
Week of July 10, 2017

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 July 12, 2017

Appellate Court Advance Release Opinions:

- AC38252 - [Bank of America, N.A. v. Chainani](#)

PB 23-18a allows a foreclosing plaintiff to establish the balance due on the mortgage by way of affidavit without a witness, and without it being deemed hearsay. This decision held that rule applied even when the defendant filed an answer denying he was in default, and only pled insufficient knowledge as to the loan debt balance, but failed to directly attack the claimed loan balance.

- AC38689 - [Avery v. Medina](#)

Trial Court was within its powers to “effectuate its judgment” when it held the defendant property owners in contempt of court because after twice ordering them remove a stone, they finally complied. They then snuck back in a replacement, but lower, stone wall of scattered boulders. Even though the scattered boulders might not rise to the level of a prohibited permanent structure the restrictive covenant proscribed, the conduct was meant to circumvent the court's order.

- AC37281 - [Santos v. Zoning Board of Appeals](#)

pullcom.com  @pullmancomley

BRIDGEPORT
203.330.2000

HARTFORD
860.424.4300

SPRINGFIELD
413.314.6160

STAMFORD
203.324.5000

WATERBURY
203.573.9700

WESTPORT
203.254.5000

WHITE PLAINS
914.705.5355

Week of July 10, 2017

There was no inverse taking of a lot the owner bought at a tax sale for a song that was already non-conforming when the prior owner carved it off his land, even though the ZBA denied variance requests to allow the construction of a house. By adjusting the lot lines and building a smaller house, the issue could have been remedied, so there was no confiscation of property by regulation.

- AC38693 - [EH Investment Co., LLC v. Chappo LLC](#)

Here is another case upholding an integration clause. The mortgage broker agreement allowed the broker to keep a deposit if it found a lender but the owner thereafter refused to close the loan. The agreement contained an integration clause. In the meantime the owner was telling the broker about the importance of his key tenant renewing its lease and was sending copies of the lease documents to the broker. The broker found a lender but the owner refused to close the deal because its key tenant had still not renewed its lease. The owner sued for the deposit back and the Trial Court held that the tenant's lease renewal was a condition precedent to the deal. To add insult to injury the Trial Court added that the broker committed conversion by keeping the deposit. "Wrong" said the Appellate Court. It was inappropriate to import terms into the agreement around the integration clause and one could not shift the risk of the tenant renewing upon the broker. That was a risk the owner had assumed.

- AC38572 - [Pronovost v. Tierney](#)

Maryland ("MD") resident involved in a car accident with a Connecticut ("CT") resident in MD could not be sued in CT under the CT long arm statute without a showing that the defendant's MD business derived substantial revenue from CT residents.

- AC38489 - [Bank of New York Mellon v. Talbot](#)

Trial Court entered a judgment of foreclosure incorrectly as the defendant was not in default. Thereafter the plaintiff obtained a proper default for failure to plead. Then the void judgment was reopened. The plaintiff then moved for judgment again. The second judgment was granted. The defendant appealed. This decision held that the default was not void just because it had been entered after an invalid judgment which had not yet been reopened. Therefore the second judgment could rely upon that default.

- AC38659 - [Kurisoo v. Ziegler](#)

Driver of an antique car on a tour sponsored by Mystic Seaport collided with a motorcycle. Each driver was responsible to follow the route on their own and obey the rules of the road before returning to the Seaport. The injured plaintiff sued the driver and Mystic. Mystic moved for summary judgment on two separate grounds, each of which was rejected by the Trial Court. But the Trial Court went on to nonetheless grant SJ to Mystic ruling that under such circumstances, as a matter of public policy, Mystic owed no duty to the motorcyclist. The Appellate Court reversed holding the court was without authority to grant SJ on a ground

Week of July 10, 2017

never raised in Mystic's motions.

- AC38900 - [American Express Bank, FSB v. Rutkowski](#)

A credit card debt (of \$180,000!) was not a “loan in excess of \$50,000” governed by the CT Statute of Frauds. The debt was used to pay for goods and services of third parties. The Trial Court properly granted SJ to the credit card company over a SoF defense. A footnote suggests the parties did not properly argue which law should apply to the dispute to include possibly federal law, or Utah law cited in the cardholders agreement.

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. © 2017 Pullman & Comley, LLC. All Rights Reserved.

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.