Appellate Notes

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

Week of January 29, 2018

February 2, 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 2, 2018

Appellate Court Advance Release Opinions:

- SC19725 - Jones v. State
- SC19725 Concurrence - Jones v. State
- SC19754 - Bouchard v. State Employees Retirement Commission
- SC19727 - Brooks v. Powers

It was a dark and stormy night. So instead of going out on their patrol boat, two constables kept busy driving between their boat (to make sure the bilge pumps were running, and the donut shop. At one point the tax collector of the town drove up and said he saw a woman standing in a nightgown in a field, near the water's edge, just down the road out in the rain, with her hands up in the air who might need medical help. One constable said he would "take care of it." But what he did was he called it in to 911 and joked with the dispatcher about how they were supposed to check on someone standing in the rain. The dispatcher never sent anyone to check on the woman claiming "he forgot." The two constables drove past the spot a few hours later but saw nothing. The woman was found floating dead the next morning. The subsequent lawsuit by the estate was tossed on immunity grounds. The Appellate panel reversed and the Supremes reversed the

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Appellate panel and reinstated summary judgment for the officers. To come within the identifiable person exception to government immunity, the government official must be aware of the "specific harm" the person might suffer – not general harm. Standing out in the rain does not equate to an expectation that someone may drown. Obviously incensed by the cavalier attitude of the officers – Justice Everleigh dissents – but argues for a too broad definition of exposure to any risk.

- SC19727 Dissent - Brooks v. Powers
- AC36832 - State v. Blaine
- AC39200 - State v. Anthony L.
- AC39135 - General Linen Service Co. v. Cedar Park Inn & Whirlpool Suites

After a being defaulted the defendant claimed the trial court had no jurisdiction to hear the case because it was an unincorporated entity that was a d/b/a of a corporation that was never cited in as a party defendant. Held: the failure to cite in even an arguably necessary party does not deprive the court of subject matter jurisdiction. Judgement sustained.

- AC39289 - Hazel v. Commissioner of Correction
- AC38670 - Megos v. Ranta

Plaintiff's first motor vehicle negligence lawsuit was served with one day to spare on the SOL upon the Commissioner of Motor Vehicles and mailed to the out of state defendant's last known address. But the address was wrong and the suit was dismissed. The plaintiff re-served the complaint under the Accidental Failure of Suit ("AFS") Statute and the trial court dismissed again holding that the original suit was not "commenced on time" as required by the AFS Statute. The Appellate Court reversed holding that the original service upon the Commissioner of Motor Vehicles "commenced" the suit before the SOL expired. The failed original service upon the defendant's residence only goes to the manner of service. Thus the AFS Statute was available for the plaintiff to use.

- AC38233 - United Amusement & Vending Co. v. Sabia

Defendant bar signed an agreement with Plaintiff to lease video games and split the proceeds. Plaintiff went out and bought the equipment from a seller and then Defendant refused to allow the Plaintiff to install the items in the bar Plaintiff sued and was awarded damages. Defendant appealed. Held: an appeal is ripe even though the trial court has yet to rule on a request for an award of attorney fees. Next, this decision threw out the damage award because it was based largely upon the Plaintiff's claim it would be charged a 50% restocking fee if it returned the equipment to the seller – but in fact it did not return the equipment. The Appellate panel then chastised both the parties (and by hint – even the trial court) for going through the

whole case without mentioning the UCC even once, and the parties were directed to do so upon remand. Even though this was characterized as a lease deal – the UCC would deem it a "sale" and no one addressed Article 2A and how it spells out the remedies upon default.

- AC39674 - Fields v. Commissioner of Correction
- AC38482 - Doctor's Associates, Inc. v. Searl

Franchise agreement provided that it was to be governed by Connecticut Law (except as otherwise provided in the agreement). But another clause provided that Federal Law would preempt any state law as to the enforceability of mandatory arbitration. After an arbitration decision, the franchisee moved to vacate and argued they did not receive proper notice. The state court judge, applying CT law denied the motion, holding that the Motion to Vacate was not filed in time under CT's statutes. The Appellate Court reversed holding that the only way to read the two clauses together meant that Connecticut law would apply to substantive matters, but the parties had agreed to apply Federal Law to procedural matters, at least as concerns enforceability, and an attempt to ***vacate the award*** implicates enforceability. The matter was remanded to determine if the Motion to Vacate would have been deemed timely under Federal Law.

- AC38953 - State v. Juarez
- SC19728 - Ridgaway v. Mount Vernon Fire Ins. Co

This case reaffirmed that the sanction of nonsuit should be only used as a last resort. The trial court must consider the nature and frequency of the transgressions and whether alternative sanctions would compel compliance, to include a DQ of the existing counsel for the offending side, rather than tossing the case entirely. Here plaintiff's counsel kept avoiding a judge's direct order to file with the court a disputed document for an in-camera review, claiming over and over that it was confidential. Repetitive objections were filed w/o revealing to the Judge that the document contained the standard exceptions to non-disclosure, including to comply with a judge's order. Ultimately the SC held that some of the factual conclusions relied upon by the Trial Court in ordering a nonsuit were not supported by evidence, and some were. Since the attorney's conduct clearly amounted to a **Material Misrepresentation to the Court By Omission**....some sanction was warranted...but whether it justified the ultimate sanction of dismissal had to be re-weighed using the **Proportionality of the Crime to the Punishment Test** using just the facts supported by the evidence. The matter was remanded.

reading. The Docket number should be a link to the full decision.