

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 1, 2023)

CAPITAL VIDEO CORPORATION

*Plaintiff,*

v.

JOSEPH A. BEVILACQUA

*Defendant.*

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C.A. No. PC-1997-4715

**DECISION**

**CRUISE, J.** Before this Court for decision is Intervenor Donna Bevilacqua’s (Donna)<sup>1</sup> Emergency Motion for Provisional Relief, to which Plaintiff Capital Video Corporation (CVC) objects. Through the instant Motion, Donna asks the Court to determine the validity of two Writs of Execution recorded against Donna’s property located at 104 Olney Avenue in North Providence, Rhode Island (the Property). Jurisdiction is pursuant to Rule 65(a) of the Superior Court Rules of Civil Procedure.

**I**

**Facts and Travel**

The facts giving rise to the present matter before the Court are largely uncontested. On May 23, 1997, CVC and Defendant Joseph Bevilacqua (Joseph) executed a promissory note whereby Joseph promised to pay CVC \$140,000 on or before July 19, 1997. (Compl. ¶ 3.) Joseph failed to make payments to CVC under the terms of the promissory note, and, as a result, CVC

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<sup>1</sup> Because Donna and Joseph share the same last name, this Decision will refer to them by their first names for clarity purposes; no disrespect is intended by doing so.

instituted the present action on September 26, 1997. *Id.* ¶ 4; Docket. CVC's Complaint did not name Donna as a defendant. *See generally* Compl.

On April 24, 2002, after several years of litigation, CVC and Joseph stipulated that (1) judgment would enter in favor of CVC for \$178,000 and (2) entry of final judgment would be stayed until August 27, 2002. (Stipulation (Apr. 24, 2002).) On October 24, 2002, this Court entered final judgment for CVC in the amount of \$178,000, plus post-judgment statutory interest at the rate of 12 percent per annum starting on August 27, 2002. (Entry of J. (Oct. 24, 2002) (Clifton, J. (ret.)) (the Judgment).)

On December 10, 2002, a paralegal for CVC's counsel filed a letter addressed to the Clerk of the Court requesting a Writ of Execution for \$178,000 plus \$6,086.08 in statutory interest accrued from August 27, 2002 to December 10, 2002. (Letter (Dec. 10, 2002).) The Clerk of the Court issued an original execution on December 19, 2002 with a return date of December 19, 2003. (Execution – Goods, Chattel and Real Estate (Apr. 16, 2004) (copy of December 2002 Execution returned following expiration) (Original Execution).)

On April 14, 2004, a paralegal for CVC's counsel sent another letter addressed to the Clerk of the Court requesting a new execution for \$184,086.08, plus \$34,936.44 in statutory interest accrued from August 27, 2002 to April 15, 2004, because the Original Execution had lapsed. (Letter (Apr. 14, 2004).) Thereafter, on May 11, 2004, the Clerk issued an alias execution with a return date of May 11, 2005. (Alias Execution (May 11, 2004) (the First Alias Execution).)

CVC recorded the First Alias Execution on May 28, 2004 against real property in Warwick that was jointly owned by Joseph and Donna. Donna Bevilacqua's Mem. in Supp. of Mot. for Provisional Relief in the Form of a TRO and Prelim. Inj. (Donna's Mem.) 4, ¶ 11; *see also* App. to Donna Bevilacqua's Mot. for Provisional Relief in the Form of a TRO and Prelim. Inj. (Donna's

Mem. App.) at 19 (copy of recorded First Alias Execution).<sup>2</sup> Subsequently, on December 6, 2006, CVC sent a letter to the Warwick Recorder of Deeds requesting the release and discharge of the First Alias Execution. (Donna’s Mem. App. at 20 (copy of recorded release).) The December 6 letter was recorded in the City of Warwick Land Records on December 15, 2006. *See id.*

In a letter dated April 20, 2005, a paralegal for CVC’s counsel requested the issuance of another alias execution because the First Alias Execution had been “lost, stolen or misplaced.” Letter (Apr. 20, 2005); *see also* Aff. of Att’y Douglas A. Giron ¶ 2 (Apr. 20, 2005). Thereafter, the Clerk of the Court issued a second alias execution on May 5, 2005, for a total of \$240,337.77 with a return date of May 5, 2006. (Alias Execution (May 5, 2005) (the Second Alias Execution).) CVC recorded the Second Alias Execution on May 6, 2005 against real property situated at 50 Deep Meadow Lane, East Greenwich, Rhode Island that was jointly held by Joseph and Donna. (Donna’s Mem. App. at 26-28 (recorded Second Alias Execution); Donna’s Mem. 5.) On November 9, 2005, CVC recorded a document entitled “Partial Discharge of Execution” with respect to the Second Alias Execution, but “reserve[d] its rights as to any other real estate, wherever situated, as to which CVC has levied the [Second Alias Execution].” (Donna’s Mem. App. at 29-30 (recorded discharge of Second Alias Execution).)

Approximately fifteen years later, counsel for CVC filed a request for another alias execution for the First Alias Execution on July 23, 2020 because the First Alias Execution had been “lost or misplaced.” (Req. for Replacement Alias Execution (July 23, 2020); Req. for Replacement Alias Execution Ex. 1 (Aff. of Edward D. Pare, III), ¶¶ 3, 6.) On October 6, 2020, CVC filed the affidavit of Kenneth Guarino (Mr. Guarino). (Docket.) In his Affidavit, Mr. Guarino

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<sup>2</sup> For clarity, citations to Donna’s Appendix include pinpoint citations based on the pagination established therein. The page numbers are located in the bottom right hand corner of each page included in Donna’s Appendix and are numbered as pages 001 through 065.

attests that CVC had only received a \$10,000 payment from Joseph toward the Judgment as of September 30, 2020. (Guarino Aff. (filed Oct. 6, 2020), ¶ 4.) That same day, the Clerk of the Court issued a pluries execution in the amount of \$533,160.07, noting that a \$10,000 payment had been made by Joseph and listing a return date of October 7, 2021. (Writ of Execution Pluries (Oct. 6, 2020) (the First Pluries Execution).) The First Pluries Execution was recorded against the Property on October 13, 2020. (Donna’s Mem. App. at 41-42 (recorded First Pluries Execution).)

Approximately two years later, on August 16, 2022, CVC filed a request for issuance of another pluries execution. (Req. for Alias Execution (Aug. 16, 2022).) CVC made this request because the First Pluries Execution had lapsed, and the Judgment remained unsatisfied. *Id.* On August 19, 2022, the Clerk of the Court issued another pluries execution in the amount of \$570,823.65 with a return date of August 20, 2023. (Writ of Execution Pluries (Aug. 19, 2022) (the Second Pluries Execution).) The Second Pluries Execution was recorded against the Property on August 22, 2022. (Donna’s Mem. App. at 56-57 (recorded Second Pluries Execution).)

Thereafter, CVC scheduled a sheriff’s sale of the Property for October 21, 2022. (App. to Pl.’s Obj. to Intervenor’s Emergency Mot. for Provisional Relief at 94, 98, 100 (documentation of public notices evidencing scheduling of sale).) On October 18, 2022, Donna filed an Emergency Motion to Intervene pursuant to Rule 24(a)(2) of the Superior Court Rules of Civil Procedure for the limited purpose of challenging the First and Second Pluries Executions (collectively the Pluries Executions). (Emergency Mot. to Intervene 1.) That same day, Donna also filed her Emergency Motion for Provisional Relief (Donna’s Mot.) and a memorandum of law in support thereof, requesting the issuance of a temporary restraining order and a preliminary injunction “to prevent the immediate sale of Donna’s home at a constable’s sale scheduled for October 21, 2022.” (Emergency Mot. for Provisional Relief 1.)

Following a hearing on October 19, 2022, the Court entered a Consent Order that: (1) granted Donna’s Emergency Motion to Intervene for “the limited purpose of challenging the [Executions] that were previously issued[,]” (2) stayed the sheriff’s sale of the Property “pending the Court’s determination of the merits of the claim that [either of the Executions] are invalid[,]” (3) established a briefing schedule, (4) instructed the parties to request a hearing date following submission of the briefs “to present argument and submit the matter to the Court for decision on the merits of the validity of the [Executions]” pursuant to Rule 65(a)(2) of the Superior Court Rules of Civil Procedure, and (5) stayed the independent action brought by Donna against CVC pending the Court’s determination of the validity of the Executions. (Consent Order (Oct. 19, 2022) (hereinafter Consent Order) 1-2.) On November 22, 2022, the Court entered an Amended Consent Order to adjust the briefing schedule. (Am. Consent Order (Nov. 22, 2022).)

On December 9, 2022, CVC filed its Objection to Donna’s Motion and a memorandum of law in support thereof. (Docket.) Donna filed a reply memorandum on January 12, 2023. *Id.* On February 8, 2023, pursuant to Rule 65(a)(2) of the Superior Court Rules of Civil Procedure, the Court held a hearing on the merits for the validity of the Executions. *Id.*

## II

### Standard of Review

Rule 65(a)(2) provides that:

“An application for a preliminary injunction shall be heard on evidence or affidavits or both at the discretion of the court. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.” Super. R. Civ. P. 65(a)(2).

Consolidation under Rule 65(a)(2) “is a flexible procedure that ‘may be raised by the parties or on the court’s own motion.’” *Richards v. Halder*, 853 A.2d 1206, 1211 (R.I. 2004) (quoting *Oster v.*

*Restrepo*, 448 A.2d 1268, 1270 (R.I. 1982)). “[T]he decision whether or not to consolidate the hearing for preliminary relief with a trial on the merits is left to the sound discretion of the trial justice [who] may order consolidation and advancement in any appropriate manner as long as his order protects the parties’ rights to a full hearing on the merits.” *Id.* (quoting *Oster*, 448 A.2d at 1270). Importantly, “parties are not prejudiced if they have received adequate notice and sufficient time to prepare for consolidation and advancement.” *Id.* (citing *Pucino v. Uttley*, 785 A.2d 183, 188 n.1 (R.I. 2001)).

### III

#### Analysis

Donna argues that G.L. 1956 § 9-25-3 is clear and unambiguous such that it renders the First Pluries Execution invalid because it was not issued within six years of the return date of the Second Alias Execution. (Donna’s Mem. 17-18.) Conversely, CVC contends that, when read *in pari materia* with § 9-25-3, § 9-25-19 creates an exception to the six-year time limit for the replacement of executions that are lost or destroyed. *See generally* Mem. of Law in Supp. of Pl.’s Obj. to Intervenor’s Emergency Mot. for Provisional Relief 16-22. CVC therefore submits that the six-year limitation under § 9-25-3 does not render the First Pluries Execution invalid because the First Pluries Execution was issued as a replacement for the Second Alias Execution after the Second Alias Execution was lost or destroyed.<sup>3</sup> *Id.*

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<sup>3</sup> While the Court is aware of the various other arguments raised by both parties, the crux of the issue in this case is whether the First and Second Pluries Executions were validly issued. Accordingly, the Court will proceed with its analysis as to the validity of the First and Second Pluries Executions.

## A

### Whether § 9-25-3 Includes Pluries Executions

When interpreting a statute, the Court must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). “It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012) (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)). The plain meaning approach, however, “is not the equivalent of myopic literalism,” and “it is entirely proper for [the Court] to look to ‘the sense and meaning fairly deducible from the context.’” *In re Brown*, 903 A.2d 147, 150 (R.I. 2006) (quoting *In re Estate of Roche*, 109 A.2d 655, 659 (N.J. 1954)).

Section 9-25-3 provides that “[e]xecutions, original or alias, may be issued by any court at any time within six (6) years from the rendition of the judgment originally or from the return day of the last execution.” Section 9-25-3. Our Supreme Court has held that “the language of [§ 9-25-3 is] free from ambiguity” and the six-year limitation set forth thereunder is mandatory. *Bruno v. DiPasquale*, 714 A.2d 614, 615 (R.I. 1998); *see also Lopes Liquor, Inc. v. Pastore*, 633 A.2d 1353, 1354 (R.I. 1993) (holding that an execution of judgment was properly granted within the six-year statutory period under § 9-25-3).

Here, the Court must first interpret § 9-25-3 to determine whether the six-year time frame is applicable to pluries executions. The language of § 9-25-3 does not include pluries executions in the six-year time limit. *See* § 9-25-3. However, pluries executions and alias executions are almost identical except for the fact that a pluries execution is issued after an alias execution. *Compare* Black’s Law Dictionary (11th ed. 2019 West 2022) (defining an alias writ as “[a]n

additional writ issued after another writ of the same kind in the same case”) *with* Black’s Law Dictionary (11th ed. 2019 West 2022) (defining pluries as “[a] third or subsequent writ issued when the previous writs have been ineffective; a writ issued after an alias writ”). It is unclear to the Court why the Legislature would choose to exclude pluries executions from the six-year time limit of § 9-25-3, but not alias executions. If it was the Legislature’s intent to exclude all but original executions from the six-year time limit, then the Legislature would have also excluded alias executions from § 9-25-3. *See Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011) (legislative intent “is discovered from an examination of the language, nature, and object of the statute”).

Furthermore, § 9-25-19 permits the Court to issue a replacement execution for “any original, alias, or pluries execution . . . upon proof that the execution has been lost or destroyed[.]” Section 9-25-19. In accordance with §§ 9-25-19 and 9-25-3, a replacement execution for lost *alias* execution must be issued within six years of the return date of the lost alias execution. *See* §§ 9-25-3, 9-25-19. On the other hand, a replacement execution for a lost *pluries* execution does not need to be issued within six years of the return date of the lost execution; instead, a replacement pluries execution could be issued at any time following the issuance of an alias execution. *See* §§ 9-25-3, 9-25-19. Clearly, §§ 9-25-3 and 9-25-19 are in conflict.

“When faced with the task of statutory construction, [the] Court ‘construes and applies apparently inconsistent statutory provisions in such a manner so as to avoid the inconsistency.’” *Tiernan v. Magaziner*, 270 A.3d 25, 30 (R.I. 2022) (quoting *Such v. State*, 950 A.2d 1150, 1156 (R.I. 2008)). Moreover, the Court “‘should attempt to construe two statutes that are in apparent conflict so that, if at all reasonably possible, both statutes may stand and be operative.’” *Id.*



(quoting *Such*, 950 A.2d at 1156). When applying these principles, the goal is to “give effect ‘to the apparent object and purpose of the Legislature.’” *Id.* (quoting *Such*, 950 A.2d at 1156).

Looking at the language of §§ 9-25-3 and 9-25-19, it is likely that the Legislature intended original, alias, *and* pluries executions to issue within six years of the judgment or the return date of a previous execution. *See Ryan*, 11 A.3d at 71. Accordingly, the Court will diverge from the literal interpretation of § 9-25-3 and construe that provision to include a requirement that pluries executions issue within the six-year time limit to give an effect that is consistent with the General Assembly’s intent. *See Tiernan*, 270 A.3d at 30. Therefore, the Court hereby determines that pluries executions are subject to the six-year time limit of § 9-25-3.

## **B**

### **Validity of the First Pluries Execution**

Having determined that pluries executions are subject to the six-year time limit of § 9-25-3, the Court now turns to the validity of the First Pluries Execution. In the present action, the last execution issued prior to the First Pluries Execution was the Second Alias Execution. The Second Alias Execution was issued May 5, 2005 and had a return date of May 5, 2006. (Second Alias Execution (May 5, 2005).) Consequently, according to § 9-25-3, a pluries execution had to be issued within six years of May 5, 2006, i.e., on or before May 5, 2012. *See id.*; § 9-25-3. The First Pluries Execution was issued by the Clerk of this Court on October 6, 2020, more than eight years past the deadline imposed by § 9-25-3. Accordingly, because CVC did not obtain the First Pluries Execution on or before May 6, 2012, the First Pluries Execution is invalid.

## **C**

### **Validity of the Second Pluries Execution**

Having found that the First Pluries Execution is not valid, it necessarily follows that the Second Pluries Execution is also invalid because it was requested two years after the First Pluries Execution. Accordingly, the Second Pluries Execution is invalid.

## **IV**

### **Conclusion**

For the foregoing reasons, the Court concludes that the First Pluries Execution and the Second Pluries Execution are invalid. CVC shall release and discharge the First and Second Pluries Executions forthwith. Counsel shall prepare and file an order consistent with this Decision.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Capital Video Corporation v. Bevilacqua

**CASE NO:** PC-1997-4715

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** May 1, 2023

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

**ATTORNEYS:**

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Lauren E. Jones, Esq.