STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: November 30, 2021)

MANUEL ANDREWS, JR., et al.,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. KC-2013-1128**
	:	
JAMES J. LOMBARDI, in his capacity as Treasurer of the City of Providence, Rhode Island,	:	
Defendant.	:	

DECISION

TAFT-CARTER, J. Before the Court for decision is Plaintiffs'[1] Motion[2] for Health Care Costs. The Defendant, James J. Lombardi, in his capacity as Treasurer of the City of Providence (Defendant or the City) objects to the Motion. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 9-30-1.

I

Facts and Travel

Plaintiffs are retired members of the Providence police and fire departments. *Andrews v. Lombardi*, 233 A.3d 1027, 1029 (R.I. 2020). In 2011, a review of the City's financial status

[1] Plaintiffs are Joseph Battista, Raymond Bergeron, Michael A. Cardi, Salvatore Celeberto, Robert Chin, Henry Cochrane, James Connell, Manuel Costa, Leonard Cummings, Thomas DiLibero, Edward L. Duggan, Alan Fortes, Robert P. Garvin, Deborah A. Gill, Armand Heron, Leo R. Jenkins, Jr., Walter A. Loiselle, Edward Maroney, John McLaughlin, Sr., Gayland Miller, Timothy Patterson, Roy Persson, Thomas Pesaturo, John Quigley, Kenneth F. Rinaldi, Henry Roy, John A. Santilli, Dennis Simoneau, Kathleen Simoneau, Leo Simoneau, and William J. Thomas. (Pls.' Mem., Ex. A.)

[2] Plaintiffs' filing is entitled "Plaintiffs' Memorandum in Support of Order Requiring Defendants to Pay Health Care Costs Incurred by Plaintiffs." This Court will refer to Plaintiffs' filing as a Motion.

indicated that it faced a $69.9 million structural budgetary deficit that was projected to increase to $109.9 million by the following fiscal year. *Id.* at 1029. The City's continued obligations to its retired employees were a major factor in its burgeoning financial crisis: for example, as of June 30, 2009, the unfunded accrued actuarial liability of the City's retiree health care plan was $1.497 billion. *Id.*; *see also Andrews, Jr. v. Lombardi*, No. KC-2013-1128, 2017 WL 532353, at *2 (R.I. Super. Feb. 2, 2017) ("In addition to the issues involving the pension plan, medical costs for current employees and retirees represented more than 15% of the City's annual budget.").

As a result, on July 19, 2011, the City enacted Chapter 2011-32, Ordinance No. 422 (2011 Medicare Ordinance or Ordinance). *Andrews*, 233 A.3d at 1030. The 2011 Medicare Ordinance was enacted pursuant to G.L. 1956 § 28-54-1 (Medicare Enrollment Statute), a state law permitting municipalities to require retired employees to enroll in Medicare in order to continue receiving medical benefits. *Id.* at 1029. The Ordinance, as passed, required Medicare-eligible retirees and their spouses to enroll in Medicare and provided that, "[w]ith the exception of Medicare supplement or gap coverage," the City would not provide healthcare benefits to Medicare-eligible retirees. *Id.* at 1030 (quoting 2011 Medicare Ordinance). The cost of such supplement or gap coverage could be paid either by the City or the retiree. *Id.* After the Ordinance was passed, the City notified the affected retirees that, as of May 1, 2013, it would terminate City-paid health care coverage for those who were Medicare-eligible. *Id.* Retirees who were not yet eligible to enroll in Medicare would continue to receive health care coverage from the City until they became eligible. *Id.*

"[O]n October 12, 2011, the Providence Retired Police and Firefighter's Association (Retiree Association) and a number of individual retirees filed suit against the City challenging the constitutionality of the Medicare Ordinance." *Andrews, Jr.*, 2017 WL 532353, at *4. Thereafter,

this Court ordered the parties into mediation. *Id.* The mediation resulted in a settlement agreement between "the City, the Retiree Association, the Fire Union, and the Police Union[.]" *Id.* Under the terms of the settlement, eligible retirees would be required to enroll in Medicare, while the "City would pay for certain costs associated with Medicare coverage, including penalties associated with late enrollment, a Medicare supplement plan, and the premium for the prescription drug program with a $10/$20 copayment." *Id.* On April 12, 2013, this Court issued a final and consent judgment reflecting the terms of the settlement agreement (2013 Final and Consent Judgment or 2013 Judgment). *Andrews*, 233 A.3d at 1030-31.

Certain retirees, including the instant Plaintiffs, opted out of the settlement and filed suit against the City in October 2013. *Id.* at 1031. Plaintiffs sought a declaratory judgment that

> "(1) the City breached its contractual obligations to each plaintiff by 'unilateral[ly] terminat[ing] . . . the Health Care Benefits when Retirees reach[ed] the age of Medicare eligibility'; (2) the Medicare Enrollment Statute is both unconstitutional on its face and as applied because it violates the Contract Clause, Due Process Clause, and Takings Clause of the United States and Rhode Island Constitutions; (3) the 2011 Medicare Ordinance is both unconstitutional on its face and as applied because it violates the Contract Clause, Due Process Clause, and Takings Clause of the United States and Rhode Island Constitutions; and (4) plaintiffs are entitled to relief under a promissory estoppel theory." *Id.*

"The plaintiffs also requested a permanent injunction directing the City's treasurer to provide the health care benefits that had allegedly been wrongfully withheld and prohibiting the City from terminating or suspending the health care benefits to which plaintiffs were allegedly entitled." *Id.*

On March 16, 2016, this Court granted "the City's motion for summary judgment with respect to plaintiffs' claims for violation of the Takings Clause and promissory estoppel." *Id.* The Court held a bench trial in April 2016 with respect to the Plaintiffs' remaining claims for breach of contract and violation of the Contract Clauses of the federal and state constitutions. *Id.*

Following the bench trial, in February 2017, this Court issued a written decision that denied and dismissed Plaintiffs' claims for "breach of contract and violation of the Contract Clause of the Rhode Island and United States Constitutions." *Id.* at 1032. Final judgment was entered for the City, and Plaintiffs filed a timely appeal in which they advanced four primary arguments:

> "Specifically, plaintiffs argue[d] that the trial justice erred by: (1) dismissing plaintiffs' claim for breach of contract; (2) dismissing plaintiffs' claim for violation of the Contract Clauses of the Rhode Island and United States Constitutions; (3) granting summary judgment in favor of the City on plaintiffs' claim that the 2011 Medicare Ordinance violated the Takings Clause of the Rhode Island and United States Constitutions; and (4) granting the City's motion for summary judgment regarding plaintiffs' claim for promissory estoppel." *Id.* at 1033.

Plaintiffs did not challenge this Court's ruling that "'the Medicare Ordinance amount[ed] to a substantial impairment of [their] contractual rights[.]'" *Id.* at 1035.

On appeal, the Supreme Court noted that the dismissal of Plaintiffs' claim for breach of contract rested on this Court's finding that the City intended the 2011 Medicare Ordinance to "preclude the availability of damages as a remedy for its breach," with the result that "there can be no breach of contract but instead a constitutional claim for impairment of the contract." *Id.* at 1034. "After carefully reviewing the trial justice's decision and the voluminous record," the Supreme Court concluded that

> "two critical findings in the court's Contract Clause analysis [were] constructed upon the faulty premise that plaintiffs who have retired were in fact receiving supplemental medical benefits under the hybrid plan. The two findings are that (1) the City did not impair its contractual obligation to plaintiffs covered by CBAs or IAAs, and (2) the City presented sufficient credible evidence that no more moderate course was available to address the City's financial condition." *Id.* at 1038-39.

Conversely, the Supreme Court sustained this Court's findings that "the 2011 Medicare Ordinance was passed for a significant and legitimate public purpose, that the City did not consider

the change to retirees' health care benefits on par with other policy alternatives, and that the change was reasonable under the circumstances." *Id.* at 1039. Opining that "little [is] to be gained by further litigation on the issue of health care benefits for these plaintiffs[,]" the Supreme Court concluded that

> "the controversy ought to be resolved by awarding the plaintiffs the same remedies for health care as provided in the 2011 lawsuit's settlement agreement approved in the 2013 Final and Consent Judgment. It is nothing more than what the City has agreed to provide for the opt-in retirees and indeed is contemplated in the 2011 Medicare Ordinance, which allows for the City's payment of 'Medicare supplement or gap coverage' when 'otherwise provided by ordinance or contract.' For the reasons set forth in this opinion, the judgment of the Superior Court is affirmed with respect to the plaintiffs' claims for breach of contract, violation of the Takings Clause of the Rhode Island and United States Constitutions, and promissory estoppel. The judgment of the Superior Court is vacated with respect to the plaintiffs' claim for violation of the Contract Clause. The case shall be remanded to the Superior Court with instructions to enter judgment consistent with the 'specific provisions pertaining to the Medicare Ordinance' as set forth in the Final and Consent Judgment entered in PC 11-5853 and PC 12-3590 on April 12, 2013." *Id.* at 1039-40.

Thereafter, the City began providing supplemental and prescription coverage for Medicare-eligible Plaintiffs as of October 1, 2020. *See* Pls.' Mem. 4; Def.'s Opp'n 1. The issue at bar is whether the City is obligated to reimburse Plaintiffs for the health care costs they incurred when the City was not providing them with that supplemental and prescription coverage.[3]

[3] The exact start date of the period at issue is somewhat unclear and may also vary from Plaintiff to Plaintiff based on when they became eligible for Medicare. While the Supreme Court's opinion references May 1, 2013 as the date the City terminated its legacy plans, Plaintiffs assert that some retirees had to begin paying for their health care coverage on January 1, 2013. *See Andrews*, 233 A.3d at 1030; Pls.' Mem. 2 & n.3. Since the specifics of each individual Plaintiff's claim may vary, Plaintiffs suggest the appointment of a special master to handle the individual claims if this Court determines that the City must reimburse their health care costs. (Pls.' Mem. 2 & n.3.)

II

Standard of Review

The mandate rule "'provides that a lower court on remand must implement both the *letter* and *spirit* of the [Supreme Court's] mandate, and may not disregard the explicit directives of that [C]ourt.'" *Hagopian v. Hagopian*, 960 A.2d 250, 253 (R.I. 2008) (quoting *RICO Corp. v. Town of Exeter*, 836 A.2d 212, 218 (R.I. 2003)). "'When a case has been once decided by [the Supreme Court] on appeal, and remanded to the [Superior Court], . . . [the Superior Court] . . . cannot . . . intermeddle with it, further than to settle so much as has been remanded.'" *Butterfly Realty v. James Romanella & Sons, Inc.*, 93 A.3d 1022, 1032 (R.I. 2014) (quoting *Pleasant Management, LLC v. Carrasco*, 960 A.2d 216, 223 (R.I. 2008)). Lower courts cannot "exceed the scope of the remand or open up the proceeding to legal issues beyond the remand." *Sansone v. Morton Machine Works, Inc.*, 957 A.2d 386, 398 (R.I. 2008) (quotation omitted).

Instead, "'whatever was before [the Supreme Court] . . . is considered as finally settled[,]'" and "'[t]he [Superior Court] is bound by the decree as the law of the case, and must carry it into execution according to the mandate.'" *Pleasant Management, LLC*, 960 A.2d at 223 (quoting *United States v. Thrasher*, 483 F.3d 977, 981 (9th Cir. 2007)). The Rhode Island Supreme Court has also held that "'[i]t is not the role of a trial justice to attempt to read between the lines of [the Supreme Court's] decisions.'" *State v. Arciliares*, 194 A.3d 1159, 1162 (R.I. 2018) (quoting *Willis v. Wall*, 941 A.2d 163, 166 (R.I. 2008)). "'[T]he opinions of [the Supreme] Court speak forthrightly and not by suggestion or innuendo.'" *Pleasant Management, LLC*, 960 A.2d at 223 (quoting *Fracassa v. Doris*, 876 A.2d 506, 509 (R.I. 2005)).

III

Analysis

A

The Supreme Court's Mandate to this Court

Plaintiffs seek to recover the premiums some individuals paid to obtain supplemental and prescription coverage, the out-of-pocket health costs incurred by other individuals because they lacked that coverage, any qualifying penalties for late enrollment in Medicare Part B, and statutory prejudgment interest on those awards. (Pls.' Mem. 1-2.) Because the City agreed in the 2013 Final and Consent Judgment to pay for the opt-ins' supplemental and prescription coverage and certain penalties for late enrollment in Part B, Plaintiffs argue that the Supreme Court's award of the "same remedies for health care" as that judgment entitles them to reimbursement for the premiums and penalties that the City previously failed to pay. *Id.* at 3 (quoting *Andrews*, 233 A.3d at 1039). They also argue that recovery of the out-of-pocket costs is necessary to effectuate "the letter and spirit" of the Supreme Court's award by placing all Plaintiffs on equal footing with the retirees who opted into the 2013 Judgment. *Id.* at 7, 10 (quoting *Hagopian*, 960 A.2d at 253).

In its objection, the City argues that it is now in full compliance with the Supreme Court's mandate because, as of October 1, 2020, it began to provide Plaintiffs with the same supplemental and prescription coverage set forth in the 2013 Final and Consent Judgment. (Defs.' Opp'n 1, 14.) The City also contends that Plaintiffs are "read[ing] between the lines" of the appellate decision because the Supreme Court did not address the issue of retrospective health care costs. *Id.* at 16 (quoting *Sansone*, 957 A.2d at 398).

In considering Plaintiffs' Motion, this Court "'is bound by the [Supreme Court's] decree as the law of the case, and must carry it into execution according to the mandate.'" *Pleasant*

Management, LLC, 960 A.2d at 223 (quoting *Thrasher*, 483 F.3d at 981). After concluding that "the controversy ought to be resolved by awarding the plaintiffs the same remedies for health care as provided in the 2011 lawsuit's settlement agreement approved in the 2013 Final and Consent Judgment[,]" the Supreme Court's "instructions" to this Court were "to enter judgment consistent with the 'specific provisions pertaining to the Medicare Ordinance' as set forth in the Final and Consent Judgment entered in PC 11-5853 and PC 12-3590 on April 12, 2013." *Andrews*, 233 A.3d at 1039-40.

"'[A] consent judgment . . . is in essence a contract between the parties to the litigation from which it is derived.'" *Durfee v. Ocean State Steel, Inc.*, 636 A.2d 698, 703 (R.I. 1994) (quoting *Trahan v. Trahan*, 455 A.2d 1307, 1310 (R.I. 1983)). "'Such a judgment is to be construed as a contract using the rules of construction applicable thereto.'" *Id.* (quoting *Trahan*, 455 A.2d at 1310). In turn, a remedy is "[t]he means of enforcing a right or preventing or redressing a wrong; legal or equitable relief." Black's Law Dictionary 1547 (11th ed. 2019); *see also R.I. Council on Postsecondary Education v. Hellenic Society Paideia – R.I. Chapter*, 202 A.3d 931, 939 (R.I. 2019) ("The word 'remedies' refers . . . to the redress available for plaintiffs' grievance, whether that be damages at law or an equitable remedy, such as specific performance."). Determining the extent of the award of "the same remedies for health care as provided in the . . . 2013 Final and Consent Judgment" must therefore begin with the terms of that judgment. *Andrews*, 233 A.3d at 1039; *see also City of Providence v. Employee Retirement Board of City of Providence*, 749 A.2d 1088, 1097 (R.I. 2000) (examining plain meaning of consent judgment).

The 2013 Final and Consent Judgment's "Specific Provisions Pertaining to the Medicare Ordinance" begin by stating that, "[e]xcept as modified by the terms of [the] . . . Judgment, the [2011] Medicare Ordinance shall remain in full force and effect." (Pls.' Mem., Ex. B, at 6.) The

2013 Judgment then provides that "Class Members turning age 65 shall enroll in Medicare during their initial enrollment period[,]" while "[a]ny Class Member not eligible to enroll in Medicare shall continue to receive fully paid healthcare benefits as they presently exist with the full cost of said healthcare benefits being paid for by the City[.]" *Id.* Retirees who opted out of the 2013 Judgment, such as the instant Plaintiffs, "shall continue to receive healthcare benefits as they presently exist until said person becomes Medicare eligible at age 65 at which time he/she would be bound by the Medicare Ordinance subject to their right to challenge the Medicare Ordinance." *Id.*

Although "Class Members who have enrolled in Medicare shall be responsible to pay the monthly premium for Medicare Part B[,]" the 2013 Judgment requires that the City pay for:

> "[18.] (a) Penalties associated with the late enrollment fees for Part B for those Class Members who enrolled in Medicare during the 2012 general enrollment period[;]
> "(b) A plan as summarized in Exhibit B hereto to supplement Medicare Parts A and B, the terms of which have been agreed to by the parties, and which will be equivalent to the Blue Cross coverage in effect on June 29, 2011[; and]
> "(c) [P]remium[s] for Blue Medicare Rx (PDP) with a $10/$20 co-payment." *Id.* at 6-7.

In addition to paragraph 18(a), other provisions of the 2013 Judgment further detail which late enrollment penalties the City is obligated to pay and which it is not. Paragraph 19 states that, "[e]xcept as provided in paragraph 20, Class Members: (a) who should have enrolled for the July 1, 2012 effective date but did not, and (b) those turning 65 after July 1, 2012 who do not enroll when they should, will be personally responsible to pay their own penalties." *Id.* at 7. Paragraph 20 addresses the City's continued provision of health coverage for those Class Members "who did not intentionally fail to timely enroll" in Medicare by March 31, 2012 due to lack of notice or confusion surrounding this Court's "issuance of a preliminary injunction on January 30, 2012" and

obligates the City to pay that portion of those Class Members' penalties for late enrollment in Part B incurred before July 1, 2013. *Id.* at 7-8. The City's obligation to pay late enrollment fees therefore applies only to those retirees who either incurred late fees during the 2012 general enrollment period or, due to their unintentional failure to enroll during the 2012 general enrollment period, incurred late fees before July 1, 2013.

i

Late Enrollment Penalties

Pursuant to the plain language of paragraphs 18(a), 19, and 20 of the 2013 Final and Consent Judgment, the Supreme Court's explicit mandate to enter judgment consistent with the provisions of the 2013 Judgment extends to the specified penalties for late enrollment in Medicare Part B. As previously mentioned, Plaintiffs seek reimbursement from the City for any qualifying late enrollment penalties. (Pls.' Mem. 2.) Plaintiffs assert that they have all enrolled in Medicare and were either Medicare-eligible as of January 1, 2013 or became eligible after that date but provide no further details. *Id.* at 5. As a result, it is conceivable that some Plaintiffs may have incurred qualifying late enrollment penalties in 2012 or 2013.

Nevertheless, Plaintiffs have not presented the Court with evidence establishing the existence and extent of any qualifying penalties. *See* Certain Pls.' Reply Mem. 2 n.2 ("[W]hether any plaintiff suffered a qualifying late-enrollment penalty remains to be established[.]"). At trial, Plaintiffs waived any claim for individual damages and did not submit evidence concerning late enrollment penalties. *See, e.g.*, Trial Tr. 1558:3-4, Apr. 19, 2016 (Morning Session) (statement by Plaintiffs' counsel) ("[Plaintiffs] are not claiming individual damages and are not seeking an award of individual damages."). Without a record to determine which Plaintiffs, if any, incurred late enrollment fees covered by the 2013 Final and Consent Judgment, there is no evidentiary basis for

entering judgment against the City on that issue. Moreover, as the Court will discuss in more detail in Section III.B, the narrow scope of the Supreme Court's mandate precludes additional evidentiary proceedings at this stage.

ii

Supplemental and Prescription Coverage

Next, paragraphs 18(b) and 18(c) of the 2013 Final and Consent Judgment address precisely what supplemental and prescription coverage the City is obligated to provide on a prospective basis. Specifically, the City must pay for benefits "to supplement Medicare Parts A and B . . . equivalent to the Blue Cross coverage in effect on June 29, 2011" and "Blue Medicare Rx (PDP) with a $10/$20 co-payment." (Pls.' Mem., Ex. B, at 7.) The parties agree—as does this Court—that the City now has an ongoing obligation to provide Plaintiffs with these specific health care benefits. (Pls.' Mem. 5-6; Def.'s Opp'n 1.) The crux of the parties' dispute is whether the Supreme Court's mandate also entitles Plaintiffs to recover from the City for the period from 2013 to 2020 during which they did not receive these benefits.

This Court cannot interpret the Supreme Court's mandate as having this retroactive effect. The more reasonable interpretation of the Supreme Court's decision to award "the same remedies for health care" and direct the entry of "judgment consistent with the 'specific provisions pertaining to the Medicare Ordinance' as set forth in the Final and Consent Judgment" is that it was intended to identify the specific health care benefits that the City is now obligated to provide and give Plaintiffs the means to enforce the City's obligation. *See Andrews*, 233 A.3d at 1039-40. Upon entry of a new judgment "consistent with" the provisions of the 2013 Final and Consent Judgment, Plaintiffs will possess the "same remedies for health care" as "the opt-in retirees," albeit under a different judgment with a different effective date. *Id.*

"[A] final and unappealed decree-judgment of the Superior Court . . . mandates compliance therewith by the parties." *Mansolillo v. Employee Retirement Board of City of Providence*, 668 A.2d 313, 317 (R.I. 1995). This Court also has the power to ensure the parties' continued compliance. *See, e.g.*, *Durfee*, 636 A.2d at 704 ("[I]n civil contempt the purpose of the sanction imposed is to coerce the contemnor into compliance with the court order and to compensate the complaining party for losses sustained."); *Episcopal Church in Diocese of Connecticut v. Gauss*, 28 A.3d 302, 332 (Conn. 2011) (describing trial court's equitable powers to enforce prior judgments). Crucially, however, "a judgment is effective between the parties from the time it is rendered." 50 C.J.S. *Judgments* § 735.

Therefore, while the Supreme Court's decision to award the same health care benefits in the 2013 Final and Consent Judgment created a legally enforceable obligation on the part of the City, it does not change the fact that Plaintiffs chose to opt out of the 2013 Judgment and seek reinstatement of the legacy plans in effect prior to the 2011 Medicare Ordinance. "A consent decree 'is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court . . . . It binds only the consenting parties.'" *Durfee*, 636 A.2d at 703 (quoting Black's Law Dictionary 410–11 (6th ed. 1990)). "Where parties to litigation, acting in good faith, settle their litigation, . . . courts will enforce the compromised settlement 'without regard to what result might, or would have been, had the parties chosen to litigate.'" *Mansolillo*, 668 A.2d at 316 (quoting *Homar, Inc. v. North Farm Associates*, 445 A.2d 288, 290 (R.I. 1982)). Conversely, having made the strategic decision not to be bound by the terms of the 2013 Judgment, Plaintiffs—unlike those retirees who did not opt out—cannot now rely on that settlement to recover health care costs for the period from 2013 to 2020.

This Court cannot interpret the Supreme Court's award of the "same remedies" provided in the 2013 Final and Consent Judgment as contemplating retroactive modification of that Judgment's terms to encompass Plaintiffs. *See Andrews*, 233 A.3d at 1039. Rather, the Supreme Court clearly fashioned a specific remedy to end the "protracted dispute" between the parties by avoiding the "further litigation" that would otherwise ensue. *Id.* The Supreme Court "under its supervisory and revisory powers has the authority to fashion remedies." *Cheetham v. Cheetham*, 121 R.I. 337, 342, 397 A.2d 1331, 1334 (1979); *see also City of Providence*, 749 A.2d at 1100-01 ("[A]uthority [is] vested in this Court to fashion remedies to insure equity and justice to litigants and parties, and in order to bring to an end this decade long litigation[.]"). It has also acknowledged that "'the exercise of [its] supervisory jurisdiction is an extraordinary measure.'" *State v. Mattatall*, 219 A.3d 1288, 1294 (R.I. 2019) (quoting *State v. Barros*, 24 A.3d 1158, 1166 (R.I. 2011)).

Had the Supreme Court intended its decision to have the effect of obligating the City to reimburse Plaintiffs' health care costs, it would have been explicit about such a powerful exercise of its authority. "'[T]he opinions of [the Supreme] Court speak forthrightly and not by suggestion or innuendo.'" *Pleasant Management, LLC*, 960 A.2d at 223 (quoting *Fracassa*, 876 A.2d at 509). As a result, the Court cannot conclude that the retroactive health care costs Plaintiffs seek were included in the Supreme Court's mandate.

B

The Scope of the Remand

Plaintiffs also argue that, if the Supreme Court did not address the question of whether they are entitled to recover health care costs, that issue remains open for this Court to consider. (Pls.' Mem. 9; Certain Pls.' Reply Mem. 12-15.) They assert that the mandate of judgment "consistent

with" the 2013 Final and Consent Judgment indicates that the contemplated remedy was not expressly limited to prospective insurance coverage, and that retroactive recovery of costs is necessary to avoid disparate treatment of individual Plaintiffs based solely on the dates they turned 65 or incurred uncovered medical expenses. Certain Other Pls.' Mem. 5-8 (quoting *Andrews*, 233 A.3d at 1040). Plaintiffs also argue that the specific forms of relief they sought or waived at trial were rendered irrelevant by the Supreme Court's *sua sponte* decision to fashion a new remedy. *Id.* at 10; Certain Pls.' Reply Mem. 11, 19-21.

In response, the City argues that because Plaintiffs waived any claim for individual damages at trial, further proceedings on that issue would violate the mandate rule by impermissibly widening the scope of the current remand. (Defs.' Opp'n 7-8, 15-16.) The City also notes that Plaintiffs' First Amended Complaint only sought monetary damages in connection with their claims for breach of contract and promissory estoppel, and the Supreme Court only vacated this Court's denial of Plaintiffs' Contract Clause claim. *Id.* at 18-19.

The Court cannot agree with Plaintiffs that the Supreme Court's mandate left the claimed health care costs open for consideration. Under the mandate rule, lower courts cannot "exceed the scope of the remand or open up the proceeding to legal issues beyond the remand." *Sansone*, 957 A.2d at 398 (quotation omitted). Permitting the Plaintiffs to recover health care costs from the City on the basis of the "'specific provisions pertaining to the Medicare Ordinance' as set forth in the Final and Consent Judgment" would exceed the scope of the Supreme Court's mandate by requiring this Court to oversee "further litigation" on the scope of that recovery. *Andrews*, 233 A.3d at 1039-40 ("We are also mindful that our decision marks but another chapter in [this] protracted dispute . . . . In addition, we see little to be gained by further litigation on the issue of health care benefits[.]").

In their First Amended Complaint, Plaintiffs sought to recover monetary damages in connection with their claims for breach of contract and promissory estoppel. (First Am. Compl. ¶¶ 101, 131.) In the February 2017 decision, this Court denied and dismissed both of those claims, and the Supreme Court upheld those determinations on appeal. *Andrews*, 233 A.3d at 1039-40. More importantly, at trial Plaintiffs waived their claims for individual damages and did not submit evidence regarding their individual health care costs. *See, e.g.*, Trial Tr. 1558:3-4, Apr. 19, 2016 (Morning Session) (statement by Plaintiffs' counsel) ("[Plaintiffs] are not claiming individual damages and are not seeking an award of individual damages."); Trial Tr. 1577:4-6, Apr. 19, 2016 (Afternoon Session) (statement by this Court to Plaintiffs' counsel) ("[Y]ou've also told me that these figures are not going to the issue of individual damages because there's no claim for individual damages.").

Plaintiffs respond that their current claims for health care costs arose after the Supreme Court's decision to award Plaintiffs a remedy on their Contract Clause claim. *See* Certain Pls.' Reply Mem. 19-21; Certain Other Pls.' Mem. 10. The fact remains that the Court has no evidence before it upon which to support Plaintiffs' recovery of health care costs, and additional proceedings on those costs would be outside the scope of the Supreme Court's narrow mandate to "enter judgment consistent with the 'specific provisions pertaining to the Medicare Ordinance' as set forth in the Final and Consent Judgment entered in PC 11-5853 and PC 12-3590 on April 12, 2013." *Andrews*, 233 A.3d at 1040.

"[A] judgment is commonly based upon a jury verdict or upon the judge's findings of fact and conclusions of law, but they are part of the record of the proceedings and are not part of the judgment itself." Robert B. Kent et al., *Rhode Island Civil and Appellate Procedure*, § 54:1 (2018). Considering Plaintiffs' claims would require the development of a new evidentiary record and

raise legal questions on the application of the 2013 Final and Consent Judgment's provisions to individual Plaintiffs' costs. *See, e.g., Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013) (holding that interpretation of a contract is a question of law); *see also Durfee*, 636 A.2d at 703 (holding that contract rules of construction apply to consent judgments). These proceedings would be contrary to "'both the *letter* and *spirit*'" of the Supreme Court's decision to avert further litigation. *RICO Corp.*, 836 A.2d at 218 (quoting *Tollett v. City of Kemah*, 285 F.3d 357, 364 (5th Cir. 2002)); *see also Hagopian*, 960 A.2d at 253 ("We also note that we did not instruct the trial justice to conduct further proceedings or consider additional evidence, nor are we persuaded that such actions were necessary.").

C

Plaintiffs' Unjust Enrichment Arguments

Plaintiffs also raise the doctrine of unjust enrichment and argue that the City would be unjustly enriched if allowed to retain health care costs that it was obligated to pay. (Pls.' Mem. 12-13.) Plaintiffs also assert that this argument does not represent a new claim, but rather the application of equitable principles to the question of whether the City must reimburse them for their health care costs. (Certain Pls.' Reply Mem. 22-23.) On that question, Plaintiffs assert that the equities of the situation weigh heavily in their favor because the 2011 Medicare Ordinance was an invalid impairment of their contractual rights. *Id.* at 23. The City argues that Plaintiffs' unjust enrichment theory is barred because it represents a new cause of action that was not raised in pleadings or at trial. (Def.'s Opp'n 2, 4.)

Plaintiffs' invocation of unjust enrichment does not change the outcome, as the mandate rule prevents this Court from considering a new theory of recovery or applying equitable principles to issues already decided by the Supreme Court. As a cause of action, unjust enrichment

"'typically arise[s] . . . when a benefit is conferred deliberately but without a contract[.]'" *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210 (R.I. 2015) (quoting Black's Law Dictionary 1771 (10th ed. 2014)).

> "To recover under a claim for unjust enrichment, 'a plaintiff is required to prove three elements: (1) a benefit must be conferred upon the defendant by the plaintiff, (2) there must be appreciation by the defendant of such benefit, and (3) there must be an acceptance of such benefit in such circumstances that it would be inequitable for a defendant to retain the benefit without paying the value thereof.'" *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 99 (R.I. 2006) (quoting *Bouchard v. Price*, 694 A.2d 670, 673 (R.I. 1997)).

As Plaintiffs acknowledge, their Complaint did not assert a claim against the City for unjust enrichment. (Certain Pls.' Reply Mem. 22.) At this juncture, permitting Plaintiffs to raise a new cause of action would violate the mandate rule by "exceed[ing] the scope of the remand." *Sansone*, 957 A.2d at 398 (quotation omitted). For example, in *RICO Corp. v. Town of Exeter*, the Rhode Island Supreme Court upheld a "trial justice's denial of [a plaintiff]'s motion to amend" its complaint where the "proposed amendments . . . effectively fell outside the scope" of the "explicit instructions" in a previous remand. *RICO Corp.*, 836 A.2d at 218.

Instead of a new cause of action, Plaintiffs characterize their discussion of unjust enrichment as an attempt to "provide the Court with a platform for equitable analysis." (Certain Pls.' Reply Mem. 22.) However, the narrow scope of the Supreme Court's mandate leads this Court to conclude that there are no open issues. Under the mandate rule, "'whatever was before [the Supreme Court] . . . is considered as finally settled.'" *Pleasant Management, LLC*, 960 A.2d at 223 (quoting *Thrasher*, 483 F.3d at 981). The Supreme Court vacated only this Court's denial and dismissal of Plaintiffs' Contract Clause claim. *See Andrews*, 233 A.3d at 1039-40. Recognizing that "further litigation" on that claim would otherwise be necessary, the Supreme

Court foreclosed the need for those proceedings by awarding a specific remedy and directing this Court to put that remedy into effect. *Id.* at 1039. In so doing, the Supreme Court left no room for further inquiry into the equities of the case.

Similarly, Plaintiffs' argument has expanded the interpretation of the Supreme Court's decision into a ruling that the 2011 Medicare Ordinance was unconstitutional from its inception. While the Supreme Court vacated this Court's denial of Plaintiffs' Contract Clause claim, the decision did not reverse this Court's holdings. The Supreme Court did not therefore hold that the Ordinance was unconstitutional when enacted. *See id.* at 1039-40; *see also Andrews v. Lombardi*, 231 A.3d 1108, 1124 (R.I. 2020) (Pension Case) ("Moreover, it is well settled that legislative action, whether state or municipal, 'is presumed constitutional and will not be invalidated by this Court unless the party challenging the [legislation] proves *beyond a reasonable doubt* that the legislative enactment is unconstitutional.'") (quoting *Parella v. Montalbano*, 899 A.2d 1226, 1232-33 (R.I. 2006)).

In fact, the Supreme Court noted that its award is consistent with the terms of the 2011 Medicare Ordinance, "which allows for the City's payment of 'Medicare supplement or gap coverage' when 'otherwise provided by ordinance or contract.'" *Andrews*, 233 A.3d at 1039; *see also Cranston Police Retirees Action Committee v. City of Cranston*, 208 A.3d 557, 578 (R.I. 2019) (upholding conclusion that ordinance suspending retirees' cost-of-living adjustment benefits "for a finite period of time" did not violate Contract Clause). While the City is now obligated to provide supplemental and prescription Medicare coverage to Plaintiffs, it does not follow that the now-concluded lack of such coverage was necessarily unconstitutional, or that this Court can reopen and address that question.

IV

Conclusion

For the reasons stated above, Plaintiffs' Motion for Health Care Costs is denied. Accordingly, the Court need not address whether Plaintiffs are entitled to recover prejudgment interest on any amounts awarded. Counsel shall submit an appropriate order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Andrews, et al. v. Lombardi**
CASE NO:	**KC-2013-1128**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**November 30, 2021**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Thomas M. Dickinson, Esq.; Lauren E. Jones, Esq.; Kevin F. Bowen, Esq.; Thomas J. McAndrew, Esq.**
For Defendant:	**William M. Dolan, Esq.; Kenneth B. Chiavarini, Esq.; Matthew T. Jerzyk, Esq.; Jeffrey M. Padwa, Esq.**