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## Week of January 26

*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](mailto:emccreery@pullcom.com) I hope the reader finds these summaries helpful. – Edward P. McCreery*

Posted January 26, 2015

- SC19216 - Sikorsky Financial Credit Union, Inc. v. Butts

Finally some clarity in rules pertaining to the award of post-judgment interest. Here the (consumer) loan agreement provided that interest would accrue at 9% per annum and would continue to accrue after maturity “at the highest legal rate” until the debt was paid in full. Heretofore some trial courts and the Appellate Court have held that contractual interest rates are only a matter of right up until the judgment and thereafter totally discretionary with the trial judge, and when awarded, is limited to the statutory rate of 8% under CGS 37-1. That is what happened in this case and the creditor appealed. The Supreme Court decision suggests the underlying courts were misapplying CGS 37-1 and confusing it with CGS 37-3.

CGS 37-1 sets a rate for money loaned where no agreement on the interest rate was specified in the agreement. Case law has also held that CGS 37-1 lets the parties agree on whether interest shall continue to accrue after the loan matures. Thus parties should provide for two things in a loan agreement: (1) specify whether interest will continue to accrue after maturity, and (2) specify the post-maturity rate. In this case the agreement did provide that interest would accrue after maturity **but did not** set the post maturity (aka post-default & post-judgment) interest rate. Therefore the trial court had no discretion but to award post judgment interest but had to set it at the statutory rate of 8%. (The creditor would have been better off just saying that interest shall continue to accrue after maturity at the same 9% rate.) The Court noted that while CGS 37-1

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interest is not discretionary, CGS 37-3a is different animal. The later statute grants the trial court discretion to award interest for the wrongful detention of money (not just loans) which award becomes part of the damages (and remember you have to ask for it with your Motion for Judgment).

Finally, for your auto dealer clients, this decision also held that CGS 36a-772 dealing with repossession under an automobile retail installment contract, did not prohibit the award of contractual, post-judgment interest just because that statute was silent on the issue.

[Note: The bulk of this decision's interest rate holding on what should be in the note is not limited to just consumer loans.]

- AC35904 - Stratford v. International Federation of Professional & Technical Engineers, Local 134

This decision upheld an arbitration award reinstating an ambulance driver who was terminated after stopping at the EMS building on the way to the hospital to perform a "crew swap" while the patient was on the gurney in back. The decision held that the arbitration panel could conclude that while there is a well-defined public policy in CT that EMTs shall do no harm to a patient, this was not an emergency call, the patient was stable, the swap only took 4 minutes, and the service had allowed "crew swap stops" in the past in non-emergency situations. Finally the arbitration panel could also conclude the termination investigation was not conducted fairly when done by a supervisor with a history of bad blood with this employee.

- AC36335 - Davis v. Administrator, Unemployment Compensation Act
- AC35954 - Nxegen, LLC v. Carbone

Nxegen LLC, brought an arbitration complaint against its former chief operating officer, Carbone, alleging that after he negotiated a new \$2 million deal with an existing customer, he kept the details secret from his employer, and then he resigned his position and formed a competing company, Power Point, which then entered into the contract with that customer. Nxegen alleged that Carbone's conduct of stealing the customer while still employed breached his contract, breached his fiduciary duties to the company, and was done by stealing trade secrets in violation of Connecticut Uniform Trade Secrets Act ("CUTSA"), Connecticut General Statutes §35-51, and that he violated the Connecticut Unfair Trade Practices Act ("CUTPA"). An arbitrator awarded Nxegen \$1 million in damages and found that Carbone's conduct was willful and malicious because he resented a co-worker being promoted above him and so awarded \$340,000 in punitives.... but only under CUTSA .....though he found both statutes would have justified the punitives. The trial court upheld the award finding that the arbitrator could infer malice from the defendant's conduct and it did not matter under which statute punitives were found. The Appellate Court affirmed and held the arbitrator did not manifestly disregard the law. The arbitrator correctly stated that the law required a finding of both malice and willfulness to award punitives. When the arbitrator went on to say that he did not find the same type of malice as observed in the 1999 CT Supreme Court decision of **Elm City Cheese v. Federico**, he was merely referring to the different factual findings of that case, not that he did not find malice at all on the part of Carbone. Further,

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this being an un-restricted submission to the arbitrator, any chance of setting it aside was severely constrained.

[A footnote puzzles ...how on earth was the defendant's new company awarded the contract when it was never qualified to bid, never submitted a bid, and the Board of Ed never approved the contract?????]

- AC36339 - McGuinness v. McGuinness
- AC35889 - Wilkes v. Thomson

[Pushing the limits? - not only by asking, but by appealing too?] Here the defendants fought a summary process action with a MTD, but when unsuccessful, they vacated the premises. Their attorney then moved to dismiss the action as moot. The trial court granted the motion. Then the defense attorneys moved for an award of attorney fees claiming they had *successfully defended a (consumer) action* per 42-150bb. This decision upheld the trial court's ruling that dismissal for mootness is not the same as prevailing on the merits.

- AC36324 - National City Real Estate Services, LLC v. Tuttle

In this foreclosure action the property was appraised at \$490,000 at the time of judgment but only generated a high bid of \$210,000 after the property owner refused to allow access to the Committee for a pre-auction inspection. This decision held the trial court was within its discretion to approve a sale that only generated 60% of FMV noting past decisions have approved sales as low as 40% of FMV. A court ordered auction of real estate is not a mechanism designed to fetch the highest fair value price and the trial court correctly pointed out that no testimony was offered to suggest holding the auction again would result in any different outcome.... and that maybe .....the property owners themselves contributed to the outcome by refusing access to the Committee.

- AC35945 - Cimino v. Cimino

*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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The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.