

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: September 9, 2019]

CASHMAN EQUIPMENT :
CORPORATION, INC., :
Plaintiff, :

v. :

C.A. No. PB-2011-2488

CARDI CORPORATION, INC.; :
SAFECO INSURANCE CO., INC.; :
RT GROUP, INC.; JAMES RUSSELL; :
STEVEN OTTEN; CARDI :
MATERIALS, LLC; SPECIALTY :
DIVING SERVICES, INC.; :
HALEY & ALDRICH, INC., :
Defendants, :

v. :

WESTERN SURETY COMPANY; :
RHODE ISLAND DEPARTMENT :
OF TRANSPORTATION, :
Third-Party Defendants. :

DECISION

TAFT-CARTER, J. This case involves disputes arising out of the construction and renovations of the Sakonnet River Bridge. Defendant Cardi Corporation, Inc. (Cardi) and Cashman entered into a subcontractor agreement, should Cardi be awarded the Sakonnet River Bridge project by the Rhode Island Department of Transportation (RIDOT).

Before this Court is Plaintiff Cashman Equipment Corporation, Inc.’s (Cashman) Motion to Strike Defendants RT Group, Inc. (RTG), James Russell, and Steven Otten’s Jury Demand. RTG, James Russell, and Steven Otten object to the motion. Cashman, Cardi, Cardi Materials,

LLC and Specialty Diving Services, Inc. (SDS) have all consented to a bench trial. At issue here is whether the above-referenced action must be tried without a jury.

I

Legal Standard

Generally, in Rhode Island, there is an inviolate right to a trial by jury. “The Rhode Island constitution declares in art. 1, sec. 15, that the right of trial by jury shall remain inviolate.” *Briggs Drive, Inc. v. Moorehead*, 103 R.I. 555, 557, 239 A.2d 186, 187 (1968) (citing *Merrill v. Bowler*, 20 R.I. 226, 38 A. 114 (1897)). However, “[t]hat declaration preserves the right to a jury trial in proceedings which were triable to a jury at the time of the adoption of the constitution; it does not create rights where none preexisted.” *Id.* As such, if the right to a jury trial exists, “its origins must be found either in the constitution or in some legislative enactment.” *Id.*

At the federal level, “[i]t has long been settled that the Seventh Amendment right to trial by jury does not apply in actions against the Federal Government. . . . ‘It hardly can be maintained that under the common law in 1791 jury trial was a matter of right for persons asserting claims against the sovereign.’” *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) (quoting *Galloway v. United States*, 319 U.S. 372, 388-89 (1943)). Similarly, in Rhode Island, “under the common law, the state, as well as a municipality, enjoyed sovereign immunity, which could be waived only by the state’s deliberate and explicit waiver.” *Graff v. Motta*, 695 A.2d 486, 489 (R.I. 1997) (citing *Mulvaney v. Napolitano*, 671 A.2d 312, 312 (R.I. 1995)). It follows that since no right to a jury trial existed for individuals asserting a claim against the State of Rhode Island prior to the adoption of the state constitution, parties are only entitled to the right of a jury trial through legislative enactment. *See Briggs Drive, Inc.*, 103 R.I. at 557, 239 A.2d at 187 (citing *Ronci Mfg. Co. v. Director of Pub. Works*, 99 R.I. 723, 725, 210 A.2d 585, 587 (1965)).

II

Analysis

Here, the applicable statute provides that:

“[a]ny person, firm, or corporation *which is awarded a contract* subsequent to July 1, 1977, *with the state of Rhode Island*, acting through any of its departments, commissions, or other agencies, *for the design, construction, repair, or alteration of any state highway, bridge, or public works* other than those contracts which are covered by the public works arbitration act *may, in the event of any disputed claims under the contract, bring an action* against the state of Rhode Island in the superior court for Providence county for the purpose of having the claims determined” and that “[*t*]he action shall be tried to the court without a jury.” G.L. 1956 § 37-13.1-1(a) (emphasis added).

Therefore, under this statute, the Rhode Island General Assembly has relinquished the State’s sovereign immunity as it relates to actions involving contracts with the State for the design, construction, repair, or alteration of a bridge. However, this statute clearly states any action of this type “shall be tried to the court without a jury.” *Id.*

RTG questions whether Cashman’s claims, since none are directed specifically at RIDOT, fall under § 37-13.1-1. The Rhode Island Supreme Court has not addressed the issue of whether § 37-13.1-1’s requirement of a bench trial applies in cases such as this, where the original case is brought by a subcontractor against the party to a public works contract with the State. However, our Supreme Court has stated that it “find[s] it obvious that the Legislature intended to have a judicial determination concerning those disputed claims which arise under a public-works contract. The relevant phrase . . . is ‘disputed claims.’ The Legislature was clearly limiting a plaintiff’s cause of action to those claims arising ‘under the contract.’” *Clark-Fitzpatrick, Inc./Franki Found. Co. v. Gill*, 652 A.2d 440, 452 (R.I. 1994) (quoting § 37-13.1-1).

Generally, “[i]n construing a waiver of immunity statute, it is presumed that the Legislature did not intend to deprive the state of any part of its sovereign power unless the intent to do so is clearly expressed or arises by necessary implication from the statutory language.” *Id.* (quoting *Andrade v. State*, 448 A.2d 1293, 1294 (R.I. 1982)). “It is also the general rule that a statute waiving sovereign immunity, which is also in derogation of common law, must be strictly construed.” *Andrade*, 448 A.2d at 1294-95 (citing *Brown University v. Granger*, 19 R.I. 704, 36 A. 720 (1897)). “The waiver of a common-law right inuring to the state, like the waiver of any other known right or privilege should not be lightly inferred.” *Id.* at 1294 (citing *City of Providence v. Solomon*, 444 A.2d 870, 875 (R.I. 1982)); *see also* 1997 Survey of Rhode Island Law, Robert E. Falvey, *Civil Procedure/Tort/Law*, 3 Roger Williams U. L. Rev. 402, 405-06 (1998) (“the court took notice [when strictly construing a statute waiving sovereign power] of the tendency and likelihood that a sympathetic jury might take advantage of the considerable monetary resources of a municipality . . . ultimately at taxpayer expense . . . [which would] contravene the public policy of Rhode Island”).

In *Clark-Fitzpatrick*, a subcontractor filed suit against the general contractor who had entered into a public works contract with the State of Rhode Island under Section 37-13.1-1. *Clark-Fitzpatrick*, 652 A.2d at 451-52. In that case, the Rhode Island Supreme Court held that the State did not waive immunity to a prejudgment interest statute applying to “any civil action in which a verdict is rendered or a decision made for pecuniary damages” because it was not “expressly mentioned in” section 37-13.1-1. *Id.*; *see Jacor, Inc. v. Cardi Corp.*, 673 A.2d 1077, 1078 (R.I. 1996) (sustaining State’s appeal as to prejudgment interest added to a judgment entered against the State where the State was a third-party defendant in dispute governed by § 37-13.1-1).

In this case, RIDOT is a third-party defendant in a case originally filed by Cashman, a subcontractor, against Cardi, the general contractor and main party to a contract with RIDOT to construct and repair the Sakonnet River Bridge. Though the Rhode Island Supreme Court has not directly addressed this issue, it has held that the Legislature must have clearly expressed or necessarily implied via statutory language that the State's overall sovereign immunity is explicitly waived. *See Clark-Fitzpatrick*, 652 A.2d at 452. Here, the State has waived its sovereign immunity "to those claims arising 'under the contract.'" *Id.* (quoting § 37-13.1-1). However, the Legislature explicitly declined to waive the State's immunity to a jury trial, instead expressly stating trials under § 37-13.1-1 would be tried without a jury. Though Cashman does not directly assert a claim against RIDOT in the Amended Complaint, Cashman repeatedly refers to communications and interactions between RTG, RIDOT, Cardi, and Cashman throughout its complaint. Additionally, Cashman entered into its contract with Cardi as a subcontractor solely because of the RIDOT contract for which Cardi was bidding.

There is no question that Cashman's amended complaint, and this entire case, arises out of disputes related to the contract between RIDOT and Cardi. Section 37-13.1-1 clearly states that disputes arising out of a contract with the State involving the "design, construction, repair, or alteration of any state . . . bridge" must be tried "without a jury." This statute must be strictly construed, and it does not provide any exception for cases in which the State is a third-party defendant or is not the subject of direct claims by the original plaintiff to the case. Instead, the statute has been strictly construed to apply to and protect the State's sovereign immunity in cases when the State is a third-party defendant in cases involving disputes between subcontractors and general contractors such as the dispute here. *See Clark-Fitzpatrick*, 652 A.2d at 452; *see also*

Jacor, Inc., 673 A.2d at 1078. Therefore, the motion to strike jury demand is granted, and this case must be tried without a jury.

III

Conclusion

For the foregoing reasons, Cashman's Motion to Strike RTG, James Russell, and Steven Otten's Jury Demand is granted.



RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

TITLE OF CASE: Cashman Equipment Corporation, Inc. v. Cardi Corporation,
et al.

CASE NO: PB-2011-2488

COURT: Providence County Superior Court

DATE DECISION FILED: September 9, 2019

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

For Plaintiff: *SEE ATTACHED LIST

For Defendant: *SEE ATTACHED LIST

Cashman Equipment Corporation, Inc.

vs.

Cardi Corporation, Inc., et al.

vs.

Western Surety Company, et al.

C.A. No. PB-2011-2488

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