Appellate Notes

PULLMAN & COMLEY

*A publication of Pullman & Comley, LLC*

# Week of February 28, 2018

## February 28, 2018

*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 28, 2018*

### Appellate Court Advance Release Opinions:

• AC38581 - Brady v. Bickford

Husband and wife defendants were related to the husband and wife plaintiffs. The defendants were convinced the plaintiff husband (a state trooper) was abusing his wife, despite her denials, and they filed numerous statements and complaints with a variety of law enforcement agencies and state agencies over a period of years making those claims. Each time their allegations were found to be unsupported. The last incident was within two years of the complaint and involved the defendant wife testifying before a commission charged with looking into their allegation the plaintiff husband used his police contacts to taint the prior investigations. The plaintiffs then sued for negligent and intentional infliction of emotional distress. The defendants pled a special defense of the statute of limitations (SOL). The plaintiff replied that the SOL for their claims for even the earliest incidents was tolled by the continued conduct over several years. The defendants failed to response to that tolling claim with a special defense of litigation privilege. Nonetheless, they argued that their last conduct could not toll the statute of limitations because testifying before a quasi-judicial administrative agency was entitled to absolutely immunity. The trial court agreed, allowed the defendants to amend their pleadings to assert the defense, and dismissed the claims.

## Week of February 28, 2018

On appeal, the plaintiffs claimed that the trial court should not have considered the defense of absolute privilege when it had not been pled as a special defense. The Appellate Court disagreed. It noted that ***qualified privileges*** must be pled as special defenses in certain actions like defamation – but litigation privilege (or ***absolute immunity*** or absolute privilege – all terms used in the case) implicate subject matter jurisdiction of the court and as such can be raised at any time. It did not matter that the first time the defendants raised that defense was in a Motion for Summary judgment. It also did not matter that the defendant then dropped the defense during oral argument when the plaintiff claimed it had not been affirmatively pled. Merely dropping a point of argument during SJ arguments does not amount to a waiver of the claim being raised at trial. In any event, the plaintiffs cannot claim surprise when they saw the defense asserted in an earlier SJ memo **and** that **defense of absolute immunity cannot be waived**.

The plaintiff next tried to attack the application of absolute immunity to the defendant wife's testimony before a commission claiming she brought up complaints of hers just to defame him that had nothing to do with their investigation. The Appellate Court noted that the privilege afforded to testimony before any judicial type proceeding is extremely broad, and even covers false and malicious statements. It includes quasi-judicial proceedings before administrative agencies. It was enough that the testimony related to the plaintiff's conduct.

• AC39241 - Toland v. Toland

After agreeing to grant the arbitrator in a marital dissolution action broad powers, the plaintiff-wife's multi-pronged attack on the award - including assertion of bias on the part of the arbitrator / former judge, proved unsuccessful. The courts will only review those portions of an arbitration award where the parties reserved the review in the submission. Here the alleged legal challenges to the award were found to in actuality amount to factual challenges.

• AC39988 - Cliff's Auto Body, Inc. v. Grenier

OK – watch out for this one. Plaintiff obtained a judgment but the trial court had yet to decide what pre and post-judgment interest to award. Nonetheless the plaintiff jumped the gun and went ahead and recorded a judgment lien. The defendant appealed but the Appellate Court made its own motion to dismiss the appeal as it was not a final judgment yet w/o interest having been decided. The plaintiff woke up and asked the trial court to now award the interest, which it did. The problem was it was now 15 months after the original judgment. The plaintiff then started a foreclosure of the judgment lien on debtor's property. A Motion to Dismiss the foreclosure was denied and a foreclosure by sale was ordered. On appeal it was held that the original judgment lien was premature, and thus void, because it could not possibly have set forth the entirety of the debt. The amount of interest had not been determined. You could not look to the subsequent interest award because it too was void as the trial court lacked jurisdiction 15 months later to modify the original judgment. Thus, the foreclosure was set aside and the lien thrown out.

PULLMAN & COMLEY

## Week of February 28, 2018

The Court held that the proper procedure would have been for the plaintiff to have moved within four months of the original judgment to reopen the decision to add the interest and then record a modified & corrected Judgment Lien. [Also – watch out for footnote #6 in this case. It implies that a Judgment Lien must be recorded within 4 months of the judgment under 52-328. Putting aside this might be considered dicta – if that is what the Court was trying to say – it was taking a quote from the statute out of context. I believe what that statute really says, when read in its entirely, is that a judgment lien must be recorded within 4 months in order to relate back to any prior PJR attachment. Otherwise a Judgment Lien dates to the date of recording.]

• AC39009 - Frantzen v. Davenport Electric

Workers Compensation Commissioner has the authority to resolve a dispute over attorney fees claimed between two sets of lawyers who represented the claimant.

• AC38991 - Kimberly C. v. Anthony C.

Trial court in a dissolution action was not required to apply the doctrine of collateral estoppel to take either a stipulation permitting a preliminary restraining order against sexual or physical abuse that contained no judicial admissions by the defendant, or a finding that the plaintiff presented credible testimony as part of the court's rejection of the plaintiff's second attempt at extending the restraining order, as conclusive findings and incorporate them into some component addressing those claims in the final dissolution decree.