
Week of February 27, 2017

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 March 1, 2017

Supreme Court Advance Release Opinions:

- SC19734 - [Wall Systems, Inc. v. Pompa](#)

Plaintiff - construction company - discovered one of its supervisors who was paid ~\$200k/year was working for a competitor at the same time, after hours, helping them put together bids, sometimes for the same jobs the plaintiff was bidding on. He was also demanding kickbacks from some of the plaintiff's subcontractors. He was fired and sued by his former employer for [breach of loyalty](#), theft and fraud, seeking \$500,000 in damages to be trebled. The Trial Court agreed with the plaintiff's claims, but concluded the plaintiff had failed to establish an actual dollar amount by which it had been damaged by the side bid work, so it declined to award damages for that claim. The Trial Court did find the defendant received at least \$14,000 in actual cash kickbacks and concluded that the conduct amounted to fraud and theft, which should be trebled to \$40,000 damages. To this amount, the Trial Court added \$20,000 in interest and \$25,000 for attorney fees.

The plaintiff appealed, claiming that once it agreed with the plaintiff's claims, the Trial Court had no choice but to order the defendant to forfeit all his pay during the period of disloyalty – from both companies. The defendant cross appealed claiming that the Trial Court should not have imposed a constructive trust upon his wife's bank account when there was no evidence she was involved.

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The Supreme Court agreed that forfeiture of compensation, including disgorgement from third parties, are remedies available for breach of loyalty claims, they are not mandatory damages. Rather, as a matter of first impression for Connecticut, the Court concluded they fall within the range of damages a Trial Court has discretion to award after applying the principles of equity. It was not shown here that the Trial Court abused its discretion in refusing to award those remedies.

Finally, the Court set aside the constructive trust. Even though it was a joint bank account of the husband and wife, and even though a Trial Court may impose a constructive trust to lock up the money derived from a breach of loyalty scenario, it was held that the plaintiff failed to present any evidence that any of the proceeds the defendant obtained from his conduct was actually deposited into that account.

- SC19700 - [Horner v. Bagnell](#)

Two-person law firm split up and the junior partner took some hourly rate and contingency work files with him. He thereafter refused to share any of the fees recovered on those files with his former partner, who as a result, sued him. This decision held that the Trial Court properly refused to award any of the post-dissolution hourly fee income to the plaintiff as that would be a violation of the fee splitting prohibition of Rule 1.5(e). Nonetheless the Trial Court could award a pro-rated portion of the contingency fee deemed earned before dissolution of the partnership to the plaintiff under a theory of unjust enrichment. That amounted to ~ \$100,000. The majority rule, called the Unfinished Business Doctrine, is that absent a partnership clause to the contrary, a contingency fee matter is an asset of the law firm, up and until dissolution, such that the partnership is entitled to share in the ultimate recovery. This rule also prevents partners from a dissolving law firm from scrambling to grab the most lucrative files that will tend to pay out the quickest and/or largest amounts as they head out the door. The rule does not implicate a client's right to choose their counsel. They are still getting what they bargained for. The Justices did not take kindly to the defendant's last argument that the former partner should be forced to sue the client for quantum meruit if they wanted to recover any fees.

A footnote adds that the Court applied partnership law to this dispute even though the firm was set up as an LLC, because that is how the attorneys treated the legal entity. Another footnote distinguishes this case from the recent NY decisions precluding a trustee of a bankrupt law firm from claiming a share of post-dissolution hourly work taken by a departing partner, but then warns you can't rely upon the NY authority as even that area of the law is in a state of flux due to a pending case in the 9th Circuit and changes in the Uniform Partnership Act.

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. © 2017 Pullman & Comley, LLC. All Rights Reserved.

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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.