
Week of April 30

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

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- SC19116, SC19150 - [Brennan v. Brennan Associates](#)
- SC19116, SC19150 Dissent - [Brennan v. Brennan Associates](#)
- In a prior appeal decision, the court upheld the judicial disassociation (forceful removal) of the plaintiff from the named partnership for wrongful conduct. The plaintiff then brought an action to have his interest valued and bought out. [By statute, only the disassociated partner can initiate the buyout process once the disassociation is ratified by a court per C.G.S. § 34-300 – § 34-399.]
- The Trial Court found that the partner was entitled to \$7 million for the value his partnership interest, that could be paid over 4 years, along \$3.5 million in interest on that amount starting from the date of the order of disassociation. On appeal, the remaining partners claimed that the Trial Court should have valued his partnership interest as of the date of the appeal decision validating their right to force him out of the partnership, as opposed to three years' earlier when the Trial Court rendered its decision. They also claimed the Trial Court incorrectly awarded the bad partner interest, and further should have deemed the majority partner's attorney's fees as a liability of the partnership.
- The Supreme Court noted that when the plaintiff appealed the Trial Court's Judgment of Disassociation, the Judgment was automatically stayed pursuant to Practice Book § 61-11(a). While the Appeal was pending, the plaintiff continued to remain active in the partnership and continued to receive \$50,000 a month in partnership profits, which totaled almost \$2 million while the appeal was pending. And during that appeal,

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the value of the partnership had declined significantly.

- CGS§ 34-362 does not define the term “Date of Disassociation,” but the decision concludes that it is clear that the date of disassociation for the purpose of valuing a partnership interest is the date the partner is actually expelled from the partnership, not the date of a judgment of disassociation being rendered by a trial court. It is the actual expulsion that counts, because that is when the partner can no longer lawfully participate in management of the partnership. Such an expulsion could not have occurred here while the automatic stay was in place by virtue of the partner’s appeal of the order of disassociation. That appeal allowed the partner to continue participating in and benefiting from the partnership. That automatic stay denied the remaining partners the fruit of their victory until it was lifted.
- Further, it is good public policy that a while partner still participates in the partnership they should share the risk during the time period of their participation that the partnership will lose value. To hold otherwise would allow a partner to act in a manner that may not be in the best interests of the partnership. The interests of all partners should be aligned. Otherwise, a disgruntled outgoing partner could sabotage the business without diminution of their own interests.
- Turning to the interest award, the decision noted that § 34-362 has two alternative procedures for valuing and buying out a partner’s interest. The departing partner can either receive a lump sum immediate buy-out, or a distribution over time with interest. If, however, the disassociation was found to be “wrongful,” then the partner is not entitled to the payout early, and is only entitled to a payout in a manner that would have been provided under the partnership agreement, absent a showing by the departing partner that an earlier payout would not cause undue hardship. Here, the Trial Court properly found under § 34-362(h) that ordering a quick payout over four years would not harm the partnership even though the disassociation was wrongful.
- But the court wrestled with whether interest accrues on the payout to a wrongfully disassociated partner. The Uniform Partnership Act was carefully drafted to protect non-breaching partners from an unexpected loss of their investment. Therefore rightfully disassociating partners are entitled to interest from the date of disassociation to the date of payment in full of their claim. But a wrongfully disassociated partner (i.e. one being kicked out because of their bad conduct) is not entitled to compensation for the use of their partnership interest because it was their own conduct that is causing the partnership to buy them out. Thus, in such a case, interest should only be due to the partner if the payments ordered by the court are not made in a timely manner. Accordingly in this case, the disassociated partner was not entitled to interest on his buyout amount unless one of the quarterly payments provided for in the judgment was not paid on time.
- The Trial Court had previously concluded that the remaining partners were not entitled to recover their attorneys’ fees as a matter of law under C.G.S. § 34-356(c) or C.G.S. § 34-362(c). The Trial Court never addressed however a second argument that an indemnity provision in the partnership agreement allowed the remaining partners to recover the legal fees for all the litigation. That issue was the only basis asserted in the appeal as to why the attorneys’ fees should have been considered a partnership liability, and therefore, the argument could not be reviewed as the Trial Court never ruled upon it.

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- A Footnote criticizes the Dissenting Opinion, which suggested that the automatic stay should not have been relied upon, because it had not been raised by the remaining partners in the first trial. The majority reply that the plaintiff had never challenged that issue in the second appeal. And, in any event, the Majority argued that the Dissent's position rested upon a deep misunderstanding of the procedural posture of the case. The Dissent further suggested that the automatic stay did not apply, because disassociation is an injunctive remedy. The Majority noted in the footnote that this is a novel claim, but even if they were to accept as true the Dissent's argument that automatic stays do not apply to injunctions, the Dissent offered no authority to suggest that disassociation of a partnership is a form of injunctive relief.
- Finally, in the last set of Footnotes, there were more barbs exchanged with the Dissent. The Majority appeared to be granting the remaining partners a second bite at the apple with respect to the attorneys' fees and the dissent did not like that. The Dissent claimed that the attorneys' fees issued was unpreserved. The Majority disagreed and said the issue *was* preserved because it was raised in the pre-trial memorandum, was set forth in the post-trial brief and was set forth in the proposed findings of fact. Therefore, upon remand, the Trial Court can once again take up the issue of whether the remaining partners can claim their attorneys' fees under the partnership indemnification provision, since the Trial Court has to take up other issues anyway.

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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