immediately after this sentence. *See id.* ("This agreement can not [sic] be changed or modified in any way except in writing signed by both [Vetelino] and [LPI] and it is subject to no understanding, conditions or representations other than those expressly stated herein."). Importantly, the last

sentence of this article states: “Those terms and conditions set forth herein *which specifically provide so* shall continue beyond the termination of [Vetelino’s] employment as set forth herein for the benefit of [Vetelino] and/or [Vetelino’s] spouse, as applicable.” *Id.* (emphasis added).

Additionally, Article 12 binds the Contract upon the heirs, executors, administrators, successors and assigns of [LPI]; Article 13 provides that since the parties did not create a Shareholders Agreement, they agreed to use best efforts to enter into one “with terms customary for a similarly situated company.” *Id.* at Art. 12-13. Lastly, the Contract provides an article titled “Miscellaneous”; in addition to the rights granted to Vetelino with respect to an assignment as discussed above, a relevant section to this article is the effect of a sale of all of LPI’s stocks or assets. Under that provision, in the event of a sale of all or substantially all of LPI’s assets to a third party, all obligations between the parties from this Contract would terminate as of such sale. *Id.* at Art. 14(d).

In December 2016, Vetelino turned sixty-six years old, and, at that point, LPI had yet to sell their stock or assets pursuant to the repurchase right provision in Article 7.<sup>1</sup> Pls.’ Mot. LPI thus seeks to repurchase Vetelino’s shares under this repurchase right provision. It is undisputed that LPI can exercise this right and that Vetelino has a right of first refusal. However, what is in

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<sup>1</sup> In June 2009, Vetelino terminated his employment with LPI but retained his forty percent interest in the agency. Pls.’ Mot. The Plaintiffs allege that he breached the Contract, covenant of good faith and fair dealing, and/or his fiduciary duty, including, *inter alia*, his termination of employment two and one-half years after the Contract was made. However, this dispute is not the subject of this Decision at this moment, and the Plaintiffs have reserved their claims on these issues. This Court also notes that Vetelino claims shareholder oppression and self-dealing by Panciera. Specifically, Vetelino claims (1) that Panciera intentionally violated a clear obligation to purchase life insurance as required under Article 14(c); (2) that Panciera’s interpretation of the Contract is just another part of his supposed larger pattern of oppression; (3) that Panciera obligated LPI to pay him nine percent on certain debt, which depleted the value of Vetelino’s shares so Vetelino can sell them for half of what they are worth; and (4) that Panciera refuses to allow LPI to pay a dividend. Def.’s Mem. in Supp. of Mot. for Partial Summ. J. (Def.’s Mot.). However, these disputes are not before this Court on these motions.

dispute is the impact that the exercise of this repurchase right has on other rights granted to Vetelino under the Contract.

## II

### Standard of Review

“Summary judgment is an extreme remedy and should be granted only when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as [a] matter of law.’” *Rose v. Brusini*, 149 A.3d 135, 139 (R.I. 2016) (quoting *Plunkett v. State*, 869 A.2d 1185, 1187 (R.I. 2005)). “Only when a review of the admissible evidence viewed in the light most favorable to the nonmoving party reveals no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law, will this Court . . . grant . . . summary judgment.” *Id.* at 139-40 (quoting *Nat’l Refrigeration, Inc. v. Standen Contracting Co.*, 942 A.2d 968, 971 (R.I. 2008)). “The party opposing ‘a motion for summary judgment carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.’” *Id.* at 140 (quoting *Nat’l Refrigeration, Inc.*, 942 A.2d at 971).

Under the Uniform Declaratory Judgments Act (UDJA), this Court possesses the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Sec. 9-30-1. A decision to grant or deny relief, however, is purely discretionary under the UDJA. *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997). The stated purpose of the UDJA is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations . . .” Sec. 9-30-12; *see also Millett v. Hoisting Eng’rs’ Licensing Div. of Dep’t of Labor*, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977) (“The purpose of declaratory

judgment actions is to render disputes concerning the legal rights and duties of parties justiciable without proof of a wrong committed by one party against another, and thus facilitate the termination of controversies.”). Factors to be considered when determining whether declaratory judgment relief is appropriate include the following:

“the existence of another remedy, the availability of other relief, the fact that a question may readily be presented in an actual trial, and the fact that there is pending, at the time of the commencement of the declaratory action, another action or proceeding which involves the same parties and in which may be adjudicated the same identical issues that are involved in the declaratory action.” *Berberian v. Trivisono*, 114 R.I. 269, 273, 332 A.2d 121, 123-24 (1975).

### III

#### Analysis

The Plaintiffs seek a declaration that once LPI exercises its repurchase right, it either (1) extinguishes the right of first refusal, the right to approve a change in control, and the right, if any, to acquire Panciera’s LPI shares upon Panciera’s death or (2) after LPI exercises its repurchase right, Panciera’s sale of LPI will terminate any and all of LPI’s remaining obligations to Vetelino and his surviving spouse, including retirement and survivor’s benefits, and, if any, the right to acquire Panciera’s shares upon Panciera’s death. Pls.’ Reply to Def.’s Reply Mem. Opposing Pls.’ Mot. for Summ. J. In the alternative, the Plaintiffs seek a declaration that the exercise of the repurchase right results in the immediate termination of the Contract under Article 11, and that Vetelino has no existing right under the Contract to purchase Panciera’s LPI shares upon Panciera’s death. *Id.* Vetelino disagrees and seeks a declaration that his ownership of LPI stock is not an implied condition impacting the Contract, and his contractual rights are thus not subject to any implied terms or conditions. Def.’s Reply Mem. Opposing Pls.’ Mot. for Summ. J. Furthermore, Vetelino argues that this Court declare the terms of the Contract require

LPI to make payments and/or benefits to Vetelino according to the specific provisions benefiting himself and his wife under Articles 4, 8, and 9, for the duration of his life, and, if applicable, his wife's life. *Id.* Additionally, he states that LPI properly made and is bound by those grants of power to him in the Contract—such as those in Articles 7, 10, 14(b) and 14(c)—for the duration of the Contract, and that Panciera is personally bound by those promises made in Article 14(c). *Id.*

All of the rights discussed in this Decision are contractual rights; thus, this Court applies traditional principals of contract interpretation. “The determination of whether a contract’s terms are ambiguous is a question of law . . . .” *High Steel Structures, Inc. v. Cardi Corp.*, 152 A.3d 429, 433-34 (R.I. 2017) (quoting *JPL Livery Servs., Inc. v. R.I. Dep’t of Admin.*, 88 A.3d 1134, 1142 (R.I. 2014)). “When there is only one reasonable interpretation of a contract, the contract is deemed unambiguous.” *Roadepot, LLC v. Home Depot, U.S.A., Inc.*, 163 A.3d 513, 519 (R.I. 2017) (citing *Botelho v. City of Pawtucket Sch. Dep’t*, 130 A.3d 172, 176 (R.I. 2016)). “In determining whether language in a contract is ambiguous, ‘[the Court] give[s] words their plain, ordinary, and usual meaning.’” *Botelho*, 130 A.3d at 176 (quoting *DiPaola v. DiPaola*, 16 A.3d 571, 576 (R.I. 2011)). “However, a reviewing court should not seek out ambiguity where there is none.” *Roadepot*, 163 A.3d at 519 (citing *Botelho*, 130 A.3d at 177). “The court should consider ‘whether the language has only one reasonable meaning when construed . . . in an ordinary, common sense manner.’” *Id.* (quoting *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58, 63 (R.I. 2005)). “[I]f the contractual language is unambiguous, the intention of the parties must govern ‘if that intention can be clearly inferred from the writing and . . . can be fairly carried out in a manner consistent with settled rules of law.’” *A.F. Lusi Constr., Inc. v. Peerless Ins. Co.*, 847 A.2d 254, 258 (R.I. 2004) (quoting *W.P. Assocs. v. Forcier, Inc.*,



637 A.2d 353, 356 (R.I. 1994)). Furthermore, ““in situations in which the language of a contractual agreement is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids.”” *Botelho*, 130 A.3d at 176-77 (quoting *JPL Livery Servs.*, 88 A.3d at 1142).

Here, this Court concludes, as a matter of law, that the Contract is clear and unambiguous. Article 11 expressly states that “[t]hose terms and conditions set forth herein *which specifically provide so* shall continue beyond the termination of [Vetelino’s] employment as set forth herein for the benefit of [Vetelino] and/or [Vetelino’s] spouse, as applicable.” Employment Contract Art. 11 (emphasis added). Thus, the only reasonable interpretation provided in this Article is that any right granted to Vetelino that expressly states it will continue beyond his employment to himself or to his wife will indeed extend beyond that time. It is appropriate then to assume that those rights in the Contract that are not expressly granted beyond Vetelino’s employment terminated when his employment with LPI ended. *See, e.g., Dudzik v. Leesona Corp.*, 473 A.2d 762, 766 (R.I. 1984) (Supreme Court’s interpretation of an employee’s special assignment agreement to assist his employer with patent litigation determined that based on the express language used in the contract, the employee’s temporary assignment could not continue longer than the termination of the specific litigation mentioned in the agreement). Therefore, because Vetelino’s right of first refusal and right to approve a change in control were not expressly extended beyond his termination of employment, these rights extinguished when he left LPI in 2009.

This Court also notes that the language incorporated by the parties in the Contract is clear and unambiguous as well. When a contract is clear and unambiguous, “the terms of the contract are to be applied as written.” *Gorman v. Gorman*, 883 A.2d 732, 739 n.11 (R.I. 2005). In

applying the Contract as it was written, the Court finds it significant that the Contract is labeled an *Employment Contract*, and that LPI is referred to as the *Employer* while Vetelino is referenced as the *Employee*. It is clear to this Court then that many of the terms and conditions under this Contract hinged on Vetelino's status as an employee of the company, and when his status as employee ended, those rights that were not expressly granted beyond his termination of employment would also be extinguished as well. *See Kenyon v. Andersen*, 656 A.2d 963, 966 (R.I. 1995) (holding that the usage of the terms "mortgagee" and "mortgagor" in the document granting a right of first refusal indicated that the right extinguished upon discharge of the mortgage).

Moreover, the exercise of the repurchase right—which would give LPI full ownership of the company—and LPI's right to sell the company under Article 14(d) of the Contract will terminate those rights that expressly continue beyond Vetelino's employment. These rights in the Contract are (1) LPI's commitment to pay for the cost of Vetelino's health insurance benefits up to his death and for the remainder of his spouse's life; (2) LPI's commitment to pay Vetelino's life insurance premiums until his death; (3) LPI's obligation to buy Vetelino a reasonable automobile; (4) payments made to Vetelino for voluntary retirement as well as disability; and (5) the survival of LPI's duties, obligations and liabilities after Vetelino's death that transfer over to his spouse. *See Employment Contract Art. 4(A-B)*, 8, 9.

“The language employed by the parties to a contract is the best expression of their contractual intent . . . .” *Roadepot*, 163 A.3d at 521 (quoting *Cathay Cathay, Inc. v. Vindalu, LLC*, 962 A.2d 740, 746 (R.I. 2009)). The Rhode Island Supreme Court “has repeatedly held that the parties’ subjective intent is irrelevant to contract interpretation and courts should only consider the intent that is clearly expressed in the language of the contract itself.” *Id.* (citing

*Botelho*, 130 A.3d at 176-77). In incorporating this analysis from our Supreme Court, Article 11 states: “This agreement shall be effective as of the date hereof and shall remain in full force and effect until the consummation of the transactions contemplated by this agreement.” Employment Contract Art. 11. This Court is satisfied that a transaction “contemplated by this agreement” is one in which LPI exercises its repurchase right, as granted to it under Article 7, and then sells all of its stock and assets—which in this case would be the entire company—as granted to it under Article 14(d). *See id.* at Art. 14(d). What is more, Article 14(d) makes it clear that upon sale of LPI’s assets and stock to a third party, all obligations will terminate under this Contract. *Id.* (“In the event of the sale of all of the stock or substantially all of the assets of Employer to a third party in a bona fide arm’s length transaction, *all obligations between the parties hereto set forth in this agreement shall terminate as of such sale.*” (emphasis added)); *see also Roadepot*, 163 A.3d at 519; *Botelho*, 130 A.3d at 176. Therefore, once LPI repurchases Vetelino’s stock, LPI will own all of its stock and assets. It can then sell all of the stocks and assets to a third party, and once this transaction occurs, the Contract will expire and all obligations owed between the parties will be terminated. *See* Employment Contract Art. 11, 14(d).

Lastly, Article 14(c) of the Contract requires LPI to pay premiums on Panciera’s life insurance policy, and, upon Panciera’s death, LPI must transfer all of its stock to Vetelino after such premiums have been paid to Panciera’s designee. *Id.* at Art. 14(c). Specifically, this provision states:

“14. *MISCELLANEOUS*

....

“c. *Life Insurance.* [LPI] will pay premiums on a life insurance policy with [Panciera] as the insured in an amount to be determined, but which amount shall not be less than \$750,000, the

beneficiary of which policy shall be [Panciera's] designee, *provided, however*, that upon the death of [Panciera] and the payment of the life insurance policy to [Panciera's] designee, all of the stock of [LPI] held by [Panciera] or [Panciera's] designee shall be transferred to [Vetelino]." *Id.*

Upon reading the unambiguous language in this section, this Court notes that this provision is located in Article 14, which is titled "Miscellaneous," and under a subheading which is titled "Life Insurance." *Id.* It is clear then that this provision, based on its language alone, requires Panciera to have purchased life insurance for himself in order to transfer LPI's stock to Vetelino. *See Kenyon*, 656 A.2d at 966. Additionally, it is apparent that in order for there to be a transfer of stock to Vetelino under this provision, two conditions must take place: (1) Panciera must have deceased and (2) the payments of the life insurance policy must have been made to Panciera's designee. *See* Employment Contract Art. 14(c) ("[P]rovided, however, that upon the death of [Panciera] and the payment of the life insurance policy to [Panciera's] designee, all of the stock of [LPI] held by [Panciera] or [Panciera's] designee shall be transferred to [Vetelino].").

"A condition precedent is either an act of a party that must be performed or a certain event that must happen before a contractual right accrues or a contractual duty arises." Lord, *Williston on Contracts* § 38:7 (4th ed. 2013). For example,

“[i]t is both elementary as well as fundamental law that where parties contract and make performance conditional upon the happening of an occurrence of a particular matter, the contract imposes upon the party required to bring about the happening of that occurrence an implied promise to use good faith, diligence and best efforts to bring about that happening.” *1800 Smith St. Assocs., LP v. Gencarelli*, 888 A.2d 46, 56 (R.I. 2005) (quoting *Bradford Dyeing Ass'n, Inc. v. J. Stog Tech GmbH*, 765 A.2d 1226, 1237 (R.I. 2001)).

Here, the parties agree that Panciera never purchased a life insurance policy. However, Vetelino asserts that Panciera intentionally violated this obligation to avoid funding complete

ownership to Vetelino. On the other hand, the Plaintiffs argue in their papers that Panciera suffered a stroke at the age of forty-six, was fifty-nine years old at the time this Contract was entered into and was therefore uninsurable. There is not enough evidence provided by either party to determine whether Panciera had engaged in “good faith, diligence and best efforts” to bring about this condition precedent. *1800 Smith St. Assocs.*, 888 A.2d at 56. Additionally, there is also insufficient evidence before this Court at this time to declare Panciera personally liable under Article 14(c) of the Contract with respect to life insurance, per Vetelino’s request. To make these findings would require this Court to engage in an evidentiary hearing. Nonetheless, however, and in keeping in line with the interpretation of this Contract, this Court declares that if and when LPI sells all of its assets and stock after exercising its repurchase right, all obligations under this Contract—including Article 14(c)—terminate as of such sale. *See* Employment Contract Art. 14(d). Therefore, upon the sale of LPI, the obligations under this provision would be moot.

#### **IV**

#### **Conclusion**

For the preceding reasons, this Court refuses to declare that LPI’s exercise of the repurchase right extinguishes the rights granted to Vetelino under Articles 7, 14(b), and 14(c) of the Contract. This Court also denies the Plaintiffs’ declaration that Vetelino has no right under the Contract to purchase Panciera’s LPI shares upon Panciera’s death. However, this Court does declare that Article 11 of the Contract extinguishes any rights not expressly granted to Vetelino past the termination of his employment. With respect to the remaining rights granted to Vetelino that surpass his termination date—including the rights granted to Vetelino under Article 14(c)—this Court declares that these rights would also be terminated upon LPI’s exercise of its

repurchase right and a subsequent sale as defined under Article 14(d) of the Contract. Accordingly, this Court grants in part and denies in part the Plaintiffs' motion for summary judgment and denies the Defendant's motion for partial summary judgment. Counsel shall present the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Richard C. Panciera, et al. v. Lawrence C. Vetelino

**CASE NO:** WC-2016-0248

**COURT:** Washington County Superior Court

**DATE DECISION FILED:** January 18, 2018

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

**ATTORNEYS:**

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Lynne B. Dolan, Esq.

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