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1997 Survey of Rhode Island Law: Cases: Statutes of Limitations

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Statutes of Limitations. *McBurney v. Roszkowski*, 687 A.2d 447 (R.I. 1997). Tort of intentional interference with a contract is not an "injury to a person" as outlined in section 9-1-14(b) of the Rhode Island General Laws,¹ but is considered contractual in nature and therefore subject to a ten-year statute of limitations.²

If the underlying cause of action, although tortious, stems from a contractual relationship, then the petitioner maintains a right to sue in contract under section 9-1-13(a) of the Rhode Island General Laws which imposes a ten-year statute of limitations. In *McBurney v. Roszkowski*,³ the Rhode Island Supreme Court upheld *Pickering v. American Employers Insurance Co.*,⁴ which distinguished the difference between a cause of action entirely within the realm of "injury to a person," and a claim which has those elements, but is inherently a derivative of contract.⁵

FACTS AND TRAVEL

John McBurney (McBurney), a practicing attorney in Rhode Island, filed suit in June of 1994 claiming that in June of 1989, Joseph Roszkowski (Roszkowski), also a practicing attorney, interfered with a contractual relationship between McBurney and a client.⁶ McBurney claimed that he conveyed a settlement offer to his client, Shirley Salerno (Salerno), in the amount of \$60,000.⁷ McBurney had created an attorney-client contract with Salerno where he agreed to represent her in an automobile accident.⁸ McBurney claimed that on the defendant's advice, Salerno rejected the settlement offer, fired McBurney and retained defendant Roszkowski as her attorney. The defendant claimed that the statute of limitations had expired because the claim related to an "injury to the person." As a result, the defendant asserted that the claim fell under section 9-1-14(b) of the Rhode Island General Laws, which required filing within three years of the tortious event.⁹ The

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1. R.I. Gen. Laws § 9-1-14(b) (1956) (1997 Reenactment).
 2. See R.I. Gen. Laws § 9-1-13(a) (1956).
 3. 687 A.2d 447 (R.I. 1997).
 4. 282 A.2d 584 (R.I. 1971).
 5. See *id.* at 588.
 6. See *McBurney*, 687 A.2d at 448.
 7. See *id.*
 8. See *id.*
 9. See *id.* (citing R.I. Gen. Laws § 9-1-14(b)).

supreme court disagreed and held that because the relationship was conceived in contract, section 9-1-13(a) controls, and a ten-year statute of limitations is appropriate.¹⁰

BACKGROUND

When the Rhode Island General Laws were enacted in 1896, the General Assembly based the period of limitation on the form of the action brought, not on the nature of the injury that resulted from the tortious conduct.¹¹ In 1902, the legislature attempted to limit the commencement of actions on the basis of the character of injury that resulted, rather than on the form of the action brought.¹² Following this repositioning of law, the general laws provided that actions for injuries to the person were barred unless brought within two years¹³ from the time of accrual whether the injury stemmed from direct, intentional tortious conduct or indirect, unintentional conduct.¹⁴ The Rhode Island General Laws codified the period of limitation on injuries to the person at three years,¹⁵ while all other civil actions shall be commenced within ten years.¹⁶ In *McBurney v. Roszkowski*, the court again clarified any ambiguity between the two limitation periods.¹⁷

ANALYSIS AND HOLDING

The cornerstone of the court's analysis is based on two Rhode Island Supreme Court cases, *Commerce Oil Refining Corp. v. Miner*¹⁸ and *Pickering v. American Employers Insurance Co.*¹⁹ The

10. *See id.*

11. R.I. Gen. Laws ch. 234, § 2-3 (1896). Actions of trespass for injury resulting from direct or intentional tortious acts were barred if not commenced within four years. On the other hand, actions for indirect or unintentional injury were barred if not commenced within six years.

12. *See* 1902 R.I. Pub. Laws ch. 976, § 1-2. Actions for injuries to the person were barred unless brought within two years from the time of the accrual.

13. This has now been expanded to three years. R.I. Gen. Laws § 9-1-14(b).

14. *See* *Commerce Oil Refining Corp. v. Miner*, 199 A.2d 606, 608 (R.I. 1964).

15. *See* R.I. Gen. Laws § 9-1-14(b) (stating that "actions for injuries to the person shall be commenced and sued within three (3) years next after the cause of action shall accrue, and not after").

16. *See* R.I. Gen. Laws § 9-1-13(a) (stating that, "except as otherwise specifically provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after").

17. *McBurney*, 687 A.2d at 448.

18. 199 A.2d 606 (R.I. 1964).

19. 282 A.2d 584 (R.I. 1971).

court first visited the issue of whether injuries to the person meant merely physical injuries in *Commerce Oil*.²⁰ In *Commerce Oil*, the developer of an oil refinery brought suit against a group of residents in the town of Jamestown, Rhode Island.²¹ The plaintiff sought damages for an alleged conspiracy to obstruct the erection of an oil refinery pursuant to town licensing of the refinery.²² The defendants eventually counterclaimed on the grounds of malicious use of process. On appeal, the plaintiff urged that malicious use of process is an injury to the person as defined in section 9-1-14(b).²³ Therefore, the refining company argued that the action should be barred by the statute of limitations.²⁴ The Rhode Island Supreme Court agreed and stated that a literal reading of injury to the person would assume an interpretation that was too restrictive.²⁵ The *Commerce Oil* court did not embrace a specific rationale, but noted that it was significant that the legislature eliminated the distinction between intentional and unintentional tortious injury.²⁶ The elimination of this distinction, the court reasoned, gave the court authority to interpret injury to the person broadly.²⁷ The court held that *Commerce Oil* effectively expanded the scope of the statute beyond mere physical injury by disallowing the defendant's counterclaim of malicious use of process and subjecting it to a two year limitation under section 9-1-14(b) of the Rhode Island General Laws.²⁸

Commerce Oil, however, did not survive as the sole authority for long. In *Pickering v. American Employers Insurance Co.*,²⁹ the court for the first time faced a quagmire involving both contract

20. 199 A.2d 606.

21. *Id.* at 607.

22. *See id.*

23. *See id.*

24. *See id.*

25. *See McBurney*, 687 A.2d at 609. ("It would, under these circumstances, be an oversimplified solution of the problem if statutory interpretation were to be subjected to the test of the ordinary and natural meaning of language as understood by the man of average intelligence.")

26. *Commerce Oil*, 199 A.2d at 607.

27. *See id.*

28. *See id.* at 610 ("It is then our conclusion that the phrase 'injuries to the person' as used in the instant statute is to be construed comprehensively and as contemplating its application to actions involving injuries that are other than physical.")

29. 282 A.2d 584 (R.I. 1971).

and tort law.³⁰ *Pickering* involved an insured motorist who attempted to sue her insurance company for the difference between what she collected from the defendant's insurance company and the minimum personal-injury coverage required by Rhode Island law.³¹ As the plaintiff's policy had a provision for coverage in the event of liability on behalf of an uninsured motorist, *Pickering* sought to collect the full amount for her injuries.³² *Pickering's* insurance company attempted to deny coverage on the basis that the statute of limitations had run its course because the claim involved an injury to the person.³³ The *Pickering* court chose to augment the interpretation of section 9-1-14(b) in light of the expanded definition established in *Commerce Oil*. Although *Pickering* involves tortious injury, the court found the action was fundamentally one in contract.

In carving out this interpretation, the *McBurney* court embraced the pre-1902 action principle³⁴ and endorsed the *Commerce Oil* rationale.³⁵ The court revisited the action principle in *McBurney* when it determined that the principle action is the basis for determining whether a claim falls inside section 9-1-14(b) or in the alternative into section 9-1-13(a). In applying the *Commerce Oil* rationale, the court reasoned that because the "action" was one that was fundamentally in contract, the ten-year statute of limitations was appropriate.

30. *Pickering* was actually the second time the supreme court faced a question of limitation involving both tort and contract. The court declined to address the matter in *Lessard v. New Hampshire Insurance Co.*, 258 A.2d 793 (R.I. 1960). See *Pickering*, 282 A.2d at 588.

31. *Pickering*, 282 A.2d at 588. In 1971, Rhode Island law required \$10,000 in personal injury coverage on automotive insurance. See *id.* at 589; see also R.I. Gen. Laws §§ 27-7-2.1, 31-31-7 (1956) (1994 Reenactment) (governing the minimum threshold on personal-injury coverage).

32. See *Pickering*, 282 A.2d at 586 (determining that the plaintiff had incurred \$25,000 in damages). The defendant's policy paid out \$5000. The plaintiff sought to recover the difference of \$20,000 from her policy. See *id.*

33. See *id.*

34. See *supra* notes 12, 13.

35. "It can be seen that in *Commerce Oil Refining Corp.*, . . . expanding the definition of 'injuries to the person' within the framework of tortious conduct and claims recognized the difference between a tort action based on 'injuries to the person' and action brought because of a right created by contract." *Pickering*, 282 A.2d at 588.

CONCLUSION

The *McBurney* court determined that a tortious injury based in contract falls under section 9-1-13(b) of the Rhode Island General Laws. The court noted that any rights that accrued to the plaintiff did so by reason of *McBurney's* contractual relationship with his client, Salerno.³⁶ But for this contractual relationship, there would be no claim for tortious interference.³⁷ In embracing this rationale, the court squarely aligned itself behind *Pickering*. The court stated that such rights associated with man as a rational being are wholly and distinctly separate from those rights "which accrue to an individual by reason of some peculiar status or by virtue of an interest created by contract or property."³⁸ In allowing claims "based in contract" longer limitation periods,³⁹ *McBurney* reestablishes an old rationale whereby it creates a workable standard to determine proper limitation periods.⁴⁰

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36. *McBurney*, 687 A.2d at 449.

37. *See id.*

38. *Id.* at 448 (citing *Commerce Oil Refining v. Miner*, 199 A.2d 606 (R.I. 1964)).

39. As outlined in section 9-1-13(a) of the Rhode Island General Laws, claims "based in contract" have a ten-year-limitation period. *Cf.* § 9-1-14(b) (allowing a three-year-limitation period for claims not "based in contract").

40. *See Pickering*, 282 A.2d 584 (holding that a claim involving tortious conduct stems from a claim in contract and therefore falls under section 9-1-13(a) of the Rhode Island General Laws).