

SUPREME COURT OF RHODE ISLAND

Tri-Town Construction Company, Inc. v. Commerce Park Associates
12, LLC et al.

161 A.3d 500 (R.I. 2017) · No. 2016-47-Appeal · Decided June 7, 2017

SUMMARY

The Rhode Island Supreme Court affirmed an order allowing Tri-Town Construction Company, a judgment creditor, to reach and apply the judgment debtor's choses in action and effectively step into the debtor's shoes in related receivership proceedings. The Court held that the debtor waived his challenge to the Superior Court's authority under Rhode Island General Laws § 9-28-1 by failing to raise that issue timely. The Court expressly declined to decide the legal correctness of the challenged order.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	William P. Robinson III; Frank Williams Suttell, C.J.; Maureen McKenna Goldberg, J.; Francis X. Flaherty, J.; William P. Robinson III, J.
JURISDICTION	Rhode Island
DECIDED	June 7, 2017
DOCKET	2016-47-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nicholas E. Cambio appealed an order of the Kent County Superior Court in a creditor's equitable action that authorized Tri-Town Construction Company, Inc. to reach and apply Cambio's choses in action and to step into his shoes to litigate claims arising from those choses in action.
STANDARD OF REVIEW	The Supreme Court applied Rhode Island's raise-or-waive rule and declined to review an issue that was not timely raised and properly presented below.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	Nicholas E. Cambio v. Tri-Town Construction Company, Inc.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Superior Court's order authorizing Tri-Town to step into Cambio's shoes and litigate his choses in action was properly reviewable on appeal when Cambio had not timely raised that statutory-authority issue below.
2. Whether the Supreme Court should decide the legal correctness of the Superior Court's order under Rhode Island General Laws § 9-28-1.

HOLDINGS

1. Cambio waived appellate review of his challenge to the Superior Court's authority under § 9-28-1 because he did not raise and articulate that issue when it was presented and discussed in the Superior Court.
2. The Supreme Court affirmed without deciding whether the Superior Court's order was legally correct under § 9-28-1, because the statutory-authority issue had been waived.

KEY QUOTATIONS

“It follows that Mr. Cambio thereby waived his opportunity to challenge before us the Superior Court’s authority under § 9-28-1 to assign his choses in action to Tri-Town.” (-7-)

“We pause to note that we expressly refrain from passing on the legal correctness of the challenged order of the Superior Court.” (-8-)

FACTUAL BACKGROUND

Tri-Town was a judgment creditor of Commerce Park Associates 12, LLC and Nicholas E. Cambio on claims involving a promissory note and guaranty, with a judgment of \$3,911,894.95 plus interest and fees. Tri-Town sought to attach and reach Cambio's choses in action arising from receivership proceedings so that any resulting payments or distributions would satisfy the judgment. At the hearing on the motion, Cambio's counsel did not object when the court and Tri-Town's counsel discussed whether § 9-28-1 authorized Tri-Town to step into Cambio's shoes and litigate those claims.

PROCEDURAL HISTORY

Tri-Town obtained a judgment exceeding \$3.9 million against Commerce Park Associates 12, LLC and Nicholas E. Cambio. After the judgment was returned wholly or partially unsatisfied, Tri-Town filed a creditor's equitable action and moved under Rhode Island General Laws § 9-28-1 to attach the judgment debtors' choses in action.

The Superior Court granted the motion and authorized Tri-Town to act as the effective assignee of Cambio's claims. On appeal, the Rhode Island Supreme Court affirmed solely because Cambio failed to raise and articulate his challenge to the statutory authority for the assignment in the Superior Court.

DISPOSITION

affirmed

CASES CITED

- Tri-Town Construction Company, Inc. v. Commerce Park Associates 12, LLC, 139 A.3d 467 (R.I. 2016)
- DeMarco v. Travelers Insurance Co., 26 A.3d 585, 628 (R.I. 2011)
- Pollard v. Acer Group, 870 A.2d 429, 433 (R.I. 2005)
- In re Shy C., 126 A.3d 433, 434-35 (R.I. 2015)
- O'Connor v. Newport Hospital, 111 A.3d 317, 322 (R.I. 2015)
- Waterman v. Caprio, 983 A.2d 841, 848 (R.I. 2009)

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