
Week of July 18, 2016

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 August 24, 2016

Supreme Court Advance Release Opinions:

- SC19496 - [Commission on Human Rights & Opportunities v. Echo Hose Ambulance](#)

The issue of this case was whether or not an unpaid volunteer, in this case for an ambulance company, can be deemed an employee for the purposes of Connecticut's Fair Employment Practices Act (CFEPA). The young unpaid volunteer claimed she was kicked out of the program because of her race. The Supreme Court said it had to decide whether a volunteer must satisfy the Remuneration Test, or, Connecticut's Common Law Right of Control Test.

The CHRO referee struck the complaint on the grounds that the individual was not an employee. The CHRO took an appeal to the Superior Court, but it dismissed the case. The Appellate Court affirmed the dismissal. The Supreme Court affirmed the Judgment of the Appellate Court. The city had argued that she was not an employee, which is a factual predicate to a cause of action under CFEPA. The decision noted that Connecticut has historically looked to the Federal Courts for analysis of the Act and two tests have been developed by the Federal Courts: The Right to Control Test and the Remuneration Test.

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203.330.2000

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STAMFORD
203.324.5000

WATERBURY
203.573.9700

WESTPORT
203.254.5000

WHITE PLAINS
914.705.5355

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The Right to Control Test is to resolve whether the hired party is an employee or an independent contractor. The Remuneration Test, however, is different. It is designed to ascertain whether or not the plaintiff had been hired at all. It is a two-step process that requires the alleged volunteer to first show he is paid remuneration as a threshold to the second step of examining the agency relationship between the parties. Remuneration can either be direct compensation (like salary or wages) or indirect benefits that are not minor.

The Control Test already assumes that there is a hiring party and a hired party. In fact, the Connecticut Legislature's recent extension of CFEPA to interns reinforces that volunteers are not automatically covered by CFEPA and the Remuneration Test is the proper test. The Legislature was very specific in only expanding the protections of the statute to a narrowly-defined class of persons, unpaid interns. (A Footnote adds that interns are defined as those receiving supplemental training in an educational environment. The plaintiff here is an ambulance volunteer, which is not the same as an educational intern).

- SC19647 - [Gershuny v. Gershuny](#)

The husband and wife were married in 2001 in New York. They subsequently found out, however, that the person who performed the services was impersonating a rabbi and he was not authorized under New York law to perform marriages at all. That person had for years fraudulently performed hundreds of marriages in New York and New Jersey. Accordingly, one year after the parties' marriage ceremony, the New York Legislature enacted legislation to validate the marriages performed by the fake rabbi.

In 2014, the husband brought an action to dissolve the marriage in Connecticut. The wife objected and filed a motion to dismiss, which the Connecticut Trial Court granted, reasoning no marriage had ever existed. The Trial Court held that because the rabbi would not have been authorized to officiate at a marriage in this state, the marriage would have been expressly prohibited in Connecticut under C.G.S. § 46(b)-28(a).

The Appellate Court reversed, noting there was a fundamental flaw in the Trial Court's reasoning. It incorrectly combined the sections of the statute, thinking C.G.S. § 46(b)-22 identifying people who can solemnize marriage in this state was relevant to determining whether or not the marriage performed in another state was valid. The language of the statute, however, only limits the scope of marriages that may be performed in this state. Otherwise, the Trial Court must give full faith and credit to a marriage deemed valid in another state. Here, New York validated the marriage by legislative enactment and the Connecticut Court should have recognized it as such.

Appellate Court Advance Release Opinions:

- AC37210 - [Cornelius v. Rosario](#)

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Developer bought property in Hartford but never recorded the deed and never paid the back taxes. Accordingly, when the city held a tax sale, he did not receive notice of the sale. The developer thereafter brought a quiet title and declaratory judgment action that the tax sale was null and void, and named the tax collector individually as a defendant. The plaintiff developer also claimed money damages for violation of its constitutional and due process rights.

Summary judgment was granted to the city and the tax collector, followed by unsuccessful appeals by the developer all the way to the United States Supreme Court. Only after all the appeals were over did the defendant file a motion for attorney's fees and costs pursuant to § 12-140, seeking \$140,000 for defending the plaintiff's actions.

The Trial Court found that it was too late to seek an award of attorney's fees incurred in the trial, but that it could award attorney's fees for the appeal, so it only allowed \$40,000.

Both the plaintiff and the defendant appealed. The plaintiff claimed that the tax collector could only recover costs and not attorney's fees under § 12-140. The Court disagreed, noting that § 12-140 plainly and unambiguously provides for the recovery of attorney's fees incurred by the municipality in defending any civil action which seeks to declare a tax sale to be unlawful. The Court also rejected the developer's claim that it was not a delinquent taxpayer because he had never recorded his deed. As soon as he brought the property, he was obligated to pay the taxes. After failing to do so, he was a delinquent taxpayer. It does not matter that the deed to the property was not recorded.

The Court also rejected the plaintiff's claims that fees under § 12-140 were pre-empted by his Constitutional rights claim under 12 U.S.C. 1983. The federal act does not pre-empt the state statute. Section 12-140 permitting an award of attorney's fees for successfully defending a tax sale is not an obstacle to people bringing claims under 42 U.S.C. 1983, even though there is a higher standard for a defendant to recover attorney's fees as a result of an unsuccessful 1983 claim (frivolous, unreasonable or groundless). Merely because a plaintiff chooses to combine a § 1983 claim with a challenge to a tax sale, does not trigger a higher burden for the defendant to recover attorney's fees under the state statute. Such a holding would have a chilling effect on the use of tax sales as a means of collecting unpaid property taxes. It would also encourage plaintiffs to add a § 1983 claim every time they sued a state or a municipal official.

The Court agreed that the defendant's motion for attorney's fees was untimely with respect to the trial and the motion to reopen, as the motion for attorney's fees should be filed within thirty days of a resolution of the proceeding pursuant to Practice Book § 11-21.

The Court warned that prior decisions do not stand for the proposition that a prevailing party in a Trial Court can await the outcome of appellate litigation before filing a motion for attorney's fees. This is especially true after the adoption of Practice Book § 11-21. That section requires motions for attorney's fees to be filed within thirty days of the final judgment at the Trial Court level or thirty days following the decision at the

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Appellate Court or Supreme Court level for appellate fees.

- AC37754 - [Astoria Federal Mortgage Corp. v. Genesis Ltd. Partnership](#)

In this case Plaintiff started a mortgage foreclosure. It named as a defendant a mechanic lien holder. That defendant assigned its mechanic lien to a third party and recorded the assignment on the land records. The third party then reassigned the lien back but the defendant forgot to record the re-assignment. The defendant then cross claimed to foreclose its mechanic lien claiming priority over the plaintiff's mortgage. The plaintiff moved to dismiss for lack of standing citing 47-10 which holds conveyances of interest in land are not binding upon others unless recorded. The defendant tried to fix the problem by now recording the assignment. The Trial Court agreed with the plaintiff and granted the motion to dismiss. The Appellate Court then went through a convoluted analysis of mechanic liens to mortgages and concluded that since mechanic liens are to be foreclosed like mortgages. Since the holder of a mortgage note can foreclose regardless of whether the mortgage was assigned to them, the holder of a mechanic lien should be allowed to foreclose even if their assignment was not recorded. And so 47-10 did not apply to mechanic lien assignments.

- AC37412 - [Mensah v. Mensah](#)

After several prior delays in the start of the trial, the Court received a letter from plaintiff's counsel, Miller, on the day of the trial that she had a medical condition and could not make it and sought a delay. The Trial Court continued the trial date for several days but also issued an order to show cause stating the attorney better show up and offer the court proof of her illness or face sanctions and the trial would immediately start. On the continuation date neither the plaintiff nor her attorney showed up. Instead the Trial Court received another letter from the attorney that basically said, "Like I said, I'm sick and I'm not jeopardizing my health by coming," and then attached another letter that said she had visited a clinic but gave no indication of any illness the visit was for. The court started the trial in the plaintiff's absence and issued its decision. On appeal by the plaintiff - now acting pro se - the Appellate Court upheld the Trial Court's refusal to delay the trial as being within its discretion. It also rejected the plaintiff's contention that in her absence the Trial Court should have assumed the role of her representative and more extensively critiqued the evidenced offered by the defendant - to include aggressive questioning of him.

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. © 2016 Pullman & Comley, LLC. All Rights Reserved.

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