STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 1, 2022)

COMMERCE PARK REALTY, LLC,	**:**	
COMMERCE PARK PROPERTIES, LLC	**:**	
COMMERCE PARK COMMONS, LLC	**:**	
COMMERCE PARK ASSOCIATES 4, LLC	**:**	
COMMERCE PARK ASSOCIATES 11, LLC	**:**	
UNIVERSAL PROPERTIES GROUP, INC.	**:**	
DARTMOUTH COMMONS, LLC	**:**	
WARWICK VILLAGE, LLC	**:**	
NICHOLAS E. CAMBIO, individually and	**:**	
NICHOLAS E. CAMBIO, Trustee of the	**:**	
NICHOLAS E. CAMBIO, RONY A.	**:**	
MALAFRONTE & VINCENT A. CAMBIO	**:**	
TRUST and VINCENT A. CAMBIO	**:**	
Plaintiffs,	**:**	
	:	
v.	**:**	**C.A. No. PB-2011-1922**
	:	
HR-2 A Corp., as General Partner of HR2-A	**:**	
Limited Partnership, John Doe(s), the	**:**	
Limited Partners of HR2-A Limited	**:**	
Partnership, HR4-A Corp., as General Partner	**:**	
of HR4-A Limited Partnership, John Doe(s),	**:**	
the Limited Partners of HR4-A Limited	**:**	
Partnership, MR4A-JV Corp., as General	**:**	
Partner of MR4A-JV Limited Partnership,	**:**	
and REALTY FINANCIAL PARTNERS,	**:**	
DAVID ALLEN and DONALD BIERER and	**:**	
John Doe(s), the Officers and agents of	**:**	
REALTY FINANCIAL PARTNERS,	**:**	
Defendants.	**:**	

DECISION

TAFT-CARTER, J. Before this Court for decision are the following motions:

(1) The Receivership Plaintiffs'[1] Motion for Partial Summary Judgment to Award Statutory Damages Pursuant to G.L. 1956 § 6-26-4 and Rule 54(b) Motion for Entry of Final Judgment (Receivership Pls.' MPSJ and MFJ);

(2) Receivership Plaintiffs' Motion for a Protective Order to Block or Limit the Scope of Discovery and the Deposition of Anthony M. Traini, Esq. (Attorney Traini) (Receivership Pls.' Mot. for a Protective Order); and

(3) Receivership Plaintiffs' Motion to Compel RFP Defendants'[2] Responses to Requests for Production of Documents (Receivership Pls.' Mot. to Compel).

In connection with these motions and also before the Court are the following submissions by the parties:

(1) Objection of RFP Defendants to Receivership Plaintiffs' MPSJ and MFJ;

(2) RFP Defendants'[3] Objection to Receivership Plaintiffs' Motion for a Protective Order;

(3) RFP Defendants'[4] Objection to Receivership Plaintiffs' Motion to Compel;

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[1] "Receivership Plaintiffs" refer to: Plaintiff Commerce Park Realty, LLC (CPR); Plaintiff Commerce Park Properties, LLC (CPP); Plaintiff Commerce Park Commons, LLC (CPC); Plaintiff Commerce Park Associates 4, LLC (CPA 4); and Receiver Matthew McGowan.

[2] "RFP Defendants" refer to: Defendant HR2-A Corp., as General Partner of HR2-A Limited Partnership (HR2-A); Defendant HR4-A Corp. as General Partner of HR4-A Limited Partnership (HR4-A); Defendant MR4A-JV Corp., as General Partner of MR4A-JV Limited Partnership (MR4A-JV); and Defendant Realty Financial Partners (RFP Lenders).

[3] While "RFP Defendants" is utilized in the title of this document, the parties joining in this objection include HR2-A and HR4-A. S*ee* RFP Defs.' Obj. to Receivership Pls.' Mot. Compel RPF Defs.' Responses to Requests Produc. Docs. (RFP Defs.' Obj. Mot. Compel) 1. As such, for purposes of the Motion for a Protective Order, those RFP Defendants will be referred to as "the MPO Objectors."

[4] While "RFP Defendants" is utilized in the title of this document, the parties joining in this objection include HR2-A, HR4-A, and MR4A-JV. *See* RFP Defs.' Obj. to Receivership Pls. Mot. for Protective Order to Block or Limit the Scope of Disc. and the Dep. of Anthony M. Traini, Esq.

(4) Petitioner's[5] Assent to Receivership Plaintiffs' Motion for a Protective Order;

(5) The Receivership Plaintiffs' Reply in Support of their Motion for Partial Summary Judgment for Statutory Usury Damages;

(6) Principal Borrower Plaintiffs'[6] Memorandum of Law in Support of Receivership Plaintiffs' Motion for Partial Summary Judgment as to Usury Damages and Request for Application of Rhode Island Pre-Judgment Interest Accrual Law;

(7) Supplemental Memorandum of Law in Support of Objection of HR2-A, MR4A-JV, and RFP Lenders to Receivership Plaintiffs' MPSJ and MFJ;

(8) The Receivership Plaintiffs' Response to RFP Defendants' Supplemental Memorandum Concerning Prejudgment Interest; and

(9) Principal Borrower Plaintiffs' Sur-Reply to RFP Defendants' Supplemental Memorandum Concerning Motion for Partial Summary Judgment for Statutory Damages and Rule 54(b) Entry of Final Judgment.

Jurisdiction is pursuant to G.L. 1956 §§ 8-2-14 and 6-26-4(c), and Rules 26, 54, and 56 of the Superior Court Rules of Civil Procedure.

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1. As such, for purposes of the Motion to Compel, those RFP Defendants will be referred to as "the MTC Objectors."

[5] "Petitioner" refers to Vincent A. Cambio, in his capacity as Trustee of the Nicholas E. Cambio, Roney A. Malafronte, and Vincent A. Cambio Trust. (Pet'r's Assent to Receivership Pls.' Mot. for Protective Order 1.)

[6] "Principal Borrower Plaintiffs" refer to the following individuals who are parties to this lawsuit and executed the loans addressed throughout the instant motions. They are Nicholas E. Cambio (N. Cambio) and Vincent A. Cambio (V. Cambio). *See* Docket (listing each Cambio as an individual Plaintiff); *see also* RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ) Ex. D (N. Cambio Aff.), at Ex. D (listing both Cambios as borrowers on a fourteen-million-dollar promissory note subject to instant litigation).

I

Facts and Travel

The pertinent facts underlying the motions at bar are outlined in this Court's June 19, 2019 Decision concerning cross-motions for summary judgment (the June 2019 Decision). *See Commerce Park Realty, LLC v. HR2-A Corp.*, No. PB-2011-1922, 2019 WL 2579853, at *3-8 (R.I. Super. June 19, 2019) (detailing pertinent facts), *aff'd* 253 A.3d 868, and *aff'd* 253 A.3d 1258. This Court incorporates by reference its recounting of the facts in the June 2019 Decision. *See id.* As such, this Court will only provide the facts it deems necessary to rule on the instant motions. [7]

A

Procedural History

After the Court's June 2019 Decision with respect to the cross-motions for summary judgment, *see id.*, this Court entered final judgment on September 19, 2019. *See generally* Summ. J. Order (Sept. 19, 2019) (Summ. J. Order). The judgment decreed the following: (a) that the loans at issue in this matter are usurious and void; (b) that a forbearance agreement (the Forbearance Agreement)—executed by HR2-A, HR4-A, CPR, CPC, CPP, and CPA 4 through their duly authorized representatives—is ineffective and does not preclude the assertion of usury claims in this matter; (c) that the Loans and related usury claims are governed by Rhode Island law; and (d)

[7] There are four separate loans at issue in this matter. *See generally* Am. Compl. For convenience, the loans will be referred to collectively as "the Loans" where it is appropriate to do so. Additionally, the Court will refer to the loans at issue individually as it did in the June 2019 Decision. *See Commerce Park Realty, LLC v. HR2-A Corp.*, No. PB-2011-1922, 2019 WL 2579853, at *4 (R.I. Super. June 19, 2019) (detailing pertinent facts), *aff'd* 253 A.3d 868, and *aff'd* 253 A.3d 1258. For example, the promissory note for $7,599,333.00 will be referred to as "the Seven Million Dollar Note." Similarly, the promissory note for $14,320,000.00 will be referred to as "the Fourteen Million Dollar Note."

that the Non-Receivership Plaintiffs[8] are not borrowers on the Fourteen Million Dollar and Seven Million Dollar Notes. Summ. J. Order ¶¶ 1-2, 4-5, 7, 9a, 9c, 11-13; *see generally* RFP Defs.' Obj. to Receivership Pls.' Mot. Partial Summ. J. for Statutory Damages Pursuant to R.I. Gen. Laws § 6-26-4(c) and Rule 54(b) Motion for Entry of Final J. (RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ) Ex. D (N. Cambio Aff.), at Ex. F (containing Forbearance Agreement); *see also Commerce Park Realty, LLC*, 2019 WL 2579853, at *12-17 (detailing this Court's analysis and findings on usury issues).

The Court entered judgment on the usury violations and deferred its decision with respect to recovery from the RFP Defendants. *See generally* Judgment (Sept. 19, 2019) (Judgment). Pursuant to the RFP Defendants' Renewed Request for Rule 54(b) Certification, the Court entered final judgment regarding the RFP Defendants' violation of Rhode Island's usury laws, staying the proceedings during the pendency of appeals stemming therefrom. (Rule 54(b) Certification Order 1-2 (Sept. 19, 2019).) The RFP Defendants then filed the Notice of Appeal on October 8, 2019.[9] The Rhode Island Supreme Court affirmed this Court's June 2019 Decision and September 2019 Decision. *Commerce Park Realty, LLC*, 253 A.3d at 1273.[10]

[8] The term "Non-Receivership Plaintiffs" is a short form employed to refer to the following parties to this action: Plaintiff Commerce Park Associates 11, LLC (CPA 11); Plaintiff Dartmouth Commons, LLC (Dartmouth); Plaintiff Warwick Village, LLC; Plaintiff Universal Properties Group, Inc. (UPG); Plaintiff N. Cambio, individually and as Trustee of the Nicholas E. Cambio, Roney A. Malafronte, and Vincent A. Cambio Trust; and Plaintiff V. Cambio.

[9] The Non-Receivership Plaintiffs also filed their Notice of Appeal on October 28, 2019, leading to an appeal which was addressed in a separate decision entered by the Supreme Court because the Non-Receivership Plaintiffs sought "review of secondary determinations made by the Superior Court that coincided with the finding that the loans were usurious." *See Commerce Park Realty, LLC, v. HR2-A Corp.*, 253 A.3d 868, 871 (R.I. 2021).

[10] Specifically, the Rhode Island Supreme Court held as follows: (a) the Seven Million Dollar and Fourteen Million Dollar Notes were not exempt from Rhode Island's usury statute; (b) that the Forbearance Agreement does not operate to extinguish the Receivership Plaintiffs' usury claims; (c) that Rhode Island law governs the Four Million Dollar and Three Hundred Fifty Thousand Dollar Notes; and (d) refinancing the Seven Million Dollar and Fourteen Million Dollar Notes

The Receivership Plaintiffs now move for partial summary judgment on Counts I and IV of the Amended Complaint with respect to the issue of the usury penalty. (Receivership Pls.' MPSJ & MFJ 1-2). The Receivership Plaintiffs also seek entry of final judgment in accordance with Rule 54(b) of the Superior Court Rules of Civil Procedure. *Id.* The RFP Defendants object to both of those motions. (RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 1-2.)

Further, the Receivership Plaintiffs and Petitioner jointly move for a protective order to block or limit the scope of discovery and deposition of Attorney Traini following the issuance of a subpoena *duces tecum* for him to sit for deposition.[11] (Superior Ct. Subpoena-Civil (Oct. 12, 2021); Receivership Pls.' Mot. for a Protective Order; Pet'r's Assent to Receivership Pls.' Mot. for Protective Order.) The MPO Objectors have filed an objection to this motion as well. *See generally* RFP Defs.' Obj. to Receivership Pls.' Mot. for Protective Order.

Finally, the Receivership Plaintiffs move to compel the RFP Defendants' response to request for production of business and financial documents, to which the MTC Objectors have also filed an objection. *See generally* Receivership Pls.' Mot. to Compel; RFP Defs.' Obj. to Receivership Pls.' Mot. to Compel.

extinguished previously existing loans. *Commerce Park Realty, LLC, v. HR2-A Corp.*, 253 A.3d 1258, 1267-73 (R.I. 2021).

[11] Attorney Traini performed legal services on behalf of a number of the parties to the instant action and was involved in transactional work associated with the loans at issue in this case.

II

Standards of Review

A

Motion for Summary Judgment

"'Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). Indeed, "[s]ummary judgment is appropriate 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.'" *Sola v. Leighton*, 45 A.3d 502, 506 (R.I. 2012) (quoting *Plunkett v. State*, 869 A.2d 1185, 1187 (R.I. 2005)).

"'The moving party bears the initial burden of establishing the absence of a genuine issue of fact.'" *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (quoting Robert B. Kent et al., *Rhode Island Civil Procedure* § 56:5, VII-28 (West 2006)). Once the moving party has satisfied its burden, however, "'[t]he burden then shifts . . . and the nonmoving party has an affirmative duty to demonstrate . . . a genuine issue of fact.'" *Id.* (quoting Kent, *supra*). "[T]he nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013) (internal quotation omitted).

B

Motion for Entry of Final Judgment

Rule 54(b) of the Superior Court Rules of Civil Procedure states in pertinent part as follows:

> "When more than one (1) claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim . . . the court may direct the entry of a final judgment as to one (1) or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Super. R. Civ. P. 54(b).

The function of Rule 54(b) is to avoid piecemeal appeals. *Astro-Med, Inc. v. R. Moroz, Ltd.*, 811 A.2d 1154, 1156 (R.I. 2002) (citing 1 Kent, *Rhode Island Civil Practice* 396, 397 (1969)). When determining whether to grant a Rule 54(b) motion, the trial justice should take into account "judicial administrative interests as well as the equities involved." *Id.* (citation omitted). While examining judicial administrative interests, the trial justice should consider "the existence of a transactional relationship between a remaining unadjudicated claim and a claim that has been disposed of[.]" *Id.* at 1156-57. Rule 54(b) should be applied with caution, and a final judgment should enter only in "unusual and compelling circumstances." *Id.* at 1158 (internal quotation omitted). In the absence of such a determination of final judgment, an order which adjudicates the rights and liabilities of fewer than all of the parties is subject to revision at any time before the entry of final judgment. *See* Super. R. Civ. P. 54(b).

C

Discovery

In Rhode Island, "discovery rules are liberal and have been construed to 'promote broad discovery.'" *DeCurtis v. Visconti, Boren & Campbell, Ltd.*, 152 A.3d 413, 421 (R.I. 2017) (quoting

Henderson v. Newport County Regional Young Men's Christian Association, 966 A.2d 1242, 1246 (R.I. 2009)). As a result, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" Super. R. Civ. P. 26(b)(1). Rhode Island courts are "bound . . . to give the concept of relevancy, as it applies to discovery purposes, a liberal application[.]" *Borland v. Dunn*, 113 R.I. 337, 341, 321 A.2d 96, 99 (1974).

While Rhode Island discovery is broad, "the imposition of an unreasonable burden is an abuse of the discovery process and will not be tolerated." *Eleazer v. Ted Reed Thermal, Inc.*, No. C.A. 87-624, 1989 WL 1110555, at *1 (R.I. Super. Jan. 27, 1989). As such, "[a] litigant may not engage in merely speculative inquiries in the guise of relevant discovery." *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1328 (Fed. Cir. 1990). Moreover, it is well settled that the trial court has broad discretion over matters of discovery. *See Martin v. Howard*, 784 A.2d 291, 296 (R.I. 2001) (citing *Colvin v. Lekas*, 731 A.2d 718, 720 (R.I. 1999)); *see also Bashforth v. Zampini*, 576 A.2d 1197, 1201 (R.I. 1990).

III

Analysis

A

Motion for Partial Summary Judgment

The Receivership Plaintiffs argue judgment should enter in their favor for the recovery of payments made to the RFP Defendants with respect to the Seven Million Dollar and Fourteen Million Dollar Notes because the Rhode Island Supreme Court affirmed this Court's findings that those loans violated § 6-26-2, and that the RFP Defendants were therefore subject to the penalty set forth in § 6-26-4(c). (Receivership Pls.' Mem. Supp. MPSJ & MFJ 6-8.)

The RFP Defendants maintain that there exists a genuine issue of material fact regarding: (1) whether the Receivership Plaintiffs should be equitably estopped from recovering the usury penalty; and (2) whether fraud was committed on this Court. *See* RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 9. The RFP Defendants take the position that N. Cambio made false statements in an affidavit regarding the procurement of a pro forma methods analysis,[12] which the RFP Defendants contend should bar the Receivership Plaintiffs' recovery of payments because "in the face of conflicting evidence, the Receivership Plaintiffs nevertheless relied upon the statements in the [N.] Cambio Affidavit when they represented to this Court and to the Supreme Court that no Pro Forma Analyses were performed or obtained." *Id.*; *see also* RFP Defs.' Obj. Mot. Compel 4.

The RFP Defendants also maintain that entry of judgment in favor of the Receivership Plaintiffs pursuant to § 6-26-4(c) is not appropriate at this time based on the Court's Order entered on September 19, 2019, which stated "Receivership Plaintiffs and Non-Receivership Plaintiffs[']Motions for Summary Judgment seeking an award of damages relating to the Court's finding of usury of the referenced RFP Loan are hereby deferred." *See* RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 4 (quoting Summ. J. Order ¶ 14). In essence, the RFP Defendants contend that the penalty issue is a separate and distinct claim from the usury violation claim. *See* Hr'g Tr. 36:24-40:21

[12] During closing proceedings for the Fourteen Million Dollar and Seven Million Dollar Notes, "Borrower Certifications" were prepared by the RFP Defendants (the Borrower Certifications) and executed by agents of CPR, UPG, CPA 11, CPC, Dartmouth, and CPA 4, indicating that a pro forma methods analysis was performed and that the RFP Defendants could rely upon those representations. *See* RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ Ex. A (Borrower Certifications for Fourteen Million Dollar and Seven Million Dollar Notes).

However, in connection with the cross-motions for summary judgment, the RFP Defendants were unable to furnish competent evidence demonstrating said analysis was obtained. *See Commerce Park Realty, LLC*, 2019 WL 2579853, at *12. Therefore, this Court found the RFP Defendants failed to satisfy the burden of compliance with Rhode Island's usury exception under § 6-26-2(e) and granted summary judgment in favor of the Receivership Plaintiffs. *Id.* at *12-13.

(Nov. 9, 2021); RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 8-9. As such, according to the RFP Defendants, there remain viable methods of challenging the Receivership Plaintiffs' entitlement to a usury penalty—i.e., the assertion of equitable estoppel and fraud upon the court. *See* Hr'g Tr. 40:7-21 (Nov. 9, 2021); RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 8-9.

Conversely, the Receivership Plaintiffs and Principal Borrower Plaintiffs argue the RFP Defendants' defenses of equitable estoppel and fraud upon the court are precluded by the judgment already entered in the instant action. (Receivership Pls.' Mem. Supp. MPSJ & MFJ 6-8; Principal Borrower Mem. 3.)

Following the June 2019 Decision, this Court deferred entry of judgment with respect to the usury penalty. (Summ. J. Order ¶ 14.) It is clearly undisputed that this penalty is the sole remaining issue presented to this Court for determination. (Hr'g Tr. 30:20-25, 36:20-38:13 (Nov. 9, 2021).)

1

Statutory Construction

The Rhode Island Supreme Court has recognized as a "basic principle of statutory construction" that, if a statutory section "is clear and unambiguous," the courts will apply "the plain and ordinary meaning of the statute" and will not "delve into any further statutory interpretation." *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018). In fact, "'[i]t is only when a statute is ambiguous that [the courts] apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.'" *Id.* (quoting *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014)). In other words, "'[i]f a statute is clear and unambiguous [the courts] are bound to ascribe the plain and ordinary meaning of the words of the statute and

[the] inquiry is at an end."' *In re Kapsinow*, 220 A.3d 1231, 1234 (R.I. 2019) (quoting *Olsen v. DeMayo*, 210 A.3d 431, 435 (R.I. 2019)).

Section 6-26-4 provides in pertinent part as follows:

> "(a) Every contract made in violation of any of the provisions of § 6-26-2, and every mortgage, pledge, deposit, or assignment made or given as security for the performance of the contract, shall be usurious and void.
>
> ". . .
>
> "(c) Nothing contained in this section shall affect the rights, duties or liabilities of any persons acting under the provisions of title 19, and *if the borrower shall, either before or after suit, make any payment on the contract, either of principal or interest, or of any part of either*, and whether to the lender or to any assignee, endorsee, or transferee of the contract, *the borrower shall be entitled to recover from the lender the amount so paid in an action of the case.* Receipts shall be given whenever payments are made of either principal or interest." Sections 6-26-4(a), (c) (emphasis added).

The RFP Defendants maintain that a close reading of § 6-26-4(c) demonstrates that there are two phases to this trial: (1) a determination of whether the loan is usurious and therefore null and void, and (2) the issue of entitlement to the usury penalty provided for under § 6-26-4(c). *See* Hr'g Tr. 36:24-38:13 (Nov. 9, 2021). As such, the RFP Defendants posit they are entitled to dispute the latter after a finding that the loans at issue were usurious because the only issue resolved in the June 2019 Decision was whether the loan was usurious, null, and void. *See id.*; RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 4, 8-9. The RFP Defendants consequently argue that the Receivership Plaintiffs' entitlement to the usury penalty remains a viable issue subject to further litigation. *See* Hr'g Tr. 36:24-38:13 (Nov. 9, 2021); RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 4, 8-9.

In response, the Receivership Plaintiffs argue there is no exception to the mandate for a usury penalty under § 6-26-4(c) following a finding that a loan is in violation of § 6-26-2.

(Receivership Pls.' Reply Mem. 7-8.) Additionally, the Receivership Plaintiffs refute the RFP Defendants' characterization of this Court's use of the word "defer" in the September 2019 Order because "[t]here is nothing further for this Court to 'decide' on the issue of whether the Receivership Plaintiffs are entitled to [the usury penalty.]" *Id.* at 6. Thus, the Receivership Plaintiffs conclude that "[t]he statutory [usury penalty] is mandatory, it neither invites nor affords any discretion, and it provides no exceptions or defenses including an 'estoppel/fraud' defense." *Id.* at 8.

The term "statutory penalty" is defined as "[a] penalty imposed for a statutory violation[,] esp[ecially] a penalty *imposing automatic liability* on a wrongdoer for violation of a statute's terms *without reference to any actual damages suffered*." *See* Black's Law Dictionary 1154 (7th ed. 1999). ("statutory penalty" defined under the umbrella term "penalty") (emphasis added). Clearly, the title of § 6-26-4(c), "Usurious contracts—*Penalty*," plainly indicates the statute is designed to penalize lenders who enter into and collect payments on usurious loan agreements. *See* § 6-26-4 (emphasis added); Black's Law Dictionary 1154 (7th ed. 1999); *Nazarian v. Lincoln Financial Corp.*, 77 R.I. 497, 505, 78 A.2d 7, 10 (1951).

Furthermore, a plain and ordinary reading of § 6-26-4(c) establishes that the General Assembly provided a method of recovery to a borrower for any payments made on a usurious loan. *See* § 6-26-4(c). That recovery comes in the form of a penalty—i.e., the return of all of the principal and interest payments made pursuant to the usurious instrument at issue. *See id.*; *NV One, LLC v. Potomac Realty Capital, LLC*, 84 A.3d 800, 805 (R.I. 2014) (citing § 6-26-4) ("Contracts in violation of § 6–26–2 are usurious and void, and the borrower is entitled to recover any amount paid on the loan."); *Nazarian*, 77 R.I. at 505, 78 A.2d at 10 ("Plainly the policy of the legislature was to provide severe penalties against the lender for [their] violation of the statute as the best

method . . . to prevent usurious transactions. In the light of such policy, . . . the trial justice's decision, awarding recovery of both principal and interest payments, was not erroneous."); *see also* Black's Law Dictionary 1154 (7th ed. 1999) (defining "statutory penalty").

The requirements for recovery of the usury penalty has been clearly delineated by our Supreme Court as follows:

> "(1) the party must be a named 'borrower' on the usurious loan, and (2) that named borrower must 'make any payment' to the lender—irrespective of whether value is rendered directly or indirectly. . . . If both of these conditions are met, the borrower is 'entitled to recover from the lender the amount so paid[.]'" *Commerce Park Realty, LLC*, 253 A.3d at 874 (citations omitted).

These prerequisites for recovery of the penalty are therefore two-fold. *See id.*; § 6-26-4(c). First, a borrower must bring a cause of action seeking a declaration that the loan in question is usurious, void, and unenforceable pursuant to § 6-26-2 and successfully establish the same. *See Commerce Park Realty, LLC*, 253 A.3d at 874; § 6-26-4(c). Second, if the loan is deemed usurious, the Court must then determine whether the party seeking recovery was named as a borrower on the loan in question and made payments in connection therewith. *See Commerce Park Realty, LLC*, 253 A.3d at 874. Here, these requirements are satisfied, and therefore the Receivership Plaintiffs are entitled to recover the penalty. *See id.*; *Commerce Park Realty, LLC*, 2019 WL 2579853, at *15-17; § 6-26-4; Black's Law Dictionary 1154 (7th ed. 1999).

2

Issue Preclusion

"The question of issue preclusion raised under the doctrines of res judicata or collateral estoppel generally presents to the court an issue of law." *Mulholland Construction Co. v. Lee Pare and Associates, Inc.*, 576 A.2d 1236, 1237 (R.I. 1990) (*Mulholland*) (citing *Corrado v. Providence Redevelopment Agency*, 113 R.I. 274, 320 A.2d 331 (1974); *Providence Teachers Union v.*

McGovern, 113 R.I. 169, 319 A.2d 358 (1974); *Perez v. Pawtucket Redevelopment Agency*, 111 R.I. 327, 302 A.2d 785 (1973)).

"[T]he term 'res judicata' is commonly used to refer to two preclusion doctrines: (1) collateral estoppel or issue preclusion; and (2) res judicata or claim preclusion." *Plunkett*, 869 A.2d at 1188 (citing *Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1014 n.2 (R.I. 2004) (*Foster-Glocester*)). While these doctrines are often referred to interchangeably, collateral estoppel is a subsidiary doctrine of *res judicata*. *See Mulholland*, 576 A.2d at 1238; *accord Cranston Police Retirees Action Committee v. City of Cranston*, 208 A.3d 557, 584 (R.I. 2019) ("Collateral estoppel, or issue preclusion, is . . . related to *res judicata* . . . but its focus is different."). Hence, "[w]hile the elements of the two doctrines are basically the same," they differ in important respects. *City of Cranston*, 208 A.3d at 585.

Collateral estoppel "renders conclusive in a later action based on a different claim the determination of certain issues actually litigated in a prior action." *Zalobowski v. New England Teamsters & Trucking Industry Pension Fund*, 122 R.I. 609, 613, 410 A.2d 436, 438 (1980). As noted by our Supreme Court, collateral estoppel '"means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit."' *City of Cranston*, 208 A.3d at 584-85 (quoting *E.W. Audet & Sons, Inc. v. Fireman's Fund Insurance Company of Newark, New Jersey*, 635 A.2d 1181, 1186 (R.I. 1994)).

Alternatively, '"the doctrine of res judicata relates to the effect of a final judgment between the parties to an action and those in privity with those parties."' *Id.* at 584 (quoting *E.W. Audet & Sons, Inc.*, 635 A.2d at 1186). It is well settled that the purpose of *res judicata* is to ensure '"judicial resources are not wasted on multiple and possibly inconsistent resolutions of the same

lawsuit."' *ElGabri v. Lekas*, 681 A.2d 271, 275 (R.I. 1996) (quoting *Gaudreau v. Blasbalg*, 618 A.2d 1272, 1275 (R.I. 1993)).

Here, the issue is whether the judgment entered on September 19, 2019 with respect to Counts I and IV of the Amended Complaint precludes the RFP Defendants from asserting equitable estoppel and fraud upon the court. *See* Receivership Pls.' Mem. Supp. MPSJ & MFJ 6-8; Principal Borrower Mem. 3. Therefore, the appropriate preclusive doctrine to apply is *res judicata*, not collateral estoppel. *See State v. Presler*, 731 A.2d 699, 703-04 (R.I. 1999) (per curiam) (detailing application of *res judicata* to two separate motions stemming from the same case following an appeal on the first motion); *Mulholland*, 576 A.2d at 1237; *City of Cranston*, 208 A.3d at 584-85; *see also ElGabri*, 681 A.2d at 275 (detailing overriding purpose of *res judicata*).

The elements of *res judicata* are as follows: "(1) identity of the parties; (2) identity of the issues; (3) identity of the claims for relief; and (4) finality of the judgment[.]" *Ouimette v. State*, 785 A.2d 1132, 1138 (R.I. 2001) (citing *Estate of Bassett v. Stone*, 458 A.2d 1078, 1080 (R.I. 1983)).

In *State v. Presler*, our Supreme Court applied the doctrine of *res judicata* to affirm the trial court's denial of a motion which bore substantial similarity to one that had already been presented and denied as part of the same proceedings. *See Presler*, 731 A.2d at 703-04.[13] There,

[13] The *Presler* Court also analyzed whether the proper doctrine to apply was *res judicata* or the law-of-the-case doctrine. *See Presler*, 731 A.3d at 702-03. However, the *Presler* Court found the law-of-the-case doctrine to be inapplicable in light of the holding in *Richardson v. Smith*, 691 A.2d 543 (R.I. 1997). *See id.*

The law-of-the-case doctrine is implicated '"after one judge has decided an interlocutory matter in a pending suit, a second judge *on that same court*, when confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling."' *Id.* at 702-03 (quoting *Richardson*, 691 A.2d at 546). Here, the Court agrees with the rationale of the *Presler* Court and finds that *res judicata* is a more appropriate doctrine to apply given the need for finality. *See id.*

the majority held that even though "the defendant in his second motion posed a challenge . . . that had not been raised in his first motion is of no consequence, because *res judicata* effectively precluded relitigation of an issue that could have been raised in the defendant's earlier motion." *Id.* at 704.

Here, the RFP Defendants, Receivership Plaintiffs, and Principal Borrower Plaintiffs were and still are parties to the instant lawsuit. *See* Docket. Also, there is no dispute that the claims for relief under Counts I and IV are the same as those argued and addressed in connection with the June 2019 Decision. *See* Am. Compl. ¶¶ 65-70; 80-85. Therefore, the first two elements of *res judicata* are satisfied as there exists identity of the parties and identical claims for relief. *See Ouimette*, 785 A.2d at 1138. The two remaining elements of *res judicata* are addressed in turn below.

i

Identity of Issues

A finding that there exists identity of issues requires: (1) the issue to be precluded is identical to one already decided, (2) the issue was actually litigated, and (3) that the issue was necessarily decided. *See State v. Pacheco*, 161 A.3d 1166, 1173 (R.I. 2017) (citing *State v. Godette*, 751 A.2d 742, 746 (R.I. 2000)). However, the Rhode Island Supreme Court has adopted the transactional rule governing the preclusive effect of *res judicata*, meaning the doctrine precludes relitigation of an issue that could have been raised previously. *See Presler*, 731 A.2d at 704; *Foster-Glocester*, 854 A.2d at 1014 n.2.

On March 10, 2016, the RFP Defendants submitted a document titled "Compilation of Usury Issues," wherein the RFP Defendants set forth all of the usury issues briefed by the parties

to this lawsuit. *See generally* Receivership Pls.' Reply Mem. Ex. A (Compilation of Usury Issues). That document stated in pertinent part as follows:

> "RFP Lenders Usury Legal Issues
>
> "1. Where [a] Borrower certifies to Lender that Borrower has obtained the pro forma methods analysis referenced in . . . § 6-26-2(e), said certification is sufficient to make the exemption set forth in . . . § 6-26-2(e) applicable and operative where no actual pro forma methods analysis was obtained, provided that Lender does not have actual or constructive notice of the false representation made in the certification.
>
> ". . .
>
> "(c) Reichwein Rule: *A Borrower by his voluntary act cannot render usurious that which but for such act would be free from usury.*
>
> "(d) *Estoppel/Fraud*: A Borrower who fraudulently induces a Lender to enter into a usurious transaction *is estopped* from exercising statutory remedies otherwise applicable to said usurious transactions." *Id.* at 1 (emphasis added).

Clearly, the RFP Defendants' equitable estoppel defense was presented in connection with the cross-motions for summary judgment. *See id.* This Court rejected that argument and decided the Receivership Plaintiffs were entitled to seek return of payments made on the Seven Million Dollar and Fourteen Million Dollar Notes pursuant to § 6-26-4(c). *See Commerce Park Realty, LLC.*, 2019 WL 2579853, at *15-17. In making that determination, the Court examined the record and determined the Receivership Plaintiffs were named as borrowers and made payments on the Seven Million Dollar and Fourteen Million Dollar Notes. *See id.* at *16-17. Thereafter, the Court entered judgment and an order in favor of the Receivership Plaintiffs with respect to Counts I and IV of the Amended Complaint. *See* Judgment ¶¶ 1-2; Summ. J. Order ¶¶ 1-2.

Based on the foregoing, the RFP Defendants' assertion of equitable estoppel is clearly identical to an issue previously presented in connection with the cross-motions for summary judgment. *See* Receivership Pls.' Reply Mem. Ex. A (Compilation of Usury Issues), at 1. What is more, the RFP Defendants asserted the same argument before the Supreme Court on appeal, which was explicitly rejected. *See Commerce Park Realty, LLC*, 253 A.3d at 1268.

Therefore, the issue of equitable estoppel was certainly before the Court and necessarily decided in connection with the June 2019 Decision. *See Leighton*, 45 A.3d at 506 (quoting *Plunkett*, 869 A.2d at 1187); Receivership Pls.' Reply Mem. Ex. A (Compilation of Usury Issues), at 1. Additionally, the RFP Defendants have not presented an equitable estoppel argument that differs from the one presented in connection with the cross-motions for summary judgment, thus firmly establishing identity of the issue for that defense. *Compare* Receivership Pls.' Reply Mem. Ex. A (Compilation of Usury Issues), at 1, *with* RFP Defs.' Obj. to MPSJ & MFJ 4, 8-9; Hr'g Tr. 36:24-40:21; *see also Presler*, 731 A.2d at 704.

In addition, there exists identity of issues for purposes of the RFP Defendants' fraud upon the court argument as well. It is indisputable that the RFP Defendants had ample opportunity to raise the issue of fraud upon the court following the Court's June 2019 Decision where summary judgment was granted in favor of the Receivership Plaintiffs on Counts I and IV. Instead of explicitly asserting this argument once judgment was officially entered, the RFP Defendants elected to request a Rule 54(b) certification—which the Court granted as there was no just reason for delay—and proceeded with their appeal. *See* Obj. and Req. for Rule 54(b) Certification; Super. R. Civ. P. 54(b). As such, the transactional approach adopted by the Rhode Island Supreme Court operates in favor of applying *res judicata* to the RFP Defendants' assertion of fraud upon the court

because that issue could and should have been raised prior to the RFP Defendants' request for a Rule 54(b) certification. *See Presler*, 731 A.2d at 704; *Foster-Glocester*, 854 A.2d at 1014 n.2.

Moreover, this particular situation fits squarely within the overriding purpose of *res judicata*—that is to ensure judicial resources are not wasted on multiple and possibly inconsistent resolutions of the same lawsuit. *See ElGabri*, 681 A.2d at 275. Parties are undoubtedly entitled to raise arguments and defenses as they deem fit. However, the failure to assert an equitable defense—which is highly relevant to the enforceability of a judgment—prior to an interlocutory appeal does not come without the risk of suffering preclusive effects. *See id.* That is especially true where, as is the case here, the assertion of said defense attempts to vacate a judgment that carries immense importance, presents the potential for another appeal and inconsistent outcomes with respect to a judgment that was already affirmed, and requires the inefficient exhaustion of additional judicial resources in a manner which was entirely avoidable. *See id.*

Therefore, based on the foregoing, the identity of issues element is satisfied. *See Pacheco*, 161 A.3d at 1173.

ii

Finality of Judgment

When a party seeks the benefit of *res judicata*, they carry the burden of proving the prior judgment at issue was final. *See Reynolds v. First NLC Financial Services, LLC*, 81 A.3d 1111, 1116 (R.I. 2014). In Rhode Island, absolute finality of a lawsuit is not required for this element to be satisfied. *See Presler*, 731 A.2d at 702-04. Thus, Rhode Island courts are to determine whether the judgment at issue was sufficiently conclusive in nature for *res judicata* to attach. *See id.* The key requirement for a finding of finality is that the judgment in question was entered on the merits. *See Zalobowski*, 122 R.I. at 612, 410 A.2d at 437 (citing *R. A. Beaufort & Sons, Inc. v. Trivisonno*,

R.I., 403 A.2d 664 (1979); *Molony & Rubien Construction Co. v. Segrella*, 118 R.I. 340, 373 A.2d 816 (1977); *Corrado*, 113 R.I. 274, 320 A.2d 331). The term "judgment on the merits" is defined as "[a] judgment based on the evidence rather than on technical or procedural grounds." Black's Law Dictionary 848 (7th ed. 1999).

The judgment at issue was entered on September 19, 2019 in light of this Court's June 2019 Decision. *See generally* Judgment. Critically, in adjudicating the cross-motions for summary judgment, the Court examined the merits of the Receivership Plaintiffs' claims for relief and the evidence presented, thereby definitively adjudicating the issue of whether the Receivership Plaintiffs were entitled to the penalty provided for under § 6-26-4(c) as a matter of law. *See Commerce Park Realty, LLC*, 2019 WL 2579853, at *15-17 (analyzing entitlement issues); *see* Black's Law Dictionary 848 (7th ed. 1999). In light of those determinations, judgment was entered in the Receivership Plaintiffs' favor on Counts I and IV of the Amended Complaint. *See* Judgment ¶¶ 1-2; Summ. J. Order ¶¶ 1-2. Thereafter, the Court entered an order for final judgment pursuant to Rule 54(b) at the request of the RFP Defendants. *See* Order 1-2 (Sept. 30, 2019).

Clearly, the Court considered the propriety of the Receivership Plaintiffs' request for the penalty and conclusively decided that issue as a matter of law in a manner which comports with our Supreme Court's construction of § 6-26-4(c). *Commerce Park Realty, LLC*, 2019 WL 2579853, at *10-17 (analyzing arguments presented regarding usury violations and entitlement issues with reliance on the record and consideration of equitable arguments asserted); *see Commerce Park Realty, LLC*, 253 A.3d at 874 (enumerating entitlement test); *see also* Receivership Pls.' Reply Mem. Ex. A (Compilation of Usury Issues), at 1 (containing estoppel and fraud arguments of RFP Defendants which the Court considered in ruling on cross-motions for summary judgment).

Therefore, the judgment entered on September 19, 2019 was sufficiently conclusive in nature as it pertained to an issue that was fully litigated and adjudicated on the merits. *See Zalobowski*, 122 R.I. at 612, 410 A.2d at 437; *Presler*, 731 A.2d at 702-04; Black's Law Dictionary 848 (7th ed. 1999). Furthermore, the Receivership Plaintiffs have carried their burden of establishing finality by submitting arguments and evidence to support such a finding. *See* Receivership Pls.' Reply Mem. 3-6; *see also* Receivership Pls.' Mem. Supp. MPSJ & MFJ Tabs 1-2, 4 (Compilation of June 2019 Decision and Related Documents stemming therefrom); *Huntley v. State*, 63 A.3d 526, 532 (R.I. 2013). Accordingly, the finality requirement is also satisfied. *See Ouimette*, 785 A.2d at 1138; *Presler*, 731 A.2d at 702-04.

Based on the foregoing analysis, the RFP Defendants are precluded from asserting equitable defenses on the issue of the Receivership Plaintiffs' right to seek the statutory usury penalty based on the doctrine of *res judicata*. *See Mulholland*, 576 A.2d at 1237; *Presler*, 731 A.2d 699; *Casco Indemnity Co. v. O'Connor*, 755 A.2d 779, 782 (R.I. 2000); *Huntley*, 63 A.3d at 532; *Commerce Park Realty, LLC*, 2019 WL 2579853, at *15-17; Judgment ¶¶ 1-2; Summ. J. Order ¶¶ 1-2.

3

Penalty Amount

The Receivership Plaintiffs have presented the Court with a calculation of amount which they assert they are entitled to recover from the RFP Defendants based on the payments made with respect to the Seven Million Dollar and Fourteen Million Dollar Notes. *See* Receivership Pls.' Mem. Supp. MPSJ & MFJ 7-8. To calculate these amounts, the Receivership Plaintiffs rely on a schedule of payments, the substance of which the RFP Defendants do not dispute because the RFP Defendants furnished these documents during the course of litigation in this matter. *See* Tavenner,

Jr. Aff. Ex. F (Schedule of Payments for Fourteen Million Dollar Note) (affidavit filed January 9, 2015); Receivership Pls.' Mem. Supp. MPSJ & MFJ Tab 8 (Schedule of Payments for Seven Million Dollar Note); *see also* Dunn Aff. ¶¶ 7-8 (stating RFP Defendants provided schedule of payments for loans at issue, which RFP Defendants conceded at hearing). As such, the total amounts paid on the Seven Million Dollar and Fourteen Million Dollar Notes are not in dispute.

To date, the total amount paid on the Seven Million Dollar Note is $4,410,752.13. (Receivership Pls.' Mem. Supp. MPSJ & MFJ Tab 8 (Schedule of Payments for Seven Million Dollar Note).) The total amount paid on the Fourteen Million Dollar Note is $21,970,701.92. (Receivership Pls.' Mem. Supp. MPSJ & MFJ Tab 7 (Schedule of Payments for Fourteen Million Dollar Note).)[14] The sum total of these amounts is $26,381,454.05, an amount which the Receivership Plaintiffs are now entitled to recover pursuant to § 6-26-4(c). *See* §§ 6-26-2, 6-26-4(a), 6-26-4(c).

In light of the foregoing analysis, the Court finds the Receivership Plaintiffs have demonstrated the absence of a genuine issue of material fact regarding the right to recover the usury penalty. *McGovern*, 91 A.3d at 858. In contrast, the RFP Defendants have failed to present competent evidence demonstrating the existence of such an issue, meaning the Receivership Plaintiffs are entitled to judgment as a matter of law for a penalty in the amount of $26,381,454.05. *See Leighton*, 45 A.3d at 506; § 6-26-4(c).

[14] The Principal Borrower Plaintiffs also submitted their own calculations of the amount of money paid against the Seven Million Dollar and Fourteen Million Dollar Notes. *See* Principal Borrower Mem. 4-5. However, at hearing, the Principal Borrower Plaintiffs elected to forgo the calculations they provided and instead adopted those provided by the Receivership Plaintiffs.

B

Attachment of Interest

Initially, both Receivership Plaintiffs and Principal Borrower Plaintiffs took positions on the attachment of pre-judgment interest—pursuant to G.L. 1956 § 9-21-10—for payments made on the Seven Million Dollar and Fourteen Million Dollar Notes. *See* Receivership Pls.' Mem. Supp. MPSJ & MFJ 8-9; Principal Borrower Mem. Supp. MPSJ & MFJ 6-7. The Receivership Plaintiffs requested that the starting point for the calculation of interest on the total payments should begin from the date the initial Complaint was filed in this matter—i.e., April 8, 2011. (Receivership Pls.' Mem. Supp. MPSJ & MFJ 8-9.) On the other hand, the Principal Borrower Plaintiffs maintain that the calculation of pre-judgment interest "should be calculated as early as September 2000 and not later than the dates on which each payment was made[.]" (Principal Borrower Mem. Supp. MPSJ & MFJ 7.)

In response, the RFP Defendants argue that pre-judgment interest should not be awarded because § 9-21-10 only applies to an award of pecuniary damages. (Suppl. Mem. Law Supp. RFP Defs.' Obj. to Receivership Pls.' MPSJ for Statutory Damages Pursuant to R.I. Gen. Laws § 6-26-4(c) and Rule 54(b) MFJ. (RFP Defs.' Suppl. Mem.) 3-6.) Hence, the RFP Defendants assert the pre-judgment interest should not attach because the instant dispute concerns reimbursement claims made pursuant to statute as opposed to "claims for pecuniary damages arising out of tort and/or breach of contract." *Id.* at 4-5.

In reply, the Receivership Plaintiffs have made clear they "do not take a position on the issue of the award of prejudgment interest and will permit the [Principal Borrower] Plaintiffs articulate its position on that issue." (Receivership Pls.' Resp. to RFP Defs.' Suppl. Mem.

Concerning Prejudgment Interest 2.)[15] However, the Receivership Plaintiffs contend that the issue of post-judgment interest is undisputed and should still apply following an award of the usury penalty and entry of judgment regarding the same. *See id.* at 2-3.

In addition, the Principal Borrower Plaintiffs replied and submitted several counterarguments to the RFP Defendants' contentions. *See generally* Principal Borrower Pls.' Sur-Reply to RFP Defendants' Suppl. Mem. Concerning MPSJ for Statutory Damages and Rule 54(b) Entry of Final Judgment (Principal Borrower Pls.' Sur-Reply).

First, the Principal Borrower Plaintiffs argue that while the usury claims in this litigation are based in statute, they fall within the ambit of pecuniary damages for purposes of § 9-21-10 because "[u]pon closer examination, . . . they 'sound in tort.'" *Id.* at 3-5. Second, the Principal Borrower Plaintiffs maintain that Rhode Island Supreme Court precedent supports the proposition that claims brought under Rhode Island's usury laws provide for actions at law with a remedy for pecuniary damages, as opposed to equitable relief. *Id.* at 5-7. In support of this second argument, the Principal Borrower Plaintiffs assert the RFP Defendants seek to "circumvent the application of prejudgment interest to Plaintiffs' claim of usury," and contend that public policy makes it "entirely appropriate to require usurious lenders like the RFP Defendants to pay prejudgment interest[.]" *Id.* at 6 n.1. Third, the Principal Borrower Plaintiffs surmise that finding to the contrary "would undermine the letter and spirit of both the Usury Statute and the Prejudgment Interest Statute." *Id.*

[15] It is important to note here that while the Receivership Plaintiffs do not press their original arguments for attachment of pre-judgment interest, counsel for the Principal Borrower Plaintiffs adopted the calculations provided in the Receivership Plaintiffs' Memorandum in Support of the Motion for Partial Summary Judgment and Rule 54(b) Motion for Entry of Final Judgment. With that in mind, those calculations remain operative for purposes of the Principal Borrower Plaintiffs' request for attachment of pre-judgment interest.

Next, the Principal Borrower Plaintiffs argue that because the General Assembly was aware of Rhode Island's usury statutes at the time § 9-21-10(a) was signed into law and did not exempt usury actions from the scope of application, that "evinces the Legislature's intent that prejudgment interest should apply to such actions." *See id.* at 7-9 (citing *Kurbiec v. Bastien*, No. 75-152, 1985 WL 670596, at *1 (R.I. Super. Jan. 30, 1985) and *P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1206 (R.I. 2002) for the proposition that failure to proscribe applicability of prejudgment interest statute to other statutory causes of action within presumed knowledge of General Assembly indicates prejudgment interest should apply to cause of action in question). Furthermore, the Principal Borrower Plaintiffs assert the RFP Defendants' arguments "mischaracterize[] the nature of Plaintiffs' usury monetary claims as being equitable for 'reimbursement,' rather than claims which have a legal, pecuniary basis[,]" and distinguish the case law relied upon by the RFP Defendants in a number of respects. *See id.* at 9-12. Finally, the Principal Borrower Plaintiffs reinforce public policy arguments, maintaining that non-attachment of pre-judgment interest to recovery of payments in accordance with § 6-26-4(c) would encourage opportunistic behaviors by lenders engaged with usurious loan agreements and undermine the dual aims of the pre-judgment interest statute. *See id.* at 13.

Section 9-21-10(a) governs the application of pre-judgment and post-judgment interest. *See Paola v. Commercial Union Assurance Companies,* 461 A.2d 935, 937 (R.I. 1983); *Imperial Casualty & Indemnity Co. v. Bellini,* 947 A.2d 886, 895 (R.I. 2008). By virtue of the language used therein, § 9-21-10(a) only applies to civil actions for damages. *Rhode Island Insurer's Insolvency Fund v. Leviton Manufacturing Co.*, 763 A.2d 590, 597-98 (R.I. 2000) (*Leviton*). More specifically, § 9-21-10(a) states as follows:

> "In any civil action in which a verdict is rendered or a decision made *for pecuniary damages,* there shall be added by the clerk of the court

> to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued, which shall be included in the judgment entered therein. Post-judgment interest shall be calculated at the rate of twelve percent (12%) per annum and accrue on both the principal amount of the judgment and the prejudgment interest entered therein. This section shall not apply until entry of judgment or to any contractual obligation where interest is already provided." Section 9-21-10(a) (emphasis added).

The term "pecuniary" is defined as "[o]f or relating to money; monetary." Black's Law Dictionary 1152 (7th ed. 1999). Likewise, "pecuniary damages" are defined as "[d]amages that can be estimated and monetarily compensated." *Id.* at 396. "Although [the] phrase ['pecuniary damages'] appears in many old cases, it is now widely considered a redundancy — since damages are always pecuniary." *Id.* In light of that redundancy, Rhode Island courts are to consider whether a claim for relief based in statute implicates "additional loss, deprivation, or injury" to determine whether pecuniary damages are at issue. *Leviton,* 763 A.2d at 597-98.

Here, the Receivership Plaintiffs seek return of payments made on the Seven Million Dollar and Fourteen Million Dollar Notes. (Receivership Pls.' Mem. Supp. MPSJ & MFJ 6-8; Am. Compl. ¶¶ 65-70; 80-85.) As discussed above, the Receivership Plaintiffs do not seek compensatory damages but rather enforcement of a statutory penalty. *See* § 6-26-4(c); Receivership Pls.' Mem. Supp. MPSJ & MFJ 6-8; Am. Compl. ¶¶ 65-70; 80-85. Moreover, the Receivership Plaintiffs' pleadings do not allege that they suffered any additional loss, deprivation, or injury beyond the fact that they made payments on the Seven Million Dollar and Fourteen Million Dollar Notes pursuant to usurious loan agreements. *See* Am. Compl. ¶¶ 65-70, 80-85; *Commerce Park Realty, LLC*, 2019 WL 2579853, at *11-13 (finding agreements for Seven Million Dollar and Fourteen Million Dollar Notes unenforceable); *Commerce Park Realty, LLC.*, 253 A.3d at 1268-69 (affirming the same). Therefore, the Receivership Plaintiffs' claims for enforcement of the usury penalty do not warrant an award of pre-judgment or post-judgment interest pursuant

to § 9-21-10(a) because § 6-26-4(c) does not provide for recovery of pecuniary damages and there is no additional form of harm or injury alleged under Counts I and IV of the Amended Complaint. *See Leviton,* 763 A.2d at 597-98; Black's Law Dictionary 396, 1152, 1290 (7th ed. 1999); The Merriam-Webster Dictionary 613 (7th ed. 2016).

In sum, the Principal Borrower Plaintiffs' requests for application of pre-judgment interest and the Receivership Plaintiffs' request for application of post-judgment interest to the return of payments made on the Seven Million Dollar and Fourteen Million Dollar Notes are therefore denied.

C

Motion for Final Judgment

The Receivership Plaintiffs argue that final judgment should enter pursuant to Rule 54(b) because "[i]t is in the best interests of the Receivership Estate to enter final judgment on damages[]" and because there is no just reason for delaying entry of said judgment with respect to damages based on the award of a usury penalty. (Receivership Pls.' Mem. Supp. MPSJ & MFJ 8.)

In response, the RFP Defendants argue that entry of final judgment at this time would be improper "in light of the fact that there are so few claims remaining in the case that would require adjudication prior to a final judgment." (RFP Defs.' Mem. Supp. Obj. MPSJ & MFJ 9.)

In their Reply Memorandum, the Receivership Plaintiffs argue that upon entry of judgment regarding damages "they will have no further actions or issues to adjudicate[.]" (Receivership Pls.' Reply Mem. 8.) The Receivership Plaintiffs claim that entry of judgment is also appropriate because award of the usury penalty will permit them to pursue discovery efforts to ascertain the RFP Defendants' ability to satisfy the monetary judgment requested pursuant to § 6-26-4(c). *See id.* at 8-9. Furthermore, the Receivership Plaintiffs state they "are aware that the Non-Receivership

Plaintiffs intend to file a similar motion for statutory usury damages in relation to the Four Million Dollar Note[,]" which they maintain "is the only other pending issue known to Receivership Plaintiffs concerning this action." *Id.* at 9. Therefore, the Receivership Plaintiffs conclude that entry of final judgment is still appropriate because "the Non-Receivership Plaintiffs' claim relates to a separate loan, involving different borrowers and different payments" such that granting the Motion to Compel will enable them to "proceed with [the] execution and collection against the RFP [Defendants]." *Id.*

On October 29, 2021, the parties filed a joint stipulation of dismissal, leaving only a handful of claims intact. *See* Stipulation of Dismissal 1-3 (Oct. 29, 2021). At this time, the only remaining counts before the Court are as follows:

"Count I	Violation of Usury Law Fourteen Million Dollar Loan Receivership Plaintiffs Against HR2-A
"Count IV	Violation of Usury Law Seven Million Dollar Loan Receivership Plaintiffs Against HR4-A
"Count VII	Violation of Usury Law Three Hundred Fifty Thousand Dollar Loan CPP Against HR4-A [Loan Receivership Plaintiffs Against HR4-A]
"Count IX	Declaratory Relief Under R.I. Gen. Laws § 9-30-1 et seq. Receivership Plaintiffs Against HR2-A and HR4-A finding the Fourteen Million Dollar Note, Seven Million Dollar Note, Three Hundred Fifty Thousand Dollar Note, and Four Million Dollar Note Usurious
"Count XIII	Declaratory Judgment: Usury - Fourteen Million Dollar Loan: Non-Receivership Plaintiffs
"Count XIX	Declaratory Judgment: Usury-Seven Million Dollar Loan: Non-Receivership Plaintiffs
"Count XXV	Declaratory Judgment: Usury - Three Hundred Fifty Thousand Dollar Loan: Non-Receivership Plaintiffs
"Count XXIX	Declaratory Judgment: Usury - Four Million Dollar Loan: Non-Receivership Plaintiffs
"Count XXX	Damages (Reimbursement of Payments): Usury - Four Million Dollar Loan: Non-Receivership Plaintiffs
"Count XXXV	Declaratory Judgment: The Application of Rhode Island Law to all Usurious Loans Secured by Rhode Island Real Estate

"Count XXXVI	Declaratory Judgment: Waivers and Releases Are Unenforceable Under Rhode Island Usury Law"

See id. at 3; Judgment ¶¶ 1-3, 5-6, 9j, 10-12.

The RFP Defendants have made it clear that they do not seek to challenge the Court's entry of judgment for declaratory relief in favor of the Receivership Plaintiffs and Non-Receivership Plaintiffs regarding the unenforceability of the loans at issue in this lawsuit. *See* Hr'g Tr. 36:24-37:15, 38:4-39:18 (Nov. 9, 2021) (counsel for the RFP Defendants unequivocally recognizing finality of usury findings which make the Loans null, void, and unenforceable). Thus, the only remaining issues before the Court pertain to the usury penalty provided for under § 6-26-4(c), as the basis for recovery of moneys paid under Counts I, IV, and XXX. *See id.*; Stipulation of Dismissal 1-4 (Oct. 29, 2021). The instant Decision resolves the issue regarding the Receivership Plaintiffs' entitlement to the usury penalty as a matter of law, taking into account the RFP Defendants' objection and arguments regarding equitable defenses. *See supra* Section III.A.

However, the issue of the Non-Receivership Plaintiffs' right to reimbursement of payments made on the Four Million Dollar Note remains unresolved. *See* Stipulation of Dismissal 3 (Oct. 29, 2021). While Counts I and IV pertain only to the Receivership Plaintiffs and Count XXX pertains only to the Non-Receivership Plaintiffs, the remaining issue with respect to each of these counts—i.e., return of payments made on the respective loans—means that withholding judgment obviates the risk of piecemeal appeals of matters that should be considered together. *Astro-Med, Inc.*, 811 A.2d at 1156 (quoting 1 Kent, *Rhode Island Civil Practice* 396, 397, 400 (1969)). Moreover, there exists just reason for delay as the Court has been informed that the Principal Borrower Plaintiffs intend to bring a similar motion for summary judgment regarding return of moneys paid. (Receivership Pls.' Reply Mem. 8.)

Based on the foregoing, the Court finds that there exists just reason to delay entry of final judgment regarding the usury penalty requested under Counts I and IV, and the Receivership Plaintiffs' Rule 54(b) motion is therefore denied. *Astro-Med, Inc.*, 811 A.2d at 1156-57; Super. R. Civ. P. 54(b).

D

Discovery Motions

This Decision with respect to the Motion for Partial Summary Judgment is dispositive of the issues relating to the Motion for Protective Order. As such, the Court declines to rule on that motion. With respect to the Motion to Compel, the parties shall contact the Clerk of this Court for a further date in light of this Decision, if necessary.

IV

Conclusion

For the reasons stated above, the Receivership Plaintiffs' Motion for Partial Summary Judgment for Statutory Damages is granted, while the Motion for Final Judgment pursuant to Rule 54(b) is denied. In addition, the Principal Borrower Plaintiffs' request for attachment of pre-judgment interest and the Receivership Plaintiffs' request for attachment of post-judgment interest are also denied.

Counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Commerce Park Realty, LLC, et al. v. HR-2 A Corp., et al.**
CASE NO:	**PB-2011-1922**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**April 1, 2022**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**

ATTORNEYS:

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