Appellate Notes

PULLMAN & COMLEY

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# Appellate Court Notes: Week of July 22

*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*

*Posted July 22, 2014*

• SC19048 - JP Morgan Chase Bank, NA v. Winthrop Properties, LLC

Finally, the Supreme Court has decided whether or not C.G.S. 49-1 bars further action against the guarantors after a mortgage foreclosure. The Court concluded that guarantors' obligations arise separately from a promissory note. It does not matter that the plaintiff asked in its prayer for relief for a deficiency judgment against "the makers or obligors on the note." The Appellate Court had incorrectly concluded that the plaintiff's sole remedy was to pursue a deficiency judgment against the guarantors. The Appellate Court found that guarantors had an "obligation" on the debt as meant by C.G.S. 49-1. The Supreme Court said that while the statute might be read that way, it is properly meant to refer to those who have an obligation on the note . . . i.e. the makers of the note, when read in conjunction with the surrounding foreclosure statutes. The surrounding statutory provisions help define what otherwise would be an ambiguous term. A guaranty is a separate contractual obligation to answer for the debt of another. That agreement is separate and distinct from the note and is often executed at a different time utilizing different instruments. Therefore, the guarantor's liability does not arise from the note or the mortgage, but rather by virtue of a separate and distinct obligation. The Court also noted that it was appropriate for the plaintiff to bring one count to foreclose the mortgage and a separate count against the guarantors, in the same action. The trial court's rendering of a judgment of strict foreclosure on the first count of the complaint had no effect on the ability to pursue a judgment on the second count of the complaint against the guarantors. A footnote adds similarly, it

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is appropriate for a plaintiff to file a lawsuit to collect on the note in one count and to foreclose on the mortgage in an alternate count. Thus under 49-1 a foreclosure of a mortgage only bars further action against the maker of the note except for a timely deficiency judgment motion. It has no impact on the liability of the guarantors.

- SC19102 - State v. Johnson
- SC19102 Concurrence - State v. Johnson

- AC36291 - In re Avirex R.
- AC35132 - Day v. Commissioner of Correction
- AC35451 - State v. Edmonds
- AC35154 - Santos v. Commissioner of Correction
- AC35850, AC35851 - Bank of America, N.A. v. Thomas

Two foreclosure extensions, five bankruptcies and five years after the original judgment of foreclosure, the defendant filed another motion to reopen the judgment. At the start of the action the debt was only $255,000 but the property was worth $455,000. Five years later, those numbers had reversed. The trial court denied her motion. On appeal it was held that the trial judge's pre-argument comments that it was unlikely he would grant the motion did not evidence that the Court had prejudged the motion.

- AC35557 - Gugliemi v. Willowbrook Condominium Assn., Inc.

Unit owner sued Condominium Association in 2011 for its failure to fix a leaking pipe in a common area that caused mold and damage in the unit. The plaintiff first complained about the leak in 2007 asserting it was getting into the basement area. The trial court found that the claim was barred by the two-year statute of limitations of C.G.S. 52-584. It is the discovery of the leaking spigot that triggered the statute of limitations not the later subsequent discovery of mold damage in the basement. The statute of limitations begins to run when a plaintiff discovers some form of actionable harm, not the fullest manifestation that might later result.

- AC35382 - Lederle v. Spivey

*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.* 

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