
Week of February 2

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 February 2, 2015

- SC19194 - State v. Miranda
- SC19289 - Deutsche Bank National Trust Co. v. Perez

Supreme Court upheld Appellate Court's decision to reform the plaintiff's mortgage.

- SC19226 - Sullins v. United Parcel Service, Inc

In this case, the Supreme Court had to decide how to allocate the disability payments when the worker's injury was due to a non-occupational condition that started before employment, but the work injury damaged the same body part. The Appellate Court had determined that the worker's compensation carrier had to pay for all of the disability to the worker's arms, rather than apportioning the payment to the work and non-work (i.e. employee's responsibility) components. The Supreme Court agreed with the Appellate Court.

Here, the worker's diabetes caused weakness in his hands, but work injuries aggravated that condition. Upon retirement, the worker was diagnosed with 44% partial impairment of his arms, with the doctor attributing 10% to the work-related injury. Issuing its decision, the Supreme Court noted that the statute is humanitarian and remedial in purpose, and should not be construed so as to unduly limit worker's compensation benefits. The Court also noted that an employer is responsible for all consequences of an injury to an employee, even

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though the consequences are aggravated by the employee not having had been a “normal person.” The Court added that its decision was entirely consistent with the purposes of C.G.S. Section 31-349. Under this statutory scheme, compensation is allowed for an injury that combines with a pre-existing non-occupational disability to materially increase the worker’s overall impairment. Thus no apportionment between the employer and employee was appropriate here.

The decision goes on to point out that apportionment of responsibility for two concurrent disabilities is only appropriate when one disability is occupational and the other disability is non-occupational, when the condition of the worker’s occupation had no influence on the development of the non-occupational disease. The Court was slicing its meat pretty thin as it tried to distinguish the two different scenarios. It stated that its earlier decision allowing apportionment was based upon a unique set of facts, where the worker had a pre-existing disease that independently worsened over time, regardless of the work related injury. [Hmmm- not sure that’s a whole lot different from diabetes' effects which can get worse over time.]

Thus, Connecticut now has two (court-created) standards for whether concurrent disabilities can give rise to worker’s compensation coverage. The disability is fully covered if the worker has a pre-existing disability that combines with a later work injury that aggravates the condition. It is only partially covered if the worker has a pre-work disability or injury or disease that progresses independently of the work caused injury, even if they harm the same body part. [Glad I don’t handle workers comp claims.]

- AC35758 - State v. Gould
- AC35758 Concurrence - State v. Gould
- AC34078, AC34710, AC35204 - McKeon v. Lennon

Matrimonial decision. Not summarized.

- AC36198 - Housing Development Fund, Inc. v. Burke Real Estate Management, LLC

This case was another challenge to a court-approved foreclosure sale auction. In this case, the Trial Court approved the auction of an apartment building appraised at \$550,000 which generated bids up to \$500,000 at the auction. A subordinate lienholder challenged the Court’s approval of the sale, arguing that the committee (aka auctioneer) did not gain access to the interior units that would have potentially generated higher bids. The defendant also claimed that the tenants had to have been named defendants to the foreclosure as necessary parties. The Appellate Court noted that, despite the defendant’s contentions, Form JD-CV-81 specifically provides that under no circumstances may a foreclosure committee force entry into a property against the will of the party in possession. Here, the committee went around and asked tenants if they would allow access, and that’s all he had to do. A committee does not have to force the tenants to allow access. Additionally, the defendant failed to present any evidence to establish that such an inspection would have generated higher bids.

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Finally, the Court disagreed that the tenants were necessary parties. It noted that under Connecticut law, title to property and possession of property are separate questions and that title is often obtained via foreclosure without acquiring the right to possession. It is up to the mortgagee when it commences its foreclosure to decide whether to name a tenant as a party to the foreclosure and obtain an ejectment, or, to separately file a summary process (eviction) action after obtaining title.

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.

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.