

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

WEEKAPAUG FIRE DISTRICT

Plaintiff,

v.

TOWN OF WESTERLY; the WESTERLY
TOWN COUNCIL and MARY E. SCIALABBA,
JOY L. CORDIO, DYLAN J. LAPIETRA,
WILLIAM J. AIELLO, PHILIP M. OVERTON
JR., KEVIN J. LOWTHER, II, and, ROBERT
L. LOMBARDO, in their official capacities as
Members of the Westerly Town Council; IRENE
LYNCH, in her capacity as DIRECTOR OF
FINANCE for the Town of Westerly; RHODE
ISLAND COASTAL MANAGEMENT
COUNCIL and CATHERINE ROBINSON
HALL, DONALD T. GOMEZ, JOSEPH
RUSSOLINO, KEVIN FLYNN, STEPHEN
IZZI, PATRICIA REYNOLDS, and
RAYMOND C. COIA, in their capacities as
Members of the Rhode Island Coastal Resources
Management Council; JEFFREY WILLIS, in
his capacity as the Executive Director of the
Rhode Island Coastal Resources Management
Council; RHODE ISLAND OFFICE OF THE
ATTORNEY GENERAL; PETER F.
NERONHA, in his official capacity as the
Attorney General of Rhode Island; CAROLINE
CONTRATA; and SPRAY ROCK TRUST
(J) AND (N),

Defendants

C.A. No. PM-2023-06573

**MEMORANDUM OF LAW IN SUPPORT OF RHODE ISLAND ATTORNEY
GENERAL'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

NOW COME the Defendants, the Rhode Island Office of the Attorney General, and
Peter F. Neronha, in his official capacity as the Attorney General of Rhode Island (collectively,

the “RIAG”), and pursuant to Rules 12(b)(3) and (6) of the Rhode Island Superior Court Rules of Civil Procedure, hereby move for an Order of this Honorable Court dismissing the Complaint of the Plaintiff, Weekapaug Fire District (hereinafter “Plaintiff” or “WFD” or “Fire District”), as it fails to state a claim upon which relief may be granted, has been filed in an improper venue, and is in violation of Rhode Island’s Anti-SLAPP statute, R.I. Gen. Laws, § 9-33-1 *et seq.*

I. INTRODUCTION

Simply put, the Fire District’s Complaint is inappropriate at this stage in an ongoing and longstanding dispute among the parties, as it is improperly seeking to circumvent the statutorily established CRMC fact-finding process for evaluations of potentially preexisting public rights-of-way for designation purposes. *See generally, Compl.*; R.I. Gen. Laws § 46-23-6(5). It is clear from a simple reading of the Complaint that the Fire District’s position is that the so-called Spring Avenue Extension is privately owned, has never been converted into a public right-of-way via public dedication and acceptance at any point in time, and that the evidence is so incontrovertible that the Defendants should be held liable for even suggesting otherwise. *See generally, Compl.*

However, neither the Fire District nor this Court is the authority charged with weighing the evidence of whether a tract of land is a preexisting right-of-way; that duty has been expressly delegated to the CRMC. *See Sartor v. CRMC*, 542 A.2d 1077 (R.I.1988); R.I. Gen. Laws § 46-23-6(5). The CRMC is charged with finding and weighing the facts at issue, and that process needs to be finished, and the record must be complete, before a determination on whether the contested area is a preexisting right-of-way can be made, and certainly before seeking judicial review. At this stage, the only appropriate route is to continue this fact-finding endeavor that has

been actively underway at the CRMC, and in which all parties and the CRMC have invested considerable time and resources, where it belongs.

Further, the notion that participants in the public investigative process before CRMC could be found liable for slander of title would destroy public participation if allowed to stand and provides a perfect example of why the Anti-SLAPP law exists. *See* R.I. Gen. Laws § 9-33-1, *et seq.* The reality is that the Fire District has used every tactic it possibly can to make this process burdensome, contentious, and frankly, expensive for all parties involved, and has done so in order to intentionally thwart public participation.

The Fire District's Complaint against the Rhode Island Attorney General for quiet title, declaratory judgment, and slander of title should be dismissed in its entirety and the administrative process should be allowed to continue, undisturbed, so that the record can be completed and a final CRMC decision issued. If the Fire District finds itself unsatisfied with that result, it still would retain full opportunity for review before this Court and could pursue those judicial remedies at that juncture.

II. STATEMENT OF RELEVANT FACTS

The Complaint provides extensive detail on the land evidence related to the so-called Spring Avenue Extension that is currently being considered by the CRMC in the administrative proceedings. Given the scope of this motion, it is not necessary to address the merits of the Fire District's position as it relates to the Spring Avenue Extension's status, and, accordingly, only the relevant issue setting and procedural background are provided herein.

The so-called Spring Avenue Extension ("SAE") is a fifty-foot-wide strip of land located in Westerly, Rhode Island. *See Compl.*, at par. 17. This parcel, situated between Lots 10 and 11

on the Town of Westerly Assessor's Plat 169, runs south from Spray Rock Road—formerly known as Spring Avenue—to the Weekapaug Beach oceanfront. *See Compl.*, at par. 17 and Exhibit A.

In 2008, the Westerly Town Council investigated whether the SAE was a public right-of-way and “engaged an attorney with expertise in property titles, Charles Soloveitzik..., to study and opine upon the legal ownership of the SAE.” *Compl.*, at par. 62 and Exhibit E. Mr. Soloveitzik ultimately provided a report, attached to the Complaint as Exhibit E, which stated “[s]urely, factors outside the land records must be considered. Those factors include an investigation of the actual use of the land over an extended period of time to determine if the general public has enjoyed the use of the way or whether use was limited to owners of land shown on the Weekapaug plans, whether the public has ever been excluded, etc.” *Compl.*, at Exhibit E. In other words, the relevant evidence is not limited to the land evidence records themselves, and Mr. Soloveitzik was therefore unable to render a fully definitive opinion at that time.

Later, in 2020, the Town Council renewed discussions about the SAE's right-of-way status and referred to the Soloveitzik study; however, because questions regarding ownership remained unanswered, the Town formally “referred the SAE to CRMC for a determination as to whether SAE was a public right of way,” pursuant to R.I. Gen. Laws § 46-23-6(5). *Compl.*, at par. 80.

In the wake of the Town's referral, “the CRMC opened a file for the SAE's...designation as a public right of way, File No. 2020-11-084” and began the fact-finding process. *Compl.*, at par. 82. The matter remains in front of the CRMC right-of-way subcommittee and is actively

undergoing factfinding, hearings, and building a record for an ultimate decision by CRMC. *See Compl.*, at par. 103. The RIAG, Ms. Contrata, and the Town of Westerly are all parties in those proceedings. *See Compl.*, at par. 109.

III. STANDARD OF REVIEW

A motion brought pursuant to the Superior Court Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint. *Palazzo v. Alves*, 944 A.2d 144, 149 (R.I.2008) (“[t]he sole function of a motion to dismiss is to test the sufficiency of the complaint[.]”) (quoting *R.I. Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d 1232 (R.I.1989)). Indeed, a trial justice considering a Rule 12(b)(6) motion “must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff’s favor.” *McKenna v. Williams*, 874 A.2d 217, 225 (R.I.2005) (quoting *Bernasconi*, 557 A.2d at 1232). However, “[a]llegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true.” *Doe ex rel. His Parents and Natural Guardians v. East Greenwich School Dep’t*, 899 A.2d 1258, 1262 n.2 (R.I.2006) (emphasis in original).

Rhode Island law indicates that granting “a Rule 12(b)(6) motion to dismiss is appropriate ‘when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.’” *Barrette v. Yakavonis*, 966 A.2d 1231, 1234 (R.I. 2009) (quoting *Palazzo*, 944 A.2d at 149-50). Therefore, “[i]f it appears beyond a reasonable doubt that [the] plaintiff[s] would not be entitled to relief, under any facts that could be established, the motion to dismiss should be granted.” *McKenna*, 874 A.2d at 225 (citing *Laurence v. Sollitto*, 788 A.2d 455, 456 (R.I.2002)).

IV. ARGUMENT

A. COUNTS I AND II SHOULD BE DISMISSED, AS FACT-FINDING IS APPROPRIATELY UNDERWAY BEFORE THE CRMC, THE WEEKAPAUG FIRE DISTRICT HAS FAILED TO EXHAUST ITS ADMINISTRATIVE REMEDIES, AND NO FINAL ORDER HAS BEEN ISSUED BY THE CRMC, PURSUANT TO R.I. GEN. LAWS § 42-35-15.

As this matter is currently pending before the CRMC, one must turn to the Administrative Procedures Act (“APA”) to determine when judicial review is available in the instant matter. According to R.I. Gen. Laws § 42-35-15(a), “[a]ny person, including any small business, *who has exhausted all administrative remedies* available to him or her within the agency, and *who is aggrieved by a final order* in a contested case is entitled to judicial review under this chapter.” (*emphasis added*). As is blatantly apparent from the Complaint, the CRMC proceedings are still actively underway.

The Fire District, despite the numerous exhibits attached to the Complaint, failed to provide the agreed-to (by WFD, RIAG, Westerly, and Contrata) procedural schedule and numerous amendments filed with the CRMC for the administrative proceedings. The scheduling order would provide Court with a look into just how much activity is being done on the administrative process, as it includes timing for, amongst other things, the exchange of proposed joint statement of facts, exhibit lists, witness lists, depositions, and procedure for discovery. Regardless of whether this schedule is available for the Court’s consideration, it is clear from the Complaint itself and the totality of the attached exhibits that the administrative process is well underway, that there are a lot of facts for CRMC to determine, and that much more information is needed for CRMC to make an ultimate determination.

Accordingly, as described in more detail below, this action should be dismissed because CRMC is the appropriate factfinder here, Plaintiff has failed to exhaust its administrative

remedies, and there is no final agency decision from which to seek judicial review. This Court should apply the doctrine of exhaustion of administrative remedies and decline to entertain the Fire District's attempts to circumvent it.

*i. CRMC is the Appropriate
Factfinder for Right-of-Way
Designations*

“One of [CRMC's] responsibilities is to explore and designate public rights-of-way to the tidal water areas. [R.I. Gen. Laws § 46–23–1 *et seq.* (1956)]. The CRMC created a right-of-way subcommittee (“subcommittee”) to investigate, hold public hearings, and act as [the] initial factfinder to determine whether public rights-of-way exist.” *Riesman v. Coastal Resources Management Council of State of Rhode Island*, 2005 WL 3074143, at *1 (R.I. Super.2005) (referring to *Sartor v. CRMC*, 542 A.2d 1078, 1079, 1081–82 (R.I.1988); R.I. Gen. Laws § 46–23–20). The Rhode Island Supreme Court in *Sartor v. CRMC*, discussed at length, the CRMC's role as the factfinder for these rights-of-way proceedings, in response to petitioners' arguments that § 8–2–14 (1985) “gives the Superior Court original jurisdiction of all actions at law where title to real estate or some interest therein is at issue” and “that § 46–23–6(E) should be interpreted as conferring merely investigatory powers upon the CRMC.” *Id.*, at 1081.

Disavowing this notion, the Court found that while “§ 8–2–14 vests original jurisdiction in the Superior Court in all actions at law when title to real estate or some interest therein is at issue . . . the proceedings conducted by the CRMC are not actions at law.” 542 A.2d at 1082. The Court continued, finding “[s]uch proceedings are administrative inquiries into the existence of public rights-of-way,” “[s]aid public rights-of-way have previously been established by actions on the part of prior landowners and public officials[,]” and that “[t]he CRMC merely recognizes and places an official imprimatur upon a previously existing status.” *Id.* The Court ultimately

deferred to “the factfinding role given by the General Assembly to the CRMC” and that found that “[t]he Legislature has determined that questions of fact are to be resolved by the CRMC.” *Id.* (citing *Weeks v. Personnel Bd. of Review of Town of North Kingstown*, 118 R.I. at 247, 373 A.2d at 178).

With the filing of the Complaint, just as the plaintiffs tried in *Sartor*, the Fire District seeks to undermine the legislatively intended administrative authority for designation of right-of-ways. *See Id.*; R.I. Gen. Laws § 42-35-1 *et seq.* According to the Fire District, “[c]ontinuing with the CRMC would be wasteful, time[-]consuming, burdensome, duplicative, and futile because CRMC does not have authority to determine already established ownership of the SAE as a matter of law.” *Compl.*, at par. 106. It continues with another equally incorrect legal conclusion that “[t]herefore, this Court has exclusive jurisdiction over the SAE ownership dispute.” *Id.* Indeed, this argument closely resembles the unsuccessful arguments presented by petitioners in *Sartor* and should be similarly disregarded and dismissed by this Honorable Court.

As shown above, the CRMC is the body legislatively granted the authority to evaluate the facts on whether a public right-of-way exists. To presuppose that the fact-finding authority only exists when the record is obvious that a right-of-way is already public (as Plaintiff proffers) would negate the need for fact-finding at all by the CRMC and would impermissibly frustrate the legislative intent of providing such authority over right-of-way designations to CRMC under R.I. Gen. Laws § 46-23-6(5). *See, In re Tavares*, 885 A.2d 139, 149 (R.I.,2005); *Krikorian v. Rhode Island Department of Human Services*, 606 A.2d 671, 675 (R.I.1992); *Town of Scituate v. O'Rourke*, 103 R.I. 499, 507, 239 A.2d 176, 181 (1968).

ii. ***Weekapaug Fire District Failed to Exhaust its Administrative Remedies***

“It is well settled that a plaintiff aggrieved by a state agency’s action first must exhaust administrative remedies before bringing a claim in court.” Bellevue-Ochre Point Neighborhood Ass’n v. Pres. Soc’y of Newport Cnty., 151 A.3d 1223, 1231 (R.I.2017) (internal quotation omitted); *see also, generally, Burns v. Sundlun*, 617 A.2d 114, 117 (R.I.1992); *Chase v. Mousseau*, 448 A.2d 1221, 1224 (R.I.1982); *Jacob v. Burke*, 110 R.I. 661, 673, 296 A.2d 456, 463 (1972); *see also Drinkwater v. Metropolitan Life Insurance Co.*, 846 F.2d 821, 825–26 (1st Cir.1988). Requiring the exhaustion of administrative remedies (1) “aids judicial review by allowing the parties and the agency to develop the facts of the case, and (2) ‘[] promotes judicial economy by avoiding needless repetition of administrative and judicial factfinding, perhaps avoiding the necessity of any judicial involvement.’” *Burns*, 617 A.2d at 117 (quoting Schwartz, *Administrative Law* § 8.33 at 542 (1991)).

The Fire District has, as is undeniably clear from the face of the Complaint and as explained further below, not exhausted its applicable administrative remedies. It is therefore precluded from pursuing a quiet title action in this case, where the exact subject of a quiet title action regarding the existence of public rights of way along the shore has been legislatively committed to a competent administrative agency, CRMC.

The same doctrine equally bars the Fire District’s claims under the facts as pleaded in this case. “A Superior Court justice’s decision to grant or deny declaratory relief under the Uniform Declaratory Judgments Act is discretionary.” Green Dev., LLC v. Town of Exeter, 297 A.3d 931, 935 (R.I. 2023), citing *Summit Insurance Company v. Stricklett*, 199 A.3d 523, 527-28 (R.I. 2019). There are times when a UDJA action is available despite the existence of another form of

relief, “particularly when ‘the complaint seeks a declaration that the challenged ordinance or rule is facially unconstitutional or in excess of statutory powers, or that the agency or board had no jurisdiction.’” Tucker Ests. Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009) (quoting *Kingsley v. Miller*, 120 R.I. 372, 374, 388 A.2d 357, 359 (1978)). But where, as here, “the four purposes of the exhaustion of remedies doctrine . . . would be thwarted,” namely, “the frequent and deliberate flouting of the administrative process would not be discouraged; the agency would be denied the opportunity to apply its expertise and exercise its discretion; further judicial review would be compromised by the inability of the parties and the agency to fully develop the pertinent facts and record; and, the judicial economy would not be served,” rejection of the declaratory judgment at the outset is appropriate. *Bellevue-Ochre*, 151 A.3d at 1231. As described fully below, these exact same prudential concerns militate rejection of these claims for failure to exhaust here.

Moreover, the Fire District cannot properly suggest that the proceedings before CRMC are futile, another residual exception to the exhaustion of administrative remedies requirement. *See Compl.*, at par. 106 (“[c]ontinuing with the CRMC proceeding would be . . . futile because CRMC does not have authority to determine already established ownership of the SAE as a matter of law”). Those procedures are robust and the CRMC has not yet given any indication of how it might rule. Here, the CRMC has “the authority to consider the issues raised in” the Complaint, it has “not yet rendered a decision,” and the Fire District has “a mechanism . . . to pursue the issues asserted in its complaint.” *Bellevue-Ochre*, 151 A.3d at 1232.

The Fire District has not exhausted. As described above, R.I. Gen. Laws § 42-35-15 requires that Plaintiff “*exhaust[] all administrative remedies*” before seeking judicial review.

Again, *Sartor* described the proper procedure for rights-of-way evaluations and what exhaustion of administrative remedies looks like in these types of proceedings, as follows: “the CRMC is charged with the responsibility of making findings regarding the existence of public rights-of-way to the tidal-water areas of the state and designating them as such. Hearings are held and evidence is taken, initially by the subcommittee and later by the full CRMC.” *Id. at 1080*. Upon issuance of a final decision, the Superior Court would “then exercise[] full original jurisdiction to determine questions regarding interests in real property” and “[t]he scope of such determinations were set forth by the Legislature in § 42–35–15.” *Sartor*, 542 A.2d at 1082. The Court concluded that “the CRMC exercises legislatively delegated powers pursuant to rigorous statutory control and subject to judicial intervention *at the appropriate juncture in the proceedings.*” *Id. at 1081 (emphasis added)*.

Here, as evidenced by the Complaint, the administrative process is still actively underway and therefore administrative remedies have not been exhausted and the Complaint should be dismissed accordingly.

B. VENUE IS IMPROPER BECAUSE THIS MATTER DOES NOT PROPERLY ARISE UNDER THE ADMINISTRATIVE PROCEDURES ACT AND STATUTE ASSIGNS VENUE TO A DIFFERENT COUNTY FOR REAL ESTATE MATTERS.

The Fire District alleges that Providence County is the proper venue under R.I. Gen. Laws § 42-35-15, the APA. *Compl.*, at par. 15. Importantly, R.I. Gen. Laws § 42-35-15(b) provides, “[p]roceedings for review are instituted by filing a complaint in the superior court of Providence County or in the superior court in the county in which the cause of action arose . . . within thirty (30) days after mailing *notice of the final decision of the agency*. . .” (emphasis added). However, as shown above, Plaintiffs have failed to exhaust their administrative remedies and there is no final agency decision for this matter.

Proper venue in this case is determined instead under R.I. Gen. Laws § 9-4-2, which states that “[a]ll civil actions which concern realty, or any right, easement, or interest therein, or the possession thereof, all civil actions for breaking and entering the close of any plaintiff, and all actions in which the title to real estate may be tried and determined, *shall, if brought in the superior court, be brought in the court for the county*.” (emphasis added). Further, R.I. Gen. Laws § 9-4-6 requires that “all actions and suits brought contrary to the provisions of § 9-4-2 shall be dismissed.”

As the Spring Avenue Extension is located in Westerly, the appropriate venue should be Washington County and not Providence. Accordingly, the Complaint must be dismissed in its entirety on this ground alone.

C. COUNT IV ALLEGING SLANDER OF TITLE MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM, AS PLAINTIFFS HAVE FAILED TO SHOW A FALSE STATEMENT, MALICE, OR PECUNIARY LOSS.

“To prevail in a slander of title action, a plaintiff must prove by a preponderance of the evidence: (1) that the alleged wrongdoer uttered or published a false statement about the plaintiff's ownership of real estate[;] (2) that the uttering or publishing was malicious [;] and (3) that the plaintiff suffered a pecuniary loss as a result.” *Carrozza v. Voccola*, 90 A.3d 142, 151-152 (R.I.2014) (citing *Beauregard v. Gouin*, 66 A.3d 489, 494 (R.I.2013) and *Arnold Road Realty Associates, LLC v. Tiogue Fire District*, 873 A.2d 119, 126 (R.I.2005)); *see also*, *Eastern Motor Inns, Inc. v. Ricci*, 565 A.2d 1265, 1273 (R.I.1989); 50 Am.Jur.2d Libel and Slander § 524 at 899 (2006) (“Slander or disparagement of title occurs when a party maliciously makes false statements about another party’s interest in property, which then results in the owner suffering a pecuniary loss[] or special damages”).

First, Plaintiff has failed to identify a single false statement issued by the RIAG within its Complaint, outside its legal opinion on the status of the right-of-way currently under review by CRMC. *See generally*, *Compl.*, at par. 134 (“the Town Defendants, RIAG Defendants[,] and Contrata, without basis and in the face of contradicting evidence, inaccurately and falsely claim that SAE is a public right of way and have improperly acted in furtherance of this claim.”). However, the status of the SAE is in dispute and still under review by the CRMC. *See Compl.*, at pars. 102, and 103. It would be nonsensical to hold a party participating in a *legally-sanctioned*, investigatory process could be held liable for slander of title for merely participating in that process, which is designed to resolve the matter.

Second, “[i]t is essential to note that malice may not properly be inferred from the ‘mere fact that a person asserts a claim to the property that is unfounded.’” *Carrozza*, 90 A.3d at 152

(quoting *Peckham v. Hirschfeld*, 570 A.2d 664, 667(R.I. 1990)). Indeed, the “plaintiff must also show that the defendant could not honestly have believed in the existence of the right he claimed, or at least that he had no reasonable or probable cause of believing so.” *Peckham*, 570 A.2d at 667. Further, a party can “assert a property interest based upon an ultimately unfounded claim without incurring liability for slander of title—provided the party asserting the property interest did so in good faith.” *Belliveau Building Corp. v. O’Coin*, 763 A.2d 622, 630 (R.I.2000).

“Malice . . . is that feeling of personal hostility or ill-will towards another which only manifests itself in language or conduct, and hence is best shown by the character of the language or conduct.” *Hopkins v. Drowne*, 41 A. 567, 568 (R.I. 1898). “In other words, it naturally and legitimately springs out of and is to be inferred from such language or conduct as naturally tends to deceive, injure, and damage another, and for which there is no legal excuse.” *Id.* Here, despite repeated attempts to suggest some untoward collusion or other political motivations, WFD has failed to plead a single act or statement by any Defendants that even implies malice or lack of good faith. Instead, Plaintiff alleges mere participation in the *legally-sanctioned* public process is enough, and accordingly, Plaintiff has failed its burden of proof here to show malice by the Defendants.

Finally, “[i]n order to prevail on a slander of title claim, a plaintiff must necessarily prove that he or she has sustained an ‘actual pecuniary loss.’” *Carrozza v. Voccola*, 90 A.3d at 160 (citing *Peckham*, 570 A.2d at 666–67 (internal quotation marks omitted); *see also Wheeler*, 21 A.3d at 441; *Keystone Elevator Co. v. Johnson & Wales University*, 850 A.2d 912, 923 (R.I.2004)). However, WFD has failed to show any actual damages associated with any statement by RIAG in this matter, other than what are voluntarily incurred, if surely extensive, legal fees

given the extremely aggressive and overly litigious approach implemented by Plaintiff's counsel. Indeed, the Complaint is void of details on any actual damages suffered, outside a bare, nonparticularized allegation stating "[t]he District has suffered and will continue to suffer monetary damages based on such slander of title of the SAE" and "[a]s a result of Town Defendants, RIAG Defendants, CRMC Defendants, and Contrata's actions, Plaintiff has incurred and will continue to incur significant legal fees and/or other damages." *Compl.*, at pars. 114, 122, 131, 137, and 138. Such conclusory statements do not meet the Plaintiff's burden of pleading here to allege actual pecuniary loss connected to RIAG's actions, rather than Plaintiff's choice of counsel. *See Rhode Island Insurer's Insolvency Fund v. Leviton Mfg. Co.*, 763 A.2d 590, 597 (R.I.2000); *Farrell v. Garden City Builders, Inc.*, 477 A.2d 81, 81–82 (R.I.1984).

Accordingly, Plaintiff has failed the three necessary prongs to successfully bring a slander of title claim against the RIAG and, therefore, Claim IV should also be dismissed in its entirety.

D. THE WEEKAPAUG FIRE DISTRICT'S COMPLAINT VIOLATES RHODE ISLAND'S "LIMITS ON STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION" ACT, R.I. GEN. LAWS § 9-33-1 ET SEQ., ("ANTI-SLAPP STATUTE").

The WFD's Complaint also violates Rhode Island's "Limits on Strategic Litigation Against Public Participation" Act, R.I. Gen. Laws § 9-33-1 *et seq.*, (the "anti-SLAPP statute") because it is frivolous and was brought primarily to harass, inhibit, and chill the valid exercise of the Attorney General's constitutional right of petition and free speech in connection with a matter of public concern.

The Complaint states, in part, that "capitalizing on the growing public pressure, the RIAG Defendants . . . intervened in the CRMC matter in order to pursue their own personal and/or political agendas against the District." *Compl.*, at par. 2. The WFD again, also further claims that

the “Town Defendants, RIAG Defendants and Contrata falsely claim that SAE is a public right of way and have improperly acted in furtherance of this claim.” *Compl.*, at pars. 117 and 134. These statements, alleging misconduct by the Attorney General, are patently false and not supported by the evidence already provided by the Attorney General to the CRMC or any evidence provided by the WFD or other parties.

Rhode Island’s anti-SLAPP statute was enacted “to prevent vexatious lawsuits against citizens who exercise their First Amendment rights of free speech and legitimate petitioning by granting those activities conditional immunity from punitive civil claims.” *Sisto v. America Condominium Ass’n, Inc.*, 68 A.3d 603, 614 (R.I.2013) (*quoting Alves v. Hometown Newspapers, Inc.*, 857 A.2d 743, 752 (R.I.2004)).

Pursuant to R.I. Gen. Laws § 9–33–2(a), “[a] party's exercise of his or her right of petition or of free speech [before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding] . . . in connection with a matter of public concern shall be conditionally immune from civil claims, counterclaims, or cross-claims.” However, that speech will not enjoy protection if it “constitutes a sham,” meaning that it is “not genuinely aimed at procuring favorable government action, result, or outcome, regardless of ultimate motive or purpose.” *Sisto*, 68 A.3d at 615 (*quoting Palazzo v. Alves*, 944 A.2d 144, 150 (R.I.2008)),

The Attorney General’s correspondence to CRMC about the SAE and subsequent intervention in the CRMC’s formal review of the SAE as a possible public right-of-way (CRMC No. 2020-11-084) constitutes an “exercise of [the Attorney General’s] right of petition [and] of free speech” because they were in the form of “written or oral statement made before or submitted to [an] executive [] body . . . made in connection with an issue under consideration or

review by [an] executive [] body”—in this case, the CRMC. *See* R.I. Gen. Laws § 9–33–2(e). That correspondence and intervention dealt with a “matter of public concern” because the issue before the CRMC involves whether there is public access over the SAE to the ocean.

Finally, in order for the Attorney General’s correspondence to CRMC about the SAE and subsequent intervention in the CRMC review fall within the immunity protections afforded by the anti-SLAPP statute, the correspondence and intervention must not have constituted a sham.

In determining this last element, the anti-SLAPP statute requires an examination of whether the Attorney General’s statements made to the CRMC were “genuinely aimed at procuring favorable government action, result, or outcome, regardless of ultimate motive or purpose.” R.I. Gen. Laws § 9–33–2(a). Further, the act requires examination of whether the statements were “(1) [o]bjectively baseless in the sense that no reasonable person exercising the right of speech or petition could realistically expect success in procuring the government action, result, or outcome, and (2) [s]ubjectively baseless in the sense that it is actually an attempt to use the governmental process itself for its own direct effects.” Section 9–33–2(a). With respect to whether the statements are subjectively baseless, the court should consider “whether the litigants ‘utilized the process itself rather than the intended outcome in order to hinder and delay [a] plaintiff’.” *Sisto*, 68 A.3d at 615 (*quoting Karousos v. Pardee*, 992 A.2d 263, 271 (R.I.2010)).

The Attorney General’s statements made to the CRMC were aimed at obtaining a favorable CRMC decision that the SAE is a public right-of-way, and the Complaint does not allege otherwise. These statements are not “objectively baseless” because the Attorney General’s statements and actions could realistically expect success in procuring a CRMC decision supporting the public’s rights in the SAE. These statements were not “subjectively baseless”

because the Attorney General did not use the CRMC process to hinder or delay anything. He simply commented on a matter that had been brought to the CRMC by the Town of Westerly, then properly intervened in the agency review.

Pursuant to R.I. Gen. Laws § 9-33-2 the RIAG seeks costs and attorney's fees, as well as compensatory and punitive damages. R.I. Gen. Laws § 9-33-2 states:

(d) If the court grants the motion asserting the immunity established by this section, or if the party claiming lawful exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions in connection with a matter of public concern is, in fact, the eventual prevailing party at trial, the court **shall** award the prevailing party costs and reasonable attorney's fees, including those incurred for the motion and any related discovery matters. The court **shall** award compensatory damages and **may** award punitive damages upon a showing by the prevailing party that the responding party's claims, counterclaims, or cross-claims were frivolous or were brought with an intent to harass the party or otherwise inhibit the party's exercise of its right to petition or free speech under the United States or Rhode Island constitution.

(emphasis added.)

The WFD's claims are clearly frivolous, as it is uncontested that the Town Defendants, RIAG Defendants and Caroline Contrata have submitted numerous documents to the CRMC supporting their claim that the SAE is a public right-of-way, including municipal and private plat maps, title documents, expert reports, photographs, and other documents. The Town Defendants, RIAG Defendants, and Caroline Contrata have also identified numerous witnesses who have knowledge of said right-of-way, many who have already been deposed under oath stating that they have used said right-of way and seen others using it as far back as the 1960s.

The WFD's Complaint provides no particularized allegations backing its bald statements that the Defendants "have improperly acted in furtherance of this [false] claim" or otherwise acted improperly in this matter. Based upon the facts and arguments herein, the WFD'

Complaint should be dismissed, and the Attorney General should be awarded reasonable costs and attorney's fees, as well as compensatory and punitive damages.

V. CONCLUSION

The entirety of this Complaint should be dismissed, as it improperly seeks to circumvent the well-established CRMC procedure for review of potentially preexisting rights-of-way for designation purposes, has been filed in an improper venue, and was brought to intentionally quell public participation, in violation of Rhode Island's Anti-SLAPP statute.

Respectfully submitted,
Defendants,

**RHODE ISLAND OFFICE OF
THE ATTORNEY GENERAL and
PETER F. NERONHA in his
official capacity as the
ATTORNEY GENERAL OF
RHODE ISLAND**

By:

**PETER F. NERONHA
ATTORNEY GENERAL**

/s/ Alison Hoffman Carney
Alison Hoffman Carney (#9811)
Assistant Attorney General
Chief, Environment and Energy Unit
Gregory S. Schultz (#5570)
Special Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
Tel: (401) 274-4400, Ext. 2116/2400
Fax: (401) 222-3016
acarney@riag.ri.gov
gschultz@riag.ri.gov

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 22nd day of January 2024, I filed the within document via the ECF filing system and that a copy is available for viewing and downloading.

/s/ Maria Bedell