
Week of April 13

Welcome to our Supreme and Appellate Court summaries webpage. On this page, I provide abbreviated summaries of decisions from the Connecticut appellate courts which highlight important issues and developments in Connecticut law, and provide practical practice pointers to litigants. I have been summarizing these court decisions internally for our firm for more than 10 years, and providing relevant highlights to my municipal and insurance practice clients for almost as long. It was suggested that a wider audience might appreciate brief summaries of recent rulings that condense often long and confusing decisions down to their basic elements. These summaries are limited to the civil litigation decisions. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my own personal opinion.. Pullman & Comley's Appellate Practice Group of which I am a member includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at emccreery@pullcom.com I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted April 14, 2015

- AC36342 - [Budrawich v. Budrawich](#)

Post-dissolution motion to modify child support denial was upheld by the Appellate Court due to lack of substantial change in circumstances, when ex-husband's increased income was not significant, and failure of the ex-husband to pay past bills was the fault of both parties. Further, the deviation from the Standard Guidelines was neither inequitable nor inappropriate. Then, the court raised on its own an issue not raised by either party. That was an ancillary decision by the Trial Court to order the parties to submit to arbitration their dispute over unreimbursed historical child support expenses. None of the parties had ever executed a voluntary arbitration agreement. Accordingly, the Trial Court did not have authority to order the parties to submit to binding arbitration.

- AC36087 - [State v. Badaracco](#)

[Not summarized.]

- AC36419 - [Customers Bank v. CB Associates, Inc.](#)

When a condo development project went bust, the bank / lender / 1st mortgagee started a collection action against the developer and the guarantor. At that time there were five unsold units in the project but two

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additional phases of land yet to be developed. The defendants filed CUTPA counterclaims. On the eve of that trial, the parties stipulated to the entry of a judgment on the mortgagee's promissory note in the amount of \$1.5 million, and an agreement no one would contest a judgment of strict foreclosure being entered in favor of the condominium association which had already started its own foreclosure on the unsold units. It was further agreed that if the lender / 1st mortgagee redeemed the common charges in the condo's foreclosure, that the value of the condominium units obtained by the mortgagee (as determined in the condo foreclosure action) would be credited against the stipulated debt of \$1.5 million. That simple oral agreement was reported to court with a statement by the bank's attorney..... "So we are reserving (the right) to challenge the value at that time." [BIG MISTAKE.]

Thereafter, the condominium association preceded to a judgment of strict foreclosure where the court found the aggregate fair market value of the five unsold units to be \$1.6 million and the bank redeemed and took title to the units. The borrowers immediately moved for an order pursuant to Practice Book § 6-5 that the stipulated judgment had been satisfied in full. The lender objected, claiming they had not been paid in full, because by now they had determined that the five units were only worth \$500,000, not the "inflated valuation" found in the foreclosure of the condominium association. The Trial Court held that the bank was bound by the terms of its own stipulation, and while the judgment in its favor was not being satisfied by a traditional transfer of cash, they were bound by the terms of their own settlement.

The lender appealed, and the Appellate upheld the decision of the Trial Court. While normally, a borrower must tender payment in cash to pay off a debt, and a court cannot impose a hypothetical valuation in satisfaction of a judgment, the present case concerns a stipulated judgment. Right or wrong, the lender entered into a voluntary agreement to avoid the risks of litigation. That stipulated judgment became a contract, which supersedes the rules of common law. The stipulated agreement was not ambiguous, and the parties were clearly referring to the valuation to be set at the time of the foreclosure hearing, especially in light of the lender's reservation of the right to challenge the finding of value during the association's foreclosure process.

The trial court's ruling did not violate any public policy. To the contrary, Connecticut strongly favors freedom of contract, and that is what took place here. A judgment creditor and debtor can always agree to compromise and settle for less than the full amount of the award.

The defendants' cross-appeal, seeking sanctions for a frivolous appeal, was also rejected by the Appellate Court.

[Herein lies the risk of hastily agreeing to an oral settlement of a court proceeding, and reporting it to the court without having time to write it down, review it, and think about it. This hasty agreement potentially cost that client \$1 million. The guarantor is off the hook and presumably retained the rights to the undeveloped parcels.]

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- AC36325 - Izikson v. Protein Science Corp.

Affirmed the decision of the Worker's Compensation Commission that claim was untimely when the notice failed to comply with Connecticut General Statutes § 31-294c(A).

- AC36211 - Vanghele v. Fairfield

The plaintiff had been a police officer who was injured on the job in 2005 in an automobile accident that injured his left elbow. He missed two months of work, but eventually returned to full time duty, despite continuing discomfort with his arm. That resulted in surgery in 2006, but he again returned to work full time. By 2009 he had been involved in several incidents of improper conduct, causing him to be placed on administrative leave. He resigned on the eve of being fired by the Chief. Simultaneously with his resigning, he filed a claim for disability retirement, for which a member was eligible only when the employment was terminated because of total disability.

When plaintiff was denied a disability retirement pension, he sued for breach of contract. The Trial Court found that the Board had abused its discretion in denying the plaintiff's application for disability pension. The town appealed. The Trial Court found that Board's decision had to be based upon medical evidence, and therefore, remanded the matter, mandating that the retired police officer submit to a medical exam so the Board could render its decision based upon whether the plaintiff suffered from a total disability preventing him from engaging in and performing his duties. Thereafter, the Board was to reconsider its decision.

On appeal, the Appellate Court determined that the burden was upon the applicant to show that he met the requirements of the plan. Until that burden was met, there should have been no presumptive entitlement to the disability benefit, which is basically what the Trial Court did by flipping the burden of proof. The Board was entitled to exercise its discretion in determining whether or not the plaintiff was entitled to the benefit. The Trial Court should not have forced the Board to pursue additional medical evidence to see whether or not the applicant was disabled. That burden was on the applicant. While there was some evidence of disability, that evidence was contradictory, and the Board was entitled to accept or reject the medical evidence as it saw fit. The Board's decision was also supported by evidence of the improper conduct of the officer, and the police chief's testimony that he was not terminated because of his disability, but rather he resigned in order to avoid the termination process.

- AC36547 - Abendroth v. Moffo

In this decision, the court referred to this fact pattern as an *unfortunate set of facts and circumstances*. An employee operating a pay loader struck and killed a fellow employee. A lawsuit was brought on behalf of the decedent against the fellow employee and the employer, claiming it was vicariously liable. The defendants raised a special defense of the Worker's Compensation Act, and asserted that these facts did not fall within the exception allowed for the negligent operation of motor vehicles by a fellow employee (C.G.S. § 31-293a).

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In its decision, the Appellate Court noted that the Worker's Compensation Act is the exclusive remedy for injuries sustained by employees. But there is an exception for being injured in a motor vehicle by another employee. Unfortunately, a pay loader is not a motor vehicle, but rather, is a piece of "Special Mobile" Equipment." C.G.S. § 14-1 specifically excludes Special Mobile Equipment from the definition of a Motor Vehicle. Special Mobile Equipment are vehicles **not designed** for transportation of persons or property over the highway, and only incidentally operate or move over a highway, including ditch digging apparatus, road construction machinery, bucket loaders, etc. Since pay loaders and bucket loaders are synonymous terms, it is clear that the Trial Court was correct to grant summary judgment to the defendants. The plaintiff's cause of action was barred by the provisions of the Worker's Compensation Act. The court also said it did not matter whether the accident occurred at the work site of the employer.

The facts and holdings of any case may be redacted, paraphrased or condensed for ease of reading. No summary can be an exact rendering of any decision, however, so interested readers are referred to the full decisions. The docket number of each case is a hyperlink to the Connecticut Judicial Department online slip opinion. Copyright 2015 Pullman & Comley, LLC. All Rights Reserved.

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