Appellate Notes

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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 based on my own particular field of practice, so you will not find distillations of the many criminal and matrimonial law decisions on this page. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my opinion . . . and when mistakes of trial counsel are highlighted because they triggered a particular outcome, I will try to be mindful of the adage . . . "There but for the grace of God . . .." I hope the reader finds these summaries helpful. – Edward P. McCreery

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• SC19151, SC19158 - Weiss v. Smulders

Plaintiff sued the defendant claiming it violated an oral agreement to form a new company by merging their existing companies as a joint venture to sell food products. After a Chapter 7 filing by the plaintiff, the parties reached a written distribution agreement that briefly mentioned the plan to form a new company. Later they allegedly entered into an oral agreement about to form and run the new company. The defendant filed a counterclaim for damages for failure to pay food products that were delivered to the plaintiff per the written agreement. The Trial Court awarded only nominal damages to the plaintiff on its promissory estoppel claim finding that the defendant had made oral and email representations about the proposed merger upon which the plaintiff reasonably relied to his detriment....but the Court added that the plaintiff had failed to prove the value of the prospective joint venture that never got off the ground. The Trial Court then awarded the defendant $100k for its counterclaim damages.

The Supreme Court affirmed. First it held that the plaintiff had standing to assert the claim notwithstanding the prior bankruptcy. The Supremes said they did not have to resolve the split of federal authority over whether and when post-petition lawsuits are an asset of the debtor, vs. the bankruptcy trustee. Here the Trial Court only awarded damages based upon the promissory estoppel claim (not the breach of oral agreement claim) and all the material promises that were relied upon were made post-petition. There were few if any

material pre-petition representations, so the Bankruptcy Trustee would not have had a right to assert the claim .....no matter which federal bankruptcy test was applied.

Next the decision held the Trial Court properly admitted parol evidence of the oral agreement to merge to companies despite an integration clause in the written agreement. That was because the oral agreement did not vary or contradict the (substantive) terms of the written agreement. The formation of a new company by a merger was only mentioned briefly in the recitals of the written distribution agreement and was never mentioned again in the substantive portions of the agreement. Noting the rule of law that substantive portions of a written agreement trump inconsistent or superfluous provisions in the recitals, the decision held the mere passing mention about a future new company in the preamble of the agreement with an integration clause, did not prevent parol evidence to be admitted about that future oral agreement. [Note: Make sure you say what you mean and you mean what you say. (Horton?)]

Next the Court upheld the nominal damages award. Noting the rule that damages cannot be speculative it looked at the capitalization of earnings approach used by the plaintiff's expert. He relied entirely on the earnings of the defendant's company that would have been merged into the new company. The expert admitted he did not factor in the bankruptcy of plaintiff's company, nor its negative impact on credit of the new company. He did not try to value the merged companies as one entity either. The substantial similarity test for valuation did not apply as the new (merged) company would have been different than the defendant's company. So the expert could not just rely on the value of one of the companies to set a minimal value of both together. The Trial Court properly concluded the plaintiff failed to establish his claim here. The plaintiff responded that it's expert had asked the defendant for more financials and was rebuffed. The decision said this was no excuse for the plaintiff. The plaintiff should have pursued the formal discovery protocols if it need more data for its expert.

Finally, the decision held the Trial Court was within its discretion to 1st say it would allow the plaintiff a renewed hearing to offer more valuation evidence and then change its mind on reargument to conclude the plaintiff already had plenty of opportunity to put on proper valuation evidence the first time around.