Appellate Notes

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

Week of January 19

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@pulcom.com I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted January 19, 2015

• SC19298 - Getty Properties Corp. v. ATKR, LLC

Defendants appealed eviction judgments against them for a series of gas stations located on properties owned by the plaintiffs. Getty Properties Real Estate Investment Trust leased the properties to Getty Marketing, with further permission to sublease, provided all subleases were subject to and subordinate to the master lease, which would be terminated in the event of termination of the master lease. Getty Marketing then subleased the properties to Green Valley with a clause making reference to the obligations under the Master Lease, including the right to terminate. Green Valley then entered into individual subleases with each of the defendant gas station dealers. Once again, the sub-subleases were expressly subject to and subordinate to all prior superior leases. When Getty Marketing failed to pay rent to Getty Properties, litigation ensued with a settlement that Getty Marketing then violated.

A new Notice of Termination was sent to the gas station operators, whereupon Getty Marketing filed for bankruptcy. Getty Marketing then proposed to reject the Master Lease in its bankruptcy, whereupon Getty Properties entered into a new sublease with NECG Holdings Corporation (NECG). Getty Properties, notified the defendant station operators that they could enter into temporary license agreements as their leases were coming to an end. Ultimately, the master lease was rejected in bankruptcy, and before a subsequent motion confirming rejection of all subleases had been entered, Getty Properties wrote to the defendant station

Week of January 19

operators, demanding that they either execute the license or vacate the properties. All subsequent rent checks were rejected by Getty Properties. Getty Properties and NECG then served the defendants with Notices to Quit, and shortly thereafter, the Bankruptcy Court confirmed rejection of all subleases. The multiple evictions were consolidated on the Complex Litigation Docket, where the plaintiffs were granted possession.

On appeal, the Supreme Court first responded to a challenge over the validity of Notices to Quit, because an associate signed the partner's name and then initialed it. C.G.S. Section 47a-23 allows a lessor's attorney to sign the Notice to Quit. The Court held that the document afforded the defendant with actual notice, and any irregularity with the signature could not possibly have misled or prejudiced them. The associate who signed the notice on behalf of the partner had the partner's explicit authority to do so. Next, the Notice to Quit signed by NECG was challenged because it did not yet have a certificate of authority to transact business in Connecticut. But that failure was deemed a voidable defect, not an issue of subject matter jurisdiction. Here, the subsequent receipt of the certificate cured any defect.

Next, the Court ruled that it did not matter that the Bankruptcy Court had not rejected the subleases when the Notices to Quit were issued, because it was the Master Lease that mattered, and which conveyed any rights of the defendants to possess the properties. Next, the Court said it was not error for the Trial Court to admit the Master Lease even though it was missing attachments when the defendants had admitted in their answer that they took possession of the property by virtue of the Master Lease. The Supreme Court also rejected the tenants' claims that mere termination of the Master Lease did not affect the rights of subtenants under their validly executed subleases. The Decision notes that the rule to the contrary only applies when the subleases are not subject to the terms of the original lease.

Finally, the Court refused to consider the subtenants' claims that the lawsuit was premature because they had not been properly afforded their rights under the Federal Petroleum Marketing Practices Act, which they claim preempted State summary process law, because the claim had not been adequately briefed.

- SC19298 - NECG Holdings Corp. v. Pamby Motors, Inc.
- SC19299 - NECG Holdings Corp. v. 331 West Avenue Gas Station, LLC
- SC19300 - NECG Holdings Corp. v. West Broad Service Center, LLC
- SC19300 - NECG Holdings Corp. v. Navjot Enterprises, Inc.
- SC19301 - NECG Holdings Corp. v. HSTN, LLC
- SC19302 - NECG Holdings Corp. v. Bodaeve, Inc.
- SC19302 - NECG Holdings Corp. v. Mica Enterprises, Inc.

- AC35433 - Bellsite Development, LLC v. Monroe

Week of January 19

Plaintiff claimed that town officials had agreed to locate their communication equipment for emergency responders on a tower, to be built by the plaintiff on volunteer fire department property. Plaintiff claimed reliance upon a series of first selectman's representations that the town would locate the equipment in pursuing zoning approval for the project. When a zoning appeal delayed the project for two years, the town officials indicated they were no longer interested in locating their equipment on the tower, and plaintiff claimed this killed the project. Plaintiff sued the town for breach of contract and won a jury verdict for over $700,000. On appeal, our own Rick Robinson convinced the Appellate Court to not only set aside the jury verdict, but to direct that judgment be issued in favor of the town. The Appellate Court cited the long-standing rule that those who negotiate with a municipality must not only show a breach of contract, but have the additional burden of proving that the government officials with whom they were negotiating, had the authority to enter into the contract. The town charter in this case required all contracts to be approved by the town council, not the first selectman. At no time was evidence offered that the town council had authorized the first selectman to enter into any contract binding the town to locate its communications facilities upon the plaintiff's cell phone tower.

Ruling out any express authority, the court then turned to reviewing whether or not the facts as presented evidenced any express or implied (a/k/a actual) authority . . . or apparent authority on behalf of the first selectman to bind the town. Having ruled out actual authority, the court then looked to implied authority. The court noted that the first selectmen testified that they never actually promised the plaintiff they would locate on the tower, but only said it was a good idea. There was no evidence to suggest that the town council had conveyed express or implied authority to the First Selectman to enter into a contract. In fact, all approvals up to that date concerning even discussing the tower had been run through the town council. Absent any evidence of express or implied agency relationship between the town council and the first selectman, the court then turned its attention to any possible apparent authority. As a matter of first impression, the court sided with several sister states, holding that municipalities cannot be liable under a theory of "apparent authority." The concept of apparent authority is inconsistent with established municipal law that anyone entering into an agreement where the government assumes the risk of having accurately ascertained who the authority to act on behalf of the governmental unit.

Next, the court looked to whether or not there had been any ratification by the town council of the first selectman's actions that could bind the municipality, and found that no such evidence had been presented to jury on this issue.

Finally, the court turned its attention to the plaintiff's negligent misrepresentation claim, which asserted that one of the first selectman had stated that the town would place its equipment on the plaintiff's tower. Reviewing the actual testimony, however, the Court found that the statements made were not false when made. The statement was simply that if the tower was approved and if the towns needs were met, the town would locate its equipment. That statement did not come to fruition. Statements that do not come to fruition, do not rise to the level of negligent misrepresentation. There was no evidence that the first selectman knew

Week of January 19

or had reason to know her statement was false when made. It was merely a statement of present intention to act in the future. Such a statement does not bar one from changing their mind later based upon new facts and circumstances. Changing a course of action does not automatically render the original statement false

- AC35691 - Paulino v. Commissioner of Correction
- AC33424 - St. Juste v. Commissioner of Correction
- AC36041 - Dept. of Transportation v. Cheriha, LLC

Plaintiff appealed a condemnation award by the State DOT in the amount of $125,000. The Trial Court increased the award to $243,000, and the property owner appealed. The parcel amounted to .44 acres of mixed-use zoned property with a 2,000 square foot masonry building and garage repair bays occupied by a used car dealer. The owner's appraisers opined that the parcel was worth between $320,000 and $340,000, and the owner himself testified that he thought it was worth $850,000. The State's appraiser opined the property was worth only $125,000. The Trial Court accepted what it felt were the best comparables, and a square foot pricing in arriving at its conclusions. On appeal, the Court first held that the Trial Court was within its rights to preclude a witness from testifying about his letter of intent to purchase the property for $850,000. The Court allowed the letter in solely to back up the owner's own opinion of value, but noted that the author had no expertise on property valuation. This was proper, since the author of the letter was not a valuation expert.

Next the decision held that admitting the State's appraiser's testimony was not erroneous simply because he misidentified the zone of the subject property. Finally, the Court held that just because the Memorandum of Decision did not make reference to the owner's opinion of value does not mean that the Trial Court failed to consider that testimony. The value of $850,000, being much higher than all of the experts' opinions, leads to the logical conclusion that the Trial Court considered it, but disregarded it. It is not necessary for each factor considered by a Court to be meticulously cited within its memorandum of decision. Appeal dismissed.

- AC35426 - State v. Fairchild
- AC36451 - State v. Williamson
- AC33223 - Martin v. Commissioner of Correction
- AC36039 - Talton v. Commissioner of Correction

PULLMAN & COMLEY

Week of January 19

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.