

Roger Williams University Law Review

Volume 28
Issue 3 *Vol. 28, No. 3: Summer 2023*

Article 16

Summer 2023

Verizon New England Inc. v. Savage, 267 A.3d 647 (R.I. 2022)

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Recommended Citation

Cavanaugh, Matthew (2023) "Verizon New England Inc. v. Savage, 267 A.3d 647 (R.I. 2022)," *Roger Williams University Law Review*: Vol. 28: Iss. 3, Article 16.

Available at: https://docs.rwu.edu/rwu_LR/vol28/iss3/16

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Civil Procedure. *Verizon New England Inc. v. Savage*, 267 A.3d 647 (R.I. 2022). A party attempting to intervene must overcome a presumption of adequate representation if the party shares an identical interest with a party involved in the case. The moving party must demonstrate that their interests are not adequately represented to overcome this presumption. Fiscal and budgetary concerns related to a settlement were outside the scope of the case because any refund or credit would be managed by the tax administrator. Therefore, these concerns do not demonstrate inadequate representation where municipalities share a common interest in assuring that the tax administrator’s interpretation is upheld.

FACTS AND TRAVEL

On December 21, 2018, the plaintiff, Verizon New England Inc. (Verizon), appealed to the trial court pertaining to the state tax administrator’s (Neena S. Savage, in her capacity as Tax Administrator for the State of Rhode Island) denial to reassess, lower, and partially refund the taxes paid on its tangible personal property (TPP) from 2010 through 2014.¹ Verizon argued that it had overpaid by approximately \$21,358,152 because of an alleged improper depreciation approach.² On February 27, 2019, the trial court denied Savage’s motions to dismiss and motions to join indispensable parties, which included Rhode Island’s thirty-nine cities and towns and the Department of Revenue Division of Municipal Finance.³ In October 2019, the City of Providence (Providence) moved to intervene as of right; the City of Pawtucket (Pawtucket) and the City of Cranston (Cranston) followed.⁴ Providence claimed an interest in the TPP tax and stated that its interests could be substantially impacted by the outcome of the action under Rhode Island General Laws

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1. *Verizon New England Inc. v. Savage*, 267 A.3d 647, 650 (R.I. 2022).
 2. *Id.*
 3. *Id.*
 4. *Id.*

section 44-13-13.⁵ Pawtucket and Cranston (Movants) adopted Providence's claims and arguments, making no additional or separate contentions.⁶

On January 14, 2020, the trial court considered the motions to intervene, granting Providence's motion and denying the Movants' motions.⁷ The trial court applied the test set forth in *Marteg Corp. v. Zoning Board of Review of City of Warwick*; to establish a right to intervene, movants were required, "(1) to file a timely application for intervention, (2) to show an interest in the subject matter of that action in that the disposition of the action without intervention would as a practical matter impair or impede their ability to protect that interest, and (3) to establish that their interest was not adequately represented by the existing parties."⁸ The trial judge found that the first two elements were met and were not in dispute.⁹ The Movants contend that the trial judge erred in finding that the third element was not met because each city is aligned with the tax administrator's statutory interpretation of the depreciation.¹⁰ The Movants argue that the Court should consider each city's distinct interest in how a refund would be accomplished if Verizon prevailed.¹¹ The Movants believed this burden was minimal and they only need to demonstrate "some tangible basis" that their interests "may" be at risk.¹² Verizon contends that movants are required to make a compelling showing of inadequate representation, showing an adverse position with Providence.¹³

The Movants then filed a petition for writ of certiorari arguing that the trial judge erred in finding that Providence adequately represented their interests and the Rhode Island Supreme Court should reconsider the matter.¹⁴ The Court remanded with the instruction to "allow [p]etitioners the opportunity to set forth, with

5. *Id.*

6. *Id.*

7. *Id.* at 650-51.

8. *Id.* at 653; *Marteg Corp. v. Zoning Bd. of Rev. of City of Warwick*, 425 A.2d 1240, 1242 (R.I. 1981).

9. *Verizon*, 267 A.3d at 653.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 651.

particularity, what their individual interests in the matter are and why those interests cannot be adequately represented by the City of Providence.”¹⁵ On remand, the trial judge again denied the motions to intervene, finding that Providence represented the movant’s interests because all three municipalities had the identical interest of assuring the tax administrator’s interpretation is upheld.¹⁶

The Movants again appealed to the Rhode Island Supreme Court, which affirmed the trial court’s judgment.¹⁷

ANALYSIS AND HOLDING

The Rhode Island Supreme Court applied the test set forth in *Marteg Corp.*, the only element in question was whether Providence adequately represented the interest of the Movants.¹⁸ The Court held that “a compelling showing may be necessary when the intervenor’s interest is identical to that of one of the present parties.”¹⁹ The Court found that the movants and Providence presented identical goals, ensuring that the tax administrator’s interpretation of accumulated depreciation is upheld.²⁰ The Movants argue that Providence does not adequately represent their fiscal and budget concerns because how a refund would be accomplished is unclear.²¹ The Court rejected this argument.²² The Court reasoned that how a refund would be distributed was not in front of the trial judge; instead, the trial judge would merely determine if Verizon is entitled to a refund.²³

The Court stated that when “the goals of the applicants are the same as those of the plaintiff or defendant” a presumption of adequate representation arises.²⁴ Further, the Court determined that when a party is presumed to adequately represent an intervening party’s interest, the one seeking to intervene must explain why the

15. *Id.*

16. *Id.*

17. *Id.* at 649-50.

18. *Id.* at 653.

19. *Id.* at 654.

20. *Id.* at 655.

21. *Id.*

22. *Id.*

23. *Id.* at 656.

24. *Id.* at 654.

assumed adequate representation is not so.²⁵ Accordingly, the Court concluded that the Movants' position is not adverse to Providence and that the proper standard is if the Movants can offer an adequate explanation of why their interests are not adequately represented by Providence.²⁶

Movants' main concern is that a settlement negotiated by Providence may favor Providence over other towns, and they argued that this adequately explained why Providence did not represent their interests.²⁷ However, the Court found settlement negotiations exist in every case and did not amount to a tangible basis for intervention.²⁸ The Court reasoned that "how that refund or credit is managed or administered is not before the trial judge," so Providence would not be able to influence how a refund or credit is administered.²⁹ Further, if Verizon prevails, under section 44-1-11, the tax administrator would have the authority to manage refunds and credits.³⁰ Therefore, how a refund would be accomplished was beyond the scope of this case, and these concerns were insufficient to establish that Providence did not adequately represent the Movants' interests.

The Court also found that fiscal and budgetary concerns are merely a "generalized grievance—common to all municipalities [and] without an adequate explanation as to how these concerns are different in kind or adverse to Providence, is conclusory and insufficient to overcome the underlying presumption."³¹ The movants allege that they have additional challenges that the other parties do not raise, but the Court stated that they may raise them in an amicus brief.³²

The Court found Pawtucket and Cranston "failed to overcome the presumption of adequate representation" and "failed to demonstrate that their interests were not adequately represented by

25. *Id.* at 654-55.

26. *Id.* at 655.

27. *Id.*

28. *Id.* at 655-56.

29. *Id.* at 656; 44 R.I. GEN. LAWS § 44-13-13.

30. *Verizon*, 267 A.3d at 656.

31. *Id.* at 657.

32. *Id.* at 658.

Providence.”³³ Therefore, the Court affirmed the trial court’s judgment and remanded it to the trial court.³⁴

COMMENTARY

Movants attempt to argue that a settlement negotiated by Providence may favor Providence over other municipalities, but the power to manage refunds and credits is vested in the tax administrator.³⁵ So, in the event of a settlement, Providence could impact the settlement amount but would have no power to impact how the settlement refund or credit is managed. Without the ability to influence how a refund or credit is managed, Providence cannot impact the settlement in any way that would favor Providence over other municipalities. Barring this showing, the interests of Providence and the movants are likely identical. Providence, Pawtucket, and Cranston are all interested in assuring that the tax administrator’s interpretation is upheld, and that Verizon receives no refund at all or the smallest possible refund.

Movants also argue that their fiscal and budgetary concerns would not be adequately represented by Providence. This is a valid concern, but the reasoning is like the previous point; all that is in front of the trial judge is if Verizon should receive a refund, not how it will be accomplished. A refund or credit would be managed by the tax administrator, not by the trial judge or by Providence. This leaves Movants and Providence with the identical interest of assuring that the tax administrator’s interpretation is upheld or that a settlement is as inexpensive as possible.

Therefore, movants likely have no interest that is not adequately represented by Providence and brought nothing forward other than a generalized grievance common to all Rhode Island municipalities.

CONCLUSION

The Court held that the Movant’s interests were identical to the City of Providence’s. Therefore, movants must overcome a presumption of adequate representation and demonstrate that

33. *Id.*

34. *Id.*

35. *Id.* at 656.

Providence did not adequately represent their interests. The Court affirmed the trial court and found that the Movants failed to do so.

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