
Week of January 19, 2016

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 April 4, 2016

Supreme Court Advance Release Opinions:

- SC19494 - [State v. Berrios](#)

Appellate Court Advance Release Opinions:

- AC37045 - [Hickey v. Commissioner of Correction](#)
- AC33954 - [Burr Road Operating Co. II, LLC v. New England Health Care Employees Union, District 1199](#)

A nursing home terminated an employee who already had her third and final warning for prior improper conduct, when it concluded that she failed to timely report her suspicion of mistreatment of a patient. Pursuant to the Collective Bargaining Agreement, her appeal was submitted to an arbitrator as an unrestricted submission to decide if she was properly terminated. The arbitrator acknowledged the prior warnings, but noted that the employee undertook her own investigation to confirm that there had been potential abuse before reporting the matter, and therefore concluded termination was too harsh of a result and a suspension without pay and subsequent reinstatement was more appropriate.

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The Trial Court upheld the arbitrator's decision. The Appellate Court reversed, concluding it was against public policy to reinstate an employee who had delayed reporting potential abuse of a patient.

The Supreme Court reversed holding the arbitrator's decision did not violate public policy, and remanded the matter to the Appellate Court to determine whether or not the arbitrator exceeded the scope of his authority by not giving enough weight to the prior warnings to the employee.

This time around, the Appellate Court upheld the arbitrator's decision, noting that when parties include an arbitration clause, in their contract, they are foregoing the formalistic rules that govern a courtroom, and are instead relying upon an arbitrator's judgment of what is fair. That is especially true when the contract that authorizes termination for "just cause" fails to define what that term means. While "just cause" is a commonly utilized term in contract provisions dealing with labor management, there is no standard definition of exactly what it means. The common understanding is that "just cause" requires not a determination of whether the employee committed the infraction, but whether or not the proven conduct was sufficient grounds to impose the discipline handed out.

In this instance, where there was an unrestricted submission, without stated grounds in the contract of what amounts to "just cause," the arbitrator can take into account, as he/she deems fit, the weight and significance of the prior warnings in determining the appropriate sanction to be imposed upon the employee.

- AC37217 - [Levinson v. Lawrence](#)

Plaintiff befriended his college sweetheart after she divorced her husband, and agreed to pay off a \$60,000 mortgage on the girlfriend's house that was owed to her ex-husband. The plaintiff then moved in with the girlfriend, but over time the relationship became violent, and the plaintiff was forced out by a court protective order. The plaintiff then initiated a series of harassing tactics, including suing the defendant in Small Claims Court, filing complaints with town officials, parking in front of her house, harassing her at her place of employment, and then filing this lawsuit, claiming he was entitled to a **resulting trust** interest in her property by virtue of his improvements and the \$60,000 mortgage that he paid off.

The Trial Court rendered judgment in favor of the defendant, and awarded her \$13,000 in damages on a defamation of title counterclaim. The plaintiff appealed. The Appellate Court noted that in deciding whether there was a resulting trust, the intent of the parties controls, and in determining intent, the Trial Court must weigh the credibility of the witnesses.

The decision stated that as a general rule, courts should enforce claimed contracts between non-marital partners, except as explicitly conditioned upon sex as payment. When an agreement is claimed, but there is no evidence of an express contract, the court should inquire into the conduct of the parties to determine whether or not there was an implied contract, or other tacit understanding. As between non-married partners, the court can also employ the equitable remedies of *quantum meruit* and *constructive or resulting*

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trusts to ensure that the agreement of the parties is carried out.

The plaintiff claimed the Trial Court should have made a finding that there was a resulting trust from his agreement to pay off the ex-husband's mortgage. He said she agreed to give him a 50 percent interest in the property as security. The girlfriend testified, however, that she never promised to convey any interest in the property, but simply offered to repay the funds if and when the relationship faltered, and she sold the house. There was no evidence regarding the purported agreement, other than the testimony of the parties themselves. The Trial Court concluded there was no such agreement. That court also concluded all of the improvements to the house were done by the plaintiff for comfort reasons, not to protect his purported investment in the house, as he claimed. It was within the province of the Trial Court to discredit the testimony of the plaintiff as it saw fit to make these factual findings. Absent a finding of mutual intention to grant the defendant an interest in the property, the Trial Court properly found that there was no equitable basis for imposing a resulting trust against the property. The Appellate Court will not disturb on appeal a trial court's decision based upon factual findings.

There was no unjust enrichment on the part of the defendant for the monies expended by the plaintiff for improvements and renovations to the property. When such expenditures were made to make the property more livable for both of them, and were initiated by the plaintiff himself, which he admitted he undertook willingly, then the retention of that benefit by the defendant was not "unjust."

As a general rule, for the benefit to be **unjustly** retained, the defendant must have solicited the benefit. The doctrine is inapplicable when the benefit has been conferred upon, and not requested by, the recipient. In those situations, the defendant is enriched, but not unjustly. This is especially true where the grantor was conferring a benefit upon himself, such as here where he was making himself more comfortable with the improvements he made to the house he was living in.

Finally, the Appellate Court turned to the counterclaim for defamation of title due to the refusal of the plaintiff to release two notices of *lis pendens* he recorded against the property. The defendant's attorney made written demand for release of the two notices of *lis pendens*. First, the court noted that for statutory damages and attorney's fees to be triggered, the *lis pendens* must first have "become of no effect" under C.G.S. § 52-326 pursuant to C.G.S. § 49-8. An improper *lis pendens* should be attacked pursuant to C.G.S. § 52-322, which requires either a court order finding the *lis pendens* has no probable cause, or a resolution of the underlying controversy, such as the plaintiff receiving satisfaction of their claim, or a judgment against them or a failure to return the writ to court. Only when the *lis pendens* is rendered ineffective for one of those reasons, is the property owner entitled to a release, and thus, entitled to statutory damages and attorney's fees if, sixty days after written demand, a release is not forthcoming.

None of the statutory reasons entitling the defendant to a release were present here. An encumbrancer has no obligation to release a notice of *lis pendens* simply because it receives a demand letter, even if such letter is replete with good reasons. Here, the attorney sent the demand letter, but never pursued an application for

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discharge of the *lis pendens* pursuant to C.G.S. § 52-325(b) for lack of probable cause nor under C.G.S. § 52-325(d) if the *lis pendens* was defective. The defamation of title damages were set aside.

- AC36612 - [State v. Palencia](#)
- AC35654 - [State v. Ralph B.](#)
- AC37403 - [Arthur v. Commissioner of Correction](#)
- AC36954 - [Pollansky v. Pollansky](#)

Mother brought a summary process action against her son, who claimed he was occupying her property she inherited from her husband. The son claimed an ownership interest because his father had allegedly orally promised the property to him.

The Trial Court concluded the mother was the rightful owner and entered a Judgment of Possession in favor of the mother, and the Appellate Court affirmed. The son then brought a second lawsuit against the mother and others alleging breach of contract, unjust enrichment, *quantum meruit* and adverse possession, again claiming an ownership interest in the property, in addition to being owed money for improvements he had performed. The Trial Court again rendered judgment in favor of the mother and the new defendants, ruling that *res judicata* and collateral estoppel precluded all of the claims in the new lawsuit.

The Appellate Court partially reversed, holding that the claims of unjust enrichment and *quantum meruit* were not bound by the prior proceedings. The court reviewed the claim preclusion doctrines of *res judicata* and *collateral estoppel*, and distinguished the two. The claim of breach of contract for refusing to convey the property was barred by *res judicata*, as the issue of ownership was already decided in the prior litigation. The breach of contract claim was also barred against the new defendants in the latest lawsuit, even though they were not parties to the original summary process action. The claims against the new defendants were barred under the doctrine of collateral estoppel. Mutuality of the parties is not a bar to the application of collateral estoppel in Connecticut. To allow a party who has fully and fairly litigated an issue in a prior trial to avoid the ruling against them simply because they are suing a different opponent, is inappropriate and unnecessary. Therefore, it does not matter that the new defendants in the latest lawsuit were unrelated to the defendant's mother in the initial lawsuit. The findings in the first lawsuit are equally applicable to claims of ownership the son might make against others in the second lawsuit.

Next, the Appellate Court held that the Trial Court's finding in the summary process action that the son did not own, but did have his deceased father's permission to occupy, the property (up until the eviction) precludes him from now asserting a claim for adverse possession in the second lawsuit against his mother under the doctrine of collateral estoppel.

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Lastly, the claims for unjust enrichment and *quantum meruit* for improvements the son claimed to have made to the property, were not actually litigated in the summary process proceedings. Summary process proceedings are limited to determining who is entitled to possession of the property, and the son would not have been allowed to assert a counterclaim for money damages in those proceedings. The issues not having been litigated, *res judicata* does not bar these two equitable claims from being made now for the first time. Similarly, collateral estoppel will not preclude those two claims because the limited nature of summary process proceedings would have precluded the Court from adjudicating the plaintiff's claims for non-contractual money damages. Any rulings that the Summary Process Judge found with respect to improvements to the property were not essential to the underlying eviction proceedings. Collateral estoppel only applies to bar re-litigation of facts that were formally put in issue and ultimately determined by the prior court.

- AC37244 - Norberg-Hurlburt v. Hurlburt

Plaintiff and defendant were divorced after a seventeen-year marriage. The ex-wife was obligated to maintain the family house and pay the mortgage. Alimony was modifiable only upon the plaintiff ex-wife's cohabitation, which was defined as a relationship similar to that of husband and wife. The wife relocated to New Jersey, defaulted on the mortgage, let the house fall into ruin, and filed Chapter 7 Bankruptcy. The defendant ex-husband filed a motion for contempt for failure to pay the mortgage, keep the property in repair, pay taxes, and sought to terminate his alimony because the wife was now cohabitating with a man in New Jersey as husband and wife. The plaintiff responded that she had not remarried, but conceded that she was in a relationship, but that it did not impact the defendant financially one bit. With respect to her failure to make the house payments, she claimed the failure was not willful as she was broke. Counsel for both sides showed up at the court hearing, but the plaintiff failed to appear, and instead had her lawyer read a letter to the court from her employer as to her unavailability, whereupon her lawyer asked for a continuance. The Trial Court denied the motion for continuance, and proceeded with evidence from the defendant. At the conclusion of the evidence, the court made a finding of contempt, and made an award of attorney's fees, and terminated the alimony based on the former wife's failure to appear and offer testimony of her economic condition or refute the suggestion of cohabitation.

On appeal, the plaintiff claimed that her financial difficulties were a good defense to the claim of contempt. The Appellate Court noted, however, that it was only the unsworn statements of her counsel about her financial difficulties, and those are not evidence. While inability to pay may be a defense to a contempt motion, the burden of proving inability rests upon the obligor. She should have come to court and testified. As to the alimony issue, there was sufficient evidence because the defendant testified that the plaintiff was cohabitating, and introduced a newspaper article referring to she and her friend as being engaged. The Trial Court could then properly draw an adverse inference from the failure of the ex-wife to show up and refute that evidence presented by the defendant. The appeal was dismissed.

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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. © 2016 Pullman & Comley, LLC. All Rights Reserved.

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