
Week of July 25, 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 August 24, 2016

Supreme Court Advance Release Opinions:

- SC19378 - [State v. Francis](#)
- SC19411 - [State v. Wright](#)

Appellate Court Advance Release Opinions:

- AC35949 - [State v. Porter](#)
- AC36656 - [State v. Gonzalez](#)
- AC36971 - [Jamison v. Commissioner of Correction](#)
- AC37022 - [State v. Harper](#)
- AC37896 - [Bank of America, N.A. v. Aubut](#)

Trial Court improperly granted summary judgment to plaintiff who was the assignee of a note and mortgage in this foreclosure action. The plaintiff claimed as an assignee of the note, it was not subject to the defenses being asserted by the residential lender. Wrong said the Court which pointed out that an assignee of a note who does not affirmatively assume the liabilities does not take subject to affirmative claims, but does take subject to all defenses, including a defense of setoff.

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This decision also held that CUTPA is not properly asserted as a special defense. It is only an affirmative cause of action. Therefore the plaintiff was properly granted summary judgment on that defense. Finally, this decision appears to be the first to recognize a special defense of “predatory lending” in residential foreclosure settings. *The lender knew I could not afford this loan from the very beginning.* So summary judgment should not have been granted on that special defense.

- AC37732 - [Kobyluck Bros., LLC v. Planning & Zoning Commission](#)

In this crazy decision, the Appellate Court held that the applicant was entitled to a special permit to conduct a permanent rock crushing operation in an industrial zone which otherwise only permitted *manufacturing operations* because the town had failed to define “*manufacturing*” and crushing stone to make an earth product could be deemed “*manufacturing*,” even though the town regulations referred to crushing operations as “*processing*” when describing the zones it was not allowed in. The town quickly sought to clarify its regulations, but it was too late.

- AC37676 - [State v. West](#)
- AC37436 - [Guzman v. Yeroz](#)

When a defendant was defaulted for failing to appear, missed the hearing in damages, and then appeared and filed a late appeal challenging the underlying factual conclusions, but the plaintiff failed to move to dismiss the late appeal, the Appellate Court was confronted with what to do. It struggled with whether it could unilaterally dismiss the late appeal when the plaintiff had not moved to dismiss it within 10 days himself. It ultimately ducked the issue and just dismissed the appeal anyway holding that whether or not an unchallenged late appeal could be dismissed, the defendant never appeared at the hearing so none of the issues he was complaining about had been preserved for the appeal and they could offer him no relief.

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.

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.