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## Week of September 22

### September 22, 2014

*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 September 22, 2014

- SC19119 - Iacurci v. Sax
- SC19119 Dissent - Iacurci v. Sax

Plaintiff sued his accountant for negligence and was trying to get around the 3-year statute of limitations of 52-577. In opposition to the defendant's summary judgment, the plaintiff alleged the accountant owed him a fiduciary duty to disclose his mistake and this tolled the statute of limitation. The majority of the Supreme Court affirmed the recent Appellate Court decision in this dispute that CPAs and tax preparers do not normally owe a fiduciary duty to their clients absent more involvement in their client's affairs, such as: representing them in tax disputes with the IRS; providing investment advice; handling their finances; or recommending financial transactions they might participate in. The dissent objected to such a bright line rule for CPAs and would have left the issue to the jury to decide. The majority responded in a footnote that their decision was consistent with the majority of states and was not a bright line rule. They said the plaintiff here simply failed to put forth any evidence of anything more by the CPA other than preparing tax returns. The plaintiff's opposition to summary judgment was full of conclusory statements like "he trusted them," "he relied upon them," "they had superior knowledge," etc. But such generic statements are not enough.

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The decision also looked to when fiduciary roles can toll the statute of limitations. Tolling due to fraudulent concealment under CGS 52-595 require three elements: [1] knowledge of the mistake; [2] intentional concealment; and [3] for the purpose of delaying the claim. The federal rule allows *concealment element #2* to be satisfied by showing a fiduciary relationship. [The Court said it did not need to decide in this case whether CT would adopt the federal rule but it looks to me like they would if presented with the correct fact pattern.]

- AC35169 - Marasco v. Connecticut Regional Vocational-Technical School System

Blueprint course teacher sued the State Vo-Tech school system claiming he was improperly terminated due to retaliation and age discrimination (CGS 46a-60 & ADEA). When the system announced all blue print teaching would be updated and current teachers would need to apply for new positions, he filed an EEOC complaint before any action was taken to implement the change. He was later transferred to a different teaching position at another school when his blueprint reading course was phased out. He claimed the changes were designed to force out older teachers who principally taught the blue print reading classes. This decision noted that the US Supreme Court has held that Congress' adoption of the ADEA did not supplant State laws on this issue and CGS 46a-100 which waives the State's immunity for violations of state age laws.....does not amount to a waiver of immunity for federal ADEA claims. Thus while summary judgment was granted on the ADEA claim, it should have been upon the grounds of lack of subject matter jurisdiction due to immunity.

Summary judgment was properly granted on the 46a-60 State claim due to lack of evidence. The plaintiff offered nothing to rebut the school system's affirmations of a good faith basis for its decision to change how the course was being taught. Equally, the plaintiff failed to offer any evidence of his retaliation claim under the three part test set forth in DeMoss vs BOE.

- AC34113 - State v. Place
- AC35793 - Smigelski v. Dubois

Attorney who was suspended for charging an estate-client an exorbitant fee, unilaterally deducting it from the sale proceeds, and refusing to return it, sought a new trial on the basis of "new evidence," or a "fraud upon the court." He claimed that there existed an appraisal report which justified his fee and that report would have persuaded the trial court that he was right. This decision held this was not deemed to be *newly discovered evidence* because as the attorney for the estate he had documentation to show an appraisal had been done, if not the actual appraisal, and a party must exercise reasonable diligence in pursuing information to defend their case. It was also not a *fraud upon the court* when the executor testified about a valuation lower than the appraisal report because that testimony was stricken. Finally, the disciplinary counsel was under no obligation to correct any misinformation caused by the witness's testimony about valuation. Disciplinary proceedings are civil, not criminal. Further the evidence of the appraisal report could not be

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deemed “suppressed” by the disciplinary counsel when the respondent knew or should have known about that report.

- AC35413 - Lynch v. Lynch
- AC34951 - Grasso v. Grasso
- AC35670 - State v. Dyou
- AC36012 - State v. Abushaqra

*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. ©2014 Pullman & Comley, LLC. All Rights Reserved.*

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